

R27. Administrative Services, Fleet Operations.**R27-1. Definitions.****R27-1-1. Authority.**

(1) This rule is established pursuant to Section 63A-9-401, which requires the Department of Administrative Services, Division of Fleet Operations, to establish rules regarding the State Fleet.

R27-1-2. Definitions.

In addition to the terms defined in Section 63A-9-101, as used in Title 63A, Chapter 9, or these rules the following terms are defined.

(1) "Accident" means any occurrence, in which a state vehicle is involved in a mishap resulting in harm or injury to persons, or damage to property, regardless of total cost of treatments or repairs. It may also be referred to as an incident.

(2) "Accident Review Committee (ARC)" means the panel formed by each agency to review accidents in which agency employees are involved and make a determination as to whether or not said accidents were preventable.

(3) "Agency" has the same meaning as provided in Section 63A-9-101(1)(a),(b), and (c).

(4) "Agency Motor Vehicle Policy (AMV)" means any policy written by an agency that covers any agency-specific needs involving the use of a state vehicle that are not addressed by state vehicle rules. Agencies shall not adopt policies that are less restrictive than the State vehicle rules.

(5) "Alternative Fuel Vehicles (AFV)" means any vehicle designed and manufactured by an original equipment manufacturer or a converted vehicle designed to operate either on a dual-fuel, flexible-fuel, or dedicated mode while using fuels other than gasoline or diesel. Examples of alternative fuel types are electricity, bio-diesel, fossil-fuel hybrids, compressed natural gas, propane, hydrogen, methanol, ethanol, and any other vehicle fuel source approved by the Federal government's Department of Energy (DOE). AFVs shall be identified and tracked in DFO's fleet information system.

(6) "Authorized Driver" means any employee, as defined in Section 63-30d-102, of an agency who has been identified by the agency in DFO's Fleet Information System as having the authority, within his or her scope of employment, to operate a state vehicle on the agency's behalf, who holds a valid driver license, and has completed the specific training and other criteria required by DFO, Risk Management or employing agency for the vehicle type that will be operated. An Authorized Driver may also be referred to as operator, employee or customer.

(7) "Authorized Passenger" means any state employee acting within the scope of his or her employment, or any other person or animal whose transport is either necessary for the performance of the authorized driver's employment duties, or has been pre-approved by the appropriate department head to accompany an authorized driver.

(8) "Capital only lease vehicle" means any vehicle with a lease designed to recover depreciation cost, (vehicle cost less salvage value spread over the estimated useful life of the vehicle, less the incremental cost of Alternative Fuel Configuration), plus overhead costs only. Capital only leases are subject to DFO approval.

(9) "Commute Use" means an employee driving a state vehicle from the employee's place of business to the employee's place of residence, until the start of the next business day for more than five calendar days per month.

(10) "Compressed Natural Gas Vehicle (CNG)" means any vehicle that may be fueled with compressed natural gas.

(11) "Department" means the Department of Administrative Services.

(12) "Division" has the same meaning as provided by Section 63A-9-101(3).

(13) "Driving Privilege Review Board (DPRB)" means the panel formed for the purpose of reviewing Accident Review Committee (ARC) decisions regarding the suspension, withdrawal or revocation of the state vehicle driving privilege.

(14) "Emergency Vehicle" means any state vehicle which is primarily used for the purpose of providing law enforcement and public safety services as defined in Section 53-12-102(3)(a) and (b), or fire service, or emergency medical services.

(15) "Expansion vehicle" means any vehicle purchased when an agency requires an additional vehicle in order to complete the duties assigned to the requesting agency and will increase the size of the state fleet. The purchase of an expansion vehicle requires legislative approval.

(16) "Extreme Duty Vehicle" a designation used for preventive maintenance purposes, means, but is not limited to, emergency vehicles and vehicles driven primarily off-road.

(17) "Feature" means any option or accessory that is available from the vehicle manufacturer.

(18) "Fixed costs" means, for the purposes of this rule, costs including depreciation, overhead, licensing, betterment, insurance, and title costs, as well as registration fees.

(19) "Fleet Vehicle Advisory Committee" means the panel formed for the purpose of advising DFO, after input from user agencies, as to the vehicle, included features, and equipment that will constitute the standard vehicle for each class in the fleet.

(20) "FO number" means a vehicle specific number assigned to each state vehicle for tracking purposes.

(21) "Fuel Network" means the state program that provides an infrastructure for fueling state vehicles.

(22) "Full Service Lease" means a type of lease designed to recover depreciation costs, overhead costs and all variable costs.

(23) "Heavy-duty Vehicle" means any motor vehicle having a gross vehicle weight range (GVWR) greater than 8,500 pounds. In addition to vehicles licensed for on road use, includes non-road vehicles, as defined in R27-1-2(31), with a GVWR greater than 8,500 pounds. Heavy-duty vehicles shall be tracked in DFO's fleet information system.

(24) "Light-duty Vehicle" means any motor vehicle having a gross vehicle weight rating (GVWR) of 8,500 pounds or less. In addition to vehicles licensed for on road use, includes non-road vehicles, as defined in R27-1-2(31), with a GVWR of 8,500 pounds or less. Light-duty vehicles shall be tracked in DFO's fleet information system.

(25) "Miscellaneous Equipment" means any equipment, enhancement or accessory that is installed on or in a motor vehicle by persons other than the original vehicle manufacturer, and other non-fleet related equipment. Includes, but is not limited to, light bars, 800 MHz radios, transits, surveying equipment, traffic counters, semaphores, and diagnostic related equipment. Miscellaneous Equipment shall be tracked in DFO's fleet information system.

(26) "Motor Pool" generally, means any vehicle that is made available to agencies for lease on a short-term basis.

(27) "Motor Vehicle" has the same meaning as provided by Section 63A-9-101(6)(a) and (b).

(28) "Motor Vehicle Review Committee (MVRC)" means the panel formed to advise the Division of Fleet Operations (DFO), as required by Subsection 63A-9-301(1). The duties of the MVRC are as specified in Section 63A-9-302.

(29) "Non-Preventable Accident" means any occurrence involving an accident/incident in which everything that could have been reasonably done to prevent it was done and the accident/incident still occurred. Non-preventable accidents shall include vandalism of state vehicles being used to conduct state business.

(30) "Non-road vehicle" means a vehicle, regardless of GVWR, that is not licensed for on-road use. Includes, but is not

limited to, vehicles used principally for construction and other non-transportation purposes. Golf carts, farm tractors, snowmobiles, forklifts and boats are examples of vehicles in this category. Non-road vehicles shall be tracked in DFO's fleet information system.

(31) "Other Equipment" means vehicles and equipment not specifically identified in other standard reporting categories.

(32) "Personal Use" means the use of a state vehicle to conduct an employee's personal affairs, not related to state business.

(33) "Preventable Accident" means any occurrence involving a state vehicle, which results in property damage and/or personal injury, regardless of who was injured, what property was damaged, to what extent, or where it occurred, in which the authorized driver in question failed to do everything that could have reasonably been done to prevent it.

(a) Preventable accidents are not limited to collisions.

(b) As used in this rule, "preventable accidents" include, but are not limited to: damage to the interior of the state vehicle due to improperly locked doors, smoke or burn damage caused by smoking in the vehicle or lack of general care of the vehicles interior.

(34) "Preventive Maintenance (PM)" means vehicle services that are conducted at regular time intervals to deter mechanical breakdowns, including, but not limited to, lube, oil and filter changes.

(35) "Regular Duty Vehicle" a designation used for preventive maintenance purposes, means a vehicle that is driven primarily on paved roads under normal driving conditions.

(36) "Replacement cycle" means the criteria established to determine when the replacement of a state vehicle is necessary. A replacement cycle has a time and mileage element, and is established according to vehicle type and use.

(37) "Replacement vehicle" means a vehicle purchased to replace a state vehicle that has met replacement cycle criteria.

(38) "Service Level Agreement (SLA)" means an agreement, signed annually, between an agency and DFO in which the agency agrees to follow all rules, policies and procedures published by DFO concerning the use of state vehicles. This document also clearly defines the level of service between DFO and agencies.

(39) "State of Utah Fuel Card" means a purchase card issued to vehicles by the fuel network program, to be used when purchasing fuel. Fluids and minor miscellaneous items that may also be purchased with the "State of Utah Fuel Card" cannot exceed the monthly monetary limits placed on such purchases by DFO/Fuel Network, unless otherwise authorized.

(40) "Take-home vehicle" means a state vehicle assigned to be driven to and from an employee's place of residence and their assigned work location for more than five calendar days per month and the employee's use of the vehicle is a working condition benefit and not a taxable fringe benefit under the provisions of IRS bulletin 15-B.

(41) "State vehicle" for the purposes of this rule, has the same meaning as provided by Subsection 63A-9-101(7).

(42) "Unique Motorized Equipment" (UME) means high-cost vehicles and equipment such as trains; locomotives; airplanes; jets; mobile power stations and helicopters. Unique equipment shall be tracked in DFO's fleet information system.

(43) "Variable costs" means costs including, but are not limited to fuel, oil, tires, services, repairs, maintenance and preventive maintenance.

(44) "Vehicle Identification Number (VIN)" means the number issued by the vehicle manufacturer to identify the vehicle in the event of a theft; this number can be found on the driver's side of the dashboard below the windshield.

(45) "Vendor" means any person offering sales or services for state vehicles, such as preventive maintenance or repair services.

**KEY: definitions
January 10, 2005**

63A-9-401

R28. Administrative Services, Fleet Operations, Surplus Property.**R28-1. State Surplus Property Disposal.****R28-1-1. Purpose.**

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

R28-1-2. Authority.

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

R28-1-3. Procedures.

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

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

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

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

D. State-owned information technology equipment may be transferred directly to public institutions, such as schools and libraries by the owning agency. However, a form SP-1 must still be completed and forwarded to the USASP to account for the transfer of the equipment. In such cases, the USASP will not assess a fee. Similarly, the USASP is authorized to donate computer equipment received as surplus property from agencies to schools that have submitted requests for computer equipment directly to the USASP.

E. Pursuant to the provisions of section 63A-9-808.1, state-owned information technology equipment may be transferred directly to Non-profit entities for distribution to, and use by, persons with a disability as defined in subsections 62A-5-101(4)(a)(i) and (ii). However, interagency transfers and sales of surplus property to state and local agencies within the 30-day period under section 63A-9-808 shall have priority over transfers under this subsection. The 30-day holding period may be waived if shown to be in the best interest of the state.

F. Requests for state-owned information technology equipment from non-profit entities shall be:

1. Submitted, in writing, on the non-profit entity's official letterhead, to the Department of Human Services, Division of Services for People with Disabilities (DSPD);

2. Reviewed and approved by DSPD and forwarded to the USASP manager to properly track and arrange for distribution.

G. State agencies transferring state-owned information

technology equipment to non-profit entities for distribution to, and use by persons with a disability as defined in subsections 62A-5-101(4)(a)(i) and (ii), shall provide the USASP with completed SP-1 forms in order to account for the transfer of said equipment. In such cases, the USASP will not assess a fee to the donating agency.

H. Pursuant to the provisions of subsection 63A-9-808.1(4), the USASP shall prepare an annual report to DSPD containing the names of non-profit entities that received state-owned information technology equipment under subsection 63A-9-808.1(2), and the types and amounts of equipment received.

I. Prior to submitting information technology equipment to Surplus Property, or donating it directly to the public institutions, agencies shall delete all information from all storage devices. Information shall be deleted in such a manner as to not be retrievable by data recovery technologies.

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

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

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

R28-1-4. Related Party Transactions.

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

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

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

C. Owning state agencies may list any recommended purchasers on the standard form SP-1 Final decision rests with USASP as to selling price and buyer.

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

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

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

3. The USASP may hold the property for a 30-day period

before allowing the related party the opportunity to purchase the property, thus allowing for purchase of the property in accordance with the priorities listed below. The 30-day holding period may be waived if shown to be in the best interest of the state.

R28-1-5. Priorities.

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

B. Property received by the USASP that is determined to be unique, in short supply or in high demand by public agencies shall be held for a period of 30 days before being offered for sale to the general public. The 30-day holding period may be waived if shown to be in the best interest of the state.

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

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

D. State-owned personal property that is not purchased by or transferred to public agencies during the 30-day hold period may be offered for public sale. The 30-day holding period may be waived if shown to be in the best interest of the state.

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

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

R28-1-6. Accounting and Reimbursement.

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

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

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

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

R28-1-7. Payment.

A. Payment received from public purchasers may be in the form of cash and/or certified funds, authorized bank credit cards, and business or personal checks. may not be accepted for amounts exceeding \$200. Two-party checks shall not be accepted.

B. Payment received from state subdivisions shall be in the

form of agency or subdivision check or purchasing card.

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

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

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

R28-1-8. Bad Debt Collection.

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

B. In the event that a check is returned to the USASP is returned for "insufficient fund," the USASP may:

1. Prohibit the debtor from making any future purchases from the USASP until the debt is paid in full.
2. Have division accountant send a certified letter to the debtor stating that:

(a) the debtor has 15 days to pay the full amount owed with cash or certified funds, including any and all additional fees associated with the collection process, such as returned check fees; and

(b) If the balance is not paid within the 15 day period, the matter will be referred to the Office of State Debt Collection for formal collection proceedings.

C. Debts for which payments have not been received in full within the 15 day period referred to above, shall be assigned to the Office of State Debt Collection in accordance with statute.

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

A. State-owned surplus property may be purchased at any time by the general public, subject to any 30-day holding period that may be assigned by USASP management. The 30-day holding period may be waived if shown to be in the best interest of the state.

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

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

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

**KEY: state property
December 20, 2005
Notice of Continuation March 5, 2002**

**63A-9-801
63A-9-808.1**

R63. Agriculture and Food, Chemistry Laboratory.

R63-1. Fee Schedule.

R63-1-1. Authority.

Promulgated under authority of Section 4-2-10.

R63-1-2. Analytical Service Fees.

Analytical service fees shall be charged as determined by the department pursuant to 4-2-2(2). A current list of approved fees may be obtained, upon request from the Utah Department of Agriculture and Food, 350 North Redwood Road, PO Box 146500, Salt Lake City, UT 84114-6500. Phone (801)538-7168. Website: ag.utah.gov, Chemistry Division.

KEY: chemical testing

December 16, 2005

4-2-2

Notice of Continuation September 2, 2005

R81. Alcoholic Beverage Control, Administration.**R81-4B. Airport Lounges.****R81-4B-1. Licensing.**

Airport lounge liquor licenses are issued to persons as defined in Section 32A-1-105(38). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32A-4-202(3), 32A-4-203 and 32A-4-206(21).

R81-4B-2. Application.

A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of an airport lounge license when the requirements of Sections 32A-4-202, -203, and -205 have been met, a completed application has been received by the department, and the airport lounge premises have been inspected by the department.

R81-4B-3. Bonds.

No part of any corporate or cash bond required by Section 32A-4-205 may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4B-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32A-4-202(1)(h) and (i) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-4B-5. Airport Lounge Liquor Licensee Liquor Order and Return Procedures.

The following procedures shall be followed when an airport lounge liquor licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee's order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.

(3) The licensee or the licensee's designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5)(a) Spirituous liquor may be returned by the licensee for the original purchase price only under the following conditions:

- (i) the bottle has not been opened;
- (ii) the seal remains intact;
- (iii) the label remains intact; and
- (iv) upon a showing of the original cash register receipt.

(b) A restocking fee of 10% shall be assessed on the entire amount on any returned spirituous liquor order that exceeds

\$1,000. All spirituous liquor returned that is based on a single purchase on a single cash register receipt must be returned at the same time at a single store, package agency, or satellite warehouse location.

(b) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

R81-4B-6. Airport Lounge Liquor Licensee Operating Hours.

Liquor sales shall be in accordance with Section 32A-4-206(9). However, licensees may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4B-7. Sale and Purchase of Alcoholic Beverages.

A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab, provided that a written beverage tab, as provided in Section 32A-4-206(22), shall be commenced upon the patron's first purchase and shall be maintained by the airport lounge during the course of the patron's stay at the airport lounge regardless of where the patron orders and consumes an alcoholic beverage. Customers shall be notified of the price charged for any packaged wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

R81-4B-8. Liquor Storage.

Liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area of the airport lounge as approved by the department.

R81-4B-9. Alcoholic Product Flavoring.

Airport lounge licensees may use alcoholic products as flavoring subject to the following guidelines:

(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours under the airport lounge license. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No airport lounge employee under the age of 21 years may handle alcoholic product flavorings.

R81-4B-10. Price Lists.

(1) Each licensee shall have available for its patrons a printed price list containing current prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any charges for the service of packaged wines or heavy beer.

(2) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and the list is readily available to the patron.

(3) A licensee or his employee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

R81-4B-11. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or

similar identification number.

KEY: alcoholic beverages

August 1, 2003

Notice of Continuation December 6, 2005

32A-1-107

R81. Alcoholic Beverage Control, Administration.**R81-10A. On-Premise Beer Retailer Licenses.****R81-10A-1. Licensing.**

(1) On-premise beer retailer licenses are issued to persons as defined in Section 32A-1-105(38). The department must be immediately notified of any action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued to ensure there is no violation of Sections 32A-10-202 (3), 32A-10-203, and 32A-10-206(18).

(2) An on-premise beer retailer licensee that wishes to operate the same licensed premises under the operational restrictions of a restaurant liquor license during certain designated periods of the day or night, must apply for and be issued a separate restaurant liquor license subject to the following:

(a) The same on-premise beer retailer licensee must separately apply for a state restaurant liquor license pursuant to the requirements of Sections 32A-4-102, -103, and -105.

(b) Licensees applying for dually licensed premises must notify the department of the time periods under which each license will be operational at the time application is made. Changes must be requested in writing and approved in advance by the department. Licensees may operate sequentially under either license, but not concurrently.

(c) On-premise beer retailer licensees holding a separate restaurant liquor license must operate in accordance with 32A-4-106 and R81-4A during the hours the restaurant liquor license is active.

(d) Liquor storage areas on the restaurant premises shall be deemed to remain on the floor plan of the restaurant premises and shall be kept locked during the hours the on-premise beer retailer license is active.

R81-10A-2. Application.

A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of an on-premise beer retailer license when the requirements of Sections 32A-10-202, -203, and -205 have been met, and a completed application has been received by the department and the beer retailer premises have been inspected by the department.

R81-10A-3. Bonds.

No part of any corporate or cash bond required by Section 32A-10-205 may be withdrawn during the time the license is in effect. If the on-premise beer licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-10A-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32A-10-202(1)(h) and (i) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-10A-5. On-premise Beer Licensee Operating Hours.

Beer sales shall be in accordance with Section 32A-10-206(4). However, on-premise beer licensees may open their beer storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-10A-6. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name,

initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

R81-10A-7. Draft Beer Sales/Minors on Premises.

A state on-premise beer license, restaurant liquor license, airport lounge license, limited restaurant license, on-premise banquet license or private club license authorizes the licensee to sell beer on draft regardless of the nature of the business (e.g. cafe, restaurant, pizza parlor, bowling alley, golf course clubhouse, club, tavern, etc.). Minors may not be precluded from establishments based upon whether draft beer is sold. However, minors may not be employed by or be on the premises of any establishment or portion of an establishment which is a "tavern" as defined in Section 32A-1-105(54). This does not preclude local authorities and licensees from excluding minors from premises or portions of premises which have the atmosphere or appearance of a "tavern" as so defined.

KEY: alcoholic beverages**August 1, 2003****Notice of Continuation December 6, 2005****32A-1-107**

**R156. Commerce, Occupational and Professional Licensing.
R156-55a. Utah Construction Trades Licensing Act Rules.
R156-55a-101. Title.**

These rules shall be known as the "Utah Construction Trades Licensing Act Rules".

R156-55a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as defined or used in these rules:

(1) "Employee", as used in Subsections 58-55-102(10)(a) and 58-55-102(12), means a person providing labor services in the construction trades for compensation who has federal and state taxes withheld and workers' compensation and unemployment insurance provided by the person's employer.

(2) "Incidental to the performance of his licensed craft or trade" as used in Subsection 58-55-102(32) means work which:

(a) can be safely and competently performed by the specialty contractor;

(b) arises from and is directly related to work performed in the licensed specialty classification; and

(c) is substantially less in scope and magnitude when compared to the work performed or to be performed by the specialty contractor in the licensed specialty classification.

(3) "Maintenance" means the repair, replacement and refinishing of any component of an existing structure; but, does not include alteration or modification to the existing weight-bearing structural components.

(4) "Mechanical", as used in Subsections 58-55-102(15) and 58-55-102(25) means the work which may be performed by a S350 HVAC Contractor under Subsection R156-55a-301(3).

(5) "Personal property" means, as it relates to Title 58, Chapter 56, factory built housing and modular construction, a structure which is titled by the Motor Vehicles Division, state of Utah, and taxed as personal property.

(6) "School" means a Utah school district, applied technology college, or accredited college.

(7) "Unprofessional conduct" defined in Title 58, Chapters 1 and 55, is further defined in accordance with Subsection 58-1-203(5) in Section R156-55a-501.

R156-55a-103. Authority.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 55.

R156-55a-104. Organization - Relationship to Rule R156-1.

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

R156-55a-301. License Classifications - Scope of Practice.

(1) In accordance with Subsection 58-55-301(2), the classifications of licensure are listed and described in this section. The construction trades or specialty contractor classifications listed are those determined to significantly impact the public health, safety, and welfare. A person who is practicing a construction trade or specialty contractor classification which is not listed is exempt from licensure in accordance with Subsection 58-55-305(9).

(2) Licenses shall be issued in the following primary classifications and subclassifications:

E100 - General Engineering Contractor. A General Engineering contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(19).

B100 - General Building Contractor. A General Building contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(18).

R100 - Residential and Small Commercial Contractor. A Residential and Small Commercial contractor is a contractor licensed to perform work as defined in Subsection 58-55-

102(28).

R101 - Residential and Small Commercial Non Structural Remodeling and Repair. Remodeling and repair to any existing structure built for support, shelter and enclosure of persons, animals, chattels or movable property of any kind with the restriction that no change is made to the bearing portions of the existing structure, including footings, foundation and weight bearing walls; and the entire project is less than \$25,000 in total cost.

R200 - Factory Built Housing Set Up Contractor. Set up or installation of manufactured housing on a temporary or permanent basis. The scope of the work permitted under this classification includes placement of the manufactured housing on a permanent or temporary foundation, securing the units together if required, securing the manufactured housing to the foundation, and connection of the utilities from the near proximity, such as a meter, to the manufactured housing unit and construction of foundations of less than four feet six inches in height. Work excluded from this classification includes site preparation or finishing, excavation of the ground in the area where a foundation is to be constructed, back filling and grading around the foundation, construction of foundations of more than four feet six inches in height and construction of utility services from the utility source to and including the meter or meters if required or if not required to the near proximity of the manufactured housing unit from which they are connected to the unit.

I101 - General Engineering Trades Instructor. A General Engineering Trades Instructor is a construction trades instructor authorized to teach the construction trades and is subject to the scope of practice defined in Subsection 58-55-102(19).

I102 - General Building Trades Instructor. A General Building Trades Instructor is a construction trades instructor authorized to teach the construction trades and is subject to the scope of practice defined in Subsection 58-55-102(18).

I103 - Electrical Trades Instructor. An Electrical Trades Instructor is a construction trades instructor authorized to teach the electrical trades and subject to the scope of practice defined in Subsection R156-55a-301(S200).

I104 - Plumbing Trades Instructor. A Plumbing Trades Instructor is a construction trades instructor authorized to teach the plumbing trades and subject to the scope of practice defined in Subsection R156-55a-301(S210).

I105 - Mechanical Trades Instructor. A Mechanical Trades Instructor is a construction trades instructor authorized to teach the mechanical trades and subject to the scope of practice defined in Subsection R156-55a-301(S350).

S200 - General Electrical Contractor. Fabrication, construction, and/or installation of generators, transformers, conduits, raceways, panels, switch gear, electrical wires, fixtures, appliances, or apparatus which utilizes electrical energy.

S201 - Residential Electrical Contractor. Fabrication, construction, and/or installation of services, disconnecting means, grounding devices, panels, conductors, load centers, lighting and plug circuits, appliances and fixtures in any residential unit, normally requiring non-metallic sheathed cable, including multiple units up to and including a four-plex, but excluding any work generally recognized in the industry as commercial or industrial.

S210 - General Plumbing Contractor. Fabrication and/or installation of material and fixtures to create and maintain sanitary conditions in buildings, by providing a permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and provision of a safe and adequate supply of gases for lighting, heating, and industrial purposes. Work permitted

under this classification shall include the furnishing of materials, fixtures and labor to extend service from a building out to the main water, sewer or gas pipeline.

S211 - Boiler Installation Contractor. Fabrication and/or installation of fire-tube and water-tube power boilers and hot water heating boilers, including all fittings and piping, valves, gauges, pumps, radiators, converters, fuel oil tanks, fuel lines, chimney flues, heat insulation and all other devices, apparatus, and equipment related thereto.

S212 - Irrigation Sprinkling Contractor. Layout, fabrication, and/or installation of water distribution system for artificial watering or irrigation.

S213 - Industrial Piping Contractor. Fabrication and/or installation of pipes and piping for the conveyance or transmission of steam, gases, chemicals, and other substances including excavating, trenching, and back-filling related to such work.

S214 - Water Conditioning Equipment Contractor. Fabrication and/or installation of water conditioning equipment and only such pipe and fittings as are necessary for connecting the water conditioning equipment to the water supply system within the premises.

S215 - Solar Energy Systems Contractor. Fabrication and/or installation of solar energy systems.

S216 - Residential Sewer Connection and Septic Tank Contractor. Construction of residential sewer lines including connection to the public sewer line, and excavation and grading related thereto. Excavation, installation and grading of residential septic tanks and their drainage.

S217 - Residential Plumbing Contractor. Fabrication and/or installation of material and fixtures to create and maintain sanitary conditions in residential building, including multiple units up to and including a four-plex by providing a permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and provision of a safe and adequate supply of gases for lighting and heating purposes. Work permitted under this classification shall include the furnishing of materials, fixtures and labor to extend service from a residential building out to the main water, sewer or gas pipeline. Excluded is any new construction and service work generally recognized in the industry as commercial or industrial.

S220 - Carpentry Contractor. Fabrication for structural and finish purposes in a structure or building using wood, wood products, metal studs, vinyl materials, or other wood/plastic/metal composites as is by custom and usage accepted in the building industry as carpentry.

S221 - Cabinet and Millwork Installation Contractor. On-site construction and/or installation of milled wood products.

S230 - Metal and Vinyl Siding Contractor. Fabrication, construction, and/or installation of wood, aluminum, steel or vinyl sidings.

S231 - Raingutter Installation Contractor. On-site fabrication and/or installation of raingutters and drains, roof flashings, gravel stops and metal ridges.

S240 - Glass and Glazing Contractor. Fabrication, construction, installation, and/or removal of all types and sizes of glass, mirrors, substitutes for glass, glass-holding members, frames, hardware, and other incidental related work.

S250 - Insulation Contractor. Installation of any insulating media in buildings and structures for the sole purpose of temperature control, sound control or fireproofing, but shall not include mechanical insulation of pipes, ducts or conduits.

S260 - General Concrete Contractor. Fabrication, construction, mixing, batching, and/or installation of concrete and related concrete products along with the placing and setting of screeds for pavement for flatwork, the construction of forms,

placing and erection of steel bars for reinforcing and application of plaster and other cement-related products.

S261 - Concrete Form Setting and Shoring Contractor. Fabrication, construction, and/or installation of forms and shoring material; but, does not include the placement of concrete, finishing of concrete or embedded items such as metal reinforcement bars or mesh.

S262 - Guniting and Pressure Grouting Contractor. Installation of a concrete product either injected or sprayed under pressure.

S263 - Cementitious Coating Systems Resurfacing and Sealing Contractor. Fabrication, construction, mixing, batching and installation of cementitious coating systems or sealants limited to the resurfacing or sealing of existing surfaces, including the preparation or patching of the surface to be covered or sealed.

S270 - General Drywall, Stucco and Plastering Contractor. Fabrication, construction, and/or installation of drywall, gypsum, wallboard panels and assemblies. Preparation of drywall, stucco or plaster surfaces for suitable painting or finishing. Installation of light-weight metal, non-bearing wall partitions, ceiling grid systems, and ceiling tile or panel systems.

S271 - Plastering and Stucco Contractor. Application to surfaces of coatings made of stucco or plaster, including the preparation of the surface and the provision of a base. Exempted is the plastering of foundations.

S272 - Ceiling Grid Systems, Ceiling Tile and Panel Systems Contractor. Fabrication and/or installation of wood, mineral, fiber, and other types of ceiling tile and panels and the grid systems required for placement.

S273 - Light-weight Metal and Non-bearing Wall Partitions Contractor. Fabrication and/or installation of light-weight metal and other non-bearing wall partitions.

S274 - Drywall Contractor. Fabrication, construction and installation of drywall, gypsum, wallboard panels and assemblies. Preparation of surfaces for suitable painting or finishing. Installation of lightweight metal, non-bearing wall partitions.

S280 - General Roofing Contractor. Application and/or installation of asphalt, pitch, tar, felt, flax, shakes, shingles, roof tile, slate, and any other material or materials, or any combination of any thereof which use and custom has established as usable for, or which are now used as, water-proof, weatherproof, or watertight seal or membranes for roofs and surfaces; and roof conversion.

S281 - Single Ply and Specialty Coating Contractor. Application of solutions of rubber, latex, or other materials or single-ply material to surfaces to prevent, hold, keep, and stop water, other liquids, derivatives, compounds, and solids from penetrating and passing such materials thereby gaining access to material or space beyond such waterproofing.

S282 - Build-up Roofing Contractor. Application of solutions of rubber, latex, asphalt, pitch, tar, or other materials in conjunction with the application of layers, felt, or other material to a roof or other surface.

S283 - Shingle and Shake Roofing Contractor. Application of shingles and shakes made of wood or any other material.

S284 - Tile Roofing Contractor. Application or installation of tile roofs including under layment material and sealing and reinforcement of weight bearing roof structures for the purpose of supporting the weight of the tile.

S285 - Metal Roofing Contractor. On-site fabrication and/or application of metal roofing materials.

S290 - General Masonry Contractor. Construction by cutting, and/or laying of all of the following brick, block, or forms: architectural, industrial, and refractory brick, all brick substitutes, clay and concrete blocks, terra-cotta, thin set or structural quarry tile, glazed structural tile, gypsum tile, glass

block, clay tile, copings, natural stone, plastic refractories, and castables and any incidental works as required in construction of the masonry work.

S291 - Stone Masonry Contractor. Construction using natural or artificial stone, either rough or cut and dressed, laid at random, with or without mortar.

S292 - Terrazzo Contractor. Construction by fabrication, grinding, and polishing of terrazzo by the setting of chips of marble, stone, or other material in an irregular pattern with the use of cement, polyester, epoxy or other common binders.

S293 - Marble, Tile and Ceramic Contractor. Preparation, fabrication, construction, and installation of artificial marble, burned clay tile, ceramic, encaustic, falence, quarry, semi-vitreous, and other tile, excluding hollow or structural partition tile.

S294 - Cultured Marble Contractor. Preparation, fabrication and installation of slab and sheet manmade synthetic products including cultured marble, onyx, granite, onice, corian and corian type products.

S300 - General Painting Contractor. Preparation of surface and/or the application of all paints, varnishes, shellacs, stains, waxes and other coatings or pigments.

S310 - Excavation and Grading Contractor. Moving of the earth's surface or placing earthen materials on the earth's surface, by use of hand or power machinery and tools, including explosives, in any operation of cut, fill, excavation, grading, trenching, backfilling, or combination thereof as they are generally practiced in the construction trade.

S320 - Steel Erection Contractor. Construction by fabrication, placing, and tying or welding of steel reinforcing bars or erecting structural steel shapes, plates of any profile, perimeter or cross-section that are used to reinforce concrete or as structural members, including riveting, welding, and rigging.

S321 - Steel Reinforcing Contractor. Fabricating, placing, tying, or mechanically welding of reinforcing bars of any profile that are used to reinforce concrete buildings or structures.

S322 - Metal Building Erection Contractor. Erection of pre-fabricated metal structures including concrete foundation and footings, grading, and surface preparation.

S323 - Structural Stud Erection Contractor. Fabrication and installation of metal structural studs and bearing walls.

S330 - Landscaping Contractor. Grading and preparing land for architectural, horticultural, and the decorative treatment, arrangement, and planting of gardens, lawns, shrubs, vines, bushes, trees, and other decorative vegetation. Construction of pools, tanks, fountains, hot and green houses, retaining walls, patio areas when they are an incidental part of the prime contract, fences, walks, garden lighting of 50 volts or less, and sprinkler systems.

S340 - Sheet Metal Contractor. Layout, fabrication, and installation of air handling and ventilating systems. All architectural sheet metal such as cornices, marquees, metal soffits, gutters, flashings, and skylights and skydomes including both plastic and fiberglass.

S350 - HVAC Contractor. Fabrication and installation of complete warm air heating and air conditioning systems, and complete ventilating systems.

S351 - Refrigerated Air Conditioning Contractor. Fabrication and installation of air conditioning ventilating systems to control air temperatures below 50 degrees.

S352 - Evaporative Cooling Contractor. Fabrication and installation of devices, machinery, and units to cool the air temperature employing evaporation of liquid.

S353 - Warm Air Heating Contractor. Layout, fabrication, and installation of such sheet metal, gas piping, and furnace equipment as necessary for a complete warm air heating and ventilating system.

S360 - Refrigeration Contractor. Construction and/or installation of refrigeration equipment including, but not limited

to, built-in refrigerators, refrigerated rooms, insulated refrigerated spaces and equipment related thereto; but, the scope of permitted work does not include the installation of gas fuel or electric power services other than connection of electrical devices to a junction box provided for that device and electrical control circuitry not exceeding 50 volts.

S370 - Fire Suppression Systems Contractor. Layout, fabrication, and installation of fire protection systems using water, steam, gas, or chemicals. When a potable sanitary water supply system is used as the source of supply, connection to the water system must be accomplished by a licensed journeyman plumber. Excluded from this classification are persons engaged in the installation of fire suppression systems in hoods above cooking appliances.

S380 - Swimming Pool and Spa Contractor. On-site fabrication, construction and installation of swimming pools, spas, and tubs.

S390 - Sewer and Waste Water Pipeline Contractor. Construction of sewer lines, sewage disposal and sewage drain facilities including excavation and grading with respect thereto, and the construction of sewage disposal plants and appurtenances thereto.

S400 - Asphalt Paving Contractor. Construction of asphalt highways, roadways, driveways, parking lots or other asphalt surfaces, which will include but will not be limited to, asphalt overlay, chip seal, fog seal and rejuvenation, micro surfacing, plant mix sealcoat, slurry seal, and the removal of asphalt surfaces by milling. Also included is the excavation, grading, compacting and laying of fill or base-related thereto.

S410 - Pipeline and Conduit Contractor. Fabrication, construction, and installation of pipes, conduit or cables for the conveyance and transmission from one station to another of such products as water, steam, gases, chemicals, slurries, data or communications. Included are the excavation, cabling, horizontal boring, grading, and backfilling necessary for construction of the system.

S420 - General Fencing and Guardrail Contractor. Fabrication, construction, and installation of fences, guardrails, and barriers.

S421 - Residential Fencing Contractor. Fabrication and installation of residential fencing up to and including a height of six feet.

S430 - Metal Firebox and Fuel Burning Stove Installer. Fabrication, construction, and installation of metal fireboxes, fireplaces, and wood or coal-burning stoves.

S440 - Sign Installation Contractor. Installation of signs and graphic displays which require installation permits or permission as issued by state or local governmental jurisdictions. Signs and graphic displays shall include signs of all types, both lighted and unlighted, permanent highway marker signs, illuminated awnings, electronic message centers, sculptures or graphic representations including logos and trademarks intended to identify or advertise the user or his product, building trim or lighting with neon or decorative fixtures, or any other animated, moving or stationary device used for advertising or identification purposes. Signs and graphic displays must be fabricated, installed and erected in accordance with professionally engineered specifications and wiring in accordance with the National Electrical Code.

S441 - Non Electrical Outdoor Advertising Sign Contractor. Installation of signs and graphic displays which require installation permits or permission as issued by state and local governmental jurisdictions. Signs and graphics shall include outdoor advertising signs which do not have electrical lighting or other electrical requirements, and in accordance with professionally engineered specifications.

S450 - Mechanical Insulation Contractor. Fabrication, application and installation of insulation materials to pipes, ducts and conduits.

S460 - Wrecking and Demolition Contractor. The raising, cribbing, underpinning, moving, and removal of building and structures so that alterations, additions, repairs, and new sub-structures may be built.

S470 - Petroleum Systems Contractor. Installation of above and below ground petroleum and petro-chemical storage tanks, piping, dispensing equipment, monitoring equipment and associated petroleum and petro-chemical equipment including excavation, backfilling, concrete and asphalt.

S480 - Piers and Foundations Contractor. The excavation, drilling, compacting, pumping, sealing and other work necessary to construct, alter or repair piers, piles, footings and foundations placed in the earth's subsurface to prevent structural settling and to provide an adequate capacity to sustain or transmit the structural load to the soil or rock below.

S490 - Wood Flooring Contractor. Installation of wood flooring including prefinished and unfinished material, sanding, staining and finishing of new and existing wood flooring. Underlayments, non-structural subfloors and other incidental related work.

S491 - Laminate Floor Installation Contractor. Installation of laminate floors including underlayments, non-structural subfloors and other incidental related work, but does not include the installation of solid wood flooring.

S500 - Sports and Athletic Courts, Running Tracks, and Playground Installation Contractor. Installation of sports and athletic courts including but not limited to tennis courts, racquetball courts, handball courts, basketball courts, running tracks, playgrounds, or any combination. Includes nonstructural floor subsurfaces, nonstructural wall surfaces, perimeter walls and perimeter fencing.

R156-55a-302a. Qualifications for Licensure - Examinations.

(1) In accordance with Subsection 58-55-302(1)(c), an applicant for licensure as a contractor or a construction trades instructor shall pass the following examinations as a condition precedent to licensure as a contractor or a construction trades instructor:

- (a) the Trade Classification Specific Examination; and
 - (b) the Utah Contractor Business - Law Examination.
- (2) The passing score for each examination is 70%.
- (3) An applicant for licensure who fails an examination may retake the failed examination as follows:

- (a) no sooner than 30 days following any failure up to three failures; and
- (b) no sooner than six months following any failure thereafter.

R156-55a-302b. Qualifications for Licensure - Experience Requirements.

In accordance with Subsection 58-55-302(1)(e)(ii), the minimum experience requirements are established as follows:

- (1) Requirements for all license classifications:
 - (a) All experience shall be directly supervised by the applicant's employer.
 - (b) All experience shall be directly related to the scope of practice set forth in Section R156-55a-301 of the classification the applicant is applying for, as determined by the Division.
 - (c) One year of work experience means 2000 hours.
 - (d) No more than 2000 hours of experience during any 12 month period may be claimed.
 - (e) Except as described in paragraph (2)(c), experience obtained under the supervision of a construction trades instructor as a part of an educational program is not qualifying experience for a contractors license.

(2) Requirements for E100 General Engineering, B100 General Building, R100 Residential and Small Commercial Building license classifications:

(a) In addition to the requirements of paragraph (1), an applicant for an R100, B100 or E100 license shall have within the past 10 years a minimum of four years experience as an employee of a contractor licensed in the license classification applied for, or the substantial equivalent of a contractor licensed in that license classification as determined by the Division.

(b) Two of the required four years of experience shall be in a supervisory or managerial position.

(c) A person holding a four year bachelors degree or a two year associates degree in Construction Management may have one year of experience credited towards the supervisory or managerial experience requirement.

(3) Requirements for S280 General Roofing, S290 General Masonry, S320 Steel Erection, S350 Heating Ventilating and Air Conditioning, S360 Refrigeration and S370 Fire Suppression Systems license classifications:

In addition to the requirements of paragraph (1), an applicant shall have within the past 10 years a minimum of four years of experience as an employee of a contractor licensed in the license classification applied for, or the substantial equivalent of a contractor licensed in that license classification as determined by the Division.

(4) Requirements for I101 General Engineering Trades Instructor, I102 General Building Trades Instructor, I103 Electrical Trades Instructor, I104 Plumbing Trades Instructor, I105 Mechanical Trades Instructor license classifications:

An applicant for construction trades instructor license shall have the same experience that is required for the license classifications for the construction trade they will instruct.

(5) Requirements for other license classifications:

In addition to the requirements of paragraph (1), an applicant for contractor license classification not listed above shall have within the past 10 years a minimum of two years of experience as an employee of a contractor licensed in the license classification applied for, or the substantial equivalent of a contractor licensed in that license classification as determined by the Division.

R156-55a-302c. Qualifications for Licensure Requiring Licensure in a Prerequisite Classification.

(1) Each applicant for licensure as a I103 Electrical Trades Instructor shall also be licensed as either a journeyman or master electrician or a residential journeyman or residential master electrician.

(2) Each applicant for licensure as a I104 Plumbing Trades Instructor shall also be licensed as either a journeyman plumber or a residential journeyman plumber.

R156-55a-302d. Qualifications for Licensure - Proof of Insurance and Registrations.

In accordance with the provisions of Subsection 58-55-302(2)(b), an applicant who is approved for licensure shall submit proof of public liability insurance in coverage amounts of at least \$100,000 for each incident and \$300,000 in total.

R156-55a-302e. Additional Requirements for Construction Trades Instructor Classifications.

In accordance with Subsection 58-55-302(1)(f), the following additional requirements for licensure are established:

(1) Any school that provides instruction to students by building houses for sale to the public is required to become a Utah licensed contractor with a B100 General Building Contractor or R100 Residential and Small Commercial Building Contractor classification or both.

(2) Any school that provides instruction to students by building houses for sale to the public is also required to be licensed in the appropriate instructor classification.

(a) Before being licensed in a construction trades instructor classification, the school shall submit the name of an

individual person who acts as the qualifier in each of the construction trades instructor classifications in accordance with Section R156-55a-304. The applicant for licensure as a construction trades instructor shall:

(i) provide evidence that the qualifier has passed the required examinations established in Section R156-55a-302a; and

(ii) provide evidence that the qualifier meets the experience requirement established in Subsection R156-55a-302b(4).

(3) Each individual employed by a school licensed as a construction trades instructor and working with students on a job site shall meet any teacher certification, or other teacher requirements imposed by the school district or college, and be qualified to teach the construction trades instructor classification as determined by the qualifier.

R156-55a-303a. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licensees under Title 58, Chapter 55 is established by rule in Section R156-1-308.

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

(3) In accordance with Subsections 58-55-501(21) and 58-1-308(3)(b)(i), there is established a continuing education requirement for license renewal. Each licensee, or the licensee's qualifier, or an officer, director or supervising individual, as designated by the licensee, shall comply with the following continuing education requirements:

- (a) complete three hours of core continuing education; and
- (b) an additional three hours of continuing education.

R156-55a-303b. Continuing Education - Standards.

(1) Continuing education courses are not required to be submitted for approval by the Commission, but must meet the following criteria:

(a) content must be relevant to the practice of the construction trades and consistent with the laws and rules of this state;

(b) learning objectives must be reasonably and clearly stated;

(c) teaching methods must be clearly stated and appropriate;

(d) faculty must be qualified, both in experience and in teaching expertise;

(e) documentation of attendance must be provided; and

(f) all core education and professional education hours shall be clock hours.

(2) The three hour core education requirement shall include one or more of the following course content areas:

- (a) construction codes;
- (b) construction laws and rules; and
- (c) construction practices.

(3) Credit for core education and professional education shall be recognized in accordance with the following. Hours shall be recognized for core education and professional education completed in blocks of time of not less than 50 minutes, in formally established classroom courses, seminars, lectures, conferences, training sessions or distance learning modules, which meet the criteria listed in Subsection (1) above and conducted by or under the sponsorship of:

- (a) a recognized university or college;
- (b) a state agency;
- (c) a professional association, including:
 - (i) the Associated Builders and Contractors Association;
 - (ii) the Associated General Contractors Association;
 - (iii) the Utah Home Builders Association;
 - (iv) the Utah Mechanical Contractors Association; or

(d) other recognized education programs as approved by the Commission with the concurrence of the Director.

(4) Professional education shall not include courses in office and business skills, physical well-being and personal development, and meetings held in conjunction with the general business of the licensee.

(5) The continuing education requirement for electricians as established in Section R156-55b-304, which is completed by an electrical contractor, shall satisfy the continuing education requirement for contractors as established in Subsection 58-55-501(21) and implemented herein.

(6) A licensee shall be responsible for maintaining competent records of completed core and other continuing education for a period of two years after the two year period to which the records pertain.

R156-55a-304. Construction Trades Instructor License Qualifiers.

In accordance with Subsection 58-55-302(1)(f), the contractor license qualifier requirements in Section 58-55-304 shall also apply to construction trades instructors.

R156-55a-305. Compliance Agency Reporting of Sole Owner Building Permits Issued.

In accordance with Subsection 58-55-305(2), all compliance agencies that issue building permits to sole owners of property must submit information concerning each building permit issued in their jurisdiction within 30 days of the issuance, with the building permit number, date issued, name, address and phone number of the issuing compliance agency, sole owner's full name, home address, phone number, and subdivision and lot number of the building site, to a fax number, email address or written mailing address designated by the division.

R156-55a-306a. Financial Responsibility - Questionnaire and Aggregate Bonding Limit.

In accordance with Section 58-55-306, the following shall apply:

(1) An applicant may demonstrate financial responsibility by either submitting the questionnaire or by submitting proof of an aggregate bonding limit in a form acceptable to the division.

(2) Under no circumstances shall the aggregate bonding limit be less than \$25,000.

R156-55a-306b. Financial Responsibility - Division Audit - Financial Statements.

(1) All financial statements shall cover a period of time ending no earlier than the last tax year.

(2) Financial statements prepared by an independent certified public accountant (CPA) shall be "audited", "reviewed", or "compiled" financial statements prepared in accordance with generally accepted accounting principles and shall include the CPA's report stating that the statements have been audited, reviewed or compiled.

(3) Division reviewed financial statements shall be submitted in a form acceptable to the division and shall include the following:

- (a) the balance sheet;
- (b) all schedules;
- (c) a complete copy of the applicant's most recently filed federal income tax return;
- (d) a copy of the applicant's bank or broker account statements; and
- (e) an acceptable credit report for the applicant.

(4) An acceptable credit report is:

- (a) dated within 30 days prior to the date the application is received by the division;
- (b) free from erasures, alterations, modifications, omissions, or any other form of change which alters the full and

complete information provided by the credit reporting agency;

- (c) a report from:
 - (i) Trans Union, Experian, and Equifax national credit reporting agencies; or
 - (ii) National Association of Credit Managers (NACM); or
 - (iii) another local credit reporting agency that includes a report for each of the three national credit reporting agencies names in Subsection (i) above.

R156-55a-308a. Operating Standards for Schools or Colleges Licensed as Contractors.

(1) Each school licensed as a B100 General Building Contractor or a R100 Residential and Small Commercial Contractor or both shall obtain all required building permits for homes built for resale to the public as part of an educational training program.

(2) Each employee that works as an instructor for a school licensed as a construction trades instructor shall:

- (a) have on their person a school photo ID card with the trade they are authorized to teach printed on the card; and
- (b) if instructing in the plumbing or electrical trades, they shall also carry on their person their Utah journeyman or residential journeyman plumber license or Utah journeyman, residential journeyman, master, or residential master electrician license.

(3) Each school licensed as a construction trades instructor shall not allow any teacher or student to work on any portion of the project subcontracted to a licensed contractor unless the teacher or student are lawful employees of the subcontractor.

R156-55a-308b. Natural Gas Technician Certification.

(1) In accordance with Subsection 58-55-308(1), the scope of practice defined in Subsection 58-55-308(2)(a) requiring certification is further defined as the installation, modifications, repair or replacement of the gas piping, combustion air vents, exhaust venting system or derating of gas input for altitude of a residential or commercial gas appliance.

(2) An approved training program shall include the following course content:

- (a) general gas appliance installation codes;
- (b) venting requirements;
- (c) combustion air requirements;
- (d) gas line sizing codes;
- (e) gas line approved materials requirements;
- (f) gas line installation codes; and
- (g) methods of derating gas appliances for elevation.

(3) In accordance with Subsection 58-55-308(2)(c)(i), the following programs are approved to provide natural gas technician training, and to issue certificates or documentation of exemption from certification:

- (a) Federal Bureau of Apprenticeship Training;
- (b) Utah college apprenticeship program; and
- (c) Trade union apprenticeship program.

(4) In accordance with Subsection 58-55-308(2)(e), the approved programs set forth in paragraphs (2)(b) and (2)(c) herein shall require program participants to pass the Rocky Mountain Gas Association Gas Appliance Installers Certification Exam or approved equivalent exams established or adopted by a training program, with a minimum passing score of 80%.

(5) In accordance with Subsection 58-55-308(2)(e), a person who has not completed an approved training program, but has passed the Rocky Mountain Gas Association Gas Exam or approved equivalent exam established or adopted by an approved training program, with a minimum passing score of 80%, or the Utah licensed Journeyman or Residential Journeyman Plumber Exam, with a minimum passing score of 70%, shall be exempt from the certification requirement set forth in Subsection 58-55-308(2)(c)(i).

(6) Content of certificates of completion. An approved program shall issue a certificate, including a wallet certificate, to persons who successfully complete their training program containing the following information:

- (a) name of the program provider;
- (b) name of the approved program;
- (c) name of the certificate holder;
- (d) the date the certification was completed; and
- (e) signature of an authorized representative of the program provider.

(7) Documentation of exemption from certification. The following shall constitute documentation of exemption from certification:

- (a) certification of completion of training issued by the Federal Bureau of Apprenticeship Training;
- (b) current Utah licensed Journeyman or Residential Journeyman plumber license; or
- (c) certification from the Rocky Mountain Gas Association or approved equivalent exam which shall include the following:
 - (i) name of the association, school, union, or other organization who administered the exam;
 - (ii) name of the person who passed the exam;
 - (iii) name of the exam;
 - (iv) the date the exam was passed; and
 - (v) signature of an authorized representative of the test administrator.

(8) Each person engaged in the scope of practice defined in Subsection 58-55-308(2)(a) and as further defined in Subsection (1) herein, shall carry in their possession documentation of certification or exemption.

R156-55a-311. Reorganization of Contractor Business Entity.

A reorganization of the business organization or entity under which a licensed contractor is licensed shall require application for a new license under the new form of organization or business structure. The creation of a new legal entity constitutes a reorganization and includes a change to a new entity under the same form of business entity or a change of the form of business entity between proprietorship, partnership, whether limited or general, joint venture, corporation or any other business form.

R156-55a-312. Inactive License.

(1) The requirements for inactive licensure specified in Subsection R156-1-305(3) shall also include certification that the licensee will not engage in the construction trade(s) for which his license was issued while his license is on inactive status except to identify himself as an inactive licensee.

(2) A license on inactive status will not be required to meet the requirements of licensure in Subsections 58-55-302(1)(e)(i), 58-55-302(2)(a) and 58-55-302(2)(b).

(3) The requirements for reactivation of an inactive license specified in Subsection R156-1-305(6) shall also include:

(a) documentation that the licensee meets the requirements of Subsections 58-55-302(1)(e)(i), 58-55-302(2)(a) and 58-55-302(2)(b); and

(b) documentation that the licensee has taken and passed the business and law examination and the trade examination for the classification for which activation is sought except that the following exceptions shall apply to the reactivation examination requirement:

(i) No qualifying examinations will be required if the licensee applies for reactivation of his license within two years after being placed on inactive status.

(ii) No qualifying examinations will be required if the licensee has been actively and lawfully involved in the construction trades as an employee of another licensed contractor or has been actively and lawfully involved in the

construction trades in another state during the time the license was inactive.

(iii) If the licensee applies for reactivation after two years but before four years after being placed on inactive status, the division may waive the qualifying examinations if the licensee presents adequate support that he has maintained the knowledge and skills tested in the business and law examination and the trade examination in the classification for which reactivation of licensure is sought.

(iv) If the licensee applies for reactivation four years or more after being placed on inactive status, the division may waive the trade examination in the classification for which reactivation of licensure is sought, if the licensee presents adequate support that he has maintained the knowledge and skills tested in the trade examination.

R156-55a-401. Minimum Penalty for Failure to Maintain Insurance.

(1) A minimum penalty is hereby established for the violation of Subsection R156-55a-501(2) as follows:

(a) For a violation the duration of which is less than 90 days, where the licensee at the time a penalty is imposed documents that the required liability and workers compensation insurance have been reacquired, and provided an insurable loss has not occurred while not insured, a minimum of a 30 day suspension of licensure, stayed indefinitely, automatically executable in addition to any other sanction imposed, upon any subsequent violations of Subsection R156-55a-501(2).

(b) For a violation the duration of which is 90 days or longer, or where insurable loss has occurred, where the licensee at the time a penalty is imposed documents that the required insurance have been reacquired, a minimum of 30 days suspension of licensure.

(c) For a violation of any duration, where the licensee at the time a penalty is imposed fails to document that the required insurance have been reacquired, a minimum of indefinite suspension. A license which is placed on indefinite suspension may not be reinstated any earlier than 30 days after the licensee documents the required insurance have been reacquired.

(d) If insurable loss has occurred and licensee has not paid the damages, the license may be suspended indefinitely until such loss is paid by the licensee.

(e) Nothing in this section shall be construed to restrict a presiding officer from imposing more than the minimum penalty for a violation of Subsection R156-55a-501(2). However, absent extraordinary cause, the presiding officer may not impose less than the minimum penalty.

R156-55a-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to notify the division with respect to any matter for which notification is required under these rules or Title 58, Chapter 55, the Construction Trades Licensing Act, including a change in qualifier. Such failure shall be considered by the division and the board as grounds for immediate suspension of the contractors license;

(2) failing to continuously maintain insurance and registration as required by Subsection 58-55-302(2), in coverage amounts and form as implemented by this chapter.

R156-55a-502. Penalty for Unlawful Conduct.

The penalty for violating Subsection 58-55-501(1) while suspended from licensure shall include the maximum fine allowed by Subsection 58-55-503(4)(i).

R156-55a-503. Administrative Penalties.

(1) In accordance with Subsection 58-55-503, the following fine schedule shall apply to citations issued under Title 58, Chapter 55:

TABLE		
FINE SCHEDULE		
FIRST OFFENSE		
Violation	All Licenses Except Electrical or Plumbing	Electrical or Plumbing
58-55-308(2)	\$ 500.00	N/A
58-55-501(1)	\$ 500.00	\$ 500.00
58-55-501(2)	\$ 500.00	\$ 800.00
58-55-501(3)	\$ 800.00	\$1,000.00
58-55-501(9)	\$ 500.00	\$ 500.00
58-55-501(10)	\$ 800.00	\$1,000.00
58-55-501(12)	N/A	\$ 500.00
58-55-501(14)	\$ 500.00	N/A
58-55-501(19)	\$ 500.00	N/A
58-55-501(21)	\$ 500.00	\$ 500.00
SECOND OFFENSE		
58-55-308(2)	\$1,000.00	N/A
58-55-501(1)	\$1,000.00	\$1,500.00
58-55-501(2)	\$1,000.00	\$1,500.00
58-55-501(3)	\$1,600.00	\$2,000.00
58-55-501(9)	\$1,000.00	\$1,000.00
58-55-501(10)	\$1,600.00	\$2,000.00
58-55-501(12)	N/A	\$1,000.00
58-55-501(14)	\$1,000.00	N/A
58-55-501(19)	\$1,000.00	N/A
58-55-501(21)	\$1,000.00	\$1,000.00
THIRD OFFENSE		
Double the amount for a second offense		

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

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

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

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

KEY: contractors, occupational licensing, licensing
December 19, 2005 58-1-106(1)(a)
Notice of Continuation January 15, 2002 58-1-202(1)(a)
 58-55-101
 58-55-308(1)
 58-55-102(35)
 58-55-501(21)

**R156. Commerce, Occupational and Professional Licensing.
R156-56. Utah Uniform Building Standard Act Rules.
R156-56-101. Title.**

These rules are known as the "Utah Uniform Building Standard Act Rules".

R156-56-102. Definitions.

In addition to the definitions in Title 58, Chapters 1, 55 and 56, as used in Title 58, Chapter 56 or these rules:

(1) "Building permit" means, for the purpose of determining the building permit surcharge under Subsection 58-56-9(4), a warrant, license or authorization to build or construct a building or structure or any part thereof.

(2) "Building permit fee" means, for the purpose of determining the building permit surcharge under Subsection 58-56-9(4), fees assessed by an agency of the state or political subdivision of the state for the issuance of permits for construction, alteration, remodeling, and repair and installation including building, electrical, mechanical and plumbing components.

(3) "Employed by a local regulator, state regulator or compliance agency" means, with respect to Subsection 58-56-9(1), the hiring of services of a qualified inspector whether by an employer/employee relationship, an independent contractor relationship, a fee-for-service relationship or any other lawful arrangement under which the regulating agency purchases the services of a qualified inspector.

(4) "Inspector" means a person employed by a local regulator, state regulator or compliance agency for the purpose of inspecting building, electrical, plumbing or mechanical construction, alteration, remodeling, repair or installation in accordance with the codes adopted under these rules and taking appropriate action based upon the findings made during inspection.

(5) "Refuses to establish a method of appeal" means with respect to Subsection 58-56-8(3), that a compliance agency does not in fact adopt a formal written method of appealing uniform building standard matters in accordance with generally recognized standards of due process; or, that the compliance agency does not convene an appeals board and render a decision in the matter within ninety days from the date on which the appeal is properly filed with the compliance agency.

(6) "Uniform Building Standards" means the codes identified in Section R156-56-701 and as amended under these rules.

(7) "Unprofessional conduct" as defined in Title 58, Chapter 1 is further defined, in accordance with Subsection 58-1-203(5), in Section R156-56-502.

R156-56-103. Authority.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 56.

R156-56-104. Organization - Relationship to Rule R156-1.

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

R156-56-105. Board of Appeals.

If the commission is required to act as an appeals board in accordance with the provisions of Subsection 58-56-8(3), the following shall regulate the convening and conduct of the special appeals board:

(1) If a compliance agency refuses to establish a method of appeal regarding a uniform building standard issue, the appealing party may petition the commission to act as the board of appeals.

(2) The person making the appeal shall file the request to convene the commission as an appeals board in accordance with

the requirements for a request for agency action, as set forth in Subsection 63-46b-3(3)(a) and Section R151-46b-7. A request by other means shall not be considered. Any request received by the commission or division by any other means shall be returned to the appellant with appropriate instructions.

(3) A copy of the final written decision of the compliance agency interpreting or applying a code which is the subject of the dispute shall be submitted as an attachment to the request. If the person making the appeal requests, but does not timely receive a final written decision, the person shall submit an affidavit to this effect in lieu of the final written decision.

(4) The request shall be filed with the division no later than 30 days following the issuance of the disputed written decision by the compliance agency.

(5) The compliance agency shall file a written response to the request not later than 20 days after the filing of the request. The request and response shall be provided to the commission in advance of any hearing in order to properly frame the disputed issues.

(6) Except with regard to the time period specified in Subsection (7), the time periods specified in this section may, upon a showing of good cause, be modified by the presiding officer conducting the proceeding.

(7) The commission shall convene as an appeals board within 45 days after a request is properly filed.

(8) Upon the convening of the commission as an appeals board, the board members shall review the issue to be considered to determine if a member of the board has a conflict of interest which would preclude the member from fairly hearing and deciding the issue. If it is determined that a conflict does exist, the member shall be excused from participating in the proceedings.

(9) The hearing shall be a formal hearing held in accordance with the Utah Administrative Procedures Act, Title 63, Chapter 46b.

(10) Decisions relating to the application and interpretation of the code made by a compliance agency board of appeals shall be binding for the specific individual case and shall not require commission approval.

R156-56-106. Fees.

In accordance with Subsection 58-56-9(4), on April 30, July 31, October 31 and January 31 of each year, each agency of the state and each political subdivision of the state which assesses a building permit fee shall file with the division a report of building fees and surcharge for the immediately preceding calendar quarter; and, shall remit 80% of the amount of the surcharge to have been assessed to the division.

R156-56-201. Building Inspector Licensing Board.

In accordance with Section 58-56-8.5, the board shall be as follows:

- (1) one member licensed as a Combination Inspector;
- (2) one member licensed as an Inspector who is qualified in the electrical code;
- (3) one member licensed as an Inspector who is qualified in the plumbing code;
- (4) one member licensed as an Inspector who is qualified in the mechanical code; and
- (5) one member shall be from the general public.

R156-56-202. Advisory Peer Committees Created - Membership - Duties.

(1) There is created in accordance with Subsection 58-1-203(6) and 58-56-5(10)(e), the following committees as advisory peer committees to the Uniform Building Codes Commission:

(a) the Education Advisory Committee consisting of seven members;

(b) the Plumbing and Health Advisory Committee consisting of seven members;

(c) the Structural Advisory Committee consisting of seven members;

(d) the Architectural Advisory Committee consisting of seven members;

(e) the Fire Protection Advisory Committee consisting of five members;

(i) This committee shall join together with the Fire Advisory and Code Analysis Committee of the Utah Fire Prevention Board to form the Unified Code Analysis Council.

(ii) The Unified Code Analysis Council shall meet as directed by the Utah Fire Prevention Board or as directed by the Uniform Building Code Commission or as needed to review fire prevention and building code issues that require definitive and specific analysis.

(iii) The Unified Code Analysis Council shall select one of its members to act in the position of chair and another to act as vice chair. The chair and vice chair shall serve for one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year.

(iv) The chair or vice chair shall report to the Utah Fire Prevention Board or Uniform Building Code Commission recommendations of the council with regard to the review of fire and building codes; and

(f) the Mechanical Advisory Committee consisting of seven members.

(2) The committees shall be appointed and serve in accordance with Section R156-1-205. The membership of each committee shall be made up of individuals who have direct knowledge or involvement in the area of code involved in the title of that committee.

(3) The duties and responsibilities of the committees shall include:

(a) review of requests for amendments to the adopted codes as assigned to each committee by the division with the collaboration of the commission;

(b) submission of recommendations concerning the requests for amendment; and

(c) the Education Advisory Committee shall review and make recommendations regarding funding requests which are submitted, and review and make recommendations regarding budget, revenue and expenses of the education fund established pursuant to Subsection 58-56-9(4).

R156-56-301. Reserved.

Reserved.

R156-56-302. Licensure of Inspectors.

In accordance with Subsection 58-56-9(1), the licensee classifications, scope of work, qualifications for licensure, and application for license are established as follows:

(1) License Classifications. Each inspector required to be licensed under Subsection 58-56-9(1) shall qualify for licensure and be licensed by the division in one of the following classifications:

(a) Combination Inspector; or

(b) Limited Inspector.

(2) Scope of Work. The scope of work permitted under each inspector classification is as follows:

(a) Combination Inspector.

(i) Inspect the components of any building, structure or work for which a standard is provided in the specific edition of the codes adopted under these rules or amendments to these codes as included in these rules.

(ii) Determine whether the construction, alteration, remodeling, repair or installation of all components of any building, structure or work is in compliance with the adopted

codes.

(iii) After determination of compliance or noncompliance with the adopted codes take appropriate action as is provided in the aforesaid codes.

(b) Limited Inspector.

(i) A Limited Inspector may only conduct activities under Subsections (ii), (iii) or (iv) for which the Limited Inspector has maintained current certificates under the adopted codes as provided under Subsections R156-56-302(3)(b) and R156-56-302(2)(c)(ii).

(ii) Subject to the limitations of Subsection (i), inspect the components of any building, structure or work for which a standard is provided in the specific edition of the codes adopted under these rules or amendments to these codes as included in these rules.

(iii) Subject to the limitations under Subsection (i), determine whether the construction, alteration, remodeling, repair or installation of components of any building, structure or work is in compliance with the adopted codes.

(iv) Subject to the limitations under Subsection (i), after determination of compliance or noncompliance with the adopted codes, take appropriate action as is provided in the adopted codes.

(3) Qualifications for Licensure. The qualifications for licensure for each inspector classification are as follows:

(a) Combination Inspector.

Has passed the examination for and maintained as current the following national certifications for codes adopted under these rules:

(i) the "Combination Inspector Certification" issued by the International Code Council; or

(ii) all of the following certifications:

(A) the "Building Inspector Certification" issued by the International Code Council or both the "Commercial Building Inspector Certification" and the "Residential Building Inspector Certification" issued by the International Code Council;

(B) the "Electrical Inspector Certification" issued by the International Code Council or the "General Electrical Certification" issued by the International Association of Electrical Inspectors, or both the "Commercial Electrical Inspector Certification" and the "Residential Electrical Inspector Certification" issued by the International Code Council;

(C) the "Plumbing Inspector Certification" issued by the International Code Council, or both the "Commercial Plumbing Inspector Certification" and the "Residential Plumbing Inspector Certification" issued by the International Code Council; and

(D) the "Mechanical Inspector Certification" issued by the International Code Council or both the "Commercial Mechanical Inspector Certification" and the "Residential Mechanical Inspector Certification" issued by the International Code Council.

(b) Limited Inspector.

Has passed the examination for and maintained as current one or more of the following national certifications for codes adopted under these rules:

(i) the "Building Inspector Certification" issued by the International Code Council;

(ii) the "Electrical Inspector Certification" issued by the International Code Council or the "General Electrical Certification" issued by the International Association of Electrical Inspectors;

(iii) the "Plumbing Inspector Certification" issued by the International Code Council;

(iv) the "Mechanical Inspector Certification" issued by the International Code Council;

(v) the "Residential Combination Inspector Certification" issued by the International Code Council;

(vi) the "Commercial Combination Certification" issued by the International Code Council;

(vii) the "Commercial Building Inspector Certification" issued by the International Code Council;

(viii) the "Commercial Electrical Inspector Certification" issued by the International Code Council;

(ix) the "Commercial Plumbing Inspector Certification" issued by the International Code Council;

(x) the "Commercial Mechanical Inspector Certification" issued by the International Code Council;

(xi) the "Residential Building Inspector Certification" issued by the International Code Council;

(xii) the "Residential Electrical Inspector Certification" issued by the International Code Council;

(xiii) the "Residential Plumbing Inspector Certification" issued by the International Code Council;

(xiv) the "Residential Mechanical Inspector Certification" issued by the International Code Council;

(xv) any other special or otherwise limited inspector certifications used by the International Code Council which certifications cover a part of the codes adopted under these rules including but not limited to each of the following: Reinforced Concrete Special Inspector, Prestressed Concrete Special Inspector, Residential Energy Inspector, Commercial Energy Inspector; or

(xvi) any combination certification which is based upon a combination of one or more of the above listed certifications.

(4) Application for License.

(a) An applicant for licensure shall:

(i) submit an application in a form prescribed by the division; and

(ii) pay a fee determined by the department pursuant to Section 63-38-3.2.

(5) Code transition provisions.

(a) If an inspector or applicant obtains a new, renewal or recertification or replacement national certificate after a new code or code edition is adopted, the inspector or applicant is required to obtain that certification under the currently adopted code or code edition.

(b) After a new code or new code edition is adopted under these rules, the inspector is required to re-certify their national certification to the new code or code edition at the next available renewal cycle of the national certification.

(c) If a licensed inspector fails to obtain the national certification as required in Subsection (a) or (b), their authority to inspect for the area covered by the national certification automatically expires at the expiration date of the national certification that was not obtained as required.

(d) If an inspector recertifies a national certificate on a newer edition of the codes adopted before that newer edition is adopted under these rules, such recertification shall be considered as a current national certification as required by these rules.

(e) If an inspector complies with these transition provisions, the inspector shall be considered to have a current national certification as required by these rules.

R156-56-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year cycle applicable to licenses under Title 58, Chapter 56 is established by rule in Section R156-1-308.

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

R156-56-501. Reserved.

Reserved.

R156-56-502. Unprofessional Conduct - Building Inspectors.

"Unprofessional conduct" includes:

(1) knowingly failing to inspect or issue correction notices

for code violations which when left uncorrected would constitute a hazard to the public health and safety and knowingly failing to require that correction notices are complied with;

(2) the use of alcohol or the illegal use of drugs while performing duties as a building inspector or at any time to the extent that the inspector is physically or mentally impaired and unable to effectively perform the duties of an inspector;

(3) gross negligence in the performance of official duties as an inspector;

(4) the personal use of information or knowingly revealing information to unauthorized persons when that information has been obtained by the inspector as a result of their employment, work, or position as an inspector;

(5) unlawful acts or acts which are clearly unethical under generally recognized standards of conduct of an inspector;

(6) engaging in fraud or knowingly misrepresenting a fact relating to the performance of duties and responsibilities as an inspector;

(7) knowingly failing to require that all plans, specifications, drawings, documents and reports be stamped by architects, professional engineers or both as established by law;

(8) knowingly failing to report to the Division any act or omission of a licensee under Title 58, Chapter 55, which when left uncorrected constitutes a hazard to the public health and safety;

(9) knowingly failing to report to the Division unlicensed practice by persons performing services who are required by law to be licensed under Title 58, Chapter 55;

(10) approval of work which materially varies from approved documents that have been stamped by an architect, professional engineer or both unless authorized by the licensed architect, professional engineer or both; and

(11) failing to produce verification of current licensure and current certifications for the codes adopted under these rules upon the request of the Division, any compliance agency, or any contractor or property owner whose work is being inspected.

R156-56-601. Modular Unit Construction and Set-up.

Modular construction and set-up shall be as set forth in accordance with the following:

(1) Construction shall be in accordance with the building standards accepted by the state pursuant to Section 58-56-4.

(2) The inspection of the construction, modification of or set-up of a modular unit shall be the responsibility of the local regulator; however, nothing in these rules shall preclude the local regulator from entering into an agreement with another qualified person for the inspection of the unit(s) in the manufacturing facility.

R156-56-602. Factory Built Housing Dealer Bonds.

(1) Pursuant to the provisions of Subsection 58-56-16(2)(c), a factory built housing dealer shall provide a registration bond issued by a surety acceptable to the Division in the amount of \$50,000. An acceptable surety is one that is listed in the Department of Treasury, Fiscal Service, Circular 570, current revision, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies".

(2) The coverage of the registration bond shall include losses which may occur as the result of the factory built housing dealer's violation of the unprofessional or unlawful provisions contained in Title 58, Chapters 1 and 56.

R156-56-603. Factory Built Housing Dispute Resolution Program.

(1) Pursuant to Subsection 58-56-15(1)(f)(i), the dispute resolution program is defined and clarified as follows:

(a) Persons having disputes regarding manufactured

housing issues may file a complaint with the Division.

(b) The Division shall investigate such complaints and as part of the investigation may take any of the following actions:

(i) The Division may negotiate with the parties involved for informal resolution of such complaints.

(ii) The Division may take any informal or formal action allowed by any applicable statute including, but not limited to:

(A) pursuing disciplinary proceedings under Section 58-1-401;

(B) pursuing civil sanctions under Subsection 58-56-15(2); and

(C) referring matters to appropriate criminal prosecuting agencies and cooperating or assisting with the investigation and prosecution of cases by such agencies.

(c) In addition, persons having disputes regarding manufactured housing issues may also institute civil action.

R156-56-604. Factory Built Housing Continuing Education Requirements.

(1) Pursuant to Subsection 58-56-15(1)(f)(ii), continuing education required for manufactured housing installation contractors is defined and clarified as follows:

(a) the continuing education required by Subsection 58-55-501(21), which is effective July 1, 2005.

R156-56-701. Specific Editions of Uniform Building Standards.

(1) In accordance with Subsection 58-56-4(3), and subject to the limitations contained in Subsection (6), (7), and (8), the following codes are hereby incorporated by reference and adopted as the construction standards to be applied to building construction, alteration, remodeling and repair and in the regulation of building construction, alteration, remodeling and repair in the state:

(a) the 2003 edition of the International Building Code (IBC), including Appendix J promulgated by the International Code Council, and amendments adopted under these rules together with standards incorporated into the IBC by reference, including but not limited to, the 2003 edition of the International Energy Conservation Code (IECC) promulgated by the International Code Council and the 2003 edition of the International Residential Code (IRC) promulgated by the International Code Council shall become effective on January 1, 2004;

(b) the 2005 edition of the National Electrical Code (NEC) promulgated by the National Fire Protection Association, to become effective January 1, 2006;

(c) the 2003 edition of the International Plumbing Code (IPC) promulgated by the International Code Council and amendments adopted under these rules in Section R156-56-707 shall become effective on January 1, 2004;

(d) the 2003 edition of the International Mechanical Code (IMC) together with all applicable standards set forth in the 2003 International Fuel Gas Code (IFGC) (formerly included as part of the IMC) and amendments adopted under these rules in Section R156-56-708 shall become effective on January 1, 2004;

(e) subject to the provisions of Subsection (4), the Federal Manufactured Housing Construction and Safety Standards Act (HUD Code) as promulgated by the Department of Housing and Urban Development and published in the Federal Register as set forth in 24 CFR parts 3280 and 3282 as revised April 1, 1990; and

(f) subject to the provisions of Subsection (4), the 1994 edition of NCSBCS A225.1 Manufactured Home Installations promulgated by the National Conference of States on Building Codes and Standards (NCSBCS).

(2) In accordance with Subsection 58-56-4(4), and subject to the limitations contained in Subsection 58-56-4(5), the

following codes or standards are hereby incorporated by reference and approved for use and adoption by a compliance agency as the construction standards which may be applied to existing buildings in the regulation of building alteration, remodeling, repair, removal and rehabilitation in the state:

(a) the 1997 edition of the Uniform Code for the Abatement of Dangerous Buildings (UCADB) promulgated by the International Code Council;

(b) the 1997 edition of the Uniform Code for Building Conservation (UCBC) promulgated by the International Code Council;

(c) Guidelines for the Seismic Retrofit of Existing Buildings (GSREB) promulgated by the International Code Council;

(d) Guidelines for the Rehabilitation of Existing Buildings (GREB) promulgated by the International Code Council;

(e) Pre-standard and Commentary for the Seismic Rehabilitation of Buildings (FEMA 356) published by the Federal Emergency Management Agency (November 2000).

(3) Amendments adopted by rule to prior editions of the Uniform Building Standards shall remain in effect until specifically amended or repealed.

(4) In accordance with Subsection 58-56-4(2), the following is hereby adopted as the installation standard for manufactured housing:

(a) The manufacturer's installation instruction for the model being installed;

(b) The NCSBCS/ANSI 225.1-1994, Manufactured Home Installations, promulgated by the National Conference of States on Building Codes and Standards;

(c) The manufacturer, dealer or homeowner shall be permitted to design for unusual installation of a manufactured home not provided for in the manufacturer's standard installation instruction or NCSBCS/ANSI 225.1, Manufactured Home Installations, provided the design is approved in writing by a professional engineer or architect licensed in Utah; and

(d) Guidelines for Manufactured Housing Installation as promulgated by the International Code Council may be used as a reference guide.

(5) Pursuant to the Federal Manufactured Home Construction and Safety Standards Section 604(d), a manufactured home may be installed in the state of Utah which does not meet the local snow load requirements as specified in Subsection R156-56-704; however all such homes which fail to meet the standards of Subsection R156-56-704 shall have a protective structure built over the home which meets the International Building Code and the snow load requirements under Subsection R156-56-704.

(6) To the extent that the building codes adopted under Subsection (1) establish local administrative functions or establish a method of appeal which pursuant to Section 58-56-8 are designated to be established by the compliance agency, such provisions are not included in the codes adopted hereunder but authority over such provisions are reserved to the compliance agency to establish such provisions.

(7) To the extent that the building codes adopted under Subsection (1) establish provisions, standards or references to other codes which by state statutes are designated to be established or administered by other state agencies or local city, town or county jurisdictions, such provisions are not included in the codes adopted herein but authority over such provisions are reserved to the agency or local government having authority over such provisions. Provisions excluded under this Subsection include but are not limited to:

(a) the International Property Maintenance Code;

(b) the International Private Sewage Disposal Code, authority over which would be reserved to the Department of Health and the Department of Environmental Quality;

(c) the International Fire Code which pursuant to Section

58-3-7 authority is reserved to the Utah Fire Prevention Board; and

(d) day care provisions which are in conflict with the Child Care Licensing Act, authority over which is designated to the Utah Department of Health.

(8) To the extent that the codes adopted under Subsection (1) establish provisions that exceed the authority granted to the Division, under the Utah Uniform Building Standards Act, to adopt codes or amendments to such codes by rulemaking procedures, such provisions, to the extent such authority is exceeded, are not included in the codes adopted.

R156-56-702. Commission Override of the Division.

(1) In the event that the director of the division rules contrary to the recommendation of the commission with respect to the provisions of Subsection 58-56-7(8), the director shall present his action and the basis for that action at the commission's next meeting or at a special meeting called by either the division or the commission.

(2) The commission may override the division's action by a two-thirds vote which equals eight votes.

(3) In the event of a vacancy on the commission, a vote of a minimum of two-thirds of the existing commissioners must be obtained to override the division.

R156-56-703. Code Amendments.

In accordance with Subsection 58-56-7(1), the procedure and manner under which requests for amendments to codes shall be filed with the division and recommended or declined for adoption are as follows:

(1) All requests for amendments to any of the uniform building standards shall be submitted to the division on forms specifically prepared by the division for that purpose.

(2) The processing of requests for code amendments shall be in accordance with division policies and procedures.

R156-56-704. Statewide Amendments to the IBC.

The following are adopted as amendments to the IBC to be applicable statewide:

(1) All references to the International Electrical Code are deleted and replaced with the National Electrical Code adopted under Subsection R156-56-701(1)(b).

(2) All references to the International Existing Building Code are deleted and replaced with the codes approved under Subsection R156-56-701(2).

(3) Section 101.4.1 is deleted and replaced with the following:

101.4.1 Electrical. The provisions of the National Electrical Code (NEC) shall apply to the installation of electrical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances thereto.

(4) In Section 109, a new section is added as follows:

109.3.5 Weather-resistive barrier and flashing. An inspection shall be made of the weather-resistive barrier as required by Section 1403.2 and flashing as required by Section 1405.3 to prevent water from entering the weather-resistant exterior wall envelope.

The remaining sections will be renumbered as follows:

109.3.6 Lath or gypsum board inspection

109.3.7 Fire-resistant penetrations

109.3.8 Energy efficiency inspections

109.3.9 Other inspections

109.3.10 Special inspections

109.3.11 Final inspection.

(5) Section 114.1 is deleted and replaced with the following:

114.1 Authority. Whenever the building official finds any work regulated by this code being performed in a manner either contrary to the provisions of this code or other pertinent laws or

ordinances or dangerous or unsafe, the building official is authorized to stop work.

(6) In Section 202, the following definition is added:

ASSISTED LIVING FACILITY. See Section 308.1.1.

(7) Section 305.2 is deleted and replaced with the following:

305.2 Day care. The building or structure, or portion thereof, for educational, supervision, child day care centers, or personal care services of more than four children shall be classified as a Group E occupancy. See Section 419 for special requirements for Group E child day care centers.

Exception: Areas used for child day care purposes with a Residential Certificate, Family License or Family Group License may be located in a Group R-2 or R-3 occupancy as provided in Section 310.1 or shall comply with the International Residential Code in accordance with Section 101.2.

Child day care centers providing care for more than 100 children 2 1/2 years or less of age shall be classified as Group I-4.

(8) In Section 308 the following definitions are added:

308.1.1 Definitions. The following words and terms shall, for the purposes of this section and as used elsewhere in this code, have the meanings shown herein.

TYPE 1 ASSISTED LIVING FACILITY. A residential facility that provides a protected living arrangement for ambulatory, non-restrained persons who are capable of achieving mobility sufficient to exit the facility without the assistance of another person.

TYPE 2 ASSISTED LIVING FACILITY. A residential facility that provides an array of coordinated supportive personal and health care services to residents who meet the definition of semi-independent.

SEMI-INDEPENDENT. A person who is:

A. Physically disabled but able to direct his or her own care; or

B. Cognitively impaired or physically disabled but able to evacuate from the facility with the physical assistance of one person.

(9) Section 308.2 is deleted and replaced with the following:

308.2 Group I-1. This occupancy shall include buildings, structures, or parts thereof housing more than 16 persons, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment that provides personal care services. The occupants are capable of responding to an emergency situation without physical assistance from staff. This group shall include, but not be limited to, the following: residential board and care facilities, type 1 assisted living facilities, half-way houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug centers and convalescent facilities. A facility such as the above with five or fewer persons shall be classified as a Group R-3 or shall comply with the International Residential Code in accordance with Section 101.2. A facility such as above, housing at least six and not more than 16 persons, shall be classified as a Group R-4.

(10) Section 308.3 is deleted and replaced with the following:

308.3 Group I-2. This occupancy shall include buildings and structures used for medical, surgical, psychiatric, nursing or custodial care on a 24-hour basis of more than three persons who are not capable of self-preservation. This group shall include, but not be limited to the following: hospitals, nursing homes (both intermediate care facilities and skilled nursing facilities), mental hospitals, detoxification facilities, ambulatory surgical centers with two or more operating rooms where care is less than 24 hours, outpatient medical care facilities for ambulatory patients (accommodating more than five such patients in each tenant space) which may render the patient

incapable of unassisted self-preservation, and type 2 assisted living facilities. Type 2 assisted living facilities with five or fewer persons shall be classified as a Group R-4. Type 2 assisted living facilities as defined in 308.1.1 with at least six and not more than sixteen residents shall be classified as a Group I-1 facility.

(11) Section 308.3.1 is deleted and replaced with the following:

308.3.1 Child care facility. A child care facility that provides care on a 24 hour basis to more than four children 2 1/2 years of age or less shall be classified as Group I-2.

(12) Section 308.5 is deleted and replaced with the following:

308.5 Group I-4, day care facilities. This group shall include buildings and structures occupied by persons of any age who receive custodial care less than 24 hours by individuals other than parents or guardians, relatives by blood, marriage, or adoption, and in a place other than the home of the person cared for. A facility such as the above with four or fewer persons shall be classified as an R-3 or shall comply with the International Residential Code in accordance with Section 101.2. Places of worship during religious functions and Group E child day care centers are not included.

(13) Section 308.5.2 is deleted and replaced with the following:

308.5.2 Child care facility. A facility that provides supervision and personal care on less than a 24 hour basis for more than 100 children 2 1/2 years of age or less shall be classified as Group I-4.

(14) Section 310.1 is deleted and replaced with the following:

310.1 Residential Group "R". Residential Group R includes, among others, the use of a building or structure, or a portion thereof, for sleeping purposes when not classed as an Institutional Group I. Residential occupancies shall include the following:

R-1: Residential occupancies where the occupants are primarily transient in nature (less than 30 days) including: Boarding Houses (transient), Hotels (transient), and Motels (transient).

Exception: Boarding houses accommodating 10 persons or less shall be classified as a Residential Group R-3 or shall comply with the International Residential Code in accordance with Section 101.2.

R-2: Residential occupancies containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature, including: Apartment Houses, Boarding houses (not transient), Convents, Dormitories, Fraternities and Sororities, Monasteries, Vacation timeshare properties, Hotels (non transient), and Motels (non transient).

Exception: Boarding houses accommodating 10 persons or less shall be classified as a Residential Group R-3 or shall comply with the International Residential Code in accordance with Section 101.2.

R-3: Residential occupancies where the occupants are primarily permanent in nature and not classified as R-1, R-2, R-4 or I and where buildings do not contain more than two dwelling units, as applicable in Section 101.2, or adult and child care facilities that provide accommodations for five or fewer persons of any age for less than 24 hours. Adult and child care facilities that are within a single family home are permitted to comply with the International Residential Code in accordance with Section 101.2. Areas used for day care purposes may be located in a residential dwelling unit under all of the following conditions:

1. Compliance with the Utah Administrative Code, R710-8, Day Care Rules, as enacted under the authority of the Utah Fire Prevention Board.

2. Use is approved by the State Department of Health, as

enacted under the authority of the Utah Child Care Licensing Act, UCA, Sections 26-39-101 through 26-39-110, and in any of the following categories:

a. Utah Administrative Code, R430-50, Residential Certificate Child Care Standards.

b. Utah Administrative Code, R430-90, Licensed Family Child Care.

3. Compliance with all zoning regulations of the local regulator.

R-4: Residential occupancies shall include buildings arranged for occupancy as Residential Care/Assisted Living Facilities including more than five but not more than 16 occupants, excluding staff.

Group R-4 occupancies shall meet the requirements for construction as defined for Group R-3 except as otherwise provided for in this code or shall comply with the International Residential Code in accordance with Section 101.2.

(15) A new Section 403.9.1 is added as follows:

403.9.1 Elevator lobby. Elevators on all floors shall open into elevator lobbies that are separated from the remainder of the building, including corridors and other means of egress by smoke partitions complying with Section 710. Elevator lobbies shall have at least one means of egress complying with Chapter 10 and other provisions within the code. Elevator lobbies shall be separated from a fire resistance rated corridor with fire partitions complying with Section 708 and shall have walls of not less than one-hour fire resistance rating and openings shall conform to Section 715.

Exceptions:

1. Separations are not required from a street floor elevator lobby.

2. In atria complying with the provisions of Section 404 elevator lobbies are not required.

(16) A new section 419 is added as follows:

Section 419 Group E Child Day Care Centers. Group E child day care centers shall comply with Section 419.

419.1 Location at grade. Group E child day care centers shall be located at the level of exit discharge.

Exception: Child day care spaces for children over the age of 24 months may be located on the second floor of buildings equipped with automatic fire protection throughout and an automatic fire alarm system.

419.2 Egress. All Group E child day care spaces with an occupant load of 10 or more shall have a second means of egress. If the second means of egress is not an exit door leading directly to the exterior, the room shall have an emergency escape and rescue window complying with Section 1025.

(17) In Section 707.14.1 Exception 4 is deleted and replaced with the following:

4. See Section 403.9.1 for high rise buildings.

(18) In Section (F)902, the definition for record drawings is deleted and replaced with the following:

(F)RECORD DRAWINGS. Drawings ("as built") that document all aspects of a fire protection system as installed.

(19) Section (F)903.2.7 is deleted and replaced with the following:

(F)903.2.7 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

Exception:

1. Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) constructed in accordance with the International Residential Code For One- and Two-Family Dwellings.

2. Group R-4 fire areas not more than 4,500 gross square feet and not containing more than 16 residents, provided the building is equipped throughout with an approved fire alarm system that is interconnected and receives its primary power from the building wiring and a commercial power system.

(20) Section (F)903.3.7 is deleted and replaced with the following:

(F)903.3.7 Fire department connections. The location of fire department connections shall be approved by the code official.

(21) Section 905.5.3 is deleted and replaced with the following:

905.5.3 Class II system 1-inch hose. A minimum 1-inch (25.4 mm) hose shall be permitted to be used for hose stations in light-hazard occupancies where investigated and listed for this service and where approved by the code official.

(22) Section (F)907.2.10 is deleted and replaced with the following:

(F)907.2.10 Single- and multiple-station alarms. Listed single- and multiple-station smoke alarms shall be installed in accordance with the provision of this code and the household fire-warning equipment provision of NFPA 72. Listed single- and multiple-station carbon monoxide detectors shall comply with U.L. 2034 and shall be installed in accordance with the provisions of this code and NFPA 720.

(F)907.2.10.1 Smoke alarms. Single- or multiple-station smoke alarms shall be installed in the locations described in Sections (F)907.2.10.1.1 through (F)907.2.10.1.4.

(F)907.2.10.1.1 Group R-1. Single- or multiple-station smoke alarms shall be installed in all of the following locations in Group R-1:

1. In sleeping areas.
2. In every room in the path of the means of egress from the sleeping area to the door leading from the sleeping unit.
3. In each story within the sleeping unit, including basements. For sleeping units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

(F)907.2.10.1.2 Groups R-2, R-3, R-4 and I-1. Single- or multiple-station smoke alarms shall be installed and maintained in Groups R-2, R-3, R-4 and I-1, regardless of occupant load at all of the following locations:

1. On the ceiling or wall outside of each separate sleeping area in the immediate vicinity of bedrooms.
2. In each room used for sleeping purposes.
3. In each story within a dwelling unit, including basements and cellars but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

(F)907.2.10.1.3 Group I-1. Single- or multiple-station smoke alarms shall be installed and maintained in sleeping areas in occupancies in Group I-1. Single- or multiple-station smoke alarms shall not be required where the building is equipped throughout with an automatic fire detection system in accordance with Section (F)907.2.6.

(F)907.2.10.2 Carbon monoxide alarms. Carbon monoxide alarms shall be installed on each habitable level of a dwelling unit or sleeping unit in Groups R-2, R-3, R-4 and I-1 equipped with fuel burning appliances.

(F)907.2.10.3. Power source. In new construction, required alarms shall receive their primary power from the building wiring where such wiring is served from a commercial source and shall be equipped with a battery backup. Alarms shall emit a signal when the batteries are low. Wiring shall be permanent and without a disconnecting switch other than as required for overcurrent protection.

Exception: Alarms are not required to be equipped with battery backup in Group R-1 where they are connected to an emergency electrical system.

(F)907.2.10.4 Interconnection. Where more than one alarm is required to be installed with an individual dwelling unit in Group R-2, R-3, or R-4, or within an individual sleeping unit in Group R-1, the alarms shall be interconnected in such a manner that the activation of one alarm will activate all of the alarms in the individual unit. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed. Approved combination smoke and carbon-monoxide detectors shall be permitted.

(F)907.2.10.5 Acceptance testing. When the installation of the alarm devices is complete, each detector and interconnecting wiring for multiple-station alarm devices shall be tested in accordance with the household fire warning equipment provisions of NFPA 72 and NFPA 720, as applicable.

(23) In Section 1008.1.8.3, a new subparagraph (5) is added as follows:

(5) Doors in Group I-1 and I-2 occupancies, where the clinical needs of the patients require specialized security measures for their safety, approved access controlled egress may be installed when all the following are met:

5.1 The controlled egress doors shall unlock upon activation of the automatic fire sprinkler system or automatic fire detection system.

5.2 The facility staff can unlock the controlled egress doors by either sensor or keypad.

5.3 The controlled egress doors shall unlock upon loss of power.

(24) Section 1009.3, Exception #5 is deleted and replaced with the following:

5. In occupancies in Group R-3, as applicable in Section 101.2, within dwelling units in occupancies in Group R-2, as applicable in Section 101.2, and in occupancies in Group U, which are accessory to an occupancy in Group R-3, as applicable in Section 101.2, the maximum riser height shall be 8 inches (203 mm) and the minimum tread depth shall be 9 inches (229 mm). The minimum winder tread depth at the walk line shall be 10 inches (254 mm), and the minimum winder tread depth shall be 6 inches (152 mm). A nosing not less than 0.75 inch (19.1 mm) but not more than 1.25 inches (32 mm) shall be provided on stairways with solid risers where the tread depth is less than 10 inches (254 mm).

(25) Section 1009.11 Exception #4 is deleted and replaced with the following:

4. In occupancies in Group R-3, as applicable in Section 101.2 and in occupancies in Group U, which are accessory to an occupancy in Group R-3, as applicable in Section 101.2, handrails shall be provided on at least one side of stairways consisting of four or more risers.

(26) Section 1009.11.3 is amended to include the following exception at the end of the section:

Exception. Non-circular handrails serving an individual unit in a Group R-1, Group R-2 or Group R-3 occupancy shall be permitted to have a maximum cross sectional dimension of 3.25 inches (83 mm) measured 2 inches (51 mm) down from the top of the crown. Such handrail is required to have an indentation on both sides between 0.625 inch (16 mm) and 1.5 inches (38 mm) down from the top or crown of the cross section. The indentation shall be a minimum of 0.25 inch (6 mm) deep on each side and shall be at least 0.5 (13 mm) high. Edges within the handgrip shall have a minimum radius of 0.0625 inch (2 mm). The handrail surface shall be smooth with no cusps so as to avoid catching clothing or skin.

(27) In Section 1012.2 Exception 3 is added as follows:

3. For occupancies in Group R-3 and within individual dwelling units in occupancies in Group R-2, as applicable in Section 101.2, guards shall form a protective barrier not less than 36 inches (914 mm) in height.

(28) New sections 1109.7.1 and 1109.7.2 are added as follows:

1109.7.1 All platform (wheelchair) lifts shall be capable of independent operation without a key.

1109.7.2 Standby power shall be provided for platform lifts permitted to serve as part of the accessible means of egress.

(29) Section 1208.4 subparagraph 1 is deleted and replaced with the following:

1. The unit shall have a living room of not less than 165 square feet (15.3 m²) of floor area. An additional 100 square feet (9.3 m²) of floor area shall be provided for each occupant of such unit in excess of two.

(30) Section 1405.3 is deleted and replaced with the following:

1405.3 Flashing. Flashing shall be installed in such a manner so as to prevent moisture from entering the wall or to redirect it to the exterior. Flashings shall be installed at the perimeters of exterior door and window assemblies, penetrations and terminations of exterior wall assemblies, exterior wall intersections with roofs, chimneys, porches, decks, balconies and similar projections and at built-in gutters and similar locations where moisture could enter the wall. Flashing with projected flanges shall be installed on both sides and the ends of copings, under sills and continuously above projected trim. A flashing shall be installed at the intersection of the foundation to stucco, masonry, siding or brick veneer. The flashing shall be on an approved corrosion-resistant flashing with a 1/2" drip leg extending past exterior side of the foundation.

(31) Section 1604.5, footnote "c" is added to Table 1604.5 Classification of Buildings and Other Structures for Importance Factors:

c. For determining "W" per sections 1616.4.1, 1617, 1617.5.1, or 1618.1, the Snow Factor I_s, may be taken as 1.0.

(32) In Section 1605.2.1, the formula shown as "f₂ = 0.2 for other roof configurations" is deleted and replaced with the following:

f₂ = 0.20 + .025(A-5) for other configurations where roof snow load exceeds 30 psf

f₂ = 0 for roof snow loads of 30 psf (1.44kN/m²) or less.

Where A = Elevation above sea level at the location of the structure (ft/1000).

(33) In Section 1605.3.1 and section 1605.3.2, Exception number 2 in each section is deleted and replaced with the following:

Flat roof snow loads of 30 pounds per square foot (1.44 kNm²) or less need not be combined with seismic loads. Where flat roofs exceed 30 pounds per square foot (1.44 kNm²), the snow loads may be reduced in accordance with the following in load combinations including both snow and seismic loads.

$$W_s = (0.20 + 0.025(A-5))P_f$$

Where

W_s = Weight of snow to be included, psf

A = Elevation above sea level at the location of the structure (ft/1000)

P_f = Design roof snow load, psf

(34) In Table 1607.1 number 6 is deleted and replaced with the following:

Occupancy or Use	Uniform (psf)	Concentrated (lbs)
6. Decks, except residential	Same as occupancy served ^h	
6.1 Residential decks	60 psf	

(35) In Table 1607.1 number 27 is deleted and replaced with the following:

Occupancy or Use	Uniform (psf)	Concentrated (lbs)
27. Residential Group R-3 as applicable in Section 101.2		-
Uninhabitable attics without storage	10 ¹	

Uninhabitable attics with storage	20
Habitable attics and sleeping areas	30
All other areas except balconies and decks	40
Hotels and multifamily dwellings	
Private rooms	40
Public rooms and corridors serving them	100

(36) In Notes to Table 1607.1, Note i is added as follows:
i. This live load need not be considered as acting simultaneously with other live loads imposed upon the ceiling framing or its supporting structure.

(37) Section 1608.1 is deleted and replaced with the following:

Except as modified in section 1608.1.1, design snow loads shall be determined in accordance with Section 7 of ASCE 7, but the design roof load shall not be less than that determined by Section 1607.

(38) Section 7.4.5 of Section 7 of ASCE 7 referred to in Section 1608.1 of the IBC is deleted and replaced with the following:

Section 7.4.5 Ice Dams and Icicles Along Eaves. Where ground snow loads exceed 75 psf, eaves shall be capable of sustaining a uniformly distributed load of 2P_f on all overhanging portions. No other loads except dead loads shall be present on the roof when this uniformly distributed load is applied. All building exits under down-slope eaves shall be protected from sliding snow and ice.

(39) Section 1608.1.1 is added as follows:

1608.1.1 Utah Snow Loads. The ground snow load, P_g, to be used in the determination of design snow loads for buildings and other structures shall be determined by using the following formula: P_g = (P_o² + S²(A-A_o)²)^{0.5} for A greater than A_o, and P_g = P_o for A less than or equal to A_o.

WHERE

P_g = Ground snow load at a given elevation (psf)

P_o = Base ground snow load (psf) from Table No. 1608.1.1(a)

S = Change in ground snow load with elevation (psf/100 ft.) From Table No. 1608.1.1(a)

A = Elevation above sea level at the site (ft./1000)

A_o = Base ground snow elevation from Table 1608.1.1(a) (ft./1000)

The building official may round the roof snow load to the nearest 5 psf. The ground snow load, P_g, may be adjusted by the building official when a licensed engineer or architect submits data substantiating the adjustments. A record of such action together with the substantiating data shall be provided to the division for a permanent record.

The building official may also directly adopt roof snow loads in accordance with Table 1608.1.1(b), provided the site is no more than 100 ft. higher than the listed elevation.

Where the minimum roof live load in accordance with section 1607.11 is greater than the design roof snow load, such roof live load shall be used for design, however, it shall not be reduced to a load lower than the design roof snow load. Drifting need not be considered for roof snow loads less than 20 psf.

(40) Table 1608.1.1(a) and Table 1608.1.1(b) are added as follows:

COUNTY	P _o	S	A _o
Beaver	43	63	6.2
Box Elder	43	63	5.2
Cache	50	63	4.5
Carbon	43	63	5.2
Daggett	43	63	6.5
Davis	43	63	4.5
Duchesne	43	63	6.5
Emery	43	63	6.0

Garfield	43	63	6.0
Grand	36	63	6.5
Iron	43	63	5.8
Juab	43	63	5.2
Kane	36	63	5.7
Millard	43	63	5.3
Morgan	57	63	4.5
Piute	43	63	6.2
Rich	57	63	4.1
Salt Lake	43	63	4.5
San Juan	43	63	6.5
Sanpete	43	63	5.2
Sevier	43	63	6.0
Summit	86	63	5.0
Tooele	43	63	4.5
Uintah	43	63	7.0
Utah	43	63	4.5
Wasatch	86	63	5.0
Washington	29	63	6.0
Wayne	36	63	6.5
Weber	43	63	4.5

Summit County			
Coalville	5600 ft.	60	86
Kamas	6500 ft.	70	100
Park City	6800 ft.	100	142
Park City	8400 ft.	162	231
Summit Park	7200 ft.	90	128
Tooele County			
Tooele	5100 ft.	30	43
Uintah County			
Vernal	5280 ft.	30	43
Utah County			
American Fork	4500 ft.	30	43
Orem	4650 ft.	30	43
Pleasant Grove	5000 ft.	30	43
Provo	5000 ft.	30	43
Spanish Fork	4720 ft.	30	43
Wasatch County			
Heber	5630 ft.	60	86
Washington County			
Central	5209 ft.	25	36
Dameron	4550 ft.	25	36
Leeds	3460 ft.	20	29
Rockville	3700 ft.	25	36
Santa Clara	2850 ft.	15 (1)	21
St. George	2750 ft.	15 (1)	21
Wayne County			
Loa	7080 ft.	30	43
Hanksville	4308 ft.	25	36
Weber County			
North Ogden	4500 ft.	40	57
Ogden	4350 ft.	30	43

TABLE NO. 1608.1.1(b)
RECOMMENDED SNOW LOADS FOR SELECTED UTAH CITIES AND TOWNS(2)

		Roof Snow Load (PSF)	Ground Snow Load (PSF)
Beaver County			
Beaver	5920 ft.	43	62
Box Elder County			
Brigham City	4300 ft.	30	43
Tremonton	4290 ft.	30	43
Cache County			
Logan	4530 ft.	35	50
Smithfield	4595 ft.	35	50
Carbon County			
Price	5550 ft.	30	43
Daggett County			
Manila	5377 ft.	30	43
Davis County			
Bountiful	4300 ft.	30	43
Farmington	4270 ft.	30	43
Layton	4400 ft.	30	43
Fruit Heights	4500 ft.	40	57
Duchesne County			
Duchesne	5510 ft.	30	43
Roosevelt	5104 ft.	30	43
Emery County			
Castledale	5660 ft.	30	43
Green River	4070 ft.	25	36
Garfield County			
Panguitch	6600 ft.	30	43
Grand County			
Moab	3965 ft.	25	36
Iron County			
Cedar City	5831 ft.	30	43
Juab County			
Nephi	5130 ft.	30	43
Kane County			
Kanab	5000 ft.	25	36
Millard County			
Millard	5000 ft.	30	43
Delta	4623 ft.	30	43
Morgan County			
Morgan	5064 ft.	40	57
Piute County			
Piute	5996 ft.	30	43
Rich County			
Woodruff	6315 ft.	40	57
Salt Lake County			
Murray	4325 ft.	30	43
Salt Lake City	4300 ft.	30	43
Sandy	4500 ft.	30	43
West Jordan	4375 ft.	30	43
West Valley	4250 ft.	30	43
San Juan County			
Blanding	6200 ft.	30	43
Monticello	6820 ft.	35	50
Sanpete County			
Fairview	6750 ft.	35	50
Mt. Pleasant	5900 ft.	30	43
Manti	5740 ft.	30	43
Ephraim	5540 ft.	30	43
Gunnison	5145 ft.	30	43
Sevier County			
Salina	5130 ft.	30	43
Richfield	5270 ft.	30	43

NOTES

(1) The IBC requires a minimum live load - See 1607.11.2.

(2) This table is informational only in that actual site elevations may vary. Table is only valid if site elevation is within 100 feet of the listed elevation.

(41) Section 1608.2 is deleted and replaced with the following:

1608.2 Ground Snow Loads. The ground snow loads to be used in determining the design snow loads for roofs in states other than Utah are given in Figure 1608.2 for the contiguous United States and Table 1608.2 for Alaska. Site-specific case studies shall be made in areas designated CS in figure 1608.2. Ground snow loads for sites at elevations above the limits indicated in Figure 1608.2 and for all sites within the CS areas shall be approved. Ground snow load determination for such sites shall be based on an extreme value statistical analysis of data available in the vicinity of the site using a value with a 2-percent annual probability of being exceeded (50-year mean recurrence interval). Snow loads are zero for Hawaii, except in mountainous regions as approved by the building official.

(42) Section 1608.3.2 is deleted and replaced with the following:

1608.3.2 Thermal Factor. The value for the thermal factor, C_{ts} , used in calculation of p_f shall be determined from Table 1608.3.2.

Exception: Except for unheated structures, the value of C_{ts} need not exceed 1.0 when ground snow load, P_g , is calculated using Section 1608.1.1 as amended.

(43) Section 1614.2 is deleted and replaced with the following:

1614.2 Change in Occupancy. When a change of occupancy results in a structure being reclassified to a higher Seismic Use Group, or when such change of occupancy results in a design occupant load increase of 100% or more, the structure shall conform to the seismic requirements for a new structure.

Exceptions:

1. This is not required if the design occupant load increase is less than 25 persons and the Seismic Use Group does not change.

2. Specific detailing provisions required for a new structure are not required to be met where it can be shown an equivalent level of performance and seismic safety contemplated for a new structure is obtained. Such analysis shall consider the

regularity, overstrength, redundancy and ductility of the structure within the context of the specific detailing provided. Alternatively, the building official may allow the structure to be upgraded in accordance with the latest edition of the "Guidelines for Seismic Rehabilitation of Existing Buildings" or another nationally recognized standard for retrofit of existing buildings.

(44) In Section 1616.4.1, Definition of W, Item 4 is deleted and replaced with the following:

4. Roof snow loads of 30 psf or less need not be included.

Where the roof snow load exceeds 30 psf, the snow load shall be included, but may be adjusted in accordance with the following formula: $W_s = (0.20 + 0.025(A-5))P_f$

WHERE:

W_s = Weight of snow to be included in seismic calculation;

A = Elevation above sea level at the location of the structure (ft/1000)

P_f = Design roof snow load, psf

For the purposes of this section, snow load shall be assumed uniform on the roof footprint without including the effects of drift or sliding.

(45) Section 1617.4 is deleted and replaced with the following:

1617.4 Equivalent lateral force procedure for seismic design of buildings. The provisions given in Section 9.5.5 of ASCE 7 shall be used. Roof snow loads to be included in the seismic dead load (W) may be adjusted as outlined in Section 1616.4.1, Item 4, as amended.

(46) In Section 1617.5.1, Definition of W, Item 4 is deleted and replaced with the following:

4. Roof snow loads to be included shall be as outlined in section 1616.4.1, Definition of W, Item 4, as amended.

(47) Section 1618.1 is deleted and replaced with the following:

1618.1 Dynamic analysis procedures. The following dynamic analysis procedures are permitted to be used in lieu of the equivalent lateral force procedure of Section 1617.4:

1. Modal Response Spectral Analysis.
2. Linear Time-history Analysis.
3. Nonlinear Time-history Analysis.

The dynamic analysis procedures listed above shall be performed in accordance with the requirements of Section 9.5.6, 9.5.7, and 9.5.8 respectively, of ASCE 7. Roof snow loads to be included in the seismic dead load (W) may be adjusted as outlined in Section 1616.4.1, Item 4, as amended.

(48) Section 1621.1 is deleted and replaced with the following:

1621.1 Component design. Architectural, mechanical, electrical and nonstructural systems, components and elements permanently attached to structures, including supporting structures and attachments (hereinafter referred to as "components"), and nonbuilding structures that are supported by other structures, shall meet with requirements of Section 9.6 of ASCE 7 except as modified in Sections 1621.1.1, 1621.1.2, 1621.1.3, and 1621.1.4, excluding Section 9.6.3.11.2, of ASCE 7, as amended in this section.

(49) A new Section 1621.1.4 is added as follows:

1621.1.4 ASCE 7, Section 9.6.2.6.2.2 paragraph (e) is modified to read as follows:

(e) Penetrations shall have a sleeve or adapter through the ceiling tile to allow for free movement of at least 1 inch (25 mm) in all horizontal directions.

Exceptions:

1. Where rigid braces are used to limit lateral deflections.
2. At fire sprinkler heads in frangible surfaces per NFPA 13.

(50) Section 1805.2.1 is deleted and replaced with the following:

1805.2.1 Frost protection. Except where otherwise protected from frost, foundation walls, piers and other

permanent supports of buildings and structures shall be protected from frost by one or more of the following methods:

- (1) Extending below the frost line of the locality;
- (2) Constructed in accordance with ASCE-32; or
- (3) Erected on solid rock.

Exception: Freestanding buildings meeting all of the following conditions shall not be required to be protected:

1. Classified in Importance Category I (see Table 1604.5), or Occupancy Group U (see Section 312);
2. Area of 1,000 square feet (93m²) or less;
3. Eave height of 10 feet (3048 mm) or less; and
4. Constructed of light-wood-framed construction.

Footings shall not bear on frozen soil unless such frozen condition is of a permanent character.

(51) Section 1805.5 is deleted and replaced with the following:

1805.5 Foundation walls. Concrete and masonry foundation walls shall be designed in accordance with Chapter 19 or 21. Foundation walls that are laterally supported at the top and bottom and within the parameters of Tables 1805.5(1) through 1805.5(4) are permitted to be designed and constructed in accordance with Sections 1805.5.1 through 1805.5.5. Concrete foundation walls may also be constructed in accordance with Section 1805.5.8.

(52) A new section 1805.5.8 is added as follows:

1805.5.8 Empirical foundation design. Group R, Division 3 Occupancies three stories or less in height, and Group U Occupancies, which are constructed in accordance with Section 2308, or with other methods employing repetitive wood-frame construction or repetitive cold-formed steel structural member construction, shall be permitted to have concrete foundations constructed in accordance with Table 1805.5(5).

(53) Table 1805.5(5) is added as follows:

Table 1805.5(5), entitled "Empirical Foundation Walls, dated September 1, 2002, published by the Department of Commerce, Division of Occupational and Professional Licensing is hereby adopted and incorporated by reference. Table 1805.5(5) identifies foundation requirements for empirical walls.

(54) A new section 2306.1.4 is added as follows:

2306.1.4 Load duration factors. The allowable stress increase of 1.15 for snow load, shown in Table 2.3.2, Frequently Used Load Duration Factors, C_d , of the National Design Specifications, shall not be utilized at elevations above 5,000 feet (1524 M).

(55) Section 2308.6 is deleted and replaced with the following:

2308.6 Foundation plates or sills. Foundations and footings shall be as specified in Chapter 18. Foundation plates or sills resting on concrete or masonry foundations shall comply with Section 2304.3.1 and shall be bolted or anchored by one of the following:

1. Foundation plates or sill shall be bolted or anchored to the foundation with not less than 1/2 inch (12.7 mm) diameter steel bolts or approved anchors. Bolts shall be embedded at least 7 inches (178 mm) into concrete or masonry, and spaced not more than 6 feet (1829 mm) apart. There shall be a minimum of two bolts or anchor straps per piece with one bolt or anchor strap located not more than 12 inches (305 mm) or less than 4 inches (102 mm) from each end of each piece.

2. Foundation plates or sills shall be bolted or anchored to the foundation with not less than 1/2 inch (12.7 mm) diameter steel bolts or approved anchors. Bolts shall be embedded at least 7 inches (178 mm) into concrete or masonry, and spaced not more than 32 inches (816 mm) apart. There shall be a minimum of two bolts or anchor straps per piece located not less than 4 inches (102 mm) from each end of each piece.

A properly sized nut and washer shall be tightened on each bolt to the plate.

(56) Section 2506.2.1 is deleted and replaced with the following:

2506.2.1 Other materials. Metal suspension systems for acoustical and lay-in panel ceilings shall conform with ASTM C635 listed in Chapter 35 and Section 9.6.2.6 of ASCE 7, as amended in Section 1621.1.4, for installation in high seismic areas.

(57) In Section 2902.1, the title for Table 2902.1 is deleted and replaced with the following and footnote f is added as follows: Table 2902.1, Minimum Number of Plumbing Facilities^{a, f}.

FOOTNOTE: f. When provided, in public toilet facilities there shall be an equal number of diaper changing facilities in male toilet rooms and female toilet rooms.

(58) A new section 2902.1.1 is added as follows:

2902.1.1 Unisex toilets and bath fixtures. Fixtures located within unisex toilet and bathing rooms complying with section 2902 are permitted to be included in determining the minimum number of fixtures for assembly and mercantile occupancies.

(59) Section 3006.5 Shunt Trip, the following exception is added:

Exception: Hydraulic elevators and roped hydraulic elevators with a rise of 50 feet or less.

(60) A new section 3403.5 is added as follows:

3403.5 Parapets and other appendages. Building constructed prior to 1975 with parapet walls, cornices, spires, towers, tanks, signs, statuary and other appendages shall have such appendages evaluated by a licensed engineer to determine resistance to design loads specified in this code when said building is undergoing reroofing, or alteration of or repair to said feature.

EXCEPTION: Group R-3 and U occupancies.

Original Plans and/or structural calculations may be utilized to demonstrate that the parapet or appendages are structurally adequate. When found to be deficient because of design or deteriorated condition, the engineer shall prepare specific recommendations to anchor, brace, reinforce or remove the deficient feature.

The maximum height of an unreinforced masonry parapet above the level of the diaphragm tension anchors or above the parapet braces shall not exceed one and one-half times the thickness of the parapet wall. The parapet height may be a maximum of two and one-half times its thickness in other than Seismic Design Categories D, E, or F. If the required parapet height exceeds this maximum height, a bracing system designed using the coefficients specified in ASCE 7-02 Table 9.6.2.2 shall support the top of the parapet. When positive diaphragm connections are absent, tension roof anchors shall be added. Approved alternative methods of equivalent strength will be considered when accompanied by engineer sealed drawings, details and calculations.

(61) The exception in 3409.1 is deleted and replaced with the following:

Exception: Type B dwelling or sleeping units required by section 1107 are not required to be provided in existing buildings and facilities, except when an existing occupancy is changed to R-2.

(62) In Section 3409.3, number 7 is added as follows:

7. When a change of occupancy in a building or portion of a building results in multiple dwelling or sleeping units as determined in section 1107.6.2, not less than 20 percent of the dwelling or sleeping units shall be Type B dwelling or sleeping units. These dwelling or sleeping units may be located on any floor of the building provided with an accessible route. Two percent, but not less than one, of the dwelling or sleeping units shall be Type A dwelling units.

(63) The following referenced standard is added under NFPA in chapter 35:

Number	Title	Referenced in code Section number
720-99	Recommended Practice for the	907.2.10.1,
907.2.10.5	Installation of Household Carbon Monoxide (CO) Warning Equipment	

(64) In Chapter 35, Referenced Standards, the following NFPA referenced standards are deleted and replaced with the current versions as follows:

DELETED	REPLACED BY	TABLE
13 - 99	13 - 02	Installation of Sprinkler Systems
13D - 99	13D - 02	Installation of Sprinkler Systems in One- and Two-family Dwellings and Manufactured Homes
13R - 99	13R - 02	Installation of Sprinkler Systems in Residential Occupancies Up to and Including Four Stories in Height
72 - 99	72 - 02	National Fire Alarm Code
101 - 00	101 - 03	Life Safety Code

R156-56-705. Local Amendments to the IBC.

The following are adopted as amendments to the IBC to be applicable to the following jurisdictions:

(1) City of Farmington:

Section (F)903.2.14 is adopted as follows:

(F)903.2.14 Group R, Division 3 Occupancies. An automatic sprinkler system shall be installed throughout every dwelling in accordance with NFPA 13-D, when any of the following conditions are present:

1. The structure is over two stories high, as defined by the building code;
2. The nearest point of structure is more than 150 feet from the public way;
3. The total floor area of all stories is over 5,000 square feet (excluding from the calculation the area of the basement and/or garage); or
4. The structure is located on a street constructed after March 1, 2000 that has a gradient over 12% and, during fire department response, access to the structure will be gained by using such street. (If the access is intended to be from a direction where the steep gradient is not used, as determined by the Chief, this criteria shall not apply).

Such sprinkler system shall be installed in basements, but need not be installed in garages, under eaves or in enclosed attic spaces, unless required by the Chief.

(2) City of North Salt Lake

Section (F)903.2.14 is adopted as follows:

(F)903.2.14 Group R, Division 3 Occupancies. An automatic sprinkler system shall be installed throughout every dwelling in accordance with NFPA 13-D, when the following condition is present:

1. The structure is over 6,200 square feet.

Such sprinkler system shall be installed in basements, but need not be installed in garages, under eaves, or in enclosed attic spaces, unless required by the fire chief.

(3) Park City Corporation and Park City Fire District:

Section (F)903.2 is deleted and replaced with the following:

(F)903.2 Where required. Approved automatic sprinkler systems in new buildings and structures shall be provided in the location described in this section.

All new construction having more than 6,000 square feet on any one floor, except R-3 occupancy.

All new construction having more than two (2) stories, except R-3 occupancy.

All new construction having three (3) or more dwelling units, including units rented or leased, and including condominiums or other separate ownership.

All new construction in the Historic Commercial Business zone district, regardless of occupancy.

All new construction and buildings in the General Commercial zone district where there are side yard setbacks or where one or more side yard setbacks is less than two and one half (2.5) feet per story of height.

All existing building within the Historic District Commercial Business zone.

In Table 1505.1, the following is added as footnotes d and e:

d. Wood roof covering assemblies are prohibited in R-3 occupancies in areas with a combined rating of more than 11 using Tables 1505.1.1 and 1505.1.2 with a score of 9 for weather factors.

e. Wood roof covering assemblies shall have a Class A rating in occupancies other than R-3 in areas with a combined rating of more than 11 using Tables 1505.1.1 and 1505.1.2 with a score of 9 for weather factors. The owner of the building shall enter into a written and recorded agreement that the Class A rating of the roof covering assembly will not be altered through any type of maintenance process.

TABLE 1505.1.1
WILDFIRE HAZARD SEVERITY SCALE

RATING	SLOPE	VEGETATION
1	less than or equal to 10%	Pinion-juniper
2	10.1 - 20%	Grass-sagebrush
3	greater than 20%	Mountain brush or softwoods

TABLE 1505.1.2
PROHIBITION/ALLOWANCE OF WOOD ROOFING

Rating	R-3 Occupancy	All Other Occupancies
less than or equal to 11	wood roof covering assemblies per Table 1505.1 are allowed	wood roof covering assemblies per Table 1505.1 are allowed
greater than or equal to 12	wood roof covering is prohibited	wood roof covering assemblies with a Class A rating are allowed

Appendix C is adopted.

(4) Sandy City

Section (F)903.2.14 is added as follows:

(F)903.2.14 An automatic sprinkler system shall be installed in accordance with NFPA 13 throughout buildings containing all occupancies where fire flow exceeds 2,000 gallons per minute, based on Table B105.1 of the 2003 International Fire Code. Exempt locations as indicated in Section 903.3.1.1.1 are allowed.

Exception: Automatic fire sprinklers are not required in buildings used solely for worship, Group R Division 3, Group U occupancies and buildings complying with the International Residential Code unless otherwise required by the International Fire Code.

R156-56-706. Statewide Amendments to the NEC.

The following are adopted as amendments to the NEC to be applicable statewide:

R156-56-707. Statewide Amendments to the IPC.

The following are adopted as amendments to the IPC to be applicable statewide:

(1) In Section 202, the definition for "Backflow Backpressure, Low Head" is deleted in its entirety.

(2) In Section 202, the definition for "Backsiphonage" is deleted and replaced with the following:

Backsiphonage. The backflow of potentially contaminated, polluted or used water into the potable water system as a result of the pressure in the potable water system falling below

atmospheric pressure of the plumbing fixtures, pools, tanks or vats connected to the potable water distribution piping.

(3) In Section 202, the following definition is added:

Certified Backflow Preventer Assembly Tester. A person who has shown competence to test Backflow prevention assemblies to the satisfaction of the authority having jurisdiction under Subsection 19-4-104(4), Utah Code Ann. (1953), as amended.

(4) In Section 202, the definition for "Cross Connection" is deleted and replaced with the following:

Cross Connection. Any physical connection or potential connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other either water of unknown or questionable safety or steam, gas or chemical, whereby there exists the possibility for flow from one system to the other, with the direction of flow depending on the pressure differential between the two systems (see "Backflow").

(5) In Section 202, the following definition is added:

Heat Exchanger (Potable Water). A device to transfer heat between two physically separated fluids (liquid or steam), one of which is potable water.

(6) In Section 202, the definition for "Potable Water" is deleted and replaced with the following:

Potable Water. Water free from impurities present in amounts sufficient to cause disease or harmful physiological effects and conforming to the Titles 19-4 and 19-5, Utah Code Ann. (1953), as amended and the regulations of the public health authority having jurisdiction.

(7) In Section 202, the following definition is added:

S-Trap. A trap having its weir installed above the inlet of the vent connection.

(8) In Section 202, the following definition is added:

Trap Arm. That portion of a fixture drain between a trap weir and the vent fitting.

(9) In Section 202, the definition for "Water Heater" is deleted and replaced with the following:

Water Heater. A closed vessel in which water is heated by the combustion of fuels or electricity and is withdrawn for use external to the system at pressures not exceeding 160 psig (1100 kPa (gage)), including the apparatus by which heat is generated, and all controls and devices necessary to prevent water temperatures from exceeding 210 degrees Fahrenheit (99 degrees Celsius).

(10) Section 304.3 Meter Boxes is deleted.

(11) Section 304.4 is deleted and replaced with the following:

304.4 Opening of Pipes. In or on the exterior habitable envelop of structures where openings have been made in walls, floors, or ceilings for the passage of pipes, the annular space between the opening and the pipe shall not exceed 1/2 inch (12.7 mm). Openings exceeding 1/2 inch (12.7 mm) shall be closed and protected by the installation of approved metal collars that are securely fastened to the adjoining structure.

(12) Section 305.5 is deleted and replaced with the following:

305.5 Pipes through or under footings or foundation walls. Any pipe that passes under or through a footing or through a foundation wall shall be protected against structural settlement.

(13) Section 305.8 is deleted and replaced with the following:

305.8 Protection against physical damage. In concealed locations where piping, other than cast-iron or galvanized steel, is installed through holes or notches in studs, joists, rafters or similar members less than 1 1/2 inches (38 mm) from the nearest edge of the member, the pipe shall be protected by shield plates. Protective shield plates shall be minimum of 1/16 inch-thick (1.6 mm) steel, shall cover the area of the pipe where the member is notched or bored, and shall be at least the thickness

of the framing member penetrated.

(14) Section 305.10 is added as follows:

Section 305.10 Improper Connections. No drain, waste, or vent piping shall be drilled and tapped for the purpose of making connections.

(15) Sections 308.7 and 308.7.1 are deleted and replaced with the following:

308.7 Anchorage. All drainage piping except ABS, PVC, CPVC, PP or any other approved piping material having solvent weld or heat fused joints shall be anchored and restrained to prevent axial movement.

308.7.1 Location. Restraints specified by an engineer and approved by the code official shall be provided for pipe sizes greater than 4 inches (102 mm), having changes in direction greater than 45 degrees and at all changes in diameter greater than two pipe sizes.

(16) Section 311.1 is deleted.

(17) Section 312.9 is deleted in its entirety and replaced with the following:

312.9 Backflow assembly testing. The premise owner or his designee shall have backflow prevention assemblies operation tested at the time of installation, repair and relocation and at least on an annual basis thereafter, or more frequently as required by the authority having jurisdiction. Testing shall be performed by a Certified Backflow Preventer Assembly Tester. The assemblies that are subject to this paragraph are the Spill Resistant Vacuum Breaker, the Pressure Vacuum Breaker Assembly, the Double Check Backflow Prevention Assembly, the Double Check Detector Assembly Backflow Preventer, the Reduced Pressure Principle Backflow Preventer, and Reduced Pressure Detector Assembly.

(18) In Section 403.1, the title for Table 403.1 is deleted and replaced with the following title and footnote f is added as follows: Table 403.1, Minimum Number of Plumbing Facilities^f, (see Sections 403.2 and 403.3).

FOOTNOTE: f. When provided, in public toilet facilities there shall be an equal number of diaper changing facilities in male toilet rooms and female toilet rooms.

(19) In Section 406.3, an exception is added as follows:

Exception: Gravity discharge clothes washers, when properly trapped and vented, shall be allowed to be directly connected to the drainage system or indirectly discharge into a properly sized catch basin, trench drain, or other approved indirect waste receptor installed for the purpose of receiving such waste.

(20) A new section 406.4 is added as follows:

406.4 Automatic clothes washer metal safe pans. Metal safe pans, when installed under automatic clothes washers, shall only be allowed to receive the unintended discharge from a leaking appliance, valve, supply hose, or overflowing waste water from the clothes washer standpipe. Clothes washer metal safe pans shall not be used as indirect waste receptors to receive the discharge of waste water from any other equipment, appliance, appurtenance, drain pipe, etc. Each safe pan shall be provided with an approved trap seal primer, conforming to ASSE 1018 or 1044 or a deep seal trap. The sides of the safe pan shall be no less than 1 1/2" high and shall be soldered at the joints to provide a water tight seal.

406.4.1 Safe pan outlet. The safe pan outlet shall be no less than 1 1/2" in diameter and shall be located in a visible and accessible location to facilitate cleaning and maintenance. The outlet shall be flush with the surface of the pan so as not to allow water retention within the pan.

(21) Section 412.1 is deleted and replaced with the following:

412.1 Approval. Floor drains shall be made of ABS, PVC, cast-iron, stainless steel, brass, or other approved materials that are listed for the use.

(22) Section 412.5 is added as follows:

412.5 Public toilet rooms. All public toilet rooms shall be equipped with at least one floor drain.

(23) Section 417.5.2 is deleted and replaced with the following:

(Subsections 417.5.2.1 to 417.5.2.4 are not changed)

417.5.2 Shower lining. Floors under shower compartments, except where prefabricated receptors have been provided, shall be lined and made water tight utilizing material complying with Sections 417.5.2.1 through 417.5.2.4. Such liners shall turn up on all sides at least three inches (76.2 mm) above the finished threshold level. Liners shall be recessed and fastened to an approved backing so as not to occupy the space required for wall covering, and shall not be nailed or perforated at any point less than two inches (50.8 mm) above finished threshold. Liners shall be pitched one-fourth unit vertical in 12 units horizontal (2-percent slope) and shall be sloped towards the fixture drains and be securely fastened to the waste outlet at the seepage entrance, making a watertight joint between the liner and the outlet.

Exception: Floor surfaces under shower heads provided for rinsing laid directly on the ground are not required to comply with this section. (24) Section 418.1 is deleted and replaced with the following:

418.1 Approval. Sinks shall conform to ANSI Z124.6, ASME A112.19.1M, ASME A112.19.2M, ASME A112.19.3M, ASME A112.19.4M, ASME A112.19.9M, CSA B45.1, CSA B45.2, CSA B45.3, CSA B45.4 or NSF 2.

(25) Section 424.3 is deleted and replaced with the following:

424.5 Shower Valves. Shower and tub-shower combination valves shall be balanced pressure, thermostatic or combination balanced-pressure/thermostatic valves that conform to the requirements of ASSE 1016 or CSA B125. Multiple (gang) showers supplied with a single tempered water supply pipe shall have the water supply for such showers controlled by an approved master thermostatic mixing valve complying with ASSE 1017. Shower and tub-shower combination valves and master thermostatic mixing valves required by this section shall be equipped with a means to limit the maximum setting of the valve to 120 degrees F (49 degrees C), which shall be field adjusted in accordance with the manufacturer's instructions. The water heater thermostat shall not be used as a water tempering device to meet this requirement.

(26) Section 502.4 is deleted and replaced with the following:

502.4 Water Heater Seismic Bracing. Water heaters shall be anchored or strapped in the upper third of the appliance to resist a horizontal force equal to one third the operating weight of the water heater, acting in any horizontal direction, or in accordance with the appliance manufacturers recommendations.

(27) Section 504.6.2 is deleted and replaced with the following:

504.6.2 Material. Relief valve discharge piping shall be of those materials listed in Table 605.5 and meet the requirements for Section 605.5 or shall be tested, rated and approved for such use in accordance with ASME A112.4.1. Piping from safety pan drains shall meet the requirements of Section 804.1 and be constructed of those materials listed in Section 702.

(28) Section 504.7.1 is amended as follows:

The measurement of "3/4 inch" in the last sentence of the paragraph is replaced with the measurement "1 1/2 inch".

(29) Section 504.7.2 is deleted and replaced with the following:

504.7.2 Pan drain termination. The pan drain shall extend full-size and terminate over a suitably located indirect waste receptor, floor drain or extend to the exterior of the building and terminate not less than 6 inches (152 mm) and not more than 24 inches (610 mm) above the adjacent ground surface. When permitted by the administrative authority, the pan drain may be

directly connected to a soil stack, waste stack, or branch drain. The pan drain shall be individually trapped and vented as required in Section 907.1. The pan drain shall not be directly or indirectly connected to any vent. The trap shall be provided with a trap primer conforming to ASSE 1018 or ASSE 1044.

(30) A new section 504.7.3 is added as follows:

504.7.3 Pan Designation. A water heater pan shall be considered an emergency receptor designated to receive the discharge of water from the water heater only and shall not receive the discharge from any other fixtures, devices or equipment.

(31) Section 602.3 is deleted and replaced with the following:

602.3 Individual water supply. Where a potable public water supply is not available, individual sources of potable water supply shall be utilized provided that the source has been developed in accordance with Sections 73-3-1, 73-3-3, and 73-3-25, Utah Code Ann. (1953), as amended, as administered by the Department of Natural Resources, Division of Water Rights. In addition, the quality of the water shall be approved by the local health department having jurisdiction. The source shall supply sufficient quantity of water to comply with the requirements of this chapter.

(32) Sections 602.3.1, 602.3.2, 602.3.3, 602.3.4, 602.3.5 and 602.3.5.1 are deleted in their entirety.

(33) Section 604.4.1 is added as follows:

604.4.1 Metering faucets. Self closing or metering faucets shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.

(34) Section 606.5 is deleted and replaced with the following:

606.5 Water pressure booster systems. Water pressure booster systems shall be provided as required by Section 606.5.1 through 606.5.11.

(35) Section 606.5.11 is added as follows:

606.5.11 Prohibited installation. In no case shall a booster pump be allowed that will lower the pressure in the public main to less than 20 psi.

(36) In Section 608.1, the following sentence is added at the end of the paragraph:

Connection without an air gap between potable water piping and sewer-connected waste shall not exist under any condition.

(37) Table 608.1 is deleted and replaced with the following:

TABLE 608.1
General Methods of Protection

Assembly (applicable standard)	Degree of Hazard	Application	Installation Criteria
Air Gap (ASME A112.1.2)	High or Low	Backsiphonage	See Table 608.15.1
Reduced Pressure Principle Backflow Preventer (AWWA C511, USC-FCCCHR, ASSE 1013 CSA CNA/CSA-B64.4) and Reduced Pressure Detector Assembly (ASSE 1047, USC-FCCCHR)	High or Low	Backpressure or Backsiphonage	1/2" - 16" a. The bottom of each RP assembly shall be a minimum of 12 inches above the ground or floor. b. RP assemblies shall NOT be installed in a pit. c. The relief valve on each RP assembly shall not be directly connected to any waste disposal line, including sanitary sewer, storm drains, or vents. d. The assembly shall be installed in a horizontal position only unless listed

Double Check Backflow Prevention Assembly (AWWA C510, USC-FCCCHR, ASSE 1015) Double Check Detector Assembly Backflow Preventer (ASSE 1048, USC-FCCCHR)	Low	Backsiphonage	1/2" - 16" a. If installed in a pit, the DC assembly shall be installed with a minimum of 12 inches of clearance between all sides of the vault including the floor and roof or ceiling with adequate room for testing and maintenance. b. Shall be installed in a horizontal position unless listed or approved for vertical installation.
Pressure Vacuum Breaker Assembly (ASSE 1020, USC-FCCCHR)	High or Low	Backsiphonage	1/2" - 2" a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions. b. Shall be installed a minimum of 12 inches above all downstream piping and the highest point of use. c. Shall not be installed below ground or in a vault or pit. d. Shall be installed in a vertical position only.
Spill Resistant Vacuum Breaker (ASSE 1056, USC-FCCCHR)	High or Low	Backsiphonage	1/4" - 2" a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions. b. Shall be installed a minimum of 12 inches above all downstream piping and the highest point of use. c. Shall not be installed below ground or in a vault or pit. d. Shall be installed in a vertical position only.
Atmospheric Vacuum Breaker (ASSE 1001, USC-FCCCHR, CSA CAN/CSA-B64.1.1)	High or Low	Backsiphonage	a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions. b. Shall not be installed where it may be subjected to continuous pressure for more than 12 consecutive hours at any time. c. Shall be installed a minimum of six inches above all downstream piping and the highest point of use. d. Shall be installed on the discharge (downstream) side of any valves.

General Installation Criteria

- e. The AVB shall be installed in a vertical position only.
- The assembly owner, when necessary, shall provide devices or structures to facilitate testing, repair, and/or maintenance and to insure the safety of the backflow technician. Assemblies shall not be installed more than five feet off the floor unless a permanent platform is installed.
- The body of the assembly shall not be closer than 12 inches to any wall, ceiling or incumbrance, and shall be accessible for testing, repair and/or maintenance.
- In cold climates, assemblies shall be protected from freezing by a means acceptable to the code official.
- Assemblies shall be maintained as an intact assembly.

instructions and the specific provisions of this chapter.

(39) In Section 608.3.1, the following sentence is added at the end of the paragraph:

All piping and hoses shall be installed below the atmospheric vacuum breaker.

(40) Section 608.7 is deleted in its entirety.

(41) In Section 608.8, the following sentence is added at the end of the paragraph:

In addition each nonpotable water outlet shall be labeled with the words "CAUTION: UNSAFE WATER, DO NOT DRINK".

(42) In Section 608.11, the following sentence is added at the end of the paragraph:

The coating shall conform to NSF Standard 61 and application of the coating shall comply with the manufacturers instructions.

(43) Section 608.13.3 is deleted and replaced with the following:

608.13.3 Backflow preventer with intermediate atmospheric vent. Backflow preventers with intermediate atmospheric vents shall conform to ASSE 1012 or CAS CAN/CAS-B64.3. These devices shall be permitted to be installed on residential boilers only where subject to continuous pressure conditions. The relief opening shall discharge by air gap and shall be prevented from being submerged.

(44) Section 608.13.4 is deleted in its entirety.

(45) Section 608.15.3 is deleted and replaced with the following:

608.15.3 Protection by a backflow preventer with intermediate atmospheric vent. Opening and outlets to residential boilers only shall be protected by a backflow preventer with an intermediate atmospheric vent.

(46) Section 608.15.4 is deleted and replaced with the following:

608.15.4 Protection by a vacuum breaker. Openings and outlets shall be protected by atmospheric-type or pressure-type vacuum breakers. The critical level of the atmospheric vacuum breaker shall be set a minimum of 6 inches (152 mm) above the flood level rim of the fixture or device. The critical level of the pressure vacuum breaker shall be set a minimum of 12 inches (304 mm) above the flood level rim of the fixture or device. Ball cocks shall be set in accordance with Section 425.3.1. Vacuum breakers shall not be installed under exhaust hoods or similar locations that will contain toxic fumes or vapors. Pipe-applied vacuum breakers shall be installed not less than 6 inches (152 mm) above the flood level rim of the fixture, receptor or device served. No valves shall be installed downstream of the atmospheric vacuum breaker.

(47) Section 608.15.4.2 is deleted and replaced with the following:

608.15.4.2 Hose connections. Sillcocks, hose bibbs, wall hydrants and other openings with a hose connection shall be protected by an atmospheric-type or pressure-type vacuum breaker or a permanently attached hose connection vacuum breaker. Add-on-type backflow prevention devices shall be non-removable. In climates where freezing temperatures occur, a listed self-draining frost proof hose bibb with an integral backflow preventer shall be used.

(48) In Section 608.16.2, the first sentence of the paragraph is deleted and replaced as follows:

608.16.2 The potable water supply to the residential boiler shall be equipped with a backflow preventer with an intermediate atmospheric vent complying with ASSE 1012 or CSA CAN/CSA B64.3.

(49) Section 608.16.3 is deleted and replaced with the following:

608.16.3 Heat exchangers. Heat exchangers shall be separated from potable water by double-wall construction. An air gap open to the atmosphere shall be provided between the

(38) Table 608.1.1 is added as follows:

TABLE 608.1.1
Specialty Backflow Devices for low hazard use only

Device	Degree of Hazard	Application	Applicable Standard
Antisiphon-type Water Closet Flush Tank Ball Cock	Low	Backsiphonage	ASSE 1002 CSA CAN/ CSA-B125
Dual check valve Backflow Preventer	Low	Backsiphonage or Backpressure 1/4" - 1"	ASSE 1024
Backflow Preventer with Intermediate Atmospheric Vent	Low Residential Boiler	Backsiphonage or Backpressure 1/4" - 3/4"	ASSE 1012 CSA CAN/ CSA-B64.3
Dual check valve type Backflow Preventer for Carbonated Beverage Dispensers/Post Mix Type	Low	Backsiphonage or Backpressure 1/4" - 3/8"	ASSE 1022
Hose-connection Vacuum Breaker	Low	Backsiphonage 1/2", 3/4", 1"	ASSE 1011 CSA CAN/ CSA-B64.2
Vacuum Breaker Wall Hydrants, Frost-resistant, Automatic Draining Type	Low	Backsiphonage 3/4", 1"	ASSE 1019 CSA CAN/ CSA-B64.2.2
Laboratory Faucet Backflow Preventer	Low	Backsiphonage	ASSE 1035 CSA CAN/ CSA-B64.7
Hose Connection Backflow Preventer	Low	Backsiphonage 1/2" - 1"	ASSE 1052

Installation Guidelines: The above specialty devices shall be installed in accordance with their listing and the manufacturer's

two walls.

Exceptions:

1. Single wall heat exchangers shall be permitted when all of the following conditions are met:

a. It utilizes a heat transfer medium of potable water or contains only substances which are recognized as safe by the United States Food and Drug Administration (FDA);

b. The pressure of the heat transfer medium is maintained less than the normal minimum operating pressure of the potable water system; and

c. The equipment is permanently labeled to indicate only additives recognized as safe by the FDA shall be used.

2. Steam systems that comply with paragraph 1 above.

3. Approved listed electrical drinking water coolers.

(50) In Section 608.16.4.1, add the following exception:

Exception: All class 1 and 2 systems containing chemical additives consisting of strictly glycerine (C.P. or U.S.P. 96.5 percent grade) or propylene glycol shall be protected against backflow with a double check valve assembly. Such systems shall include written certification of the chemical additives at the time of original installation and service or maintenance.

(51) Section 608.16.5 is deleted and replaced with the following:

608.16.5 Connections to lawn irrigation systems. The potable water supply to lawn irrigation systems shall be protected against backflow by an atmospheric-type vacuum breaker, a pressure-type vacuum breaker, or a reduced pressure principle backflow preventer. A valve shall not be installed downstream from an atmospheric vacuum breaker. Where chemicals are introduced into the system, the potable water supply shall be protected against backflow by a reduced pressure principle backflow preventer.

(52) Section 608.16.7 is deleted and replaced with the following:

608.16.7 Chemical dispensers. Where chemical dispensers connect to the water distribution system, the water supply system shall be protected against backflow in accordance with Section 608.13.1, Section 608.13.2, Section 608.13.5, Section 608.13.6 or Section 608.13.8.

(53) Section 608.16.8 is deleted and replaced with the following:

608.16.8 Portable cleaning equipment. Where the portable cleaning equipment connects to the water distribution system, the water supply system shall be protected against backflow in accordance with Section 608.13.1, Section 608.13.2 or Section 608.13.8.

(54) Section 608.16.9 is deleted and replaced with the following:

608.16.9 Dental pump equipment or water syringe. Where dental pumping equipment or water syringes connects to the water distribution system, the water supply system shall be protected against backflow in accordance with Section 608.13.1, Section 608.13.2, Section 608.13.5, Section 608.13.6 or Section 608.13.8.

(55) Section 608.16.10 is added as follows:

608.16.10 Automatic and coin operated car washes. The water supply to an automatic or coin operated car wash shall be protected in accordance with Section 608.13.1 or Section 608.13.2.

(56) Section 608.17 is deleted in its entirety.

(57) Section 701.2 is deleted and replaced with the following:

701.2 Sewer required. Every building in which plumbing fixtures are installed and all premises having drainage piping shall be connected to a public sewer where the sewer is within 300 feet of the property line in accordance with Section 10-8-38, Utah Code Ann., (1953), as amended; or an approved private sewage disposal system in accordance with Rule R317-501 through R317-513 and Rule R317-5, Utah Administrative Code,

as administered by the Department of Environmental Quality, Division of Water Quality.

(58) Section 802.3.2 is deleted in its entirety and replaced with the following:

802.3.2 Open hub waste receptors. Waste receptors for clear water waste shall be permitted in the form of a hub or pipe extending not more than 1/2 inch above a water impervious floor and are not required to have a strainer.

(59) Section 904.1 is deleted and replaced with the following:

904.1 Roof extensions. All open vent pipes that extend through a roof shall be terminated at least 12 inches (304.8 mm) above the roof, except that where a roof is to be used for any purpose other than weather protection, the vent extension shall be run at least 7 feet (2134 mm) above the roof.

(60) In Section 904.6, the following sentence is added at the end of the paragraph:

Vents extending through the wall shall terminate not less than 12 inches from the wall with an elbow pointing downward.

(61) In Section 905.4, the following sentence is added at the end of the paragraph:

Horizontal dry vents below the flood level rim shall be permitted for floor drain and floor sink installations when installed in accordance with Sections 702.2, 905.2 and 905.3 and provided with a wall clean out.

(62) Section 1002.2 is deleted and replaced with the following:

1002.2 Design of traps. Fixture traps shall be self-scouring. Fixture traps shall not have interior partitions, except where such traps are integral with the fixture or where such traps are constructed of an approved material that is resistant to corrosion and degradation. Slip joints shall be made with an approved elastomeric gasket and shall only be installed on the trap inlet, trap outlet and within the trap seal. One slip joint fitting shall be allowed to be installed downstream of the trap.

(63) Section 1002.8 is deleted and replaced with the following:

1002.8 Recess for trap connection. A recess provided for connection of the underground trap, such as one serving a bathtub in slab-type construction, shall have sides and a bottom of corrosion-resistant, insect- and vermin-proof construction. The annular space between the pipe and the penetration shall not exceed 1/2 inch (12.7 mm).

(64) Section 1003.3.5 is added as follows:

1003.3.5 Grease trap restriction. Unless specifically required or permitted by the code official, no food waste grinder or dishwasher shall be connected to or discharge into any grease trap.

(65) Section 1104.2 is deleted and replaced with the following:

1104.2 Combining storm and sanitary drainage prohibited. The combining of sanitary and storm drainage systems is prohibited.

(66) Section 1108 is deleted in its entirety.

(67) Chapter 13, Referenced Standards, is amended as follows:

NSF - Standard Reference Number 61-99 - The following referenced in code section number is added: 608.11

The following reference standard is added:

TABLE

USC- FCCCHR 9th Edition Manual of Cross Connection Control	Foundation for Cross-Connection Control and Hydraulic Research University of Southern California Kaprielian Hall 300 Los Angeles CA 90089-2531	Table 608.1
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(68) Appendix C of the IPC, Gray Water Recycling

Systems as amended herein shall not be adopted by any local jurisdiction until such jurisdiction has requested Appendix C as amended to be adopted as a local amendment and such local amendment has been approved as a local amendment under these rules.

(69) In jurisdictions which have adopted Appendix C as amended as a local amendment as provided herein, Section 301.3 of the IPC is deleted and replaced with the following:

301.3 Connection to the drainage system. All plumbing fixtures, drains, appurtenances and appliances used to receive or discharge liquid wastes or sewage shall be directly connected to the drainage system of the building or premises, in accordance with the requirements of this Code. This section shall not be construed to prevent indirect waste systems provided for in Chapter 8.

Exception: Bathtubs, showers, lavatories, clothes washers and laundry sinks shall not be required to discharge to the sanitary drainage system where such fixtures discharge to a gray water recycling system meeting all the requirements as specified in Appendix C as amended by these rules.

(70) Appendix C is deleted and replaced with the following, to be effective only in jurisdictions which have adopted Appendix C as amended as a local amendment under these rules:

Appendix C, Gray Water Recycling Systems, C101 Gray Water Recycling Systems

C101.1 General, recycling gray water within a building. In R1, R2 and R4 occupancies and one- and two-family dwellings, gray water recycling systems are prohibited.

In commercial occupancies, recycled gray water shall only be utilized for the flushing of water closets and urinals that are located in the same building as the gray water recycling system, provided the following conditions are met:

1. Such systems comply with Sections C101.1 through C101.14 as amended by these rules.

2. The commercial establishment demonstrates that it has and will have qualified staff to oversee the gray water recycling systems. Qualified staff is defined as level 3 waste water treatment plan operator as specified by the Department of Environmental Quality.

3. Gray water recycling systems shall only receive non hazardous waste discharge of bathtubs, showers, lavatories, clothes washers and laundry sinks such as chemicals having a pH of 6.0 to 9.0, or non flammable or non combustible liquids, liquids without objectionable odors, non-highly pigmented liquids, or other liquids that will not interfere with the operation of the sewer treatment facilities.

C101.2 Permit required. A permit for any gray water recycling system shall not be issued until complete plans prepared by a licensed engineer, with appropriate data satisfactory to the Code Official, have been submitted and approved. No changes or connections shall be made to either the gray water recycling system or the potable water system within any site containing a gray water recycling system, without prior approved by the Code Official. A permit may also be required by the local health department to monitor compliance with this appendix for system operator standards and record keeping.

C101.3 Definition. The following term shall have the meaning shown herein.

GRAY WATER. Waste water discharged from lavatories, bathtubs, showers, clothes washers and laundry sinks.

C101.4 Installation. All drain, waste and vent piping associated with gray water recycling systems shall be installed in full compliance with this code.

C101.5 Gray Water Reservoir. Gray water shall be collected in an approved reservoir construction of durable, nonabsorbent and corrosion-resistant materials. The reservoir shall be a closed and gas-tight vessel. Gas tight access openings

shall be provided to allow inspection and cleaning of the reservoir interior. The holding capacity of the reservoir shall be a minimum of twice the volume of water required to meet the daily flushing requirements of the fixtures supplied by the gray water, but not less than 50 gallons (189 L). The reservoir shall be sized to limit the retention time of gray water to 72 hours maximum.

C101.6 Filtration. Gray water entering the reservoir shall pass through an approved cartridge filter or other method approved by the Code Official.

C101.7 Disinfection. Gray water shall be disinfected by an approved method that employs one or more disinfectants such as chlorine, iodine or ozone. A minimum of 1 ppm free residual chlorine shall be maintained in the gray water recycling system reservoir. Such disinfectant shall be automatically dispensed. An alarm shall be provided to shut down the gray water recycling system if disinfectant levels are not maintained at the required levels.

C101.8 Makeup water. Potable water shall be supplied as a source of makeup water for the gray water recycling system. The potable water supply to any building with a gray water recycling system shall be protected against backflow by an RP backflow assembly installed in accordance with this code. There shall be full-open valve on the makeup water supply to the reservoir. The potable water supply to the gray water reservoir shall be protected by an air gap installed in accordance with this code.

C101.9 Overflow. The reservoir shall be equipped with an overflow pipe of the same diameter as the influent pipe for the gray water. The overflow shall be directly connected to the sanitary drainage system.

C101.10 Drain. A drain shall be located at the lowest point of the reservoir and shall be directly connected to the sanitary drainage system. The drain shall be the same diameter as the overflow pipe required by Section C101.9 and shall be provided with a full-open valve.

C101.11 Vent required. The reservoir shall be provided with a vent sized in accordance with Chapter 9 based on the size of the reservoir influent pipe.

C101.12 Coloring. The gray water shall be automatically dyed blue or green with a food grade vegetable dye before such water is supplied to the fixtures.

C101.13 Identification. All gray water distribution piping and reservoirs shall be identified as containing non-potable water. Gray water recycling system piping shall be permanently colored purple or continuously wrapped with purple-colored Mylar tape. The tape or permanently colored piping shall be imprinted in black, upper case letters with the words "CAUTION: GRAY WATER, DO NOT DRINK."

All equipment areas and rooms for gray water recycling system equipment shall have a sign posted in a conspicuous place with the following text: TO CONSERVE WATER, THIS BUILDING USES GRAY WATER TO FLUSH TOILETS AND URINALS, DO NOT CONNECT TO THE POTABLE WATER SYSTEM. The location of the signage shall be determined by the Code Official.

C101.14 Removal from service. All gray water recycling systems that are removed from service shall have all connections to the reservoir capped and routed back to the building sewer. All gray water distribution lines shall be replaced with new materials.

C201.1 Outside the building. Gray water reused outside the building shall comply with the requirements of the Department of Environmental Quality Rule R317.

R156-56-708. Statewide Amendments to the IMC.

The following are adopted as amendments to the IMC to be applicable statewide:

R156-56-709. Statewide Amendments to the IFGC.

The following are adopted as amendments to the IFGC to be applicable statewide:

(1) The following paragraph is added at the end of Section 305.1

305.1 General. After natural gas, space and water heating appliances have been adjusted for altitude and the Btu content of the natural gas, the installer shall apply a sticker in a visible location indicating that the proper adjustments to such appliances have been made. The adjustments for altitude and the Btu content of the natural gas shall be done in accordance with the manufacturer's installation instructions and the gas utility's approved practices.

(2) Chapter 4, Section 401 General, a new section 401.9 is added as follows:

401.9 Meter protection. Gas meters shall be protected from physical damage, including falling ice and snow.

R156-56-710. Statewide Amendments to the IECC.

The following are adopted as amendments to the IECC to be applicable statewide:

(1) In Section 504.7, the following exception is added:

Exception: Heat traps, other than the arrangement of piping and fittings, shall be prohibited unless a means of controlling thermal expansion can be ensured as required in the IPC Section 607.3.

R156-56-711. Statewide Amendments to the IRC.

The following are adopted as amendments to the IRC to be applicable statewide:

(1) All amendments to the IBC under Section R156-56-704, local amendments under Section R156-56-705, the NEC under Section R156-56-706, the IPC under Section R156-56-707, the IMC under Section R156-56-708, the IFGC under Section R156-56-709 and the IECC under Section R156-56-710 which may be applied to detached one and two family dwellings and multiple single family dwellings shall be applicable to the corresponding provisions of the IRC. All references to the International Electrical Code are deleted and replaced with the National Electrical Code adopted under Section R156-56-701(1)(b). Should there be any conflicts between the NEC and the IRC, the NEC shall prevail.

(2) In Section 109, a new section is added as follows:

R109.1.5 Weather-resistive barrier and flashing inspections. An inspection shall be made of the weather-resistive barrier as required by Section R703.1 and flashings as required by Section R703.8 to prevent water from entering the weather-resistant exterior wall envelope.

The remaining sections are renumbered as follows:

R109.1.6 Other inspections

R109.1.6.1 Fire-resistance-rated construction inspection

R109.1.7 Final inspection.

(3) Section R114.1 is deleted and replaced with the following:

R114.1 Notice to owner. Upon notice from the building official that work on any building or structured is being prosecuted contrary to the provisions of this code or other pertinent laws or ordinances or in an unsafe and dangerous manner, such work shall be immediately stopped. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent or to the person doing the work; and shall state the conditions under which work will be permitted to resume.

(4) In Section R202, the definition of "Backsiphonage" is deleted and replaced with the following:

BACKSIPHONAGE: The backflow of potentially contaminated, polluted or used water into the potable water system as a result of the pressure in the potable water system falling below atmospheric pressure of the plumbing fixtures,

pools, tanks or vats connected to the potable water distribution piping.

(5) In Section R202 the following definition is added:

CERTIFIED BACKFLOW PREVENTER ASSEMBLY TESTER: A person who has shown competence to test Backflow prevention assemblies to the satisfaction of the authority having jurisdiction under Subsection 19-4-104(4), Utah Code Ann. (1953), as amended.

(6) In Section R202 the definition of "Cross Connection" is deleted and replaced with the following:

CROSS CONNECTION. Any physical connection or potential connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other either water of unknown or questionable safety or steam, gas or chemical, whereby there exists the possibility for flow from one system to the other, with the direction of flow depending on the pressure differential between the two systems(see "Backflow, Water Distribution").

(7) In Section R202 the following definition is added:

HEAT exchanger (Potable Water). A device to transfer heat between two physically separated fluids (liquid or steam), one of which is potable water.

(8) In Section R202 the definition of "Potable Water" is deleted and replaced with the following:

POTABLE WATER. Water free from impurities present in amounts sufficient to cause disease or harmful physiological effects and conforming to the Titles 19-4 and 19-5, Utah Code Ann. (1953), as amended and the regulations of the public health authority having jurisdiction.

(9) In Section R202, the following definition is added:

S-Trap. A trap having it's weir installed above the inlet of the vent connection.

(10) In Section R202 the definition of "Water Heater" is deleted and replaced with the following:

WATER HEATER. A closed vessel in which water is heated by the combustion of fuels or electricity and is withdrawn for use externally to the system at pressures not exceeding 160 psig (1100 kPa (gage)), including the apparatus by which heat is generated, and all controls and devices necessary to prevent water temperatures from exceeding 210 degrees Fahrenheit (99 degrees Celsius).

(11) Section R301.5 is deleted and replaced with the following:

R301.5 Live Load. The minimum uniformly distributed live load shall be as provided in Table R301.5.

TABLE R301.5
MINIMUM UNIFORMLY DISTRIBUTED LIVE LOADS
(in pounds per square foot)

USE	LIVE LOAD
Attics with storage (b), (e)	20
Attics without storage (b), (e), (g)	10
Decks (f)	60
Exterior balconies	60
Fire escapes	40
Guardrails and handrails (d)	200
Guardrails in-fill components (f)	50
Passenger vehicle garages (a)	50(a)
Rooms other than sleeping rooms	40
Sleeping rooms	30
Stairs	40(c)

For SI: 1 pound per square foot = 0.0479kN/m², 1 square inch = 645 mm² 1 pound = 4.45N.

(a) Elevated garage floors shall be capable of supporting a 2,000-pound load applied over a 20-square-inch area.

(b) No storage with roof slope not over 3 units in 12 units.

(c) Individual stair treads shall be designed for the uniformly distributed live load or a 300-pound concentrated load acting over an area of 4 square inches, whichever produces the greater stresses.

(d) A single concentrated load applied in any direction at any point along the top.

(e) Attics constructed with wood trusses shall be

designated in accordance with Section R802.10.1.

(f) See Section R502.2.1 for decks attached to exterior walls.

(g) This live load need not be considered as acting simultaneously with other live loads imposed upon the ceiling framing or its supporting structure.

(12) Section R304.3 is deleted and replaced with the following:

R304.3 Minimum dimensions. Habitable rooms shall not be less than 7 feet (2134 mm) in any horizontal dimension.

Exception: Kitchens shall have a clear passageway of not less than 3 feet (914 mm) between counter fronts and appliances or counter fronts and walls.

(13) Section R311.5.3 is deleted and replaced with the following:

R311.5.3 Stair treads and risers.

R311.5.3.1 Riser height. The maximum riser height shall be 8 inches (203 mm). The riser shall be measured vertically between leading edges of the adjacent treads. The greatest riser height within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm).

R311.5.3.2 Tread depth. The minimum tread depth shall be 9 inches (228 mm). The tread depth shall be measured horizontally between the vertical plans of the foremost projection of adjacent treads and at a right angle to the tread's leading edge. The greatest tread depth within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm). Winder treads shall have a minimum tread depth of 10 inches (254 mm) measured as above at a point 12 inches (305 mm) from the side where the treads are narrower. Winder treads shall have a minimum tread depth of 6 inches (152 mm) at any point. Within any flight of stairs, the greatest winder tread depth at the 12 inch (305 mm) walk line shall not exceed the smallest by more than 3/8 inch (9.5 mm).

R311.5.3.3 Profile. The radius of curvature at the leading edge of the tread shall be no greater than 9/16 inch (14.3 mm). A nosing not less than 3/4 inch (19.1 mm) but not more than 1 1/4 inches (32 mm) shall be provided on stairways with solid risers. The greatest nosing projection shall not exceed shall not exceed the smallest nosing projection by more than 3/8 inches (9.5 mm) between two stories, including the nosing at the level of floors and landings. Beveling of nosing shall not exceed 1/2 inch (12.7 mm). Risers shall be vertical or sloped from the underside of the leading edge of the tread above at an angle not more than 30 degrees (0.51 rad) from the vertical. Open risers are permitted, provided that the opening between treads does not permit the passage of a 4-inch diameter (102 mm) sphere.

Exceptions:

1. A nosing is not required where the tread depth is a minimum of 10 inches (254 mm).

2. The opening between adjacent treads is not limited on stairs with a total rise of 30 inches (762 mm) or less.

(14) Section R311.5.6 is deleted and replaced with the following:

R311.5.6 Handrails. Handrails shall be provided on at least one side of stairways consisting of four or more risers. Handrails shall have a minimum height of 34 inches (864 mm) and a maximum height of 38 inches (965 mm) measured vertically from the nosing of the treads. All required handrails shall be continuous the full length of the stairs from a point directly above the top riser to a point directly above the lowest riser of the stairway. The ends of the handrail shall be returned into a wall or shall terminate in newel post or safety terminals. A minimum clear space of 1 1/2 inches (38 mm) shall be provided between the wall and the handrail.

Exceptions:

1. Handrails shall be permitted to be interrupted by a newel post at a turn.

2. The use of a volute, turnout or starting easing shall be allowed over the lowest tread.

(15) Section R311.5.6.3 is deleted and replaced with the following:

R311.5.6.3 Handrail grip size. The handgrip portion of handrails shall have a circular cross section of 1 1/4 inches (32mm) minimum to 2 5/8 inches (67mm) maximum. Edges shall have a minimum radius of 1/8 inch (3.2mm).

Exception: Non-circular handrails shall be permitted to have a maximum cross sectional dimension of 3.25 inches (83mm) measured 2 inches (51 mm) down from the top of the crown. Such handrail is required to have an indentation on both sides between 0.625 inch (16mm) and 1.5 inches (38mm) down from the top or crown of the cross section. The indentation shall be a minimum of 0.25 inch (6mm) deep on each side and shall be at least 0.5 inch (13 mm) high. Edges within the handgrip shall have a minimum radius of 0.0625 inch (2 mm). The handrail surface shall be smooth with no cusps so as to avoid catching clothing or skin.

(16) Section R313 is deleted and replaced with the following:

R313.1 Single- and multiple-station smoke alarms. Single- and multiple-station smoke alarms shall be installed in the following locations:

1. In each sleeping room.
2. Outside of each separate sleeping area in the immediate vicinity of the bedrooms.

3. On each additional story of the dwelling, including basements and cellars but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

All smoke alarms shall be listed and installed in accordance with the provisions of this code and the household fire warning equipment provision of NFPA 72.

R313.2 Carbon monoxide alarms. In new residential structures regulated by this code that are equipped with fuel burning appliances, carbon monoxide alarms shall be installed on each habitable level. All carbon monoxide detectors shall be listed and comply with U.L. 2034 and shall be installed in accordance with provisions of this code and NFPA 720.

R313.3 Interconnection of alarms. When multiple alarms are required to be installed within an individual dwelling unit, the alarm devices shall be interconnected in such a manner that the activation of one alarm will activate all of the alarms in the individual unit. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed. Approved combination smoke- and carbon-monoxide detectors shall be permitted.

R313.4 Power source. In new construction, the required alarms shall receive their primary power from the building wiring when such wiring is served from a commercial source, and when primary power is interrupted, shall receive power from a battery. Wiring shall be permanent and without a disconnecting switch other than those required for overcurrent protection. Alarms shall be permitted to be battery operated when installed in buildings without commercial power or in buildings that undergo alterations, repairs, or additions regulated by Section R313.5

R313.5 Alterations, repairs and additions. When interior alterations, repairs or additions requiring a permit occur, or when one or more sleeping rooms are added or created in existing dwellings, the individual dwelling unit shall be provided with alarms located as required for new dwellings; the alarms shall be interconnected and hard wired.

Exceptions:

1. Alarms in existing areas shall not be required to be interconnected and hard wired where the alterations or repairs do not result in the removal of interior wall or ceiling finishes

exposing the structure, unless there is an attic, crawl space, or basement available which could provide access for hard wiring and interconnection without the removal of interior finishes.

2. Repairs to the exterior surfaces of dwellings are exempt from the requirements of this section.

(17) In Section 317.3.2 Exception 1.1 is deleted and replaced with the following:

1.1 By a horizontal distance of not less than the width of a stud space regardless of stud spacing, or

(18) In Section R403.1.4.1 exception 1 is deleted and replaced with the following:

1. Freestanding accessory structures, not intended for human occupancy, with an area of 1,000 square feet (93m²) or less, of wood framed construction, with an eave height of 10 feet (3048 mm) or less shall not be required to be protected.

(19) In Section R403.1.6 the exception is deleted and replaced with the following exceptions:

Exceptions:

1. Foundation anchor straps, spaced as required to provide equivalent anchorage to 1/2 inch diameter (12.7 mm) anchor bolts.

2. When anchor bolt spacing does not exceed 32 inches (813 mm) apart, anchor bolts may be placed with a minimum of two bolts per plate section located not less than 4 inches (102 mm) from each end of each plate section at interior bearing walls, interior braced wall lines and at all exterior walls.

(20) In Section R403.1.6.1 the following exception is added at the end of Item 2 and Item 3:

Exception: When anchor bolt spacing does not exceed 32 inches (816 mm) apart, anchor bolts may be placed with a minimum of two bolts per plate section located not less than 4 inches (102 mm) from each end of each plate section at interior bearing walls, interior braced wall lines and at all exterior walls.

(21) Section R703.6 is deleted and replaced with the following:

R703.6 Exterior plaster.

R703.6.1 Lath. All lath and lath attachments shall be of corrosion-resistant materials. Expanded metal or woven wire lath shall be attached with 1 1/2 inch-long (38 mm), 11 gage nails having 7/16 inch (11.1 mm) head, or 7/8-inch-long (22.2 mm), 16 gage staples, spaced at no more than 6 inches (152 mm), or as otherwise approved.

R703.6.2 Weather-resistant barriers. Weather-resistant barriers shall be installed as required in Section R703.2 and, where applied over wood-based sheathing, shall include a weather-resistive vapor permeable barrier with a performance at least equivalent to two layers of Grade D paper.

R703.6.3 Plaster. Plastering with portland cement plaster shall be not less than three coats when applied over metal lath or wire lath and shall be not less than two coats when applied over masonry, concrete or gypsum backing. If the plaster surface is completely covered by veneer or other facing material or is completed concealed, plaster application need be only two coats, provided the total thickness is as set forth in Table R702.1(1). On wood-frame construction with an on-grade floor slab system, exterior plaster shall be applied in such a manner as to cover, but not extend below, lath, paper and screed.

The proportion of aggregate to cementitious materials shall be as set forth in Table R702.1(3).

(22) In Section R703.8, number 8 is added as follows:

8. At the intersection of foundation to stucco, masonry, siding, or brick veneer with an approved corrosive-resistance flashing with a 1/2" drip leg extending past exterior side of the foundation.

(23) A new Section G2401.2 is added as follows:

G2401.2 Meter Protection. Gas meters shall be protected from physical damage, including falling ice and snow.

(24) Section P2602.3 is added as follows:

P2602.3 Individual water supply. Where a potable public

water supply is not available, individual sources of potable water supply shall be utilized provided that the source has been developed in accordance with Sections 73-3-1 and 73-3-25, Utah Code Ann. (1953), as amended, as administered by the Department of Natural Resources, Division of Water Rights. In addition, the quality of the water shall be approved by the local health department having jurisdiction.

(25) Section P2602.4 is added as follows:

P2602.4 Sewer required. Every building in which plumbing fixtures are installed and all premises having drainage piping shall be connected to a public sewer where the sewer is within 300 feet of the property line in accordance with Section 10-8-38, Utah Code Ann. (1953), as amended; or an approved private sewage disposal system in accordance with Rule R317-501 through R317-513 and Rule R317-5, Utah Administrative Code, as administered by the Department of Environmental Quality, Division of Water Quality.

(26) Section P2603.2.1 is deleted and replaced with the following:

P2603.2.1 Protection against physical damage. In concealed locations where piping, other than cast-iron or galvanized steel, is installed through holes or notches in studs, joists, rafters, or similar members less than 1 1/2 inch (38 mm) from the nearest edge of the member, the pipe shall be protected by shield plates. Protective shield plates shall be a minimum of 1/16 inch-thick (1.6 mm) steel, shall cover the area of the pipe where the member is notched or bored, and shall be at least the thickness of the framing member penetrated.

(27) Section P2801.2.1 is added as follows:

P2801.2.1 Water heater seismic bracing. In Seismic Design Categories C, D₁ and D₂, water heaters shall be anchored or strapped in the upper third of the appliance to resist a horizontal force equal to one third the operating weight of the water heater, acting in any horizontal direction, or in accordance with the appliance manufacturers recommendations.

(28) Section P2902.1.1 is added as follows:

P2902.1.1 Backflow assembly testing. The premise owner or his designee shall have backflow prevention assemblies operation tested at the time of installation, repair and relocation and at least on an annual basis thereafter, or more frequently as required by the authority having jurisdiction. Testing shall be performed by a Certified Backflow Preventer Assembly Tester. The assemblies that are subject to this paragraph are the Spill Resistant Vacuum Breaker, the Pressure Vacuum Breaker Assembly, the Double Check Backflow Prevention Assembly, the Double Check Detector Assembly Backflow Preventer, the Reduced Pressure Principle Backflow Preventer, and Reduced Pressure Detector Assembly.

(29) Section P3003.2.1 is added as follows:

P3003.2.1 Improper Connections. No drain, waste, or vent piping shall be drilled and tapped for the purpose of making connections.

(30) In Section P3103.6, the following sentence is added at the end of the paragraph:

Vents extending through the wall shall terminate not less than 12 inches from the wall with an elbow pointing downward.

(31) In Section P3104.4, the following sentence is added at the end of the paragraph:

Horizontal dry vents below the flood level rim shall be permitted for floor drain and floor sink installations when installed below grade in accordance with Chapter 30, and Sections P3104.2 and P3104.3. A wall cleanout shall be provided in the vertical vent.

(32) Chapter 43, Referenced Standards, is amended as follows:

The following reference standard is added:

TABLE

USC- Foundation for Cross-Connection

Section P2902

FCCCHR Control and Hydraulic Research
 9th University of Southern California
 Edition Kaprielian Hall 300
 Manual Los Angeles CA 90089-2531
 of Cross
 Connection
 Control

(33) In Chapter 43, the following standard is added under NFPA as follows:

TABLE

720-98	Recommended Practice for the Installation of Household Carbon Monoxide (CO) Warning Equipment	R313.2
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R156-56-712. Local Amendments to the IRC.

The following are adopted as amendments to the IRC to be applicable to the following jurisdictions:

(1) City of Farmington:

Sections R324.1 and R324.2 are added as follows:

R324.1 When required. An automatic sprinkler system shall be installed throughout every dwelling in accordance with NFPA 13-D, when any of the following conditions are present:

1. the structure is over two stories high, as defined by the building code;
2. the nearest point of structure is more than 150 feet from the public way;
3. the total floor area of all stories is over 5,000 square feet (excluding from the calculation the area of the basement and/or garage); or
4. the structure is located on a street constructed after March 1, 2000 that has a gradient over 12% and, during fire department response, access to the structure will be gained by using such street. (If the access is intended to be from a direction where the steep gradient is not used, as determined by the Chief, this criteria shall not apply).

R324.2 Installation requirements and standards. Such sprinkler system shall be installed in basements, but need not be installed in garages, under eaves or in enclosed attic spaces, unless required by the Chief. Such system shall be installed in accordance with NFPA 13-D.

(2) Morgan City Corp:

Section R105.2 Work Exempt From Permit, the following is added:

10. Structures intended to house farm animals, or for the storage of feed associated with said farm animals when all the following criteria is met:

- a. The parcel of property involved is zoned for the keeping of farm animals or has grand fathered animal rights.
- b. The structure is setback not less than 50 feet from the rear or side of dwellings, and not less than 10 feet from property lines and other structures.
- c. The structure does not exceed 1000 square feet of floor area, and is limited to 20 feet in height. Height is measured from the average grade to the highest point of the structure.
- d. Before construction, a site plan is submitted to, and approved by the building official.

Electrical, plumbing, and mechanical permits shall be required when that work is included in the structure.

(3) Morgan County:

Section R105.2 Work Exempt From Permit, the following is added:

10. Structures intended to house farm animals, or for the storage of feed associated with said farm animals when all the following criteria is met:

- a. The parcel of property involved is zoned for the keeping of farm animals or has grand fathered animal rights.
- b. The structure is set back not less than required by the Morgan County Zoning Ordinance for such structures, but not less than 10 feet from property lines and other structures.

c. The structure does not exceed 1000 square feet of floor area, and is limited to 20 feet in height. Height is measured from the average grade to the highest point of the structure.

d. Before construction, a Land Use Permit must be applied for, and approved, by the Morgan County Planning and Zoning Department.

Electrical, plumbing, and mechanical permits shall be required when that work is included in the structure.

(4) City of North Salt Lake:

Sections R324.1 and R324.2 are added as follows:

R324.1 When Required. An automatic sprinkler system shall be installed throughout every dwelling when the following condition is present:

1. The structure is over 6,200 square feet.

R324.2 Installation requirements and standards. Such sprinkler system shall be installed in basements, but need not be installed in garages, under eaves, or in enclosed attic spaces, unless required by the fire chief. Such system shall be installed in accordance with NFPA 13-D.

(5) Park City Corporation and Park City Fire District:

Section R905.7 is deleted and replaced with the following:

R905.7 Wood shingles. The installation of wood shingles shall comply with the provisions of this section.

Wood roof covering is prohibited in areas with a combined rating of more than 11 using the following tables with a score of 9 for weather factors.

TABLE
 WILDFIRE HAZARD SEVERITY SCALE

RATING	SLOPE	VEGETATION
1	less than or equal to 10%	Pinion-juniper
2	10.1 - 20%	Grass-sagebrush
3	greater than 20%	Mountain brush or softwoods

PROHIBITION/EXEMPTION TABLE

RATING	WOOD ROOF PROHIBITION
less than or equal to 11	wood roofs are allowed
greater than or equal to 12	wood roofs are prohibited

Section R905.8 is deleted and replaced with the following:

R905.8 Wood Shakes. The installation of wood shakes shall comply with the provisions of this section. Wood roof covering is prohibited in areas with a combined rating of more than 11 using the following tables with a score of 9 for weather factors.

TABLE
 WILDFIRE HAZARD SEVERITY SCALE

RATING	SLOPE	VEGETATION
1	less than or equal to 10%	Pinion-juniper
2	10.1 - 20%	Grass-sagebrush
3	greater than 20%	Mountain brush or softwoods

PROHIBITION/EXEMPTION TABLE

RATING	WOOD ROOF PROHIBITION
less than or equal to 11	wood roofs are allowed
greater than or equal to 12	wood roofs are prohibited

Appendix K is adopted.

KEY: contractors, building codes, building inspection, licensing

January 1, 2006 58-1-106(1)(a)
Notice of Continuation May 16, 2002 58-1-202(1)(a)
 58-56-1
 58-56-4(2)
 58-56-6(2)(a)

R182. Community and Culture, Administration.**R182-1. Government Records Access And Management Act Rules.****R182-1-1. Purpose.**

The purpose of the following rule is to provide procedures for access to government records.

R182-1-2. Authority.

The authority for the following rule is Section 63-2-204 and Section 63-2-904 of the Government Records Access and Management Act (GRAMA), effective July 1, 1992.

R182-1-3. Allocation of Responsibility within DCC.

DCC and its agencies shall be considered a single government entity and the Executive Director of DCC or designee shall be considered the chief administrative officer of DCC and its agencies for purposes of Section 63-2-401.

R182-1-4. Requests for Access.

(1) Requests for access to government records of the Department of Community and Culture (DCC) and its agencies must be made in writing. Except as provided for in Subsection R182-1-4(1)(a) below, record access requests must be directed to the records officer of the DCC agency holding the requested record. The response to a request may be delayed if not properly directed. See Subsections 63-2-204(2), (6). Record access requests must be directed as set forth below:

(a) Media and other expedited requests must be addressed to the DCC Public Information Officer, located at the DCC Administrative Office in Salt Lake City.

(b) All other requests must be addressed to the Records Officer, located at the main Salt Lake City office of the appropriate DCC agency listed below:

- (i) DCC Administration, which includes all other DCC agencies not specifically referenced below;
- (ii) Housing and Community Development;
- (iii) Office of Ethnic Affairs, which includes Asian Affairs, Black Affairs, Hispanic Affairs, and Pacific Island Affairs;
- (iv) Division of Fine Arts;
- (v) Division of Indian Affairs;
- (vi) Division of State History; and
- (vii) Division of State Library.

R182-1-5. Fees.

A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from DCC by contacting Executive Assistant to the Executive Director, DCC Administration, located at the DCC Administrative Office in Salt Lake City. DCC and its agencies may require payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed \$50.00 or if the requester has not paid fees from previous requests.

R182-1-6. Waiver of Fees.

Fees for duplication and compilation of a record may be waived under certain circumstances described in Subsection 63-2-203(3). Requests for waiver of fees are made to DCC Executive Assistant to the Executive Director, located at the DCC Administrative Office in Salt Lake City.

R182-1-7. Request for Access for Research Purposes.

Access to private or controlled records for research purposes is allowed by Subsection 63-2-202(8). Requests for access to such records for research purposes may be made directly to the records officer of the DCC agency from which the record is sought as set forth in R182-1-4.

R182-1-8. Requests for Records Containing Intellectual Property Rights.

If the department owns an intellectual property right

contained within records being requested, it shall duplicate and distribute such materials in accordance with Subsection 63-2-201(10). Initial decisions with regard to these rights will be made by the records officer of the DCC agency from which the record is sought as set forth in R182-1-4.

R182-1-9. Requests to Amend a Record.

(1) An individual may contest the accuracy or completeness of a document pertaining to him pursuant to Section 63-2-603. All such requests to amend a record shall be made in writing and include the following: 1) the requester's name, mailing address, and daytime telephone number; and 2) a brief statement explaining why DCC should amend the record. Such requests shall be made and directed to the appropriate DCC agency director as set forth below:

(a) Requests to amend records held by DCC Administration or by DCC agencies not specifically referenced below shall be addressed to the Executive Director, located at the DCC Administrative Office in Salt Lake City.

(b) Requests to amend records held by the following listed DCC agencies shall be addressed to the Executive Director, located at the main Salt Lake City office of the applicable agency:

- (i) Housing and Community Development;
- (ii) Office of Ethnic Affairs, which includes Asian Affairs, Black Affairs, Hispanic Affairs, and Pacific Island Affairs;
- (iii) Division of Fine Arts;
- (iv) Division of Indian Affairs;
- (v) Division of State History; and
- (vi) Division of State Library.

(2) Adjudicative proceedings resulting from requests to amend a record shall be conducted informally. Pursuant to Section 63-46b-5, the following procedures are established by rule to govern such proceedings:

(a) The Director of a DCC agency may delegate the responsibility to respond to a request to amend a record.

(b) An individual making a request to amend a record may also request a meeting to present information or evidence. The agency Director, or designee, receiving the request shall determine whether a meeting with the petitioner will be required to fairly respond to the request.

(c) The Director, or designee, receiving a request to amend a record shall respond to the request in writing within a reasonable time following receipt of the request. In the event a meeting with the petitioner is necessary to fairly evaluate the merits of a request, a written response shall be made within a reasonable time following the conclusion of any such meeting. The response shall contain the following information:

- (i) The decision reached.
- (ii) The reasons for the decision.
- (iii) A notice of the requester's right to appeal to the Executive Director of DCC, or designee, within 30 days of the date of the response, pursuant to Section 63-46b-12.

R182-1-10. Appeals to Agency Head.

Review of an order denying a request to amend a record may be taken to the Executive Director of DCC, or designee, located at the DCC Administrative Office in Salt Lake City. Such review shall be conducted pursuant to the procedures outlined in Section 63-46b-12 of the Utah Code.

R182-1-11. Time Periods Under GRAMA.

The provisions of Rule 6 of the Utah Rules of Civil Procedure shall apply to calculate time periods specified in GRAMA.

R182-1-12. Forms.

(1) All forms described in this Section are available from the records officer of the DCC agency from which the record is

sought as set forth in R182-1-4. The forms described as follows or a document prepared by the requester containing substantially similar information to that requested in the DCC forms, shall be completed by requester in connection with records requests:

(a) DCC Record Access Request form is for use by all entities requesting records from DCC or its agencies. This form is intended to assist entities, who request records, to comply with the requirements of Subsection 63-2-204(1) regarding the contents of a request. If a request is made through a written document other than a completed DCC Record Access Request form, the document must be legible and include the following information: the requester's name; mailing address; daytime telephone number (if available); a description of the records requested that identifies the record with reasonable specificity; and if the request is for a record which is not public, information regarding the requester's status.

(b) DCC Request For Protected Record Status form is for use by all entities providing records to DCC or its agencies. This form is intended to comply with the Section 63-2-308 regarding business confidentiality claims. If a request for protected records status is made through a written document other than a DCC Request For Protected Record Status form, the document must contain a claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality.

(c) DCC Disclosure and Agreement form is for use when another government entity, political subdivisions of the state and their designated economic development agencies request controlled, private or protected records from DCC or its agencies, pursuant to Subsection 63-2-206(5). This form discloses to the government entity certain information regarding restrictions on access, and obtains the written agreement of the entity to abide with those restrictions.

(d) DCC Certification by Requesting Government Entity form is for use by another government entity requesting controlled or private records from DCC or its agencies, pursuant to Subsection 63-2-206(2). This form requires the information found in the DCC Record Access Request form, as well as certain representations required from the government entity, if the information sought is not public.

(2) DCC or its agencies may use forms to respond to requests for records.

KEY: government documents, freedom of information, public records

1992

63-2-204

Notice of Continuation October 19, 2001

63-2-904

R195. Community and Culture, Home Energy Assistance Target (HEAT).**R195-1. Energy Assistance: General Provisions.****R195-1-1. Purpose.**

The Home Energy Assistance Target (HEAT) program serves to provide assistance in meeting home energy costs for certain low-income families and individuals.

R195-1-2. Authority.

The department shall require compliance with Title 9, Chapter 12.

R195-1-3. Definitions.

1. The following definitions apply to R195-1 through R195-8:

- a. "Applicant" means any person requesting assistance under the program discussed.
- b. "Assistance" means payments made to individuals under the program discussed.
- c. "Assistance unit" or "household" means any individual or group of individuals who are living together as one economic unit and for whom residential heating is customarily purchased in common or who make payments for heat in the form of rent.
- d. "Department" means the Department of Community and Culture.
- e. "Recipient" or "client" means any individual receiving assistance under the program discussed.
- f. "Confidential information" means information that has limited access as provided in Section 63-2.
- g. "HEAT" means Home Energy Assistance Target program.
- h. "IRS" means Internal Revenue Service.
- i. "Moratorium" means a period of time in which involuntary termination for nonpayment by residential customers of essential utility bills is prohibited.
- j. "Vulnerability" means having to pay a home heating cost.

R195-1-4. Client Rights and Responsibilities.

1. Any client may apply or reapply at any time for the HEAT program by completing and signing an application and turning it in at the correct office.
2. If the client needs help to apply, help will be given by the local HEAT office staff.
3. HEAT workers will identify themselves.
4. The client will be treated with courtesy, dignity and respect.
5. Verification and information will be requested clearly and courteously.
6. If the client must be visited after working hours, an appointment will be made.
7. The client's home will not be entered without permission.
8. Clients may have an agency conference to talk about their case.
9. Clients may look at information concerning their case except confidential information.
10. Anyone may look at a copy of the program manuals located at any local HEAT office.
11. The client must give complete and correct information and verification.
12. The client must immediately report any address change while under the protection of the moratorium.
13. The client is responsible for repaying any overpayments of assistance.

R195-1-5. Information.

The department shall require compliance with Title 63, Chapter 2.

1. Client may review and copy anything in their case record unless it is confidential.

a. The Client requests for release of information shall be in writing and include:

- i. the date;
 - ii. the name of the person receiving the information;
 - iii. the time period covered by the information.
- b. Information classified as confidential shall not be used in a hearing.
- c. Information classified as confidential shall not be used to close, deny or reduce benefits.

d. Clients may copy information from their file. Up to ten pages are free. If the client wants more than ten copies, the client must pay the cost of making the extra copies.

e. The client cannot take the case record from the office.

2. Releasing information to sources other than the client.

a. Information will not be released when it is to be used for a commercial or political purpose.

b. The client's permission will be obtained before sharing any information regarding their case record.

i. Information may be released without the client's permission if the outside source making the request has comparable rules for safeguarding information.

ii. Information may be released in an emergency. The director or designee will decide what constitutes an emergency.

3. Information released without the client's permission.

a. Information, with the exception of confidential information, may be released without the clients permission when that information is to be used in:

- i. The administration of any federal or state means-tested program.
- ii. Any audit or review of expenditures in connection with the HEAT or Moratorium program.

iii. Any investigation, prosecution, criminal or civil proceeding connected with the administration of the HEAT or Moratorium programs.

4. If a case file is subpoenaed by an outside source, legal counsel for the department will ask the court to disallow the confidential information from the case record.

R195-1-6. Complaints and Conciliation.

1. Complaints
 - a. The client may make a complaint in person, by phone, or in writing to the local HEAT office.
 - b. Complaints shall be resolved as quickly as possible.
 - c. Responses to complaints shall be made in person, by phone or in writing.
2. Conciliation
 - a. The agency conference will be the conciliation mechanism.
 - b. Some or all of the following steps may be involved in the agency conference:
 - i. Contacting the client to identify the issue and barriers which may be preventing client progress.
 - ii. Reviewing and explaining rules which apply to the issues. These include rules about client rights and responsibilities.
 - iii. Exploring any alternative actions which may resolve the issues.
 - c. If the client fails to respond, or chooses not to cooperate in this process, documentation in the case file of attempts made to follow these steps will be considered as compliance with the requirement to attempt conciliation.

R195-1-7. Hearings.

The department shall require compliance with Title 63, Chapter 46b.

1. Current Departmental Practices:
 - a. The department conducts hearings informally.

- b. Hearings are held before a state agency.
- c. Hearings may be conducted by telephone when the applicant or recipient agrees to the procedure.
- d. Requests for a hearing must be in writing. Only a clear expression by the claimant to the effect that they want an opportunity to present their case is required.
- e. The applicant or recipient has the option of appealing a hearing decision to either the director of the Department or to the District Court.
- f. Final administrative action shall be taken within 90 days from the request for the hearing unless the client asks for a postponement of a scheduled hearing. The period of postponement can be added to the 90 days.

**KEY: client rights*, hearings, confidentiality of information
1987 9-12-10
Notice of Continuation June 14, 2002**

R195. Community and Culture, Home Energy Assistance Target (HEAT).**R195-2. Energy Assistance Programs Standards.****R195-2-1. Opening and Closing Dates for HEAT Program.**

1. Each November 1, or the first working day thereafter, the HEAT Program opens for the general population.

2. The HEAT Program closes the following April 30, or the last business day of the month, or when federal LIHEAP funds are exhausted, whichever comes first. Applications taken on or before the program closing date may be processed after the program closing date. If funds are exhausted before all applications are processed, notice of non-payment will be sent to the remaining unprocessed applications.

R195-2-2. U.S. Residence.

1. To be eligible for HEAT assistance, a person must meet at least one of the criteria for US residence listed below:

a. Be a US born or naturalized citizen as evidenced by any document verifying the individual was born in the US or naturalization papers.

b. Be lawfully admitted into the US for permanent residence as evidenced by an Immigration and Naturalization Service (INS) form I-151 or I-551.

c. Be lawfully admitted into the US as a Refugee as evidenced by an INS form I-94 stamped "Admitted under the Refugee Act of 1980".

d. Be lawfully admitted into the US as a conditional entrant as evidenced by an INS form I-94 stamped "Conditional Entrant".

e. Be lawfully admitted into the US as a special agricultural worker as evidenced by a green colored INS form I-688 stamped PL 99-603 Sec. 210.

2. Persons not eligible to participate in the HEAT program are:

a. Persons who hold INS I-94 who are admitted as temporary entrants.

b. Persons who hold an INS I-688 Sec. 210A (RAWS).

c. Persons who hold an INS I-688 Sec. 245A (AMNESTY).

d. Persons who hold an INS I-688A Sec. 210, 210A, or 245A (SAWS, RAWS, and AMNESTY).

e. Persons who have no registration card.

R195-2-3. Utah Residence.

There is no length of residency requirement. Individuals must be living in Utah voluntarily and not for a temporary purpose.

R195-2-4. Local Residence.

1. A household's completed HEAT application must be maintained in the office in the area where they reside.

2. Native American Residents of Daggett, Duchesne, and Uintah Counties who are enrolled in any federally recognized Indian Tribe have a choice of applying for utility assistance through the state HEAT program or through the Ute Tribal LIHEAP Program. Clients cannot receive assistance from both programs in the same program year.

3. Native American Residents of Washington, Iron, Millard, and Sevier Counties have a choice of receiving utility assistance through the state HEAT program or through the Paiute Tribal LIHEAP Program. Clients cannot receive assistance from both programs in the same program year.

4. Residents living on the Navajo Indian Reservation in San Juan county must apply for utility assistance through the Navajo Tribe. They cannot receive assistance through the state HEAT program except through special provision of the State HEAT Office.

R195-2-5. Vulnerability.

1. An eligible household must be vulnerable to home heating costs.

a. The following households are considered responsible for home heating costs:

i. Households who are presently paying heating costs directly to energy suppliers on currently active accounts.

ii. Households who are currently paying energy costs indirectly through rent.

2. Residents in the following households are not considered responsible for home heating costs and are not eligible for HEAT assistance:

a. Nursing homes;

b. Hospitals;

c. Prisons and jails;

d. Institutions;

e. Alcoholism and drug treatment centers;

f. Group homes administered under a contract with a government agency or administered by a government agency;

g. Households not connected to a heat source;

h. Households whose utility bills are paid regularly by an outside party;

i. Residents of hotels or trailer courts who have lived there less than 30 days and who do not pay a reasonable or customary rate.

R195-2-6. Subsidized Housing - Roomers And Boarders.

Eligibility for HEAT assistance: a household living in a federal, state, or local subsidized housing or anyone renting a room in a private house or apartment must pay an identifiable surcharge for heat in addition to their rent or they must pay a utility bill for heating costs directly to a utility provider.

R195-2-7. Social Security Numbers.

1. Adults who apply for HEAT assistance must provide verification of their Social Security Numbers (SSN) or apply for SSN cards. Social Security Numbers may be required for all household members if there is a question of household size and composition.

a. There are four ways to provide a correct SSN. The client can submit one of these three documents.

i. An official SSN card

ii. Official documents from Social Security Administration including award letters, benefit checks or a Medicare card

iii. An SSA receipt form 5028 or 2880.

iv. Official document from another government agency or from an employer.

R195-2-8. Eligible HEAT Household.

1. Household members need not be related.

2. Multiple dwellings including duplexes and apartment buildings, are considered separate households.

R195-2-9. Age and Emancipation.

Household members 18 years of age or older or emancipated are considered adults. A child can be emancipated by age, marriage or court order.

R195-2-10. Weatherization Referrals.

Participation in the weatherization program is not a condition of eligibility for HEAT.

R195-2-11. Energy Crisis Intervention.

1. A crisis is any weather-related emergency, any supply shortage emergency, or any other household energy-related emergency as approved by the region or state office.

a. Examples of household energy-related emergencies may include energy costs above 25% of the client's gross income, arrearages when the client has demonstrated a good faith attempt to resolve the problem or repairs to prevent loss of

energy from a dwelling.

b. Examples of household energy-related non-emergencies may include payments that will create a credit balance on a utility account, payments on utility accounts previously sent to a collection agency or capital improvements to rental property.

2. To be eligible for energy crisis intervention, a household must be eligible for HEAT during the same HEAT program year.

a. If the local office determines that a household is eligible to receive energy crisis intervention benefits and is in a life threatening situation, energy crisis intervention benefits will be provided within 18 hours. Regular energy crisis intervention benefits will be provided within 48 hours of eligibility determination.

b. The director or HEAT supervisor must approve all crisis intervention expenditures.

c. HEAT payments are issued to the vendor. In emergencies a check may be issued to the client.

d. When an energy crisis requires work from an outside vendor, the client must obtain at least two bids before work may begin. The job order will go to the lowest bidder unless the reasons for accepting a higher bid is documented and approved by the supervisor or the state office.

e. Energy crisis intervention payments are limited to a maximum of \$500 per household per HEAT program year unless prior approval for an amount larger than \$500 is obtained from the supervisor or state office.

R195-2-12. Supplemental Programs.

Household who qualify for HEAT assistance may also receive supplemental payments from other utility programs, such as "Reach", "Lend-A-Hand", and Catholic Community Services utility fund.

R195-2-13. Security Deposits.

1. Public Service Commission (PSC) Regulated Utilities
a. A PSC regulated utility is required to waive the security deposit requirement for all Heat and Moratorium clients during the period of the Moratorium.

b. Monies received by a regulated utility from third-party sources, including monies provided by HEAT, REACH, CONCERN or similar programs, shall not be applied to the security deposit.

2. Non Regulated Utilities

a. If the company has signed a HEAT contract, the company has agreed not to charge a security deposit to a HEAT client from November 15th through March 15th. This does not apply to the service initiation fees that are routinely charged as a condition of service.

R195-2-14. Consumer Complaints.

1. Public Service Commission (PSC) Regulated Utilities
a. Consumer complaints against a PSC regulated utility should be referred to the Public Service Commission.

2. Non Regulated Utilities

a. Consumer complaints against a non regulated utility should be referred directly to the individual utility company.

R195-2-15. Credit Balances on Utility Accounts.

1. If the household discontinues service with their utility supplier, and the household so elects, the disconnecting supplier will forward any HEAT credit balance remaining on the account to the household's new utility company. The new utility company must operate in Utah. The household must furnish, to the disconnecting utility supplier, the name and address of the new utility company within 30 days after termination of service.

2. If the household elects to have the HEAT credit balance refunded directly to them, the disconnecting utility supplier will do so if the household still resides in Utah. The household must

furnish, to the disconnecting utility supplier, their new address within 30 days after termination of service.

3. In no case shall HEAT credit balances be forwarded to utility companies not operating in Utah or to clients no longer residing in Utah.

4. If the client fails to give the disconnecting utility company the information for either option one or option two listed above, the utility company can hold the credit balance for an additional 30 days. If reconnection with the same utility has not occurred, any remaining credit balance must be refunded to the HEAT program.

5. Once credit balances are refunded to the HEAT program they become part of the general HEAT budget and are redistributed in the form of benefits to additional eligible households.

KEY: energy assistance, residency requirements, opening and closing dates, HEAT

January 12, 2005

9-12-10

Notice of Continuation June 14, 2002

R195. Community and Culture, Home Energy Assistance Target (HEAT).**R195-3. Energy Assistance Income Standards, Income Eligibility, and Payment Determination.****R195-3-1. Energy Assistance Income Standards.**

For HEAT assistance cases, the local HEAT office shall determine the countable income of the household.

R195-3-2. Countable Income.

Countable income is gross income minus exclusions, disregards, and deductions.

R195-3-3. Unearned Income.

1. Countable unearned income is cash received by an individual for which no service is performed.

2. Sources of unearned income include the following:

- a. Pensions and annuities including Railroad Retirement, Social Security, Supplemental Security Income, Veteran's benefits and Civil Service retirement benefits;
- b. Disability benefits including Industrial Compensation, sick pay, mortgage insurance and paycheck insurance;
- c. Unemployment Compensation;
- d. Strike or union benefits;
- e. Veteran's benefits;
- f. Child support and alimony;
- g. Veteran's Educational Assistance intended for family members;
- h. Trust payments;
- i. Tribal fund gratuities unless excluded by law.
- j. Money from sales contracts and mortgages;
- k. Personal injury settlements;
- l. Financial payments made by the Department of Workforce Services;
- m. Income from Rental Property. If the client also manages the property, the income is earned.

R195-3-4. Earned Income.

1. Earned income is income in cash or in kind received by an individual for which a service is performed.

2. Sources of earned income include the following:

- a. Wages, including military base pay;
- b. Salaries;
- c. Commissions;
- d. Rent amount, when client works in return for rent;
- e. Monies from self-employment including baby-sitting;
- f. Tips;
- g. Sale of livestock and poultry;
- h. Work Study;
- i. University Year for Action;
- j. Military payments to cover Basic Allowance for Quarters and Basic Allowance for Substance;
- k. Money the employee chooses to have withheld for benefit plans including Flex Plans and Cafeteria Plans.

R195-3-5. Income Exclusions.

1. The following definitions apply to this section:

- a. "Bona fide loan" means a loan which has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment.
 - b. "JTPA" means Jobs Training Partnership Act.
2. The income listed below is not counted:
- a. Earned income of an unemancipated household member.
 - b. Cash over which the household has no control.
 - c. Reimbursements for expenses directly related to employment, training, schooling, and volunteer activities.
 - d. Reimbursements for incurred medical expenses.
 - e. Bona fide loans.
 - f. Compensation paid to individual volunteers under the Retired Senior Volunteers Program, Green Thumb and the

Foster Grandparent Program.

g. Incentive and training expenses paid by the HEAT Self Sufficiency program.

h. Earned Income Tax Credit.

i. Financial payments from JTPA.

j. Value of Food Stamp Coupons, Food Stamp Cash Out checks, and surplus commodities donated by the U.S. Department of Agriculture.

k. Educational loans, grants, scholarships or college work study with the exception of Veterans Educational Assistance intended for the family members of the student. The student's portion is exempt.

l. Interest or Dividend Income.

m. Compensation or reimbursement paid to Volunteers In Service To America, Senior Health Aides, Senior Core of Retired Executives, Senior Companions and ACE.

n. Church cash assistance and voluntary cash contributions by others unless received on a regular basis.

o. Rental subsidies and relocation assistance.

p. Utility subsidies.

q. Any funds, payments, or tribal benefits required by Public Law 98-64, Public Law 93-134(7), Public Law 92-254, Public Law 94-540, Public Law 94-114 and Public Law 96-240(9).

r. Payments required by Public Law 92-203.

s. Payments required by Public Law 101-201 or Public Law 101-239(10405).

t. Payments required by Public Law 100-383.

u. Payments required by Public Law 101-426.

v. Payments required by Public Law 100-707.

R195-3-6. Income Disregard.

1. The following definition applies to this section:

a. "Disregard" means a portion of income that is not counted.

2. 20% of earned income, including self-employment earned income, will be disregarded.

3. For self-employed households the cost of doing business will be deducted. The 20% disregard will be applied to the remainder.

R195-3-7. Income Deductions.

1. Medical

A deduction for payments on uncompensated medical bills will be allowed when those payments are actually made by a member of the household during the same time period as the income being counted.

a. The client must verify the payment was made directly to a medical provider in the month prior to the month of application and that they will not be reimbursed by a third party.

b. Health and accident insurance payments, dental insurance payments, and Medical Assistance Only (MAO) payments are considered medical expenses.

2. Child Support and Alimony

a. A deduction for child support and alimony payments will be allowed when those payments were actually made by a member of the household during the same time period as the income being counted.

b. The client must verify the payment was actually made directly to the custodial adult or through the court.

c. Payments in lieu of child support and alimony, including car payments or mortgage payments, are deductible.

R195-3-8. Self-Employment Income.

1. A self-employed person actively earns income directly from their own business, trade, or profession.

2. Self-employment income will be determined by using the previous year's tax return or as follows:

a. All gross self-employment income is counted.

- i. Capital gains will be included.
- ii. The proceeds from the sale of capital goods or equipment will be calculated in the same way as a capital gain for Federal income tax purposes. Even if only part of the proceeds from the sale of capital goods or equipment is taxed, the full amount of the capital gain will be counted as income for HEAT program purposes.
 - b. The cost of doing business will be deducted.
 - i. Allowable business costs include:
 - A. labor;
 - B. stock;
 - C. raw materials;
 - D. seed and fertilizer;
 - E. interest paid toward the purchase of income producing property;
 - F. insurance premiums;
 - G. taxes paid on income producing property;
 - ii. Transportation costs will be allowed only if the person must move from place to place in the course of business.
 - iii. The following items will not be allowed as business expenses:
 - A. Payments on the principal of the purchase price of income producing real estate and capital assets, equipment, machinery and other durable goods.
 - B. Net losses from previous periods.
 - C. Federal, state and local income taxes, money set aside for retirement purposes, and other work related personal expenses.
 - D. Depreciation.

R195-3-9. HEAT Financial Eligibility and Payment Determination.

1. All countable income received in the previous calendar month for the current applicant household will be used to determine eligibility. Terminated income received in the previous calendar month or the month of application is exempt if no new source of income is identified. Failure to provide verification of income will result in the HEAT application being denied.

Verification of countable income includes preceding or current month's SSI or SSA checks, divorce decrees, award letters, or current check stubs if the income is stable and the amount is the same as the actual income received in the previous calendar month.

KEY: energy assistance, self-employment income, income eligibility, payment determination

January 12, 2005

9-12-10

Notice of Continuation June 14, 2002

R195. Community and Culture, Home Energy Assistance Target (HEAT).

R195-4. Energy Assistance: Asset Standards.

R195-4-1. Resource Limits.

The value of any household assets, either real or personal property, will not be counted when determining eligibility for the HEAT program.

**KEY: energy assistance, financial disclosures
1987**

9-12-10

Notice of Continuation June 14, 2002

R195. Community and Culture, Home Energy Assistance Target (HEAT).**R195-5. Energy Assistance: Program Benefits.****R195-5-1. Program Benefits.**

Program benefits are limited to a one time payment, per household, per program year. If an applicant household contains anyone who has already received a HEAT benefit in any other household during that program year, the application will be denied.

R195-5-2. Standard Payment Levels.

The energy assistance benefit payment level is based on a household's income and energy burden (energy burden is the proportion of a household's income used to pay for home heating). For example, households with the lowest income and the highest energy burden will receive the highest energy assistance benefit payment available. Households with children under age six years, the elderly (age 60 plus years), and/or disabled people may receive an additional energy assistance benefit amount.

R195-5-3. Benefit Payments.

1. Direct client payments will be made only when a contract with the primary heat source cannot be obtained or if the primary heat source is the landlord.

R195-5-4. Split Payments.

1. If the primary heat source's payment account is current, up to 50% of the HEAT payment may be made to the client. Payment disbursements may be split only in the percentages listed below:

- a. 100%
- b. 50%/50%
- c. 75%/25%

KEY: energy assistance, benefits

January 2, 1996

Notice of Continuation June 14, 2002

9-12-10

R195. Community and Culture, Home Energy Assistance Target (HEAT).**R195-6. Energy Assistance: Eligibility Determination.****R195-6-1. Eligibility Determination.**

The local HEAT Office shall determine a household's eligibility for HEAT by applying the program and income standards to the household's circumstances, and by establishing the validity and accuracy of the information given by the applicant household.

R195-6-2. Acceptable Verification.

1. All factors of eligibility must be verified.
2. It is the applicant's responsibility to obtain acceptable verification.
3. If the household refuses to obtain the required verification and refuses to assist the HEAT Office in obtaining the verification, the application will be denied.

R195-6-3. Determination of The Primary Fuel Type.

The primary fuel type is the type of fuel for which the house is designed. If the household is actually using a less expensive fuel type as the primary heat source, the fuel type is the type of heat the household is actually using.

R195-6-4. Date of Application.

The date of application is the date the application is accepted at the correct HEAT office.

R195-6-5. Date of Approval or Denial.

The date of approval or denial is the action date of the application.

R195-6-6. Date of Payment.

The payment date is the date the HEAT check is actually issued.

KEY: energy assistance

1991

9-12-10

Notice of Continuation June 14, 2002

R195. Community and Culture, Home Energy Assistance Target (HEAT).**R195-7. Energy Assistance: Records and Benefit Management.****R195-7-1. Records Management.**

1. Documentation of the eligibility decision and amount of HEAT assistance is kept in the household's HEAT folder in the local HEAT office. Every person who completes an application shall have a case record.

2. HEAT case records shall not be removed from the local HEAT Office except by subpoena or request of the State HEAT Office (SHO) or in accordance with the Archives Schedule.

R195-7-2. Notification.

1. The local HEAT office shall provide all HEAT applicants with a written notice of any action that affects the amount, form, or requirements of the assistance.

2. Written notice shall include an explanation of the action, the reason for the action, and the effective date of the action. The notice shall also include an explanation of the applicant's hearing rights and how to file a hearing if the applicant is not satisfied with the decision on the case.

R195-7-3. Checks.

1. All HEAT payments to clients or vendors are issued by check.

2. If the payee dies before endorsing the check, the local Heat Office director or designee may authorize another person to endorse the check to use it on behalf of the payee or other person in the case.

3. Lost or stolen HEAT checks.

a. The client must report a lost or stolen check within 29 days of the issuance date. A check that is reported lost or stolen 30 days or more after the issuance date will not be replaced.

b. The client may report this by telephone or in person.

c. Lost checks will be replaced after five mailing days from the issuance date.

d. A replacement HEAT check which is lost or stolen after the payee receives it will not be issued.

KEY: energy assistance, benefits, government documents, state HEAT office records

January 12, 2005

9-12-10

Notice of Continuation June 14, 2002

R195. Community and Culture, Home Energy Assistance Target (HEAT).**R195-8. Energy Assistance: Special State Programs.****R195-8-1. Moratorium.**

The department shall require compliance with Section 9-12-201.

1. The moratorium program protects eligible persons from winter utility shut offs.

2. A household can apply for moratorium protection only one time per utility per program year.

3. The protection of the Moratorium lasts from November 15 through the following March 15.

The Department has the option of beginning The Moratorium program earlier or extending it later when severe weather conditions warrant such action.

4. The moratorium applicant must:

a. Be the adult residential account holder, or the adult resident applying for service. A residential utility customer is any adult person who has an account with a utility or any adult who is applying for residential utility service;

b. Be living at the address where Moratorium protection is needed;

c. Have a termination notice from the utility company or have been refused service if the utility is not active;

d. Have a written statement from the utility company stating that all methods of working out satisfactory payment arrangements have failed. A deferred payment agreement must have been offered to the utility customer. If the customer signs a deferred payment agreement, but does not have the money to activate it, the agreement is in immediate default. The written statement must include:

i. account name or the name of the customer applying for service;

ii. the residential address;

iii. account number, if there is one;

iv. indicate if the account is active or inactive;

v. the total amount owed on the account;

vi. indication that the client has applied for HEAT;

vii. indication that the client has applied for utility assistance through the Red Cross;

viii. and must indicate that the client meets at least one of the following criteria:

A. Gross household income in the month of or the month prior to the month of the moratorium application must be less than 125% of the federal poverty limit.

B. have suffered a medical or other emergency in either the month of application or the month prior to the month of application.

C. loss of employment in either the month of application or the month prior to the month of application.

D. 50% drop in income in either the month of application or the month prior to the month of application.

ix. make a good faith effort to pay their utility bill on a consistent basis as specified below.

5. Required Verification

a. All factors of eligibility must be verified.

b. It is the applicant's responsibility to obtain acceptable verification.

c. If the household refuses to obtain the required verification and refuses to assist the local HEAT office in obtaining the verification, the moratorium application will be denied.

6. Good Faith Payment Effort

a. Each month during the moratorium the household must pay the utility company at least 5% of the gross income received in the month prior to the month of the moratorium application, unless the home is heated by electricity.

b. If the home is heated by electricity the household must pay the utility company at least 10% of the gross income

received in the month prior to the month of application.

c. The minimum allowed monthly payment is \$5.00 even if the client has no income in the month prior to the month of application.

7. In order to activate the moratorium, including the restoration of service to those households which are shut off, the first good faith payment is due at the time of application. Payments for subsequent months are due on or before the last day of each month.

8. For clients who defaulted during a previous Moratorium season the default payment is due before the client is eligible for protection under the current moratorium.

a. When a client defaults on a moratorium application, the client is not eligible for moratorium protection on that particular utility for the remainder of that moratorium season.

b. The client must pay the amount of any previous defaulted payment before they are eligible for the moratorium.

c. When a utility company notifies the HEAT office of a client default, the HEAT office will notify the client that of the default.

9. Regulated companies operating in Utah are subject to the Moratorium with the exception of the Mexican Hat Association.

R195-8-2. Conservation Education Demonstration Project.

Participants in the HEAT program served under the Mountainlands Community Action Project contract will be required, as a part of eligibility, to attend energy conservation education classes.

**KEY: energy assistance, energy industries
1994**

Notice of Continuation June 14, 2002

9-12-10

R199. Community and Culture, Housing and Community Development.**R199-8. Permanent Community Impact Fund Board Review and Approval of Applications for Funding Assistance.****R199-8-1. Purpose.**

The Permanent Community Impact Fund Board (the Board) provides loans and/or grants to State agencies and subdivisions of the State which are or may be socially or economically impacted, directly or indirectly, by mineral resource development. Authorization for the Board is contained in Section 9-4-301 et seq.

R199-8-2. Eligibility.

Only those applications for funding assistance which are submitted by an eligible applicant for an eligible project shall be funded by the Board.

Eligible projects include: a) planning; b) the construction and maintenance of public facilities; and c) the provision of public services. "Public Facilities and Services" means public infrastructure or services traditionally provided by governmental entities.

Eligible applicants include state agencies and subdivisions of the state as defined in Subsection 9-4-302(5)3, which are or may be socially or economically impacted, directly or indirectly, by mineral resource development.

R199-8-3. Application Requirements.

A. Applicants shall submit their funding requests on the Board's most current application form, furnished by the Department of Community and Culture (DCC). Applicants submitting incomplete applications will be notified of deficiencies and their request for funding assistance will be held by the Board's staff pending submission of the required information by the applicant.

Complete applications which have been accepted for processing will be placed on the next available "Application Review Meeting" agenda.

B. Additional general information not specifically covered by the application form should also be furnished to the Board and its staff when such information would be helpful to the Board in appraising the merits of the project.

C. For proposed drinking water and sewer projects, sufficient technical information must be provided to the Utah Department of Environmental Quality (DEQ) to permit their review. The Board will not act on any drinking water or sewer project unless they receive such review from DEQ.

D. Planning grants and studies normally require a fifty percent cash contribution by the applicant.

E. The Board requires all applicants to have a vigorous public participation effort. All applicants shall hold at least one formal public hearing to solicit comment concerning the size, scope and nature of any funding request prior to its submission to the Board. In that public hearing, the public shall be advised the financing may be in the form of a loan, even if the application requests a grant.

Complete and detailed information shall be given to the public regarding the proposed project and its financing. The information shall include the expected financial impact including potential repayment terms and the costs to the public as user fees, special assessments, or property taxes if the financing is in the form of a loan. The Board may require additional public hearings if determines the applicant did not adequately disclose to the public the impact of the financial assistance during the initial public hearing.

When the Board offers the applicant a financial package that is substantially different in the amounts, terms or conditions initially requested by an applicant, the Board may require additional public hearings to solicit public comment on the modified funding package.

A copy of the public notice and transcript or minutes of the hearing shall be attached to the funding request. Public opinion polls may be submitted in addition to the transcript or minutes.

F. Letters of comment outlining specific benefits (or problems) to the community and State may be submitted with the application.

G. All applicants are required to notify in writing the applicable Association of Governments of their intention to submit a funding request to the Board. A copy of any comments made by the Association of Governments shall be attached to the funding request. It is the intent of the Board to encourage regional review and prioritization of funding requests to help ensure the timely consideration of all worthwhile projects.

H. State statute requires the Board before it grants or loans any funds or approves any undertaking to take into account the effect of the undertaking on any district, site, building structure or specimen that is included in or eligible for inclusion in the National Register of Historic Places or the State Register and to allow the state historic preservation officer (SHPO) a reasonable opportunity to comment on the undertaking or expenditure. In order to comply with that duty, the Board requires all applicants to provide the SHPO with a description of the proposed project and attach the SHPO's comments to the application. The Board also requires that if during the construction of the project the applicant discovers any cultural/paleontological resources, the applicant shall cease project activities which may affect or impact the cultural/paleontological resource, notify the Board and the SHPO of the discovery, allow the Board to take into account the effects of the project on cultural/paleontological resources, and not proceed until further approval is given by the Board.

I. All applicants must provide evidence and arguments to the Board as to how the proposed funding assistance provides for planning, the construction and maintenance of public facilities or the provision of public services.

J. All applicants must demonstrate that the facilities or services provided will be available and open to the general public and that the proposed funding assistance is not merely a device to pass along low interest government financing to the private sector.

K. All applicants must demonstrate that any arrangement with a lessee of the proposed project will constitute a true lease, and not a disguised financing arrangement. The lessee must be required to pay a reasonable market rental for the use of the facility. In addition, the applicant shall have no arrangement with the lessee to sell the facility to the lessee, unless fair market value is received.

L. Each applicant must submit evidence and legal opinion that it has the authority to construct, own and lease the proposed project. In the case of a request for an interest bearing loan, the applicant must provide an opinion of nationally-recognized bond counsel that the interest will not be subject to federal income taxes.

M. All applicants shall certify to the Board that they will comply with the provisions of Titles VI and VII of the Civil Rights Act of 1964 (42 USC 2000e), as amended, which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agree to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90, as amended, which prohibits discrimination on the basis of age; Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 and 28 CFR 35, as amended, which prohibit discrimination on the basis of disabilities; Utah Anti-Discrimination Act, Section 34A-5-101 et seq., which prohibits discrimination against any employee or applicant for employment because of race, color, sex, age, religion, national origin, or handicap, and to certify compliance with the ADA to

the Board on an annual basis and upon completion of the project.

R199-8-4. Board Review Procedures.

A. The Board will review applications and authorize funding assistance on a "Trimester" basis. The initial meetings of each "Trimester" shall be "Project Review Meetings". The final meeting of each "Trimester" shall be a "Prioritization and Funding Meeting". Board meetings shall be held monthly, except July when no meeting will be held. "Prioritization and Funding Meetings" shall be held in April for the 1st Trimester, August for the 2nd Trimester and December for the 3rd Trimester.

The deadlines for submitting applications for each of the Trimesters will no later than the following dates: 1st Trimester, December 1st; 2nd Trimester, April 1st; 3rd Trimester, August 1st.

B. The process for review of new applications for funding assistance shall be as follows:

1. Submission of an application to the Board's staff for technical review and analysis.

2. Incomplete applications will be held by the Board's staff pending submission of required information.

3. Complete applications accepted for processing will be placed on the next available "Project Review Meeting" agenda.

4. At the "Project Review Meeting" the Board may either:

a. deny the application;

b. place the application on the "Pending List" for consideration at a future "Project Review Meeting" after additional review, options analysis and funding coordination by the applicant and the Board's staff;

c. place the application on the "Prioritization List" for consideration at the next "Prioritization and Funding Meeting".

C. Applicants and their representatives shall be informed of any "Project Review Meeting" at which their applications will be considered. Applicants may make formal presentations to the Board and respond to the Board's questions during the "Project Review Meetings".

D. No funds shall be committed by the Board at the "Project Review Meetings", with the exception of bona fide emergencies.

E. Applications for funding assistance which have been placed on the "Prioritization List" will be considered at the "Prioritization and Funding Meeting" for that Trimester. Applications which do not receive funding authorization will be held over for reconsideration at the next "Prioritization and Funding Meeting". Applications which have not received funding authorization after reconsideration will be deemed denied.

F. In instances of bona fide public safety or health emergencies or for other compelling reasons, the Board may suspend the provisions of this section and accept, process, review and authorize funding of an application on an expedited basis.

R199-8-5. Local Capital Improvement Lists.

A. A consolidated list of the anticipated capital needs for eligible entities shall be submitted from each county area, or in the case of state agencies, from DCC. This list shall be produced as a cooperative venture of all the eligible entities within each county area.

B. The list shall contain a short term (one year) and a medium term (five year) component.

C. The list shall contain the following items: jurisdiction, summary description, project time frame, anticipated time of submission to PCIFB, projected overall cost of project, anticipated funding sources, the individual applicant's priority for their own projects, and the county area priority for each project. The county area priority for each project shall be

developed as a cooperative venture of all eligible entities within a county area.

D. Projects not identified in a county area's or DCC's list, will not be funded by the PCIFB, unless they address a bona fide public safety or health emergency or for other compelling reasons.

E. An up-dated list shall be submitted to the Board no later than April 1st of each year. The up-dated list shall be submitted in the uniform format required by the Board.

F. If the consolidated list from a county area does not contain the information required in R-199-8-5-C, or is not in the uniform format required in R-199-8-5-E, all applications from the affected county area will be held by the Board's staff until the next funding cycle pending submission of the required information in the uniform format.

G. The Board has authorized its staff to hold any application that does not appear on the applicable local capital improvement list. Such applications will be held until the next funding cycle to allow the applicant time to pursue amending the local capital improvement list.

H. The amendment to include an additional project must follow the process used for the original list, and it must contain the required information and be submitted in the uniform format, particularly the applicant and county area prioritization.

I. The regional Association of Governments are the compilers of the capital improvement lists. The AOG cannot simply add additional applications to any given list without the applicant meeting the process requirements outlined in Item III-B, above.

J. Notwithstanding Item III-C, above, allowing an applicant to add a project to the capital improvement list just prior to the application deadline subverts the intent of the capital improvement list process. Such applications will be held by the Board's staff until the next funding cycle.

R199-8-6. Modification or Alteration of Approved Projects.

A recipient of PCIFB grant funds may not, for a period of ten years from the approval of funding by the Board, change or alter the use, intended use, ownership or scope of a project without the prior approval of the Board. A recipient of PCIFB loan funds may not, for the term of the loan, change or alter the use, intended use, ownership or scope of a project without the prior approval of the Board. The recipient shall submit a written request for such approval and provide such information as requested by the Board or its staff, including at a minimum a description of the modified project sufficient for the Board to determine whether the modified project is an eligible use of PCIFB funds.

The Board may place such conditions on the proposed modifications or modified project as it deems appropriate, including but not limited to modifying or changing the financial terms, requiring additional project actions or participants, or requiring purchase or other satisfaction of all or a portion of the Board's interests in the approved project. Approval shall only be granted if the modified project, use or ownership is also an eligible use of PCIFB funds, unless the recipient purchases or otherwise satisfies in full the Board's interest in the previously approved or the proposed project.

R199-8-7. Procedures for Electronic Meetings.

A. These provisions govern any meeting at which one or more members of the Board or one or more applicant agencies appear telephonically or electronically pursuant to Section 52-4-7.8.

B. If one or more members of the Board or one or more applicant agencies may participate electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the CIB not participating electronically or

telephonically will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

C. Notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be provided to at least one newspaper of general circulation within the state and to a local media correspondent. These notices shall be provided at least 24 hours before the meetings.

D. Notice of the possibility of an electronic meeting shall be given to the members of the Board and applicant agencies at least 24 hours before the meeting. In addition, the notice shall describe how the members of the Board and applicant agencies may participate in the meeting electronically or telephonically.

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

F. The anchor location shall be designated in the notice. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. In addition, the anchor location has space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

KEY: grants

December 8, 2003

Notice of Continuation November 5, 2002

9-4-305

R199. Community and Culture, Housing and Community Development.**R199-9. Policy Concerning Enforceability and Taxability of Bonds Purchased.****R199-9-1. Enforceability.**

In providing any financial assistance in the form of a loan, the (Board/Committee) representing the State of Utah (the "State") may purchase Bonds or other legal obligations (the "Bonds") of various political subdivisions (interchangeably, as appropriate, the "Issuer" or "Sponsor") of the State only if the Bonds are accompanied by a legal opinion of recognized municipal bond counsel to the effect that the Bonds are legal and binding under applicable Utah law.

R199-9-2. Tax-Exempt Bonds.

In providing any financial assistance in the form of a loan, the (Board/Committee) may purchase either taxable or tax-exempt Bonds; provided that it shall be the general policy of the (Board/Committee) to purchase Bonds of the Issuer only if the Bonds are tax-exempt and are accompanied by a legal opinion of recognized municipal bond counsel to the effect that interest on the Bonds is exempt from federal income taxation. This does not apply for Bonds carrying a zero percent interest taxation. This tax opinion must be provided by the Issuer in the following circumstances:

a. When Bonds are issued and sold to the State to finance a project which will also be financed in part at any time by the proceeds of other Bonds, the interest on which is exempt from federal income taxation.

b. When (i) Bonds are issued which are no subject to the arbitrage rebate provision or Section 148 of the Internal Revenue Code of 1986 (or any successor provisions of similar intent) (the "Code"), including, without limitation, Bonds covered by the "small governmental units" exemption contained in Section 148 (f) (4) (c) of the Code, and (ii) when Bonds are issued which are not subject to arbitrage rebate because the gross proceeds from the loan will be completely expended within six months after the issuance of the Bonds.

Notwithstanding the above, the (Board/Committee) may purchase taxable Bonds if it determines, after evaluating all relevant circumstances including the Issuer's ability to pay, that the purchase of the taxable Bonds is in the best interests of the State and the Issuer.

R199-9-3. Parity Bonds.

In addition to the policy stated above, it is the general policy of the (Board/Committee) that Bonds purchased by the (Board/Committee) shall be full parity Bonds with other outstanding Bonds of the Issuer. Exceptions to this parity requirement may be authorized by the (Board/Committee) if the (Board/Committee) makes a determination that

(i) the revenues or other resources pledged as security for the repayment of the Bonds are adequate (in excess of 100% coverage) to secure all future payments on the Bonds and all debt having a lien superior to that of the Bonds and

(ii) the Issuer has covenanted not to issue additional Bonds having a lien superior to the Bonds owned by the (Board/Committee) without the prior written consent of the (Board/Committee), and

(iii) requiring the Issuer to issue parity bonds would cause undue stress on the financial feasibility of the project.

KEY: grants**1987****9-4-305****Notice of Continuation November 5, 2002**

R199. Community and Culture, Housing and Community Development.**R199-10. Procedures in Case of Inability to Formulate Contract for Alleviation of Impact.****R199-10-1. Purpose.**

A. The following procedures are promulgated and adopted by the Permanent Community Impact Fund Board ("Board") of the Department of Community and Culture of the State of Utah pursuant to Section 9-4-306(4), UCA 1953 as amended.

B. In the event a project entity or a candidate ("Complainant") submits a request for determination to the Board under Section 11-13-29, UCA 1953 as amended, the Board shall hold a hearing on the questions presented. These proceedings shall be conducted informally, in accordance with the requirements of the Utah Administrative Procedure Act ("Act"), Section 63-46b-4(1), UCA 1953 as amended, unless the Board at its discretion converts the proceeding to a formal proceeding, in accordance with Section 63-46b-4(3) UCA 1953 as amended, if such action is deemed to be in the public interest and does not unfairly prejudice the rights of any party.

C. The only grounds available for relief are those set forth in Section 11-13-29, UCA 1953 as amended, or those reasonably inferred therefrom.

R199-10-2. Commencement of the Procedure Requesting a Determination.

A. Commencement of the procedure to request a determination from the Board shall be conducted in conformity with Section 63-46b-3(3)(a).

1. A complainant requesting a determination from the Board must submit such a request:

- a. In writing;
- b. Signed by the person invoking the jurisdiction of the Board or by that person's representative; and
- c. Including the following information:
 1. The names and addresses of all parties to whom a copy of the request for a hearing is being sent;
 2. The Board's file number or other reference number;
 3. The name of the adjudicative proceeding, if known;
 4. The date the request for the hearing was mailed;
 5. A statement of the legal authority and jurisdiction under which action by the Board is requested;
 6. A statement of relief sought from the Board; and
 7. A statement of facts and reasons forming the basis for relief.

B. The Complainant shall file the request for a determination with the Board and at the same time, shall serve a copy of the request upon the party complained against (the "Respondent"). The Complainant shall also mail a copy of the request to each person known to have a direct interest in the request for a determination by the Board.

C. The Respondent shall serve a response within fifteen (15) days after the request is served upon the Respondent. The Respondent may admit, deny or explain the point of view of Respondent as to each allegation in the request. Not to respond to any allegation is to admit that allegation. The Respondent may pose a counteroffer to Complainant's request for relief. Any counteroffer must be supported by reasons. Requests and responses may be directed at multiple parties.

R199-10-3. Notification of Parties.

A. The Board shall promptly give notice by mail to all parties that the hearing will be held, stating the following:

1. The Board's file number or other reference number;
2. The name of the proceedings;
3. Designate that the proceeding is to be conducted informally according to the provisions or rules enacted under Section 63-46b-4 and Section 63-46b-5, UCA 1953 as amended, with citation to Section 63-46b-4 authorizing the designation;

4. State the time and place of the scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate may be held in default; and

5. Give the name, title, mailing address and telephone number of the presiding officer for the hearing.

B. At any time twenty (20) or more days before the hearing begins, either party may serve upon the adverse party an offer to agree to specific terms and payments. If, within ten (10) days after the service of the offer, the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with proof of service thereof, and the Board shall enter a corresponding order. An offer not accepted shall be deemed withdrawn and evidence concerning it is not admissible except in a proceeding to determine costs. If the order finally obtained from the offeree is not more favorable than the offer, the offeree shall pay the costs incurred after the making of the offer, including a reasonable attorney's fee. The fact that an offer is made but not accepted does not preclude a subsequent offer.

R199-10-4. Informal Hearing Procedures.

A. Within forty (40) days after receiving a request for determination, the Board shall hold a public hearing on the questions at issue.

B. The Board may appoint an administrative law judge to preside in its stead at the hearing and to hear such preliminary motions and manage such ancillary matters as the Board deems necessary and appropriate.

C. In the hearing, the parties named in the request for determination shall be permitted to testify, present evidence, comment on the issues and bring forth witnesses who may be examined and cross-examined. The hearing may be adjourned from time to time in the interest of a full and fair investigation of the facts and the law.

D. Discovery is prohibited, and the Board may not issue subpoenas or other discovery orders.

E. All parties shall have access to information contained in the Board's files and to all materials and information gathered by any investigation to the extent permitted by the law.

F. Any intervention is prohibited.

G. All hearings shall be open to all parties.

H. Within twenty (20) days after the close of the hearing, the Board or the administrative law judge shall issue a signed order in writing that states:

1. The decision;
2. The reasons for the decision;
3. A notice of any right for administrative or judicial review available to the parties; and
4. The time limits for filing a request for reconsideration or judicial review.

I. The order issued by the Board or by the administrative law judge shall be based on the facts appearing in the Board's files and on the facts presented in evidence at the hearing.

J. Any determination order issued by the Board or by the administrative law judge shall specify:

1. The direct impacts, if any, or methods determining the direct impacts to be covered; and
2. The amounts, or methods of computing the amounts, of the alleviation payments, if any, or the means to provide for impact alleviation, provisions assuring the timely completion of the facilities and the furnishing of the service, if any; and
3. Other pertinent matters.

K. A copy of the Board's or the administrative law judge's order shall be promptly sent to all parties.

L. All hearings shall be recorded at the Board's expense. Any party, at his own expense, may have a reporter approved by the Board prepare a transcript from the Board's record of the hearing.

R199-10-5. Formal Hearing Procedures.

A. At any time prior to issuance of the final order, the Board at its discretion may convert the informal adjudicative hearing into a formal adjudicative hearing, as allowed in Section 63-46b-4(3). The procedures to be followed in such a formal adjudicative hearing are given below.

B. The Board may appoint an administrative law judge to preside in its stead at the hearing and to hear such preliminary motions and manage such ancillary matters as the Board deems necessary and appropriate.

C. A party may be represented by an officer or the party or by legal counsel.

D. In the hearing, the parties named in the request for determination shall be permitted to testify, present evidence, comment on the issues and bring forth witnesses who may be examined and cross-examined. The hearing may be adjourned from time to time in the interest of a full and fair investigation of the facts and the law.

E. Utah Rules of Evidence shall be in effect; however,

1. Copies of original documents may be introduced into evidence unless objected to for reasons of illegibility or tampering.

2. Hearsay will be considered for its weight but will not be conclusive in and of itself as to any matter subject to proof.

F. Discovery in formal proceedings shall be limited. Because negotiation between the parties shall have been proceeding prior to a request for determination being submitted, the Board or the administrative law judge shall assume that discovery is complete when a request is submitted. However, upon motion and sufficient cause shown, the Board or the administrative law judge may extend the period of discovery.

G. All parties shall have access to information contained in the Board's files and to all materials and information gathered by any investigation to the extent permitted by the law.

H. The Board or the administrative law judge may give a person not a party to the proceeding the opportunity to present oral or written statements at the hearing.

I. All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.

J. All hearings shall be open to all parties.

K. Intervention into the formal hearing will be allowed on the following basis:

1. Any person not a party may file a signed, written petition to intervene in a formal adjudicative hearing with the Board. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:

a. The Board's file number or other reference number;

b. The name of the proceeding;

c. A statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative hearing, or that the petitioner qualifies as an intervenor under any provision of law; and

d. A statement of the relief the petitioner seeks from the Board.

2. The Board or the administrative law judge shall grant a petition for intervention if it determines that:

a. The petitioner's legal interests may be substantially affected by the formal adjudicative hearing; and

b. The interests of justice and the orderly and prompt conduct of the adjudicative hearing will not be materially impaired by allowing the intervention.

3. Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.

4. An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative hearing that are necessary for a just, orderly, and prompt conduct of that hearing. Such conditions may be imposed by the Board or the

administrative law judge at any time after the intervention.

L. Within twenty (20) days after the close of the hearing, the Board or the administrative law judge shall issue a signed order in writing that states:

1. The decision based upon findings of fact and conclusions of law;

2. The reasons for the decision;

3. A notice of any right for administrative or judicial review available to the parties; and

4. The time limits for filing a request for reconsideration or judicial review.

M. The order issued by the Board or by the administrative law judge shall be based on the facts appearing in the Board's files and on the facts presented in evidence at the hearing.

N. Any determination order issued by the Board or by the administrative law judge shall specify:

1. The direct impacts, if any, or methods determining the direct impacts to be covered; and

2. The amounts, or methods of computing the amounts, of the alleviation payments, if any, or the means to provide for impact alleviation, provisions assuring the timely completion of the facilities and the furnishing of the service, if any; and

3. Other pertinent matters.

O. A copy of the Board's or the administrative law judge's order shall be promptly sent to all parties.

P. All hearings shall be recorded at the Board's expense. Any party, at his own expense, may have a reporter approved by the Board prepare a transcript from the Board's record of the hearing.

R199-10-6. Default.

A. The Board or the administrative law judge may enter an order of default against a party if that party fails to participate in the adjudicative proceedings.

B. The order shall include a statement of the grounds for default and shall be mailed to all parties.

C. A defaulted party may seek to have the Board set aside the default order according to procedures outlined in the Utah Rules of Civil Procedure.

D. After issuing the order of default, the Board or the administrative law judge shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulted party.

R199-10-7. Reconsideration by the Board.

Within ten (10) days after the date that a final order is issued by the Board or the administrative law judge, any party may file a written request for reconsideration in accordance with the provisions of Section 63-46b-13, UCA 1953 as amended. Upon receipt of the request, the disposition by the Board of that written request shall be in accordance with Section 63-46b-13(3), UCA 1953 as amended. With the exception of reconsideration, all orders issued by the Board or the administrative law judge shall be final. There shall be no other review except for judicial review as provided below.

R199-10-8. Judicial Review.

An aggrieved party may also obtain judicial review of final orders issued by the Board or by the administrative law judge by filing a petition for judicial review of that order in compliance with the provisions and requirements of Section 63-46b-14 and Section 63-46b-15, UCA 1953 as amended.

KEY: impacted area programs**1988****Notice of Continuation November 5, 2002****9-4-305****11-13-29**

R199. Community and Culture, Housing and Community Development.**R199-11. Community Development Block Grants (CDBG).
R199-11-1. Purpose and Authority.**

This rule incorporates by reference 24 CFR 570 (1996) as authorized by Section 9-4-202.

R199-11-2. State and Regional Funding Processes.

(1) CDBG funds are to be distributed based on regional prioritization of projects by utilizing a rating and ranking system developed and applied by the regional review committees (RRC). The role of each RRC is to receive, review and to prioritize the CDBG applications in its region.

(2) The RRC shall develop a rating and ranking system prior to the receipt of grant application. Upon completion of the rating and ranking process, each RRC shall present to the state a list of:

- (a) all projects submitted to them for ranking,
- (b) copies of ranking result sheets,
- (c) the rationale for not ranking any submitted projects, and
- (d) a summary of all final ranking results.

R199-11-3. Eligible Grant Applicants, National Objectives and Eligible Projects.

(1) Eligible applicants for the State CDBG Program are:

- (a) incorporated cities and towns with populations of less than 50,000, except Clearfield and jurisdictions located in Salt Lake County;

- (b) all of Utah's counties except Salt Lake County;
- (c) units of local government recognized by the Secretary of The Department of Housing and Urban Development (HUD).

(2) National Objective Compliance Pursuant to 24 CFR 570.208.

(a) The national objective may be met in three possible ways:

- (i) activities that benefit low and moderate income individuals, families and communities.
- (ii) activities aiding in the prevention or elimination of slums or blight.
- (iii) activities that address urgent health and welfare needs.

(3) Inclusive Federal Compliance Requirements.

- (a) applicants shall comply with all regulations in 24 CFR part 570 and all applicable federal and state regulations, laws and overlay statutes.

- (b) additional federal overlay statutes and regulations may apply to the state program if directed by HUD and Congress.

(4) Eligible activities are those defined by Section 105 of the Housing and Community Development Act of 1974, as amended.

R199-11-4. Responsibilities of Grantee, Regions and State.

(1) Grantee Responsibilities

- (a) Grantees are allowed to take up to 10% of the contract amount for administration purposes. Administrative cost must be broken out from the rest of the project costs when the application and contract budget are prepared.

- (b) The formal contract with the state must include an environmental review, federal labor standards and civil rights.

(2) Regional Responsibilities.

- (a) Prioritization - Each RRC shall rate and rank all applications based on a set of criteria available to the public for comment.

- (b) Public participation - Each RRC is required to hold at least one public hearing yearly to assist applicants and obtain comments and suggestions regarding the CDBG process.

- (c) Application completion - Each RRC has the responsibility to assure that applications are completed in full prior to submission to the state.

- (d) Administrative Capacity - The RRC will assess the ability of each applicant to administer a CDBG grant.

- (3) State Responsibilities.
- (a) Public Participation - The state is required to hold at least one public hearing yearly to notify the public, explain the community development program and to receive comments.

- (b) Review of Applications - Upon receipt of the CDBG prioritized applications from the regions, the state staff shall begin a review process.

- (c) Timely Distribution of Funds - The state is required by HUD to ensure that CDBG funds are allocated and distributed in a timely manner.

- (i) Application - Each applicant shall make their final application decision prior to submitting it to the RRC.

- (ii) Contracts - Two separate categories will be used to process contracts:

- Category one:
- (A) Contracts will be sent out in April and Grantees will have until June 1, to sign and return all copies of the contract to DCC (The Department of Community and Culture);

- (B) On a case by case basis, RRCs may allow a one month extension to grantees experiencing unavoidable delays. Grantees must notify their RRC prior to the deadline;

- (C) Funds from all contracts not returned to DCC by July 1, will be returned to the appropriate RRC for reallocation;

- (D) Any funds not reallocated by the RRC by August 1, will be returned to the State. The State will reallocate the funds to an approved project;

- Category two:
- (A) Applicants in this category must demonstrate that they are actively seeking the additional funds needed for an identified CDBG project;

- (B) Contracts shall be returned by August 1, accompanied by verification of all other funds;

- (C) If additional funds have not been secured by August 1, grantees may, after notifying and receiving the permission of their AOG, (Association of Governments) have the months of August, September, and October to obtain definite commitment from other funding sources;

- (D) There are varying time frames and unexpected delays inherent with the funding agencies. Therefore, after October 31, the RRC, in conjunction with the State, will determine necessary or requested extensions on a case by case basis based on criteria administered by the Policy Committee. If the additional funds cannot be obtained within the time permitted, the RRC must follow the procedure outlined in (C) and (D) of method one.

Grantees may not delay the processing of the current application based on the possibility of receiving an allocation in the following year.

- (d) Ten Percent Withholding - The state reserves the right to withhold ten percent of the CDBG grant amount pending a satisfactory final programmatic financial monitoring review of all projects.

- (e) Cost Overruns - The state may authorize the funding of project cost overruns requested by the RRC.

- (f) Fund Leveraging - One of the state's roles in the CDBG funding process is to provide assistance to grantees in leveraging other available financial resources.

- (g) Program Monitoring - During the course of each CDBG contract the state must monitor all grantees.

- (h) Grant Close Out - A grant close out packet will be submitted to the state at the completion of each CDBG-funded activity.

R199-11-5. Threshold Requirements.

Minimum threshold requirements are those defined by Section 105(e) of the Housing and Community Development Act of 1974, as amended and as stipulated in section 4 of the

State CDBG Application Guide available from DCC.

(1) The determination of eligibility for recipients and activities shall be made by the RRC and State CDBG staff under state and federal criteria and regulations contained in 24 CFR part 500 and the State CDBG Application Guide available by contacting DCC at 324 S. State Street, Salt Lake City, UT 84111 or calling (801)538-8700.

(2) Each grant application must clearly demonstrate that the project will meet one of the three National Objectives identified in R199-1-3.

(3) Each grant applicant must demonstrate consistency with the Consolidated Plan, available from the Department of Community and Culture, Division of Housing and Community Development, 324 S. State Street, Salt Lake City, UT 84114.

(4) Each grant application may contain more than one activity addressing identified needs; however, these activities must be interrelated.

(5) All costs incorporated with the grant must be realistic given the nature and type of activities to be performed.

(6) Program income generated as a result of CDBG activities may be retained by the grantee when income is applied to continue the activity from which the income was derived, or when used for other community development projects eligible under Section 105 of the Housing and Community Development Act of 1974, as amended, and after the preparation of a plan, approved by the state, specifying the proposed activity and stating the method that will be employed for its use.

R199-11-6. Length of Contract and Type of Grants.

(1) All grantees shall have 18 months depending upon contract execution, or until October 31, of the following year to complete their project.

(2) There are four types of grants:

- (a) Single Year, Single Purpose
- (b) Single Year, Multi Purpose
- (c) Multi Year, Single Purpose
- (d) Multi Year, Multi Purpose

R199-11-7. Adjudicative Proceedings to Appeal Decisions of RRC.

(1) Classification of Actions. Adjudicative proceeding to appeal decisions of RRC by CDBG applicant agencies shall be conducted in accordance with section 63-46b-5.

(2) Commencement of Appeals Procedure. An applicant agency requesting an appeal hearing from DCC, DHCD (The Division of Housing and Community Development), shall submit a request:

- (a) in writing;
- (b) signed by the chief elected official; and
- (c) include the following information:
 - (i) the names and addresses of all persons to whom a copy of the request for a hearing is being sent;
 - (ii) the RRC file number;
 - (iii) the name of the adjudicative proceeding;
 - (iv) the date the request for an appeals hearing was mailed;
 - (v) a statement of the legal authority and jurisdiction under which CDBG action is requested;
 - (vi) a statement of relief sought from DHCD; and
 - (vii) a statement of facts and reasons forming the basis for relief.

(d) The request for an appeals hearing must be submitted within ten days following the notice of decision by the RRC. At this point it shall be necessary for DHCD to place a hold on processing any contracts from the region in which the dispute has occurred until the matter is settled.

(3) Notification of interested parties.

(a) The CDBG applicant agency that requests an appeals hearing shall file the request with the Director of DHCD and shall send a copy by mail to each person known to have a direct

interest in the requested hearing.

(b) The Director of DHCD, or a hearing officer appointed by the Director of DHCD, will within five working days after the appeals request, set the time and date for an appeals hearing. The Director of DHCD or the hearing officer shall promptly give notice by mail to all parties, stating the following:

- (i) DHCD and RRC file number;
- (ii) the name of the proceeding;
- (iii) a statement indicating that the proceeding is to be conducted informally and according to the provisions of rules enacted under Sections 63-46b-5 authorizing informal proceedings.
- (iv) the time and place of the scheduled appeals hearing, the purpose of the hearing, and that a party may be held in default if failing to attend or participate in the hearing.
- (v) the name, title, mailing address and telephone number of the director of DHCD or the hearing officer.

(vi) Hearing Procedures

(a) hearing shall be held only after notice to interested parties is given in conformance with R199-7-1C;

(b) no answer or other pleading responsive to the request for a hearing need be filed.

(c) the following issues shall be reviewed at the appeals hearing:

(i) whether reasonable and equitable criteria are established for reviewing CDBG applications by the RRC

(ii) whether the priority ranking process is fair to all applicants;

(iii) whether the criteria and process were applied equitably and consistently to all applicants.

(d) in the appeals hearing, the parties named in the request for a hearing shall be permitted to testify, present evidence, and comment on the issues.

(e) discovery is prohibited, and DHCD may not issue subpoenas or other discovery orders.

(f) all parties shall have access to information contained in DHCD's files and to all materials and information gathered by any investigation to the extent permitted by law.

(g) any intervention is prohibited.

(h) all hearings shall be open to all parties.

(i) within 21 days after the close of the hearing, the Director of DHCD shall issue a signed order in writing that states:

- (i) the decision;
- (ii) the reason for the decision;
- (iii) a notice of any right for administrative or judicial review available to the parties; and
- (iv) the time limits for filing a request for reconsideration or judicial review.

(j) the Director of DHCD's order shall be based on the facts appearing in DHCD's files and on the facts presented in evidence at the appeals hearing.

(k) a copy of the Director of DHCD's order shall be promptly mailed to the parties.

(l) all hearings shall be recorded at the expense of DHCD. Any party, at his own expense, may have a reporter approved by DHCD prepare a transcript from DHCD's record of the hearing.

(5) Default

(a) the Director of DHCD may enter an order of default against a party if a party fails to participate in the adjudicative proceeding.

(b) the order shall include a statement of the grounds of default and shall be mailed to all parties.

(c) a defaulted party may seek to have DHCD set aside the default order according to procedures outlined in the Utah Rules of Civil Procedure.

(d) after issuing the order of default, the Director of DHCD will conduct any further proceedings necessary to complete the adjudicative proceeding without the participation

of the party in default and will determine all issues in the adjudicative proceeding, including those affecting the defaulted party.

(6) Reconsideration by DHCD. Within ten days after the date that a final order is issued by the Director of DHCD, any party may file a written request for reconsideration in accordance with the provisions of the Administrative Procedures Act, Section 63-46b-13. Upon receipt of the request, the disposition by the Director of DHCD of that written request shall be in accordance with Section 63-46b-13(3). With the exception of reconsideration, all orders issued by the Director of DHCD shall be final. There shall be no other review except for judicial review as provided below.

(7) Judicial Review. An aggrieved party may also obtain judicial review of final DHCD orders by filing a petition for judicial review of that order in compliance with the provisions and requirements of the Utah Administrative Procedures Act, Sections 63-46b-14 and 63-46b-15.

KEY: community development, grants
December 17, 1996 **9-4-202(2) et seq.**
Notice of Continuation December 3, 2001

R202. Community and Culture, Housing and Community Development, Community Services.

R202-100. Community Services Block Grant Rules.

R202-100-1. Authority.

This rule is authorized under Section 9-4-202, U.C.A. 1953, which allows the Department of Community and Culture (DCC) to receive funds for and to administer federal aid programs.

R202-100-2. Purpose.

The purpose of this rule is to establish standards and procedures for the Community Services Block Grant (CSBG) authorized under the Omnibus Reconciliation Act of 1981 (Title XVII, Chapter 2, Sections 671 through 683), contracted to eligible entities (counties or combinations of counties and Community Action Programs) to provide a range of services and activities having a measurable and potentially major impact on causes of poverty in the local communities.

R202-100-3. Eligible Grantees for CSBG Programs and Projects.

A. Utah shall distribute at least 90 percent of available funds as pass-through grants to eligible entities (hereinafter referred to as local grantees) for them to administer directly or, at their option, to sub-contract (hereinafter referred to as local sub-grantees) for the performance of eligible activities. Eligibility for the 5 percent discretionary funds will be established by the state plan each fiscal year.

B. Whenever a public grantee chooses to sub-contract all program operations to a private entity rather than administer them directly, the private entity must be a non-profit organization directed by a board whose composition complies with Section 675 (c)(3) of the Community Services Block Grant Act.

R202-100-4. Assurances Required by CSBG Act.

All grantees shall be required to submit a certification of assurances based on CSBG programmatic, administrative and financial requirements of the Act as outlined by Community Services Block Grant Program Directives prepared by the State Community Services Office (SCSO).

R202-100-5. Compliance.

Local grantees must maintain their eligibility to receive CSBG funds by being in compliance with applicable laws, regulations, and contractual agreements. The state reserves the right to examine all aspects of CSBG funded activities to ensure that this is the case.

R202-100-6. Qualifications.

Local grantees must demonstrate that they have in place, or shall have in place prior to undertaking CSBG funded program activities, management systems adequate to ensure that CSBG funds shall be spent efficiently and effectively. When activities are sub-contracted, the local grantee must have in place a system and assume the responsibility for monitoring and evaluating sub-contracts. Files must be retained containing such monitoring and evaluation results. In no case shall the state provide funds to a grantee if available evidence suggests that the grantee cannot fulfill its obligations under the terms of the assurances required by the CSBG Act and the state plan for the use of CSBG funds.

R202-100-7. Program Participant Eligibility.

Income eligibility for program participation shall be based on the Office of Management and Budget official poverty guidelines as described in Section 673 of the CSBG Act.

R202-100-8. Funds Allocation.

A. CSBG funds shall be allocated on the basis of federal fiscal years beginning October 1 to local agencies by the following formula:

(1) All agencies selected for funding shall be awarded an equal, minimum base amount.

(2) The amount remaining after subtraction of the sum of the minimum base amount shall be allocated among the local grantees based on the census counts (or updates) of low-income residents and other related criteria such as long-term unemployment.

R202-100-9. Approval Process.

Criteria shall be used to review applications for CSBG funds and shall be distributed to eligible grantees as a SCSO Community Services Block Grant Program Directives. A panel will screen and give a numerical rating to every application submitted by an eligible grantee based on the criteria outlined. The Community Services Office will compile these ratings and will make a final determination as to proposals that will receive funding and as to the level of funding that will be provided. Proposals must score a minimum number of points to be considered eligible. Prospective CSBG grantees shall be notified of application status 60 days or less after the closing date of application submissions. Any application found to be incomplete or inadequate will be returned to the local grantee for appropriate changes. The Community Services Office will provide technical assistance to any eligible agency scoring below the minimum.

R202-100-10. Award Procedures.

The state shall enter into a contract with local grantees October 1 contingent upon Federal authorization and appropriation for CSBG. Once signed, this contract shall be binding on both parties.

R202-100-11. Fiscal Operations Procedures.

A. Each local grantee shall have an acceptable procedure describing functions of its fiscal office and including at a minimum:

- (1) Purchasing procedure
- (2) System of cash control
- (3) Payroll system
- (4) Internal and external reporting systems

B. Fiscal procedures shall be in compliance with applicable state and federal regulations and conform with generally accepted accounting procedures.

R202-100-12. Financial Reports and Reimbursements.

Financial reports (Form CSBG 611-D) are to be submitted on a monthly basis, no later than twenty (20) days following the end of each month. Local grantees shall receive reimbursement based on a monthly financial status report and certification of work program activities. All reports must have an authorized signature, i.e., the contract signatory or someone designated by the signatory, with a letter of designation filed with the state.

R202-100-13. Administrative Cost.

Administrative costs include allowable expenditures incurred to administer the CSBG through an indirect cost plan, approved by a cognizant Federal Agency or a cost allocation plan approved by the SCSO. Such costs should not exceed 10%.

R202-100-14. Travel and Per Diem.

Travel, per diem and allowances for staff and board members shall be determined by approved local agency guidelines which establish rates of reimbursement.

R202-100-15. Purchasing, Receiving and Accounts Payable.

A. Grantee agencies shall develop and have approved procedures for handling purchasing, receiving, and accounts payable. (In the absence of a local procedure, the state procedure shall be followed.) These procedures should include:

- (1) Pre-numbered purchase orders and/or vouchers for all items of cost and expense.
- (2) Procedures to insure procurement at competitive prices.
- (3) Receiving reports to control the receipt of merchandise.
- (4) Effective review following prescribed procedures for program coding, pricing and extending vendors' invoices.
- (5) Invoices matched with purchase orders and receiving reports.
- (6) The local grantee must have adequate controls, such as checklists for statement - closing procedures to insure that open invoices and uninvolved amounts for goods and services are properly accrued or recorded in the books or controlled through worksheet entries.
- (7) Adequate segregation of duties in that different individuals are responsible for:
 - (a) Purchase;
 - (b) Receipt of merchandise or services; and
 - (c) Voucher approval

B. A list of anticipated equipment purchases must accompany the application for funding. Purchases over \$1,000 must receive written state approval.

R202-100-16. Property and Equipment.

A. Each local grantee shall develop procedures for control of property and equipment. These procedures should include; but are not limited to:

- (1) An effective system of authorization and approval of equipment purchase;
- (2) Accounting practices for recording assets;
- (3) Detailed records of individual assets which are maintained and periodically balanced with the general ledger accounts;
- (4) Effective procedures for authorizing and accounting for equipment disposal; and
- (5) Secure storage of property and equipment.

R202-100-17. Purchase or Improvement of Land or Buildings.

Funds shall not be used for purchase or improvement of land, or the purchase, construction, or permanent improvement (other than low-cost residential weatherization or other energy related home repairs) of any building or other facility except as this prohibition may be waived under conditions described in Section 680 (b) of the CSBG act.

R202-100-18. Personnel Policies.

A. Each local grantee shall maintain written personnel policies, available for review, which should include:

- (1) Classification and pay plan;
- (2) Policies governing selection and appointment;
- (3) Conditions of employment and employee performance;
- (4) Employee benefits;
- (5) Employee-management relations including procedures for filing and handling grievances, complaints and rights of appeal;
- (6) Personnel records and payroll procedures;
- (7) Job description for all positions;
- (8) Drug Free Work Place Policy.

R202-100-19. Civil Rights.

A. All CSBG funded programs shall comply with the nondiscrimination provisions contained in Section 677 of the Community Services Act.

B. Local grantees shall be required to have on file an

affirmative action plan that describes what they will do to ensure that current and prospective employees and program participants are treated in a non-discriminatory manner. This plan shall also include a grievance procedure to deal with allegations of discrimination on the part of prospective and current staff members or program participants.

C. The provisions of this section shall apply to any and all grantees and sub-grantees, except where special conditions apply, i.e., Indians, migrants, or seasonal farm workers.

R202-100-20. Prohibition of Political Activities.

Each CSBG grantee shall be responsible for assuring adherence to political activity prohibitions contained in Sec. 675 (c) (7) of the CSBG Act. Monitoring of sub-grantees shall be required as a part of administrative responsibilities. A description of this process is to be available for state review during monitoring visits or upon request. Violations of the prohibitions are to be reported to the state CSO immediately along with reports of measures taken by the grantee to restore compliance.

R202-100-21. Audits and Inspection.

Each local grantee shall have performed by an independent certified public accounting firm an annual audit that conforms with the provisions and requirements of OMB Circular A-128, A-122 and A-133. The audit shall be due no later than one year following the end of the grantee's fiscal year.

R202-100-22. Suspension or Termination of Funds.

A. DCC may suspend funding to a local grantee if monitoring reports or independent audit reports indicate continuing, substantial non-compliance with contract requirements, accounting procedures, or fiscal control requirements. If problems identified are not corrected within a reasonable length of time, but not to exceed 60 days, DCC may terminate its contract with local grantee and make the remaining funds available to other eligible entities. Action to suspend or terminate funding will not be taken, however, unless timely and reasonable communication with the local grantee fails to produce corrective action to DCC's satisfaction. The local grantee shall not be relieved of liability to the state for funds expended for improper purpose or federal audit exceptions sustained by the state by virtue of any breach of the contract by the agency, and the state may withhold or recover any payments to the grantee for the purpose of setoff until such time as the exact amount of damage due the state from the grantee is determined.

B. Pursuant to the provisions of the contract between the state and local grantee, delegation of funds and activities to others may not be made without prior approval of DCC, SCSO.

R202-100-23. Transfer of Funds.

Because of the limited funds anticipated to be made available, DCC shall not transfer any of the CSBG to eligible entities under the Older Americans Act of 1965, Head Start, or Low-income Home Energy Assistance, nor consider a grantee in compliance if such transfers are made locally.

R202-100-24. Amendments/Waivers.

A. Prior approval for budget changes is required in the following instances:

(1) The dollar amount of transfers among budget categories exceeds or is expected to exceed \$10,000 or five percent of the grant budget, whichever is greater, for grants of \$100,000 or larger.

(2) For grants under \$100,000, approval is required if transfers exceed or are expected to exceed five percent of the grant budget.

(3) Limited flexibility in budget adjustments will be

allowed as follows (submit informational copies of adjusted CSBG forms to SCSO):

- (a) Rebudgeted funds within the Personnel Services portion of their CSBG budget;
- (b) Rebudgeted funds within the Supportive Services portion of their CSBG budget;
- (c) On a one-time basis, allowable transfers from the Personnel Services budget to Supportive Services;
- (d) On a one-time basis, allowable transfers from the Supportive Services budget to Personnel Services;

B. Program goals may be amended by submitting changes for approval on appropriate CSBG forms. At any point during the program year it appears that a goal may be achieved at less than 90%, a program and budget amendment must be submitted for approval.

C. Grantees may also request contract period end dates be extended for up to sixty (60) days in order to spend program or project carryover funds amounting to less than ten (10) percent, or an amount approved by the state, of the total contract amount.

R202-100-25. Project Monitoring and Evaluations.

A. Monitoring will be accomplished through review of the fiscal and progress reports and on-site. On-site visits shall automatically be initiated in response to a written complaint of financial or programmatic non-compliance.

B. Evaluation of CSBG funded programs shall be conducted either by the state or by the local CSBG grantees and shall be distinct from both compliance monitoring and the state's examination of CSBG grantees to ensure that they are eligible to receive CSBG funds and that they are in compliance with all CSBG related obligations. Monitoring will relate to grantee compliance with federal assurances and state requirements in program management and operation. Evaluation will involve an attempt to measure program performance project results, and to determine the impact a grantee's efforts have had on the causes of a problem being addressed and on the problem itself.

C. For the most part, CSBG evaluations will be a joint state/local effort, but the state does reserve the right to conduct evaluations of CSBG programs at any time for purposes it deems appropriate. In such cases, reasonable efforts will be made to accommodate the concerns of any local grantee that is involved.

R202-100-26. Program Reporting Requirements.

Local grantees shall be required to maintain client profile sheets on individual clients, households or groups of clients, if appropriate. A compiled report of the number and characteristics of clients served, by category, shall be submitted to SCSO on the prescribed CSBG Form thirty (30) days after the end of each quarter of the program period. The program progress report is also due at the same time.

R202-100-27. Appeals Procedure.

A. Grantees identified in the state plan as eligible to receive funding from the Community Services Block Grant can use the following procedure to appeal decisions made by the State Community Services Office in regards to program and funding.

B. Any substantive decision of SCSO which a local grantee believes to be unfair or unreasonable and having a major adverse impact on the local program, may be appealed by the grantee. The appeal process is as follows:

(1) Within fifteen (15) days of receipt of a SCSO decision that is believed to be unfair or unreasonable, the grantee believing itself to be aggrieved must submit a letter to the executive director of DCC, approved and signed by its elected officials, setting forth:

- (a) The decision that is being questioned;
- (b) The date on which the grantee received notice of the

decision;

(c) The rationale of the grantee for considering the decision to be substantial and unfair or unreasonable to the grantee;

(d) A request for a hearing, including a statement as to the desired outcome of such a hearing.

(2) Within ten (10) working days of the receipt of the grantee's request for a hearing, the executive director shall name a hearing officer, who shall schedule a hearing date no later than two (2) weeks after being so named and will notify the appellant grantee. The hearing officer will be independent of DCC.

(3) Prior to the scheduled hearing, the SCSO staff shall contact the Board of Directors of the appellant grantee:

- (a) To obtain additional information pertinent to the issue;
- (b) To clarify any misunderstanding of fact or policy;
- (c) To explore possible alternatives that would eliminate the necessity for a hearing;

(d) To obtain a written withdrawal of the request for a hearing if the issue is resolved through negotiation.

(4) The hearing, should there be one, shall be conducted by the hearing officer. The appellant grantee may be represented by whomever it chooses at the hearing, but must notify DCC at least five (5) working days prior to the hearing who that person will be.

(5) The hearing officer shall review all testimony and evidence presented at the hearing and recommend a decision to the DCC Executive Director. The DCC Executive Director shall issue a written decision on the appeal within 10 working days after receipt of the hearing officer's recommendations.

(6) The decision resulting from the hearing shall be final. Any necessary hearings shall be held in Salt Lake City or at a site more convenient to the appellant agency, at the discretion of the Executive Director of DCC.

R202-100-28. Citizen Participation.

A. The state requires citizen participation and supports maximum participation of all interested persons and groups in the development and implementation of the CSBG programs at the state and local level, in advisory or administering capacity.

1. Tripartite boards are required for governing boards of private, non-profit organizations and for the administering/advisory boards of public agencies and shall conform to the requirements outlined in Sec. 675 (c) (3).

a. A minimum of one third of the board is to represent low income. A description of the democratic selection process for representatives of the poor is to be available for review.

b. One third of the members of the board are to be elected public officials, currently holding office, or their representatives, except if not enough public officials are willing or available, appointed public officials may serve. Minutes of meetings or letters of appointment must be on file for review.

c. The remainder of the members are to be officials or members of business, industry, labor, religious, welfare, education or other major groups in the community. A description of the process used for selection of private sector representatives is to be available for review. The description should include a process for interested private sector groups to petition for membership and how the petition will be considered.

B. As a part of the problem assessment portion of the planning phase (conducted every three years), each local agency shall conduct public forums for low-income residents of the areas. These forums are to allow a discussion and listing of problems as viewed by the low-income and their suggestions for solutions.

R202-100-29. Federal Program Regulations.

The CSBG is subject to regulations periodically published in the Federal Register.

R202-100-30. Required Documentation and Forms.

The required application, budget and reporting forms shall be designated through SCSO Community Services Block Grant Program Directives.

R202-100-31. Application Process and Submission Timetable.

A. The grant application phase of CSBG for local grantees involves:

(1) A local poverty problem identification process developed under prescribed criteria outlined in a Community Services Block Grant Program Directives, problem analysis, resource analysis, service delivery system description, prioritization process and coordination policy process with appropriate documentation submitted to SCSO by May 15 every three (3) years, starting in 1998;

(2) The development of a work program for addressing problems identified and prioritized includes;

(a) Community review of draft work program;

(b) Approval of final plan by local boards or by local officials;

(c) Submission to state office by June 30 of each year.

(3) As part of the application package, the applicant must submit an administrative budget separate from the program operation budget.

R202-100-32. Budget Estimate.

By May 1, the state shall make available to eligible applicants, an estimate of funding amounts for each geographical area, based on the formula contained in the State Plan.

R202-100-33. Public Review and Comment.

A. After the work program has been prepared, but before Board approval, the applicant must provide ample opportunity for its' review by low-income residents, the community as a whole, and relevant community organizations and agencies. Notice of the availability of the application for citizen review and comment shall also be given by providing written notice to organizations and agencies, to the local media, and posting of notice in public places convenient to low-income residents. The grantee must submit all of the comments of persons and organizations choosing to respond with the application to the State Office of Community Services.

R202-100-34. Senate Bill 50 - Sales Tax Refund on Donated Food.

A. The State Community Services Office shall:

(1) Provide definitions for certification and de-certification of eligible agencies to receive the sales tax refund;

(2) Provide criteria for an organization to apply for recognition as a qualified emergency food agency;

(3) Provide procedures to be used in the certifying and de-certifying of agencies for Rules and Procedure infractions;

(4) Provide standards for determining and verifying the amount of the donated food;

(5) Certify organizations to receive the Sales Tax Refund to the State Tax Commission;

(6) Provide monitoring to insure certified agencies maintain required weighing capabilities and inventory records;

(7) Develop other procedures necessary to implement Senate Bill 50 in consultation with the State Tax Commission.

KEY: antipoverty programs, grants, community action programs, food sales tax refunds

January 15, 1998

9-4-202

Notice of Continuation November 26, 2002

R203. Community and Culture, Energy Services.**R203-4. Utah Public Building Energy Loan and Grant Programs.****R203-4-1. Authority.**

The promulgation of this rule is authorized under a negotiated settlement of litigation known as "In re The Department of Energy Stripper Well Exemption Litigation, 653 F. Supp. 108 (D. Kan. 1986)", which allows the State of Utah, Department of Community and Economic Development, Office of Energy Services to receive funds for and administer energy programs.

R203-4-2. Purpose.

The purpose of this rule is to:

- (1) Establish procedures related to use of Office funds to promote energy efficiency for public facilities.
- (2) Establish criteria and conditions for advertisement of Programs.
- (3) Establish criteria and conditions for providing no-cost or low-cost auditing services.
- (4) Establish criteria and conditions for loan or grant application and application review processes.
- (5) Establish criteria and conditions for loan or grant disbursement process.
- (6) Establish criteria and conditions for loan repayment and collection processes.
- (7) Establish criteria and procedures for project evaluation and reporting processes.

R203-4-3. Definitions.

- (1) "Program" means the Utah Public Building Energy Loan and Grant Programs.
- (2) "Fund" means \$2,600,000 obligated under the petroleum violation escrow spending plan approved by the U.S. Department of Energy on August 12, 1996.
- (3) "Office" means the Utah Office of Energy Services, Utah Division of Community Development, Utah Department of Community and Economic Development.
- (4) "Applicant" means any unit of state and local government or other public non-profit organization, that submits an application requesting Program funds.
- (5) "Payback" means the average simple payback calculated by taking project costs divided by the estimated annual energy savings.
- (6) "Loan or Grant Application" means the document submitted to the Office of Energy Services in person, by postal service, by electronic mail, by FAX, or by telephone and in response to an open solicitation/request for proposal from the Office of Energy Services.
- (7) "Efficiency Measures" mean state-of-the-art energy efficiency technologies including energy management controls, lighting upgrades, chiller and boiler upgrades, and insulation.
- (8) "Energy Audit" means a preliminary survey of a facility's existing energy using system that assesses energy consumption relative to other similar facilities, recommends operational and maintenance changes for energy savings, and investigates and ranks state-of-the-art energy technologies based upon payback.

R203-4-4. Announcement.

Office staff will notify Utah public institutions of the availability of Program loan or grant funds and specify targeted energy technologies and building/facility sectors. The notification will include a due date and a description of application processes. This may be done in the following manner:

- (1) By issuing a state-wide news release announcing availability of Program; or
- (2) By issuing a direct mailing.

R203-4-5. Auditing Services.

(1) An Applicant shall notify the Office regarding energy auditing needs. Notification shall be made in person, by postal services, by electronic mail, by FAX or by telephone. The Office may log and prioritize all requests based on date received.

(2) Auditing Services shall be provided by the Office only as staff time allows.

(3) Applicants will be encouraged to secure energy auditing service from utility companies, vendors and suppliers, and professional consulting engineers listed as "technical energy auditors" under the U.S. Department of Energy's Institutional Conservation Program. Applicants will also be encouraged to attend energy auditor training and complete energy audits with internal staff.

R203-4-6. Application.

All Applicants wishing to receive Program funds shall apply in the following manner:

- (1) Complete and file an application provided by the Office. The following information may be necessary:
 - (a) name of Applicant;
 - (b) address and phone number of Applicant;
 - (c) contact person;
 - (d) name of facility/building
 - (e) cost of project;
 - (f) audit results and calculations including estimated energy and energy cost savings with simple payback;
 - (g) federal tax ID #;
 - (h) loan or grant amount requested (inclusive of project design costs if desired); and
 - (i) brief description of proposed energy efficiency measures.

R203-4-7. Application Review.

(1) The Program administrator shall, upon the proper submission of the application, make a determination of eligibility no later than 45 days from receipt of the application. This decision may be based upon the following:

- (a) Applicant's compliance with all aspects of the application process; and
- (b) Applicant's meeting of all project eligibility requirements defined in Section R203-4-8 and all program limitations defined in Section R203-4-9.

(2) All applications may be numbered in order of their receipt by the Office. This sequence may be used as a basis for prioritizing applicants for Program funding.

(3) If the application meets all Program criteria under Sections R203-4-8 and R203-4-9, the application may be granted approval and the Applicant shall be notified according to Section R203-4-10.

R203-4-8. Project Eligibility.

(1) Once an application has been submitted to the Office, it will be analyzed to determine Program eligibility. It should be noted that although an application is deemed "eligible", program limitations as specified in Section R203-4-9 may serve as the final basis for approving and obligating Program funds.

(2) The data provided by the Applicant under Section R203-4-6 may be used by the Office to establish program eligibility. Projected simple payback figures may be used to determine eligibility for grants and loans. Average simple payback figures may be no longer than eight years.

(3) In determining eligibility, the Office reserves the right to verify energy audit information and calculations used to calculate the payback period and to independently assess the appropriateness of technologies proposed by the Applicant:

- (4) Eligible projects shall:
 - (a) reduce energy costs;

(b) increase building life; and
 (c) improve the working or living environment within the facility.

(5) Where applications for funding exceed the Office's balance of available funds, an Applicant may only receive one loan or grant per fiscal year. Multiple buildings or projects can be covered under one application.

(6) Grant applications must include matching funds including in-kind and cash match of at least a 50-50 level. Hardship criteria set forth under the Institutional Conservation Program may allow for less than a 50-50 applicant match.

(7) Requested loan or grant amounts may include project design costs and labor costs.

(8) The Office may check the Applicant's history of energy project management and history of loan repayments. Instances of gross mismanagement and unreliability may disqualify an Applicant.

(9) The Office may request, at any time during the application approval process, additional information or data from the Applicant necessary for determining eligibility.

(10) The loan interest rate shall be zero percent. However, the Division of State Finance may charge interest for late repayments.

R203-4-9. Program Limitations.

Under no circumstance shall the Program administrator approve an application if:

(1) it would result in the Office's inability to fulfill its obligations under this Program or this rule;

(2) the Applicant does not meet the application requirements of Section R203-4-8;

(3) there is no energy cost savings from the measures funded with a loan or grant;

(4) the total requested loan amount, including project design cost and labor cost, is less than \$5,000;

(5) the annual energy savings is insufficient to justify a loan repayment of eight years or less.

(6) the Fund balance is zero, or by awarding a loan to an Applicant, the Fund balance is overdrawn;

(7) the Applicant's request for loan or grant funds exceeds fifteen percent of the Office's available funds and funding to the Applicant would limit funding to other applicants.

R203-4-10. Notification of Award and Executing Loan or Grant Contracts.

After review of an application and approval or rejection under this rule, the director of the Office or the Program administrator shall notify the Applicant in writing.

(1) If approved, the Applicant may be notified of the maximum loan or grant amount approved.

(2) If rejected, the denied Applicant may file an application for reconsideration. An application for reconsideration may be reviewed only if it includes changes that correct or remove the reasons for denial of the original application.

The loan or grant agreement, including budget, assurances, scope of work and promissory note with repayment schedule (in the case of loan agreements) must be approved and signed by authorized representatives of the Utah Department of Community and Economic Development, the Division of State Finance, the Office, and Applicant.

R203-4-11. Fund Transfer and Payment Process.

Once a loan or grant contract has been fully executed, the Applicant may proceed with energy efficiency measures authorized by the agreement. Applicants may request up to a 30-day advance for anticipated expenses from the Office for completion of energy efficiency measures or may submit for requests for reimbursement of expenses. Full documentation of

expenses must be provided to the Office. Advances and reimbursement payments will only be made to the Applicant, and cannot be assigned unless otherwise directed in writing by the Applicant.

R203-4-12. Loan Repayment.

(1) The annual energy savings computed under Subsection R203-4-8 shall serve as the basis for calculating quarterly loan repayment. The repayment period will be determined by dividing the total of funds advanced and reimbursed to the Applicant by the total anticipated annual energy cost savings. Repayments shall be sent to the Division of Finance and will be credited to the approved Applicant's loan account.

(2) As reimbursements occur and when an Applicant's loan account balance reaches zero, the repayments may cease, and the account closed.

(3) Loan recipients may make early repayment of loans or can renegotiate the terms of repayment upon the mutual consent of the Division of Finance and the Office.

R203-4-13. Review.

The Office reserves the right to review all data and monitor Applicant progress for compliance with these rules during the loan or grant contract period and for a period of three years after the loan or grant contract period has been closed. The Office further reserves the right to request supplemental information it may deem necessary from an Applicant in order to effectively administer the Program and to meet federal petroleum violation escrow account reporting requirements.

R203-4-14. Indemnification.

The state government of Utah, any subdivision, or any agent of state government with responsibility for, or obligation to the Program, cannot be held liable for injury or damage to persons or property caused by or involved with any action related to retrofits in this Program.

R203-4-15. Notices.

An application, notice, correspondence, payment requests, report or data submitted under this Program should be addressed in the following manner:

Utah Office of Energy Services
 ATTN: Utah Public Energy Loan Program
 324 S. State, Suite 500
 Salt Lake City, UT 84111
 (801) 538-8690

**KEY: public building, energy loans, grant programs
 December 30, 1997 653 F. Supp. 108 (D. Kan. 1986)
 Notice of Continuation September 20, 2002**

R203. Community and Culture, Energy Services.**R203-5. Utah Energy Technology Demonstration Program.****R203-5-1. Authority.**

The promulgation of this rule is authorized under a negotiated settlement of litigation known as "Department of Energy Stripper Well Exemption Litigation, 653 F. Supp. 108 (D. Kan. 1986)", which allows the State of Utah, Department of Community and Economic Development, Office of Energy Services to receive funds for and administer energy programs.

R203-5-2. Purpose.

The purpose of this rule is to:

- (1) Establish procedures related to use of Office funds to promote energy efficiency and the commercialization of new energy technologies.
- (2) Establish criteria and conditions for advertisement of Programs.
- (3) Establish criteria and conditions for providing technical support.
- (4) Establish criteria and conditions for loan or grant application and application review processes.
- (5) Establish criteria and conditions for loan or grant disbursement process.
- (6) Establish criteria and conditions for loan repayment and collection processes.
- (7) Establish criteria and procedures for project evaluation and reporting processes.

R203-5-3. Definitions.

- (1) "Program" means the Utah Energy Technology Demonstration Program.
- (2) "Fund" means \$1,300,000 obligated under the petroleum violation escrow spending plan approved by the U.S. Department of Energy on August 12, 1996.
- (3) "Office" means the Utah Office of Energy Services, Utah Division of Community Development, Utah Department of Community and Economic Development.
- (4) "Applicant" means any unit public or private entity that submits an application requesting Program funds.
- (5) "Payback" means the average simple payback calculated by taking project costs divided by the estimated annual energy savings.
- (6) "Loan or Grant Application" means the document submitted to the Office of Energy Services in person, by postal service, by electronic mail, by FAX, or by telephone and in response to an open solicitation/request for proposal from the Office of Energy Services.
- (7) "Energy Technology Demonstration" means state-of-the-art energy efficiency technologies including biomass to energy digesters, solar photovoltaics, wind generation equipment, geothermal heat pumps, sulfur lamp technology, cogeneration, and alternate transportation fuel technology. Program funding shall be limited to those new technologies that are readily commercially available and demonstratable.
- (8) "Technology Support" means in-house or consulting engineering assistance to an Applicant in determining the applicability, reliability, sizing, and integration of a new technology into the Applicant's operation or facilities.

R203-5-4. Announcement.

Office staff will notify Utah public and private entities of the availability of Program loan or grant funds and specify targeted energy technologies and sectors. The notification will include a due date and a description of application processes. This may be done in the following manner:

- (1) by issuing a state-wide news release announcing availability of Program; or
- (2) by issuing a direct mailing

R203-5-5. Technigcal Support Services.

(1) An Applicant shall notify the Office regarding technical support needs. Notification shall be made in person, by postal services, by electronic mail, by FAX or by telephone. The Office may log and prioritize all requests based on date received.

(2) Auditing Services shall be provided by the Office, its consultants, or other state agencies only as staff time and funding allows.

(3) Applicants will be encouraged to secure technical support service from utility companies, vendors and suppliers, federal laboraories, and professional consulting engineers.

R203-5-6. Application.

All Applicants wishing to receive Program funds shall apply in the following manner:

- (1) Complete and file an application provided by the Office. The following information may be necessary:
 - (a) name of Applicant;
 - (b) address and phone number of Applicant;
 - (c) contact person;
 - (d) name of facility/operation
 - (e) cost of project;
 - (f) technical performance data and project economics including estimated energy and energy cost savings with savings-to-investment ratio;
 - (g) federal tax ID No.;
 - (h) loan or grant amount requested (inclusive of project design costs if desired); and
 - (i) brief description of proposed project.

R203-5-7. Application Review.

(1) The Program administrator shall, upon the proper submission of the application, make a determination of eligibility no later than 45 days from receipt of the application. This decision may be based upon the following:

- (a) Applicant's compliance with all aspects of the application process; and
- (b) Applicant's meeting of all project eligibility requirements defined in Section R203-5-8 and all program limitations defined in Section R203-5-9.

(2) All applications may be numbered in order of their receipt by the Office. This sequence may be used as a basis for prioritizing applicants for Program funding.

(3) If the application meets all Program criteria under Sections R203-5-8 and R203-5-9, the application may be granted approval and the Applicant shall be notified according to Section R203-5-10.

R203-5-8. Project Eligibility.

(1) Once an application has been submitted to the Office, it will be analyzed to determine Program eligibility. It should be noted that although an application is deemed "eligible", program limitations as specified in Section R203-5-9 may serve as the final basis for approving and obligating Program funds.

(2) The data provided by the Applicant under Section R203-5-6 may be used by the Office to establish program eligibility. Project economics may be used to determine eligibility for grants and loans. Project savings to investment ratios should exceed 1.0 by year eight of project operation.

(3) In determining eligibility, the Office reserves the right to review technical performance data and project economics and to independently assess the appropriateness and appliation of technologies proposed by the Applicant:

- (4) Eligible projects shall:
 - (a) reduce energy costs;
 - (b) increase facility life or improve operations; and
 - (c) contribute to a better Utah environment by reducing pollutants.

(5) Where applications for funding exceed the Office's balance of available funds, an Applicant may only receive one loan or grant per fiscal year.

(6) Grant applications must include matching funds including in-kind and cash match of at least a 50-50 level. The Office may require federal partnering as a condition for Program eligibility.

(7) Requested loan or grant amounts may include project design costs and labor costs.

(8) The Office may check the Applicant's history of energy project management and history of loan repayments. Instances of gross mismanagement and unreliability may disqualify an Applicant.

(9) The Office may request, at any time during the application approval process, additional information or data from the Applicant necessary for determining eligibility.

(10) The loan interest rate shall be determined by the Office in conjunction with the Division of State Finance. Additional interest may be charged late repayments.

R203-5-9. Program Limitations.

Under no circumstance shall the Program administrator approve an application if:

(1) it would result in the Office's inability to fulfill its obligations under this Program or this rule;

(2) the Applicant does not meet the application requirements of Section R203-5-8;

(3) there is no energy cost savings from the measures funded with a loan or grant;

(4) the total requested loan amount, including project design cost and labor cost, is less than \$5,000;

(5) the annual energy cost savings is insufficient to justify a loan repayment of eight years or less.

(6) the Fund balance is zero, or by awarding a loan to an Applicant, the Fund balance is overdrawn;

(7) the Applicant's request for loan or grant funds exceeds fifteen percent of the Office's available funds and funding to the Applicant would limit funding to other applicants.

R203-5-10. Notification of Award and Executing Loan or Grant Contracts.

After review of an application and approval or rejection under this rule, the manager of the Office or the Program administrator shall notify the Applicant in writing.

(1) If approved, the Applicant may be notified of the maximum loan or grant amount approved.

(2) If rejected, the denied Applicant may file an application for reconsideration. An application for reconsideration may be reviewed only if it includes changes that correct or remove the reasons for denial of the original application.

The loan or grant agreement, including budget, assurances, scope of work and promissory note with repayment schedule (in the case of loan agreements) must be approved and signed by authorized representatives of the Utah Department of Community and Economic Development, the Division of State Finance, the Office, and Applicant.

R203-5-11. Fund Transfer and Payment Process.

Once a loan or grant contract has been fully executed, the Applicant may proceed with energy efficiency measures authorized by the agreement. Applicants may request up to a 30-day advance for anticipated expenses from the Office for completion of energy efficiency measures or may submit for requests for reimbursement of expenses. Full documentation of expenses must be provided to the Office. Advances and reimbursement payments will only be made to the Applicant, and cannot be assigned unless otherwise directed in writing by the Applicant.

R203-5-12. Loan Repayment.

(1) The annual energy savings computed under Subsection R203-5-8 shall serve as the basis for calculating quarterly loan repayment. The repayment period will be determined by dividing the total of funds advanced and reimbursed to the Applicant by the total anticipated annual energy cost savings. Repayments shall be sent to the Division of Finance and will be credited to the approved Applicant's loan account.

(2) As reimbursements occur and when an Applicant's loan account balance reaches zero, the repayments may cease, and the account closed.

(3) Loan recipients may make early repayment of loans or can renegotiate the terms of repayment upon the mutual consent of the Division of Finance and the Office.

R203-5-13. Review.

The Office reserves the right to review all data and monitor Applicant progress for compliance with these rules during the loan or grant contract period and for a period of three years after the loan or grant contract period has been closed. The Office further reserves the right to request supplemental information it may deem necessary from an Applicant in order to effectively administer the Program and to meet federal petroleum violation escrow account reporting requirements.

R203-5-14. Indemnification.

The state government of Utah, any subdivision, or any agent of state government with responsibility for, or obligation to the Program, cannot be held liable for injury or damage to persons or property caused by or involved with any action related to retrofits in this Program.

R203-5-15. Notices.

An application, notice, correspondence, payment requests, report or data submitted under this Program should be addressed in the following manner:

Utah Office of Energy Services
ATT: Utah Commercial/Industrial Energy Loan Program
324 S. State, Suite 500
Salt Lake City, UT 84111
(801) 538-8690

KEY: public buildings, energy loans, grant programs
December 30, 1997 653 F. Supp. 108 (D. Kan. 1986)
Notice of Continuation September 19, 2002

R207. Community and Culture, Fine Arts.**R207-1. Utah Arts Council General Program Rules.****R207-1-1. Utah Arts Council General Program Rules.**

The Utah Arts Council shall set forth in printed and/or electronic materials: standards and procedures, eligibility requirements, fees, restrictions, panel and committee members, deadlines for submitting applications, requirements pertaining to specific opportunities, dates of events, liability, and other information which is available to the public. The Utah Arts Council has the authority to award prizes, commissions, grants and fellowships.

**KEY: art in public places, art preservation, art financing,
performing arts**

September 12, 2003

9-6-205

Notice of Continuation August 20, 2002

R207. Community and Culture, Fine Arts.**R207-2. Policy for Commissions, Purchases, and Donations to, and Loans from, the Utah State Art Collections.****R207-2-1. Policy for Commissions, Purchases, and Donations to, and Loans from, the Utah State Art Collections.**

In order to maintain the quality and integrity of the Utah State Art Collections, the following policies have been adopted:

a. All works of art accepted into the Utah State Art Collections must be approved through the appropriate channels (Visual Arts Committee, Public Art Selection Committees, Folk Arts Selection Committee, etc.). This policy applies to commissions, purchases and donations of artwork. When art is added to any of the Utah State Art Collections, the Utah Arts Council will assume responsibility for cataloging, conserving, insuring, storing, and displaying that work. The criteria for selecting works for the Utah State Art Collections will be based on the quality of the work, and its role in filling historical, cultural, and stylistic gaps. Public Art commissions will be based on the aesthetic value, appropriateness to the site or facility, and budget.

b. If other state agencies are approached by an individual or organization wishing to donate a work of art, that agency may contact the Utah Arts Council to receive approval through the appropriate channels (see "a" above). If the agency does not contact the Utah Arts Council, or if the donation is not accepted by the Utah Arts Council, that agency becomes solely responsible for its ownership, including cataloging, conserving, insuring, storing, and displaying the donated work of art. The artwork will not be considered part of the Utah State Art Collections.

c. Loans of artwork from the Utah State Art Collections must be approved through appropriate channels in order for them to be insured by the state's Risk Management Division through the Utah Arts Council. Replacement value insurance for non-state agencies, by agreement or default, is borne by the institution receiving the loaned works. Works of art loaned directly to the Utah Arts Council for exhibition or other purposes are fully insured by the state's Risk Management Division through the Utah Arts Council. Public Art commissions are insured by the state's Risk Management Division through the Utah Arts Council and the host agency.

**KEY: art loans, art donations, art in public places, art work
September 12, 2003 9-6-205
Notice of Continuation August 20, 2002**

R212. Community and Culture, History.**R212-1. Adjudicative Proceedings.****R212-1-1. Scope and Applicability.**

This rule is enacted in compliance with the Utah Administrative Procedures Act, Section 63-46b-1 et seq. and applies only to actions which are governed by the Act.

R212-1-2. Definitions.

A. Terms, used in this rule are defined in Section 63-46b-2.

B. In Addition:

1. "agency" means the Division of State History;
2. "applicability" means a determination if a statute, rule, or order should be applied, and if so, how the law stated should be applied to the facts;
3. "director" means the director of the Division of State History; and
4. "board" means the Board of State History.
5. "presiding officer" means the Board or its designee, which may be a subcommittee of the board.
6. "petitioner" means any person aggrieved by a decision or determination of the Division of State History.

R212-1-3. Designation.

The Agency designates all agency actions subject to the scope and applicability of the Utah Administrative Procedures Act, Section 63-46b-1 et seq. as formal proceedings.

R212-1-4. Adjudicative Hearings.

A. Any person aggrieved by a decision or determination of the Division of State History may request a hearing before the Board. That person, hereinafter "the petitioner," shall request the hearing by filing a request in writing with the Chairman of the Board and providing a copy to the director of the Division. The petition shall set forth the reason for the request, including the following:

1. a description of the decision which the petitioner requests a hearing on;
2. the date of the decision, who made the decision, and, if in writing, attach a copy of the decision;
3. the relief sought by the petitioner; and
4. the reason the petitioner is entitled to the relief requested.

B. Upon receipt of the Request for Hearing, the Division shall file a written response within 21 days with the Chairman of the Board and send a copy to the petitioner. The Division response shall include any facts or matters not included in the Request for Hearing that may be necessary for the determination, and set forth the reasons and basis for the decision for which the petitioner is seeking a hearing.

C. After the filing of the response, a meeting shall be scheduled with the petitioner, representative of the agency, and council for the Board as a pre-hearing conference. The purpose of the conference is to have the agency and the petitioner meet to determine what factual and legal matters are in dispute, what discovery may be needed by anyone to process the case, and the best manner for presentation or hearing for the Board. Counsel for the Board shall prepare a discovery and hearing schedule based upon the meeting, which shall govern the proceedings.

D. The Board may act as a presiding officer and conduct the hearing, may appoint a subcommittee of its Board or may appoint an individual or group of individuals to act as the presiding officer to conduct the hearing. If the presiding officer is other than the entire Board, the presiding officer shall make recommended findings of fact, conclusions of law, and proposed order on the petitioner's request for a hearing. That proposed order shall be placed upon and acted upon by the Board at its next scheduled meeting. The Board may adopt, reject or modify the proposed order of the presiding officer.

R212-1-5. Request for Declarative Orders.

A. As required by Section 63-46b-21, this section provides the procedures for submission, review, and disposition of petitions for agency declaratory orders on the applicability of statutes, rules, and orders governing or issued by the agency.

B. In order of importance, procedures governing declaratory orders are:

1. procedures specified in this rule pursuant to Chapter 46b of Title 63;
2. the applicable procedures of Chapter 46b of Title 63;
3. applicable procedures of other governing state and federal law;
4. the Utah Rules of Civil Procedure.

C. The petition, or request for agency action, shall be addressed and delivered to the director, who shall mark the petition with the date of receipt.

1. The petition shall:
 - a. be clearly designated as a request for an agency declaratory order;
 - b. identify the statute, rule, or order to be reviewed;
 - c. describe in detail the situation or circumstances in which applicability is to be reviewed;
 - d. describe the reason or need for the applicability review, addressing in particular why the review should not be considered frivolous;
 - e. include an address and telephone where the petitioner can be contacted during regular work days;
 - f. declare whether the petitioner has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; and
 - g. be signed by the petitioner.

D. The agency will not issue a declaratory order that deals with a question or request that the director determines is:

1. Not within the jurisdiction and competence of the agency;
2. Trivial, irrelevant, or immaterial;
3. Not one that is ripe or appropriate for determination;
4. Currently pending or will be determined in an on-going judicial proceeding;
5. Not in the best interest of the division or the public to consider; or
6. Prohibited by state or federal law.

E. A person may file a petition for intervention under Section 63-46b-9 if delivered to the director within 20 days of the director's receipt of the declaratory order petition filed under Section 3 of this rule.

F. Petitions shall be reviewed under the following procedure:

1. The director shall promptly review and consider the petition and may:
 - a. meet with the petitioner;
 - b. consult with counsel or the Attorney General; and
 - c. take any action consistent with law that the agency deems necessary to provide the petition adequate review and due consideration.
 - d. the Petitioner shall be advised as to the status or procedures to be used concerning the Petitioner's request.
2. The director may issue an order in accordance with Section 63-46b-21(6).
3. The director may order that an adjudicative proceeding be held in accordance with Section 63-46b-21(6) in connection with review of a petition.

G. A petitioner may seek administrative review or reconsideration of a declaratory order by petitioning the Board of State History or the agency under the procedures of Sections 63-46b, 12 and 13.

**KEY: administrative procedures, adjudicative proceedings
January 6, 2003
63-46b-1 et seq.**

Notice of Continuation October 8, 2002

R212. Community and Culture, History.**R212-3. Memberships, Sales, Gifts, Bequests, Endowments.****R212-3-1. Scope and Applicability.**

Purpose: To establish rules for handling disposition of proceeds and membership dues and make adjustments to prices of various publications.

R212-3-2. Definitions.

1. "board" means the Board of State History which acts as the Board of the Utah State Historical Society;

2. "society" means the Utah State Historical Society;

3. "division" means the Division of State History;

4. "historical magazine" means the Utah Historical Quarterly and Beehive History; and

5. "director" means the director of the Division of State History.

R212-3-3. Sales.

1. Prices for the sale of the historical magazine, books published by the division, microfilm, photos, and other published or facsimile documents shall be established annually by the director in consultation with the board.

2. Proceeds and earned interest from sales shall be deposited with the treasurer of the state as restricted interest bearing, nonlapsing revenue of the Society in accordance with Sections 9-8-206 and 9-8-207.

3. The disposition of the proceeds and earned interest shall be determined by the director in accordance with policy established by the board or in consultation with the board.

R212-3-4. Donations.

1. The society is authorized to receive gifts, grants, donations, bequests, devises and endowments of money or property. These monies shall be used in accordance with directions provided by the donor and shall be kept in a separate line account as nonlapsing funds of the society together with earned interest.

2. If the donor makes no indication of the direction or use of the gifts, bequests, donations, devices, and endowments, these funds and interest on these funds shall be retained in a separate line account of the society as nonlapsing funds. Disbursement shall be made by the director in accordance with policy established by the board or in consultation with the board.

3. The board may review, or establish a policy of review and is authorized to receive, any gift, grant, donation, bequest, devise or endowment of money or property but need not.

R212-3-5. Memberships.

1. Membership dues shall be established annually by the director in consultation with the board according to Section 9-8-207(1).

2. Proceeds from memberships shall be kept in a separate line account as nonlapsing funds of the society together with earned interest.

3. Disbursement shall be made by the director in accordance with policy established by the board or in consultation with the board.

KEY: administrative procedures, historical society

1992 **9-8-206**

Notice of Continuation September 26, 2001 **9-8-207**

R212. Community and Culture, History.**R212-4. Archaeological Permits.****R212-4-1. General Authority.**

Section 9-8-201 provides for the creation and purpose of the division.

Section 9-8-203 defines the division's duties and includes the provision to mark and preserve historic sites, areas, and remains.

Section 9-8-304 specifies the Antiquities section duties and includes responsibility for the stimulation of research, study, and activities in the field of antiquities; the marking, protection, and preservation of sites; the administration of site survey and excavation records; and the cooperation with local, state, and federal agencies and all interested persons to achieve the purposes of this part and Part 4.

Section 9-8-305 provides that the division shall make rules for the issuance of permits for the survey and excavation of archaeological resources on state lands and allows for the division to enter into memoranda of agreement to issue permits for federal and Native American lands within the state.

Section 9-8-306 requires a permit to excavate a privately owned designated landmark.

Section 9-8-307 requires any person who discovers any archaeological resources on privately owned lands to promptly report the discovery to the division and discourages field investigations except by those holding a permit from the division.

Section 9-8-404 regards the issuance of a permit in consultation with the State Historic Preservation Officer.

R212-4-2. Purpose.

The primary purposes of issuing a permit are to:

- A. Ensure that survey, excavation and related work are consistently and reliably executed by qualified personnel; and,
- B. Ensure that educational, scientific, archaeological, anthropological, and historical information is recovered and preserved; and,
- C. Ensure that physical items recovered and owned by the state are not lost to the people of Utah.

R212-4-3. Applicability.

This rule applies to all those seeking a permit from the division on any lands within the State of Utah.

R212-4-4. Definitions.

- A. Terms used in this rule are defined in Section 9-8-302.
- B. In addition:
 1. "board" means the Board of State History;
 2. "division" means the Division of State History;
 3. "director" means the Director of the division;
 4. "recovery" means the scientific disturbance, removal, or study of subsurface and substantial surface archaeological resources by a qualified permit holder.
 5. "permit" means a valid approval by the division issued to professionals meeting qualifications.
 6. "section" means the Antiquities Section of the division.
 7. "surface investigation" means the study, including insubstantial surface collection and limited subsurface testing, of archaeological resources for determination of eligibility for State or National Register.

R212-4-5. Qualifications of Permit Holders.

The division shall issue a permit for the survey or excavation of archaeological resources to individuals and entities who demonstrate compliance with the following requirements:

- A. Education, Experience, and Capabilities.
 1. Archaeologists shall meet the minimum standards for education and experience set by federal regulation. The federal

regulations, codified as 43 CFR 7.8, Subtitle A (October 1, 2000 Edition) as amended, Issuance of permits are hereby incorporated by reference.

- a) Archaeologists shall be Registered Professional Archaeologists (RPA) in good standing, as recognized by the Register of Professional Archaeologists. Applicants listed on Antiquities Permits at the time this rule takes effect, but who may not meet the standards for RPA status, will not have their permit status revoked.

2. Applicants shall submit a resume or vita as proof of compliance.

3. Applicants shall provide written evidence indicating the ability to conduct surveys or the proposed excavation in a manner consistent with current professional practice, including access to proper equipment and facilities, and use of other personnel qualified to execute portions of the research design.

4. All work conducted under authority of an Antiquities Permit shall be undertaken to current standards of scientific rigor, and must conform to standards established by the Utah Professional Archaeological Council and the Register of Professional Archaeologists.

R212-4-6. Survey Permit Required for Archaeological Surveys.

A. A survey permit is issued to a qualified professional upon request. The permit holder may conduct archaeological surveys on behalf of land owners within the State of Utah.

R212-4-7. Excavation Permits.

A. The division may issue a permit for excavation on lands owned or controlled by the state and its subdivisions, and on school and institutional trust lands when permitting authority is delegated to the division, when the applicant complies with the requirements of sub-section C.

B. The division may issue a permit for excavation on other lands, including private lands, when the landowner gives permission and the applicant complies with the requirements of sub-section C.

C. The division shall require that the applicant:

1. Provide a research design which:
 - a) explicitly states the questions to be addressed;
 - b) the reasons for conducting the work;
 - c) defines the methods to be used;
 - d) describes the analysis to be performed;
 - e) outlines the expected results and the plans for reporting;
 - f) evaluates expected contributions of the proposed archaeological work to archaeological science and the field of anthropology or related disciplines;
 - g) provides for recovery of the maximum amount of historic, scientific, archaeological, anthropological, and educational information;
 - h) provides that the physical recovery of specimens and the reporting of archaeological information meet current standards of scientific rigor and conforms to standards established by the Utah Professional Archaeological Council and the Register of Professional Archaeologists; and
 - i) provides that no specimen, site or portion of any site is removed from the state of Utah, prior to placement in a museum, repository, or curation facility, without explicit permission from the division and after consultation with landowners and any other agency managing any interest in the land.

2. Possess written proof of consultation with the appropriate Native American Tribe or Nation, if required by law.

3. Provide written proof of consultation with the Museum of Natural History, if required by law.

4. Possess written proof of consultation with other agencies that manage other legal interests in the land.

5. Provide all other information requested by the division.

R212-4-8. Permit Provisions.

All permits shall contain the following provisions:

A. A permittee shall provide reports documenting results of the work and data obtained, and deliver relevant records, site forms, and reports to the section within the time specified in the permit.

B. A permittee who discovers human remains shall cease further activity and notify the landowner, antiquities section and appropriate agencies pursuant to Section 9-9-403 and 76-9-704.

C. Duration of Permits.

1. Survey permits are issued for a period of up to two years.

2. Permits for excavation are issued for a period of time necessary to accomplish the proposed work.

a) The period of time may be extended by the division upon application of the permittee and

b) The Museum of Natural History shall be consulted by the permittee if the duration of a required excavation permit is to be modified.

D. Other provisions the division deems necessary.

R212-4-9. Application Review.

A. Application for a survey or excavation permit shall be made on a form provided by the section. Applicants shall fully complete the application form.

B. Applicants shall be notified of the acceptance or rejection of the completed application within 30 calendar days.

R212-4-10. Violations of Statute or Rule.

If the division receives information indicating a violation of statute or rule, the division shall make a good faith effort to notify the alleged violator of the legal requirements and potential penalties. The division shall also notify the landowner, and take other actions deemed necessary.

R212-4-11. Terminating Permits.

If the permittee fails to comply with any statute, rule, or the provisions of the permit, the division may terminate the permit, temporarily suspend the permit, place additional restrictions on a permit, require other conditions, refuse to issue a permit, or take other appropriate actions.

A. Before action is taken regarding a permit, the division shall notify the permittee.

1. The notification shall describe deficiencies in performance or qualifications.

2. The division shall provide the permittee a reasonable opportunity to respond.

B. The division shall take into account a permittee's timely response before taking action on a permit.

C. The division may seek a peer review as necessary.

R212-4-12. Appeal of Decision.

Any applicant desiring review of a decision concerning an application, termination, or other conditions placed on a permit may appeal the decision pursuant to R212-1.

R212-4-13. Records Access.

The division shall maintain records of archaeological sites and localities. Access to location information within these records shall be restricted to those with legitimate research interests, and those holding valid permits, landowners, or state or federal agencies in accordance with the requirements contained in 16 USC 470 Section 304, the National Historic Preservation Act of 1966, as amended, and Title 63, Chapter 2.

R212-4-14. Exceptions.

Exceptions to this rule may be granted, with landowner

permission, in emergency cases requiring immediate action, if in the best judgment of the division the intent of the law will not be compromised. The division shall require that a permit application be filed as soon as possible. The division shall notify the board of this action as soon as possible.

KEY: administrative procedures, archaeology

November 23, 2004

Notice of Continuation September 26, 2001

9-8-302

9-8-305

9-9-403

63-2

**16 USC 470 Sec. 304
43 CFR 7.8 Subtitle A**

R212. Community and Culture, History.**R212-6. State Register for Historic Resources and Archaeological Sites.****R212-6-1. Scope and Applicability.**

Purpose: To establish compatibility between the State and National Register. To establish standards for state landmarks consistent with Sections 9-8-306, 9-8-401, 9-8-402 and 9-8-403.

R212-6-2. Definitions.

A. Terms used in this rule are defined in Sections 9-8-302 and 9-8-402(1).

B. In addition:

1. "division" means the Division of State History;
2. "director" means the director of the Division of State History;
3. "board" means the Board of State History.

R212-6-3. State Register for Historic Resources and Archaeological Sites.

1. The State Register for properties and sites incorporates by reference, within this rule, 36 CFR 60.4, 1996 Edition for the selecting of properties and sites as historical places within Utah.

2. Properties or sites recommended for National Register consideration shall automatically be listed on the State Register after they have been recommended by the Board of State History for National Register listing and after the State Historic Preservation Officer has nominated them for listing on the National Register.

3. Should a property or site be found to be ineligible for the National Register by the Keeper of the National Register, National Park Service, that property may be reviewed for removal from the State Register.

4. Properties or sites may be removed from Century and State Registers only after notification to the owner and a hearing by the board, unless they have been entirely demolished, in which case they may be removed administratively by division staff following state procedures for removal.

R212-6-4. State Landmark Listing for Archaeological and Anthropological Sites and Localities.

Archaeological and anthropological sites and localities listed on the State Register may be listed as "State Landmarks" after nomination by the property owners and review and acceptance by the Board of State History.

KEY: historic sites, national register, state register

February 21, 2002	9-8-302
Notice of Continuation September 26, 2001	9-8-306
	9-8-401
	9-8-402
	9-8-403
	63-46b-1

R212. Community and Culture, History.**R212-7. Cultural Resource Management.****R212-7-1. Scope and Applicability.**

Purpose: to establish time frames and procedures in response to state and federal agency requests in conformance with applicable state and federal cultural resource management laws, rules, and regulations contained in Section 9-8-404, Utah Code; 36 CFR 800 (01-11-2001 edition) and 16 USC 470 Section 110 of the National Historic Preservation Act as amended. These federal laws and regulations are incorporated by reference in this rule.

R212-7-2. Definitions.

A. Terms used in this rule are defined in Section 9-8-302, 36 CFR 800 (01-11-2001 edition), and 16 USC 470 Section 110 of the National Historic Preservation Act as amended.

B. In addition:

1. "division" means the Division of State History;
2. "director" means the director of the Division of State History;

R212-7-3. Conformance of Division to State Rules and Federal Regulations.

A. The Division of State History will follow applicable regulations pursuant to an annually executed agreement with the National Park Service and state rules to insure that its activities take into account the effect on cultural resources.

1. The division shall seek creative solutions to avoid or minimize adverse effects on cultural resources and seek ways to allow adverse effects to be mitigated creatively when they cannot be avoided.

B. In that regard, the division shall encourage alternative proposals which may allow for the destruction of a site(s) or area(s) when alternative mitigation or treatment plans can be made which will allow for the development, endowment, promotion, scientific investigation of other resources more suited to public education, education involvement, appreciation and science.

R212-7-4. Division Responsibility to Other Agencies.

1. The division may consult with or provide professional information to state and federal agencies requesting consultation under Section 9-8-404, Utah Code and under 16 USC 470 Sections 106 and 110 the Historic Preservation Act of 1966 as amended. These federal regulations are incorporated by reference in this rule.

2. The information provided to a consulting person or entity will be limited to standards and regulations as issued by the U.S. Secretary of the Interior.

3. If the division responds, then it shall state that the federal or state agency shall take into account the comments.

4. Responses may be provided within 30 days of receipt of request.

5. Adequate completion of permit requirements for excavation on lands may satisfy mitigation as far as the State Historic Preservation Officer is concerned.

KEY: historic preservation, cultural resources, management
May 21, 2002 **9-8-302**

Notice of Continuation September 26, 2001 **9-8-404**
16 USC 470 Sec. 106
16 USC 470 Sec. 110

R212. Community and Culture, History.

R212-8. Preservation Easements.

R212-8-1. Scope and Applicability.

Purpose: to insure the adequate handling of preservation easements and their proper recording in accordance with Sections 9-8-503 and 9-8-504.

R212-8-2. Definitions.

Terms used in this rule are defined as:

1. "historical value" means a property on the State or National Register of Historic Places; and
2. "division" means the Division of State History or the Utah State Historical Society.

R212-8-3. Granting of an Easement to the Division.

A. The division may accept easements under the following conditions:

1. the property is on the National Register or State Register of Historic Places;
2. the easement will be recorded with the proper county recorder's office;
3. the preservation easement will prohibit demolition or alteration not in conformance with the Secretary of Interior's Standards for Rehabilitation;
4. the easement shall be in place for as long as the owner specifies but for no less than that required by IRS rule, if any;
5. the division shall acknowledge within 30 days acceptance or rejection of the easement.

KEY: historic preservation, historic sites

1992

9-8-503

Notice of Continuation October 30, 2001

9-8-504

R212. Community and Culture, History.**R212-9. Board of State History as the Cultural Sites Review Committee Review Board.****R212-9-1. Scope and Applicability.**

Rules for the Board of State History, those federal regulations regarding activities of the Cultural Sites Review Committee, Review Board as established by Section 9-8-205(d).

R212-9-2. Definitions.

1. "board" means the Board of State History, which functions as the committee;

2. "committee" means the Cultural Sites Review Committee, Review Board which is established for the state to comply with the requirements of the National Historic Preservation Act of 1966 as amended and the appropriate Code of Federal Regulations as now constituted.

R212-9-3. Applicable Federal Regulations.

The committee shall comply with appropriate federal laws including 16 USC 470 the National Historic Preservation Act of 1966 as amended and the appropriate Code of Federal Regulations including 36 CFR 61.4 and 36 CFR 60 which are herein incorporated by reference.

R212-9-4. Policy Exceptions.

The National Park Service as the responsible federal agency for regulation regarding the committee may authorize exceptions consistent with their requirements regarding regulations relating to functions of the committee described in 36 CFR 61.4 and 36 CFR 60 as amended July 1, 1996.

KEY: historic preservation**1992****Notice of Continuation October 30, 2001****9-8-205****9-8-205(d)****16 USC 470**

R212. Community and Culture, History.**R212-11. Historic Preservation Tax Credit.****R212-11-1. Authority.**

(1) Sections 59-7-609 and 59-10-108.5 allow for an historic preservation tax credit by the Utah State Tax Commission and provide for certain duties of the Division of State History and the State Historic Preservation Office.

(2) Section 9-8-205 provides that the Board of State History and the Division shall make policies and rules to direct the division director in the carrying out of his duties.

R212-11-2. Purpose.

The purposes of this rule are: (1) to ensure an orderly process by the Division of State History and the State Historic Preservation Office, (2) to allow for appeal and judicial review of decisions, and (3) to ensure that all rehabilitation work on historic preservation tax credit projects meets the Secretary of the Interior's "Standards for Rehabilitation".

R212-11-3. Applicability.

This rule applies to all applications and proceedings under Sections 59-7-609 and 59-10-108.5.

R212-11-4. Definitions.

As used in this rule:

(1) "State Historic Preservation Office" means the Office of Preservation within the Division of State History known hereafter as Office.

(2) "Director" means the Director of the Division of State History.

(3) "Office" means the Office of Historic Preservation within the Division of State History.

(4) "Division" means the Division of State History.

(5) "Historic Preservation Tax Credit" means any tax credit allowed by the Utah State Tax Commission pursuant to Sections 59-7-609 or 59-10-108.5.

(6) "Project" means the entire scope and course of work on any building and accompanying site for which an applicant is seeking the historic preservation tax credit.

(7) "Applicant" means any person or entity that is seeking an historic preservation tax credit.

(8) "Standards" means the Secretary of Interior's "Standards for Rehabilitation" as promulgated under the authority of the National Historic Preservation Act 1966 as amended, 16 USC Section 470 et seq.

(9) "National Register" means the National Register of Historic Places maintained pursuant to the National Historic Preservation Act of 1966, as amended, 16 USC Section 470 et seq.

(10) "Anticipatory construction, demolition, or alteration" means any rehabilitation-related action that does not meet the "Standards" taken with prior knowledge and in intentional disregard of the "Standards" or after having received Division comments.

R212-11-5. Application for Historic Preservation Tax Credit.

(1) Any person or entity seeking the historic preservation tax credit shall, prior to completion of the rehabilitation project, apply to the Office for certification of historic significance and approval of the proposed or on-going rehabilitation work. The applications shall be on forms approved by the Office. The applicant shall complete the applications in whole and shall provide all other information requested relative to the project including adequate pre-rehabilitation photographs and other required documentation.

(2) The Office shall consult with the applicant and provide historic and technical advice and assistance subject to budgetary and management constraints, as necessary to assist the applicant

in applying for the historic preservation tax credit. The Office shall review the application within thirty days of receipt to determine if the proposed or on-going rehabilitation work meets the "Standards".

(3) If the Office determines the project meets the "Standards" and that no anticipatory construction, demolition, or alteration has occurred, the Office shall provide the applicant with written approval of the proposed or on-going work along with any further comments or conditions deemed necessary.

(4) If after full consultation the Office determines the project does not meet the "Standards", that anticipatory construction, demolition, or alteration has occurred, or the building is not a certifiable historic building, the Office shall notify the applicant in writing of the decision, set forth the basis of the decision, and detail the process to appeal the decision. The applicant or other interested party may request a review of the decision as set forth in R212-11-9.

R212-11-6. Execution of Project.

(1) During the course of the project, the Office shall be available for continuing consultation subject to budgetary and management constraints. If the applicant desires to modify the approved work plan, the applicant shall make such request for a change on a form approved by the Office and shall be governed by the provisions of R212-11-5.

(2) The applicant shall allow access and observation of the project building at any reasonable time upon request of the Office.

R212-11-7. Certification of Completed Work.

(1) Upon completion of the project, the applicant shall request certification of completed work in writing on a form approved by the Office and shall provide all other information requested by the Office relative to the project. The applicant shall allow access to the project for final observation by the Office if necessary in determining if the work conforms with the approved plan.

(2) At this time the applicant shall also submit a complete National Register nomination if the building is not already listed in the National Register as set forth in R212-11-10.

(3) The final Office review shall be in writing and shall be forwarded to the applicant within thirty days of receipt of a complete application.

R212-11-8. Issuance of Authorization Form and Certification Number.

If the Office determines the work was completed in accordance with the approved plan and meets the "Standards", the Office shall issue an authorization form provided by the Utah State Tax Commission, including the unique certification number. If any request for review is sought, the Office shall not issue the authorization form or unique certification number unless and until the review results in approval of the project.

R212-11-9. Request for Review and Appeal Proceedings.

(1) All proceedings under R212-11 with regard to the historic preservation tax credit are informal.

(2) The applicant or any interested person may seek review of the decision of the Office by filing a request for review with the Director. The request for review shall set forth in detail that portion of the decision of the Office for which review is sought, and on what basis the decision was inconsistent with the facts or "Standards". Copies of the request for review shall be sent to the applicant and to any other party who has expressed interest in the proceeding as appropriate. Any such request for review must be filed with the Director within 30 days of the decision of the Office.

(3) The applicant or any interested person may file with the Director a response to the request for review within fifteen

days of notification.

(4) Review of the Office decision shall be made by the Director and shall be based on review of the project file, the request for review, and responses, if any. The Director may conduct an independent investigation and request further information from the Office staff, applicant, or any other party to the project. In addition, the Director may, at his/her sole discretion, conduct an informal hearing on the review.

(5) Within thirty days of receipt of the request for review, the Director shall issue his/her decision based on review of the project file and the information received at a hearing or from other sources, if any. The Director shall set forth in writing his/her decision concerning the request for review and forward it to the applicant and other interested parties.

(6) Judicial review of the decision of the Director may be obtained by filing a complaint in the Third Judicial District Court in Salt Lake County seeking review by a trial de novo. The issue in the district court is whether the decision of the Director constituted an abuse of his/her discretion. The person or entity seeking judicial review shall have the burden of proof that the decision of the Director constituted an abuse of his/her discretion.

R212-11-10. Noncertified Historic Buildings.

(1) If the project building is not listed in the National Register at the time of the application for certification of completed work, the applicant shall submit a complete National Register nomination form to the Office. The Office shall review the nomination for completeness and forward it to the Board of State History according to requirements of 36 CFR 60 and applicable policies for evaluation and action.

(2) If the project building is located in a National Register Historic District and the building has not been designated by the Division as being of significance to the district at the time of application for certification of completed work, the applicant shall submit a request for designation to the Office. The request shall be on a form approved by the Office. The Office shall review the request for completeness and determine if the project building is of significance to the district.

KEY: preservation, tax credits, rehabilitation, housing
January 2, 1996 59-7-609
Notice of Continuation June 30, 2005 59-10-108.5
9-8-205

R212. Community and Culture, History.**R212-12. Computerized Record of Cemeteries, Burial Locations and Plots, and Granting Matching Funds.****R212-12-1. Scope and Applicability.**

To provide grants to assist cemeteries, computerize their records, and to develop a centralized database of names, dates of death, burial locations, and other information. This data base will include data on individuals interred in cemeteries and burial locations where a previous record exists regarding the burial in accordance with UCA 9-8-203(3)(c).

R212-12-2. Definitions.

1. "Board" means the Board of State History.
2. "Burial locations" means locations of human burials outside of established cemeteries where written records exist on the deceased.
3. "Burial Plot" means the burial location of an individual within a cemetery.
4. "Cemeteries" means formal groupings of burial locations, including public and private facilities, whether abandoned or currently used and maintained.
5. "Director" means the Director of the Division of State History.
6. "Division" means the Division of State History.
7. "Eligible Organizations" means cemeteries, genealogical associations, and other nonprofit groups interested in cemeteries and burial locations.
8. "GIS" means Geographic Information System. A system that links information to geographic locations.
9. "In kind" means volunteer hours, labor, equipment, etc., to match grant contributed after July 1, 1997.
10. "Matching grants" means grants made to eligible organizations that are matched, ordinarily on a fifty/fifty basis, through cash or in kind.
11. "Record" means existing record of name and other available information on the interred individual.
12. "Computerized record" means an electronic version of a record meeting the standards established by the Division.

R212-12-3. Application and Distribution of Funds.

Eligible organizations may apply for matching grants on a form approved by the Division. Matching grants shall be provided to the extent that funding is available. No grant will be awarded to any single cemetery for more than \$10,000. Larger cemeteries needing more than \$10,000 may reapply in phases. Successful applicants may request fifty percent of the funds at the time of approval of the contract. The second fifty percent will be distributed upon receipt of acceptable final report and computerized records in the format agreed upon.

Grants will be allocated to applying eligible organizations on a first come, first served basis. The Division will award the grants and provide a list of successful applicants to the Board.

R212-12-4. Reports and Deliverables.

The grantee must submit complete computer files for the project in a format approved by the Division. The Division may verify the accuracy of the information prior to making final payment. In addition, a final report shall be completed by the grantee in a format designated by the Division. The report shall include a summary of the project, an accounting of matching share contributions, and a request for final payment.

KEY: burial, cemetery, plots

November 4, 2002

9-8-203(3)(c)

Notice of Continuation September 10, 2002

R223. Community and Culture, Library.**R223-1. Adjudicative Procedures.****R223-1-1. Authority and Purpose.**

The State Library Division, Department of Community and Culture, State of Utah, hereby declares, in accordance with Utah Code Annotated Section 63-46b-4(2), that all programs, actions, or proceedings carried out under the authority of the State Library Division by State Library Division personnel which require adjudicative procedures in accordance with the provisions of the Utah Administrative Procedures Act, Utah Code Annotated Title 63, Chapter 46b, shall be conducted informally according to the provisions of rules adopted under Utah Code Annotated 63-46b-4 and 63-46b-5.

R223-1-2. Procedures.

The requirement that all adjudicative procedures be conducted informally shall apply to all current programs, actions, or proceedings for which adjudicative procedures are required and to all future programs, actions, or proceedings carried out under the authority of the State Library Division for which adjudicative procedures are required.

KEY: administrative procedures, adjudicative procedures, informal procedures

1988

Notice of Continuation November 5, 2002

63-46b-4

63-46b-4(2)

63-46b-5

R223. Community and Culture, Library.**R223-2. Public Library Online Access for Eligibility to Receive Public Funds.****R223-2-1. Authority and Policy.**

(1) The Utah State Library Division, Department of Community and Culture, State of Utah, hereby adopts this rule in accordance with Sections 63-46a-1 et seq., and 9-7-213, 9-7-215, and 9-7-216 for the purpose of determining public library eligibility to receive state funds.

(2) For a public library that offers public access to the Internet to retain eligibility to receive state funds, the Library Board shall adopt and enforce a Policy that meets the process and content standards defined in 9-7-216.

R223-2-2. Definitions.

In addition to the terms defined in Section 9-7-101, and 9-7-215:

(1) "Minor" means any individual younger than 18 years of age.

R223-2-3. Reporting.

(1) Each Library Board shall submit a copy of its Policy to the Director of the State Library Division no later than July 1, 2001, accompanied by a letter signed by the Library Director and Library Board Chair affirming that the Policy was adopted in an open meeting, that notice of the Policy's availability has been posted in a conspicuous place within the library, and that the Policy is intended to meet the provisions of this rule and Sections 9-7-213 and 9-7-215.

(2) All documents submitted shall be classified as public records in accordance with the Government Records Access and Management Act (Title 63, Chapter 2).

R223-2-4. State Library Administrative Procedures.

(1) The State Library Division shall review all public library policies received by July 1, 2001, for compliance with this rule.

(2) The Director of the State Library Division shall issue notices of compliance or non-compliance within 30 days following the receipt of the policy. Any library not submitting a policy shall receive a notice of non-compliance.

(3) Appeals to the notice of non-compliance shall be submitted in writing, within 30 days of the date of the notice, to the Executive Director of the Department of Community and Economic Development, who shall respond within 30 days.

(4) A public library receiving a notice of non-compliance shall not be eligible to receive state funds until the condition(s) upon which the notice of non-compliance is based are corrected and a notice of compliance is received.

(5) A public library in compliance shall be eligible to receive state funds in state fiscal year 2002 and subsequent years, as long as a current Policy is resubmitted to the State Library Division no later than July 1, 2004, and every three years thereafter.

(6) A public library otherwise in compliance with the provisions of this rule shall not lose eligibility to receive state funds unless a complaint submitted to the Library Board under its Policy results in a ruling from a court of law that a minor has accessed obscene material expressly due to insufficient enforcement of the Policy by the local library.

KEY: libraries, public library, Internet access**September 8, 2004****9-7-213****Notice of Continuation November 7, 2005****9-7-215****9-7-216****20 U.S.C. Sec. 9101**

R230. Community and Culture, Indian Affairs.**R230-1. Native American Grave Protection and Repatriation.****R230-1-1. General Policy Statement Regarding Native American Burials.**

1. Native American burials are regarded as spiritual and sacred ceremonies where the deceased is prepared for their journey into the next dimension of life. Once the deceased, the grave and the funerary objects are blessed, consecrated and dedicated to the care and keeping of the creator the burial site is then considered "holy ground," never to be disturbed.

2. Native American burial sites discovered on state lands must not be disturbed except as allowed by this rule and other applicable law. Any disturbances that are allowed should be conducted in a manner that minimizes desecration of the site.

R230-1-2. Purpose.

1. This rule provides procedures designed to preserve the sacred nature of Native American burials by protecting Native American burial sites and insuring that the final disposition of unidentified Native American remains, discovered on state lands, shall be in keeping with that sacred nature.

R230-1-3. Authority.

1. This rule is authorized under Section 9-9-403 and Section 9-9-405, the Native American Grave Protection and Repatriation Act and Section 9-9-104(2)(c).

R230-1-4. Definitions.

1. Terms used in this rule are defined in Section 9-9-402.
2. In addition, as used in this rule "agency" means the state agency having primary management authority over the land where Native American remains are found.
3. "Committee" means the Native American Remains Review Committee.
4. "Director" means the Director of the Division of Indian Affairs.
5. "Division" means the Division of Indian Affairs.
6. "Scientific testing" means physical or chemical tests such as radiocarbon dating and DNA analysis, performed by a qualified technician to determine the age, ethnicity or any other pertinent information.

R230-1-5. Scope and Applicability.

1. This rule applies to all Native American remains found on state lands.

R230-1-6. Duties Upon Discovery of Remains.

1. Remains are to be treated at all times with dignity and respect. Any person who discovers a dead body shall not damage the body and shall not disinter or remove the body without proper authority. Any person who discovers a dead body shall report the discovery to a local law enforcement agency. A violation of these rules may constitute a criminal offense and may subject the offender to criminal sanctions under Section 76-9-704.

2. Any person or entity who discovers Native American remains must cease all activity which might disturb the remains and take reasonable steps to protect the discovered remains. Such steps may include, but are not limited to, restoring the site to its original condition or otherwise securing and protecting the site to prevent any possible desecration or destruction.

3. If it is unclear whether the remains are of Native American origin upon a cursory examination, the agency must take reasonable steps to determine the ethnicity of the remains.

a. The agency may further investigate the ethnicity by retaining the services of a qualified archeologist to conduct a physical examination of the remains.

b. If a physical examination of the remains is not sufficient

to determine ethnicity, the agency may seek an excavation permit by the Division of State History pursuant to Section 9-8-305 in order to conduct limited excavation to search for associated funerary objects.

c. If no other method of investigation is sufficient to determine ethnicity, the agency may allow limited scientific testing on the remains, by the least intrusive and least destructive means possible to determine ethnicity.

4. Any person or entity who discovers Native American remains on state land must promptly notify the Division by telephone. As soon as is reasonably possible, but not later than five business days, written notification of the discovery must also be provided.

a. Written notification shall include a detailed description of what was found, the place where the remains were found, the conditions under which the person discovered the remains and any other facts that may help identify the remains.

b. Written notification shall be provided to:

- i. the state agency having management authority over the land where the remains were discovered;
- ii. the Division of Indian Affairs; and
- iii. the Division of State History.

R230-1-7. Resumption of Activity.

1. The activity in which the remains were discovered or any further excavation may not resume until a plan for the preservation of the remains has been adopted by the Director, in consultation with the entity who discovered the remains, the agency, and a designated representative from the Division of State History.

a. Preference shall be given to a plan which provides for restoration of the site to its original condition and discontinuing all activity in the area to limit any further disturbance of the site.

b. If it is not feasible to discontinue the activity, excavation may continue pursuant to a permit issued under Section 9-8-305 and in accordance with a plan designed to minimize any further desecration of the remains.

2. The consultation shall take place as soon as reasonably possible after the Director and the agency have been notified of the discovery. The authority to determine the disposition and treatment of remains shall not be exercised in a manner that would unreasonably delay completion of a construction project or any other project.

3. Activity may not resume until the Director has been given reasonable notice of when the planned excavation shall take place and the Director or his designee has the opportunity to be present at the excavation.

a. The cost of the excavation shall be borne by the party requesting the excavation.

b. If the remains are excavated and ownership has not yet been determined, the Division may take temporary possession of the remains pending a final determination of ownership.

R230-1-8. Notification of Possible Owners of the Remains.

1. Once the Division has been notified of the discovery of Native American remains, the Director shall notify any known or possible lineal descendants.

2. If no lineal descendants can be ascertained, the Division shall notify all Indian tribes and Navajo tribal chapters located in Utah and any other interested parties who have requested notification and have designated a contact person.

3. Notice to the tribes shall include a request that the tribes take reasonable steps to notify their members of the discovery and of the process and time limits for filing a claim by posting the notice in a public place and/or by including it in tribal news media.

4. Any interested party may request notification of the discovery of Native American remains by sending a letter to the Division, specifying a contact person to be notified in the event

of a discovery and an address where they can be reached.

R230-1-9. Claims of Ownership.

1. Lineal descendants or Indian tribes may assert a claim of ownership for the remains by notifying the Division of their claim within sixty days from the date that notification is sent out by the Division.

R230-1-10. Determination of Ownership.

1. When only one claimant has asserted a claim of ownership, the Committee shall request a written petition from the claimant, substantiating the claim. If the claimant makes a substantial showing of lineal descent or cultural affiliation with the remains, the Committee may grant ownership or control of the remains to that claimant.

2. When two or more claims have been submitted, the determination of ownership shall be made in an informal proceeding which shall comply with Section 63-46b-0.5 et seq., the Utah Administrative Procedures Act.

R230-1-11. Dispute Resolution of Competing Claims.

1. After the expiration of time for claims to be submitted, the Committee shall schedule a time to hear the matter and shall notify the claimants.

2. The Committee shall conduct an informal hearing at which the competing claimants shall be allowed to testify, present evidence and comment on issues concerning their claim.

a. Lineal descent or cultural affiliation may be established by genealogical records, archeological records, oral or written history, scientific analysis, relevant Tribal records, associated funerary objects and any other supporting material.

b. If the evidence presented at the hearing is not sufficient to resolve the disputed claims or enable the Committee to make a recommendation of ownership, upon a majority vote of the Committee, scientific testing may be permitted to determine ethnicity.

3. The Committee shall attempt to facilitate a settlement of the dispute and shall grant ownership to the claimant that has shown the closest lineal descent, or if none, to the tribe that has shown the strongest genetic or cultural relationship with the remains by a preponderance of the evidence.

R230-1-12. Adjudication of Disputed Claims.

1. If competing claimants are unable to resolve their dispute at the informal hearing, the Committee shall issue findings relating to the identity of or the cultural affiliation of the remains and a decision of disposition.

2. A copy of the Committee's findings and decision shall be mailed to each of the claimants along with a notice explaining the procedure for seeking an appeal of the Committee's decision in the District Court.

3. If none of the claimants have filed an appeal in the District Court within 30 days, the Committee's decision shall be binding upon the parties.

R230-1-13. Disposition of Remains Once Ownership has been Determined.

1. If the remains have not been excavated, the owner of the remains may excavate the remains pursuant to Section 76-9-704, for the purpose of repatriation elsewhere or may leave the remains in place, subject to agreement by the agency.

2. If the remains have already been excavated pursuant to R230-1-6, the owner may then take possession of the remains from the Division or the agency that has temporary possession of the remains.

R230-1-14. Disposition of Unclaimed Remains.

1. When the plan that is adopted for preservation of the unclaimed remains directs that the activity be re-routed and the

site be restored, the remains may be permanently left in place upon final approval by the agency and in agreement with the Division.

2. When no claim of ownership has been made for discovered remains and the remains are excavated pursuant to R230-1-6, they shall be reinterred in the Indian Burial Repository.

R230-1-15. Scientific Investigation of Unclaimed Remains.

1. No scientific investigation beyond that allowed in R230-1-6 shall be conducted on unclaimed remains except upon written permission granted by the Committee.

**KEY: Indian affairs, state lands, Native American remains
February 7, 1996**

9-9-104

Notice of Continuation February 1, 2001

9-9-403

9-9-405

R251. Corrections, Administration.**R251-102. Release of Communicable Disease Information.****R251-102-1. Authority and Purpose.**

- (1) This rule is authorized under Section 64-13-36(3)(a).
- (2) The purpose of this rule is to designate the persons who will be permitted access to information in Department of Corrections inmate medical files.

R251-102-2. Definitions.

- (1) "AIDS" means Acquired Immunodeficiency Syndrome.
- (2) "Communicable Disease" means any of a group of diseases easily transmitted from one person to another.
- (3) "HIV" means Human Immunodeficiency Syndrome.
- (4) "inmates" means offenders in the secure facilities of the Department.

R251-102-3. Access to Information in Medical Files.

- (1) Information in an inmate's medical file may include:
 - (a) results of tests conducted for communicable diseases, including AIDS and HIV; and
 - (b) information self-admitted by an inmate.
- (2) The Department shall provide information regarding communicable diseases to:
 - (a) the Board of Pardons and Parole;
 - (b) designated Department Adult Probation and Parole agents; and
 - (c) other Department employees, if necessary, based on legitimate penological interests as determined by a division director in consultation with Clinical Services.

KEY: medical records, communicable diseases**January 4, 2001****64-13-10****Notice of Continuation December 6, 2005**

R251. Corrections, Administration.**R251-109. Sex Offender Treatment Providers.****R251-109-1. Authority and Purpose.**

- (1) This rule is authorized by Section 76-5-406.5.
- (2) The purpose of the rule is to define the criteria and guidelines for the standards, application and approval process, and program requirements for sex offender treatment providers.

R251-109-2. Definitions.

- (1) "Approved provider status" means status as a provider for sex offender services through the Utah Department of Corrections.
- (2) "Affiliate approval" means approval of a professional who does not meet experience requirements and is seeking to become approved as a provider.
- (3) "Direct clinical experience" means face-to-face contact with patients/clients, direct supervision, training, case coordination and research.
- (4) "Formal training" means education and/or supervised experience in the required field; may be provided at an accredited college or university or at seminars or conferences.
- (5) "Full disclosure" means the complete discussion during treatment of all previous adjudicated and unadjudicated sexual offenses.
- (6) "Provider" means a therapist who has been approved by the Department to provide services to sex offenders under the jurisdiction of the Utah Department of Corrections.
- (7) "Provider supervision" means one hour of supervision for every 40 hours of direct client contact with a minimum of one hour supervision per month.
- (8) "Screening committee" means group of Department of Corrections employees assigned to screen and approve applications from providers to provide sex offender treatment.
- (9) "SO" means sex offender.
- (10) "SOP" means Sex Offender Program.
- (11) "Transition program" means program designed to help offenders move from residential to non-residential treatment; also to help them move from intensive to progressively less intensive treatment.
- (12) "UDC" means Utah Department of Corrections.

R251-109-3. Provider Standards and Requirements.

It is the policy of the Department that:

- (1) all potential providers of sex offender treatment shall be screened to ensure they meet the specific established standards and qualifications for providers of sex offender treatment;
- (2) providers shall have a basic requirement that full disclosure of all criminal sexual behavior by the offender is a basic requirement for successful completion of therapy;
- (3) approved providers must reapply to UDC every three years to renew their approved provider status;
- (4) providers shall have a current Utah license to practice therapy in a mental health profession which shall include:
 - (a) psychiatry;
 - (b) psychology;
 - (c) social work; or
 - (d) marriage and family therapy;
- (5) providers' education shall include:
 - (a) a master's or doctorate degree from a fully accredited college or university in:
 - (i) social work;
 - (ii) psychology; or
 - (b) a medical doctor if board certified/eligible psychiatrist; or
 - (c) a doctor of osteopathy if board certified/eligible psychiatrist;
- (6) within four years immediately preceding application for approval, the provider shall have at least 2,000 hours of

direct clinical experience in sex offender treatment, which include:

- (a) at least 500 hours of sex offender evaluation experience; and
- (b) at least 1,000 hours of sex offender treatment experience;
- (7) within three years immediately preceding application, the provider shall have received at least 40 hours of sex offender specific formal training;
- (8) licensed professionals and professionals in graduate training and/or post graduate residency who do not meet the experience and training requirements may apply for affiliate approval;
- (9) affiliate approval shall require that the applicant arrange for ongoing provider supervision of therapy by an approved provider;
- (10) affiliates may provide services as part of a degree program leading to licensure;
- (11) required training may be obtained through approved:
 - (a) documented conferences;
 - (b) symposia;
 - (c) seminars; or
 - (d) other course work;
- (12) the training shall be directly related to the treatment and evaluation of sex offenders;
- (13) the training may include:
 - (a) behavioral/cognitive methods;
 - (b) reconditioning and relapse prevention;
 - (c) use of plethysmograph examinations;
 - (d) use of polygraph examinations;
 - (e) group therapy;
 - (f) individual therapy;
 - (g) sexual dysfunction;
 - (h) victimology;
 - (i) couples and family therapy;
 - (j) risk assessment;
 - (k) sexual addiction;
 - (l) sexual deviancy; and
 - (m) ethics and professional standards;
- (14) prior to and during approval, all providers must agree to abide by reporting and other requirements established by UDC and the laws and statutes of the state of Utah;
- (15) reporting requirements shall include the offender's:
 - (a) progress in therapy;
 - (b) prognosis; and
 - (c) risk to the community; and
- (16) failure to comply with reporting requirements may result in a provider being removed from the approved list.

R251-109-4. Application Process.

- (1) All individuals providing services are required to be approved.
- (2) Each applicant shall provide all of the required documentation at the time of submission. If not, the packet shall be returned to the provider.
- (3) Individuals or affiliates who are supervised by an approved individual or agency may begin providing services pending approval once UDC receives their application packet.
- (4) Reapplication shall include:
 - (a) documentation demonstrating continuing education and training in sex offender specific treatment of not less than forty hours every three years;
 - (b) current licensure with the state of Utah;
 - (c) hours of therapy/supervision per year provided; and
 - (d) information on any changes in modality of treatment.
- (5) Failure to reapply shall result in the provider being removed from the approved provider list.

R251-109-5. Approval Process.

(1) It is the policy of UDC that all therapists providing services to sex offenders under the jurisdiction of UDC shall have been reviewed and approved by UDC.

(2) Approval may be suspended by either the provider or UDC.

(3) A provider shall be removed from the list of approved providers by written request to UDC.

(4) UDC may suspend approval for:

- (a) failure to reapply;
- (b) failure to comply with provider protocol;
- (c) suspension of clinical licensure;
- (d) failure to meet provider standards; or
- (e) criminal conviction; or

(f) other legitimate penological reasons as determined by the division director.

(5) Providers who are not approved may appeal that decision to the screening committee within thirty days of denial.

(6) Appeals must contain specific documentation of why the denial was inaccurate.

R251-109-6. Program Requirements.

(1) It is the policy of UDC that each provider meet certain accepted standards for treatment of sex offenders.

(2) Treatment programs for sexual offenders convicted of crimes against persons shall have the following intake components available:

(a) complete psycho-sexual evaluation, to include:

- (i) sex offender specific testing;
- (ii) assessment of personality and intelligence using testing instruments recognized in the treatment community as valid tools; and

(iii) penile plethysmograph testing, with stimuli which conforms to state statute, for male offenders and polygraph examinations for female offenders to determine arousal patterns and establish baselines.

(3) Polygraph examination shall be used for male offenders when deemed appropriate by the provider or UDC staff.

(4) Following assessment, the provider shall submit a written report to UDC staff including:

- (a) findings of testing including specifics on offender's risk to community safety;
- (b) the offender's suitability for treatment;
- (c) a proposed treatment plan; and
- (d) the cost to the offender.

(5) The standard treatment shall include:

- (a) sex offender groups;
- (b) individual therapy;
- (c) psycho-educational classes;
- (d) ongoing transition program; and
- (e) a minimum of one monthly progress report to UDC staff.

(6) An intensive treatment program shall be available which includes:

- (a) two weekly sex offender group sessions;
- (b) individual weekly session;
- (c) psycho-educational classes;
- (d) on-going transition program; and
- (e) a minimum of one monthly progress report to UDC staff.

(7) Intensive treatment shall be conducted on a minimum of three different days per week.

(8) When treatment is terminated unsuccessfully, the provider shall:

- (a) notify UDC staff prior to termination; and
- (b) provide a written report to the UDC staff within seven days of termination, addressing:
 - (i) reason for termination;
 - (ii) progress of the offender to date;

- (iii) prognosis of the offender; and
- (iv) the offender's risk to community.

(9) When treatment is terminated successfully, the provider shall:

(a) notify UDC staff of the recommendation to terminate therapy; and

(b) provide a written report to UDC staff addressing:

- (i) issues addressed in therapy;
- (ii) the offender's compliance with the treatment plan;
- (iii) progress made by the offender;
- (iv) prognosis of the offender; and
- (v) results of a current (less than 90 days old), if appropriate, plethysmograph or polygraph.

(10) As requested, the provider shall submit written reports to UDC, courts and the Board of Pardons and Parole, as applicable.

(11) With reasonable notification, therapists shall appear in court or before the Board of Pardons and Parole as needed.

**KEY: mental health, psychiatric personnel, psychotherapy
April 5, 1996**

64-13-10

Notice of Continuation December 6, 2005

R251. Corrections, Administration.**R251-110. Sex Offender Registration Program.****R251-110-1. Authority and Purpose.**

- (1) This rule is authorized under Section 77-27-21.5.
- (2) The purpose of the rule is to define the registrant requirement and process for obtaining sex offender registration information.

R251-110-2. Definitions.

- (1) As used in this section:
 - (a) "Department" means Utah Department of Corrections;
 - (b) "registrant" means any individual who is registered under UCA 77-27-21.5; and
 - (c) "Sex Offender Registration Unit" means the unit of the Department assigned to manage the state's sex offender registration program, sex offender information files and disseminate information on sex offenders.

R251-110-3. Registrant Requirements.

- (1) A sex offender as defined under Section 77-27-21.5 shall adhere to the provisions in stated code.
- (2) Registrants shall sign the Utah Sex Offender Registration Form and the Sex Offender Address Form upon each request.

R251-110-4. Public Access to Sex Offender Registry.

- (1) If members of the public do not have access to the sex offender registry website, they may request sex offender registration information from the Department's Sex Offender Registration Unit.
 - (a) Requests may be in writing with a return address and telephone number.
 - (b) Requests shall be sent to the Utah Department of Corrections, Sex Offender Registration Unit, 14717 S. Minuteman Drive, Draper, Utah 84020.
 - (c) If a requestor changes his residence after having submitted a request, but prior to receiving a response from the Department, it is the requestor's obligation to file another request with a current return address and telephone number.
 - (d) Members of the public may request information by telephone.

R251-110-5. Instructions for Use of the Information.

- (1) Information compiled for this registry may not be used to harass or threaten sex offenders or their families.
- (2) Harassment, stalking, or threats are prohibited and doing so may violate Utah criminal law.

KEY: sex crimes, notification

March 21, 2003

Notice of Continuation December 6, 2005

64-13-10

77-27-21.5

R251. Corrections, Administration.**R251-301. Employment, Educational or Vocational Training for Community Correctional Center Offenders.****R251-301-1. Authority and Purpose.**

(1) This rule is authorized by Sections 63-46a-3, 64-13-10 and 64-13-14.5.

(2) The purpose of this rule is to provide the requirements for employers who employ offenders. This rule also provides the requirements for offenders' participation in an educational or vocational training program.

R251-301-2. Definitions.

(1) "Center" means a community correctional halfway house facility designed to facilitate an offender's readjustment to private life.

(2) "Educational or vocational training" means that an offender is participating or is enrolled in an educational or vocational training program that is recognized as being fully accredited by the state, which includes academic, applied-technology or correspondence courses, and in which the student is matriculated or has declared intent to be involved in program-completion or degree-attainment within a reasonable period of time.

(3) "Minimum wage" means compensation paid for hours worked in accordance with federally established guidelines.

(4) "Offender" means a person under the jurisdiction of the Department of Corrections residing in a community correctional center.

R251-301-3. Policy.

It is the policy of the Department that:

(1) Center offenders should be employed or participate in educational or vocational training on a full-time basis;

(2) offenders participating in educational or vocational training should have sufficient means to meet their financial obligations; and

(3) employers and offenders shall be informed in writing of the Center's rules governing employment, including:

(a) Offenders shall be accountable for all time spent away from the Center;

(b) employers shall contact Center staff when they need the offender to work overtime or work on a day off;

(c) offenders shall not consume alcoholic beverages;

(d) offenders shall have legitimate employment and shall not be allowed to work for less than the prevailing minimum wage, nor under substandard conditions;

(e) employers shall contact Center staff if the offender terminates or is terminated from his position, is excessively late, or leaves work early;

(f) offenders shall not borrow money nor secure an advance in salary without prior approval of Center staff;

(g) offenders shall notify employers of illness, absence or tardiness;

(h) Center staff shall contact the employer periodically to monitor the offender's performance and to verify the offender's work hours;

(i) within two weeks, employers shall send to the Center staff a signed acknowledgment of the rules and willingness to notify Center staff of any violations; and

(j) employers shall contact Center staff with any questions or concerns.

KEY: corrections, halfway houses, training**March 13, 2001****63-46a-3****Notice of Continuation December 6, 2005****64-13-10****64-13-14.5**

R251. Corrections, Administration.**R251-709. Transportation of Inmates.****R251-709-1. Authority and Purpose.**

(1) This rule is authorized under Section 64-13-10.

(2) This rule addresses requirements regarding the transportation of inmates in order to provide for public safety and the security of inmates under the jurisdiction of the Department.

R251-709-2. Definitions.

"Restraint" means handcuffs, handcuff cover, locking devices, leg irons, waist chains or other locking and restraining devices.

"Run" means any transport of an inmate off prison property.

R251-709-3. Policy.

It is the policy of the Department that during the transportation of inmates the primary goal is to ensure adequate security to prevent escapes and to prevent harm to officers or other persons.

R251-709-4. Court Transportation.

(1) Inmates shall not be allowed to visit with relatives, friends or members of the general public during transportation, while in a medical facility, courtroom, or while waiting, in transit to or from a medical facility or courtroom.

(2) Requests from attorneys to detain or temporarily relocate inmates for consultations, visits with spouse, parents, or other family members, shall be denied unless the presiding judge specifically orders the visits.

(3) Attorneys requesting consultation with inmates after a hearing may do so for five minutes in a court holding cell unless the presiding judge specifically orders otherwise.

(4) The inmate's attorney may provide civilian clothing for inmates appearing in a jury trial.

R251-709-5. Medical Security Procedures.

(1) The transportation officer shall maintain custody of the inmate at all times during medical transportation runs. Exceptions may be made when dealing with inmates of the opposite sex during compromising procedures, (i.e., pap smears, mammograms, etc.). When an exception is made, the officer shall remain immediately outside the door (if there are no windows or other escape routes in the room) or on the opposite side of the privacy curtain.

(2) The transportation officer shall remove a particular restraint upon the doctor's orders if the removal of that restraint is required to perform a medical procedure; only that particular restraint shall be removed and it shall be immediately reapplied upon completion of the medical procedure.

(3) Except in life-threatening emergencies, the transportation officer shall not assist nor participate in any medical procedure or other assistance to patients or inmates.

R251-709-6. Transporting by Air.

When transporting by air, the transportation lieutenant, captain, or chief shall contact the transporting airline prior to the transportation run to confirm their policies regarding inmate restraints, boarding and alighting policies, firearms on the aircraft, and other inmate transportation issues.

KEY: prisons, corrections, security measures

May 15, 2001

64-13-10

Notice of Continuation December 6, 2005

R277. Education, Administration.**R277-507. Driver Education Endorsement.****R277-507-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Endorsement" means a stipulation appended to a license setting forth the areas of practice to which the license applies.
- C. "Level 1 License" means a license issued upon completion of an approved educator preparation program or an alternative preparation program or pursuant to an agreement under the NASDTEC Interstate Contract to candidates who have also met all ancillary requirements established by law or rule.
- D. "Level 2 License" means a license issued after satisfaction of all requirements for a Level 1 license as well as any additional requirements established by law or rule relating to professional preparation or experience.
- E. "Level 3 License" means a license issued to an educator who holds a current Utah Level 2 license and has also received, in the educator's field of practice, National Board certification or a doctorate from an accredited institution.
- F. "NASDTEC" means the National Association of State Directors of Teacher Education and Certification.
- G. "NASDTEC Interstate Contract" means the contract implementing Title 53A, Chapter 6, Part 2, Compact of Interstate Qualification of Educational Personnel, which is administered through NASDTEC and which provides for reciprocity of educator licences among states.
- H. "USOE" means the Utah State Office of Education.

R277-507-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution which vests the general control and supervision of the public school in the State Board of Education, by Section 53A-1-402(1)(a) which directs the Board to make rules regarding the licensure of educators, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and by Section 53A-13-208 which directs the Board to establish procedures and standards to license teachers of driver education classes as driver license examiners.

B. The purpose of this rule is to establish standards and procedures for high school teachers to qualify for the driver education endorsement.

R277-507-3. Endorsement Requirements.

A. The driver education endorsement shall be added to the Level 1, 2, or 3 license provided:

- (1) the individual has a valid and current Level 1, 2, or 3 license with an area of concentration in one or more of the following: Secondary Education, Special Education and/or School Counselor;
- (2) the individual has a valid Utah automobile operator's license; and
- (3) the beginning teacher has no convictions for a moving violation or chargeable accident on record for which a driver license was suspended or revoked for the two year period immediately prior to employment.

B. In order for a high school driver education teacher to be certified as a driver license examiner by the Driver License Division of the Department of Public Safety, the teacher shall first be licensed and endorsed by the USOE.

C. A high school driver education teacher shall have professional preparation which includes the following:

- (1) sixteen (16) semester hours in the area of driver and safety education;
- (2) of the 16 hours required:
 - (a) a minimum of twelve (12) semester hours shall be in the area of driver and safety education, including a practicum covering classroom, on-street, simulator, and driving range instruction; and

(b) a minimum of three (3) semester hours shall be selected from areas of related safety work; and

(c) a minimum of one (1) semester hour of current/valid first aid and CPR training.

D. A high school driver education teacher after meeting the criteria of Subsection 3, shall obtain a valid and current certificate from the Driver License Division to administer knowledge and driving skills test, as required by and specified in 53A-13-208.

R277-507-4. Driver Education Program Standards.

The teacher preparation program of an institution may be approved by the Board if it requires demonstrated competency by the teacher in:

- (1) structuring, implementing, identifying and developing support materials related to regular classroom, multimedia, driving simulation, off-street multiple car driving range, and on-street experiences;
- (2) assisting students in examining and clarifying their attitudes and values about safety;
- (3) understanding and explaining the basic principles of motor vehicle systems, dynamics, and maintenance;
- (4) understanding and explaining the interaction of all highway transportation system elements;
- (5) initiating emergency procedures under varying circumstances;
- (6) motor vehicle operation and on-street instruction;
- (7) understanding and explaining the physiological and psychological influences of alcohol and other drugs especially as they relate to driving;
- (8) understanding and explaining due process in the legal system;
- (9) communicating effectively with federal, state, and local agencies concerning safety issues;
- (10) understanding and explaining the frequency, severity, nature and prevention of accidents related to driving which occur in various age groups in various life activities; and
- (11) understanding and explaining the UTAH DRIVER HANDBOOK, prepared by the Driver License Division.

R277-507-5. Endorsement Suspension.

A. The driver education endorsement shall be immediately suspended and the previously-endorsed individual shall not be allowed to teach driver education following a conviction for a moving violation, alcohol-related or chargeable accident for which an individual's driver license is suspended or revoked.

B. Once an individual's endorsement to teach has been suspended, he shall be required to maintain a driving record free of convictions for moving violations or chargeable accidents for which a driver license is suspended or revoked for a period of two years before the endorsement to teach may be reinstated.

KEY: professional education, driver education, educator licensure**December 16, 2005****Notice of Continuation April 15, 2002**

**Art X Sec 3
53A-1-402(1)(a)
53A-1-401(3)
53A-13-208**

R309. Environmental Quality, Drinking Water.
R309-600. Source Protection: Drinking Water Source Protection For Ground-Water Sources.
R309-600-1. Authority.

Under authority of Section 19-4-104(1)(a)(iv), the Drinking Water Board adopts this rule which governs the protection of ground-water sources of drinking water.

R309-600-2. Purpose.

Public Water Systems (PWSs) are responsible for protecting their sources of drinking water from contamination. R309-600 sets forth minimum requirements to establish a uniform, statewide program for implementation by PWSs to protect their ground-water sources of drinking water. PWSs are encouraged to enact more stringent programs to protect their sources of drinking water if they decide they are necessary.

R309-600 applies to ground-water sources and to ground-water sources which are under the direct influence of surface water which are used by PWSs to supply their systems with drinking water. However, compliance with this rule is voluntary for existing ground-water sources of drinking water which are used by public (transient) non-community water systems.

R309-600-3. Implementation.

(1) New Ground-Water Sources - Each PWS shall submit a Preliminary Evaluation Report (PER) in accordance with R309-600-13(2) for each of its new ground-water sources to the Division of Drinking Water (DDW). A PWS shall not begin construction of a new source until the Executive Secretary concurs with its PER.

(2) Existing Ground-Water Sources - Each PWS shall submit a Drinking Water Source Protection (DWSP) Plan in accordance with R309-600-7(1) for each of its existing ground-water sources to DDW according to the following schedule. Well fields or groups of springs may be considered to be a single source.

TABLE 1

Population Served By PWS:	Percent Of Sources:	DWSP Plans Due By:
Over 10,000	50% of wells	December 31, 1995
Over 10,000	100% of wells	December 31, 1996
3,300-10,000	100% of wells	December 31, 1997
Less than 3,300	100% of wells	December 31, 1998
Springs and other sources	100%	December 31, 1999

(3) DWSP for existing ground-water sources under the direct influence of surface water shall be accomplished through delineation of both the ground water and surface water contribution areas. The requirements of R309-600-7(1) apply to the ground water portion and the requirements of R309-605 apply to the surface water portion, except that the schedule for submitting these DWSP plans to DDW is based on the schedule in R309-605-3(1).

(4) PWSs shall maintain all land use agreements which were established under previous rules to protect their ground-water sources of drinking water from contamination.

R309-600-4. Exceptions.

(1) Exceptions to the requirements of R309-600 or parts thereof may be granted by the Executive Secretary to PWSs if: due to compelling factors (which may include economic factors), a PWS is unable to comply with these requirements, and the granting of an exception will not result in an unreasonable risk to health.

(2) The Executive Secretary may prescribe a schedule by which the PWS must come into compliance with the requirements of R309-600.

R309-600-5. Designated Person.

(1) A designated person shall be appointed and reported in writing to the Executive Secretary by each PWS within 180 days of the effective date of R309-600. The designated person's address and telephone number shall be included in the written correspondence. Additionally, the above information must be included in each DWSP Plan and PER that is submitted to DDW.

(2) Each PWS shall notify the Executive Secretary in writing within 30 days of any changes in the appointment of a designated person.

R309-600-6. Definitions.

(1) The following terms are defined for the purposes of this rule:

(a) "Collection area" means the area surrounding a ground-water source which is underlain by collection pipes, tile, tunnels, infiltration boxes, or other ground-water collection devices.

(b) "Controls" means the codes, ordinances, rules, and regulations currently in effect to regulate a potential contamination source. "Controls" also means physical controls which may prevent contaminants from migrating off of a site and into surface or ground water. "Controls" also means negligible quantities of contaminants.

(c) "Criteria" means the conceptual standards that form the basis for DWSP area delineation to include distance, ground-water time of travel, aquifer boundaries, and ground-water divides.

(d) "Criteria threshold" means a value or set of values selected to represent the limits above or below which a given criterion will cease to provide the desired degree of protection.

(e) "DDW" means Division of Drinking Water.

(f) "DWSP Program" means the program to protect drinking water source protection zones and management areas from contaminants that may have an adverse effect on the health of persons.

(g) "DWSP Zone" means the surface and subsurface area surrounding a ground-water source of drinking water supplying a PWS, through which contaminants are reasonably likely to move toward and reach such ground-water source.

(h) "Designated person" means the person appointed by a PWS to ensure that the requirements of R309-600 are met.

(i) "Engineer" means a person licensed under the Professional Engineers and Land Surveyors Licensing Act, 58-22 of the Utah Code, as a "professional engineer" as defined therein.

(j) "Executive Secretary" means the individual authorized by the Drinking Water Board to conduct business on its behalf.

(k) "Existing ground-water source of drinking water" means a public supply ground-water source for which plans and specifications were submitted to DDW on or before July 26, 1993.

(l) "Geologist" means a person licensed under the Professional Geologist Licensing Act, 58-76 of the Utah Code, as a "professional geologist" as defined therein.

(m) "Ground-water Source" means any well, spring, tunnel, adit, or other underground opening from or through which ground-water flows or is pumped from subsurface water-bearing formations.

(n) "Hydrogeologic methods" means the techniques used to translate selected criteria and criteria thresholds into mappable delineation boundaries. These methods include, but are not limited to, arbitrary fixed radii, analytical calculations and models, hydrogeologic mapping, and numerical flow models.

(o) "Land management strategies" means zoning and non-zoning strategies which include, but are not limited to, the following: zoning and subdivision ordinances, site plan

reviews, design and operating standards, source prohibitions, purchase of property and development rights, public education programs, ground-water monitoring, household hazardous waste collection programs, water conservation programs, memoranda of understanding, written contracts and agreements, and so forth.

(p) "Land use agreement" means a written agreement wherein the owner(s) agrees not to locate or allow the location of uncontrolled potential contamination sources or pollution sources within zone one of new wells in protected aquifers. The owner(s) must also agree not to locate or allow the location of pollution sources within zone two of new wells in unprotected aquifers and new springs unless the pollution source agrees to install design standards which prevent contaminated discharges to ground water. This restriction must be binding on all heirs, successors, and assigns. Land use agreements must be recorded with the property description in the local county recorder's office. Refer to R309-600-13(2)(d).

Land use agreements for protection areas on publicly owned lands need not be recorded in the local county recorder office. However, a letter must be obtained from the Administrator of the land in question and meet the requirements described above.

(q) "Management area" means the area outside of zone one and within a two-mile radius where the Optional Two-mile Radius Delineation Procedure has been used to identify a protection area.

For wells, land may be excluded from the DWSP management area at locations where it is more than 100 feet lower in elevation than the total drilled depth of the well.

For springs and tunnels, the DWSP management area is all land at elevation equal to or higher than, and within a two-mile radius, of the spring or tunnel collection area. The DWSP management area also includes all land lower in elevation than, and within 100 horizontal feet, of the spring or tunnel collection area. The elevation datum to be used is the point of water collection. Land may also be excluded from the DWSP management area at locations where it is separated from the ground-water source by a surface drainage which is lower in elevation than the spring or tunnel collection area.

(r) "New ground-water source of drinking water" means a public supply ground-water source of drinking water for which plans and specifications are submitted to DDW after July 26, 1993.

(s) "Nonpoint source" means any diffuse source of pollutants or contaminants not otherwise defined as a point source.

(t) "PWS" means public water system.

(u) "Point source" means any discernible, confined, and discrete source of pollutants or contaminants, including but not limited to any site, pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, animal feeding operation with more than ten animal units, landfill, or vessel or other floating craft, from which pollutants are or may be discharged.

(v) "Pollution source" means point source discharges of contaminants to ground water or potential discharges of the liquid forms of "extremely hazardous substances" which are stored in containers in excess of "applicable threshold planning quantities" as specified in SARA Title III. Examples of possible pollution sources include, but are not limited to, the following: storage facilities that store the liquid forms of extremely hazardous substances, septic tanks, drain fields, class V underground injection wells, landfills, open dumps, landfilling of sludge and septage, manure piles, salt piles, pit privies, drain lines, and animal feeding operations with more than ten animal units.

The following definitions are part of R309-600 and clarify the meaning of "pollution source:"

(i) "Animal feeding operation" means a lot or facility where the following conditions are met: animals have been or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period, and crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. Two or more animal feeding operations under common ownership are considered to be a single feeding operation if they adjoin each other, if they use a common area, or if they use a common system for the disposal of wastes.

(ii) "Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers; the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

(iii) "Extremely hazardous substances" means those substances which are identified in the Sec. 302(EHS) column of the "Title III List of Lists: Consolidated List of Chemicals Subject to the Emergency Planning and Community Right-to-Know Act (EPCRA) and Section 112(R) of the Clean Air Act, As Amended," (550B98017). A copy of this document may be obtained from: NCEPI, PO Box 42419, Cincinnati, OH 45202. Online ordering is also available at <http://www.epa.gov/ncepihom/orderpub.html>.

(w) "Potential contamination source" means any facility or site which employs an activity or procedure which may potentially contaminate ground water. A pollution source is also a potential contamination source.

(x) "Protected aquifer" means a producing aquifer in which the following conditions are met:

(i) A naturally protective layer of clay, at least 30 feet in thickness, is present above the aquifer;

(ii) the PWS provides data to indicate the lateral continuity of the clay layer to the extent of zone two; and

(iii) the public-supply well is grouted with a grout seal that extends from the ground surface down to at least 100 feet below the surface, and for a thickness of at least 30 feet through the protective clay layer.

(y) "Replacement well" means a public-supply well drilled for the sole purpose of replacing an existing public-supply well which is impaired or made useless by structural difficulties and in which the following conditions are met:

(i) the proposed well location shall be within a radius of 150 feet from an existing ground-water supply well, as defined in R309-600-6(1)(k); and

(ii) the PWS provides a copy of the replacement application approved by the State Engineer (refer to Section 73-3-28 of the Utah Code Annotated).

(z) "Time of travel" means the time required for a particle of water to move in the producing aquifer from a specific point to a ground-water source of drinking water.

(aa) "Unprotected aquifer" means any aquifer that does not meet the definition of a protected aquifer.

(bb) "Wellhead" means the physical structure, facility, or device at the land surface from or through which ground-water flows or is pumped from subsurface, water-bearing formations.

R309-600-7. DWSP Plans.

(1) Each PWS shall develop, submit, and implement a DWSP Plan for each of its ground-water sources of drinking water.

Required Sections for DWSP Plans - DWSP Plans should be developed in accordance with the "Standard Report Format for Existing Wells and Springs." This document may be obtained from DDW. DWSP Plans must include the following seven sections:

(a) DWSP Delineation Report - A DWSP Delineation

Report in accordance with R309-600-9(6) is the first section of a DWSP Plan.

(b) Potential Contamination Source Inventory and Assessment of Controls - A Prioritized Inventory of Potential Contamination Sources and an assessment of their controls in accordance with R309-600-10 is the second section of a DWSP Plan.

(c) Management Program to Control Each Preexisting Potential Contamination Source - A Management Program to Control Each Preexisting Potential Contamination Source in accordance with R309-600-11 is the third section of a DWSP Plan.

(d) Management Program to Control or Prohibit Future Potential Contamination Sources - A Plan for Controlling or Prohibiting Future Potential Contamination Sources is the fourth section of a DWSP Plan. This must be in accordance with R309-600-12, consistent with the general provisions of this rule, and implemented to an extent allowed under the PWS's authority and jurisdiction.

(e) Implementation Schedule - Each PWS shall develop a step-by-step implementation schedule which lists each of its proposed land management strategies with an implementation date for each strategy.

(f) Resource Evaluation - Each PWS shall assess the financial and other resources which may be required for it to implement each of its DWSP Plans and determine how these resources may be acquired.

(g) Recordkeeping - Each PWS shall document changes in each of its DWSP Plans as they are continuously updated to show current conditions in the protection zones and management areas. As a DWSP Plan is executed, the PWS shall document any land management strategies that are implemented. These documents may include any of the following: ordinances, codes, permits, memoranda of understanding, public education programs, public notifications, and so forth.

(2) DWSP Plan Administration - DWSP Plans shall be submitted, corrected, retained, implemented, updated, and revised according to the following:

(a) Submitting DWSP Plans - Each PWS shall submit a DWSP Plan to DDW in accordance with the schedule in R309-600-3 for each of its ground-water sources of drinking water.

(b) Correcting Deficiencies - Each PWS shall correct any deficiencies in a disapproved DWSP Plan and resubmit it to DDW within 90 days of the disapproval date.

(c) Retaining DWSP Plans - Each PWS shall retain on its premises a current copy of each of its DWSP Plans.

(d) Implementing DWSP Plans - Each PWS shall begin implementing each of its DWSP Plans in accordance with its schedule in R309-600-7(1)(e), within 180 days after submittal if they are not disapproved by the Executive Secretary.

(e) Updating and Resubmitting DWSP Plans - Each PWS shall update its DWSP Plans as often as necessary to ensure they show current conditions in the DWSP zones and management areas. Updated plans also document the implementation of land management strategies in the recordkeeping section. Actual copies of any ordinances, codes, permits, memoranda of understanding, public education programs, bill stuffers, newsletters, training session agendas, minutes of meetings, memoranda for file, etc. must be submitted with the recordkeeping section of updated plans. DWSP Plans are initially due according to the schedule in R309-600-3. Thereafter, updated DWSP Plans are due every six years from their original due date. This applies even though a PWS may have been granted an extension beyond the original due date.

(f) Revising DWSP Plans - Each PWS shall submit a revised DWSP Plan to DDW within 180 days after the reconstruction or redevelopment of any ground-water source of drinking water which addresses changes in source construction, source development, hydrogeology, delineation, potential

contamination sources, and proposed land management strategies.

R309-600-8. DWSP Plan Review.

(1) The Executive Secretary shall review each DWSP Plan submitted by PWSs and "concur," "concur with recommendations," "conditionally concur" or "disapprove" the plan.

(2) The Executive Secretary may "disapprove" DWSP Plans for any of the following reasons:

(a) An inaccurate DWSP Delineation Report, a report that uses a non-applicable delineation method, or a DWSP Plan that is missing this report or any of the information and data required in it (refer to R309-600-9(6));

(b) an inaccurate Prioritized Inventory of Potential Contamination Sources or a DWSP Plan that is missing this report or any of the information required in it (refer to R309-600-10(1));

(c) an inaccurate assessment of current controls (refer to R309-600-10(2));

(d) a missing Management Program to Control Each Preexisting Potential Contamination Source which has been assessed as "not adequately controlled" by the PWS (refer to R309-600-11(1));

(e) a missing Management Program to Control or Prohibit Future Potential Contamination Sources (refer to R309-600-12);

(f) a missing or incomplete Implementation Schedule, Resource Evaluation, Recordkeeping Section, Contingency Plan, or Public Notification Plan (refer to R309-600-7(1)(e)-(g), R309-600-14, and R309-600-15).

(3) The Executive Secretary may "concur with recommendations" when PWSs propose management programs to control preexisting potential contamination sources or management programs to control or prohibit future potential contamination sources for existing or new drinking water sources which appear inadequate or ineffective.

(4) The Executive Secretary may "conditionally concur" with a DWSP Plan or PER. The PWS must implement the conditions and report compliance the next time the DWSP Plan is due and submitted to DDW.

R309-600-9. Delineation of Protection Zones and Management Areas.

(1) PWSs shall delineate protection zones or a management area around each of their ground-water sources of drinking water using the Preferred Delineation Procedure or the Optional Two-mile Radius Delineation Procedure. The hydrogeologic method used by PWSs shall produce protection zones or a management area in accordance with the criteria thresholds below. PWSs may also choose to verify protected aquifer conditions to reduce the level of management controls applied in applicable protection areas.

(2) Reports must be prepared by a qualified licensed professional - A submitted report which addresses any of the following sections shall be stamped and signed by a professional geologist or professional engineer:

(a) A Delineation Report for Estimated DWSP Zones produced using the Preferred Delineation Procedure, as explained in R309-600-13(2)(a);

(b) a DWSP Delineation Report produced using the Preferred Delineation Procedure, as explained in R309-600-9(3)(a) and (6)(a);

(c) a report to verify protected aquifer conditions, as explained in R309-600-9(4) and (7);

(d) a report which addresses special conditions, as explained in R309-600-9(5); or

(e) a Hydrogeologic Report to Exclude a Potential Contamination Source, as explained in R309-600-9(6)(b)(ii).

(3) Criteria Thresholds for Ground-water Sources of

Drinking Water:

(a) Preferred Delineation Procedure - Four zones are delineated for management purposes:

(i) Zone one is the area within a 100-foot radius from the wellhead or margin of the collection area.

(ii) Zone two is the area within a 250-day ground-water time of travel to the wellhead or margin of the collection area, the boundary of the aquifer(s) which supplies water to the ground-water source, or the ground-water divide, whichever is closer. If the available data indicate a zone of increased ground-water velocity within the producing aquifer(s), then time-of-travel calculations shall be based on this data.

(iii) Zone three (waiver criteria zone) is the area within a 3-year ground-water time of travel to the wellhead or margin of the collection area, the boundary of the aquifer(s) which supplies water to the ground-water source, or the ground-water divide, whichever is closer. If the available data indicate a zone of increased ground-water velocity within the producing aquifer(s), then time-of-travel calculations shall be based on this data.

(iv) Zone four is the area within a 15-year ground-water time of travel to the wellhead or margin of the collection area, the boundary of the aquifer(s) which supplies water to the ground-water source, or the ground-water divide, whichever is closer. If the available data indicate a zone of increased ground-water velocity within the producing aquifer(s), then time-of-travel calculation shall be based on this data.

(b) Optional Two-mile Radius Delineation Procedure - In place of the Preferred Delineation Procedure, PWSs may choose to use the Optional Two-mile Radius Delineation Procedure to delineate a management area. This procedure is best applied in remote areas where few if any potential contamination sources are located. Refer to R309-600-6(1)(q) for the definition of a management area.

(4) Protected Aquifer Classification - PWSs may choose to verify protected aquifer conditions to reduce the level of management controls for a public-supply well which produces water from a protected aquifer(s) or to meet one of the requirements of a VOC or pesticide susceptibility waiver (R309-600-16(4)). Refer to R309-600-6(1)(x) for the definition of a "protected aquifer."

(5) Special Conditions - Special scientific or engineering studies may be conducted to support a request for an exception (refer to R309-600-4) due to special conditions. These studies must be approved by the Executive Secretary before the PWS begins the study. Special studies may include confined aquifer conditions, ground-water movement through protective layers, wastewater transport and fate, etc.

(6) DWSP Delineation Report - Each PWS shall submit a DWSP Delineation Report to DDW for each of its ground-water sources using the Preferred Delineation Procedure or the Optional Two-mile Radius Delineation Procedure.

(a) Preferred Delineation Procedure - Delineation reports for protection zones delineated using the Preferred Delineation Procedure shall include the following information and a list of all sources or references for this information:

(i) Geologic Data - A brief description of geologic features and aquifer characteristics observed in the well and area of the potential protection zones. This should include the formal or informal stratigraphic name(s), lithology of the aquifer(s) and confining unit(s), and description of fractures and solution cavities (size, abundance, spacing, orientation) and faults (brief description of location in or near the well, and orientation). Lithologic descriptions can be obtained from surface hand samples or well cuttings; core samples and laboratory analyses are not necessary. Fractures, solution cavities, and faults may be described from surface outcrops or drill logs.

(ii) Well Construction Data - If the source is a well, the report shall include the well drillers log, elevation of the

wellhead, borehole radius, casing radius, total depth of the well, depth and length of the screened or perforated interval(s), well screen or perforation type, casing type, method of well construction, type of pump, location of pump in the well, and the maximum projected pumping rate of the well. The maximum pumping rate of the well must be used in the delineation calculations. Averaged pumping rate values shall not be used.

(iii) Spring Construction Data - If the source is a spring or tunnel the report shall include a description or diagram of the collection area and method of ground-water collection.

(iv) Aquifer Data for New Wells - A summary report including the calculated hydraulic conductivity of the aquifer, transmissivity, hydraulic gradient, direction of ground-water flow, estimated effective porosity, and saturated thickness of the producing aquifer(s). The PWS shall obtain the hydraulic conductivity of the aquifer from a constant-rate aquifer test and provide the data as described in R309-515-6(10)(b). Estimated effective porosity must be between 1% and 30%. Clay layers shall not be included in calculations of aquifer thickness or estimated effective porosity. This report shall include graphs, data, or printouts showing the interpretation of the aquifer test.

(v) Aquifer Data for Existing Wells - A summary report including the calculated hydraulic conductivity of the aquifer, transmissivity, hydraulic gradient, direction of ground-water flow, estimated effective porosity, and saturated thickness of the producing aquifer(s). The PWS shall obtain the hydraulic conductivity of the aquifer from a constant-rate aquifer test using the existing pumping equipment. Aquifer tests using observation wells are encouraged, but are not required. If a previously performed aquifer test is available and includes the required data described below, data from that test may be used instead. Estimated effective porosity must be between 1% and 30%. Clay layers shall not be included in calculations of aquifer thickness or estimated effective porosity. This report shall include graphs, data, or printouts showing the interpretation of the aquifer test.

If a constant-rate aquifer test is not practical, then the PWS shall obtain hydraulic conductivity of the aquifer using another appropriate method, such as data from a nearby well in the same aquifer, specific capacity of the well, published hydrogeologic studies of the same aquifer, or local or regional ground-water models. A constant-rate test may not be practical for such reasons as insufficient drawdown in the well, inaccessibility of the well for water-level measurements, or insufficient overflow capacity for the pumped water.

The constant-rate test shall:

(A) Provide for continuous pumping for at least 24 hours or until stabilized drawdown has continued for at least six hours. Stabilized drawdown is achieved when there is less than one foot of change of ground-water level in the well within a six-hour period.

(B) Provide data as described in R309-515-6(10)(b)(v) through (vii).

(vi) Additional Data for Observation Wells - If the aquifer test is conducted using observation wells, the report shall include the following information for each observation well: location and surface elevation; total depth; depth and length of the screened or perforated intervals; radius, casing type, screen or perforation type, and method of construction; prepumping ground-water level; the time-drawdown or distance-drawdown data and curve; and the total drawdown.

(vii) Hydrogeologic Methods and Calculations - These include the ground-water model or other hydrogeologic method used to delineate the protection zones, all applicable equations, values, and the calculations which determine the delineated boundaries of zones two, three, and four. The hydrogeologic method or ground-water model must be reasonably applicable for the aquifer setting. For wells, the hydrogeologic method or

ground-water model must include the effects of drawdown (increased hydraulic gradient near the well) and interference from other wells.

(viii) Map Showing Boundaries of the DWSP Zones - A map showing the location of the ground-water source of drinking water and the boundary for each DWSP zone. The base map shall be a 1:24,000-scale (7.5-minute series) topographic map, such as is published by the U.S. Geological Survey. Although zone one (100-foot radius around the well or margin of the collection area) need not be on the map, the complete boundaries for zones two, three, and four must be drawn and labeled. More detailed maps are optional and may be submitted in addition to the map required above.

The PWS shall also include a written description of the distances which define the delineated boundaries of zones two, three, and four. These written descriptions must include the maximum distances upgradient from the well, the maximum distances downgradient from the well, and the maximum widths of each protection zone.

(b) Optional Two-Mile Radius Delineation Procedure - Delineation Reports for protection areas delineated using the Optional Two-mile Radius Delineation Procedure shall include the following information:

(i) Map Showing Boundaries of the DWSP Management Area - A map showing the location of the ground-water source of drinking water and the DWSP management area boundary. The base map shall be a 1:24,000-scale (7.5-minute series) topographic map, such as is published by the U.S. Geological Survey. Although zone one (100-foot radius around the well or margin of the collection area) need not be on the map, the complete two-mile radius must be drawn and labeled. More detailed maps are optional and may be submitted in addition to the map required above.

(ii) Hydrogeologic Report to Exclude a Potential Contamination Source - To exclude a potential contamination source from the inventory which is required in R309-600-10(1), a hydrogeologic report is required which clearly demonstrates that the potential contamination source has no capacity to contaminate the source.

(7) Protected Aquifer Conditions - If a PWS chooses to verify protected aquifer conditions, it shall submit the following additional data to DDW for each of its ground-water sources for which the protected aquifer conditions apply. The report must state that the aquifer meets the definition of a protected aquifer based on the following information:

(a) thickness, depth, and lithology of the protective clay layer;

(b) data to indicate the lateral continuity of the protective clay layer over the extent of zone two. This may include such data as correlation of beds in multiple wells, published hydrogeologic studies, stratigraphic studies, potentiometric surface studies, and so forth; and

(c) evidence that the well has been grouted or otherwise sealed from the ground surface to a depth of at least 100 feet and for a thickness of at least 30 feet through the protective clay layer in accordance with R309-600-6(1)(x) and R309-515-6(6)(i).

R309-600-10. Potential Contamination Source Inventory and Identification and Assessment of Controls.

(1) Prioritized Inventory of Potential Contamination Sources - Each PWS shall list all potential contamination sources within each DWSP zone or management area in priority order and state the basis for this order. This priority ranking shall be according to relative risk to the drinking water source. The name and address of each commercial and industrial potential contamination source is required. Additional information should include the name and phone number of a contact person and a list of the chemical, biological, and/or

radiological hazards associated with each potential contamination source. Additionally, each PWS shall identify each potential contamination source as to its location in zone one, two, three, four or in a management area and plot it on the map required in R309-600-9(6)(a)(viii) or R309-600-9(6)(b)(i).

(a) List of Potential Contamination Sources - A List of Potential Contamination Sources is found in the "Source Protection User's Guide for Ground-Water Sources." This document may be obtained from DDW. This list may be used by PWSs as a guide to inventorying potential contamination sources within their DWSP zones and management areas.

(b) Refining, Expanding, Updating, and Verifying Potential Contamination Sources - Each PWS shall update its list of potential contamination sources to show current conditions within DWSP zones or management areas. This includes adding potential contamination sources which have moved into DWSP zones or management areas, deleting potential contamination sources which have moved out, improving available data about potential contamination sources, and all other appropriate refinements.

(2) Identification and Assessment of Current Controls - PWSs are not required to plan and implement land management strategies for potential contamination source hazards that are assessed as "adequately controlled." If controls are not identified, the potential contamination source will be considered to be "not adequately controlled." Additionally, if the hazards at a potential contamination source cannot be identified, the potential contamination source must be assessed as "not adequately controlled." Identification and assessment should be limited to one of the following controls for each applicable hazard: regulatory, best management/pollution prevention, physical, or negligible quantity. Each of the following topics for a control must be addressed before identification and assessment will be considered to be complete. Refer to the "Source Protection User's Guide for Ground-Water Sources" for a list of government agencies and the programs they administer to control potential contamination sources. This guide may be obtained from DDW.

(a) Regulatory Controls - Identify the enforcement agency and verify that the hazard is being regulated by them; cite and/or quote applicable references in the regulation, rule or ordinance which pertain to controlling the hazard; explain how the regulatory control prevents ground-water contamination; assess the hazard; and set a date to reassess the hazard.

(b) Best Management/Pollution Prevention Practice Controls - List the specific best management/pollution prevention practices which have been implemented by potential contamination source management to control the hazard and indicate that they are willing to continue the use of these practices; explain how these practices prevent ground-water contamination; assess the hazard; and set a date to reassess the hazard.

(c) Physical Controls - Describe the physical control(s) which have been constructed to control the hazard; explain how these controls prevent contamination; assess the hazard; and set a date to reassess the hazard.

(d) Negligible Quantity Control - Identify the quantity of the hazard that is being used, disposed, stored, manufactured, and/or transported; explain why this amount should be considered a negligible quantity; assess the hazard; and set a date to reassess the hazard.

(3) For the purpose of meeting the requirements of R309-600, the Executive Secretary will consider a PWS's assessment that a potential contamination source which is covered by a permit or approval under one of the regulatory programs listed below sufficient to demonstrate that the source is adequately controlled unless otherwise determined by the Executive Secretary. For all other state programs, the PWS's assessment is subject to review by the Executive Secretary; as a result, a

PWS's DWSP Plan may be disapproved if the Executive Secretary does not concur with its assessment(s).

(a) The Utah Ground-Water Quality Protection program established by Section 19-5-104 and R317-6;

(b) closure plans or Part B permits under authority of the Resource Conservation and Recovery Act (RCRA) of 1984 regarding the monitoring and treatment of ground water;

(c) the Utah Pollutant Discharge Elimination System (UPDES) established by Section 19-5-104 and R317-8;

(d) the Underground Storage Tank Program established by Section 19-6-403 and R311-200 through R311-208; and

(e) the Underground Injection Control (UIC) Program for classes I-IV established by Sections 19-5-104 and 40-6-5 and R317-7 and R649-5.

R309-600-11. Management Program to Control Each Preexisting Potential Contamination Source.

(1) PWSs shall plan land management strategies to control each preexisting potential contamination source in accordance with their authority and jurisdiction. Land management strategies must be consistent with the provisions of R309-600, designed to control potential contamination, and may be regulatory or non-regulatory. Each potential contamination source listed on the inventory required in R309-600-10(1) and assessed as "not adequately controlled" must be addressed. Land management strategies must be implemented according to the schedule required in R309-600-7(1)(e).

(2) PWSs with overlapping protection zones and management areas may cooperate in controlling a particular preexisting potential contamination source if one PWS will agree to take the lead in planning and implementing land management strategies and the remaining PWS(s) will assess the preexisting potential contamination source as "adequately controlled."

R309-600-12. Management Program to Control or Prohibit Future Potential Contamination Sources for Existing Drinking Water Sources.

(1) PWSs shall plan land management strategies to control or prohibit future potential contamination sources within each of its DWSP zones or management areas consistent with the provisions of R309-600 and to an extent allowed under its authority and jurisdiction. Land management strategies must be designed to control potential contamination and may be regulatory or non-regulatory. Additionally land management strategies must be implemented according to the schedule required in R309-600-7(1)(e).

(2) Protection areas may extend into neighboring cities, towns, and counties. Since it may not be possible for some PWSs to enact regulatory land management strategies outside of their jurisdiction, except as described below, it is recommended that these PWSs contact their neighboring cities, towns, and counties to see if they are willing to implement protective ordinances to prevent ground-water contamination under joint management agreements.

(3) Cities and towns have extraterritorial jurisdiction in accordance with Section 10-8-15 of the Utah Code Annotated to enact ordinances to protect a stream or "source" from which their water is taken... "for 15 miles above the point from which it is taken and for a distance of 300 feet on each side of such stream..." Section 10-8-15 includes ground-water sources.

(4) Zoning ordinances are an effective means to control potential contamination sources that may want to move into protection areas. They allow PWSs to prohibit facilities that would discharge contaminants directly to ground water. They also allow PWSs to review plans from potential contamination sources to ensure there will be adequate spill protection and waste disposal procedures, etc. If zoning ordinances are not used, PWSs must establish a plan to contact potential

contamination sources individually as they move into protection areas, identify and assess their controls, and plan land management strategies if they are not adequately controlled.

R309-600-13. New Ground-water Sources of Drinking Water.

(1) Prior to constructing a new ground-water source of drinking water, each PWS shall develop a PER which demonstrates whether the source meets the requirements of this section and submit it to DDW. Additionally, engineering information in accordance with R309-515-6(5)(a) or R309-515-7(4) must be submitted to DDW. The Executive Secretary will not grant plan approval until both source protection and engineering requirements are met. Construction standards relating to protection zones and management areas (fencing, diversion channels, sewer line construction, and grouting, etc.) are found in R309-515. After the source is constructed a DWSP Plan must be developed, submitted, and implemented accordingly.

(2) Preliminary Evaluation Report for New Sources of Drinking Water - PERs shall cover all four zones or the entire management area. PERs should be developed in accordance with the "Standard Report Format for New Wells and Springs." This document may be obtained from DDW. PWSs shall include the following four sections in each PER:

(a) Delineation Report for Estimated DWSP Zones - The same requirements apply as in R309-600-9(6), except that the hydrogeologic data for the PER must be developed using the best available data which may be obtained from: surrounding wells, published information, or surface geologic mapping. PWSs must use the Preferred Delineation Procedure to delineate protection zones for new wells. The Delineation Report for Estimated DWSP Zones shall be stamped and signed by a professional geologist or professional engineer unless the Optional Two-Mile Radius Delineation Procedure is used for a new spring.

(b) Inventory of Potential Contamination Sources and Identification and Assessment of Controls - The same requirements apply as in R309-600-10(1) and (2). Additionally, the PER must demonstrate that the source meets the following requirements:

(i) Protection Areas Delineated using the Preferred Delineation Procedure in Protected Aquifers - A PWS shall not locate a new ground-water source of drinking water where an uncontrolled potential contamination source or a pollution source exists within zone one.

(ii) Protection Areas Delineated using the Preferred Delineation Procedure in Unprotected Aquifers - A PWS shall not locate a new ground-water source of drinking water where an uncontrolled potential contamination source or an uncontrolled pollution source exists within zone one. Additionally, a new ground-water source of drinking water may not be located where a pollution source exists within zone two unless the pollution source implements design standards which prevent contaminated discharges to ground water.

(iii) Management Areas Delineated using the Optional Two-Mile Radius Delineation Procedure - A PWS shall not locate a new spring where an uncontrolled potential contamination source or a pollution source exists within zone one. Additionally, a new spring may not be located where a pollution source exist within the management area unless: a hydrogeologic report in accordance with R309-600-9(6)(b)(ii) which verifies that it does not impact the spring; or the pollution source implements design standards which prevent contaminated discharges to ground water.

(c) Land Ownership Map - A land ownership map which includes all land within zones one and two or the entire management area. Additionally, include a list which exclusively identifies the land owners in zones one and two or the

management area, the parcel(s) of land which they own, and the zone in which they own land. A land ownership map and list are not required if ordinances are used to protect these areas.

(d) Land Use Agreements, Letters of Intent, or Zoning Ordinances - Land use agreements which meet the requirements of the definition in R309-600-6(1)(p). Zoning ordinances which are already in effect or letters of intent may be substituted for land use agreements; however, they must accomplish the same level of protection that is required in a land use agreement. Letters of intent must be notarized, include the same language that is required in land use agreements, and contain the statement that "the owner agrees to record the land use agreement in the county recorder's office, if the source proves to be an acceptable drinking water source." The PWS shall not introduce a new source into its system until copies of all applicable recorded land use agreements are submitted to DDW.

(3) Sewers Within DWSP Zones and Management Areas - Sewer lines may not be located within zones one and two or a management area unless the criteria identified below are met. If sewer lines are located or planned to be located within zones one and two or a management area, the PER must demonstrate that they comply with this criteria. Sewer lines that comply with these criteria may be assessed as adequately controlled potential contamination sources.

(a) Zone One - If the conditions specified in R309-600-13(3)(a)(i and ii) below are met, all sewer lines within zone one shall be constructed in accordance with R309-515-6(4) and must be at least 10 feet from the wellhead.

(i) There is at least 5 feet of suitable soil between the bottom of the sewer lines and the top of the maximum seasonal ground-water table or perched water table. (Suitable soils contain adequate sand/silt/clay to act as an effective effluent filter within its depth for the removal of pathogenic organisms and fill the voids between coarse particles such as gravel, cobbles, and angular rock fragments); and

(ii) there is at least 5 feet of suitable soil between the bottom of the sewer line and the top of any bedrock formations or other unsuitable soils. Bedrock formations include formations that have such a low permeability that they prevent the downward passage of effluent. Bedrock formations that have open joints or solution channels, which permit such rapid flow that effluent is not renovated, are also considered unacceptable. Other unsuitable soils include those with coarse particles such as gravel, cobbles, or angular rock fragments with insufficient soil to fill the voids between the particles. Solid or fractured bedrock such as shale, sandstone, limestone, basalt, or granite are unacceptable.

(b) Zones One and Two - If the conditions identified in R309-600-13(3)(a)(i and ii) above cannot be met, any sewer lines within zones one and two or a management area shall be constructed in accordance with R309-515-6(4) and must be at least 300 feet from the wellhead or margin of the collection area.

(4) Use waivers for the VOC and pesticide parameter groups may be issued if the inventory of potential contamination sources indicates that the chemicals within these parameter groups are not used, disposed, stored, transported, or manufactured within zones one, two, and three or the management area.

(5) Replacement Wells - A PER is not required for proposed wells, if the PWS receives written notification from the Executive Secretary that the well is classified as a replacement well. The PWS must submit a letter requesting that the well be classified as a replacement well and include documentation to show that the conditions required in R309-600-6(1)(y) are met. If a proposed well is classified as a replacement well, the PWS is still required to submit and obtain written approval for all other information as required in:

(a) DWSP Plan for New Sources of Drinking Water (refer to R309-600-13(6), and

(b) the Outline of Well Approval Process (refer to R309-515-6(5)).

(6) DWSP Plan for New Sources of Drinking Water - The PWS shall submit a DWSP Plan in accordance with R309-600-7(1) for any new ground-water source of drinking water within one year after the date of the Executive Secretary's concurrence letter for the PER. In developing this DWSP Plan, PWSs shall refine the information in the PER by applying any new, as-constructed characteristics of the source (i.e., pumping rate, aquifer test, etc.).

R309-600-14. Contingency Plans.

PWSs shall submit a Contingency Plan which includes all sources of drinking water for their entire water system to DDW concurrently with the submission of their first DWSP Plan. Guidance for developing Contingency Plans may be found in the "Source Protection User's Guide for Ground-Water Sources." This document may be obtained from DDW.

R309-600-15. Public Notification.

A PWSs consumers must be notified that its DWSP plans are available for their review. This notification must be released to the public by December 31, 2003. Public notifications shall address all of the PWS's sources and include the following:

(a) A discussion of the general types of potential contamination sources within the protection zones;

(b) an analysis that rates the system's susceptibility to contamination as low, medium, or high; and

(c) a statement that the system's complete DWSP plans are available to the public upon request.

Examples of means of notifying the public and examples of public notification material are discussed in the "Source Protection User's Guide for Ground-Water Sources" which may be obtained from DDW.

R309-600-16. Monitoring Reduction Waivers.

(1) Three types of monitoring waivers are available to PWSs. They are: a) reliably and consistently, b) use, and c) susceptibility. The criteria for establishing a reliably and consistently waiver is set forth in R309-205. The criteria for use and susceptibility waivers follow.

(2) If a source's DWSP plan is due according to the schedule in R309-600-3, and is not submitted to DDW, its use and susceptibility waivers for the VOC and pesticide parameter groups (refer to R309-205-6(1)(e) and (f); and (R309-205-6(2)(h) and (i)) will expire unless an exception (refer to R309-600-4) for a new due date has been granted. Additionally, current use and susceptibility waivers for the VOC, pesticide and unregulated parameter groups will expire upon review of a DWSP plan, if these waivers are not addressed in the plan. Monitoring reduction waivers must be renewed every six years at the time the PWSs Updated DWSP Plans are due and be addressed therein.

(3) Use Waivers - If the chemicals within the VOC and/or pesticide parameter group(s) (refer to R309-200 table 200-3 and 200-2) have not been used, disposed, stored, transported, or manufactured within the past five years within zones one, two, and three, the source may be eligible for a use waiver. To qualify for a VOC and/or pesticide use waiver, a PWS must complete the following two steps:

(a) List the chemicals which are used, disposed, stored, transported, and manufactured at each potential contamination source within zones one, two, and three where the use of the chemicals within the VOC and pesticide parameter groups are likely; and

(b) submit a dated statement which is signed by the system's designated person that none of the VOCs and pesticides within these respective parameter groups have been used, disposed, stored, transported, or manufactured within the

past five years within zones one, two, and three.

(4) Susceptibility Waivers - If a source does not qualify for use waivers, and if reliably and consistently waivers have not been issued, it may be eligible for susceptibility waivers. Susceptibility waivers tolerate the use, disposal, storage, transport, and manufacture of chemicals within zones one, two, and three as long as the PWS can demonstrate that the source is not susceptible to contamination from them. To qualify for a VOC and/or pesticide susceptibility waiver, a PWS must complete the following steps:

(a) Submit the monitoring results of at least one applicable sample from the VOC and/or pesticide parameter group(s) that has been taken within the past six years. A non-detectable analysis for each chemical within the parameter group(s) is required;

(b) submit a dated statement from the designated person verifying that the PWS is confident that a susceptibility waiver for the VOC and/or pesticide parameter group(s) will not threaten public health; and

(c) verify that the source is developed in a protected aquifer, as defined in R309-600-6(1)(x), and have a public education program which addresses proper use and disposal practices for pesticides and VOCs which is described in the management sections of the DWSP plan.

(5) Special Waiver Conditions - Special scientific or engineering studies or best management practices may be developed to support a request for an exception to paragraph R309-600-16(4)(c) due to special conditions. These studies must be approved by the Executive Secretary before the PWS begins the study. Special waiver condition studies may include:

(a) geology and construction/grout seal of the well to demonstrate geologic protection;

(b) memoranda of agreement which addresses best management practices for VOCs and/or pesticides with industrial, agricultural, and commercial facilities which use, store, transport, manufacture, or dispose of the chemicals within these parameter groups;

(c) public education programs which address best management practices for VOCs and/or pesticides;

(d) contaminant quantities;

(e) affected land area; and/or

(f) fate and transport studies of the VOCs and/or pesticides which are listed as hazards at the PCSs within zones one, two, and three, and any other conditions which may be identified by the PWS and approved by the Executive Secretary.

KEY: drinking water, environmental health

October 29, 2003

19-4-104(1)(a)(iv)

Notice of Continuation April 14, 2005

R309. Environmental Quality, Drinking Water.**R309-605. Source Protection: Drinking Water Source Protection for Surface Water Sources.****R309-605-1. Purpose.**

Public Water Systems (PWSs) are responsible for protecting their sources of drinking water from contamination. R309-605 sets forth minimum requirements to establish a uniform, statewide program for implementation by PWSs to protect their surface water sources of drinking water. PWSs are encouraged to enact more stringent programs to protect their sources of drinking water if they decide additional measures are necessary.

R309-605 applies to PWSs which obtain surface water prior to treatment and distribution and to PWSs obtaining water from ground-water sources which are under the direct influence of surface water. However, compliance with this rule is voluntary for public (transient) non-community water systems to the extent that they are using existing surface water sources of drinking water.

R309-605-2. Authority.

Under authority of Subsection 19-4-104(1)(a)(iv), the Drinking Water Board adopts this rule which governs the protection of surface sources of drinking water.

R309-605-3. Definitions.

(1) The following terms are defined for the purposes of this rule:

(a) "Controls" means the codes, ordinances, rules, and regulations that regulate a potential contamination source. "Controls" also means physical controls which may prevent contaminants from migrating off of a site and into surface or ground water. Controls also means negligible quantities of contaminants.

(b) "Division" means Division of Drinking Water.

(c) "DWSP Program" means the program and associated plans to protect drinking water sources from contaminants.

(d) "DWSP Zone" means the surface and subsurface area surrounding a surface source of drinking water supplying a PWS, over which or through which contaminants are reasonably likely to move toward and reach the source.

(e) "Designated person" means the person appointed by a PWS to ensure that the requirements of R309-605 are met.

(f) "Executive Secretary" means the individual appointed pursuant to Section 19-4-106 of the Utah Safe Drinking Water Act.

(g) "Existing surface water source of drinking water" means a public supply surface water source for which plans and specifications were submitted to DDW on or before June 12, 2000.

(h) "Intake", for the purposes of surface water drinking water source protection, means the device used to divert surface water and also the conveyance to the point immediately preceding treatment, or, if no treatment is provided, at the entry point to the distribution system.

(i) "Land management strategies" means zoning and non-zoning controls which include, but are not limited to, the following: zoning and subdivision ordinances, site plan reviews, design and operating standards, source prohibitions, purchase of property and development rights, public education programs, ground-water monitoring, household hazardous waste collection programs, water conservation programs, memoranda of understanding, and written contracts and agreements.

(j) "New surface water source of drinking water" means a public supply surface water source of drinking water for which plans and specifications are submitted to the Executive Secretary after June 12, 2000.

(k) "Nonpoint source" means any area or conveyance not meeting the definition of point source.

(l) "Point of diversion" (POD) is the location at which water from a surface source enters a piped conveyance, storage tank, or is otherwise removed from open exposure prior to treatment.

(m) "Point source" means any discernible, confined, and discrete location or conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, animal feeding operation with more than ten animal units, landfill, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(n) "Pollution source" means point source discharges of contaminants to surface water or potential discharges of the liquid forms of "extremely hazardous substances" which are stored in containers in excess of "applicable threshold planning quantities" as specified in the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. 11001 et seq. (1986). Examples of possible pollution sources include, but are not limited to, the following: storage facilities that store the liquid forms of extremely hazardous substances, septic tanks, drain fields, class V underground injection wells, landfills, open dumps, land filling of sludge and septage, manure piles, salt piles, pit privies, drain lines, and animal feeding operations with more than ten animal units. The following definitions are part of R309-605 and clarify the meaning of "pollution source:"

(i) "Animal feeding operation" means a lot or facility where the following conditions are met: animals have been or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period, and crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. Two or more animal feeding operations under common ownership are considered to be a single feeding operation if they adjoin each other, if they use a common area, or if they use a common system for the disposal of wastes.

(ii) "Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers; the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

(iii) "Extremely hazardous substances" means those substances which are identified in the Sec. 302(EHS) column of the "TITLE III LIST OF LISTS - Consolidated List of Chemicals Subject to Reporting Under SARA Title III," (EPA 550-B-96-015). A copy of this document may be obtained from: NCEPI, PO Box 42419, Cincinnati, OH 45202. Online ordering is also available at: <http://www.epa.gov/ncepihom/orderpub.html>.

(o) "Potential contamination source" means any facility or site which employs an activity or procedure or stores materials which may potentially contaminate ground-water or surface water. A pollution source is also a potential contamination source.

(p) "PWS" means a public water system affected by this rule, as described in R309-605-1.

(q) "Surface water" means all water which is open to the atmosphere and subject to surface runoff (see also R309-515-5(1)).

(r) "Susceptibility" means the potential for a PWS to draw water contaminated above a demonstrated background water quality concentration through any combination of the following pathways: geologic strata and overlying soil, direct discharge, overland flow, upgradient water, cracks/fissures in or open areas of the surface water intake and/or the pipe/conveyance between the intake and the water distribution system. Susceptibility is determined at the point immediately preceding treatment or, if

no treatment is provided, at the entry point to the system.

(s) "Watershed" means the topographic boundary, up to the state's border, that is the perimeter of the catchment basin that provides water to the intake structure.

R309-605-4. Implementation.

(1) Existing Surface Water Sources - Each PWS shall submit a Drinking Water Source Protection (DWSP) Plan to the Division of Drinking Water (Division) in accordance with R309-605-7 for each of its existing surface water sources according to the following schedule.

TABLE
Schedule for DWSP Plan Submittal

Population served by PWS	DWSP Plans due by
Greater than 10,000	December 31, 2001
3,300 to 10,000	May 6, 2002
Fewer than 3,300	May 6, 2003

(2) New surface water sources - Each PWS shall submit a Preliminary Evaluation Report (PER) in accordance with R309-605-9 for each of its new surface water sources to the Executive Secretary.

R309-605-5. Exceptions.

(1) Exceptions to the requirements of R309-605 or parts thereof may be granted by the Executive Secretary to a PWS if, due to compelling factors (which may include economic factors), a PWS is unable to comply with these requirements, and the granting of an exception will not result in an unreasonable risk to health.

(2) The Executive Secretary may prescribe a schedule by which the PWS must come into compliance with the requirements of R309-605.

R309-605-6. Designated Person.

(1) Each PWS shall designate a person responsible for demonstrating the PWS's compliance with these rules. A designated person shall be appointed and reported in writing to the Executive Secretary by each PWS within 180 days of the effective date of R309-605. The name, address and telephone number of the designated person shall be included in each DWSP Plan and PER that is submitted to the Executive Secretary, and in all other correspondence with the Division.

(2) Each PWS shall notify the Executive Secretary in writing within 30 days of any changes in the appointment of a designated person.

R309-605-7. Drinking Water Source Protection (DWSP) for Surface Sources.

(1) DWSP Plans

(a) Each PWS shall develop, submit, and implement a DWSP Plan for each of its surface water sources of drinking water.

(i) Recognizing that more than one PWS may jointly use a source from the same or nearby diversions, the Executive Secretary encourages collaboration among such PWSs with joint use of a source in the development of a DWSP plan for that source. PWSs who jointly submit an acceptable DWSP plan per R309-605-7 for one surface water source above common point(s) of diversion, will be considered to have met the requirement of R309-605-7(1)(a). The deadline from R309-605-4(1) that would apply to such a collaboration would be associated with the largest population served by the individual parties to the agreement.

(b) Required Sections for DWSP Plans - DWSP Plans should be developed in accordance with the "Standard Report Format for Surface Sources". This document may be obtained

from the Division. DWSP Plans must include the following eight sections:

(i) DWSP Delineation Report - A DWSP Delineation Report in accordance with R309-605-7(3) is the first section of a DWSP Plan.

(ii) Susceptibility Analysis and Determination - A susceptibility analysis and determination in accordance with R309-605-7(4) is the second section of a DWSP report.

(iii) Management Program to Control Each Preexisting Potential Contamination Source - Land management strategies to control each not adequately controlled preexisting potential contamination source in accordance with R309-605-7(5) is the third section of a DWSP Plan.

(iv) Management Program to Control or Prohibit Future Potential Contamination Sources - Land management strategies for controlling or prohibiting future potential contamination sources is the fourth section of a DWSP Plan. This must be in accordance with R309-605-7(6), must be consistent with the general provisions of this rule, and implemented to an extent allowed under the PWS's authority and jurisdiction.

(v) Implementation Schedule - The implementation schedule is the fifth section of a DWSP Plan. Each PWS shall develop a step-by-step implementation schedule which lists each of its proposed land management strategies with an implementation date for each strategy.

(vi) Resource Evaluation - The resource evaluation is the sixth section of a DWSP Plan. Each PWS shall assess the financial and other resources which may be required for it to implement each of its DWSP Plans and determine how these resources may be acquired.

(vii) Recordkeeping - Recordkeeping is the seventh section of a DWSP Plan. Each PWS shall document changes in each of its DWSP Plans as they are updated to show significant changes in conditions in the protection zones. As a DWSP Plan is executed, the PWS shall document any land management strategies that are implemented. These documents may include any of the following: ordinances, codes, permits, memoranda of understanding, public education programs, and so forth.

(viii) Public Notification - A method for, schedule for and example of the means for notifying the public water system's customers and consumers regarding the drinking water source water assessment and the results of that assessment is the last section of a DWSP plan. This must be in accordance with R309-605-7(7).

(ix) Existing watershed or resource management plans - In lieu of some or all of the report sections described in R309-605-7(1)(b), the PWS may submit watershed or resource management plans that in whole or in part meet the requirements of this rule. Such plans shall be submitted to the Executive Secretary with a cover letter that fully explains how they meet the requirements of the current DWSP rules. Any required section described in R309-605-7(1)(b) that is not covered by the watershed or resource management plan must be addressed and submitted jointly. The watershed or resource management plans will be subject to the same review and approval process as any other section of the DWSP plan.

(c) DWSP Plan Administration - DWSP Plans shall be submitted, corrected, retained, implemented, updated, and revised according to the following:

(i) Submitting DWSP Plans - Each PWS shall submit a DWSP Plan to the Executive Secretary in accordance with the schedule in R309-605-4(2) for each of its surface water sources of drinking water (a joint development and submittal of a DWSP plan is acceptable for PWSs with the joint use of a source, per R309-605-7(1)(a)(i).)

(ii) Correcting Deficiencies - Each PWS shall correct any deficiencies in a disapproved DWSP Plan and resubmit it to the Executive Secretary within 90 days of the disapproval date.

(iii) Retaining DWSP Plans - Each PWS shall retain on its

premises a current copy of each of its DWSP Plans. DWSP Plans shall be made available to the public upon request.

(iv) Implementing DWSP Plans - Each PWS shall begin implementing each of its DWSP Plans in accordance with its schedule in R309-605-7(1)(b)(v), within 180 days after submittal if they are not disapproved by the Executive Secretary.

(v) Updating and Resubmitting DWSP Plans - Each PWS shall review and update its DWSP Plans as often as necessary to ensure that they show current conditions in the DWSP zones, but at least annually after the original due date (see R309-605-4(1)). Updated plans also document the implementation of land management strategies in the recordkeeping section. Updated DWSP Plans will be resubmitted to the Executive Secretary every six years from their original due date, which is described in R309-605-4.

(vi) Revising DWSP Plans - Each PWS shall submit a revised DWSP Plan to the Executive Secretary within 180 days after the reconstruction or redevelopment of any surface water source of drinking water which causes changes in source construction, source development, hydrogeology, delineation, potential contamination sources, or proposed land management strategies.

(2) DWSP Plan Review.

(a) The Executive Secretary shall review each DWSP Plan submitted by PWSs and "concur," "conditionally concur" or "disapprove" the plan.

(b) The Executive Secretary may "disapprove" DWSP Plans for good cause, including any of the following reasons:

(i) A DWSP Plan that is missing the delineation report or any of the information and data required in it (refer to R309-605-7(3));

(ii) An inaccurate Susceptibility Analysis or a DWSP Plan that is missing this report or any of the information required in it (refer to R309-605-7(4));

(iii) An inaccurate Prioritized Inventory of Potential Contamination Sources or a DWSP Plan that is missing this report or any of the information required in it (refer to R309-605-7(4)(c));

(iv) An inaccurate assessment of current controls (refer to R309-605-7(4)(a)(iii)(B));

(v) A missing or incomplete Management Program to Control Each Preexisting Potential Contamination Source which has been assessed as "not adequately controlled" by the PWS (refer to R309-605-7(5));

(vi) A missing or incomplete Management Program to Control or Prohibit Future Potential Contamination Sources (refer to R309-605-7(6));

(vii) A missing Implementation Schedule, Resource Evaluation, Recordkeeping Section, or Contingency Plan (refer to R309-605-7(1)(b)(v-vii) and R309-605-9);

(viii) A missing or incomplete Public Notification Section (refer to R309-605-7(7)).

(c) If the Executive Secretary conditionally concurs with a DWSP Plan, the PWS must implement the conditions and report compliance the next time the DWSP Plan is due and submitted to the Executive Secretary.

(3) Delineation of Protection Zones

(a) The delineation section of the DWSP plan for surface water sources may be obtained from the Division upon request. A delineation section prepared and provided by the Division would become the first section of the submittal from the PWS. The delineation section provided by the Division will consist of a map or maps showing the limits of the zones described in R309-605-7(3)(b)(i-iv), and will include an inventory of potential contamination sources on record in the Division's Geographic Information System.

(b) Alternatively, the PWS may provide their own delineation report. Such a submittal must either describe the zones as defined in R309-605-7(3)(b)(i-iv), or must comply with

the requirements and definitions of R309-605-7(3)(c). The delineation report must include a map or maps showing the extent of the zones.

(i) Zone 1:

(A) Streams, rivers and canals: zone 1 encompasses the area on both sides of the source, 1/2 mile on each side measured laterally from the high water mark of the source (bank full), and from 100 feet downstream of the POD to 15 miles upstream, or to the limits of the watershed or to the state line, whichever comes first. If a natural stream or river is diverted into an uncovered canal or aqueduct for the purpose of delivering water to a system or a water treatment facility, that entire canal will be considered to be part of zone 1, and the 15 mile measurement upstream will apply to the stream or river contributing water to the system from the diversion.

(B) Reservoirs or lakes: zone 1 is considered to be the area 1/2 mile from the high water mark of the source. Any stream or river contributing to the lake/reservoir will be included in zone 1 for a distance of 15 miles upstream, and 1/2 mile laterally on both sides of the source. If a reservoir is diverted into an uncovered canal or aqueduct for the purpose of delivering water to a system or a water treatment facility, that entire canal will be considered to be part of zone 1, and the 15 mile measurement upstream will apply to the reservoir and tributaries contributing water to the system.

(ii) Zone 2: Zone 2 is defined as the area from the end of zone 1, and an additional 50 miles upstream (or to the limits of the watershed or to the state line, whichever comes first), and 1000 feet on each side measured from the high water mark of the source.

(iii) Zone 3: Zone 3 is defined as the area from the end of zone 2 to the limits of the watershed or to the state line, whichever comes first, and 500 feet on each side measured from the high water mark of the source.

(iv) Zone 4: Zone 4 is defined as the remainder of the area of the watershed (up to the state line, if applicable) contributing to the source that does not fall within the boundaries of zones 1 through 3.

(v) Special case delineations:

(A) Basin Transfer PODs: Where water supplies are received from basin transfers, the water from the extraneous basin will be treated as a separate source, and will be subject to its own DWSP plan, starting from zone 1 at the secondary POD.

(c) If the PWS is able to demonstrate that a different zone configuration is more protective than those defined in R309-605-7(3)(b), that different configuration may be used upon prior review and approval by the Executive Secretary. An explanation of the method used to obtain and establish the dimensions of the zones must be provided. The delineation report must include a map or maps showing the extent of the zones. The entire watershed boundary contributing to a source must be included in the delineation.

(4) Susceptibility Analysis and Determination:

(a) Susceptibility Analysis:

(i) Structural integrity of the intake: The PWS will evaluate the structural integrity of the intake to ensure compliance with the existing source development rule (R309-515-5) on a pass or fail basis. The pass-fail rating will be determined by whether the intake meets minimum rule requirements, and whether the physical condition of the intake is adequate to protect the intake from contamination events. The integrity evaluation includes any portion of the conveyance from the point of diversion to the distribution systems that is open to the atmosphere or is otherwise vulnerable to contamination, including distribution canals, etc.

(ii) Sensitivity of Natural Setting: The PWS will evaluate the sensitivity of the source based on physiographic and/or hydrogeologic factors. Factors influencing sensitivity may include any natural or man-made feature that increases or

decreases the likelihood of contamination. Sensitivity does not address the question of whether contamination is present in the watershed or recharge area.

(iii) Assessment of management of potential contamination sources:

(A) Potential Contamination Source Inventory

(I) Each PWS shall identify and list all potential contamination sources within DWSP zones 1, 2 and 3, as applicable for individual sources. The name and address of each non-residential potential contamination source is required, as well as a list of the chemical, biological, and/or radiological hazards associated with each potential contamination source. Additionally, each PWS shall identify each potential contamination source as to its location in zone one, two, or three and plot it on the map required in R309-605-7(3)(a and b). The PWS may rely on the inventory provided by the Division for zone 4.

(II) List of Potential Contamination Sources - A List of Potential Contamination Sources may be obtained from the Division. This list may be used by PWSs as an introduction to inventorying potential contamination sources within their DWSP zones. The list is not intended to be all-inclusive.

(III) Refining, Expanding, Updating, and Verifying Potential Contamination Sources - Each PWS shall update its list of potential contamination sources to show current conditions within DWSP zones according to R309-605-7(1)(c)(v). This includes adding potential contamination sources which have moved into DWSP zones, deleting potential contamination sources which have moved out, improving available data about potential contamination sources, and all other appropriate refinements.

(B) Identification and Assessment of Controls: The PWS will identify and assess the hazards at each potential contamination source, including those in the inventory provided by the Division that are located in zone 4, as "adequately controlled" or "not adequately controlled".

(I) If controls are not identified, the potential contamination source will be considered "not adequately controlled." Additionally, if the hazards at a potential contamination source cannot be or are not identified, the potential contamination source must be assessed as "not adequately controlled."

(II) Types of controls: For each hazard deemed to be controlled, one of the following controls shall be identified: regulatory, best management/pollution prevention, or physical controls. Negligible quantities of contaminants are also considered a control. The assessment of controls will not be considered complete unless the controls are completely evaluated and discussed in the DWSP report, using the following criteria:

Regulatory Controls - Identify the enforcement agency and verify that the hazard is being regulated by them; cite and/or quote applicable references in the regulation, rule or ordinance which pertain to controlling the hazard; explain how the regulatory controls affect the potential for surface water contamination; assess the hazard; and set a date to reassess the hazard. For assistance in identifying regulatory controls, refer to the "Source Protection User's Guide" Appendix D for a list of government agencies and the programs they administer to control potential contamination sources. This guide may be obtained from the Division.

Best Management/Pollution Prevention Practice Controls - List the specific best management/pollution prevention practices which have been implemented by potential contamination source management to control the hazard and indicate that they are willing to continue the use of these practices; explain how these practices affect the potential for surface water contamination; assess the hazard; and set a date to reassess the hazard.

Physical Controls - Describe the physical control(s) which have been constructed to control the hazard; explain how these controls affect the potential for contamination; assess the hazard; and set a date to reassess the hazard.

Negligible Quantity Control - Identify the quantity of the hazard that is being used, disposed, stored, manufactured, and/or transported; explain why this amount is a negligible quantity; assess the hazard; and set a date to reassess the hazard.

(II) PWSs may assess controls on Potential Contamination Sources collectively, when the Potential Contamination Sources have similar characteristics, or when the Potential Contamination Sources are clustered geographically. Examples may include, but are not limited to, abandoned mines that are part of the same mining districts, underground storage tanks that are in the same zone, or leaking underground storage tanks in the same city. However, care should be taken to avoid collectively assessing Potential Contamination Sources to the extent that the assessments become meaningless. The Executive Secretary may require an individual assessment for a Potential Contamination Source if the Executive Secretary determines that the collective assessment does not adequately assess controls.

(C) A potential contamination source which is covered by a permit or approval under one of the regulatory programs listed below shall be considered to be adequately controlled unless otherwise determined by the Executive Secretary. The PWS must provide documentation establishing that the Potential Contamination Source is covered by the regulatory program. For all other state regulatory programs, the PWS's assessment is subject to review by the Executive Secretary; as a result, a PWS's DWSP Plan may be disapproved if the Executive Secretary does not concur with its assessment(s).

(I) The Utah Ground-Water Quality Protection program established by Section 19-5-104 and Rule R317-6;

(II) Closure plans or Part B permits under authority of the Resource Conservation and Recovery Act (RCRA) of 1984 regarding the monitoring and treatment of ground-water;

(III) The Utah Pollutant Discharge Elimination System (UPDES) established by Section 19-5-104 and Rule R317-8; at the discretion of the PWS, this may include Confined Animal Feeding Operations/Animal Feeding Operations (CAFO/AFO) assessed under the Utah DWQ CAFO/AFO Strategy.

(IV) The Underground Storage Tank Program established by Section 19-6-403 and Rules R311-200 through R311-208; and

(V) the Underground Injection Control (UIC) Program for classes I-IV established by Sections 19-5-104 and 40-6-5 and Rules R317-7 and R649-5.

(b) Susceptibility determination:

(i) The PWS will assess the drinking water source for its susceptibility relative to each potential contamination source. The determination will be based on the following four factors: 1) the structural integrity of the intake, 2) the sensitivity of the natural setting, 3) whether a Potential Contamination Source is considered controlled or not, and 4) how the first three factors are interrelated. The PWS will provide an explanation of the method or judgement used to weigh the first three factors against each other to determine susceptibility.

(ii) Additionally, each drinking water source will be assessed by the PWS for its overall susceptibility to potential contamination events. This will result in a qualitative assessment of the susceptibility of the drinking water source to contamination. This assessment of overall susceptibility allows the PWS and others to compare the susceptibility of one drinking water source to another.

(iii) Each surface water drinking water source in the state of Utah is initially considered to have a high susceptibility to contamination, due to the intrinsic unprotected nature of surface water sources. An assumption of high susceptibility will be

used by the Executive Secretary unless a PWS or a group of PWSs demonstrates otherwise, per R309-605, and receives concurrence from the Executive Secretary under R309-605-7(2).

(c) **Prioritized Potential Contamination Source Inventory:** The PWS will prepare a prioritized inventory of potential contamination sources based on the susceptibility determinations in R309-605-7(4)(b)(i). The inventory will rank potential contamination sources based on the degree of threat posed to the drinking water source as determined in R309-605-7(4)(b)(i).

(5) **Management Program to Control Each Preexisting Potential Contamination Source.**

(a) PWSs are not required to plan and implement land management strategies for potential contamination source hazards that are assessed as "adequately controlled."

(b) With the first submittal of the DWSP Plan, PWSs shall include management strategies to reduce the risk of contamination from, at a minimum, each of the three highest priority uncontrolled Potential Contamination Sources in the protection zones for the source. The Executive Secretary may require land management strategies for additional Potential Contamination Sources to assure adequate protection of the source. A management plan may be for one specific Potential Contamination Source (i.e., a sewage lagoon discharging into a stream), or for a group of similar or related Potential Contamination Sources that were assessed jointly under R309-605-7(4)(a)(iii)(B)(III) (i.e., one management plan for septic systems within one residential development would be acceptable, and would count as one of the three Potential Contamination Source management strategies).

PWSs shall plan land management strategies to control preexisting uncontrolled potential contamination sources in accordance with their existing authority and jurisdiction. Land management strategies must be consistent with the provisions of R309-605, designed to control or reduce the risk of potential contamination, and may be regulatory or non-regulatory. Land management strategies must be implemented according to the schedule required in R309-605-7(1)(b)(v).

(c) PWSs with overlapping protection zones may cooperate in controlling a particular preexisting potential contamination source if one PWS will agree to take the lead in planning and implementing land management strategies. The remaining PWS(s) will assess the preexisting potential contamination source as "adequately controlled."

(d) At each six year cycle for revising and resubmitting the DWSP Plan, under the schedule in R309-605-7(1)(c)(v), the PWS shall prioritize their inventory again, and shall propose a management program to control preexisting Potential Contamination Sources for the three highest priority Potential Contamination Sources, which may include uncontrolled Potential Contamination Sources not previously managed. The PWS shall also continue existing management programs, unless justification is provided that demonstrates that a Potential Contamination Source that was previously managed is now considered controlled.

(6) **Management Program to Control or Prohibit Future Potential Contamination Sources for Existing Drinking Water Sources.**

(a) PWSs shall plan land management strategies to control or prohibit future potential contamination sources within each of its DWSP zones consistent with the provisions of R309-605 and to the extent allowed under its authority and jurisdiction. Land management strategies must be designed to control or reduce the risk of potential contamination and may be regulatory or non-regulatory. Additionally land management strategies must be implemented according to the schedule required in R309-605-7(1)(b)(v).

(b) Protection areas may extend into neighboring cities, towns, and counties. Since it may not be possible for some

PWSs to enact regulatory land management strategies outside of their jurisdiction, except for municipalities as described below, it is recommended that these PWSs contact their neighboring cities, towns, and counties to see if they are willing to implement protective ordinances to prevent surface water contamination under joint management agreements.

(c) Cities and towns have extraterritorial jurisdiction in accordance with Section 10-8-15 of the Utah Code Annotated to enact ordinances to protect a stream or "source" from which their water is taken... "for 15 miles above the point from which it is taken and for a distance of 300 feet on each side of such stream..."

(d) Zoning ordinances are an effective means to control potential contamination sources that may want to move into protection areas. They allow PWSs to prohibit facilities that would discharge contaminants directly to surface water. They also allow PWSs to review plans from potential contamination sources to ensure there will be adequate spill protection and waste disposal procedures, etc. If zoning ordinances are not used, PWSs must establish a plan to contact potential contamination sources individually as they move into protection areas, identify and assess their controls, and plan land management strategies if they are not adequately controlled.

(7) **Public Notification:**

Within their DWSP report, each PWS shall specify the method and schedule for notifying their customers and consumers that an assessment of their surface water source has been completed and what the results of that assessment are. Each PWS shall provide the proposed public notification material as an appendix to the DWSP report. The public notification material shall include a discussion of the general geologic and physical setting of the source, the sensitivity of the setting, general types of potential contamination sources in the area, how susceptible the drinking water source is to potential contamination and a map showing the location of the drinking water source and generalized areas of potential concern (it is not mandatory to show the location of the intake itself). The public notification material will be in plain English. The purpose of this public notification is to advise the public regarding how susceptible their drinking water source is to potential contamination sources. Examples of means of notifying the public, and examples of acceptable public notification materials, are available from the Division. The public notification materials must be approved by the Executive Secretary prior to distribution.

R309-605-8. DWSP for Ground-Water Sources Under the Direct Influence of Surface Water Sources.

(1) DWSP for ground-water sources under the direct influence of surface water sources will be accomplished through delineation of both the ground-water and surface water contribution areas. The requirements of R309-600 will apply to the ground-water portion, and the requirements of R309-605 will apply to the surface water portion, except that the schedule for such DWSP plans under this section will be based on the schedule shown in R309-605-4(1).

R309-605-9. New Surface Water Sources of Drinking Water.

(1) Prior to constructing a new surface water source of drinking water, each PWS shall develop a preliminary evaluation report (PER) which demonstrates that the source location has been chosen such that the number of uncontrolled sources in zones 1 and 2 is minimized. If the source water is not currently classified as Class 1C under UAC R317-2, the PWS must request such a classification from the Water Quality Board for zones 1 and 2. The PWS must also request that the source water be categorized as High Quality Waters - Category 1 or 2 under UAC R317-2-3 (Antidegradation Policy), if applicable.

In addition, engineering information in accordance with R309-515-4 and R309-515-5 (general source development and surface water source development requirements) must be submitted to the Executive Secretary concurrent with the PER. A complete DWSP plan is required, one year after approval of the PER and after construction of the source intake, following the requirements of R309-605-7.

(2) Preliminary Evaluation Report (PER) for New Sources of Drinking Water - PERs shall cover all four zones. PERs should be developed in accordance with the "Standard Report Format for New Surface Sources." This document may be obtained from the Division. PWSs shall include the following four sections in each PER:

(a) Delineation Report for Estimated DWSP Zones - The same requirements apply as in R309-605-7(3).

(b) Susceptibility Analysis and determination (including inventory)- The same requirements apply as in R309-605-7(4).

(c) Land Use Map - A land use map which includes all land within zones one and two and the primary use of the land (residential, commercial, industrial, recreational, crops, animal husbandry, etc). Existing maps or GIS data may be used to satisfy this requirement.

(d) Documentation of Division of Water Quality classification of source water - with reference to R317-2, provide documentation of the classification of the source waters by the Water Quality Board/Division of Water Quality (see also R309-605-9(1)), and of any associated petition for a change in classification.

(3) DWSP Plan for New Sources of Drinking Water - The PWS shall submit a DWSP Plan in accordance with R309-605-4 for any new surface water source of drinking water within one year after the date of the Executive Secretary's concurrence letter with the PER. In developing this DWSP Plan, PWSs shall refine the information in the PER by applying any new characteristics of the source.

R309-605-10. Contingency Plans.

PWSs shall submit a Contingency Plan which includes all sources of drinking water (groundwater and surface water) for their entire water system to the Executive Secretary concurrently with the submission of their first DWSP Plan. The Contingency Plan shall address emergency response, rationing, water supply decontamination, and development of alternative sources.

KEY: drinking water, environmental health
August 27, 2001 **19-4-104(1)(a)(iv)**
Notice of Continuation April 14, 2005

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-302. Eligibility Requirements.****R414-302-1. Citizenship and Alienage.**

(1) The department adopts 42 CFR 435.406(a)(1), 1997 ed., which is incorporated by reference. The Department adopts Section 1137 and Subsection 1903(v) of the Compilation of the Social Security Laws, in effect January 1, 1998, which is incorporated by reference. The Department adopts Pub. L. 104-193 (401) through (403), (411), (412), (421) through (423), (431), and (435), as amended by Pub. L. 105-33(5302)(b) and (c), (5303), (5305)(b), (5306), (5562), (5563), (5571), and Pub. L. 105-306(2), which are incorporated by reference. The Department adopts Pub. L. 105-33(5307)(a) and (5566) which are incorporated by reference.

(2) The definitions in R414-1 and R414-301 apply to this rule.

(3) The Department shall decide if a public or private organization no longer exists or is unable to meet an alien's needs. The Department shall base the decision on the evidence submitted to support the claim. The documentation submitted by the alien must be sufficient to prove the claim.

(4) One adult household member must declare the citizenship status of all household members who will receive Medicaid. The client must provide verification of citizenship.

(5) A qualified alien, as defined in Pub. L. 104-193 (431) as amended by Pub. L. 105-33(5302)(c)(3), (5562), (5571), and Pub. L. 105-306(2) who was residing in the United States prior to August 22, 1996, may receive full Medicaid, QMB, SLMB, or Qualifying Individuals (QI) services.

(6) A qualified alien, as defined in Pub. L. No. 104-193 (431) as amended by Pub. L. 105-33(5302)(c)(3), (5562), and (5571), newly admitted into the United States on or after August 22, 1996, may receive full Medicaid, QMB, SLMB, or Qualifying Individuals (QI) services after five years have passed from the person's date of entry into the United States.

R414-302-2. Utah Residence.

The Department adopts 42 CFR 435.403, 1997 ed., which is incorporated by reference. The Department adopts Subsection 1902(b) of the Compilation of the Social Security Laws, in effect January 1, 1998, which is incorporated by reference.

R414-302-3. Local Office Residence.

Applicants may apply at any local office or outreach location. The Department may require applicants also applying for services from the Department of Workforce Services or foster care Medicaid to apply at the local office in the area where they reside.

R414-302-4. Residents of Institutions.

(1) The Department adopts 20 CFR 416.201 and 416.211, 1997 ed. and 42 CFR 435.1008, 1997 ed., which are incorporated by reference.

(2) The Department does not consider persons under the age of 18 to be residents of an institution if they are living temporarily in the institution while arrangements are being made for other placement.

(3) The Department does not consider an individual who resides in a temporary shelter for a limited period of time as a resident of an institution.

(4) The Department considers ineligible residents of institutions for mental disease as non-residents while on conditional or convalescent leave from the institution.

R414-302-5. Social Security Numbers.

(1) The Department adopts 42 CFR 435.910, 1997 ed., which is incorporated by reference. The Department adopts Section 1137 of the Compilation of the Social Security Laws, in

effect January 1, 1998, which is incorporated by reference.

(2) Clients must provide their correct Social Security Number (SSN).

(a) The Department requires clients to provide their correct SSN or a proof of application for a SSN at the time of application for Medicaid.

(b) The Department requires clients who do not know their SSN or provide a SSN that is questionable to provide proof of application for a SSN upon application for Medicaid.

(c) Acceptable proof of application for a SSN is a Social Security Card, an official document from Social Security which identifies the correct number or a Social Security receipt form 5028, 2880, or 2853.

(d) The Department requires a new proof of application for a SSN at each recertification if the SSN has not been provided previously.

R414-302-6. Application for Other Possible Benefits.

The Department requires applicants for and recipients of medical assistance to apply for and take all reasonable steps to receive other possible benefits as required by 42 CFR 435.608, 2004 ed., which is incorporated by reference.

(2) Individuals who may be eligible for Medicare Part B benefits must apply for Medicare Part B and, if eligible, become enrolled in Medicare Part B to be eligible for Medicaid. The state pays the applicable monthly premium and cost-sharing expenses for Medicare Part B for individuals who are eligible for both Medicaid and Medicare Part B.

R414-302-7. Third Party Liability.

(1) The Department adopts 42 CFR 433.138(b) and 435.610, 1997 ed., and Section 1915(b) of the Compilation of the Social Security Laws, in effect January 1, 1998, which are incorporated by reference.

(2) The Department requires clients to report any changes in third party liability information within 30 days.

(3) The Department considers a client noncooperative if the client knowingly withholds third party liability information.

(4) The Department shall decide whether employer provided group health insurance would be cost effective for the state to purchase as a benefit of Medicaid.

(5) The Department requires clients residing in selected communities to be enrolled in a Health Maintenance Organization as their primary care provider. The Department shall enroll clients who do not make a selection in a Health Maintenance Organization that the Department selects. The Department shall notify clients of the Health Maintenance Organization that they will be enrolled in and allowed ten days to contact the Department with a different selection. If the client fails to notify the Department to make a different selection within ten days, the enrollment shall become effective for the next benefit month.

R414-302-8. Medical Support Enforcement.

The Department adopts 42 CFR 433.145 through 433.148, 1997 ed., which is incorporated by reference.

R414-302-9. Relationship Determination for Family Medicaid.

The Department adopts 42 CFR 435.602(a), 1997 ed., which is incorporated by reference.

R414-302-10. Strikers - Family Medicaid.

The Department adopts 45 CFR 233.106, 1997 ed., which is incorporated by reference.

**KEY: benefits, income
December 16, 2005**

Notice of Continuation January 31, 2003

R434. Health, Health Systems Improvement, Primary Care and Rural Health.**R434-100. Physician Visa Waivers.****R434-100-1. Authority and Purpose.**

(1) Sections 1182(e) and 1184 of Title III of the Immigration and Nationality Act and 22 CFR 41.63 provide that the state may request a waiver of the federal two year home residence requirement on behalf of J-1 visa physicians each fiscal year if they work in a medically underserved area of the state and if the waiver is in the public interest. Section 26-1-18 authorizes the Utah Department of Health to implement this program.

(2) This rule establishes the criteria to determine whether it is in the public interest to request a J-1 visa waiver for an applicant. It establishes the procedures for the submission, review, and disposition of applications.

R434-100-2. Definitions.

As used in this rule:

(1) "Department" means the Utah Department of Health.

(2) "Health care facility" means a doctor's office, local health department, clinic or licensed health care facility where a J-1 visa waiver physician may work under the supervision of the sponsoring physician.

(3) "Principal" means any person who owns 10% or more beneficial or equitable interest in the health care facility.

R434-100-3. Maximum Number of Visa Waivers.

(1) The Department may recommend J-1 visa waivers up to the maximum number of eligible J-1 visa waivers that have been granted in a federal fiscal year. If the maximum number of J-1 visa waivers have been granted, the Department shall consider pending applications in the following federal fiscal year in the order each was received.

(2) Each health care facility may make up to two requests per federal fiscal year.

R434-100-4. Physician Eligibility.

(1) A physician is eligible to apply for a J-1 visa waiver recommendation if he:

(a) is enrolled in or has completed a minimum three year postgraduate training program in the United States accredited by the Accreditation Committee on Graduate Medical Education or the American Osteopathic Association Bureau of Professional Education prior to submitting an application;

(b) has passed the examination requirements for licensure as a physician or surgeon or osteopathic physician or surgeon in Utah, pursuant to rule established by the Division of Occupational and Professional Licensing; and

(c) has the specialty training and previous work experience that corresponds to the health care facility's recruitment descriptions.

R434-100-5. Requests.

The health care facility or the physician must submit to the Department a written request for the J-1 visa waiver.

(1) The request must include from the health care facility:

(a) documentation of its recruitment efforts to hire a qualified United States citizen for at least one immediate prior year for the position the J-1 visa waiver physician seeks to fill;

(b) documentation that it implements a sliding fee scale, payment schedule, or similar method that demonstrates that it provides discounts to medically indigent patients; and

(c) an assurance letter that the health care facility and its principals are not under investigation for, under probation for, or under restriction for:

(i) Children's Health Insurance Program, Medicaid, or Medicare fraud;

(ii) violations of Division of Occupational and

Professional Licensing statute or rules; or

(iii) other violations of law that may indicate that it may not be in the public interest that a waiver of the two-year home residency requirement be granted.

(2) The request must include from the physician:

(a) a completed application that includes all professional experience, education, licenses and certificates, research, honors, professional memberships, and three professional references;

(b) a copy of all IAP-66 forms "Certificate of Eligibility for Exchange Visitor (J-1) Status" and INS forms I-94 for the physician and his or her spouse and children; and

(c) the case number issued by the United States Department of State indicating payment of the federal fee required to apply for the visa waiver.

(3) The request must also include:

(a) a copy of the complete contract between the J-1 visa waiver physician and the health care facility;

(b) any required processing fees; and

(c) other information requested by the Department as may be reasonably necessary to determine whether it is in the public interest that a waiver of the two-year home residency requirement be granted.

R434-100-6. Contract Requirements.

To obtain a state recommendation that the visa waiver is in the public interest, the contract that the applicant submits must meet the following criteria:

(1) The contract must be for employment at a health care facility:

(a) located within a federally designated primary care Health Professional Shortage Area;

(b) that has been operating for at least one year;

(c) whose principals are free from default on any federal or state scholarship or loan repayment program offered by the National Health Service Corps or by the state under Title 26, Chapter 46;

(d) that it or its principals are not under investigation for, under probation for, or under restriction for:

(i) Medicaid or Medicare fraud;

(ii) violations of Division of Occupational and Professional Licensing statute or rules; or

(iii) other violations of law that may indicate that it may not be in the public interest that a waiver of the two-year home residency requirement be granted.

(e) that accepts all Medicaid, Medicare, Children's Health Insurance Program, Primary Care Network and Utah Medical Assistance Program eligible patients; and

(f) that implements a sliding fee scale, payment schedule, or similar method that demonstrates that it provides discounts to medically indigent patients.

(2) The contract must provide:

(a) that the physician agrees to meet the requirements set forth in section 214(k) of the Immigration and Nationality Act, 8 USC 1184(k);

(b) the specific address of the health care facility where the physician will practice medicine;

(c) a description of the geographic area that will be served by the physician;

(d) that the physician agrees to work an annual full-time equivalency or 40 hours in patient care per week;

(e) for an obligation committing both parties to three years of employment; and

(f) that the physician agrees to begin employment at the health care facility within ninety (90) days of the waiver being granted;

(3) The contract shall not contain a "non competition" clause or other provision that would discourage or inhibit the physician from working anywhere in the state upon termination

of his employment with the health care facility.

R434-100-7. Application Deferral.

(1) The Department may defer processing of a request if the health care facility or any of its principals is under investigation or awaiting trial for possible:

- (a) Medicaid or Medicare fraud;
- (b) violations of Division of Occupational and Professional Licensing statute or rules; or
- (c) other violations of law that may indicate that it may not be in the public interest that a waiver of the two year home residency requirement be granted.

(2) The Department may defer processing of a request if the health care facility or any of its principals is under probation or has entered a plea in abeyance for any alleged violation of the elements listed in subsection (1).

(3) A physician applicant may seek to obtain a J-1 visa waiver as an employee of another health care facility if the Department has deferred processing of a request under subsections (1) or (2).

(4) If a health care facility for which a request has been deferred desires the Department to remove the deferral, it must notify the Department and provide documentation that the reason for the deferral no longer exists.

R434-100-8. Program Improvement.

The Department may require the health care facility and J-1 visa waiver physician to provide information regarding the performance, commitment to the medically underserved area, service obligation fulfillment, and any other information regarding their experience under the J-1 visa waiver as is reasonably necessary for the administration of the program.

**KEY: waiver, underserved, physicians
October 31, 2005**

26-1-18

R590. Insurance, Administration.**R590-102. Insurance Department Fee Payment Rule.****R590-102-1. Authority.**

This rule is adopted pursuant to Subsections 31A-3-103(2) and (4) which require the commissioner to publish the schedule of fees approved by the Legislature and to establish deadlines for payment of each of the various fees.

R590-102-2. Purpose and Scope.

(1) The purpose of this rule is to publish the schedule of fees approved by the legislature, to establish fee deadlines, and to disclose this information to licensees and the public.

(2) The rule applies to all persons engaged in the business of insurance in Utah, to all licensees, to applicants for licenses, registrations, certificates, or other similar filings and for services provided by the department for which a fee is required.

R590-102-3. Definitions.

For the purposes of this rule the following definitions will apply.

(1) "Admitted insurers" include: fraternal, health, health maintenance organization, life, limited health plan, motor club, non-profit health service, property-casualty, title insurers, and a prescription drug plan.

(2) "Agency" means:

(a) a person, other than an individual, including a sole proprietorship by which a natural person does business under an assumed name; and

(b) an insurance organization required to be licensed under Subsections 31A-23a-301, 31A-25-207, and 31A-26-209.

(3) "Captive insurer" includes association captive, branch captive, industrial insured captive, pure captive, and sponsored captive.

(4) "Deadline" means the date or time imposed by statute, order, or rule by which:

(a) a payment must be received by the department without incurring penalties for late payment or non-payment; or

(b) a filing must be received by the department without incurring penalties for late receipt or non-receipt.

(5) "Fee" means an amount set by the legislature for licenses, registrations, certificates, and other filings and services provided by the Insurance Department.

(6) "Full-line agency" includes producer, consultant, independent adjuster, managing general agent, public adjuster, reinsurance intermediary broker, and third party administrator.

(7) "Full-line individual" includes a producer, consultant, independent adjuster, managing general agent, public adjuster, reinsurance intermediary broker, and third party administrator.

(8) "Limited-line agency" includes bail bond and limited-line producer.

(9) "Limited-line individual" includes bail bond agent, limited-lines producer and customer service representative.

(10) "Other organizations" include: home warranty, joint underwriter, purchasing group, rate service organization, risk retention group, service contract provider, surplus line insurer, accredited reinsurer, trustee reinsurer, and health discount program.

(11) "Paper filing" means each item of a filing that must be manually entered into the department's database because it was submitted by some method such as paper facsimile, or email rather than submitted electronically when the department has mandated an electronic filing method.

(12) "Received by the department" means:

(a) except as provided in Subsection R590-102-3(11)(b), the date delivered to and stamped received by the department, whether delivered in person or electronically; or

(b) if delivered to the department by a delivery service, the delivery service's postmark date or pick-up date unless a statute, rule, or order related to a specific filing or payment provides

otherwise.

R590-102-4. General Instructions.

(1) Any fee payable to the department not included in Subsections R590-102-5 through 14, shall be due when service is requested, if applicable, otherwise by the due date on the invoice. A non-electronic payment fee will be added to the fee due the department when a payment that can be made electronically is done through a non-electronic method.

(2) Payment.

(a) Checks shall be made payable to the Utah Insurance Department. A check that is dishonored in the process of the collection will not constitute payment of the fee for which it was issued and any action taken based on the payment will be voided. Late fees and other penalties, resulting from the voided action will apply until proper payment is made. A check payment that is dishonored is a violation of this rule.

(b) Cash payments. The department is not responsible for un-receipted cash that is lost or misdelivered.

(c) Electronic payments.

(i) Credit Card. Credit cards may be used to pay any fee due to the department. Credit card payments that are dishonored will not constitute payment of the fee and any action taken based on the payment will be voided. Late fees and other penalties, resulting from the voided action, will apply until proper payment is made. A credit card payment that is dishonored is a violation of this rule.

(ii) Automated clearinghouse (ACH). Payers or purchasers desiring to use this method must contact the department for the proper routing and transit information. Payments that are made in error to another agency or that are not deposited into the department's account will not constitute payment of the fee and any action taken based on the payment will be voided. Late fees and other penalties resulting from the voided action will apply until proper payment is made. An ACH payment that is dishonored is a violation of this rule.

(3) Retaliation. The fees enumerated in this rule are not subject to retaliation in accordance with Section 31A-3-401 if other states or countries impose higher fees.

(4) Refunds.

(a) All fees in this rule are non-refundable.

(b) Overpayments of fees are refundable.

(c) Requests for return of overpayments must be in writing.

(5) A non-electronic processing fee will be assessed for a particular service if the department has established an electronic process for that service. See Section 12 for non-electronic processing fees.

R590-102-5. Admitted Insurer Annual License and Annual Service Fees.

(1) Annual license fees.

(a) certificate of authority, initial license application - due with license application: \$1,002;

(b) certificate of authority - renewal - due by the due date on the invoice: \$302;

(c) certificate of authority - late renewal - due for any renewal paid after the date on the invoice: \$352;

(d) certificate of authority - reinstatement - due with application for reinstatement: \$1,002;

(e) certificate of authority - amendments - due with request for amendment: \$252;

(f) application for merger, acquisition, or change of control - Form A, due with filing: \$2,002. Expenses incurred for consultant(s) services necessary to evaluate the Form A will be charged to the applicant and due when billed;

(g) redomestication filing - due with filing: \$2,002; and

(h) application for organizational permit for mutual insurer to solicit applications for qualifying insurance policies or

subscriptions for mutual bonds or contribution notes - due with application: \$1,002.

(2) The annual initial or annual renewal license fee includes the following licensing services for which no additional fee is required:

(a) filing annual statement and report of Utah business - due annually on March 1;

(b) filing holding company registration statement - Form B;

(c) filing application for material transactions between affiliated companies - Form D;

(d) application for: stock solicitation permit, public offering filing, but not an SEC filing; an SEC filing; private placement offering; and

(e) application for individual license to solicit in accordance with the stock solicitation permit.

(3) Annual service fee:

(a) Due annually by the due date on the invoice. The fee is based on the Utah premium as shown in the latest annual statement on file with the National Association of Insurance Commissioners (NAIC) and the department. Fee calculation example: the 2004 annual service fee calculation will use the Utah premium shown in the December 31, 2003 annual statement.

(i) \$0 premium volume: no service fee;

(ii) more than \$zero but less than \$1 million in premium volume: \$700;

(iii) \$1 million but less than \$3 million in premium volume: \$1,100;

(iv) \$3 million but less than \$6 million in premium volume: \$1,550;

(v) \$6 million but less than \$11 million in premium volume: \$2,100;

(vi) \$11 million but less than \$15 million in premium volume: \$2,750;

(vii) \$15 million but less than \$20 million in premium volume: \$3,500; and

(viii) \$20 million or more in premium volume: \$4,350.

(b) The annual service fee includes the following services for which no additional fee is required:

(i) filing of amendments to articles of incorporation, charter, or bylaws;

(ii) filing of power of attorney;

(iii) filing of registered agent;

(iv) affixing commissioner's seal and certifying any paper;

(v) filing of authorization to appoint and remove agents;

(vi) filing of producer/agency appointment with an insurer - initial;

(vii) filing of producer/agency appointment with an insurer - termination;

(viii) report filing, all lines of insurance;

(ix) rate filing, all lines of insurance; and

(x) form filing, all lines of insurance.

(c) The annual service fee is for services that the department will provide for an admitted insurer during the year. The fee is paid in advance of providing the services.

R590-102-6. Surplus Lines Insurer, Accredited Reinsurer, Trusteed Reinsurer, Other Organizations Annual License and Annual Service Fees.

(1) Annual license fee.

(a) other organization:

(i) other organization - initial - due with application: \$252;

(ii) other organization - renewal - due annually by the due date on the invoice: \$202;

(iii) other organization - late renewal - due for any renewal paid after the date on the invoice: \$252;

(iv) other organization - reinstatement - due with

application for reinstatement: \$252;

(v) The annual other organizations initial or renewal fee includes the risk retention group annual statement filing - due annually on May 1.

(b) surplus line insurer, accredited reinsurer, and trusteed reinsurer:

(i) surplus lines insurer, accredited reinsurer, and trusteed reinsurer - initial - due with application \$1,002.

(ii) surplus lines insurer, accredited reinsurer, and trusteed reinsurer - renewal - due annually by the due date on the invoice: \$302;

(iii) surplus lines insurer, accredited reinsurer, and trusteed reinsurer - late renewal - due for any renewal paid after the date on the invoice: \$352;

(iv) surplus lines insurer, accredited reinsurer, and trusteed reinsurer - reinstatement - due with application for reinstatement: \$1,002;

(v) The annual initial or renewal surplus line license fee includes the surplus lines annual statement filing for:

(A) U.S. companies - due annually on May 1; and

(B) foreign companies - due within 60 days of the annual statement's filing with the insurance regulatory authority where the company is domiciled.

(vi) The annual initial or renewal accredited reinsurer and trusteed reinsurer license fee includes the annual statement filing - due annually on March 1.

(2) Annual service fee:

(a) Other organization - due annually by the due date on the invoice: \$200.

(b) Surplus lines insurer, accredited reinsurer, and trusteed reinsurer - due annually by the due date on the invoice: \$200

(c) The annual service fee includes the following services for which no additional fee is required:

(i) filing of power of attorney;

(ii) filing of registered agent;

(iii) rate, form, report or service contract filing; and

(iv) any other services provided to the licensee.

(d) The annual service fee is for services that the department will provide during the year. The fee is paid in advance of providing the services.

R590-102-7. Captive Insurer Fees.

(1) Initial license application - due with license application: \$202.

(2) Initial license application review - due by the due date on the invoice: actual costs incurred by the department to review the application.

(3) Annual license fees:

(a) initial - due by the due date on the invoice: \$5,002;

(b) renewal - due by the due date on the invoice: \$5,002;

(c) late renewal - due for any renewal paid after the date on the invoice: \$5,052;

(d) reinstatement - due with application for reinstatement: \$5,002.

R590-102-8. Viatical Settlement Provider Fees.

(1) Annual license fees:

(a) initial - due with application: \$1,002;

(b) renewal - due by the due date on the invoice: \$302;

(c) late renewal - due for any renewal paid after the date on the invoice: \$352;

(d) reinstatement - due with reinstatement application: \$1,002.

(2) Annual service fee - due by the due date on the invoice: \$600.

R590-102-9. Individual Resident and Non-Resident Biennial License Fees.

(1) Resident and non-resident full-line individual initial

license or renewal fee for two-year period:

- (a) initial license fee - due with application: \$72;
- (b) express initial license fee - due with application: \$72;
- (c) renewal license fee if renewed prior to renewal deadline - due with renewal application: \$72;
- (d) renewal license fee if renewed 1 through 30 days after renewal deadline and prior to license lapse - due with renewal application: \$142;
- (e) lapsed license reinstatement fee if reinstated 31 days through 730 days after renewal deadline - due with application for reinstatement: \$192.

(2) Resident and non-resident limited-line individual initial or renewal license fee, for two-year period:

- (a) initial license fee - due with application: \$47;
- (b) renewal license fee if renewed prior to renewal deadline - due with renewal application: \$47;
- (c) renewal license fee if renewed 1 through 30 days after renewal deadline and prior to license lapse - due with renewal application: \$92;
- (d) lapsed license reinstatement fee if reinstated 31 days through 730 days after renewal deadline - due with application for reinstatement: \$142.

(3) Fee for addition of producer classification or line of authority to individual producer license - due with request for additional classification or line of authority: \$27.

(4) The initial and renewal full-line producer and limited-line producer fee includes the following services for which no additional fee is required:

- (a) issuance of letter of certification;
- (b) issuance of letter of clearance;
- (c) issuance of duplicate license;
- (d) individual continuing education services; and
- (e) other services provided to the licensee.

(5) The initial and renewal individual license fee includes services the department will provide during the year. The fee is paid in advance of providing the services.

R590-102-10. Biennial Agency License Fees.

(1) Resident and non-resident agency initial or renewal license per two-year license period for a full-line agency and for a limited-line agency:

- (a) initial license fee - due with application: \$77;
- (b) renewal license fee if renewed prior to renewal deadline - due with renewal application: \$77;
- (c) renewal license fee if renewed 1 through 30 days after renewal deadline and prior to license lapse - due with renewal application: \$152;
- (d) lapsed license reinstatement fee if reinstated 31 days through 730 days after renewal deadline - due with application for reinstatement: \$202.

(2) Fee for addition of producer classification or line of authority to agency license - due with request for additional classification or line of authority: \$27.

(3) Bail bond agency per annual license period:

- (a) initial license fee - due with application: \$252;
- (b) renewal license fee if renewed prior to renewal deadline - due with renewal application: \$252;
- (c) renewal license fee if renewed 1 through 30 days after renewal deadline and prior to license lapse - due with renewal application: \$502; and
- (d) lapsed license reinstatement fee if reinstated 31 days after renewal deadline - due with application for reinstatement: \$602.

(4) Health insurance purchasing alliance annual license:

- (a) initial license fee - due with application: \$502;
- (b) renewal license fee if renewed prior to renewal deadline - due with renewal application: \$502;
- (c) renewal license fee if renewed 1 through 30 days after renewal deadline and prior to license lapse - due with renewal

application: \$752; and

(d) lapsed license reinstatement fee if reinstated 31 days after renewal deadline - due with application for reinstatement: \$802.

(5) The initial and renewal agency license fee includes the following services for which no additional fee is required:

- (a) issuance of letter of certification;
- (b) issuance of letter of clearance;
- (c) issuance of duplicate license;
- (d) filing of producer designation to agency license - initial;
- (e) filing of producer designation to agency license - termination;
- (f) filing of amendment to agency license;
- (g) filing of power of attorney; and
- (h) any other services provided to the licensee.

(6) The initial and renewal agency license fee includes services the department will provide during the year. The fee is paid in advance of providing the services.

(7) Title agency filing (rate, form, or report) - due with filing: \$25.

R590-102-11. Continuing Education Fees.

(1) Continuing education provider license fees:

- (a) initial license fee - due with application: \$252;
- (b) renewal license fee if renewed prior to renewal deadline - due with renewal application: \$252;
- (c) late renewal license fee if renewed 1 through 60-days after renewal deadline and prior to license lapse - due with renewal application: \$302; and
- (d) Lapsed license reinstatement fee if reinstated 61 days after renewal deadline - due with application for reinstatement: \$352.

(2) Continuing education course post-approval fee - due with request for approval: \$5 per credit hour, minimum fee \$27.

R590-102-12. Non-electronic Processing Fees.

(1) Paper filing processing fee - assessed on a non-electronic filing when the department has mandated the use of an electronic filing process - due with each paper filing or by the due date on the invoice: \$5.

(2) Paper application processing fee - assessed on a non-electronic application when the department has mandated the use of an electronic application process - due with each paper application or by the due date on the invoice: \$25.

R590-102-13. Dedicated Fees.

The following are fees dedicated to specific uses:

- (1) annual fraud assessment fee - due by the due date on the invoice;
- (2) annual title assessment fee - due by the due date on the invoice;
- (3) relative value study book fee - due when book purchased or by invoice due date: \$12; and
- (4) mailing fee for books - due if book is to be mailed to purchaser: \$3.

R590-102-14. Electronic Commerce Dedicated Fees.

(1) E-commerce and internet technology services fee:

(a) admitted insurer and surplus lines insurer - due with the annual initial, annual renewal, or reinstatement application: \$75;

(b) captive insurer - due with the annual initial, annual renewal, or reinstatement application: \$250;

(c) other organization and viatical settlement provider - due with the annual initial, annual renewal, or reinstatement application: \$50;

(d) continuing education provider - due with the annual initial, annual renewal, or reinstatement application: \$20;

(e) agency - due with the biennial initial, biennial renewal, or reinstatement application: \$10;

(f) individual - due with the biennial initial, biennial renewal, or reinstatement application: \$5.

(2) The e-commerce and internet technology services fees are authorized until July 1, 2006.

(3) Database access fee - due when the department's database is accessed to input or acquire data: \$3 per transaction.

R590-102-15. Other Fees.

(1) photocopy fee - per page: \$.50.

(2) Complete annual statement copy fee - per statement: \$42.

(3) Fee for accepting service of legal process: \$12.

(4) Fees for production of information lists regarding admitted insurers, other organizations, individuals, agencies, or other information that can be produced by list:

(a) printed list: \$1 per page;

(b) electronic list:

(i) 1 to 500 records: \$52; and

(ii) 501 or more records: \$.11 per record.

(5) Returned check fee: \$20.

(6) Workers compensation loss cost multiplier schedule: \$5.

(7) Address correction fee -- assessed when department has to research and enter new address for a licensee -- due by the due date on the invoice: \$35.

R590-102-16. Separability.

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of this provision to other persons or circumstances shall not be affected.

KEY: insurance

December 28, 2005

Notice of Continuation February 21, 2002

31A-3-103

R590. Insurance, Administration.**R590-126. Accident and Health Insurance Standards.****R590-126-1. Authority.**

This rule is issued by the insurance commissioner pursuant to the following provisions of the Utah Insurance Code:

- (1) Subsection 31A-2-201(3)(a) authorizes rules to implement the Insurance Code;
- (2) Sections 31A-2-202 and 31A-23a-412 authorize the commissioner to request reports, conduct examinations, and inspect records of any licensee;
- (3) Subsection 31A-22-605(4) requires the commissioner to adopt rules to establish standards for disclosure in the sale of, and benefits to be provided by individual and franchise accident and health policies;
- (4) Section 31A-22-623 authorizes the commissioner to establish by rule minimum standards of coverage for dietary products for inborn metabolic errors;
- (5) Section 31A-22-626 authorizes the commissioner to establish by rule minimum standards of coverage for diabetes for accident and health insurance;
- (6) Subsection 31A-23a-402(8) authorizes the commissioner to define by rule acts and practices that are unfair and unreasonable; and
- (7) Subsection 31A-26-301(1) authorizes the commissioner to set standards for timely payment of claims.

R590-126-2. Purpose and Scope.

(1) Purpose. The purpose of this rule is to provide reasonable standardization and simplification of terms and coverages of insurance policies in order to facilitate public understanding and comparison and to prohibit provisions which may be misleading or confusing in connection either with the purchase of such coverages or with the settlement of claims, and to provide for full disclosure in the sale of such insurance.

(2) Scope.

(a) This regulation applies to:

(i) all individual accident and health insurance policies and group supplemental health policies and certificates, delivered or issued for delivery in this state on and after January 1, 2006, that are not specifically exempted from this regulation, regardless of:

(A) whether the policy is issued to an association; a trust; a discretionary group; or other similar grouping; or

(B) the situs of delivery of the policy or contract; and

(ii) all dental plans and vision plans.

(b) This rule shall not apply to:

(i) employer accident and health insurance, as defined in Section 31A-22-502;

(ii) policies issued to employees or members as additions to franchise plans in existence on the effective date of this regulation;

(iii) Medicare supplement policies subject to Section 31A-22-620; or

(iv) civilian Health and Medical Program of the Uniformed Services, Chapter 55, title 10 of the United States Code, CHAMPUS supplement insurance policies.

(3) The requirements contained in this regulation shall be in addition to any other applicable regulations previously adopted.

R590-126-3. Definitions.

In addition to the definitions of Section 31A-1-301 and Subsection 31A-22-605(2), the following definitions shall apply for the purpose of this rule.

(1) "Accident," "accidental injury," and "accidental means" shall be defined to employ result language and shall not include words that establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.

(a) The definition shall not be more restrictive than the

following: "injury" or "injuries" means accidental bodily injury sustained by the insured person that is the direct cause of the condition for which benefits are provided, independent of disease or bodily infirmity or any other cause and that occurs while the insurance is in force.

(b) Unless otherwise prohibited by law, the definition may exclude injuries for which benefits are paid under worker's compensation, any employer's liability or similar law, or a motor vehicle no-fault plan.

(2) "Adult Day Care" shall mean a facility duly licensed and operating within the scope of such license. Adult Day Care facility may not be defined more restrictively than providing continuous care and supervision for three or more adults 18 years of age and over for at least four but less than 24 hours a day, that meets the needs of functionally impaired adults through a comprehensive program that provides a variety of health, social, recreational, and related support services in a protective setting.

(3) "Certificate of Completion" shall mean a document issued by the Utah Board of Education to a person who completes an approved course of study not leading to a diploma, or to one who passes a challenge for that same course of study, or to one whose out-of-state credentials and certificate are acceptable to the Board.

(4) "Complications of Pregnancy" shall mean diseases or conditions the diagnoses of which are distinct from pregnancy but are adversely affected or caused by pregnancy and not associated with a normal pregnancy.

(a) "Complications of Pregnancy" include acute nephritis, nephrosis, cardiac decompensation, ectopic pregnancy which is terminated, a spontaneous termination of pregnancy when a viable birth is not possible, puerperal infection, eclampsia, pre-eclampsia and toxemia.

(b) This definition does not include false labor, occasional spotting, doctor prescribed rest during the period of pregnancy, morning sickness, and conditions of comparable severity associated with management of a difficult pregnancy.

(5) "Conditionally Renewable" means renewal can be declined by class, by geographic area or for stated reasons other than deterioration of health.

(6) "Convalescent Nursing Home," "extended care facility," or "skilled nursing facility" shall mean a facility duly licensed and operating within the scope of such license.

(7) "Cosmetic Surgery" or "Reconstructive Surgery" shall mean any surgical procedure performed primarily to improve physical appearance.

(a) This definition does not include surgery, which is necessary:

(i) to correct damage caused by injury or sickness;

(ii) for reconstructive treatment following medically necessary surgery;

(iii) to provide or restore normal bodily function; or

(iv) to correct a congenital disorder that has resulted in a functional defect.

(b) This provision does not require coverage for preexisting conditions otherwise excluded.

(8) "Custodial Care" shall mean a Plan of Care, which does not provide treatment for sickness or injury, but is only for the purpose of meeting personal needs and maintaining physical condition when there is no prospect of effecting remission or restoration of the patient to a condition in which care would not be required. Such care may be provided by persons without nursing skills or qualifications. If a nursing care facility is only providing custodial or residential care, the level of care may be so characterized.

(9) "Disability Income" shall mean income replacement as defined in Section 31A-1-301.

(10) "Elimination Period" or "Waiting Period" means the length of time an insured shall wait before benefits are paid

under the policy.

(11) "Enrollment Form" shall mean application as defined in Section 31A-1-301.

(12) "Experimental Treatment" is defined as medical treatment, services, supplies, medications, drugs, or other methods of therapy or medical practices, which are not accepted as a valid course of treatment by the Utah Medical Association, the U.S. Food and Drug Administration, the American Medical Association, or the Surgeon General.

(13) "Group Supplemental Health Insurance" means group accident and health insurance policies and certificates providing hospital confinement indemnity, accident only, specified disease, specified accident or limited benefit health coverage.

(14) "Guaranteed Renewable" means renewal cannot be declined by the insurance company for any reasons, but the insurance company can revise rates on a class basis.

(15) "Home Health Agency" shall mean a public agency or private organization, or subdivision of a health care facility, licensed and operating within the scope of such license.

(16) "Home Health Aide" shall mean a person who obtains a Certificate of Completion, as required by law, which allows performance of health care and other related services under the supervision of a registered nurse from the home health agency, or performance of simple procedures as an extension of physical, speech, or occupational therapy under the supervision of licensed therapists.

(17) "Home Health Care" shall mean services provided by a home health agency.

(18) "Homemaker" shall mean a person who cares for the environment in the home through performance of duties such as housekeeping, meal planning and preparation, laundry, shopping and errands.

(19) "Homemaker/Home Health Aide" shall mean a person who has obtained a Certificate of Completion, as required by law, which allows performance of both homemaker and home health aide services, and who provides health care and other related services under the supervision of a registered nurse from the home health agency or under the supervision of licensed therapists.

(20) "Hospice" shall mean a program of care for the terminally ill and their families which occurs in a home or in a health care facility and which provides medical, palliative, psychological, spiritual, or supportive care and treatment and is licensed and operating within the scope of such license.

(21) "Hospital" means a facility that is licensed and operating within the scope of such license. This definition may not preclude the requirement of medical necessity of hospital confinement or other treatment.

(22) "Intermediate Nursing Care" shall mean nursing services provided by, or under the supervision of, a registered nurse. Such care shall be for the purpose of treating the condition for which confinement is required.

(23) "Medical Necessity" means:

(a) health care services or products that a prudent health care professional would provide to a patient for the purpose of preventing, diagnosing or treating an illness, injury, disease or its symptoms in a manner that is:

(i) in accordance with generally accepted standards of medical practice in the United States;

(ii) clinically appropriate in terms of type, frequency, extent, site, and duration;

(iii) not primarily for the convenience of the patient, physician, or other health care provider; and

(iv) covered under the contract;

(b) when a medical question-of-fact exists medical necessity shall include the most appropriate available supply or level of service for the individual in question, considering potential benefits and harms to the individual, and known to be effective.

(i) For interventions not yet in widespread use, the effectiveness shall be based on scientific evidence.

(ii) For established interventions, the effectiveness shall be based on:

(A) scientific evidence;

(B) professional standards; and

(C) expert opinion.

(24) "Medicare" means the "Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended."

(25) "Medicare Supplement Policy" shall mean an individual, franchise, or group policy of accident and health insurance, other than a policy issued pursuant to a contract under section 1876 of the federal Social Security Act, 42 U.S.C. section 1395 et seq., or an issued policy under a demonstration project specified in 41 U.S.C. Section 1395ss(g)(1), that is advertised, marketed, or primarily designed as a supplement to reimbursements under Medicare for hospital, medical, or surgical expenses of persons eligible for Medicare.

(26) "Mental or Nervous Disorders" may not be defined more restrictively than a definition including neurosis, psychoneurosis, psychosis, or any other mental or emotional disease or disorder which does not have a demonstrable organic cause.

(27) "Non-Cancelable" means renewal cannot be declined nor can rates be revised by the insurance company.

(28) "Nurse" may be defined so that the description of nurse is restricted to a type of nurse, such as registered nurse, or licensed practical nurse. If the words "nurse" or "registered nurse" are used without specific instruction, then the use of such terms requires the insurer to recognize the services of any individual who qualifies under such terminology in accordance with applicable statutes or administrative rules.

(29) "Nurse, Licensed Practical" shall mean a person who is registered and licensed to practice as a practical nurse.

(30) "Nurse, Registered" shall mean any person who is registered and licensed to practice as a registered nurse.

(31) "Nursing Care" shall mean assistance provided for the health care needs of sick or disabled individuals, by or under the direction of licensed nursing personnel.

(32) "One Period of Confinement" shall mean consecutive days of in-hospital service received as an inpatient, or successive confinements when discharge from and readmission to the hospital occurs within a period of time of not more than 90 days or three times the maximum number of days of in-hospital coverage provided by the policy up to a maximum of 180 days.

(33) "Optionally Renewable" means renewal is at the option of the insurance company.

(34) "Partial Disability" shall be defined in relation to the individual's inability to perform one or more, but not all, of; the major, important, or essential duties of employment or occupation; customary duties of a homemaker or dependent; or may be related to a percentage of time worked or to a specified number of hours or to compensation.

(35) "Personal Care" shall mean assistance, under a plan of care by a home health agency, provided to persons in activities of daily living.

(36) "Personal Care Aide" shall mean a person who obtains a Certificate of Completion, as required by law, which allows that person to assist in the activities of daily living and emergency first aid, and who must be supervised by a registered nurse from the home health agency.

(37) "Physician" may be defined by including words such as qualified physician or licensed physician. The use of such terms requires an insurer to recognize and to accept, to the extent of its obligation under the contract, all providers of medical care and treatment when such services are within the scope of the provider's licensed authority and are provided

pursuant to applicable laws.

(38) "Preexisting Condition."

(a) Except as provided in Section (b), a preexisting condition shall not be defined more restrictively than the existence of symptoms which would cause an ordinarily prudent person to seek diagnosis, care or treatment within a two year period preceding the effective date of the coverage of the insured person or a condition for which medical advice or treatment was recommended by a physician or received from a physician within a two year period preceding the effective date of the coverage of the insured person.

(b) A specified disease insurance policy shall not define preexisting condition more restrictively than a condition which first manifested itself within six months prior to the effective date of coverage or which was diagnosed by a physician at any time prior to the effective date of coverage.

(39) "Probationary Period" shall mean the period of time following the date of issuance or effective date of the policy before coverage begins for all or certain conditions.

(40) "Residential Health Care Facility" shall mean a publicly or privately operated and maintained facility providing personal care to residents who require protected living arrangements which is licensed and operating within the scope of such license.

(41) "Residual Disability" shall be defined in relation to the individual's reduction in earnings and may be related either to the inability to perform some part of the major, important, or essential duties of employment or occupation, or to the inability to perform all usual duties for as long as is usually required.

(42) "Respite Care" shall mean provision of temporary support to the primary caregiver of the aged, disabled, or handicapped individual insured, by taking over the tasks of that person for a limited period of time. The insured may receive care in the home, or other appropriate community location, or in an appropriate institutional setting.

(43)(a) "Scientific evidence" means:

(i) scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff; or

(ii) findings, studies or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes.

(b) Scientific evidence shall not include published peer-reviewed literature sponsored to a significant extent by a pharmaceutical manufacturing company or medical device manufacturer or a single study without other supportable studies.

(44) "Sickness" means illness, disease, or disorder of an insured person.

(45) "Skilled Nursing Care" shall mean nursing services provided by, or under the supervision of, a registered nurse. Such care shall be for the purpose of treating the condition for which the confinement is required and not for the purpose of providing intermediate or custodial care.

(46) "Therapist" may be defined as a professionally trained or duly licensed or registered person, such as a physical therapist, occupational therapist, or speech therapist, who is skilled in applying treatment techniques and procedures under the general direction of a physician.

(47)(a) "Total Disability" shall mean an individual who:

(i) is not engaged in employment or occupation for which he is or becomes qualified by reason of education, training or experience; and

(ii) is unable to perform all of the substantial and material duties of his or her regular occupation or words of similar import.

(b) An insurer may require care by a physician other than

the insured or a member of the insured's immediate family.

(c) The definition may not exclude benefits based on the individual's:

(i) ability to engage in any employment or occupation for wage or profit;

(ii) inability to perform any occupation whatsoever, any occupational duty, or any and every duty of his occupation; or

(iii) inability to engage in any training or rehabilitation program.

(48)(a) "Usual and Customary" shall mean the most common charge for similar services, medicines or supplies within the area in which the charge is incurred.

(b) In determining whether a charge is usual and customary, insurers shall consider one or more of the following factors:

(i) the level of skill, extent of training, and experience required to perform the procedure or service;

(ii) the length of time required to perform the procedure or services as compared to the length of time required to perform other similar services;

(iii) the severity or nature of the illness or injury being treated;

(iv) the amount charged for the same or comparable services, medicines or supplies in the locality; the amount charged for the same or comparable services, medicines or supplies in other parts of the country;

(v) the cost to the provider of providing the service, medicine or supply; and

(vi) other factors determined by the insurer to be appropriate.

(49) "Waiting Period" shall mean "Elimination Period."

R590-126-4. Prohibited Policy Provisions.

(1) Probationary periods.

(a) A policy shall not contain provisions establishing a probationary period during which no coverage is provided under the policy, subject to the further exception that a policy may specify a probationary period not to exceed six months for specified diseases or conditions and losses resulting from disease or condition related to:

(i) adenoids;

(ii) appendix;

(iii) disorder of reproductive organs;

(iv) hernia;

(v) tonsils; and

(vi) varicose veins.

(b) The six-month period in Subsection (1)(a) may not be applicable where such specified diseases or conditions are treated on an emergency basis.

(c) Accident policies may not contain probationary or waiting periods.

(d) A probationary or waiting period for a specified disease policy shall not exceed 30 days.

(2) Preexisting conditions.

(a) Except as provided in Subsections (b) and (c), a policy shall not exclude coverage for a loss due to a preexisting condition for a period greater than 12 months following the issuance of the policy or certificate where the application or enrollment form for the insurance does not seek disclosure of prior illness, disease or physical conditions or prior medical care and treatment and the preexisting condition is not specifically excluded by the terms of the policy or certificate.

(b) A specified disease policy shall not exclude coverage for a loss due to a preexisting condition for a period greater than six months following the issuance of the policy or certificate, unless the preexisting condition is specifically excluded.

(c) A hospital confinement indemnity policy shall not exclude a preexisting condition for a period greater than 12 months following the effective date of coverage of an insured

person unless the preexisting condition is specifically and expressly excluded.

(d) Any preexisting condition elimination period must be reduced by any applicable creditable coverage.

(3) Hospital indemnity. Policies providing hospital confinement indemnity coverage shall not contain provisions excluding coverage because of confinement in a hospital operated by the federal government.

(4) Limitations or exclusions. A policy shall not limit or exclude coverage or benefits by type of illness, accident, treatment or medical condition, except as follows:

- (a) abortion;
- (b) acupuncture and acupressure services;
- (c) administrative charges for completing insurance forms, duplication services, interest, finance charges, or other administrative charges, unless otherwise required by law;
- (d) administrative exams and services;
- (e) alcoholism and drug addictions;
- (f) allergy tests and treatments;
- (g) aviation;
- (h) axillary hyperhidrosis;
- (i) benefits provided under:
 - (i) Medicare or other governmental program, except Medicaid;
 - (ii) state or federal worker's compensation; or
 - (iii) employer's liability or occupational disease law.
- (j) cardiopulmonary fitness training, exercise equipment, and membership fees to a spa or health club;
- (k) charges for appointments scheduled and not kept;
- (l) chiropractic;
- (m) complementary and alternative medicine;
- (n) corrective lenses, and examination for the prescription or fitting thereof, but policies may not exclude required lens implants following cataract surgery;
- (o) cosmetic surgery including gastric procedures; reversal, revision, repair or treatment related to a non-covered cosmetic surgery, except that cosmetic surgery shall not include reconstructive surgery when the service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part; and reconstructive surgery because of congenital disease or anomaly of a covered dependent child that has resulted in a functional defect;
- (p) custodial care;
- (q) dental care or treatment, except dental plans;
- (r) dietary products, except as required by R590-194;
- (s) educational and nutritional training, except as required by R590-200;
- (t) experimental and/or investigational services;
- (u) felony, riot or insurrection, when the insured is a voluntary participant;
- (v) foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain or symptomatic complaints of the feet, including orthotics. The exclusion of routine foot care does not apply to cutting or removal of corns, calluses, or nails when provided to a person who has a systemic disease, such as diabetes with peripheral neuropathy or circulatory insufficiency, of such severity that unskilled performance of the procedure would be hazardous;
- (w) gene therapy;
- (x) genetic testing;
- (y) hearing aids, and examination for the prescription or fitting thereof;
- (z) illegal activities, limited to losses related directly to the insured's voluntary participation;
- (aa) incarceration, with respect to disability income policies;
- (bb) infertility services, except as required by R590-76;
- (cc) interscholastic sports, with respect to short-term nonrenewable policies;

- (dd) mental or emotional disorders;
 - (ee) motor vehicle no-fault law, except when the covered person is required by law to have no-fault coverage, the exclusion applies to charges up to the minimum coverage required by law whether or not such coverage is in effect;
 - (ff) nuclear release;
 - (gg) preexisting conditions or diseases as allowed under Subsection R590-126-4(2), except for coverage of congenital anomalies as required by Section 31A-22-610;
 - (hh) pregnancy, except for complications of pregnancy;
 - (ii) refractive eye surgery;
 - (jj) rehabilitation therapy services (physical, speech, and occupational), unless required to correct an impairment caused by a covered accident or illness;
 - (kk) respite care;
 - (ll) rest cures;
 - (mm) routine physical examinations;
 - (nn) service in the armed forces or units auxiliary to it;
 - (oo) services rendered by employees of hospitals, laboratories or other institutions;
 - (pp) services performed by a member of the covered person's immediate family;
 - (qq) services for which no charge is normally made in the absence of insurance;
 - (rr) sexual dysfunction;
 - (ss) shipping and handling, unless otherwise required by law;
 - (tt) suicide, sane or insane, attempted suicide, or intentionally self-inflicted injury;
 - (uu) telephone/electronic consultations;
 - (vv) territorial limitations outside the United States;
 - (ww) terrorism, including acts of terrorism;
 - (xx) transplants;
 - (yy) transportation;
 - (zz) treatment provided in a government hospital, except for hospital indemnity policies;
 - (aaa) war or act of war, whether declared or undeclared; or
 - (bbb) others as may be approved by the commissioner.
- (5) Waivers. This rule shall not impair or limit the use of waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases, physical condition or extra hazardous activity. Where waivers are required as a condition of issuance, renewal or reinstatement, signed acceptance by the insured is required.
- (6) Commissioner authority. Policy provisions precluded in this section shall not be construed as a limitation on the authority of the commissioner to prohibit other policy provisions that in the opinion of the commissioner are unjust, unfair or unfairly discriminatory to the policyholder, beneficiary or a person insured under the policy.
- R590-126-5. General Requirements.**
- (1) Policy definitions. No policy subject to this rule may contain definitions respecting the matters defined in Section R590-126-3 unless such definitions comply with the requirements of that section.
- (2) Rights of spouse. The following provisions apply to policies that provide coverage to a spouse of the insured:
- (a) A policy may not provide for termination of coverage of the spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than for nonpayment of premium.
 - (b) A policy shall provide that in the event of the insured's death the spouse of the insured shall become the insured.
 - (c) The age of the younger spouse shall be used as the basis for meeting the age and durational requirements of the noncancellation or renewal provisions of the policy. However, this requirement may not prevent termination of coverage of the older spouse upon attainment of stated age limit in the policy,

so long as the policy may be continued in force as to the younger spouse to the age or for durational period as specified in said definition.

(3) Cancellation, Renewability, and Termination.

The terms "conditionally renewable," "guaranteed renewable," "noncancellable," or "optionally renewable" shall not be used without further explanatory language in accordance with the disclosure requirements of Subsection R590-126-6(2).

(a) Conditionally renewable. The term "conditionally renewable" may be used only in a policy which the insured may have the right to continue in force by the timely payment of premiums at least to age 65, during which period the insurer has no right to make any unilateral change to the detriment of the insured while the policy is in force. However, the insurer, at its option, and by timely notice, may decline renewal for reasons stated in the policy, or may make changes in premium rates by classes.

(b) Guaranteed renewable. The term "guaranteed renewable" may be used only in a policy which the insured has the right to continue in force by the timely payment of premiums at least to age 65, during which period the insurer has no right to make any unilateral change to the detriment of the insured while the policy is in force, except that the insurer may make changes in premium rates by classes.

(c) Noncancellable. The term "noncancellable" may be used only in a policy that the insured has the right to continue in force by the timely payment of premiums until the age of 65, during which period the insurer has no right to make unilaterally any change in any provision of the policy to the detriment of the insured.

(d) Optionally renewable. The term "optionally renewable" may be used only in a policy which the insured may have the right to continue in force by the timely payment of premiums at least to age 65, during which period the insurer has no right to make any unilateral change in any provision of the policy while the policy is in force. However, the insurer, at its option, and by timely notice, may decline renewal of the policy or may make changes in premium rates by classes.

(e) Notice of nonrenewal shall be given 90 days prior to nonrenewal.

(f) A policy may not be cancelled or nonrenewed solely on the grounds of deterioration of health.

(g) Termination of the policy shall be without prejudice to a continuous loss that commenced while the policy or certificate was in force. The continuous total disability of the insured may be a condition for the extension of benefits beyond the period the policy was in force, limited to the duration of the benefit period, if any, or payment of the maximum benefits.

(4) Optional insureds. When accidental death and dismemberment coverage is part of the accident and health insurance coverage offered under the contract, the insured shall have the option to include all insureds under the coverage and not just the principal insured.

(5) Military service. If a policy contains a status-type military service exclusion or a provision that suspends coverage during military service, the policy shall provide, upon receipt of written request, for refund of premiums as applicable to the person on a pro rata basis.

(6) Pregnancy benefit extension. In the event the insurer cancels or refuses to renew a policy providing pregnancy benefits, the policy shall provide an extension of benefits for a pregnancy commencing while the policy is in force and for which benefits would have been payable had the policy remained in force. This requirement does not apply to a policy that is canceled for the following reasons:

(a) the insured fails to pay the required premiums in accordance with the terms of the plan; or

(b) the insured person performs an act or practice that constitutes fraud in connection with the coverage or makes an

intentional misrepresentation of material fact under the terms of the coverage.

(7) Post hospital admission requirement. A policy providing convalescent or extended care benefits following hospitalization shall not condition the benefits upon admission to the convalescent or extended care facility within a period of less than 14 days after discharge from the hospital.

(8) Transplant donor coverage. A policy providing coverage for the recipient in a transplant operation shall also provide reimbursement of any medical expenses of a live donor to the extent that benefits remain and are available under the recipient's policy or certificate, after benefits for the recipient's own expenses have been paid.

(9) Recurrent disability. A policy may contain a provision relating to recurrent disabilities, but a provision relating to recurrent disabilities shall not specify that a recurrent disability be separated by a period greater than 6 months.

(10) Time limit for occurrence of loss.

(a) Accidental death and dismemberment benefits shall be payable if the loss occurs within 180 days from the date of the accident, irrespective of total disability.

(b) Disability income benefits, if provided, shall not require the loss to commence less than 30 days after the date of accident, nor shall any policy that the insurer cancels or refuses to renew require that it be in force at the time disability commences if the accident occurred while the coverage was in force.

(11) Specific dismemberment benefits shall not be in lieu of other benefits unless the specific benefit equals or exceeds the other benefits.

(12) A policy providing coverage for fractures or dislocations may not provide benefits only for "full or complete" fractures or dislocations.

(13) Specified disease, also known as critical illness, dread disease, etc., insurance sold in conjunction with another insurance product, including but not limited to life insurance or annuities, shall be in the form of a separate endorsement complying with all provisions of this rule. Specified Disease insurance shall not be incorporated into a life insurance policy or annuity contract.

(14) Notice of premium change. A notice of change in premium shall be given no fewer than 45 days before the renewal date.

R590-126-6. Required Provisions.

(1) Applications.

(a) Questions used to elicit health condition information may not be vague and must reference a reasonable time frame in relation to the health condition.

(b) Completed applications shall be made part of the policy. A copy of the completed application shall be provided to the applicant prior to or upon delivery of the policy.

(c) All applications shall contain a prominent statement by type, stamp or other appropriate means in either contrasting color or in boldface type at least equal to the size type used for the headings or captions of sections of the application and in close conjunction with the applicant's signature block on the application as follows:

"The (policy) (certificate) provides limited benefits. Review your (policy)(certificate) carefully."

(d) Application forms shall provide a statement regarding the pre-existing waiting period and the requirements to receive any applicable credit for previous coverage.

(e) An application form shall include a question designed to elicit information as to whether the insurance to be issued is intended to replace any other accident and health insurance presently in force. A supplementary application or other form to be signed by the applicant containing the question may be used.

(f) All applications for dental and vision plans shall contain a prominent statement by type, stamp or other appropriate means in either contrasting color or in boldface type at least equal to the size type used for the headings or captions of sections of the application and in close conjunction with the applicant's signature block on the application as follows:

"The (policy) (certificate) provides (dental) (vision) benefits only. Review your (policy) (certificate) carefully."

(2) Renewal and nonrenewal provisions. Accident and health insurance shall include a renewal, continuation or nonrenewal provision. The language or specification of the provision shall be consistent with the type of contract to be issued. The provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed.

(3) Endorsement acceptance.

(a) Except for endorsements by which the insurer effectuates a request made in writing by the policyholder or exercises a specifically reserved right under the policy, all endorsements added to a policy after date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the policyholder.

(b) After the date of policy issue, any endorsement that increases benefits or coverage with a concurrent increase in premium during the policy term, must be agreed to in writing signed by the policyholder, except if the increased benefits or coverage is required by law.

(4) Additional premium. Where a separate additional premium is charged for benefits provided in connection with endorsements, the premium charge shall be set forth in the policy or certificate.

(5) Benefit payment standard. A policy or certificate that provides for the payment of benefits based on standards described as usual and customary, reasonable and customary, or words of similar import shall include a definition of the terms and an explanation of the terms in its accompanying outline of coverage.

(6) Preexisting conditions. If a policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and be labeled as "Preexisting Condition Limitations."

(7) Accident Only Policies.

(a) An accident only policy or certificate shall contain a prominent statement on the first page of the policy or certificate, in either contrasting color or in boldface type at least equal to the size of type used for headings or captions of sections in the policy or certificate, as follows:

Notice to Buyer: This is an accident only (policy)(certificate) and it does not pay benefits for loss from sickness. Review your (policy)(certificate) carefully.

(b) Accident only policies or certificates that provide coverage for hospital or medical care shall contain the following statement in addition to the notice above:

This (policy)(certificate) provides limited benefits. Benefits provided are supplemental and are not intended to cover all medical expenses.

(c) An accident-only policy providing benefits that vary according to the type of accidental cause shall prominently set forth in the outline of coverage the circumstances under which benefits are payable that are lesser than the maximum amount payable under the policy.

(8) Age limitation. If age is to be used as a determining factor for reducing the maximum aggregate benefits made available in the policy or certificate as originally issued, that fact shall be prominently set forth in the outline of coverage and

schedule page.

(9) Disappearance. If a policy or certificate includes a disappearance benefit, payment must be made within the time limits provided by R590-192-9 when proof of loss, satisfactory to the company, is filed and it is reasonable to assume death occurred, but a body cannot be found.

(10) Conversion privilege. If a policy or certificate contains a conversion privilege, it shall comply, in substance, with the following: The caption of the provision shall read "Conversion Privilege" or words of similar import. The provision shall indicate the persons eligible for conversion, the circumstances applicable to the conversion privilege, including any limitations on the conversion, and the person by whom the conversion privilege may be exercised. The provision shall specify the benefits to be provided on conversion or may state that the converted coverage will be as provided on a policy form then being used by the insurer for that purpose.

(11) Specified Disease Insurance Buyers Guide. An insurer, except a direct response insurer, shall give a person applying for specified disease insurance, a buyer's guide filed with the commissioner at the time of enrollment and shall obtain recipient's written acknowledgement of the guide's delivery. A direct response insurer shall provide the buyer's guide upon request, but not later than the time that the policy or certificate is delivered.

(12) Specified disease policies or certificates shall contain on the first page or attached to it in either contrasting color or in boldface type, at least equal to the size type used for headings or captions of sections in the policy or certificate, a prominent statement as follows:

Notice to Buyer: This is a specified disease (policy) (certificate). This (policy)(certificate) provides limited benefits. Benefits provided are supplemental and are not intended to cover all medical expenses. Read your (policy) (certificate) carefully with the outline of coverage and the buyer's guide.

(13) Hospital confinement indemnity and limited benefit health policies or certificates shall display prominently by type, stamp or other appropriate means on the first page of the policy or certificate, or attached to it, in either contrasting color or in boldface type at least equal to the size type used for headings or captions of sections in the policy or certificate the following:

Notice to Buyer: This is a (hospital confinement indemnity) (limited benefit health) (policy)(certificate). This (policy)(certificate) provides limited benefits. Benefits provided are supplemental and are not intended to cover all medical expenses.

(14) Basic hospital, basic medical-surgical, and basic hospital-medical surgical expense policies and certificates shall display prominently by type, stamp or other appropriate means on the first page of the policy or certificate, or attached to it, in either contrasting color or in boldface type at least equal to the size type used for headings or captions of sections in the policy or certificate the following:

Notice to Buyer: This is a (basic hospital) (basic medical-surgical) (basic hospital/medical-surgical) expense (policy)(certificate). This (policy)(certificate) provides limited benefits and should not be considered a substitute for comprehensive health insurance coverage.

(15) Dental and vision coverage policies and certificates shall display prominently by type or stamp on the first page of the policy or certificate, or attached to it, in either contrasting color or in boldface type at least equal to the size type used for headings or captions of sections in the policy or certificate the following:

Notice to Buyer: This (policy) (certificate) provides (dental) (vision) coverage only.

R590-126-7. Accident and Health Standards for Benefits.

The following standards for benefits are prescribed for the

categories of coverage noted in the following subsections. An accident and health insurance policy or certificate subject to this rule shall not be delivered or issued for delivery unless it meets the required standards for the specified categories. This section shall not preclude the issuance of any policy or contract combining two or more categories set forth in Subsection 31A-22-605(5).

Benefits for coverages listed in this section shall include coverage of inborn metabolic errors as required by Section 31A-22-623 and Rule R590-194, and benefits for diabetes as required by Section 31A-22-626 and Rule R590-200, if applicable.

(1) Basic Hospital Expense Coverage.

Basic hospital expense coverage is a policy of accident and health insurance that provides coverage for a period of not less than 31 days during a continuous hospital confinement for each person insured under the policy, for expense incurred for necessary treatment and services rendered as a result of accident or sickness, and shall include at least the following:

(a) daily hospital room and board in an amount not less than:

(i) 80% of the charges for semiprivate room accommodations; or

(ii) \$100 per day;

(b) miscellaneous hospital services for expenses incurred for the charges made by the hospital for services and supplies that are customarily rendered by the hospital and provided for use only during any one period of confinement in an amount not less than either:

(i) 80% of the charges incurred up to at least \$3000; or

(ii) ten times the daily hospital room and board benefits;

and

(c) hospital outpatient services consisting of:

(i) hospital services on the day surgery is performed;

(ii) hospital services rendered within 72 hours after injury, in an amount not less than \$250 per accident; and

(iii) x-ray and laboratory tests to the extent that benefits for the services would have been provided if rendered to an inpatient of the hospital to an extent not less than \$200;

(d) benefits provided under Subsections (a) and (b) may be provided subject to a combined deductible amount not in excess of \$200.

(2) Basic Medical-Surgical Expense Coverage.

Basic medical-surgical expense coverage is a policy of accident and health insurance that provides coverage for each person insured under the policy for the expenses incurred for the necessary services rendered by a physician for treatment of an injury or sickness for and shall include at least the following:

(a) surgical services:

(i) in amounts not less than those provided on a current procedure terminology based relative value fee schedule, up to at least \$1000 for one procedure; or

(ii) 80% of the reasonable charges.

(b) anesthesia services, consisting of administration of necessary general anesthesia and related procedures in connection with covered surgical service rendered by a physician other than the physician, or the physician assistant, performing the surgical services:

(i) in an amount not less than 80% of the reasonable charges; or

(ii) 15% of the surgical service benefit; and

(c) in-hospital medical services, consisting of physician services rendered to a person who is a bed patient in a hospital for treatment of sickness or injury other than that for which surgical care is required, in an amount not less than:

(i) 80% of the reasonable charges; or

(ii) \$100 per day.

(3) Basic Hospital/Medical-Surgical Expense Coverage.

Basic hospital/medical-surgical expense coverage is a

policy of accident and health which combines coverage and must meet the requirements of both Subsections R590-126-7(1) and (2).

(4) Hospital Confinement Indemnity Coverage.

(a) Hospital confinement indemnity coverage is a policy of accident and health insurance that provides daily benefits for hospital confinement on an indemnity basis.

(b) Coverage includes an indemnity amount of not less than \$50 per day and not less than 31 days during each period of confinement for each person insured under the policy.

(c) Benefits shall be paid regardless of other coverage.

(5) Income Replacement Coverage.

Income replacement coverage is a policy of accident and health insurance that provides for periodic payments, weekly or monthly, for a specified period during the continuance of disability resulting from either sickness or injury or a combination of both that:

(a) contains an elimination period no greater than:

(i) 90-days in the case of a coverage providing a benefit of one year or less;

(ii) 180 days in the case of coverage providing a benefit of more than one year but not greater than two years; or

(iii) 365 days in all other cases during the continuance of disability resulting from sickness or injury;

(b) has a maximum period of time for which it is payable during disability of at least six months except in the case of a policy covering disability arising out of pregnancy, childbirth or miscarriage in which case the period for the disability may be one month. No reduction in benefits shall be put into effect because of an increase in Social Security or similar benefits during a benefit period;

(c) where a policy provides total disability benefits and partial disability benefits, only one elimination period may be required;

(d) a policy which provides for residual disability benefits may require a qualification period, during which the insured shall be continuously totally disabled before residual disability benefits are payable. The qualification period for residual benefits may be longer than the elimination period for total disability;

(e) the provisions of this subsection do not apply to policies providing business buyout coverage.

(6) Accident Only Coverage.

Accident only coverage is a policy of accident and health insurance that provides coverage, singly or in combination, for death, dismemberment, disability or hospital and medical care caused by accident. Accidental death and double dismemberment amounts under the policy shall be at least \$1,000 and a single dismemberment amount shall be at least \$500.

(7) Specified Accident Coverage.

Specified accident coverage is a policy of accident and health insurance that provides coverage for a specifically identified kind of accident, or accidents, for each person insured under the policy for accidental death or accidental death and dismemberment, combined with a benefit amount not less than \$1,000 for accidental death, \$1,000 for double dismemberment and \$500 for single dismemberment.

(8) Specified Disease Coverage.

Specified disease coverage is a policy of accident and health insurance that provides coverage for the diagnosis and treatment of a specifically named disease or diseases, and includes critical illness coverages. Any such policy shall meet these general provisions. The policy shall also meet the standards set forth in the applicable Subsections R590-126-7(8)(b), (c) or (d).

(a) General Provisions.

(i) Policy designation. Policies covering a single specified disease or combination of specified diseases may not be sold or

offered for sale other than as specified disease coverage under this Subsection (8).

(ii) Medical diagnosis. Any policy issued pursuant to this section which conditions payment upon pathological diagnosis of a covered disease, shall also provide that if a pathological diagnosis is medically inappropriate, a clinical diagnosis will be accepted instead.

(iii) Related conditions. Notwithstanding any other provision of this rule, specified disease policies shall provide benefits to any covered person, not only for the specified disease, but also for any other condition or disease directly caused or aggravated by the specified disease or the treatment of the specified disease.

(iv) Renewability. Specified disease coverage shall be at least guaranteed renewable.

(v) Probationary period. No policy issued pursuant to this section may contain a probationary period greater than 30 days.

(vi) Medicaid disclaimer. Any application for specified disease coverage shall contain a statement above the signature of the applicant that no person to be covered for specified disease is also covered by any Title XIX program, designated as Medicaid or any similar name. Such statement may be combined with any other statement for which the insurer may require the applicant's signature.

(vii) Medical Care. Payments may be conditioned upon an insured person's receiving medically necessary care, given in a medically appropriate location, under a medically accepted course of diagnosis or treatment.

(viii) Other insurance. Benefits for specified disease coverage shall be paid regardless of other coverage.

(ix) Retroactive application of coverage. After the effective date of the coverage, or the conclusion of an applicable probationary period, if any, benefits shall begin with the first day of care or confinement, if such care or confinement is for a covered disease, even though the diagnosis is made at some later date.

(x) Hospice. Hospice care is an optional benefit, but if offered it shall meet the following minimum standards:

(A) eligibility for payment of benefits when the attending physician of the insured provides a written statement that the insured person has a life expectancy of six months or less;

(B) fixed-sum payment of at least \$50 per day; and

(C) lifetime maximum benefit of at least \$10,000.

(b) Expense Incurred Benefits. The following benefit standards apply to specified disease coverage on an expense-incurred basis.

(i) Policy limits. A deductible amount not to exceed \$250, an aggregate benefit limit of not less than \$25,000 and a benefit period of not fewer than three years.

(ii) Copayment. Covered services provided on an outpatient basis may be subject to a copayment, which may not exceed 20%.

(iii) Covered Services. Covered services shall include the following:

(A) hospital room and board and any other hospital-furnished medical services or supplies;

(B) treatment by, or under the direction of, a legally qualified physician or surgeon;

(C) private duty nursing services of a registered nurse, or licensed practical nurse;

(D) x-ray, radium, chemotherapy and other therapy procedures used in diagnosis and treatment;

(E) blood transfusions, and the administration thereof, including expense incurred for blood donors;

(F) drugs and medicines prescribed by a physician;

(G) professional ambulance for local service to or from a local hospital;

(H) the rental of any respiratory or other mechanical apparatuses;

(I) braces, crutches and wheelchairs as are deemed necessary by the attending physician for the treatment of the disease;

(J) emergency transportation if, in the opinion of the attending physician, it is necessary to transport the insured to another locality for treatment of the disease;

(K) home health care with a written prescribed plan of care;

(L) physical, speech, hearing and occupational therapy;

(M) special equipment including hospital bed, toilette, pulleys, wheelchairs, aspirator, chux, oxygen, surgical dressings, rubber shields, colostomy and ileostomy appliances;

(N) prosthetic devices including wigs and artificial breasts;

(O) nursing home care for non-custodial services; and

(P) reconstructive surgery when deemed necessary by the attending physician.

(c) Per Diem Benefits. The following benefit standards apply to specified disease coverage on a per diem basis.

(i) Covered services shall include the following:

(A) hospital confinement benefit with a fixed-sum payment of at least \$200 for each day of hospital confinement for at least 365 days, with no deductible amount permitted;

(B) outpatient benefit with a fixed-sum payment equal to one half the hospital inpatient benefits for each day of hospital or non-hospital outpatient surgery, radiation therapy and chemotherapy, for at least 365 days of treatment; and

(C) blood and plasma benefit with a fixed-sum benefit of at least \$50 per day for blood and plasma, which includes their administration whether received as an inpatient or outpatient for at least 365 days of treatment.

(ii) Benefits tied to confinement in a skilled nursing home or home health care are optional. If a policy offers these benefits, they must equal the following:

(A) fixed-sum payment equal to one-half the hospital inpatient benefit for each day of skilled nursing home confinement for at least 180 days; and

(B) fixed-sum payment equal to one-fourth the hospital inpatient benefit for each day of home health care for at least 180 days.

(C) Any restriction or limitation applied to the benefits may not be more restrictive than those under Medicare.

(d) Lump Sum Benefits. The following benefit standards apply to specified disease coverage on a lump sum basis.

(i) Benefits shall be payable as a fixed, one-time payment, made within 30 days of submission to the insurer, of proof of diagnosis of the specified disease. Dollar benefits shall be offered for sale only in even increments of \$1,000.

(ii) Where coverage is advertised or otherwise represented to offer generic coverage of a disease or diseases, e.g., "cancer insurance," "heart disease insurance," the same dollar amounts shall be payable regardless of the particular subtype of the disease, e.g., lung or bone cancer, with one exception. In the case of clearly identifiable subtypes with significantly lower treatment costs, e.g., skin cancer, lesser amounts may be payable so long as the policy clearly differentiates that subtype and its benefits.

(9) Limited Benefit Health Coverage.

Limited benefit health coverage is a policy of accident and health insurance, other than a policy covering only a specified disease or diseases, that provides benefits that are less than the standards for benefits required under this Section. These policies or contracts may be delivered or issued for delivery with the outline of coverage required by Section R590-126-8.

R590-126-8. Outline of Coverage Requirements.

(1) Basic Hospital Expense Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(1). The items included in the outline

of coverage must appear in the sequence prescribed:

TABLE I

(COMPANY NAME)

BASIC HOSPITAL EXPENSE COVERAGE

THIS (POLICY) (CERTIFICATE) PROVIDES LIMITED BENEFITS AND SHOULD NOT BE CONSIDERED A SUBSTITUTE FOR COMPREHENSIVE HEALTH INSURANCE COVERAGE

OUTLINE OF COVERAGE

Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY)(CERTIFICATE) CAREFULLY! Basic hospital expense coverage is designed to provide, to persons insured, coverage for hospital expenses incurred as a result of a covered accident or sickness. Coverage is provided for daily hospital room and board, miscellaneous hospital services and hospital outpatient services, subject to any limitations, deductibles and copayment requirements set forth in the policy. Coverage is not provided for physicians or surgeons fees or unlimited hospital expenses. A brief specific description of the benefits, including dollar amounts and number of days duration where applicable, contained in this policy, in the following order: daily hospital room and board; miscellaneous hospital services; hospital out-patient services; and other benefits, if any. A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay or in any other manner operate to qualify payment of the benefits. A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

(2) Basic Medical-Surgical Expense Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(2). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE II

(COMPANY NAME)

BASIC MEDICAL-SURGICAL EXPENSE COVERAGE

THIS (POLICY)(CERTIFICATE) PROVIDES LIMITED BENEFITS AND SHOULD NOT BE CONSIDERED A SUBSTITUTE FOR COMPREHENSIVE HEALTH INSURANCE COVERAGE

OUTLINE OF COVERAGE

Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY! Basic medical-surgical expense coverage is designed to provide, to persons insured, coverage for medical-surgical expenses incurred as a result of a covered accident or sickness. Coverage is provided for surgical services, anesthesia services, and in-hospital medical services, subject to any limitations, deductibles and copayment requirements set forth in the policy. Coverage is not provided for hospital expenses or unlimited medical-surgical expenses. A brief specific description of the benefits, including dollar amounts and number of days duration where applicable, contained in this policy, in the following order: surgical services; anesthesia services; in-hospital medical services; and other benefits, if any. A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits. A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

(3) Basic Hospital/Medical-Surgical Expense Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsections R590-126-7(3). The items included in the outline of coverage must appear in the sequence prescribed.

TABLE III

(COMPANY NAME)

BASIC HOSPITAL/MEDICAL-SURGICAL EXPENSE COVERAGE

THIS (POLICY)(CERTIFICATE) PROVIDES LIMITED BENEFITS AND SHOULD NOT BE CONSIDERED A SUBSTITUTE FOR COMPREHENSIVE HEALTH INSURANCE COVERAGE

OUTLINE OF COVERAGE

Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY! Basic hospital/medical-surgical expense coverage is designed to provide, to persons insured, coverage for hospital and medical-surgical expenses incurred as a result of a covered accident or sickness. Coverage is provided for daily hospital room and board, miscellaneous hospital services, hospital outpatient services, surgical services, anesthesia services, and in-hospital medical services, subject to any limitations, deductibles and copayment requirements set forth in the policy. Coverage is not provided for unlimited hospital or medical surgical expenses. A brief specific description of the benefits, including dollar amounts and number of days duration where applicable, contained in this policy, in the following order: daily hospital room and board; miscellaneous hospital services; hospital outpatient services; surgical services; anesthesia services; in-hospital medical services; and other benefits, if any. A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits. A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

(4) Hospital Confinement Indemnity Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(4). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE IV

(COMPANY NAME)

HOSPITAL CONFINEMENT INDEMNITY COVERAGE

THIS (POLICY)(CERTIFICATE) PROVIDES LIMITED BENEFITS BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED TO COVER ALL MEDICAL EXPENSES

OUTLINE OF COVERAGE

Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of coverage. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY! Hospital confinement indemnity coverage is designed to provide, to persons insured, coverage in the form of a fixed daily benefit during periods of hospitalization resulting from a covered accident or sickness, subject to any limitations set forth in the policy. Coverage is not provided for any benefits other than the fixed daily indemnity for hospital confinement and any additional benefit described below. A brief specific description of the benefits in the following

order:
 daily benefit payable during hospital confinement; and duration of benefit.
 A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay or in any other manner operate to qualify payment of the benefit.
 A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.
 Any benefits provided in addition to the daily hospital benefit.

(5) Income Replacement Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(5). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE V

(COMPANY NAME)
 INCOME REPLACEMENT COVERAGE
 THIS (POLICY) (CERTIFICATE) PROVIDES LIMITED BENEFITS BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED TO COVER ALL EXPENSES
 OUTLINE OF COVERAGE
 Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY)(CERTIFICATE) CAREFULLY!
 Income replacement coverage is designed to provide, to persons insured, coverage for disabilities resulting from a covered accident or sickness, subject to any limitations set forth in the policy. Coverage is not provided for basic hospital, basic medical-surgical, or major medical expenses.
 A brief specific description of the benefits contained in the policy.
 A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay or in any other manner operate to qualify payment of the benefits.
 A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

(6) Accident Only Coverage.

An outline of coverage in the form prescribed below shall be issued in connection with policies meeting the standards of Subsection R590-126-7(6). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE VI

(COMPANY NAME)
 ACCIDENT ONLY COVERAGE
 THIS (POLICY)(CERTIFICATE) PROVIDES LIMITED BENEFITS BENEFITS PROVIDED ARE SUPPLEMENTAL AND NOT INTENDED TO COVER ALL MEDICAL EXPENSES
 OUTLINE OF COVERAGE
 Read Your (Policy) (Certificate) Carefully-This outline of coverage provides a very brief description of the important features of the coverage. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY)(CERTIFICATE) CAREFULLY!
 Accident only coverage is designed to provide, to persons insured, coverage for certain losses resulting from a covered accident ONLY, subject to any limitations contained in the policy. Coverage is not provided for basic hospital, basic medical-surgical, or major medical expenses.
 A brief specific description of the benefits.
 A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.
 A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any

reservations of right to change premiums.

(7) Specified Accident Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies or certificates meeting the standards of R590-126-7(7). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE VII

(COMPANY NAME)
 SPECIFIED ACCIDENT COVERAGE
 THIS (POLICY) (CERTIFICATE) PROVIDES LIMITED BENEFITS BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED TO COVER ALL MEDICAL EXPENSES
 OUTLINE OF COVERAGE
 Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of coverage. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!
 Specified accident coverage is designed to provide, to persons insured, restricted coverage paying benefits ONLY when certain losses occur as a result of specified accidents. Coverage is not provided for basic hospital, basic medical-surgical, or major medical expenses.
 A brief specific description of the benefits, including dollar amounts.
 A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.
 A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.

(8) Specified Disease Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies or certificates meeting the standards of Subsection R590-126-7(8). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE VIII

(COMPANY NAME)
 SPECIFIED DISEASE COVERAGE
 THIS (POLICY) (CERTIFICATE) PROVIDES LIMITED BENEFITS BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED TO COVER ALL MEDICAL EXPENSES
 OUTLINE OF COVERAGE
 Specified disease coverage is designed only as a supplement to a comprehensive health insurance policy and should not be purchased unless you have this underlying coverage. Persons covered under Medicaid should not purchase it. Read the Buyer's Guide to Specified Disease Insurance to review the possible limits on benefits in this type of coverage.
 Read Your (Policy) (Certificate) Carefully--This outline of coverage provides a very brief description of the important features of coverage. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!
 Specified disease coverages designed to provide, to persons insured, restricted coverage paying benefits ONLY when certain losses occur as a result of specified diseases. Coverage is not provided for basic hospital, basic medical-surgical, or major medical expenses.
 A brief specific description of the benefits, including dollar amounts.
 A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.
 A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.

(9) Limited Benefit Health Coverage.

Except for dental or vision plans, an outline of coverage, in the form prescribed below, shall be issued in connection with policies or certificates which do not meet the standards of Subsections R590-126-7(1) through (8). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE IX

(COMPANY NAME)

LIMITED BENEFIT HEALTH COVERAGE

BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED TO COVER ALL MEDICAL EXPENSES

OUTLINE OF COVERAGE

Read Your (Policy) (Certificate) Carefully--This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!

Limited benefit health coverage is designed to provide, to persons insured, limited or supplemental coverage.

A brief specific description of the benefits, including amounts.

A description of any provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.

A description of provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.

(10) Dental Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with dental plan policies and certificates. The items included in the outline of coverage must appear in the sequence prescribed:

TABLE X

(COMPANY NAME)

DENTAL COVERAGE

BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED TO COVER ALL DENTAL EXPENSES

OUTLINE OF COVERAGE

Read Your (Policy) (Certificate) Carefully--This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!

A brief specific description of the benefits.

A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.

A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.

(11) Vision Coverage.

An outline of coverage in the form prescribed below shall be issued in connection with vision plan policies and certificates. The items included in the outline of coverage must appear in the sequence prescribed:

TABLE XI

(COMPANY NAME)

VISION COVERAGE

BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED TO COVER ALL VISION EXPENSES

OUTLINE OF COVERAGE

Read Your (Policy) (Certificate) Carefully--This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!

A brief specific description of the benefits.

A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay or in any other manner operate to qualify payment of the benefits.

A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.

(12) An insurer shall deliver an outline of coverage to an applicant or enrollee prior to or upon the sale of an individual accident and health insurance policy as required in this rule.

(13) If an outline of coverage was delivered at the time of application or enrollment and the policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate must accompany the policy or certificate when it is delivered and contain the following statement in no less than 12 point type, immediately above the company name:

NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application, and the coverage originally applied for has not been issued.

(14) Outlines of coverage for hospital confinement indemnity, specified disease, or limited benefit policies, which are to be delivered to persons eligible for Medicare by reason of age shall contain the following language, which shall be printed on or attached to the first page of the outline of coverage:

THIS IS NOT A MEDICARE SUPPLEMENT POLICY. If you are eligible for Medicare, review the Guide to Health Insurance for People With Medicare available from the company.

(15) Where the prescribed outline of coverage is inappropriate for the coverage provided by the policy or certificate, an alternate outline of coverage shall be submitted to the commissioner for prior approval.

(16) Advertisements may fulfill the requirements for outlines of coverage if they satisfy the standards specified for outlines of coverage in this rule.

R590-126-9. Replacement of Accident and Health Insurance Requirements.

(1) Upon determining that a sale will involve replacement, an insurer, other than a direct response insurer, or its producer, shall furnish the applicant, prior to issuance or delivery of the policy, the notice described in Subsection (2). The insurer shall retain a copy of the notice. A direct response insurer shall deliver to the applicant, upon issuance of the policy, the notice described in Subsection (3). In no event, however, will the notices be required in the solicitation of the following types of policies: accident-only and single-premium nonrenewable policies.

(2) The notice required by Subsection (1) for an insurer, other than a direct response insurer, shall provide, in substantially the following form:

TABLE XII

NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND HEALTH INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and health insurance and replace it with a policy to be issued by (insert company name) Insurance Company. For your own information and protection, you should be aware of and seriously consider certain factors that may affect the insurance protection available to you under the new policy. Health conditions which you may presently have, (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for

benefits under the new policy, whereas a similar claim might have been payable under your present policy.

You may wish to secure the advice of your present insurer or its producer regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.

If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical/health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

The above "Notice to Applicant" was delivered to me on:

.....
(Date)

.....
(Applicant's Signature)

(3) The notice required by Subsection (1) for a direct response insurer shall be as follows:

TABLE XIII

NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND HEALTH INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and health insurance and replace it with the policy delivered herewith issued by (insert company name) Insurance Company. Your new policy provides 30 days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors that may affect the insurance protection available to you under the new policy. Health conditions that you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

You may wish to secure the advice of your present insurer or its producer regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.

(To be included only if the application is attached to the policy). If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (insert company name and address) within ten days if any information is not correct and complete, or if any past medical history has been left out of the application.

COMPANY NAME

R590-126-10. Enforcement Date.

The commissioner will begin enforcing the revised provision of this rule January 1, 2006.

R590-126-11. Severability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.

KEY: health insurance

December 28, 2005

Notice of Continuation February 1, 2002

31A-2-201

31A-2-202

31A-21-201

31A-22-605

31A-22-623

31A-22-626

31A-23a-402

31A-26-301

R590. Insurance, Administration.**R590-203. Health Grievance Review Process and Disability Claims.****R590-203-1. Authority.**

This rule is specifically authorized by 31A-22-629(4) and 31A-4-116, which requires the commissioner to establish minimum standards for grievance review procedures. The rule is also promulgated pursuant to Subsections 31A-2-201(1) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. The authority to examine insurer records, files, and documentation is provided by 31A-2-203.

R590-203-2. Purpose.

The purpose of this rule is to ensure that insurer's grievance review procedures for individual and group health insurance and income replacement plans comply with the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for Administration and Enforcement: Claims Procedure, 29 CFR 2560.503-1, and Utah Code Sections 31A-4-116 and 31A-22-629.

R590-203-3. Applicability and Scope.

(1) Except as provided in R590-203-3.(3), this rule applies to individual and group:

- (a) policies issued or renewed and effective on or after January 1, 2001;
- (b) income replacement policies;
- (i) including short-term, and
- (ii) long-term disability policies;
- (c) health insurance; and
- (d) health maintenance organization contracts.

(2) Long Term Care and Medicare supplement policies are not considered health insurance for the purpose of this rule.

(3) Income replacement, short-term and long-term disability policies, are exempt from R590-203-6.

R590-203-4. Definitions.

For the purposes of this rule:

(1) "Consumer Representative" may be an employee of the insurer who is a consumer of a health insurance or an income replacement policy, as long as the employee is not:

- (a) the individual who made the adverse determination; or
- (b) a subordinate to the individual who made the adverse determination.

(2) "Health Insurance" means a contract of:

- (a) health care insurance as defined in 31A-1-301; and
- (b) health maintenance organization as defined in 31A-8-101.

(3) "Medical Necessity" means:

(a) health care services or products that a prudent health care professional would provide to a patient for the purpose of preventing, diagnosing or treating an illness, injury, disease or its symptoms in a manner that is:

- (i) in accordance with generally accepted standards of medical practice in the United States;
- (ii) clinically appropriate in terms of type, frequency, extent, site, and duration;
- (iii) not primarily for the convenience of the patient, physician, or other health care provider; and
- (iv) covered under the contract; and

(b) that when a medical question-of-fact exists medical necessity shall include the most appropriate available supply or level of service for the individual in question, considering potential benefits and harms to the individual, and known to be effective.

(i) For interventions not yet in widespread use, the effectiveness shall be based on scientific evidence.

(ii) For established interventions, the effectiveness shall be

based on:

- (A) scientific evidence;
- (B) professional standards; and
- (C) expert opinion.

(4)(a) "Scientific evidence" means:

(i) scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff; or

(ii) findings, studies or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes.

(b) Scientific evidence shall not include published peer-reviewed literature sponsored to a significant extent by a pharmaceutical manufacturing company or medical device manufacturer or a single study without other supportable studies.

R590-203-5. Adverse Benefit Determination.

(1) An insurer's adverse benefit determination review procedure shall be compliant with the adverse benefit determination review requirements set forth in the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for Administration and Enforcement: Claims Procedure, 29 CFR 2560.503-1, effective January 20, 2001. This document is incorporated by reference and available for inspection at the Insurance Department and the Department of Administrative Rules.

(2) The provision of this rule and federal regulation applies to claims filed under individual or group plans on or after the first day of the first plan year beginning on or after July 1, 2002, but no later than January 1, 2003.

(3) An insurer's adverse benefit determination appeal board or body shall include at least one consumer representative that shall be present at every meeting.

R590-203-6. Independent and Expedited Adverse Benefit Determination Reviews for Health Insurance.

(1) An insurer shall provide an independent review procedure as a voluntary option for the resolution of adverse benefit determinations of medical necessity.

(2) An independent review procedure shall be conducted by an independent review organization, person, or entity other than the insurer, the plan, the plan's fiduciary, the employer, or any employee or agent of any of the foregoing, that do not have any material professional, familial, or financial conflict of interest with the health plan, any officer, director, or management employee of the health plan, the enrollee, the enrollee's health care provider, the provider's medical group or independent practice association, the health care facility where service would be provided and the developer or manufacturer of the service being provided.

(3) Independent review organizations shall be designated by the insurer, and the independent review organization chosen shall not own or control, be a subsidiary of, or in any way be owned or controlled by, or exercise control with a health insurance plan, a national, state, or local trade association of health insurance plans, and a national, state, or local trade association of health care providers.

(4) The submission to an independent review procedure is purely voluntary and left to the discretion of the claimant.

(5) An insurer's voluntary independent review procedure shall:

(a) waive any right to assert that a claimant has failed to exhaust administrative remedies because the claimant did not elect to submit a dispute of medical necessity to a voluntary level of appeal provided by the plan;

(b) agree that any statute of limitations or other defense

based on timeliness is tolled during the time a voluntary appeal is pending;

(c) allow a claimant to submit a dispute of medical necessity to a voluntary level of appeal only after exhaustion of the appeals permitted under 29 CFR Subsection 2560.503-1(c)(2), of the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for the Administration and Enforcement: Claims Procedure;

(d) upon request from any claimant, provide sufficient information relating to the voluntary level of appeal to enable the claimant to make an informed decision about whether to submit a dispute of medical necessity to the voluntary level of appeal. This information shall contain a statement that the decision to use a voluntary level of appeal will not effect the claimant's rights to any other benefits under the plan and information about the applicable rules, the claimant's right to representation, and the process for selecting the decision maker.

(e) An independent review conducted in compliance with Section 31A-22-629, and this rule, can be binding on both parties. A claimant's submission to a binding independent review is purely voluntary and appropriate disclosure and notification must be given as required by the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for Administration and Enforcement: Claims Procedure, 29 CFR 2560.503-1.

(6) Standards for voluntary independent review:

(a) The insurer's internal adverse benefit determination process must be exhausted unless the insurer and insured mutually agree to waive the internal process.

(b) Any adverse benefit determination of medical necessity may be the subject of an independent review.

(c) The claimant has 180 calendar days from the date of the final internal review decision to request an independent review.

(d) An insurer shall use the same minimum standards and times of notification requirement for an independent review that are used for internal levels of review, as set forth in 29 CFR Subsection 2560.503-1(h)(3), (i)(2) and (j).

(7) An insurer shall provide an expedited review process for cases involving urgent care claims.

(8) A request for an expedited review of an adverse benefit determination of medical necessity may be submitted either orally or in writing. If the request is made orally an insurer shall, within 24 hours, send written confirmation to the claimant acknowledging the receipt of the request for an expedited review.

(9) An expedited review requires:

(a) all necessary information, including the plan's original benefit determination, be transmitted between the plan and the claimant by telephone, facsimile, or other available similarly expeditious method;

(b) an insurer to notify the claimant of the benefit review determination, as soon as possible, taking into account the medical urgency, but not later than 72 hours after receipt of the claimant's request for review of an adverse benefit determination; and

(c) an insurer to use the same minimum standard for timing and notification as set forth in 29 CFR Subsection 2560.503-1(h), 503-1(i)(2)(i), and 503-1(j).

(10) This section, R590-203-6, does not apply to income replacement policies, short term disability policies or long term disability policies.

R590-203-7. Income Replacement, Short-Term and Long-Term Disability, Adverse Benefit Determination Review.

(1) An insurer will notify a claimant of the benefit determination within 45 days of receipt of the claimant's request for review of an adverse benefit determination.

(2) The time period for making a determination on review

may be extended for up to 45 days when necessary due to matters beyond the control of the insurer.

(3) If the time period is extended due to the claimant's failure to submit information necessary to decide a claim, the time period for making the benefit determination on review shall be tolled from the date on which the notification of the extension is sent until the date on which the claimant responds to the request for additional information.

(4) Upon request, relevant information free-of-charge, must be provided to the insured on any adverse benefit determination.

R590-203-8. File and Record Documentation.

An insurer selling health insurance or income replacement insurance, including short-term disability and long-term disability, shall make available upon request by the commissioner, or the commissioner's duly appointed designees, all adverse benefit determination review files and related documentation. An insurer shall keep these records for the current calendar year plus five years.

R590-203-9. Compliance.

(1) Insurers are to be compliant with the provisions of this rule and the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for Administration and Enforcement: Claims Procedure, 29 CFR 2560.503-1, by July 1, 2002.

(2) The clarification changes made for income replacement and short-term and long-term disability policies are effective on the date these rule changes take effect.

R590-203-10. Relationship to Federal Rules.

If an insurer complies with the requirements of the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for Administration and Enforcement: Claims Procedure, 29 CFR 2560.503-1, then this rule is not applicable to employer plans, except for Sections 4, 5, 6, 7, and 8 of this rule. All individual plans will remain subject to this rule in its entirety.

R590-203-11. Severability.

If a provision or clause of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of these provisions shall not be affected.

**KEY: insurance
December 28, 2005**

**31A-2-201
31A-2-203
31A-4-116
31A-22-629**

R590. Insurance, Administration.**R590-205. Privacy of Consumer Information Compliance Deadline.****R590-205-1. Authority.**

This rule is promulgated pursuant to Subsections 31A-2-202(1), 31A-2-201(2) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce Title 31A, to perform duties imposed by Title 31A and to make administrative rules to implement the provisions of Title 31A. Furthermore, Title V, Section 505, 15 U.S.C. 6805, empowers the Utah Insurance Commissioner to enforce Subtitle A of Title V of the Gramm-Leach-Bliley Act of 1999, 15 U.S.C. 6801 through 6820. Title V, Section 505, 15 U.S.C. 6805(b)(2), authorizes the commissioner to issue rules to implement the requirements of Title V, Section 501(b) of the federal act.

R590-205-2. Purpose.

The purpose of this rule is provide an extension to persons and entities under the jurisdiction of the Utah Insurance Department that are required to adopt policies, procedures, and controls to prevent the unauthorized disclosure of personal nonpublic information relating to their customers under Title V of the Gramm-Leach-Bliley Act of 1999, 15 U.S.C. 6801 through 6827. The extension would give such persons and entities time to comply with the requirements of Title V of the Gramm-Leach-Bliley Act of 1999, 15 U.S.C. 6801 through 6827.

A further purpose of the rule is to avoid the application of Title V, Section 505(c) of the Gramm-Leach-Bliley Act of 1999 that provides that if a state fails to adopt regulations to implement Title V of the federal act, the State shall not be eligible to override any federal insurance customer protections prescribed by a Federal Banking Agency.

R590-205-3. Applicability and Scope.

This rule shall apply to all insurers, producers, and other persons licensed or required to be licensed or required to be authorized, registered or required to be registered or domiciled in Utah pursuant to the Utah Insurance Code. It also applies to unauthorized insurers who accept business through a licensed surplus line broker in Utah, if the surplus line placements are placed pursuant to Section 31A-15-103.

R590-205-4. Definitions.

For the purposes of this rule the commissioner adopts the following definitions:

(1) "Utah Insurance Code" means Title 31A of the Utah Code.

(2) "Licensee" means all insurers, producers, and other persons licensed or required to be licensed or required to be authorized, registered or required to be registered or domiciled in Utah pursuant to the Utah Insurance Code, including but not limited to unauthorized insurers who accept business through a licensed surplus line broker in Utah, if the surplus line placements are placed pursuant to Section 31A-15-103.

R590-205-5. Enforcement.

Title V of the Gramm-Leach-Bliley Act of 1999, 15 U.S.C. 6801 through 6827 shall be enforced by the commissioner with respect to all licensees of the department.

R590-205-6. Compliance Date.

In order to provide sufficient time for licensees to establish policies, procedures and controls relating to the use and disclosure of personal nonpublic information of their customers and to comply with the requirements of Title V of the Gramm-Leach-Bliley Act of 1999, 15 U.S.C. 6801 through 6827, effective November 13, 2000, the commissioner extends the time for compliance for all licensees to July 1, 2001.

R590-205-7. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such validity 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 law privacy**January 11, 2001****Notice of Continuation December 15, 2005****31A-2-201****31A-2-202****15 U.S.C 6805**

R590. Insurance, Administration.**R590-233. Health Benefit Plan Insurance Standards.****R590-233-1. Authority.**

This rule is issued by the insurance commissioner pursuant to the following provisions of the Utah Insurance Code:

- (1) Subsection 31A-2-201(3)(a) authorizes rules to implement the Insurance Code;
- (2) Sections 31A-2-202 and 31A-23a-412 authorize the commissioner to request reports, conduct examinations, and inspect records of any licensee;
- (3) Subsection 31A-22-605(4) requires the commissioner to adopt rules to establish standards for disclosure in the sale of, and benefits to be provided by individual and franchise accident and health policies;
- (4) Section 31A-22-623 authorizes the commissioner to establish by rule minimum standards of coverage for dietary products for inborn metabolic errors;
- (5) Section 31A-22-626 authorizes the commissioner to establish by rule minimum standards of coverage for diabetes for accident and health insurance;
- (6) Subsection 31A-23a-402(8) authorizes the commissioner to define by rule acts and practices that are unfair and unreasonable; and
- (7) Subsection 31A-26-301(1) authorizes the commissioner to set standards for timely payment of claims.

R590-233-2. Purpose and Scope.

- (1) Purpose. The purpose of this rule is to provide reasonable standardization and simplification of terms and coverages of insurance policies in order to facilitate public understanding and comparison and to prohibit provisions which may be misleading or confusing in connection either with the purchase of such coverages or with the settlement of claims, and to provide for full disclosure in the sale of such insurance.
- (2) Scope.
 - (a) Except as excluded under (b), this regulation applies to all individual and group health benefit plan policies, including policies issued to associations, trusts, discretionary groups, or other similar groupings.
 - (b) This rule shall not apply to employer group health benefit plans.
- (3) The requirements contained in this regulation shall be in addition to any other applicable regulations previously adopted.

R590-233-3. Definitions.

In addition to the definitions of Sections 31A-1-301 and 31A-22-605(2), the following definitions shall apply for the purpose of this rule.

- (1) "Accident," "accidental injury," and "accidental means" shall be defined to employ result language and shall not include words that establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.
 - (a) The definition shall not be more restrictive than the following: "injury" or "injuries" means accidental bodily injury sustained by the insured person that is the direct cause of the condition for which benefits are provided, independent of disease or bodily infirmity or any other cause and that occurs while the insurance is in force.
 - (b) Unless otherwise prohibited by law, the definition may exclude injuries for which benefits are paid under worker's compensation, any employer's liability or similar law, or a motor vehicle no-fault plan.
- (2) "Certificate of Completion" shall mean a document issued by the Utah Board of Education to a person who completes an approved course of study not leading to a diploma, or to one who passes a challenge for that same course of study, or to one whose out-of-state credentials and certificate are

acceptable to the Board.

(3) "Complications of Pregnancy" shall mean diseases or conditions the diagnoses of which are distinct from pregnancy but are adversely affected or caused by pregnancy and not associated with a normal pregnancy.

(a) "Complications of Pregnancy" include acute nephritis, nephrosis, cardiac decompensation, ectopic pregnancy which is terminated, a spontaneous termination of pregnancy when a viable birth is not possible, puerperal infection, eclampsia, pre-eclampsia and toxemia.

(b) This definition does not include false labor, occasional spotting, doctor prescribed rest during the period of pregnancy, morning sickness, and conditions of comparable severity associated with management of a difficult pregnancy.

(4) "Convalescent Nursing Home," "extended care facility," or "skilled nursing facility" shall mean a facility duly licensed and operating within the scope of such license.

(5) "Cosmetic Surgery" or "Reconstructive Surgery" shall mean any surgical procedure performed primarily to improve physical appearance.

(a) This definition does not include surgery, which is necessary:

- (i) to correct damage caused by injury or sickness;
- (ii) for reconstructive treatment following medically necessary surgery;
- (iii) to provide or restore normal bodily function; or
- (iv) to correct a congenital disorder that has resulted in a functional defect.

(b) This provision does not require coverage for preexisting conditions otherwise excluded.

(6) "Elimination Period" or "Waiting Period" means the length of time an insured shall wait before benefits are paid under the policy.

(7) "Enrollment Form" shall mean application as defined in Section 31A-1-301.

(8) "Experimental Treatment" is defined as medical treatment, services, supplies, medications, drugs, or other methods of therapy or medical practices, which are not accepted as a valid course of treatment by the Utah Medical Association, the U.S. Food and Drug Administration, the American Medical Association, or the Surgeon General.

(9) "Home Health Agency" shall mean a public agency or private organization, or subdivision of a health care facility, licensed and operating within the scope of such license.

(10) "Home Health Aide" shall mean a person who obtains a Certificate of Completion, as required by law, which allows performance of health care and other related services under the supervision of a registered nurse from the home health agency, or performance of simple procedures as an extension of physical, speech, or occupational therapy under the supervision of licensed therapists.

(11) "Home Health Care" shall mean services provided by a home health agency.

(12) "Homemaker/Home Health Aide" shall mean a person who has obtained a Certificate of Completion, as required by law, which allows performance of both homemaker and home health aide services, and who provides health care and other related services under the supervision of a registered nurse from the home health agency or under the supervision of licensed therapists.

(13) "Hospice" shall mean a program of care for the terminally ill and their families which occurs in a home or in a health care facility and which provides medical, palliative, psychological, spiritual, or supportive care and treatment and is licensed and operating within the scope of such license.

(14) "Hospital" means a facility that is licensed and operating within the scope of such license. This definition may not preclude the requirement of medical necessity of hospital confinement or other treatment.

(15) "Intermediate Nursing Care" shall mean nursing services provided by, or under the supervision of, a registered nurse. Such care shall be for the purpose of treating the condition for which confinement is required.

(16) "Medical Necessity" means:

(a) health care services or products that a prudent health care professional would provide to a patient for the purpose of preventing, diagnosing or treating an illness, injury, disease or its symptoms in a manner that is:

(i) in accordance with generally accepted standards of medical practice in the United States;

(ii) clinically appropriate in terms of type, frequency, extent, site, and duration;

(iii) not primarily for the convenience of the patient, physician, or other health care provider; and

(iv) covered under the contract;

(b) when a medical question-of-fact exists medical necessity shall include the most appropriate available supply or level of service for the individual in question, considering potential benefits and harms to the individual, and known to be effective.

(i) For interventions not yet in widespread use, the effectiveness shall be based on scientific evidence.

(ii) For established interventions, the effectiveness shall be based on:

(A) scientific evidence;

(B) professional standards; and

(C) expert opinion.

(17) "Medicare" means the "Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended."

(18) "Medicare Supplement Policy" shall mean an individual, franchise, or group policy of accident and health insurance, other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act, 42 U.S.C. Section 1395 et seq., or an issued policy under a demonstration project specified in 41 U.S.C. Section 1395ss(g)(1), that is advertised, marketed, or primarily designed as a supplement to reimbursements under Medicare for hospital, medical, or surgical expenses of persons eligible for Medicare.

(19) "Mental or Nervous Disorders" may not be defined more restrictively than a definition including neurosis, psychoneurosis, psychosis, or any other mental or emotional disease or disorder which does not have a demonstrable organic cause.

(20) "Nurse" may be defined so that the description of nurse is restricted to a type of nurse, such as registered nurse, or licensed practical nurse. If the words "nurse" or "registered nurse" are used without specific instruction, then the use of such terms requires the insurer to recognize the services of any individual who qualifies under such terminology in accordance with applicable statutes or administrative rules.

(21) "Nurse, Licensed Practical" shall mean a person who is registered and licensed to practice as a practical nurse.

(22) "Nurse, Registered" shall mean any person who is registered and licensed to practice as a registered nurse.

(23) "Nursing Care" shall mean assistance provided for the health care needs of sick or disabled individuals, by or under the direction of licensed nursing personnel.

(24) "Physician" may be defined by including words such as qualified physician or licensed physician. The use of such terms requires an insurer to recognize and to accept, to the extent of its obligation under the contract, all providers of medical care and treatment when such services are within the scope of the provider's licensed authority and are provided pursuant to applicable laws.

(25) "Probationary Period" shall mean the period of time following the date of issuance or effective date of the policy before coverage begins for all or certain conditions.

(26)(a) "Scientific evidence" means:

(i) scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff; or

(ii) findings, studies or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes.

(b) Scientific evidence shall not include published peer-reviewed literature sponsored to a significant extent by a pharmaceutical manufacturing company or medical device manufacturer or a single study without other supportable studies.

(27) "Sickness" means illness, disease, or disorder of an insured person.

(28) "Skilled Nursing Care" shall mean nursing services provided by, or under the supervision of, a registered nurse. Such care shall be for the purpose of treating the condition for which the confinement is required and not for the purpose of providing intermediate or custodial care.

(29) "Therapist" may be defined as a professionally trained or duly licensed or registered person, such as a physical therapist, occupational therapist, or speech therapist, who is skilled in applying treatment techniques and procedures under the general direction of a physician.

(30)(a) "Total Disability" shall mean an individual who:

(i) is not engaged in employment or occupation for which he is or becomes qualified by reason of education, training or experience; and

(ii) is unable to perform all of the substantial and material duties of his or her regular occupation or words of similar import.

(b) An insurer may require care by a physician other than the insured or a member of the insured's immediate family.

(c) The definition may not exclude benefits based on the individual's:

(i) ability to engage in any employment or occupation for wage or profit;

(ii) inability to perform any occupation whatsoever, any occupational duty, or any and every duty of his occupation; or

(iii) inability to engage in any training or rehabilitation program.

(31)(a) "Usual and Customary" shall mean the most common charge for similar services, medicines or supplies within the area in which the charge is incurred.

(b) In determining whether a charge is usual and customary, insurers shall consider one or more of the following factors:

(i) the level of skill, extent of training, and experience required to perform the procedure or service;

(ii) the length of time required to perform the procedure or services as compared to the length of time required to perform other similar services;

(iii) the severity or nature of the illness or injury being treated;

(iv) the amount charged for the same or comparable services, medicines or supplies in the locality; the amount charged for the same or comparable services, medicines or supplies in other parts of the country;

(v) the cost to the provider of providing the service, medicine or supply; and

(vi) other factors determined by the insurer to be appropriate.

(32) "Waiting Period" shall mean "Elimination Period."

R590-233-4. Prohibited Policy Provisions.

(1) Probationary periods.

(a) A policy shall not contain provisions establishing a

probationary period during which no coverage is provided under the policy except as provided in R590-233-4(1)(b), (c), and (d).

(b) A policy may specify a probationary period not to exceed twelve months for losses resulting from:

- (i) amenorrhea;
- (ii) cataracts;
- (iii) congenital deformities, unless coverage is required pursuant to Subsection 31A-22-610(2);

- (iv) cystocele;
- (v) dysmenorrhea;
- (vi) enterocele;
- (vii) infertility;
- (viii) rectocele;
- (ix) seasonal allergies, limited to testing and treatment;
- (x) sleep disorders, including sleep studies;
- (xi) surgical treatment for:
 - (A) adenoidectomy,
 - (B) bunionectomy,
 - (C) carpal tunnel,
 - (D) hysterectomy, except in cases of malignancy,
 - (E) joint replacement,
 - (F) reduction mammoplasty,
 - (G) Morton's neuroma,
 - (H) myringotomy and tympanotomy, with or without tubes inserted,

(I) nasal septal repair, except for injuries after the effective date of coverage,

- (J) retained hardware removal,
- (K) sterilization, and
- (L) tonsillectomy;
- (xii) urethrocele;
- (xiii) uterine prolapse; and
- (xiv) varicose veins.

(c) Coverage must be provided for conditions and procedures prohibited in Subsection (1)(b) for emergency medical conditions in compliance with Section 31A-22-627.

(d) The probationary period must be reduced by the number of days of creditable coverage the enrollee has as of the enrollment date, in accordance with Subsection 31A-22-605.1(4)(b).

(2) Preexisting conditions provisions shall comply with Sections 31A-1-301, and 31A-22-605.1.

(3) Limitations or exclusions. A policy shall not limit or exclude coverage or benefits by type of illness, accident, treatment or medical condition, except as follows:

- (a) abortion;
- (b) acupuncture and acupressure services;
- (c) administrative charges for completing insurance forms, duplication services, interest, finance charges, or other administrative charges, unless otherwise required by law;
- (d) administrative exams and services;
- (e) alcoholism and drug addictions;
- (f) allergy tests and treatments;
- (g) aviation;
- (h) axillary hyperhidrosis;
- (i) benefits provided under:
 - (i) Medicare or other governmental program, except Medicaid;
 - (ii) state or federal worker's compensation; or
 - (iii) employer's liability or occupational disease law.
- (j) cardiopulmonary fitness training, exercise equipment, and membership fees to a spa or health club;
- (k) charges for appointments scheduled and not kept;
- (l) chiropractic;
- (m) complementary and alternative medicine;
- (n) corrective lenses, and examination for the prescription or fitting thereof, but policies may not exclude required lens implants following cataract surgery;
- (o) cosmetic surgery including gastric procedures; reversal,

revision, repair or treatment related to a non-covered cosmetic surgery, except that cosmetic surgery shall not include reconstructive surgery when the service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part; and reconstructive surgery because of congenital disease or anomaly of a covered dependent child that has resulted in a functional defect;

- (p) custodial care;
- (q) dental care or treatment,
- (r) dietary products, except as required by Rule R590-194;
- (s) educational and nutritional training, except as required by Rule R590-200;

(t) experimental and/or investigational services;

(u) felony, riot or insurrection, when the insured is a voluntary participant;

(v) foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain or symptomatic complaints of the feet, including orthotics. The exclusion of routine foot care does not apply to cutting or removal of corns, calluses, or nails when provided to a person who has a systemic disease, such as diabetes with peripheral neuropathy or circulatory insufficiency, of such severity that unskilled performance of the procedure would be hazardous;

- (w) gene therapy;
- (x) genetic testing;
- (y) hearing aids, and examination for the prescription or fitting thereof;

(z) illegal activities, limited to losses related directly to the insured's voluntary participation;

(aa) infertility services, except as required by Rule R590-76;

(bb) interscholastic sports, with respect to short-term nonrenewable policies;

(cc) mental or emotional disorders;

(dd) motor vehicle no-fault law, except when the covered person is required by law to have no-fault coverage, the exclusion applies to charges up to the minimum coverage required by law whether or not such coverage is in effect;

(ee) nuclear release;

(ff) preexisting conditions or diseases as allowed under Section 31A-22-605.1, except for coverage of congenital anomalies as required by Section 31A-22-610;

(gg) pregnancy, except for complications of pregnancy;

(hh) refractive eye surgery;

(ii) rehabilitation therapy services, such as physical, speech, and occupational, unless required to correct an impairment caused by a covered accident or illness;

(jj) respite care;

(kk) rest cures;

(ll) routine physical examinations;

(mm) service in the armed forces or units' auxiliary to it;

(nn) services rendered by employees of hospitals, laboratories or other institutions;

(oo) services performed by a member of the covered person's immediate family;

(pp) services for which no charge is normally made in the absence of insurance;

(qq) sexual dysfunction;

(rr) shipping and handling, unless otherwise required by law;

(ss) suicide, sane or insane, attempted suicide, or intentionally self-inflicted injury;

(tt) telephone/electronic consultations;

(uu) territorial limitations outside the United States;

(vv) terrorism, including acts of terrorism;

(ww) transplants;

(xx) transportation;

(yy) treatment provided in a government hospital, except for hospital indemnity policies;

(zz) war or act of war, whether declared or undeclared; or
 (aaa) others as may be approved by the commissioner.

(4) Waivers. All waivers issued must comply with 31A-30-107.5. Where waivers are required as a condition of issuance, renewal or reinstatement, signed acceptance by the insured is required.

(5) Commissioner authority. Policy provisions precluded in this section shall not be construed as a limitation on the authority of the commissioner to prohibit other policy provisions that in the opinion of the commissioner are unjust, unfair or unfairly discriminatory to the policyholder, beneficiary or a person insured under the policy.

R590-233-5. General Requirements.

(1) Policy definitions. No policy subject to this rule may contain definitions respecting the matters defined in Section R590-233-3 unless such definitions comply with the requirements of that section.

(2) Rights of spouse. The following provisions apply to policies that provide coverage to a spouse of the insured:

(a) A policy may not provide for termination of coverage of the spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than for nonpayment of premium.

(b) A policy shall provide that in the event of the insured's death the spouse of the insured shall become the insured.

(3) Cancellation, Renewability, and Termination. Policy cancellation, renewability and termination provisions must comply with Sections 31A-8-402.3, 31A-8-402.5, 31A-8-402.7, 31A-22-721 and 31A-30-107, 107.1 and 107.3.

(4) Termination of the policy shall be without prejudice to a continuous loss that commenced while the policy or certificate was in force. The continuous total disability of the insured may be a condition for the extension of benefits beyond the period the policy was in force, limited to the duration of the benefit period, if any, or payment of the maximum benefits.

(5) Military service. If a policy contains a status-type military service exclusion or a provision that suspends coverage during military service, the policy shall provide, upon receipt of written request, for refund of premiums as applicable to the person on a pro rata basis.

(6) Pregnancy benefit extension. In the event the insurer cancels or refuses to renew a policy providing pregnancy benefits, the policy shall provide an extension of benefits for a pregnancy commencing while the policy is in force and for which benefits would have been payable had the policy remained in force. This requirement does not apply to a policy that is canceled for the following reasons:

(a) the insured fails to pay the required premiums in accordance with the terms of the plan; or

(b) the insured person performs an act or practice that constitutes fraud in connection with the coverage or makes an intentional misrepresentation of material fact under the terms of the coverage.

(7) Transplant donor coverage. A policy providing coverage for the recipient in a transplant operation shall also provide reimbursement of any medical expenses of a live donor to the extent that benefits remain and are available under the recipient's policy or certificate, after benefits for the recipient's own expenses have been paid.

(8) Notice of premium change. A notice of change in premium shall be given no fewer than 45 days before the renewal date.

R590-233-6. Required Provisions.

(1) Applications.

(a) Questions used to elicit health condition information may not be vague and must reference a reasonable time frame in relation to the health condition.

(b) Completed applications shall be made part of the policy. A copy of the completed application shall be provided to the applicant prior to or upon delivery of the policy.

(c) Application forms shall provide a statement regarding the pre-existing waiting period and the requirements to receive any applicable credit for previous coverage.

(d) An application form shall include a question designed to elicit information as to whether the insurance to be issued is intended to replace any other accident and health insurance presently in force. A supplementary application or other form to be signed by the applicant containing the question may be used.

(2) Renewal and nonrenewal provisions. Accident and health insurance shall include a renewal, continuation or nonrenewal provision. The provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed.

(3) Endorsement acceptance.

(a) Except for endorsements by which the insurer effectuates a request made in writing by the policyholder or exercises a specifically reserved right under the policy, all endorsements added to a policy after date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the policyholder.

(b) After the date of policy issue, any endorsement that increases benefits or coverage with a concurrent increase in premium during the policy term, must be agreed to in writing signed by the policyholder, except if the increased benefits or coverage is required by law.

(4) Additional premium. Where a separate additional premium is charged for benefits provided in connection with endorsements, the premium charge shall be set forth in the policy or certificate.

(5) Benefit payment standard. A policy or certificate that provides for the payment of benefits based on standards described as usual and customary, reasonable and customary, or words of similar import shall include a definition of the terms and an explanation of the terms in its accompanying outline of coverage.

(6) Preexisting conditions. If a policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and be labeled as "Preexisting Condition Limitations."

(7) Conversion privilege. If a policy or certificate contains a conversion privilege, it shall comply, in substance, with the following: The caption of the provision shall read "Conversion Privilege" or words of similar import. The provision shall indicate the persons eligible for conversion, the circumstances applicable to the conversion privilege, including any limitations on the conversion, and the person by whom the conversion privilege may be exercised. The provision shall specify the benefits to be provided on conversion or may state that the converted coverage will be as provided on a policy form then being used by the insurer for that purpose.

R590-233-7. Accident and Health Standards for Benefits.

The following standards for benefits are prescribed for the categories of coverage noted in the following subsections. An accident and health insurance policy or certificate subject to this rule shall not be delivered or issued for delivery unless it meets the required standards for the specified categories. This section shall not preclude the issuance of any policy or contract combining two or more categories set forth in Subsection 31A-22-605(5).

Benefits for coverages listed in this section shall include

coverage of inborn metabolic errors as required by Sections 31A-22-623 and Rule R590-194, and benefits for diabetes as required by Sections 31A-22-626 and Rule R590-200, if applicable.

(1) Major Medical Expense Coverage.

Major medical expense coverage is a policy of accident and health insurance that provides hospital, medical and surgical expense coverage.

(a) An aggregate maximum of not less than \$1,000,000 may be applied and include any combination of the following:

(i) coinsurance percentage, paid by the covered person, not to exceed 50% of covered charges per covered person per year;

(ii) coinsurance out-of-pocket maximum after any deductibles not to exceed \$20,000 per covered person per year; or

(iii) deductibles stated on per person, per family, per illness, per benefit period, or per year basis.

(b) A combination of the bases provided under Subsections(1)(a)(i), (ii), and (iii) may not exceed 5% of the aggregate maximum limit under the policy for each covered person.

(c) The following services must be provided:

(i) daily hospital room and board expenses subject only to limitations based on average daily cost of the semiprivate room rate in the area where the insured resides;

(ii) miscellaneous hospital services;

(iii) surgical services;

(iv) anesthesia services;

(v) in-hospital medical services;

(vi) out-of-hospital care, consisting of physician services rendered on an ambulatory basis where coverage is not provided elsewhere in the policy for diagnosis and treatment of sickness or injury, diagnostic x-ray, laboratory services, radiation therapy, and hemodialysis ordered by a physician; and

(vii) at least three of the following additional benefits must also be provided:

(A) in-hospital private duty registered nurse services;

(B) convalescent nursing home care;

(C) diagnosis and treatment by a radiologist or physiotherapist;

(D) rental of special medical equipment, as defined by the insurer in the policy;

(E) artificial limbs or eyes, casts, splints, trusses or braces;

(F) treatment for functional nervous disorders, and mental and emotional disorders; or

(G) out-of-hospital prescription drugs and medications.

(d) All required benefits may be subject to all applicable deductibles, coinsurance and general policy exceptions and limitations.

(e) A major medical expense policy may also have special or internal limitations for those services covered under Subsection (1)(c).

(f) Except as authorized by this subsection through the application of special or internal limitations, a major medical expense policy must be designed to cover, after any deductibles or coinsurance provisions are met, the usual, customary and reasonable charges, as determined consistently by the carrier and as subject to approval by the commissioner, or another rate agreed to between the insurer and provider, for covered services up to the lifetime policy maximum.

(2) Basic Medical Expense Coverage.

Basic medical expense coverage is a policy of accident and health insurance that provides hospital, medical and surgical expense coverage.

(a) An aggregate maximum of not less than \$500,000 may be applied, and may include any combination of the following:

(i) coinsurance percentage, paid by the covered person, not to exceed 50% of covered charges per covered person per year;

(ii) coinsurance out-of-pocket maximum after any

deductibles, not to exceed \$25,000 per covered person per year; or

(iii) deductibles stated on per person, per family, per illness, per benefit period, or per year basis.

(b) A combination of the bases provided in Subsections (2)(a)(i), (ii) and (iii) may not exceed 10% of the aggregate maximum limit under the policy.

(c) The following services must be covered:

(i) daily hospital room and board expenses subject only to limitations based on average daily cost of the semiprivate room rate in the area where the insured resides or such other rate agreed to between the insurer and provider for a period of not less than 31 days during continuous hospital confinement;

(ii) miscellaneous hospital services;

(iii) surgical services;

(iv) anesthesia services;

(v) in-hospital medical services;

(vi) out-of-hospital care, consisting of physicians' services rendered on an ambulatory basis where coverage is not provided elsewhere in the policy for diagnosis and treatment of sickness or injury, diagnostic x-ray, laboratory services, radiation therapy and hemodialysis ordered by a physician; and

(vii) three of the following additional benefits must also be provided:

(A) in-hospital private duty registered nurse services;

(B) convalescent nursing home care;

(C) diagnosis and treatment by a radiologist or physiotherapist;

(D) rental of special medical equipment, as defined by the insurer in the policy;

(E) artificial limbs or eyes, casts, splints, trusses or braces;

(F) treatment for functional nervous disorders, and mental and emotional disorders; or

(G) out-of-hospital prescription drugs and medications.

(d) If the policy is written to complement underlying basic hospital expense coverage and basic medical-surgical expense coverage, the deductible may be increased by the amount of the benefits provided by the underlying basic coverage.

(e) The benefits required by Subsection (2) may be subject to all applicable deductibles, coinsurance and general policy exceptions and limitations.

(f) Basic medical expense policies may also have special or internal limitations for prescription drugs, nursing facilities, intensive care facilities, mental health treatment, alcohol or substance abuse treatment, transplants, experimental treatments, mandated benefits required by law and those services covered under Subsection (2)(c) and other such special or internal limitations as are authorized or approved by the commissioner.

(g) Except as authorized by this subsection through the application of special or internal limitations, basic medical expense policies must be designed to cover, after any deductibles or coinsurance provisions are met, the usual customary and reasonable charges, as determined consistently by the carrier and as subject to approval by the commissioner, or another rate agreed to between the insurer and provider, for covered services up to the lifetime policy maximum.

(3) Catastrophic Coverage.

Catastrophic coverage is a policy of accident and health insurance that:

(a) provides benefits for medical expenses incurred by the insured to an aggregate maximum of not less than \$1,000,000;

(b) contains no separate internal dollar limits;

(c) may be subject to a policy deductible which does not exceed the greater of 2% of the policy limit or the amount of other in-force accident and health insurance coverage for the same medical expenses; and

(d) contains no percentage participation or coinsurance clause for expenses which exceed the deductible.

R590-233-8. Outline of Coverage Requirements.

(1) Major Medical Expense Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Rule R590-233-7(1). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE I

(COMPANY NAME)
 MAJOR MEDICAL EXPENSE COVERAGE
 OUTLINE OF COVERAGE

Read Your (Policy)(Certificate) Carefully - This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY)(CERTIFICATE) CAREFULLY!
 Major medical expense coverage is designed to provide, to persons insured, comprehensive coverage for major hospital, medical, and surgical expenses incurred as a result of a covered accident or sickness. Coverage is provided for daily hospital room and board, miscellaneous hospital services, surgical services, anesthesia services, in-hospital medical services, and out-of-hospital care, subject to any deductibles, copayment provisions, or other limitations that may be set forth in the policy.
 A brief specific description of the benefits, including dollar amounts, contained in this policy, in the following order:
 daily hospital room and board;
 miscellaneous hospital services;
 surgical services;
 anesthesia services;
 in-hospital medical services;
 out-of-hospital care; maximum dollar amount for covered charges; and other benefits, if any.
 A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.
 A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

(2) Basic Medical Expense Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-233-7(2). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE II

(COMPANY NAME)
 BASIC MEDICAL EXPENSE COVERAGE
 THIS (POLICY)(CERTIFICATE) PROVIDES LIMITED BENEFITS
 OUTLINE OF COVERAGE

Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY)(CERTIFICATE) CAREFULLY!
 Basic medical expense coverage is designed to provide, to persons insured, limited coverage for major hospital, medical, and surgical expenses incurred as a result of a covered accident or sickness. Coverage is provided for daily hospital room and board, miscellaneous hospital services, surgical services, anesthesia services, in-hospital medical services, and out-of-hospital care, subject to any deductibles, copayment provisions, or other limitations that may be set forth in the policy.
 A brief specific description of the benefits, including dollar amounts, contained in this policy, in the following order:
 daily hospital room and board;
 miscellaneous hospital services;
 surgical services;
 anesthesia services;
 in-hospital medical services;
 out-of-hospital care;
 maximum dollar amount for covered charges; and

other benefits, if any.
 A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.
 A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

(3) Catastrophic Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-233-7(3). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE III

(COMPANY NAME)
 CATASTROPHIC COVERAGE
 OUTLINE OF COVERAGE

Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!
 Catastrophic coverage is designed to provide benefits for medical expenses incurred by the insured. Coverage is provided for daily hospital room and board, miscellaneous hospital services, surgical services, anesthesia services, in-hospital medical services, and out-of-hospital care, subject to any deductibles with no separate internal dollar limits.
 A brief specific description of the benefits, including dollar amounts, contained in this policy, in the following order:
 daily hospital room and board;
 miscellaneous hospital services;
 surgical services;
 anesthesia services;
 in-hospital medical services;
 out-of-hospital care; and other benefits, if any.
 A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.
 A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

(4) An insurer shall deliver an outline of coverage to an applicant or enrollee prior to upon the sale of an individual accident and health insurance policy as required in this rule.

(5) If an outline of coverage was delivered at the time of application or enrollment and the policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate must accompany the policy or certificate when it is delivered and contain the following statement in no less than 12-point type, immediately above the company name:

"NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application, and the coverage originally applied for has not been issued."

(6) Where the prescribed outline of coverage is inappropriate for the coverage provided by the policy or certificate, an alternate outline of coverage shall be submitted to the commissioner for prior approval.

(7) Advertisements may fulfill the requirements for outlines of coverage if they satisfy the standards specified for outlines of coverage in this rule.

R590-233-9. Replacement of Accident and Health Insurance Requirements.

(1) Upon determining that a sale will involve replacement, an insurer, other than a direct response insurer, or its producer, shall furnish the applicant, prior to issuance or delivery of the policy, the notice described in Subsection (2). The insurer shall retain a copy of the notice. A direct response insurer shall

deliver to the applicant, upon issuance of the policy, the notice described in Subsection (3).

(2) The notice required by Subsection (1) for an insurer, other than a direct response insurer, shall provide, in substantially the following form:

TABLE IV

NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND HEALTH INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and health insurance and replace it with a policy to be issued by (insert company name) Insurance Company. For your own information and protection, you should be aware of and seriously consider certain factors that may affect the insurance protection available to you under the new policy. Health conditions which you may presently have, (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy. You may wish to secure the advice of your present insurer or its producer regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical/health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded. The above "Notice to Applicant" was delivered to me on: (Date) (Applicant's Signature)

(3) The notice required by Subsection (1) for a direct response insurer shall be as follows:

TABLE V

NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND HEALTH INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and health insurance and replace it with the policy delivered herewith issued by (insert company name) Insurance Company. Your new policy provides 30 days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors that may affect the insurance protection available to you under the new policy. Health conditions that you may presently have, (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy. You may wish to secure the advice of your present insurer or its producer regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage. (To be included only if the application is attached to the policy). If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (insert company name and address) within ten days if any information is not correct and complete, or if any past medical history has been left out of the application. COMPANY NAME

R590-233-10. Existing Contracts.

Contracts issued prior to the effective date of this rule must

be amended to comply with the revised provisions on the first policy anniversary following the effective date of this rule.

R590-233-11. Enforcement Date.

The commissioner will begin enforcing this rule January 1, 2006.

R590-233-12. Severability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.

**KEY: health insurance
December 28, 2005**

- 31A-2-201
- 31A-2-202
- 31A-22-605
- 31A-22-623
- 31A-22-626
- 31A-23a-402
- 31A-23a-412
- 31A-26-301

R612. Labor Commission, Industrial Accidents.**R612-4. Premium Rates.****R612-4-1. Authority.**

This rule is enacted under the authority of Section 34A-1-104 and 59-9-101.

R612-4-2. Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund.

A. Pursuant to Section 59-9-101(2), Section 59-9-101.3 and 34A-2-202 the workers' compensation premium rates effective January 1, 2006, as established by the Labor Commission, shall be:

1. 0.25% for the Uninsured Employers' Fund;
2. 7.25% for the Employers' Reinsurance Fund;
3. 0.25% for the workplace safety account.

B. The premium rates are a percentage of the total workers' compensation insurance premium income as detailed in Section 59-9-101(2)(a).

KEY: workers' compensation, rates

January 1, 2006

59-9-101(2)

Notice of Continuation February 8, 2001

R612. Labor Commission, Industrial Accidents.**R612-10. HIV, Hepatitis B and C Testing and Reporting for Emergency Medical Services Providers.****R612-10-1. HIV, Hepatitis B and C Testing and Reporting for Emergency Medical Services Providers.**

A. Authority - The HIV, Hepatitis B and C Testing and Reporting for Emergency Medical Services Providers rule is established under the authority of U.C.A. Section 78-29-104.

B. Purpose - To establish procedures pursuant to U.C.A. Section 78-29-102 for source patient testing and reporting following a significant exposure of an emergency medical services provider.

C. Definitions

1. Department means the Utah Labor Commission.

2. Contact means designated person(s) within the emergency medical services agency or the employer of the emergency medical services provider.

3. Disease means Human Immunodeficiency Virus, acute or chronic Hepatitis B or Hepatitis C infections.

4. Emergency medical services provider means Emergency Medical personnel as defined in Section 26-8a-102, a public safety officer, local fire department personnel, or personnel employed by the Department of Corrections or by a county jail, who provide prehospital Emergency medical care for an emergency medical services agency either as an employee or a volunteer.

5. Emergency medical services (EMS) agency means an agency, entity, or organization that employs or utilizes emergency medical services providers as defined in (4) as employees or volunteers.

6. Source Patient means any individual cared for by a prehospital emergency medical services provider, including but not limited to victims of accidents or injury, deceased persons, and prisoners or persons in the custody of the Department of Corrections.

7. Receiving facility means a hospital, health care or other facility where the patient is delivered by the emergency medical services provider for care.

8. "Significant Exposure" and "Significantly Exposed" mean:

a. exposure of the body of one person to the blood or body fluids visibly contaminated by blood of another person by:

1. percutaneous injury, including a needle stick or cut with a sharp object or instrument; or

2. contact with an open wound, mucous membrane, or nonintact skin because of a cut, abrasion, dermatitis, or other damage; or

b. exposure that occurs by any other method of transmission defined by the Department of Health as a significant exposure.

D. Emergency Medical Services Provider Responsibility.

1. The EMS provider shall document and report all significant exposures to the receiving facility and contact as defined in (C) (2).

2. The reporting process is as follows:

a. The exposed EMS provider shall complete the Exposure Report Form (ERF) at the time the patient is delivered to the receiving facility and provide a copy to the person at the receiving facility authorized by the facility to receive the form. In the event the exposed EMS provider does not accompany the source patient to the receiving facility, he/she may report the exposure incident, with information requested on the ERF, by telephone to a person authorized by the facility to receive the form. In this event, the exposed EMS provider shall nevertheless submit a written copy of the ERF within three days to an authorized person of the receiving facility.

b. The exposed EMS provider shall, within three days of the incident, submit a copy of the ERF to the contact as defined in (C) (2).

E. Receiving Facility Responsibility:

1. The receiving facility shall establish a system to receive ERFs as well as telephoned reports from exposed EMS providers on a 24-hour per day basis. The facility shall also have available or on call, trained pre-test counselors for the purpose of obtaining consent and counseling of source patients when HIV testing has been requested by EMS providers. The receiving facility shall contact the source patient prior to release from the facility to provide the individual with counseling or, if unable to provide counseling, provide the source patient with phone numbers for a trained counselor to provide the counseling within 24 hours.

2. Upon notification of exposure, the receiving facility shall request permission from the source patient to draw a blood sample for disease testing, as defined in (C) (3). In conjunction with this request, the source patient must be advised of his/her right to refuse testing and be advised that if he/she refuses to be tested that fact will be forwarded to the EMS agency or employer of EMS provider. The source patient shall also be advised that if he/she refuses to be tested, the EMS agency or provider may seek a court order to compel the source patient to submit to a blood draw for the disease testing.

Testing is authorized only when the source patient, his/her next of kin or legal guardian consents to testing, with the exception that consent is not required from an individual who has been convicted of a crime and is in the custody or under the jurisdiction of the Department of Corrections, or if the source patient is dead. If consent is denied, the receiving facility shall complete the ERF and send it to the EMS agency or employer of the EMS provider. If consent is received, the receiving facility shall draw a sample of the source patient's blood and send it, along with the ERF, to a qualified laboratory for testing.

3. The laboratory that the receiving facility has sent source patient's blood draw to shall send the disease test results, by Case ID number, to the EMS agency or employer of the EMS provider.

F. EMS Agency/Employer Responsibility:

1. The EMS agency/employer, upon receipt of the disease tests, from the receiving facility laboratory, shall immediately report the result, by case number, not name, to the exposed EMS provider.

2. The EMS agency/employer, upon the receipt of refusal of testing by the source, shall report that refusal to the EMS provider.

3. The agency/employer or its insurance carrier shall pay for the EMS provider and the source patient testing for the covered diseases per the Labor Commission fee schedule.

4. The EMS agency/employer shall maintain the records of any disease exposures contained in this rule per the OSHA Blood Borne Pathogen standards.

**KEY: workers' compensation, administrative procedures, reporting, settlements
December 2, 2005**

**34A-2-101 et seq.
34A-3-101 et seq.
34A-1-104
78-29-102
78-29-104**

R616. Labor Commission, Safety.**R616-2. Boiler and Pressure Vessel Rules.****R616-2-1. Authority.**

This rule is established pursuant to Title 34A, Chapter 7 for the purpose of establishing reasonable safety standards for boilers and pressure vessels to prevent exposure to risks by the public and employees.

R616-2-2. Definitions.

A. "ASME" means the American Society of Mechanical Engineers.

B. "Boiler inspector" means a person who is an employee of:

1. The Division who is authorized to inspect boilers and pressure vessels by having met nationally recognized standards of competency and having received the Commission's certificate of competency; or

2. An insurance company writing boiler and pressure vessel insurance in Utah who is deputized to inspect boilers and pressure vessels by having met nationally recognized standards of competency, receiving the Commission's certificate of competency, and having paid a certification fee.

C. "Commission" means the Labor Commission created in Section 34A-1-103.

D. "Division" means the Division of Safety of the Labor Commission.

E. "National Board" means the National Board of Boiler and Pressure Vessel Inspectors.

F. "Nonstandard" means a boiler or pressure vessel that does not bear ASME and National Board stamping and registration.

G. "Owner/user agency" means any business organization operating pressure vessels in this state that has a valid owner/user certificate from the Commission authorizing self-inspection of unfired pressure vessels by its owner/user agents, as regulated by the Commission, and for which a fee has been paid.

H. "Owner/user agent" means an employee of an owner/user agency who is authorized to inspect unfired pressure vessels by having met nationally recognized standards of competency, receiving the Commission's certificate of competency, and having paid a certification fee.

R616-2-3. Safety Codes and Rules for Boilers and Pressure Vessels.

The following safety codes and rules shall apply to all boilers and pressure vessels in Utah, except those exempted pursuant to Section 34A-7-101, and are incorporated herein by this reference in this rule.

A. ASME Boiler and Pressure Vessel Code (2004).

1. Section I Rules for Construction of Power Boilers published July 1, 2004, and the 2005 Addenda published July 1, 2005.

2. Section IV Rules for Construction of Heating Boilers published July 1, 2004, and the 2005 Addenda published July 1, 2005.

3. Section VIII Rules for Construction of Pressure Vessels published July 1, 2004, and the 2005 Addenda published July 1, 2005.

B. Power Piping ASME B31.1 (2004), issued August 16, 2004.

C. Controls and Safety Devices for Automatically Fired Boilers ASME CSD-1-1998; the ASME CSD-1a-1999 addenda, issued March 10, 2000; and the ASME CSD-1b (2001) addenda, issued November 30, 2001.

D. National Board Inspection Code ANSI/NB-23 (2004) issued December 31, 2004.

E. Standard for the Prevention of Furnace Explosions/Implosions in Single Burner Boilers, NFPA 8501

(1997).

F. Standard for the Prevention of Furnace Explosions/Implosions in Multiple Burner Boilers, NFPA 8502 (1995).

G. Recommended Administrative Boiler and Pressure Vessel Safety Rules and Regulations NB-132 Rev. 4.

H. Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair and Alteration API 510 (1997); the 1998 Addenda, published December 1998, and Addendum 2, published December 2000.

R616-2-4. Quality Assurance for Boilers, Pressure Vessels and Power Piping.

A. Consistent with the requirements of the Commission and its predecessor agency since May 1, 1978, all boilers and pressure vessels installed on or after May 1, 1978 shall be registered with the National Board and the data plate must include the National Board number.

B. Pursuant to Section 34A-7-102(2), any boiler or pressure vessel of special design must be approved by the Division to ensure it provides a level of safety equivalent to that contemplated by the Boiler and Pressure Vessel Code of the ASME. Any such boiler or pressure vessel must thereafter be identified by a Utah identification number provided by the Division.

C. All steam piping, installed after May 1, 1978, which is external (from the boiler to the first stop valve for a single boiler and the second stop valve in a battery of two or more boilers having manhole openings) shall comply with Section 1 of the ASME Boiler and Pressure Vessel Code or ASME B31.1 Power Piping as applicable.

D. Nonstandard boilers or pressure vessels installed in Utah before July 1, 1999 may be allowed to continue in operation provided the owner can prove the equivalence of its design to the requirements of the ASME Boiler and Pressure Vessel Code. Nonstandard boilers or pressure vessels may not be relocated or moved.

E. Effective July 1, 1999, all boiler and pressure vessel repairs or alterations must be performed by an organization holding a valid Certificate of Authorization to use the "R" stamp from the National Board. Repairs to pressure relief valves shall be performed by an organization holding a valid Certificate of Authorization to use the "VR" stamp from the National Board.

R616-2-5. Code Applicability.

A. The safety codes which are applicable to a given boiler or pressure vessel installation are the latest versions of the codes in effect at the time the installation commenced.

B. If a boiler or pressure vessel is replaced, this is considered a new installation.

C. If a boiler or pressure vessel is relocated to another location or moved in its existing location, this is considered a new installation.

R616-2-6. Variances to Code Requirements.

A. In a case where the Division finds that the enforcement of any code would not materially increase the safety of employees or general public, and would work undue hardships on the owner or user, the Division may allow the owner or user a variance pursuant to Section 34A-7-102. Variances must be in writing to be effective, and can be revoked after reasonable notice is given in writing.

B. Persons who apply for a variance to a safety code requirement must present the Division with the rationale as to how their boiler or pressure vessel installation provides safety equivalent to the safety code.

C. No errors or omissions in these codes shall be construed as permitting any unsafe or unsanitary condition to exist.

R616-2-7. Boiler and Pressure Vessel Compliance Manual.

A. The Division shall develop and issue a safety code compliance manual for organizations and personnel involved in the design, installation, operation and maintenance of boilers and pressure vessels in Utah.

B. This compliance manual shall be reviewed annually for accuracy and shall be re-issued on a frequency not to exceed two years.

C. If a conflict exists between the Boiler and Pressure Vessel compliance manual and a safety code adopted in R616-2-3, the code requirements will take precedence.

R616-2-8. Inspection of Boilers and Pressure Vessels.

A. It shall be the responsibility of the Division to make inspections of all boilers or pressure vessels operated within its jurisdiction, when deemed necessary or appropriate.

B. Boiler inspectors shall examine conditions in regards to the safety of the employees, public, machinery, ventilation, drainage, and into all other matters connected with the safety of persons using each boiler or pressure vessel, and when necessary give directions providing for the safety of persons in or about the same. The owner or user is required to freely permit entry, inspection, examination and inquiry, and to furnish a guide when necessary. In the event an internal inspection of a boiler or pressure vessel is required the owner or user shall, at a minimum, prepare the boiler or pressure vessel by meeting the requirements of 29 CFR Part 1910.146 "Permit Required Confined Spaces" and 29 CFR Part 1910.147 "Control of Hazardous Energy (Lockout/Tagout)".

C. If the Division finds a boiler or pressure vessel complies with the safety codes and rules, the owner or user shall be issued a Certificate of Inspection and Permit to Operate.

D. If the Division finds a boiler or pressure vessel is not being operated in accordance with safety codes and rules, the owner or user shall be notified in writing of all deficiencies and shall be directed to make specific improvements or changes as are necessary to bring the boiler or pressure vessel into compliance.

E. Pursuant to Sections 34A-1-104, 34A-2-301 and 34A-7-102, if the improvements or changes to the boiler or pressure vessel are not made within a reasonable time, the boiler or pressure vessel is being operated unlawfully.

F. If the owner or user refuses to allow an inspection to be made, the boiler or pressure vessels is being operated unlawfully.

G. If the owner or user refuses to pay the required fee, the boiler or pressure vessel is being operated unlawfully.

H. If the owner or user operates a boiler or pressure vessel unlawfully, the Commission may order the boiler or pressure vessel operation to cease pursuant to Sections 34A-1-104 and 34A-7-103.

I. If, in the judgment of a boiler inspector, the lives or safety of employees or public are or may be endangered should they remain in the danger area, the boiler inspector shall direct that they be immediately withdrawn from the danger area, and the boiler or pressure vessel be removed from service until repairs have been made and the boiler or pressure vessel has been brought into compliance.

J. An owner/user agency may conduct self inspection of its own unfired pressure vessels with its own employees who are owner/user agents under procedures and frequencies established by the Division.

R616-2-9. Fees.

Fees to be charged as required by Section 34A-7-104 shall be adopted by the Labor Commission and approved by the Legislature pursuant to Section 63-38-3(2).

R616-2-10. Notification of Installation, Revision, or Repair.

A. Before any boiler covered by this rule is installed or before major revision or repair, particularly welding, begins on a boiler or pressure vessel, the Division must be advised at least one week in advance of such installation, revision, or repair unless emergency dictates otherwise.

B. It is recommended that a business organization review its plans for purchase and installation, or of revision or repair, of a boiler or pressure vessel well in advance with the Division to ensure meeting code requirements upon finalization.

R616-2-11. Initial Agency Action.

Issuance or denial of a Certificate of Inspection and Permit to Operate by the Division, and orders or directives to make changes or improvements by the boiler inspector are informal adjudicative actions commenced by the agency per Section 63-46b-3.

R616-2-12. Presiding Officer.

The boiler inspector is the presiding officer referred to in Section 63-46b-3. If an informal hearing is requested pursuant to R616-2-13, the Commission shall appoint the presiding officer for that hearing.

R616-2-13. Request for Informal Hearing.

Within 30 days of issuance, any aggrieved person may request an informal hearing regarding the reasonableness of a permit issuance or denial or an order to make changes or improvements. The request for hearing shall contain all information required by Sections 63-46b-3(a) and 63-46b-3(3).

R616-2-14. Classification of Proceeding for Purpose of Utah Administrative Procedures Act.

Any hearing held pursuant to R616-2-13 shall be informal and pursuant to the procedural requirements of Section 63-46b-5 and any agency review of the order issued after the hearing shall be per Section 63-46b-13. An informal hearing may be converted to a formal hearing pursuant to Section 63-46b-4(3).

KEY: boilers, certification, safety**January 1, 2006****34A-7-101 et seq.****Notice of Continuation January 10, 2002**

R651. Natural Resources, Parks and Recreation.

R651-611. Fee Schedule.

R651-611-1. Use Fees.

All fees required under this fee schedule are to be paid in advance of occupancy or use of facilities.

A. Fees for services covering one or more months, for docks and dry storage, must be paid in advance for the season as determined by the Division.

B. Fee permits and passes are not refundable or transferable. Duplicate annual permits and special fun tags will be issued only upon completion of an affidavit and payment of the required fee. Inappropriate use of fee permits and passes may result in confiscation by park authorities.

C. Fees shall not be waived, reduced or refunded unless authorized by Division guideline; however, park or unit managers may determine and impose equitable fees for unique events or situations not covered in the current fee schedule. The director has the prerogative to waive or reduce fees.

D. The Multiple Park Permit, Senior Multiple Park Permit, Special Fun Tag, Camping Permit and Daily Private Vehicle Permit are good for one (1) private vehicle with up to eight (8) occupants, with the exception of any special charges. Multiple Park Permits, Senior Multiple Park Permits, and Special Fun Tags, are not honored at This Is The Place State Park.

E. No charge for persons five years old and younger.

F. With the exception of the Multiple Park Permit, Senior Multiple Park Permit, and Special Fun Tag, fees are applicable only to the specific park or facility where paid and will not be honored at other parks or facilities, unless otherwise stated in division guideline.

G. The contract operator, with the approval of the Division Director, will set fees for This Is The Place State Park.

H. A "senior" is defined as any resident of the State of Utah 62 years of age or older. Residency and proof of age are verified by presentation of a valid driver's license or a valid Utah identification card.

I. Charges for services unique to a park may be established by the park manager with approval from the region manager. All approved charges must be submitted to the Division director or designee.

R651-611-2. Day Use Entrance Fees.

Permits the use of all day activity areas in a state park. These fees do not include overnight camping facilities or special use fees.

A. Annual Permits

1. \$70.00 Multiple Park Permit (good for all parks)
2. \$35.00 Senior Multiple Park Permit (good for all parks)
3. \$200.00 Commercial Dealer Demonstration Pass

4. Duplicate Annual Permits may be purchased if originals are lost, destroyed, or stolen, upon payment of a \$10.00 fee and the submittal of a signed affidavit to the Division office. Only one duplicate is allowed.

B. Special Fun Tag - Available free to Utah residents, who are disabled, as defined by the Special Fun Tag permit affidavit.

C. Daily Permit - Allows access to a specific state park on the date of purchase.

1. \$9.00 (\$5.00 for seniors) per private motor vehicle or \$5.00 per person (\$3.00 for seniors), for pedestrians or bicycles at the following parks:

TABLE 1

Deer Creek	Jordanelle - Hailstone
Utah Lake	Willard Bay

2. \$7.00 (\$4.00 for seniors) per private motor vehicle or \$4.00 per person (\$2.00 for seniors) for pedestrians or bicycles at the following parks:

TABLE 2

Bear Lake - Marina	Bear Lake - Rendezvous
Dead Horse Point	East Canyon
Jordanelle - Rockcliff	Quail Creek
Rockport	Sand Hollow
Yuba	

3. \$6.00 (\$3.00 for seniors) per private motor vehicle or \$3.00 per person (\$2.00 for seniors), for pedestrians or bicycles at the following parks:

TABLE 3

Antelope Island	Goblin Valley
Hyrum	Kodachrome
Palisade	

4. \$2.00 (\$1.00 for seniors) per private vehicle at the following park:

TABLE 4

Great Salt Lake

5. \$6.00 per adult, \$3.00 per child (a child is defined as any person between the ages of six (6) and twelve (12) years old inclusively), and \$3.00 for seniors at Utah Field House State Park.

6. \$2.00 per person (\$1.00 for seniors), or \$6.00 per family (up to eight (8) individuals (\$3.00 for seniors), at the following parks:

TABLE 5

Camp Floyd
Territorial

7. \$3.00 per person (\$1.50 for seniors), or \$6.00 per family (up to eight (8) individuals (\$3.00 for seniors), at the following parks:

TABLE 6

Anasazi	Edge of the Cedars
Fremont	Iron Mission

8. \$5.00 (\$3.00 for seniors) per private motor vehicle or \$3.00 per person (\$2.00 for seniors), for pedestrians or bicycles at the parks not identified above, including the east side of Bear Lake.

9. \$10.00 per OHV rider at the Jordan River OHV Center.
10. \$2.00 per person for commercial groups or vehicles with nine (9) or more occupants (\$15.00 per group at Great Salt Lake).

D. Group Site Day Use Fee - Advance reservation only. \$2.00 per person, age six (6) and over, for sites with basic facilities. Minimum \$50.00 fee established for each facility.

E. Antelope Island Wildlife Management Program: A \$1.00 fee will be added to the entrance fee at Antelope Island. This additional fee will be used by the Division to fund the Wildlife Management Program on the Island.

R651-611-3. Camping Fees.

Permits overnight camping and day use for the day of arrival until 2:00 p.m. of the following day or each successive day. Camp sites must be vacated by 12:00 noon following the last camping night at Dead Horse Point. Camping is limited to 14 consecutive days at all campgrounds with the exception of Snow Canyon State Park, with a five (5) consecutive day limit.

A. Individual Sites -- One (1) vehicle with up to eight (8) occupants and any attached recreational equipment as one (1) independent camp unit. Fees for individual sites are based on the following schedule:

1. \$9.00 with pit or vault toilets; \$12.00 with flush toilets;

\$15.00 with flush toilets and showers or electrical hookups; \$18.00 with flush toilets, showers and electrical hookups; \$21.00 with full hookups.

2. Primitive camping fees may be decreased at the park manager's discretion dependent upon the developed state of the facilities to be used by park visitors. Notification of the change must be made to the Division's financial manager and reservations manager before the reduced fee can be made effective.

3. Special Fun Tag holders may receive a \$2.00 discount for individual camping sites Monday through Thursday nights, excluding holidays.

4. One-half the campsite fee rounded up to the nearest dollar will be charged per vehicle at all parks and individual camping sites for all additional transportation vehicles that are separate and not attached to the primary vehicle, but are dependent upon that unit. No more than one additional vehicle is allowed at any individual campsite. This fee is not applicable at primitive campsites.

B. Group Sites - (by advance reservation for groups)

1. \$2.00 per person, age six (6) and over at sites with vault toilets. Minimum \$50.00 fee for each facility.

2. \$3.00 per person, age six (6) and over at sites with flush toilets and/or pavilions. Minimum \$75.00 fee for each facility.

R651-611-4. Special Fees.

A. Golf Course Fees

1. Palisade rental and green fees.

a. Nine holes general public - weekends and holidays - \$12.00

b. Nine holes weekdays (except holidays) - \$10.00

c. Nine holes Jr/Sr weekdays (except holidays) - \$8.00

d. 20 round card pass - \$160.00

e. 20 round card pass (Jr only) - \$100.00

f. Promotional pass - single person (any day) - \$450.00
g. Promotional pass - single person (weekdays only) - \$300.00

h. Promotional pass - couples (any day) - \$650.00

i. Promotional pass - family (any day) - \$850.00

j. Companion fee - walking, non-player - \$4.00

k. Motorized cart (18 holes) - \$10.00

l. Motorized cart (9 holes) - \$5.00

m. Pull carts (9 holes) - \$2.00

n. Club rental (9 holes) - \$5.00

o. School teams - No fee for practice rounds with coach and team roster. Tournaments are \$3.00 per player.

p. Driving range - small bucket - \$2.50

q. Driving range - large bucket - \$3.50

2. Wasatch Mountain and Soldier Hollow rental and green fees.

a. Nine holes general public - \$12.50

b. Nine holes general public (weekends and holidays) - \$13.50

c. Nine holes Jr/Sr weekdays (except holidays) - \$11.00

d. 20 round card pass - \$220.00 - no holidays or weekends

e. Annual Promotional Pass (except holidays) - \$1,000.00

f. Companion fee - walking, non-player - \$4.00

g. Motorized cart (9 holes - mandatory on Mt. course) - \$13.00

h. Motorized cart (9 holes single rider) - \$6.00

i. Pull carts (9 holes) - \$2.25

j. Club rental (9 holes) - \$6.00

k. School teams - No fee for practice rounds with coach and team roster (Wasatch County only). Tournaments are \$3.00 per player.

l. Tournament fee (per player) - \$5.00

m. Driving range - small bucket - \$2.50

n. Driving range - large bucket - \$5.00

o. Advance tee time booking surcharge - \$15.00

3. Green River rental and green fees.

a. Nine holes general public - \$10.00

b. Nine holes Jr/Sr weekdays (except holidays) - \$8.00

c. Eighteen holes general public - \$16.00

d. 20 round card pass - \$140.00

e. Promotional pass - single person (any day) - \$350.00

f. Promotional pass - personal golf cart - \$350.00

g. Promotional pass - single person (Jr/Sr weekdays) - \$275.00

h. Promotional pass - couple (any day) - \$600.00

i. Promotional pass - family (any day) - \$750.00

j. Companion fee - walking, non-player - \$4.00

k. Motorized cart (9 holes) - \$10.00

l. Motorized cart (9 holes single rider) - \$5.00

m. Pull carts (9 holes) - \$2.25

n. Club rental (9 holes) - \$5.00

o. School teams - No fee for practice rounds with coach and team roster. Tournaments are \$3.00 per player.

4. Golf course hours are daylight to dark

5. No private, motorized golf carts are allowed, except where authorized by existing contractual agreement.

6. Jr golfers are 17 years and under. Sr golfers are 62 and older.

B. Boat Mooring and Dry Storage

1. Mooring Fees:

a. Day Use - \$5.00

b. Overnight Boat Parking - \$7.00 (until 8:00 a.m.)

c. Overnight Boat Camping - \$15.00 (until 2:00 p.m.)

d. Monthly - \$4.00/ft.

e. Monthly with Utilities - (Bear Lake) \$6.00/ft.

f. Monthly with Utilities - (Other Parks) \$5.00/ft.

g. Monthly Off Season - \$2.00/ft

h. Monthly (Off Season with utilities) - \$3.00/ft

2. Dry Storage Fees:

a. Overnight (until 2:00 p.m.) - \$5.00

b. Monthly During Season - \$75.00

c. Monthly Off Season - \$50.00

d. Monthly (unsecured) - \$25.00

C. Application Fees - Non-refundable PLUS Negotiated

Costs.

1. Grazing Permit - \$20.00

2. Easement - \$250.00

3. Construction/Maintenance - \$50.00

4. Special Use Permit - \$50.00

5. Commercial Filming - \$50.00

6. Waiting List - \$10.00

D. Assessment and Assignment Fees.

1. Duplicate Document - \$10.00

2. Contract Assignment - \$20.00

3. Returned checks - \$20.00

4. Staff time - \$40.00/hour

5. Equipment - \$30.00/hour

6. Vehicle - \$20.00/hour

7. Researcher - \$5.00/hour

8. Photo copy - \$.10/each

9. Fee collection - \$10.00

R651-611-5. Reservations.

A. Camping Reservation Fees.

1. Individual Campsite \$8.00

2. Group site or building rental \$10.25

3. Fees identified in #1 and #2 above are to be charged for both initial reservations and for changes to existing reservations.

B. All park facilities will be allocated on a first-come, first-serve basis.

C. Selected camp and group sites are reservable in advance by calling 322-3770, 1-800-322-3770 or on the Internet at: www.stateparks.utah.gov.

D. Applications for reservation of skating rinks, meeting

rooms, buildings, mooring docks, dry storage spaces and other sites not covered above, will be accepted by the respective park personnel beginning on the first business day of February for the next 12 months. Application forms and instructions are available at the park.

E. All unreserved mooring docks, dry storage spaces and camp picnic sites are available on a first-come, first-serve basis.

F. The park manager for any group reservation or special use permit may require a cleanup deposit.

G. Golf course reservations for groups of 20 or more and tournaments will be accepted for the calendar year beginning the first Monday of March. Reservations for up to two starting times (8 persons) may be made for Saturday, Sunday and Monday, the preceding Monday; and for Tuesday through Friday, the preceding Saturday. Reservations will be taken by phone and in person during golf course hours.

H. One party will reserve park facilities for more than fourteen (14) consecutive days in any 30-day period.

KEY: parks, fees

January 1, 2006

Notice of Continuation August 7, 2001

63-11-17(8)

**R652. Natural Resources, Forestry, Fire and State Lands.
R652-122. County Cooperative Agreements with State for
Fire Protection.**

R652-122-100. Authority.

This rule implements subsection 65A-8-6(3)(a) and subsection 65A-8-6(3)(b) which require the division to establish minimum standards for a wildland fire ordinance and specify minimum standards for wildland fire training, certification and wildland fire suppression equipment. This rule is promulgated under general rulemaking authority of subsection 65A-1-4(2).

R652-122-200. Minimum Standards for Wildland Fire Ordinance.

(1) The division uses the International Urban Wildland Interface Code as a basis for establishing the minimum standards discussed in this document. A county ordinance that at least meets the minimum standards should be in place by September 2006.

(2) The Division incorporates by reference the 2003 International Code Council Urban-Wildland Interface Code as the minimum standard for wildland fire ordinance with these exceptions:

- (a) Section 101.1 Delete
- (b) Section 101.3 Delete "The extent of this regulation is intended to be tiered commensurate with the relative level of hazard present."
- (c) Section 101.3 Second paragraph, substitute "development and" for "unrestricted"
- (d) Section 101.4 Delete Exception
- (e) Section 101.5 In the Exception, delete "section 402.3"
- (f) Section 105.2 Delete "For buildings or structures erected for temporary uses, see Appendix A, Section A108.3, of this code"
- (g) Section 105.2 Add a number 15 to the list of activities that need a permit to read "Or other activities as determined by the code official"
- (h) Section 202 Delete "Critical Fire Weather, Ignition-Resistant Construction Class 1,2 and 3, Urban-Wildland Interface area"
- (i) Section 202 "See Critical Fire Weather" from Fire Weather definition
- (j) Section 202 Replace Fuel, Heavy definition with "Vegetation consisting of round wood 3 inches (76 mm) or larger in diameter. The amount of fuel (vegetation) would be 6 tons per acre or greater."
- (k) Section 202 Replace Fuel, Light definition with "Vegetation consisting of herbaceous and round wood less than 1/4 inch (6.4 mm) in diameter. The amount of fuel (vegetation) would be 1/2 ton to 2 tons per acre."
- (l) Section 202 Replace Fuel, Medium definition with "Vegetation consisting of round wood 1/4 to 3 inches (6.4mm to 76 mm) in diameter. The amount of fuel (vegetation) would be 2 to 6 tons per acre."
- (m) Section 202 Add the term Legislative Body with the following definition: "The governing body of the political jurisdiction administering this code"
- (n) Section 202 Add the term Brush, Tall with the following definition: "Arbor-like varieties of brush species and/or short varieties of broad-leaf trees that grow in compact groups or clumps. These groups or clumps reach heights of 4 to 20 feet. In Utah, this includes primary varieties of oak, maples, chokecherry, serviceberry and mahogany, but may also include other species."
- (o) Section 202 Add the term Brush, Short with the following definition: "Low-growing species that reach heights of 1 to 3 feet. Sagebrush, snowberry, and rabbitbrush are some varieties"
- (p) Section 202 Add the term Wildland Urban Interface with the following definition "The line, area or zone where

structures or other human development (including critical infrastructure that if destroyed would result in hardship to communities) meet or intermingle with undeveloped wildland or vegetative fuel."

- (q) Section 301 Delete
- (r) Section 302.1 Replace with " The legislative body shall declare the urban-wildland interface areas within the jurisdiction. The urban wildland interface areas shall be based on the maps created through Section 302."
- (s) Section 302.2 Replace with " In cooperation, the code official and the FFSL wildfire representative (per participating agreement between county and FFSL) will create or review Wildland Urban Interface area maps, to be recorded and filed with the clerk of the jurisdiction. These areas shall become effective immediately thereafter."
- (t) Section 302.3 Add "and the FFSL wildfire representative" between "official" and "shall".
- (u) Section 402.3 Delete
- (v) Section 403.2 Delete Exception
- (w) Section 403.3 Replace "typically used to respond to that location" to "to protect structures and wildlands"
- (x) Section 403.7 Add "It will be up to the code official to ascertain the standard based on local fire equipment, grade not to exceed 12%"
- (y) Section 404.1 Delete "or as required...with Section 402.1.2"
- (z) Section 404.1 Delete Exception
- (aa) Section 404.3 Delete "The draft site shall have emergency...with Section 402."
- (bb) Section 404.5 Replace "as follows: determined" with "by the local jurisdiction. NFPA 1142 may be used as a reference."
- (cc) Section 404.5.1 Delete entire section including Exception
- (dd) Section 404.5.2 Delete entire section including Exception
- (ee) Section 404.6 Replace with "The water system required by this code can only be considered conforming for purposes of determining the level of ignition-resistant construction (see Table 503.1)."
- (ff) Section 404.8 Delete the words "and hydrants"
- (gg) Section 404.9 After "...periodic tests as required by the code official." add the sentences "Code official shall establish a periodic testing schedule. Costs are to be covered by the water provider."
- (hh) Section 404.9 After the last sentence, add "Mains and appurtenances shall be installed in accordance with NFPA 24. Water tanks for private fire protection shall be installed in accordance with NFPA 22. Costs are to be covered by the water provider."
- (ii) Section 404.10.3 After "...dependent on electrical power" add "supplied by power grid" and after "...demands shall provide..." add "functional"
- (jj) Section 404.10.3 Replace "Exceptions" in its entirety with "When approved by the code official, a standby power supply is not required where the primary power service to the stationary water supply facility is underground or on-site generator."
- (kk) Section 405 Before Section 405.1 Add "The purpose of the plan is to provide a basis to determine overall compliance with this code, for determination of Ignition Resistant Construction (IRC) (see Table 503.1) and for determining the need for alternative materials and methods."
- (ll) Chapter 5, Delete Table 502
- (mm) Section 505.2 Replace "Class B roof covering" with "Class A roof covering"
- (nn) Section 506.2 replace "Class C roof covering" with "Class A roof covering"
- (oo) Section 602 Delete

(pp) Section 603.2 Replace "for the purpose of Table 503.1" with "for individual buildings or structures on a property"

(qq) Section 603.2 Replace "10 feet or to the property line" with "30 feet or to the property line"

(rr) Section 603.2 replace "along the grade" with "on a horizontal plane"

(ss) Section 603.2 replace "may be increased" with "may be modified"

(tt) Section 603.2 Delete "crowns of trees and structures"

(uu) Add new Section 603.3 titled "Community fuel modification zones" with the following text: Fuel modification zones to protect new communities shall be provided when required by the code official in accordance with Section 603 in order to reduce fuel loads adjacent to communities and structures.

(vv) Add new Section 603.3.1 titled "Land ownership" with the following text: Fuel modification zone land used to protect a community shall be under the control of an association or other common ownership instrument for the life of the community to be protected.

(ww) Add new Section 603.3.2 titled "Fuel modification zone plans" with the following text: Fuel modification zone plans shall be approved prior to fuel modification work and shall be placed on a site grading plan shown in plan view. An elevation plan shall also be provided to indicate the length of the fuel modification zone on the slope. Fuel modification zone plans shall include, but not be limited to the following:

(i) Plan showing existing vegetation

(ii) Photographs showing natural conditions prior to work being performed

(iii) Grading plan showing location of proposed buildings and structures, and set backs from top of slope to all buildings or structures

(xx) Section 604.1 Add "annually, or as necessary" after "maintained"

(yy) Section 604.4 First sentence should read "Individual trees and/or small clumps of trees or brush crowns extending to within..."

(zz) Section 607 change "20 feet" to "30 feet"

(aaa) Chapter 7 Delete

(bbb) Appendix A is included as optional recommendations rather than mandatory

(ccc) Appendix B Last sentence changed to "Continuous maintenance of the clearance is required."

(ddd) Appendix C Below title, add "This appendix is to be used to determine the fire hazard severity."

(eee) Appendix C-A1. Change to "One-lane road in, one-lane road out" and points change to 1, 10 and 15.

(fff) Appendix C-A2. Points change to 1 and 5

(ggg) Appendix C-A3 Change to 3 entries: Road grade 5% or less, road grade 5-10% and road grade greater than 10%, with points at 1,5 and 10, respectively.

(hhh) Appendix C-A4. Points are now 1, 5, 8 and 10

(iii) Appendix C-A5 Change to "Present but unapproved" for 3 points, and "not present" for 5 points

(jjj) Appendix C-B1. Fuel Types change to "Surface" and "Overstory". Surface has 4 categories -- Lawn/noncombustible, Grass/short brush, Scattered dead/down woody material, Abundant dead/down woody material; and the points are 1, 5, 10 and 15, respectively. Overstory has 4 categories -- Deciduous trees (except tall brush), Mixed deciduous trees and tall brush, Clumped/scattered conifers and/or tall brush, Contiguous conifer and/or tall brush; and the points are 3, 10, 15 and 20, respectively.

(kkk) Appendix C-B2. The 3 categories are changed to "70% or more of lots completed", "30% to 70% of lots completed" and "Less than 30% of lots completed" and the points would be 1, 10 and 20, respectively.

(lll) Appendix C-C Replace first category with "Located on flat, base of hill, or setback at crest of hill"; Replace second category with "On slope with 0-20%grade"; Replace third category with "On slope with 21-30% grade"; Replace fourth category with "On slope with 31%grade or greater"; Add fifth category that reads "At crest of hill with unmitigated vegetation below"; replace the points with 1, 5, 10, 15 and 20 for the five categories.

(mmm) Appendix C-E. Change the points to 1, 5, 10, 15 and 20.

(nnn) Appendix C-F. Drop down the second and third categories to third and fourth and insert new second category to read "Combustible siding/no deck"; The points for the four categories are 1, 5, 10 and 15.

(ooo) The new totals for "Moderate Hazard" are 50-75; "High Hazard" are 76-100; "Extreme Hazard" are 101+.

(ppp) Appendices D-H Delete

R652-122-300. Minimum Standards for Wildland Fire Training.

(1) These standards apply to fire departments representing those counties who have cooperative wildland fire protection agreements with the State of Utah or other fire departments which are contracted with the counties to provide fire protection on private wildland.

(2) All members of the fire department responding to private and state wildland fires within the county's jurisdiction will be certified by the Utah Fire Certification Council as Wildland Firefighter I. The standard must be obtained by June 1, 2007.

(3) Fire Department personnel who supervise other firefighters on private and state wildland fires within the county's jurisdiction will be certified by the Utah Fire Certification Council as Wildland Firefighter II. This standard must be obtained June 1, 2010.

R652-122-400. Minimum Standards for Wildland Firefighting Equipment.

(1) The following standards are applicable to equipment used by fire departments representing those counties who have cooperative wildland fire protection agreements with the State of Utah. This includes county fire departments and other fire departments which are contracted with the counties to provide fire protection on private wildland. The Utah Division of Forestry, Fire and State Lands has determined that this standard be met by June 1, 2006.

(2) Engines and water tenders used on private wildland fires within the county's jurisdiction will meet the standard for the type of equipment plus appropriate hand tools and water handling equipment as determined by the National Wildfire Coordinating Group.

TABLE 1
Engines

Component	Type 1	Type 2	Type 3
Pump Rating (gpm)	1,000+ @ 150 psi	250+ @ 150 psi	150+ @ 250 psi
Tank Capacity (gal)	400+	400+	500+
Hose 2.5 inch	1,200 ft	1,000 ft	--
Hose 1.5 inch	400 ft	500 ft	500 ft
Hose 1 inch	--	--	500 ft
Ladders	48 ft	48 ft	--
Master Stream (gpm)	500	--	--
Personnel (minimum)	4	3	2

Component	Type 4	Type 5	Type 6
Pump Rating (gpm)	50 @ 100 psi	50 @ 100 psi	30 @ 100 psi
Tank Capacity (gal)	750+	400 - 750	150 - 400
Hose 2.5 inch	--	--	--

Hose 1.5 inch	300 ft	300 ft	300 ft
Hose 1 inch	300 ft	300 ft	300 ft
Ladders	--	--	--
Master Stream (gpm)	--	--	--
Personnel (minimum)	2	2	2

TABLE 2
Water Tenders

Component	Type 1	Type 2	Type 3
Tank Capacity (gal)	5,000+	2,500+	1,000+
Pump Capacity (gpm)	300+	200+	200+
Off Load Capacity (gpm)	300+	200+	200+
Max Refill Time (min)	30	20	15
Personnel			
tactical/nontactical	2/1	2/1	2/1

**KEY: minimum standards, wildland urban interface,
cooperative agreement
December 16, 2005**

65A-8-6

R884. Tax Commission, Property Tax.**R884-24P. Property Tax.****R884-24P-5. Abatement or Deferral of Property Taxes of Indigent Persons Pursuant to Utah Code Ann. Sections 59-2-1107 through 59-2-1109 and 59-2-1202(5).**

A. "Household income" includes net rents, interest, retirement income, welfare, social security, and all other sources of cash income.

B. Absence from the residence due to vacation, confinement to hospital, or other similar temporary situation shall not be deducted from the ten-month residency requirement of Section 59-2-1109(3)(a)(ii).

C. Written notification shall be given to any applicant whose application for abatement or deferral is denied.

R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201.**A. Definitions.**

1. "Allowable costs" means those costs reasonably and necessarily incurred to own and operate a productive mining property and bring the minerals or finished product to the customary or implied point of sale.

a) Allowable costs include: salaries and wages, payroll taxes, employee benefits, workers compensation insurance, parts and supplies, maintenance and repairs, equipment rental, tools, power, fuels, utilities, water, freight, engineering, drilling, sampling and assaying, accounting and legal, management, insurance, taxes (including severance, property, sales/use, and federal and state income taxes), exempt royalties, waste disposal, actual or accrued environmental cleanup, reclamation and remediation, changes in working capital (other than those caused by increases or decreases in product inventory or other nontaxable items), and other miscellaneous costs.

b) For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.1.a).

c) For purposes of the capitalized net revenue method, allowable costs shall include straight-line depreciation of capital expenditures in addition to those items outlined in A.1.a).

d) Allowable costs does not include interest, depletion, depreciation other than allowed in A.1.c), amortization, corporate overhead other than allowed in A.1.a), or any expenses not related to the ownership or operation of the mining property being valued.

e) To determine applicable federal and state income taxes, straight line depreciation, cost depletion, and amortization shall be used.

2. "Asset value" means the value arrived at using generally accepted cost approaches to value.

3. "Capital expenditure" means the cost of acquiring property, plant, and equipment used in the productive mining property operation and includes:

- a) purchase price of an asset and its components;
- b) transportation costs;
- c) installation charges and construction costs; and
- d) sales tax.

4. "Constant or real dollar basis" means cash flows or net revenues used in the discounted cash flow or capitalized net revenue methods, respectively, prepared on a basis where inflation or deflation are adjusted back to the lien date. For this purpose, inflation or deflation shall be determined using the gross domestic product deflator produced by the Congressional Budget Office, or long-term inflation forecasts produced by reputable analysts, other similar sources, or any combination thereof.

5. "Discount rate" means the rate that reflects the current yield requirements of investors purchasing comparable properties in the mining industry, taking into account the

industry's current and projected market, financial, and economic conditions.

6. "Economic production" means the ability of the mining property to profitably produce and sell product, even if that ability is not being utilized.

7. "Exempt royalties" means royalties paid to this state or its political subdivisions, an agency of the federal government, or an Indian tribe.

8. "Expected annual production" means the economic production from a mine for each future year as estimated by an analysis of the life-of-mine mining plan for the property.

9. "Fair market value" is as defined in Section 59-2-102.

10. "Federal and state income taxes" mean regular taxes based on income computed using the marginal federal and state income tax rates for each applicable year.

11. "Implied point of sale" means the point where the minerals or finished product change hands in the normal course of business.

12. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.

13. "Net revenue" for the capitalized net revenue method means, for any of the immediately preceding five years, the actual receipts from the sale of minerals (or if self-consumed, the value of the self-consumed minerals), plus actual related revenue cash flows, minus allowable costs.

14. "Non-operating mining property" means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan.

15. "Productive mining property" means the property of a mine that is either actively producing or currently capable of having economic production. Productive mining property includes all taxable interests in real property, improvements and tangible personal property upon or appurtenant to a mine that are used for that mine in exploration, development, engineering, mining, crushing or concentrating, processing, smelting, refining, reducing, leaching, roasting, other processes used in the separation or extraction of the product from the ore or minerals and the processing thereof, loading for shipment, marketing and sales, environmental clean-up, reclamation and remediation, general and administrative operations, or transporting the finished product or minerals to the customary point of sale or to the implied point of sale in the case of self-consumed minerals.

16. "Product price" for each mineral means the price that is most representative of the price expected to be received for the mineral in future periods.

a) Product price is determined using one or more of the following approaches:

(1) an analysis of average actual sales prices per unit of production for the minerals sold by the taxpayer for up to five years preceding the lien date; or,

(2) an analysis of the average posted prices for the minerals, if valid posted prices exist, for up to five calendar years preceding the lien date; or,

(3) the average annual forecast prices for each of up to five years succeeding the lien date for the minerals sold by the taxpayer and one average forecast price for all years thereafter for those same minerals, obtained from reputable forecasters, mutually agreed upon between the Property Tax Division and the taxpayer.

b) If self-consumed, the product price will be determined by one of the following two methods:

(1) Representative unit sales price of like minerals. The representative unit sales price is determined from:

- (a) actual sales of like mineral by the taxpayer;
- (b) actual sales of like mineral by other taxpayers; or
- (c) posted prices of like mineral; or

(2) If a representative unit sales price of like minerals is unavailable, an imputed product price for the self-consumed minerals may be developed by dividing the total allowable costs by one minus the taxpayer's discount rate to adjust to a cost that includes profit, and dividing the resulting figure by the number of units mined.

17. "Related revenue cash flows" mean non-product related cash flows related to the ownership or operation of the mining property being valued. Examples of related revenue cash flows include royalties and proceeds from the sale of mining equipment.

18. "Self consumed minerals" means the minerals produced from the mining property that the mining entity consumes or utilizes for the manufacture or construction of other goods and services.

19. "Straight line depreciation" means depreciation computed using the straight line method applicable in calculating the regular federal tax. For this purpose, the applicable recovery period shall be seven years for depreciable tangible personal mining property and depreciable tangible personal property appurtenant to a mine, and 39 years for depreciable real mining property and depreciable real property appurtenant to a mine.

B. Valuation.

1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by:

- a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and
- b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.

2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division.

3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method. This method is outlined as follows:

- a) Determine annual net revenue, both net losses and net gains, from the productive mining property for each of the immediate past five years, or years in operation, if less than five years. Each year's net revenue shall be adjusted to a constant or real dollar basis.

- b) Determine the average annual net revenue by summing the values obtained in B.3.a) and dividing by the number of operative years, five or less.

- c) Divide the average annual net revenue by the discount rate to determine the fair market value of the entire productive mining property.

- d) Subtract from the fair market value of the entire productive mining property the fair market value, as of the lien date, of licensed vehicles and nontaxable items, to determine the taxable value of the productive mining property.

4. The discount rate shall be determined by the Property Tax Division.

- a) The discount rate shall be determined using the weighted average cost of capital method, a survey of reputable mining industry analysts, any other accepted methodology, or

any combination thereof.

- b) If using the weighted average cost of capital method, the Property Tax Division shall include an after-tax cost of debt and of equity. The cost of debt will consider market yields. The cost of equity shall be determined by the capital asset pricing model, arbitrage pricing model, risk premium model, discounted cash flow model, a survey of reputable mining industry analysts, any other accepted methodology, or a combination thereof.

5. Where the discount rate is derived through the use of publicly available information of other companies, the Property Tax Division shall select companies that are comparable to the productive mining property. In making this selection and in determining the discount rate, the Property Tax Division shall consider criteria that includes size, profitability, risk, diversification, or growth opportunities.

6. A non-operating mine will be valued at fair market value consistent with other taxable property.

7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division may use other valuation methods to estimate the fair market value of a mining property.

8. The fair market value of a productive mining property may not be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property. The mine value shall include all equipment, improvements and real estate upon or appurtenant to the mine. All other tangible property not appurtenant to the mining property will be separately valued at fair market value.

9. Where the fair market value of assets upon or appurtenant to the mining property is determined under the cost method, the Property Tax Division shall use the replacement cost new less depreciation approach. This approach shall consider the cost to acquire or build an asset with like utility at current prices using modern design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional and economic factors.

C. When the fair market value of a productive mining property in more than one tax area exceeds the asset value, the fair market value will be divided into two components and apportioned as follows:

- 1. Asset value that includes machinery and equipment, improvements, and land surface values will be apportioned to the tax areas where the assets are located.

- 2. The fair market value less the asset value will give an income increment of value. The income increment will be apportioned as follows:

- a) Divide the asset value by the fair market value to determine a quotient. Multiply the quotient by the income increment of value. This value will be apportioned to each tax area based on the percentage of the total asset value in that tax area.

- b) The remainder of the income increment will be apportioned to the tax areas based on the percentage of the known mineral reserves according to the mine plan.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

R884-24P-8. Security for Property Tax on Uranium and Vanadium Mines Pursuant to Utah Code Ann. Section 59-2-211.

A. The security deposit allowed by Section 59-2-211 shall be requested from the mine owners or operators by giving notice in the manner required by Section 59-2-211. A list of mine owners and operators who have made lump sum security deposits with the Tax Commission will be furnished annually by the Tax Commission to any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah.

B. At the option of the mine owner or operator, within 30 days after receiving proper notice from the Tax Commission, or if the mine owner or operator has not complied with the request within the 30 day period, the Tax Commission may implement the following procedure:

1. Any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah shall withhold 4 percent, or any higher amount set by the Tax Commission, of the gross proceeds due to the mine operator or owner.

2. All amounts withheld shall be remitted to the Tax Commission by the last day of April, July, October, and January for the immediately preceding calendar quarter, in the manner set forth by the Tax Commission.

3. Not later than the last day of February, owners or operators of uranium and vanadium mines who have not made lump sum security deposits with the Tax Commission shall be provided with a statement from the Tax Commission showing all security deposit amounts withheld from their gross proceeds during the previous calendar year.

4. The Tax Commission shall provide the county treasurers with a list of all uranium and vanadium mine owners and operators who have had security deposit amounts withheld. The county treasurers shall then advise the Tax Commission in writing of the amount of taxes due from each mine owner or operator on the Tax Commission's list.

5. Once all county treasurers have responded, the Tax Commission shall forward to each county treasurer the taxes due, or the pro rata portion thereof, to the extent taxes have been withheld and remitted to the Tax Commission.

a. Any amount withheld in excess of the total taxes due to all counties shall be refunded to the appropriate mine owner or operator by the Tax Commission.

b. If the amount withheld is not sufficient to pay the full amount of taxes due, the county treasurers shall collect the balance of taxes directly from the mine owner or operator.

R884-24P-10. Taxation of Underground Rights in Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201 and 59-2-210.

A. Definitions.

1. "Person" is as defined in Section 68-3-12.

2. "Working interest owner" means the owner of an interest in oil, gas, or other hydrocarbon substances burdened with a share of the expenses of developing and operating the property.

3. "Unit operator" means a person who operates all producing wells in a unit.

4. "Independent operator" means a person operating an oil or gas producing property not in a unit.

5. One person can, at the same time, be a unit operator, a working interest owner, and an independent operator and must comply with all requirements of this rule based upon the person's status in the respective situations.

6. "Expected annual production" means the future economic production of an oil and gas property as estimated by the Property Tax Division using decline curve analysis. Expected annual production does not include production used on the same well, lease, or unit for the purpose of repressuring or pressure maintenance.

7. "Product price" means:

a) Oil: The weighted average posted price for the calendar year preceding January 1, specific for the field in which the well is operating as designated by the Division of Oil, Gas, and Mining. The weighted average posted price is determined by weighing each individual posted price based on the number of days it was posted during the year, adjusting for gravity, transportation, escalation, or deescalation.

b) Gas:

(1) If sold under contract, the price shall be the stated price as of January 1, adjusted for escalation and deescalation.

(2) If sold on the spot market or to a direct end-user, the price shall be the average price received for the 12-month period immediately preceding January 1, adjusted for escalation and deescalation.

8. "Future net revenue" means annual revenues less costs of the working interests and royalty interest.

9. "Revenue" means expected annual gross revenue, calculated by multiplying the product price by expected annual production for the remaining economic life of the property.

10. "Costs" means expected annual allowable costs applied against revenue of cost-bearing interests:

a) Examples of allowable costs include management salaries; labor; payroll taxes and benefits; workers' compensation insurance; general insurance; taxes (excluding income and property taxes); supplies and tools; power; maintenance and repairs; office; accounting; engineering; treatment; legal fees; transportation; miscellaneous; capital expenditures; and the imputed cost of self consumed product.

b) Interest, depreciation, or any expense not directly related to the unit shall not be included as allowable costs.

11. "Production asset" means any asset located at the well site that is used to bring oil or gas products to a point of sale or transfer of ownership.

B. The discount rate shall be determined by the Property Tax Division using methods such as the weighted cost of capital method.

1. The cost of debt shall consider market yields. The cost of equity shall be determined by the capital asset pricing model, risk premium model, discounted cash flow model, a combination thereof, or any other accepted methodology.

2. The discount rate shall reflect the current yield requirements of investors purchasing similar properties, taking into consideration income, income taxes, risk, expenses, inflation, and physical and locational characteristics.

3. The discount rate shall contain the same elements as the expected income stream.

C. Assessment Procedures.

1. Underground rights in lands containing deposits of oil or gas and the related tangible property shall be assessed by the Property Tax Division in the name of the unit operator, the independent operator, or other person as the facts may warrant.

2. The taxable value of underground oil and gas rights shall be determined by discounting future net revenues to their present value as of the lien date of the assessment year and then subtracting the value of applicable exempt federal, state, and Indian royalty interests.

3. The reasonable taxable value of productive underground oil and gas rights shall be determined by the methods described in C.2. of this rule or such other valuation method that the Tax Commission believes to be reasonably determinative of the property's fair market value.

4. The value of the production assets shall be considered in the value of the oil and gas reserves as determined in C.2. above. Any other tangible property shall be separately valued at fair market value by the Property Tax Division.

5. The minimum value of the property shall be the value of the production assets.

D. Collection by Operator.

1. The unit operator may request the Property Tax Division to separately list the value of the working interest, and the value of the royalty interest on the Assessment Record. When such a request is made, the unit operator is responsible to provide the Property Tax Division with the necessary information needed to compile this list. The unit operator may make a reasonable estimate of the ad valorem tax liability for a given period and may withhold funds from amounts due to royalty. Withheld funds shall be sufficient to ensure payment of

the ad valorem tax on each fractional interest according to the estimate made.

a) If a unit operating agreement exists between the unit operator and the fractional working interest owners, the unit operator may withhold or collect the tax according to the terms of that agreement.

b) In any case, the unit operator and the fractional interest owner may make agreements or arrangements for withholding or otherwise collecting this tax. This may be done whether or not that practice is consistent with the preceding paragraphs so long as all requirements of the law are met. When a fractional interest owner has had funds withheld to cover the estimated ad valorem tax liability and the operator fails to remit such taxes to the county when due, the fractional interest owner shall be indemnified from any further ad valorem tax liability to the extent of the withholding.

c) The unit operator shall compare the amount withheld to the taxes actually due, and return any excess amount to the fractional interest owner within 60 days after the delinquent date of the tax. At the request of the fractional interest owner the excess may be retained by the unit operator and applied toward the fractional interest owner's tax liability for the subsequent year.

2. The penalty provided for in Section 59-2-210 is intended to ensure collection by the county of the entire tax due. Any unit operator who has paid this county imposed penalty, and thereafter collects from the fractional interest holders any part of their tax due, may retain those funds as reimbursement against the penalty paid.

3. Interest on delinquent taxes shall be assessed as set forth in Section 59-2-1331.

4. Each unit operator may be required to submit to the Property Tax Division a listing of all fractional interest owners and their interests upon specific request of the Property Tax Division. Working interest owners, upon request, shall be required to submit similar information to unit operators.

R884-24P-14. Valuation of Real Property Encumbered by Preservation Easements Pursuant to Utah Code Ann. Section 59-2-303.

A. The assessor shall take into consideration any preservation easements attached to historically significant real property and structures when determining the property's value.

B. After the preservation easement has been recorded with the county recorder, the property owner of record shall submit to the county assessor and the Tax Commission a notice of the preservation easement containing the following information:

1. the property owner's name;
2. the address of the property; and
3. the serial number of the property.

C. The county assessor shall review the property and incorporate any value change due to the preservation easement in the following year's assessment roll.

R884-24P-16. Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-25.

A. Definitions:

1. "Utah fair market value" means the fair market value of that portion of the property of a project entity located within Utah upon which the fee in lieu of ad valorem property tax may be calculated.

2. "Fee" means the annual fee in lieu of ad valorem property tax payable by a project entity pursuant to Section 11-13-25.

3. "Energy supplier" means an entity that purchases any capacity, service or other benefit of a project to provide electrical service.

4. "Exempt energy supplier" means an energy supplier

whose tangible property is exempted by Article XIII, Sec. 2. of the Constitution of Utah from the payment of ad valorem property tax.

5. "Optimum operating capacity" means the capacity at which a project is capable of operating on a sustained basis taking into account its design, actual operating history, maintenance requirements, and similar information from comparable projects, if any. The determination of the projected and actual optimum operating capacities of a project shall recognize that projects are not normally operated on a sustained basis at 100 percent of their designed or actual capacities and that the optimum level for operating a project on a sustained basis may vary from project to project.

6. "Property" means any electric generating facilities, transmission facilities, distribution facilities, fuel facilities, fuel transportation facilities, water facilities, land, water or other existing facilities or tangible property owned by a project entity and required for the project which, if owned by an entity required to pay ad valorem property taxes, would be subject to assessment for ad valorem tax purposes.

7. "Sold," for the purpose of interpreting D, means the first sale of the capacity, service, or other benefit produced by the project without regard to any subsequent sale, resale, or lay-off of that capacity, service, or other benefit.

8. "Taxing jurisdiction" means a political subdivision of this state in which any portion of the project is located.

9. All definitions contained in the Interlocal Cooperation Act, Section 11-13-3, as in effect on December 31, 1989, apply to this rule.

B. The Tax Commission shall determine the fair market value of the property of each project entity. Fair market value shall be based upon standard appraisal theory and shall be determined by correlating estimates derived from the income and cost approaches to value described below.

1. The income approach to value requires the imputation of an income stream and a capitalization rate. The income stream may be based on recognized indicators such as average income, weighted income, trended income, present value of future income streams, performance ratios, and discounted cash flows. The imputation of income stream and capitalization rate shall be derived from the data of other similarly situated companies. Similarity shall be based on factors such as location, fuel mix, customer mix, size and bond ratings. Estimates may also be imputed from industry data generally. Income data from similarly situated companies will be adjusted to reflect differences in governmental regulatory and tax policies.

2. The cost approach to value shall consist of the total of the property's net book value of the project's property. This total shall then be adjusted for obsolescence if any.

3. In addition to, and not in lieu of, any adjustments for obsolescence made pursuant to B.2., a phase-in adjustment shall be made to the assessed valuation of any new project or expansion of an existing project on which construction commenced by a project entity after January 1, 1989 as follows:

a) During the period the new project or expansion is valued as construction work in process, its assessed valuation shall be multiplied by the percentage calculated by dividing its projected production as of the projected date of completion of construction by its projected optimum operating capacity as of that date.

b) Once the new project or expansion ceases to be valued as construction work in progress, its assessed valuation shall be multiplied by the percentage calculated by dividing its actual production by its actual optimum operating capacity. After the new project or expansion has sustained actual production at its optimum operating capacity during any tax year, this percentage shall be deemed to be 100 percent for the remainder of its useful life.

C. If portions of the property of the project entity are located in states in addition to Utah and those states do not apply a unit valuation approach to that property, the fair market value of the property allocable to Utah shall be determined by computing the cost approach to value on the basis of the net book value of the property located in Utah and imputing an estimated income stream based solely on the value of the Utah property as computed under the cost approach. The correlated value so determined shall be the Utah fair market value of the property.

D. Before fixing and apportioning the Utah fair market value of the property to the respective taxing jurisdictions in which the property, or a portion thereof is located, the Utah fair market value of the property shall be reduced by the percentage of the capacity, service, or other benefit sold by the project entity to exempt energy suppliers.

E. For purposes of calculating the amount of the fee payable under Section 11-13-25(3), the percentage of the project that is used to produce the capacity, service or other benefit sold shall be deemed to be 100 percent, subject to adjustments provided by this rule, from the date the project is determined to be commercially operational.

F. In computing its tax rate pursuant to the formula specified in Section 59-2-913(2), each taxing jurisdiction in which the project property is located shall add to the amount of its budgeted property tax revenues the amount of any credit due to the project entity that year under Section 11-13-25(3), and shall divide the result by the sum of the taxable value of all property taxed, including the value of the project property apportioned to the jurisdiction, and further adjusted pursuant to the requirements of Section 59-2-913.

G. B.1. and B.2. are retroactive to the lien date of January 1, 1984. B.3. is effective as of the lien date of January 1, 1989. The remainder of this rule is retroactive to the lien date of January 1, 1988.

R884-24P-17. Reappraisal of Real Property by County Assessors Pursuant to Utah Constitution, Article XIII, Subsection 11, and Utah Code Ann. Sections 59-2-303, 59-2-302, and 59-2-704.

A. The following standards shall be followed in sequence when performing a reappraisal of all classes of locally-assessed real property within a county.

1. Conduct a preliminary survey and plan.
 - a) Compile a list of properties to be appraised by property class.
 - b) Assemble a complete current set of ownership plats.
 - c) Estimate personnel and resource requirements.
 - d) Construct a control chart to outline the process.
2. Select a computer-assisted appraisal system and have the system approved by the Property Tax Division.
3. Obtain a copy of all probable transactions from the recorder's office for the three-year period ending on the effective date of reappraisal.
4. Perform a use valuation on agricultural parcels using the most recent set of aerial photographs covering the jurisdiction.
 - a) Perform a field review of all agricultural land, dividing up the land by agricultural land class.
 - b) Transfer data from the aerial photographs to the current ownership plats, and compute acreage by class on a per parcel basis.
 - c) Enter land class information and the calculated agricultural land use value on the appraisal form.
5. Develop a land valuation guideline.
6. Perform an appraisal on improved sold properties considering the three approaches to value.
7. Develop depreciation schedules and time-location modifiers by comparing the appraised value with the sale price of sold properties.

8. Organize appraisal forms by proximity to each other and by geographical area. Insert sold property information into the appropriate batches.

9. Collect data on all nonsold properties.
 10. Develop capitalization rates and gross rent multipliers.
 11. Estimate the value of income-producing properties using the appropriate capitalization method.
 12. Input the data into the automated system and generate preliminary values.
 13. Review the preliminary figures and refine the estimate based on the applicable approaches to value.
 14. Develop an outlier analysis program to identify and correct clerical or judgment errors.
 15. Perform an assessment/sales ratio study. Include any new sale information.
 16. Make a final review based on the ratio study including an analysis of variations in ratios. Make appropriate adjustments.
 17. Calculate the final values and place them on the assessment role.
 18. Develop and publish a sold properties catalog.
 19. Establish the local Board of Equalization procedure.
 20. Prepare and file documentation of the reappraisal program with the local Board of Equalization and Property Tax Division.
- B. The Tax Commission shall provide procedural guidelines for implementing the above requirements.

R884-24P-19. Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702.

A. "State Licensed Appraiser", "State Certified General Appraiser," and "State Certified Residential Appraiser" are as defined in Section 61-2b-2.

B. The ad valorem training and designation program consists of several courses and practica.

1. Certain courses must be sanctioned by either the International Association of Assessing Officers (IAAO) or the Western States Association of Tax Administrators (WSATA).
2. Most courses are one week in duration, with an examination held on the final day. The courses comprising the basic designation program are:
 - a) Course A - Assessment Practice in Utah;
 - b) Course B - Fundamentals of Real Property Appraisal (IAAO 101);
 - c) Course C - Mass Appraisal of Land;
 - d) Course D - Building Analysis and Valuation;
 - e) Course E - Income Approach to Valuation (IAAO 102);
 - f) Course G - Development and Use of Personal Property Schedules;
 - g) Course H - Appraisal of Public Utilities and Railroads (WSATA); and
 - h) Course J - Uniform Standards of Professional Appraisal Practice (USPAP).
3. The Tax Commission may allow equivalent appraisal education to be submitted in lieu of Course B, Course E, and Course J.

C. Candidates must attend 90 percent of the classes in each course and pass the final examination for each course with a grade of 70 percent or more to be successful.

D. There are four recognized ad valorem designations: Ad Valorem Residential Appraiser, Ad Valorem General Real Property Appraiser, Ad Valorem Personal Property Auditor/Appraiser, and Ad Valorem Centrally Assessed Valuation Analyst.

1. These designations are granted only to individuals working as appraisers, review appraisers, valuation auditors, or analysts/administrators providing oversight and direction to appraisers and auditors.
2. An assessor, county employee, or state employee must

hold the appropriate designation to value property for ad valorem taxation purposes.

E. Ad Valorem Residential Appraiser.

1. To qualify for this designation, an individual must:

- a) successfully complete Courses A, B, C, D, and J;
- b) successfully complete a comprehensive residential field practicum; and
- c) attain and maintain state licensed or state certified appraiser status.

2. Upon designation, the appraiser may value residential, vacant, and agricultural property for ad valorem taxation purposes.

F. Ad Valorem General Real Property Appraiser.

1. In order to qualify for this designation, an individual must:

- a) successfully complete Courses A, B, C, D, E, and J;
- b) successfully complete a comprehensive field practicum including residential and commercial properties; and
- c) attain and maintain state licensed or state certified appraiser status.

2. Upon designation, the appraiser may value all types of locally assessed real property for ad valorem taxation purposes.

G. Ad Valorem Personal Property Auditor/Appraiser.

1. To qualify for this designation, an individual must successfully complete:

- a) Courses A, B, G, and J; and
- b) a comprehensive auditing practicum.

2. Upon designation, the auditor/appraiser may value locally assessed personal property for ad valorem taxation purposes.

H. Ad Valorem Centrally Assessed Valuation Analyst.

1. In order to qualify for this designation, an individual must:

- a) successfully complete Courses A, B, E, H, and J;
- b) successfully complete a comprehensive valuation practicum; and
- c) attain and maintain state licensed or state certified appraiser status.

2. Upon designation, the analyst may value centrally assessed property for ad valorem taxation purposes.

1. If a candidate fails to receive a passing grade on a final examination, one re-examination is allowed. If the re-examination is not successful, the individual must retake the failed course. The cost to retake the failed course will not be borne by the Tax Commission.

J. A practicum involves the appraisal or audit of selected properties. The candidate's supervisor must formally request that the Property Tax Division administer a practicum.

1. Emphasis is placed on those types of properties the candidate will most likely encounter on the job.

2. The practicum will be administered by a designated appraiser assigned from the Property Tax Division.

K. An appraiser trainee referred to in Section 59-2-701 shall be designated an ad valorem associate if the appraiser trainee:

- 1. has completed all Tax Commission appraiser education and practicum requirements for designation under E., F., and H.; and
- 2. has not completed the requirements for licensure or certification under Title 71, Chapter 2b, Real Estate Appraiser Licensing and Certification.

L. An individual holding a specified designation can qualify for other designations by meeting the additional requirements outlined above.

M. Maintaining designated status requires completion of 28 hours of Tax Commission approved classroom work every two years.

N. Upon termination of employment from any Utah assessment jurisdiction, or if the individual no longer works

primarily as an appraiser, review appraiser, valuation auditor, or analyst/administrator in appraisal matters, designation is automatically revoked.

1. Ad valorem designation status may be reinstated if the individual secures employment in any Utah assessment jurisdiction within four years from the prior termination.

2. If more than four years elapse between termination and rehire, and

a) the individual has been employed in a closely allied field, then the individual may challenge the course examinations. Upon successfully challenging all required course examinations, the prior designation status will be reinstated; or

b) if the individual has not been employed in real estate valuation or a closely allied field, the individual must retake all required courses and pass the final examinations with a score of 70 percent or more.

O. All appraisal work performed by Tax Commission designated appraisers shall meet the standards set forth in section 61-2b-27.

P. If appropriate Tax Commission designations are not held by assessor's office personnel, the appraisal work must be contracted out to qualified private appraisers. An assessor's office may elect to contract out appraisal work to qualified private appraisers even if personnel with the appropriate designation are available in the office. If appraisal work is contracted out, the following requirements must be met.

1. The private sector appraisers contracting the work must hold the State Certified Residential Appraiser or State Certified General Appraiser license issued by the Division of Real Estate of the Utah Department of Commerce. Only State Certified General Appraisers may appraise nonresidential properties.

2. All appraisal work shall meet the standards set forth in Section 61-2b-27.

Q. The completion and delivery of the assessment roll required under Section 59-2-311 is an administrative function of the elected assessor.

1. There are no specific licensure, certification, or educational requirements related to this function.

2. An elected assessor may complete and deliver the assessment roll as long as the valuations and appraisals included in the assessment roll were completed by persons having the required designations.

R884-24P-20. Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301.

A. For purposes of this rule:

1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.

2. Project means any undertaking involving construction, expansion or modernization.

3. "Construction" means:

- a) creation of a new facility;
- b) acquisition of personal property; or
- c) any alteration to the real property of an existing facility other than normal repairs or maintenance.

4. Expansion means an increase in production or capacity as a result of the project.

5. Modernization means a change or contrast in character or quality resulting from the introduction of improved techniques, methods or products.

6. Functionally complete means capable of providing economic benefit to the owner through fulfillment of the purpose for which it was constructed. In the case of a cost-regulated utility, a project shall be deemed to be functionally complete when the operating property associated with the

project has been capitalized on the books and is part of the rate base of that utility.

7. Allocable preconstruction costs means expenditures associated with the planning and preparation for the construction of a project. To be classified as an allocable preconstruction cost, an expenditure must be capitalized.

8. Cost regulated utility means a power company, oil and gas pipeline company, gas distribution company or telecommunication company whose earnings are determined by a rate of return applied to rate base. Rate of return and rate base are set and approved by a state or federal regulatory commission.

9. Residential means single-family residences and duplex apartments.

10. Unit method of appraisal means valuation of the various physical components of an integrated enterprise as a single going concern. The unit method may employ one or more of the following approaches to value: the income approach, the cost approach, and the stock and debt approach.

B. All construction work in progress shall be valued at "full cash value" as described in this rule.

C. Discount Rates

For purposes of this rule, discount rates used in valuing all projects shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions.

D. Appraisal of Allocable Preconstruction Costs.

1. If requested by the taxpayer, preconstruction costs associated with properties, other than residential properties, may be allocated to the value of the project in relation to the relative amount of total expenditures made on the project by the lien date. Allocation will be allowed only if the following conditions are satisfied by January 30 of the tax year for which the request is sought:

a) a detailed list of preconstruction cost data is supplied to the responsible agency;

b) the percent of completion of the project and the preconstruction cost data are certified by the taxpayer as to their accuracy.

2. The preconstruction costs allocated pursuant to D.1. of this rule shall be discounted using the appropriate rate determined in C. The discounted allocated value shall either be added to the values of properties other than residential properties determined under E.1. or shall be added to the values determined under the various approaches used in the unit method of valuation determined under F.

3. The preconstruction costs allocated under D. are subject to audit for four years. If adjustments are necessary after examination of the records, those adjustments will be classified as property escaping assessment.

E. Appraisal of Properties not Valued under the Unit Method.

1. The full cash value, projected upon completion, of all properties valued under this section, with the exception of residential properties, shall be reduced by the value of the allocable preconstruction costs determined D. This reduced full cash value shall be referred to as the "adjusted full cash value."

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:

a) The full cash value of the project expected upon completion.

b) The expected date of functional completion of the project currently under construction.

(1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

c) The percent of the project completed as of the lien date.

(1) Determination of percent of completion for residential

properties shall be based on the following percentage of completion:

(a) 10 - Excavation-foundation

(b) 30 - Rough lumber, rough labor

(c) 50 - Roofing, rough plumbing, rough electrical, heating

(d) 65 - Insulation, drywall, exterior finish

(e) 75 - Finish lumber, finish labor, painting

(f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical

(g) 100 - Floor covering, appliances, exterior concrete, misc.

(2) In the case of all other projects under construction and valued under this section the percent of completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion; or in the case of nonresidential projects,

b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;

c) adjust the resulting product of E.3.a) or E.3.b) for the expected time of completion using the discount rate determined under C.

F. Appraisal of Properties Valued Under the Unit Method of Appraisal.

1. No adjustments under this rule shall be made to the income indicator of value for a project under construction that is owned by a cost-regulated utility when the project is allowed in rate base.

2. The full cash value of a project under construction as of January 1 of the tax year, shall be determined by adjusting the cost and income approaches as follows:

a) Adjustments to reflect the time value of money in appraising construction work in progress valued under the cost and income approaches shall be made for each approach as follows:

(1) Each company shall report the expected completion dates and costs of the projects. A project expected to be completed during the tax year for which the valuation is being determined shall be considered completed on January 1 or July 1, whichever is closest to the expected completion date. The Tax Commission shall determine the expected completion date for any project whose completion is scheduled during a tax year subsequent to the tax year for which the valuation is being made.

(2) If requested by the company, the value of allocable preconstruction costs determined in D. shall then be subtracted from the total cost of each project. The resulting sum shall be referred to as the adjusted cost value of the project.

(3) The adjusted cost value for each of the future years prior to functional completion shall be discounted to reflect the present value of the project under construction. The discount rate shall be determined under C.

(4) The discounted adjusted cost value shall then be added to the values determined under the income approach and cost approach.

b) No adjustment will be made to reflect the time value of money for a project valued under the stock and debt approach to value.

G. This rule shall take effect for the tax year 1985.

R884-24P-24. Form for Notice of Property Valuation and

Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918 through 59-2-924.

A. The county auditor must notify all real property owners of property valuation and tax changes on the Notice of Property Valuation and Tax Changes form.

1. If a county desires to use a modified version of the Notice of Property Valuation and Tax Changes, a copy of the proposed modification must be submitted for approval to the Property Tax Division of the Tax Commission no later than March 1.

a) Within 15 days of receipt, the Property Tax Division will issue a written decision, including justifications, on the use of the modified Notice of Property Valuation and Tax changes.

b) If a county is not satisfied with the decision, it may petition for a hearing before the Tax Commission as provided in R861-1A-22.

2. The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A property description may be included at the option of the county.

B. The Notice of Property Valuation and Tax Changes must be completed by the county auditor in its entirety, except in the following circumstances:

1. New property is created by a new legal description; or

2. The status of the improvements on the property has changed.

3. In instances where partial completion is allowed, the term nonapplicable will be entered in the appropriate sections of the Notice of Property Valuation and Tax Changes.

4. If the county auditor determines that conditions other than those outlined in this section merit deletion, the auditor may enter the term "nonapplicable" in appropriate sections of the Notice of Property Valuation and Tax Changes only after receiving approval from the Property Tax Division in the manner described in A.

C. Real estate assessed under the Farmland Assessment Act of 1969 must be reported at full market value, with the value based upon Farmland Assessment Act rates shown parenthetically.

D. All completion dates specified for the disclosure of property tax information must be strictly observed.

1. Requests for deviation from the statutory completion dates must be submitted in writing on or before June 1, and receive the approval of the Property Tax Division in the manner described in A.

E. If the proposed rate exceeds the certified rate, jurisdictions in which the fiscal year is the calendar year are required to hold public hearings even if budget hearings have already been held for that fiscal year.

F. If the cost of public notice required under Sections 59-2-918 and 59-2-919 is greater than one percent of the property tax revenues to be received, an entity may combine its advertisement with other entities, or use direct mail notification.

G. Calculation of the amount and percentage increase in property tax revenues required by Sections 59-2-918 and 59-2-919, shall be computed by comparing property taxes levied for the current year with property taxes collected the prior year, without adjusting for revenues attributable to new growth.

H. If a taxing district has not completed the tax rate setting process as prescribed in Sections 59-2-919 and 59-2-920 by August 17, the county auditor must seek approval from the Tax Commission to use the certified rate in calculating taxes levied.

I. The value of property subject to the uniform fee under Section 59-2-405 is excluded from taxable value for purposes of calculating new growth, the certified tax rate, and the proposed tax rate.

J. The value and taxes of property subject to the uniform fee under Section 59-2-405, as well as tax increment distributions and related taxable values of redevelopment

agencies, are excluded when calculating the percentage of property taxes collected as provided in Section 59-2-913.

K. The following formulas and definitions shall be used in determining new growth:

1. Actual new growth shall be computed as follows:

a) the taxable value for the current year adjusted for redevelopment minus year-end taxable value for the previous year adjusted for redevelopment; then

b) plus or minus changes in value as a result of factoring; then

c) plus or minus changes in value as a result of reappraisal; then

d) plus or minus any change in value resulting from a legislative mandate or court order.

2. Net annexation value is the taxable value for the current year adjusted for redevelopment of all properties annexed into an entity during the previous calendar year minus the taxable value for the previous year adjusted for redevelopment for all properties annexed out of the entity during the previous calendar year.

3. New growth is equal to zero for an entity with:

a) an actual new growth value less than zero; and

b) a net annexation value greater than or equal to zero.

4. New growth is equal to actual new growth for:

a) an entity with an actual new growth value greater than or equal to zero; or

b) an entity with:

(1) an actual new growth value less than zero; and

(2) the actual new growth value is greater than or equal to the net annexation value.

5. New growth is equal to the net annexation value for an entity with:

a) a net annexation value less than zero; and

b) the actual new growth value is less than the net annexation value.

6. Adjusted new growth equals new growth multiplied by the mean collection rate for the previous five years.

L. 1. For purposes of determining the certified tax rate, ad valorem property tax revenues budgeted by a taxing entity for the prior year are calculated by:

a) increasing or decreasing the adjustable taxable value from the prior year Report 697 by the average of the percentage net change in the value of taxable property for the equalization period for the three calendar years immediately preceding the current calendar year; and

b) multiplying the result obtained in L.1.a) by:

(1) the percentage of property taxes collected for the five calendar years immediately preceding the current calendar year; and

(2) the prior year approved tax rate.

2. If a taxing entity levied the prior year approved tax rate, the budgeted revenues determined under L.1. are reflected in the budgeted revenue column of the prior year Report 693.

M. 1. Entities required to set levies for more than one fund must compute an aggregate certified rate. The aggregate certified rate is the sum of the certified rates for individual funds for which separate levies are required by law. The aggregate certified rate computation applies where:

a) the valuation bases for the funds are contained within identical geographic boundaries; and

b) the funds are under the levy and budget setting authority of the same governmental entity.

2. Exceptions to M.1. are the county assessing and collecting levy, as described in Section 59-2-906.1(3), and the additional levies for property valuation and reappraisal, as described in Section 59-2-906.3.

a) These levies may not be included as part of a county's aggregate certified rate. Instead, they must be segregated into a separate aggregate certified rate.

b) The separate aggregate certified rate representing these levies is subject to the proposed tax increase requirements of Sections 59-2-918 and 59-2-919.

N. For purposes of determining the certified tax rate of a municipality incorporated on or after July 1, 1996, the levy imposed for municipal-type services or general county purposes shall be the certified tax rate for municipal-type services or general county purposes, as applicable.

O. No new entity, including a new city, may have a certified tax rate or levy a tax for any particular year unless that entity existed on the first day of that calendar year.

R884-24P-27. Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Sections 59-2-704 and 59-2-704.5.

A. Definitions.

1. "Coefficient of dispersion (COD)" means the average deviation of a group of assessment ratios taken around the median and expressed as a percent of that measure.

2. "Coefficient of variation (COV)" means the standard deviation expressed as a percentage of the mean.

3. "Division" means the Property Tax Division of the State Tax Commission.

4. "Nonparametric" means data samples that are not normally distributed.

5. "Parametric" means data samples that are normally distributed.

6. "Urban counties" means counties classified as first or second class counties pursuant to Section 17-50-501.

B. The Tax Commission adopts the following standards of assessment performance.

1. For assessment level in each property class, subclass, and geographical area in each county, the measure of central tendency shall meet one of the following measures.

a) The measure of central tendency shall be within 10 percent of the legal level of assessment.

b) The 95 percent confidence interval of the measure of central tendency shall contain the legal level of assessment.

2. For uniformity of the property being appraised under the cyclical appraisal plan for the current year, the measure of dispersion shall be within the following limits.

a) In urban counties:

(1) a COD of 15 percent or less for primary residential and commercial property, and 20 percent or less for vacant land and secondary residential property; and

(2) a COV of 19 percent or less for primary residential and commercial property, and 25 percent or less for vacant land and secondary residential property.

b) In rural counties:

(1) a COD of 20 percent or less for primary residential and commercial property, and 25 percent or less for vacant land and secondary residential property; and

(2) a COV of 25 percent or less for primary residential and commercial property, and 31 percent or less for vacant land and secondary residential property.

3. Statistical measures.

a) The measure of central tendency shall be the mean for parametric samples and the median for nonparametric samples.

b) The measure of dispersion shall be the COV for parametric samples and the COD for nonparametric samples.

c) To achieve statistical accuracy in determining assessment level under B.1. and uniformity under B.2. for any property class, subclass, or geographical area, the minimum sample size shall consist of 10 or more ratios.

C. Each year the Division shall conduct and publish an assessment-to-sale ratio study to determine if each county complies with the standards in B.

1. To meet the minimum sample size, the study period may be extended.

2. A smaller sample size may be used if:

a) that sample size is at least 10 percent of the class or subclass population; or

b) both the Division and the county agree that the sample may produce statistics that imply corrective action appropriate to the class or subclass of property.

3. If the Division, after consultation with the counties, determines that the sample size does not produce reliable statistical data, an alternate performance evaluation may be conducted, which may result in corrective action. The alternate performance evaluation shall include review and analysis of the following:

a) the county's procedures for collection and use of market data, including sales, income, rental, expense, vacancy rates, and capitalization rates;

b) the county-wide land, residential, and commercial valuation guidelines and their associated procedures for maintaining current market values;

c) the accuracy and uniformity of the county's individual property data through a field audit of randomly selected properties; and

d) the county's level of personnel training, ratio of appraisers to parcels, level of funding, and other workload and resource considerations.

4. All input to the sample used to measure performance shall be completed by March 31 of each study year.

5. The Division shall conduct a preliminary annual assessment-to-sale ratio study by April 30 of the study year, allowing counties to apply adjustments to their tax roll prior to the May 22 deadline.

6. The Division shall complete the final study immediately following the closing of the tax roll on May 22.

D. The Division shall order corrective action if the results of the final study do not meet the standards set forth in B.

1. Assessment level adjustments, or factor orders, shall be calculated by dividing the legal level of assessment by one of the following:

a) the measure of central tendency, if the uniformity of the ratios meets the standards outlined in B.2.; or

b) the 95 percent confidence interval limit nearest the legal level of assessment, if the uniformity of the ratios does not meet the standards outlined in B.2.

2. Uniformity adjustments, or reappraisal orders, shall only apply to the property being appraised under the cyclical appraisal plan for the current year. A reappraisal order shall be issued if the property fails to meet the standards outlined in B.2. Prior to implementation of reappraisal orders, counties shall submit a preliminary report to the Division that includes the following:

a) an evaluation of why the standards of uniformity outlined in B.2. were not met; and

b) a plan for completion of the reappraisal that is approved by the Division.

3. A corrective action order may contain language requiring a county to create, modify, or follow its cyclical appraisal plan.

4. All corrective action orders shall be issued by June 10 of the study year.

E. The Tax Commission adopts the following procedures to insure compliance and facilitate implementation of ordered corrective action.

1. Prior to the filing of an appeal, the Division shall retain authority to correct errors and, with agreement of the affected county, issue amended orders or stipulate with the affected county to any appropriate alternative action without Tax Commission approval. Any stipulation by the Division subsequent to an appeal is subject to Tax Commission approval.

2. A county receiving a corrective action order resulting from this rule may file and appeal with the Tax Commission

pursuant to Tax Commission rule R861-1A-11.

3. A corrective action order will become the final Tax Commission order if the county does not appeal in a timely manner, or does not prevail in the appeals process.

4. The Division may assist local jurisdictions to ensure implementation of any corrective action orders by the following deadlines.

a) Factor orders shall be implemented in the current study year prior to the mailing of valuation notices.

b) Other corrective action, including reappraisal orders, shall be implemented prior to May 22 of the year following the study year. The preliminary report referred to in D.2. shall be completed by November 30 of the current study year.

5. The Division shall complete audits to determine compliance with corrective action orders as soon after the deadlines set forth in E.4. as practical. The Division shall review the results of the compliance audit with the county and make any necessary adjustments to the compliance audit within 15 days of initiating the audit. These adjustments shall be limited to the analysis performed during the compliance audit and may not include review of the data used to arrive at the underlying factor order. After any adjustments, the compliance audit will then be given to the Tax Commission for any necessary action.

6. The county shall be informed of any adjustment required as a result of the compliance audit.

R884-24P-28. Reporting Requirements For Leased or Rented Personal Property, Pursuant to Utah Code Ann. Section 59-2-306.

A. The procedure set forth herein is required in reporting heavy equipment leased or rented during the tax year.

1. On forms or diskette provided by the Tax Commission, the owner of leased or rented heavy equipment shall file semi-annual reports with the Tax Commission for the periods January 1 through June 30, and July 1 through December 31 of each year. The reports shall contain the following information:

- a) a description of the leased or rented equipment;
- b) the year of manufacture and acquisition cost;
- c) a listing, by month, of the counties where the equipment has situs; and
- d) any other information required.

2. For purposes of this rule, situs is established when leased or rented equipment is kept in an area for thirty days. Once situs is established, any portion of thirty days during which that equipment stays in that area shall be counted as a full month of situs. In no case may situs exceed twelve months for any year.

3. The completed report shall be submitted to the Property Tax Division of the Tax Commission within thirty days after each reporting period.

- a) Noncompliance will require accelerated reporting.

R884-24P-29. Taxable Household Furnishings Pursuant to Utah Code Ann. Section 59-2-1113.

A. Household furnishings, furniture, and equipment are subject to property taxation if:

- 1. the owner of the abode commonly receives legal consideration for its use, whether in the form of rent, exchange, or lease payments; or
- 2. the abode is held out as available for the rent, lease, or use by others.

R884-24P-32. Leasehold Improvements Pursuant to Utah Code Ann. Section 59-2-303.

A. The value of leasehold improvements shall be included in the value of the underlying real property and assessed to the owner of the underlying real property.

B. The combined valuation of leasehold improvements and

underlying real property required in A. shall satisfy the requirements of Section 59-2-103(1).

C. The provisions of this rule shall not apply if the underlying real property is owned by an entity exempt from tax under Section 59-2-1101.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2000.

R884-24P-33. 2006 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301.

(1) Definitions.

(a) "Acquisition cost" means all costs required to put an item into service, including purchase price, freight and shipping costs; installation, engineering, erection or assembly costs; and excise and sales taxes.

(i) Indirect costs such as debugging, licensing fees and permits, insurance or security are not included in the acquisition cost.

(ii) Acquisition cost may correspond to the cost new for new property, or cost used for used property.

(b)(i) "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

(ii) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

(c) "Cost new" means the actual cost of the property when purchased new.

(i) Except as otherwise provided in this rule, the Tax Commission and assessors shall rely on the following sources to determine cost new:

- (A) documented actual cost of the new or used vehicle; or
- (B) recognized publications that provide a method for approximating cost new for new or used vehicles.

(ii) For the following property purchased used, the taxing authority may determine cost new by dividing the property's actual cost by the percent good factor for that class:

- (A) class 6 heavy and medium duty trucks;
- (B) class 13 heavy equipment;
- (C) class 14 motor homes;
- (D) class 17 vessels equal to or greater than 31 feet in length;
- (E) class 21 commercial trailers; and
- (F) class 23 aircraft subject to the aircraft uniform fee and not listed in the aircraft bluebook price digest.

(d) "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.

(i) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.

(ii) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, other data sources or research, and vehicle valuation guides such as Primedia Price Digests.

(2) Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

(a) Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

(b) A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

(c) County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission.

Alternative schedules may not be used without prior written approval of the Commission.

(d) A party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value.

(3) The provisions of this rule do not apply to:

(a) a vehicle subject to the age-based uniform fee under Section 59-2-405.1;

(b) the following personal property subject to the age-based uniform fee under Section 59-2-405.2:

- (i) an all-terrain vehicle;
- (ii) a camper;
- (iii) an other motorcycle;
- (iv) an other trailer;
- (v) a personal watercraft;
- (vi) a small motor vehicle;
- (vii) a snowmobile;
- (viii) a street motorcycle;
- (ix) a tent trailer;
- (x) a travel trailer; and
- (xi) a vessel, including an outboard motor of the vessel, that is less than 31 feet in length.

(4) Other taxable personal property that is not included in the listed classes includes:

(a) Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business. Supplies are assessed at total cost, including freight-in.

(b) Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.

(c) Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.

(5) Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.

(6) All taxable personal property, other than personal property subject to an age-based uniform fee under Section 59-2-405.1 or 59-2-405.2, is classified by expected economic life as follows:

(a) Class 1 - Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.

(i) Examples of property in the class include:

- (A) barricades/warning signs;
- (B) library materials;
- (C) patterns, jigs and dies;
- (D) pots, pans, and utensils;
- (E) canned computer software;
- (F) hotel linen;
- (G) wood and pallets;
- (H) video tapes, compact discs, and DVDs; and
- (I) uniforms.

(ii) With the exception of video tapes, compact discs, and DVDs, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) A licensee of canned computer software shall use one of the following substitutes for acquisition cost of canned computer software if no acquisition cost for the canned computer software is stated:

- (A) retail price of the canned computer software;
- (B) if a retail price is unavailable, and the license is a nonrenewable single year license agreement, the total sum of

expected payments during that 12-month period; or

(C) if the licensing agreement is a renewable agreement or is a multiple year agreement, the present value of all expected licensing fees paid pursuant to the agreement.

(iv) Video tapes, compact discs, and DVDs are valued at \$15.00 per tape or disc for the first year and \$3.00 per tape or disc thereafter.

TABLE 1

Year of Acquisition	Percent Good of Acquisition Cost
05	67%
04	41%
03 and prior	10%

(b) Class 2 - Computer Integrated Machinery.

(i) Machinery shall be classified as computer integrated machinery if all of the following conditions are met:

(A) The equipment is sold as a single unit. If the invoice breaks out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.

(B) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.

(C) The machine can perform multiple functions and is controlled by a programmable central processing unit.

(D) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.

(E) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.

(ii) Examples of property in this class include:

- (A) CNC mills;
- (B) CNC lathes;
- (C) MRI equipment;
- (D) CAT scanners; and
- (E) mammography units.

(iii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 2

Year of Acquisition	Percent Good of Acquisition Cost
05	83%
04	73%
03	61%
02	53%
01	44%
00	36%
99	26%
98 and prior	16%

(c) Class 3 - Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.

(i) Examples of property in this class include:

- (A) office machines;
- (B) alarm systems;
- (C) shopping carts;
- (D) ATM machines;
- (E) small equipment rentals;
- (F) rent-to-own merchandise;
- (G) telephone equipment and systems;
- (H) music systems;
- (I) vending machines;
- (J) video game machines; and
- (K) cash registers and point of sale equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 3

Year of Acquisition	Percent Good of Acquisition Cost
05	79%
04	68%
03	52%
02	35%
01 and prior	18%

(d) Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.

(i) Examples of property in this class include:

- (A) furniture;
- (B) bars and sinks;
- (C) booths, tables and chairs;
- (D) beauty and barber shop fixtures;
- (E) cabinets and shelves;
- (F) displays, cases and racks;
- (G) office furniture;
- (H) theater seats;
- (I) water slides; and
- (J) signs, mechanical and electrical.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 5

Year of Acquisition	Percent Good of Acquisition Cost
05	86%
04	82%
03	73%
02	63%
01	53%
00	43%
99	33%
98	22%
97 and prior	11%

(e) Class 6 - Heavy and Medium Duty Trucks.

(i) Examples of property in this class include:

- (A) heavy duty trucks;
- (B) medium duty trucks;
- (C) crane trucks;
- (D) concrete pump trucks; and
- (E) trucks with well-boring rigs.

(ii) Taxable value is calculated by applying the percent good factor against the cost new.

(iii) Cost new of vehicles in this class is defined as follows:

(A) the documented actual cost of the vehicle for new vehicles; or

(B) 75 percent of the manufacturer's suggested retail price.

(iv) For state assessed vehicles, cost new shall include the value of attached equipment.

(v) The 2006 percent good applies to 2006 models purchased in 2005.

(vi) Trucks weighing two tons or more have a residual taxable value of \$1,750.

TABLE 6

Model Year	Percent Good of Cost New
06	90%
05	77%
04	71%
03	65%
02	59%
01	53%
00	47%
99	40%
98	34%
97	28%
96	22%

95	16%
94	10%
93 and prior	4%

(f) Class 7 - Medical and Dental Equipment. Class 7 property is subject to a high degree of technological development by the health industry.

(i) Examples of property in this class include:

- (A) medical and dental equipment and instruments;
- (B) exam tables and chairs;
- (C) high-tech hospital equipment;
- (D) microscopes; and
- (E) optical equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 7

Year of Acquisition	Percent Good of Acquisition Cost
05	87%
04	85%
03	78%
02	70%
01	62%
00	54%
99	45%
98	36%
97	28%
96	19%
95 and prior	10%

(g) Class 8 - Machinery and Equipment. Property in this class is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available.

(i) Examples of property in this class include:

- (A) manufacturing machinery;
- (B) amusement rides;
- (C) bakery equipment;
- (D) distillery equipment;
- (E) refrigeration equipment;
- (F) laundry and dry cleaning equipment;
- (G) machine shop equipment;
- (H) processing equipment;
- (I) auto service and repair equipment;
- (J) mining equipment;
- (K) ski lift machinery;
- (L) printing equipment;
- (M) bottling or cannery equipment;
- (N) packaging equipment; and
- (O) pollution control equipment.

(ii) Except as provided in Subsection (6)(g)(iii), taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii)(A) Notwithstanding Subsection (6)(g)(ii), the taxable value of the following oil refinery pollution control equipment required by the federal Clean Air Act shall be calculated pursuant to Subsection (6)(g)(iii)(B):

- (I) VGO (Vacuum Gas Oil) reactor;
- (II) HDS (Diesel Hydrotreater) reactor;
- (III) VGO compressor;
- (IV) VGO furnace;
- (V) VGO and HDS high pressure exchangers;
- (VI) VGO, SRU (Sulfur Recovery Unit), SWS (Sour Water Stripper), and TGU; (Tail Gas Unit) low pressure exchangers;
- (VII) VGO, amine, SWS, and HDS separators and drums;
- (VIII) VGO and tank pumps;
- (IX) TGU modules; and
- (X) VGO tank and air coolers.

(B) The taxable value of the oil refinery pollution control equipment described in Subsection (6)(g)(iii)(A) shall be

calculated by:

(I) applying the percent good factor in Table 8 against the acquisition cost of the property; and

(II) multiplying the product described in Subsection (6)(g)(iii)(B)(I) by 50%.

TABLE 8

Year of Acquisition	Percent Good of Acquisition Cost
05	87%
04	85%
03	78%
02	70%
01	62%
00	54%
99	45%
98	36%
97	28%
96	19%
95 and prior	10%

(h) Class 9 - Off-Highway Vehicles.

(i) Because Section 59-2-405.2 subjects Class 9 property to an age-based uniform fee, a percent good schedule is not necessary for this class.

(i) Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 10

Year of Acquisition	Percent Good of Acquisition Cost
05	92%
04	89%
03	83%
02	77%
01	70%
00	65%
99	58%
98	51%
97	44%
96	37%
95	31%
94	24%
93	16%
92 and prior	8%

(j) Class 11 - Street Motorcycles.

(i) Because Section 59-2-405.2 subjects Class 11 property to an age-based uniform fee, a percent good schedule is not necessary for this class.

(k) Class 12 - Computer Hardware.

(i) Examples of property in this class include:

- (A) data processing equipment;
- (B) personal computers;
- (C) main frame computers;
- (D) computer equipment peripherals;
- (E) cad/cam systems; and
- (F) copiers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 12

Year of Acquisition	Percent Good of Acquisition Cost
05	62%
04	46%
03	21%
02	9%
01 and prior	7%

(l) Class 13 - Heavy Equipment.

(i) Examples of property in this class include:

- (A) construction equipment;
- (B) excavation equipment;
- (C) loaders;
- (D) batch plants;
- (E) snow cats; and
- (F) pavement sweepers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) 2006 model equipment purchased in 2005 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
05	57%
04	54%
03	51%
02	48%
01	45%
00	41%
99	38%
98	35%
97	32%
96	29%
95	25%
94	22%
93	19%
92 and prior	16%

(m) Class 14 - Motor Homes.

(i) Taxable value is calculated by applying the percent good against the cost new.

(ii) The 2006 percent good applies to 2006 models purchased in 2005.

(iii) Motor homes have a residual taxable value of \$1,000.

TABLE 14

Model Year	Percent Good of Cost New
06	90%
05	69%
04	66%
03	63%
02	59%
01	56%
00	53%
99	49%
98	46%
97	43%
96	39%
95	36%
94	33%
93	29%
92	26%
91	23%
90 and prior	19%

(n) Class 15 - Semiconductor Manufacturing Equipment.

Class 15 applies only to equipment used in the production of semiconductor products. Equipment used in the semiconductor manufacturing industry is subject to significant economic and functional obsolescence due to rapidly changing technology and economic conditions.

(i) Examples of property in this class include:

- (A) crystal growing equipment;
- (B) die assembly equipment;
- (C) wire bonding equipment;
- (D) encapsulation equipment;
- (E) semiconductor test equipment;
- (F) clean room equipment;
- (G) chemical and gas systems related to semiconductor manufacturing;
- (H) deionized water systems;
- (I) electrical systems; and

(J) photo mask and wafer manufacturing dedicated to semiconductor production.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 15

Year of Acquisition	Percent Good of Acquisition Cost
05	47%
04	34%
03	24%
02	15%
01 and prior	6%

(o) Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.

(i) Examples of property in this class include:

- (A) billboards;
- (B) sign towers;
- (C) radio towers;
- (D) ski lift and tram towers;
- (E) non-farm grain elevators; and
- (F) bulk storage tanks.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 16

Year of Acquisition	Percent Good of Acquisition Cost
05	94%
04	92%
03	88%
02	84%
01	79%
00	75%
99	71%
98	65%
97	61%
96	56%
95	52%
94	48%
93	43%
92	37%
91	31%
90	25%
89	20%
88	14%
87 and prior	7%

(p) Class 17 - Vessels Equal to or Greater Than 31 Feet in Length.

(i) Examples of property in this class include:

- (A) houseboats equal to or greater than 31 feet in length;
- (B) sloops equal to or greater than 31 feet in length; and
- (C) yachts equal to or greater than 31 feet in length.

(ii) A vessel, including an outboard motor of the vessel, under 31 feet in length:

- (A) is not included in Class 17;
- (B) may not be valued using Table 17; and
- (C) is subject to an age-based uniform fee under Section 59-2-405.2.

(iii) Taxable value is calculated by applying the percent good factor against the cost new of the property.

(iv) The Tax Commission and assessors shall rely on the following sources to determine cost new for property in this class:

- (A) the following publications or valuation methods:
 - (I) the manufacturer's suggested retail price listed in the ABOS Marine Blue Book;

(II) for property not listed in the ABOS Marine Blue Book but listed in the NADA Marine Appraisal Guide, the NADA average value for the property divided by the percent good factor; or

(III) for property not listed in the ABOS Marine Blue Book or the NADA Appraisal Guide:

(aa) the manufacturer's suggested retail price for comparable property; or

(bb) the cost new established for that property by a documented valuation source; or

(B) the documented actual cost of new or used property in this class.

(v) The 2006 percent good applies to 2006 models purchased in 2005.

(vi) Property in this class has a residual taxable value of \$1,000.

TABLE 17

Model Year	Percent Good of Cost New
06	90%
05	72%
04	70%
03	67%
02	65%
01	63%
00	61%
99	59%
98	57%
97	54%
96	52%
95	50%
94	48%
93	46%
92	43%
91	41%
90	39%
89	37%
88	35%
87	32%
86	30%
85 and prior	28%

(q) Class 18 - Travel Trailers/Truck Campers.

(i) Because Section 59-2-405.2 subjects Class 18 property to an age-based uniform fee, a percent good schedule is not necessary for this class.

(r) Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

(i) Examples of property in this class include:

- (A) oil and gas exploration equipment;
- (B) distillation equipment;
- (C) wellhead assemblies;
- (D) holding and storage facilities;
- (E) drill rigs;
- (F) reinjection equipment;
- (G) metering devices;
- (H) cracking equipment;
- (I) well-site generators, transformers, and power lines;
- (J) equipment sheds;
- (K) pumps;
- (L) radio telemetry units; and
- (M) support and control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 20

Year of Acquisition	Percent Good of Acquisition Cost
05	92%
04	90%
03	82%
02	76%
01	69%
00	62%
99	55%

98	47%
97	40%
96	33%
95	25%
94	17%
93 and prior	9%

- (s) Class 21 - Commercial Trailers.
- (i) Examples of property in this class include:
 - (A) dry freight van trailers;
 - (B) refrigerated van trailers;
 - (C) flat bed trailers;
 - (D) dump trailers;
 - (E) livestock trailers; and
 - (F) tank trailers.

(ii) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state assessed vehicles, cost new shall include the value of attached equipment.

(iii) The 2006 percent good applies to 2006 models purchased in 2005.

Commercial trailers have a residual taxable value of \$1,000.

TABLE 21

Model Year	Percent Good of Cost New
06	95%
05	78%
04	74%
03	69%
02	65%
01	61%
00	56%
99	52%
98	48%
97	43%
96	39%
95	35%
94	30%
93	26%
92	22%
91	18%
90 and prior	13%

(t) Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.

a) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.

b) Because Section 59-2-405.1 subjects Class 22 property to an age-based uniform fee, a percent good schedule is not necessary for this class.

(u) Class 23 - Aircraft Subject to the Aircraft Uniform Fee and Not Listed in the Aircraft Bluebook Price Digest.

- (i) Examples of property in this class include:
 - (A) kit-built aircraft;
 - (B) experimental aircraft;
 - (C) gliders;
 - (D) hot air balloons; and
 - (E) any other aircraft requiring FAA registration.

(ii) Aircraft subject to the aircraft uniform fee, but not listed in the Aircraft Bluebook Price Digest, are valued by applying the percent good factor against the acquisition cost of the aircraft.

(iii) Aircraft requiring Federal Aviation Agency registration and kept in Utah must be registered with the Motor Vehicle Division of the Tax Commission.

TABLE 23

Year of Acquisition	Percent Good of Acquisition Cost
05	75%

04	71%
03	67%
02	63%
01	59%
00	55%
99	51%
98	47%
97	43%
96	39%
95	35%
94 and prior	31%

(v) Class 24 - Leasehold Improvements.

(i) This class includes leasehold improvements to real property installed by a tenant. The Class 24 schedule is to be used only with leasehold improvements that are assessed to the lessee of the real property pursuant to Tax Commission rule R884-24P-32. Leasehold improvements include:

- (A) walls and partitions;
- (B) plumbing and roughed-in fixtures;
- (C) floor coverings other than carpet;
- (D) store fronts;
- (E) decoration;
- (F) wiring;
- (G) suspended or acoustical ceilings;
- (H) heating and cooling systems; and
- (I) iron or millwork trim.

(ii) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.

(iii) The Class 3 schedule is used to value short life leasehold improvements.

TABLE 24

Year of Installation	Percent of Installation Cost
05	94%
04	88%
03	82%
02	77%
01	71%
00	65%
99	59%
98	54%
97	48%
96	42%
95	36%
94 and prior	30%

(w) Class 25 - Aircraft Parts Manufacturing Tools and Dies. Property in this class is generally subject to rapid physical, functional, and economic obsolescence due to rapid technological and economic shifts in the airline parts manufacturing industry. Heavy wear and tear is also a factor in valuing this class of property.

- (i) Examples of property in this class include:
 - (A) aircraft parts manufacturing jigs and dies;
 - (B) aircraft parts manufacturing molds;
 - (C) aircraft parts manufacturing patterns;
 - (D) aircraft parts manufacturing taps and gauges;
 - (E) aircraft parts manufacturing test equipment; and
 - (F) aircraft parts manufacturing fixtures.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 25

Year of Acquisition	Percent Good of Acquisition Cost
05	79%
04	69%
03	53%
02	36%
01	19%
00 and prior	4%

- (x) Class 26 - Personal Watercraft.
- (i) Because Section 59-2-405.2 subjects Class 26 property to an age-based uniform fee, a percent good schedule is not necessary for this class.
- (y) Class 27 - Electrical Power Generating Equipment and Fixtures
 - (i) Examples of property in this class include:
 - (A) electrical power generators; and
 - (B) control equipment.
 - (ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 27

Year of Acquisition	Percent Good of Acquisition Cost
05	97%
04	95%
03	92%
02	90%
01	87%
00	84%
99	82%
98	79%
97	77%
96	74%
95	71%
94	69%
93	66%
92	64%
91	61%
90	58%
89	56%
88	53%
87	51%
86	48%
85	45%
84	43%
83	40%
82	38%
81	35%
80	32%
79	30%
78	27%
77	25%
76	22%
75	19%
74	17%
73	14%
72	12%
71 and prior	9%

F. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2006.

R884-24P-34. Use of Sales or Appraisal Information Gathered in Conjunction With Assessment/Sales Ratio Studies Pursuant to Utah Code Ann. Section 59-2-704.

A. Market data gathered for purposes of an assessment/sales ratio study may be used for valuation purposes only as part of a systematic reappraisal program whereby all similar properties are given equitable and uniform treatment.

B. Sales or appraisal data gathered in conjunction with a ratio study shall not be used for an isolated reappraisal of the sold or appraised properties.

C. Information derived from ratio studies regarding the values assigned to real property and personal property shall not be used to establish the apportionment between real and personal property in future assessments.

R884-24P-35. Annual Statement for Certain Exempt Uses of Property Pursuant to Utah Code Ann. Section 59-2-1102.

A. The purpose of this rule is to provide guidance to property owners required to file an annual statement under Section 59-2-1102 in order to claim a property tax exemption under Section 59-2-1101 (2)(d) or (e).

B. The annual statement filed pursuant to Section 59-2-

1102 shall contain the following information for the specific property for which an exemption is sought:

1. the owner of record of the property;
 2. the property parcel, account, or serial number;
 3. the location of the property;
 4. the tax year in which the exemption was originally granted;
 5. a description of any change in the use of the real or personal property since January 1 of the prior year;
 6. the name and address of any person or organization conducting a business for profit on the property;
 7. the name and address of any organization that uses the real or personal property and pays a fee for that use that is greater than the cost of maintenance and utilities associated with the property;
 8. a description of any personal property leased by the owner of record for which an exemption is claimed;
 9. the name and address of the lessor of property described in B.8.;
 10. the signature of the owner of record or the owner's authorized representative; and
 11. any other information the county may require.
- C. The annual statement shall be filed:
1. with the county legislative body in the county in which the property is located;
 2. on or before March 1; and
 3. using:
 - a) Tax Commission form PT-21, Annual Statement for Continued Property Tax Exemption; or
 - b) a form that contains the information required under B.

R884-24P-36. Contents of Real Property Tax Notice Pursuant to Utah Code Ann. Section 59-2-1317.

A. In addition to the information required by Section 59-2-1317, the tax notice for real property shall specify the following:

1. the property identification number;
2. the appraised value of the property and, if applicable, any adjustment for residential exemptions expressed in terms of taxable value;
3. if applicable, tax relief for taxpayers eligible for blind, veteran, or poor abatement or the circuit breaker, which shall be shown as credits to total taxes levied; and
4. itemized tax rate information for each taxing entity and total tax rate.

R884-24P-37. Separate Values of Land and Improvements Pursuant to Utah Code Ann. Sections 59-2-301 and 59-2-305.

A. The county assessor shall maintain an appraisal record of all real property subject to assessment by the county. The record shall include the following information:

1. owner of the property;
2. property identification number;
3. description and location of the property; and
4. full market value of the property.

B. Real property appraisal records shall show separately the value of the land and the value of any improvements.

R884-24P-38. Nonoperating Railroad Properties Pursuant to Utah Code Ann. Section 59-2-201(4).

A. Definitions.

1. "Railroad right of way" (RR-ROW) means a strip of land upon which a railroad company constructs the road bed.

a. RR-ROW within incorporated towns and cities shall consist of 50 feet on each side of the main line main track, branch line main track or main spur track. Variations to the 50-foot standard shall be approved on an individual basis.

b. RR-ROW outside incorporated towns and cities shall consist of the actual right-of-way owned if not in excess of 100 feet on each side of the center line of the main line main track,

branch line main track, or main spur track. In cases where unusual conditions exist, such as mountain cuts, fills, etc., and more than 100 feet on either side of the main track is required for ROW and where small parcels of land are otherwise required for ROW purposes, the necessary additional area shall be reported as RR-ROW.

B. Assessment of nonoperating railroad properties. Railroad property formerly assessed by the unitary method which has been determined to be nonoperating, and which is not necessary to the conduct of the business, shall be assessed separately by the local county assessor. For purposes of this rule:

C. Assessment procedures.

1. Properties charged to nonoperating accounts are reviewed by the Property Tax Division, and if taxable, are assessed and placed on the local county assessment rolls separately from the operating properties.

2. RR-ROW is considered as operating and as necessary to the conduct and contributing to the income of the business. Any revenue derived from leasing of property within the RR-ROW is considered as railroad operating revenues.

3. Real property outside of the RR-ROW which is necessary to the conduct of the railroad operation is considered as part of the unitary value. Some examples are: company homes occupied by superintendents and other employees on 24-hour call, storage facilities for railroad operations, communication facilities, and spur tracks outside of RR-ROW.

4. Abandoned RR-ROW is considered as nonoperating and shall be reported as such by the railroad companies.

5. Real property outside of the RR-ROW which is not necessary to the conduct of the railroad operations is classified as nonoperating and therefore assessed by the local county assessor. Some examples are: land leased to service station operations, grocery stores, apartments, residences, and agricultural uses.

6. RR-ROW obtained by government grant or act of Congress is deemed operating property.

D. Notice of Determination. It is the responsibility of the Property Tax Division to provide a notice of determination to the owner of the railroad property and the assessor of the county where the railroad property is located immediately after such determination of operating or nonoperating status has been made. If there is no appeal to the notice of determination, the Property Tax Division shall notify the assessor of the county where the property is located so the property may be placed on the roll for local assessment.

E. Appeals. Any interested party who wishes to contest the determination of operating or nonoperating property may do so by filing a request for agency action within ten days of the notice of determination of operating or nonoperating properties. Request for agency action may be made pursuant to Utah Code Ann. Title 63, Chapter 46b.

R884-24P-40. Exemption of Parsonages, Rectories, Monasteries, Homes and Residences Pursuant to Utah Code Annotated 59-2-1101(d) and Article XIII, Section 2 of the Utah Constitution.

A. Parsonages, rectories, monasteries, homes and residences if used exclusively for religious purposes, are exempt from property taxes if they meet all of the following requirements:

1. The land and building are owned by a religious organization which has qualified with the Internal Revenue Service as a Section 501(c)(3) organization and which organization continues to meet the requirements of that section.

2. The building is occupied only by persons whose full time efforts are devoted to the religious organization and the immediate families of such persons.

3. The religious organization, and not the individuals who

occupy the premises, pay all payments, utilities, insurance, repairs, and all other costs and expenses related to the care and maintenance of the premises and facilities.

B. The exemption for one person and the family of such person is limited to the real estate that is reasonable for the residence of the family and which remains actively devoted exclusively to the religious purposes. The exemption for more than one person, such as a monastery, is limited to that amount of real estate actually devoted exclusively to religious purposes.

C. Vacant land which is not actively used by the religious organization, is not deemed to be devoted exclusively to religious purposes, and is therefore not exempt from property taxes.

1. Vacant land which is held for future development or utilization by the religious organization is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt.

2. Vacant land is tax exempt after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes.

R884-24P-41. Adjustment or Deferral of Property Taxes Pursuant to Utah Code Ann. Section 59-2-1347.

A. Requested adjustments to taxes for past years may not be made under Utah Code Ann. Section 59-2-1347 if the requested adjustment is based only on property valuation.

B. Utah Code Ann. Section 59-2-1347 applies only to taxes levied but unpaid and may not serve as the basis for refunding taxes already paid.

C. Utah Code Ann. Section 59-2-1347 may only be applied to taxes levied for the five most recent tax years except where taxes levied remain unpaid as a result of administrative action or litigation.

R884-24P-42. Farmland Assessment Audits and Personal Property Audits Pursuant to Utah Code Ann. Subsection 59-2-508(2), and Section 59-2-705.

A. The Tax Commission is responsible for auditing the administration of the Farmland Assessment Act to verify proper listing and classification of all properties assessed under the act. The Tax Commission also conducts routine audits of personal property accounts.

1. If an audit reveals an incorrect assignment of property, or an increase or decrease in value, the county assessor shall correct the assessment on the assessment roll and the tax roll.

2. A revised assessment notice or tax notice or both shall be mailed to the taxpayer for the current year and any previous years affected.

3. The appropriate tax rate for each year shall be applied when computing taxes due for previous years.

B. Assessors shall not alter results of an audit without first submitting the changes to the Tax commission for review and approval.

C. The Tax Commission shall review assessor compliance with this rule. Noncompliance may result in an order for corrective action.

R884-24P-44. Farm Machinery and Equipment Exemption Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-1101.

A. The use of the machinery and equipment, whether by the claimant or a lessee, shall determine the exemption.

1. For purposes of this rule, the term owner includes a purchaser under an installment purchase contract or capitalized lease where ownership passes to the purchaser at the end of the contract without the exercise of an option on behalf of the purchaser or seller.

B. Farm machinery and equipment is used primarily for agricultural purposes if it is used primarily for the production or

harvesting of agricultural products.

C. The following machinery and equipment is used primarily for the production or harvesting of agricultural products:

1. Machinery and equipment used on the farm for storage, cooling, or freezing of fruits or vegetables;

2. Except as provided in C.3., machinery and equipment used in fruit or vegetable growing operations if the machinery and equipment does not physically alter the fruit or vegetables; and

3. Machinery and equipment that physically alters the form of fruits or vegetables if the operations performed by the machinery or equipment are reasonable and necessary in the preparation of the fruit or vegetables for wholesale marketing.

D. Machinery and equipment used for processing of agricultural products are not exempt.

R884-24P-47. Uniform Tax on Aircraft Pursuant to Utah Code Ann. Sections 59-2-404, 59-2-1005, 59-2-1302, and 59-2-1303.

A. Registration of aircraft requires payment of a uniform tax in lieu of ad valorem personal property tax. This tax shall be collected by the county assessor at the time of registration at the rate prescribed in Section 59-2-404.

B. The average wholesale market value of the aircraft is the arithmetic mean of the average low wholesale book value and the average high wholesale book value. This average price will be used as the basis for the initial assessment. These amounts are obtained from the fall edition of the Aircraft Bluebook Price Digest in the year preceding the year of registration for all aircraft listed in that publication.

1. The average wholesale market value of aircraft subject to registration but not shown in the Aircraft Bluebook Price Digest will be assessed according to the annual depreciation schedule for aircraft valuation set forth in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules."

2. Instructions for interpretation of codes are found inside the Aircraft Bluebook Price Digest.

a) Average low wholesale values are found under the heading "Average equipped per base avg change/invtry."

b) Average high wholesale values are found under the heading "change mktbl."

c) Aircraft values not in accordance with "average" may be adjusted by the assessor following the instructions in the Bluebook. Factors that have the greatest impact on value include: high engine time, air worthiness directives not complied with, status of annual inspection, crash damage, paint condition, and interior condition.

C. The uniform tax is due each year the aircraft is registered in Utah. If the aircraft is sold within the same registration period, no additional uniform tax shall be due. However, the purchaser shall pay any delinquent tax as a condition precedent to registration.

D. If an aircraft is purchased or moved to Utah during the year and newly registered in Utah, the uniform tax shall be prorated based on the number of months remaining in the registration period.

1. Any portion of a month shall be counted as a full month. For example, if registration is required during July, 50 percent of the uniform tax shall be paid as a condition of registration.

2. If the aircraft is moved to Utah during the year, and property tax was paid to another state prior to moving the aircraft into Utah, any property tax paid shall be allowed as a credit against the prorated uniform tax due in Utah.

a) This credit may not be refunded if the other state property tax exceeds the uniform tax due in Utah for the comparable year.

b) Proof of payment shall be submitted before credit is

allowed.

E. The uniform tax collected by county assessors shall be distributed to the taxing districts of the county in which the aircraft is located as shown on the registration application. If the aircraft is registered in a county other than the county of the aircraft location, the tax collected shall be forwarded to the appropriate county within five working days.

F. The Tax Commission shall supply registration forms and numbered decals to the county assessors. Forms to assess the uniform tax shall be prepared by the counties each year. The Tax Commission shall maintain an owners' data base and supply the counties with a list of registrations by county after the first year and shall also supply registration renewal forms preprinted with the prior year's registration information.

G. The aircraft owner or person or entity in possession thereof shall immediately provide access to any aircraft hangar or other storage area or facility upon request by the assessor or the assessor's designee in order to permit the determination of the status of registration of the aircraft, and the performance of any other act in furtherance of the assessor's duties.

H. The provisions applicable to securing or collecting personal property taxes set forth in Sections 59-2-1302 and 59-2-1303 shall apply to the collection of delinquent uniform taxes.

I. If the aircraft owner and the county assessor cannot reach agreement concerning the aircraft valuation, the valuation may be appealed to the county board of equalization under Section 59-2-1005.

R884-24P-49. Calculating the Utah Apportioned Value of a Rail Car Fleet Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Average market value per rail car" means the fleet rail car market value divided by the number of rail cars in the fleet.

2. "Fleet rail car market value" means the sum of:

a)(1) the yearly acquisition costs of the fleet's rail cars;

(2) multiplied by the appropriate percent good factors contained in Class 10 of R884-24P- 33, Personal Property Valuation Guides and Schedules; and

b) the sum of betterments by year.

(1) Except as provided in A.2.b)(2), the sum of betterments by year shall be depreciated on a 14-year straight line method.

(2) Notwithstanding the provisions of A.2.b)(1), betterments shall have a residual value of two percent.

3. "In-service rail cars" means the number of rail cars in the fleet, adjusted for out-of- service rail cars.

4. a) "Out-of-service rail cars" means rail cars:

(1) out-of-service for a period of more than ten consecutive hours; or

(2) in storage.

b) Rail cars cease to be out-of-service once repaired or removed from storage.

c) Out-of-service rail cars do not include rail cars idled for less than ten consecutive hours due to light repairs or routine maintenance.

5. "System car miles" means both loaded and empty miles accumulated in the U.S., Canada, and Mexico during the prior calendar year by all rail cars in the fleet.

6. "Utah car miles" mean both loaded and empty miles accumulated within Utah during the prior calendar year by all rail cars in the fleet.

7. "Utah percent of system factor" means the Utah car miles divided by the system car miles.

B. The provisions of this rule apply only to private rail car companies.

C. To receive an adjustment for out-of-service rail cars, the rail car company must report the number of out-of-service days to the commission for each of the company's rail car fleets.

D. The out-of-service adjustment is calculated as follows.

1. Divide the out-of-service days by 365 to obtain the out-of-service rail car equivalent.

2. Subtract the out-of-service rail car equivalent calculated in D.1. from the number of rail cars in the fleet.

E. The taxable value for each rail car fleet apportioned to Utah, for which the Utah percent of system factor is more than 50 percent, shall be determined by multiplying the Utah percent of system factor by the fleet rail car market value.

F. The taxable value for each rail car company apportioned to Utah, for which the Utah percent of system factor is less than or equal to 50 percent, shall be determined in the following manner.

1. Calculate the number of fleet rail cars allocated to Utah under the Utah percent of system factor. The steps for this calculation are as follows.

a) Multiply the Utah percent of system factor by the in-service rail cars in the fleet.

b) Multiply the product obtained in F.1.a) by 50 percent.

2. Calculate the number of fleet rail cars allocated to Utah under the time speed factor. The steps for this calculation are as follows.

a) Divide the fleet's Utah car miles by the average rail car miles traveled in Utah per year. The Commission has determined that the average rail car miles traveled in Utah per year shall equal 200,000 miles.

b) Multiply the quotient obtained in F.2.a) by the percent of in-service rail cars in the fleet.

c) Multiply the product obtained in F.2.b) by 50 percent.

3. Add the number of fleet rail cars allocated to Utah under the Utah percent of system factor, calculated in F.1.b), and the number of fleet rail cars allocated to Utah under the time speed factor, calculated in F.2.c), and multiply that sum by the average market value per rail car.

R884-24P-50. Apportioning the Utah Proportion of Commercial Aircraft Valuations Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Commercial air carrier" means any air charter service, air contract service or airline as defined by Section 59-2-102.

2. "Ground time" means the time period beginning at the time an aircraft lands and ending at the time an aircraft takes off.

B. The commission shall apportion to a tax area the assessment of the mobile flight equipment owned by a commercial air carrier in the proportion that the ground time in the tax area bears to the total ground time in the state.

C. The provisions of this rule shall be implemented and become binding on taxpayers beginning with the 1999 calendar year.

R884-24P-52. Criteria for Determining Primary Residence Pursuant to Utah Code Ann. Sections 59-2-102, 59-2-103, and 59-2-103.5.

A. "Household" is as defined in Section 59-2-1202.

B. "Primary residence" means the location where domicile has been established.

C. Except as provided in D. and F.3., the residential exemption provided under Section 59-2-103 is limited to one primary residence per household.

D. An owner of multiple properties may receive the residential exemption on all properties for which the property is the primary residence of the tenant.

E. Factors or objective evidence determinative of domicile include:

1. whether or not the individual voted in the place he claims to be domiciled;

2. the length of any continuous residency in the location claimed as domicile;

3. the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;

4. the presence of family members in a given location;

5. the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;

6. the physical location of the individual's place of business or sources of income;

7. the use of local bank facilities or foreign bank institutions;

8. the location of registration of vehicles, boats, and RVs;

9. membership in clubs, churches, and other social organizations;

10. the addresses used by the individual on such things as:

a) telephone listings;

b) mail;

c) state and federal tax returns;

d) listings in official government publications or other correspondence;

e) driver's license;

f) voter registration; and

g) tax rolls;

11. location of public schools attended by the individual or the individual's dependents;

12. the nature and payment of taxes in other states;

13. declarations of the individual:

a) communicated to third parties;

b) contained in deeds;

c) contained in insurance policies;

d) contained in wills;

e) contained in letters;

f) contained in registers;

g) contained in mortgages; and

h) contained in leases.

14. the exercise of civil or political rights in a given location;

15. any failure to obtain permits and licenses normally required of a resident;

16. the purchase of a burial plot in a particular location;

17. the acquisition of a new residence in a different location.

F. Administration of the Residential Exemption.

1. Except as provided in F.2., F.4., and F.5., the first one acre of land per residential unit shall receive the residential exemption.

2. If a parcel has high density multiple residential units, such as an apartment complex or a mobile home park, the amount of land, up to the first one acre per residential unit, eligible to receive the residential exemption shall be determined by the use of the land. Land actively used for residential purposes qualifies for the exemption.

3. If the county assessor determines that a property under construction will qualify as a primary residence upon completion, the property shall qualify for the residential exemption while under construction.

4. A property assessed under the Farmland Assessment Act shall receive the residential exemption only for the homestead.

5. A property with multiple uses, such as residential and commercial, shall receive the residential exemption only for the percentage of the property that is used as a primary residence.

6. If the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.

7.a) An application for the residential exemption required by an ordinance enacted under Section 59-2-103.5 shall contain the following information for the specific property for which the exemption is requested:

- (1) the owner of record of the property;
 - (2) the property parcel number;
 - (3) the location of the property;
 - (4) the basis of the owner's knowledge of the use of the property;
 - (5) a description of the use of the property;
 - (6) evidence of the domicile of the inhabitants of the property; and
 - (7) the signature of all owners of the property certifying that the property is residential property.
- b) The application under F.7.a) shall be:
- (1) on a form provided by the county; or
 - (2) in a writing that contains all of the information listed in F.7.a).

R884-24P-53. 2006 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.

A. Each year the Property Tax Division shall update and publish schedules to determine the taxable value for land subject to the Farmland Assessment Act on a per acre basis.

1. The schedules shall be based on the productivity of the various types of agricultural land as determined through crop budgets and net rents.

2. Proposed schedules shall be transmitted by the Property Tax Division to county assessors for comment before adoption.

3. County assessors may not deviate from the schedules.

4. Not all types of agricultural land exist in every county. If no taxable value is shown for a particular county in one of the tables, that classification of agricultural land does not exist in that county.

B. All property defined as farmland pursuant to Section 59-2-501 shall be assessed on a per acre basis as follows:

1. Irrigated farmland shall be assessed under the following classifications.

a) Irrigated I. The following counties shall assess Irrigated I property based upon the per acre values listed below:

TABLE 1
Irrigated I

1) Box Elder	800
2) Cache	675
3) Carbon	535
4) Davis	810
5) Emery	515
6) Iron	795
7) Kane	455
8) Millard	790
9) Salt Lake	690
10) Utah	725
11) Washington	650
12) Weber	770

b) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed below:

TABLE 2
Irrigated II

1) Box Elder	700
2) Cache	575
3) Carbon	435
4) Davis	710
5) Duchesne	475
6) Emery	415
7) Grand	405
8) Iron	695
9) Juab	435
10) Kane	355
11) Millard	690
12) Salt Lake	590
13) Sanpete	540
14) Sevier	565
15) Summit	470
16) Tooele	440
17) Utah	625

18) Wasatch	500
19) Washington	550
20) Weber	670

c) Irrigated III. The following counties shall assess Irrigated III property based upon the per acre values listed below:

TABLE 3
Irrigated III

1) Beaver	540
2) Box Elder	550
3) Cache	425
4) Carbon	285
5) Davis	560
6) Duchesne	325
7) Emery	265
8) Garfield	200
9) Grand	255
10) Iron	545
11) Juab	285
12) Kane	205
13) Millard	540
14) Morgan	380
15) Piute	345
16) Rich	200
17) Salt Lake	440
18) San Juan	185
19) Sanpete	390
20) Sevier	415
21) Summit	320
22) Tooele	290
23) Uintah	370
24) Utah	475
25) Wasatch	350
26) Washington	400
27) Wayne	340
28) Weber	520

d) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed below:

TABLE 4
Irrigated IV

1) Beaver	440
2) Box Elder	450
3) Cache	325
4) Carbon	185
5) Daggett	215
6) Davis	460
7) Duchesne	225
8) Emery	165
9) Garfield	100
10) Grand	155
11) Iron	445
12) Juab	185
13) Kane	105
14) Millard	440
15) Morgan	280
16) Piute	245
17) Rich	100
18) Salt Lake	340
19) San Juan	85
20) Sanpete	290
21) Sevier	315
22) Summit	220
23) Tooele	190
24) Uintah	270
25) Utah	375
26) Wasatch	250
27) Washington	300
28) Wayne	240
29) Weber	420

2. Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

1) Beaver	620
2) Box Elder	665
3) Cache	620

4) Carbon	620
5) Davis	665
6) Duchesne	620
7) Emery	620
8) Garfield	620
9) Grand	620
10) Iron	620
11) Juab	620
12) Kane	620
13) Millard	620
14) Morgan	620
15) Piute	620
16) Salt Lake	620
17) San Juan	620
18) Sanpete	620
19) Sevier	620
20) Summit	620
21) Tooele	620
22) Uintah	620
23) Utah	660
24) Wasatch	620
25) Washington	750
26) Wayne	610
27) Weber	665

20) Uintah	40
21) Utah	40
22) Washington	40
23) Weber	40

b) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed below:

TABLE 8
Dry IV

1) Beaver	5
2) Box Elder	15
3) Cache	20
4) Carbon	5
5) Davis	5
6) Duchesne	5
7) Garfield	5
8) Grand	5
9) Iron	5
10) Juab	5
11) Kane	5
12) Millard	5
13) Morgan	5
14) Rich	5
15) Salt Lake	5
16) San Juan	5
17) Sanpete	5
18) Summit	5
19) Tooele	5
20) Uintah	5
21) Utah	5
22) Washington	5
23) Weber	5

3. Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6
Meadow IV

1) Beaver	230
2) Box Elder	235
3) Cache	255
4) Carbon	125
5) Daggett	170
6) Davis	260
7) Duchesne	155
8) Emery	125
9) Garfield	95
10) Grand	120
11) Iron	225
12) Juab	145
13) Kane	100
14) Millard	190
15) Morgan	175
16) Piute	160
17) Rich	105
18) Salt Lake	225
19) Sanpete	190
20) Sevier	200
21) Summit	195
22) Tooele	175
23) Uintah	180
24) Utah	230
25) Wasatch	210
26) Washington	215
27) Wayne	160
28) Weber	285

5. Grazing land shall be classified as one of the following four categories and shall be assessed on a per acre basis as follows:

a) Graze 1. The following counties shall assess Graze I property based upon the per acre values listed below:

TABLE 9
GR I

1) Beaver	68
2) Box Elder	60
3) Cache	65
4) Carbon	57
5) Daggett	68
6) Davis	63
7) Duchesne	67
8) Emery	65
9) Garfield	73
10) Grand	70
11) Iron	60
12) Juab	69
13) Kane	79
14) Millard	78
15) Morgan	54
16) Piute	72
17) Rich	65
18) Salt Lake	72
19) San Juan	70
20) Sanpete	69
21) Sevier	70
22) Summit	68
23) Tooele	73
24) Uintah	65
25) Utah	56
26) Wasatch	53
27) Washington	56
28) Wayne	79
29) Weber	63

4. Dry land shall be classified as one of the following two categories and shall be assessed on a per acre basis as follows:

a) Dry III. The following counties shall assess Dry III property based upon the per acre values listed below:

TABLE 7
Dry III

1) Beaver	40
2) Box Elder	50
3) Cache	55
4) Carbon	40
5) Davis	40
6) Duchesne	40
7) Garfield	40
8) Grand	40
9) Iron	40
10) Juab	40
11) Kane	40
12) Millard	40
13) Morgan	40
14) Rich	40
15) Salt Lake	40
16) San Juan	40
17) Sanpete	40
18) Summit	40
19) Tooele	40

b) Graze II. The following counties shall assess Graze II property based upon the per acre values listed below:

TABLE 10
GR II

1) Beaver	19
2) Box Elder	18
3) Cache	19
4) Carbon	17
5) Daggett	20
6) Davis	19

7) Duchesne	20
8) Emery	19
9) Garfield	22
10) Grand	21
11) Iron	18
12) Juab	20
13) Kane	24
14) Millard	23
15) Morgan	16
16) Piute	22
17) Rich	20
18) Salt Lake	21
19) San Juan	21
20) Sanpete	21
21) Sevier	21
22) Summit	19
23) Tooele	22
24) Uintah	19
25) Utah	17
26) Wasatch	16
27) Washington	17
28) Wayne	23
29) Weber	19

23) Tooele	5
24) Uintah	5
25) Utah	5
26) Wasatch	5
27) Washington	5
28) Wayne	6
29) Weber	5

6. Land classified as nonproductive shall be assessed as follows on a per acre basis:

TABLE 13
Nonproductive Land

a) Nonproductive Land	
1) All Counties	5

R884-24P-55. Counties to Establish Ordinance for Tax Sale Procedures Pursuant to Utah Code Ann. Section 59-2-1351.1.

A. "Collusive bidding" means any agreement or understanding reached by two or more parties that in any way alters the bids the parties would otherwise offer absent the agreement or understanding.

B. Each county shall establish a written ordinance for real property tax sale procedures.

C. The written ordinance required under B. shall be displayed in a public place and shall be available to all interested parties.

D. The tax sale ordinance shall address, as a minimum, the following issues:

1. bidder registration procedures;
2. redemption rights and procedures;
3. prohibition of collusive bidding;
4. conflict of interest prohibitions and disclosure requirements;
5. criteria for accepting or rejecting bids;
6. sale ratification procedures;
7. criteria for granting bidder preference;
8. procedures for recording tax deeds;
9. payments methods and procedures;
10. procedures for contesting bids and sales;
11. criteria for striking properties to the county;
12. procedures for disclosing properties withdrawn from the sale for reasons other than redemption; and
13. disclaimers by the county with respect to sale procedures and actions.

R884-24P-56. Assessment, Collection, and Apportionment of Property Tax on Commercial Transportation Property Pursuant to Utah Code Ann. Sections 41-1a-301 and 59-2-801.

A. For purposes of Section 59-2-801, the previous year's statewide rate shall be calculated as follows:

1. Each county's overall tax rate is multiplied by the county's percent of total lane miles of principal routes.
2. The values obtained in A.1. for each county are summed to arrive at the statewide rate.

B. The assessment of vehicles apportioned under Section 41-1a-301 shall be apportioned at the same percentage ratio that has been filed with the Motor Vehicle Division of the State Tax Commission for determining the proration of registration fees.

C. For purposes of Section 59-2-801(2), principal route means lane miles of interstate highways and clover leaves, U.S. highways, and state highways extending through each county as determined by the Commission from current state Geographic Information System databases.

R884-24P-57. Judgment Levies Pursuant to Utah Code Ann. Sections 59-2-918.5, 59-2-924, 59-2-1328, and 59-2-1330.

A. Definitions.

1. "Issued" means the date on which the judgment is

c) Graze III. The following counties shall assess Graze III property based upon the per acre values below:

TABLE 11
GR III

1) Beaver	13
2) Box Elder	12
3) Cache	13
4) Carbon	11
5) Daggett	13
6) Davis	12
7) Duchesne	13
8) Emery	13
9) Garfield	14
10) Grand	14
11) Iron	12
12) Juab	13
13) Kane	15
14) Millard	15
15) Morgan	10
16) Piute	14
17) Rich	13
18) Salt Lake	14
19) San Juan	14
20) Sanpete	13
21) Sevier	14
22) Summit	12
23) Tooele	14
24) Uintah	13
25) Utah	11
26) Wasatch	10
27) Washington	11
28) Wayne	15
29) Weber	12

d) Graze IV. The following counties shall assess Graze IV property based upon the per acre values listed below:

TABLE 12
GR IV

1) Beaver	5
2) Box Elder	5
3) Cache	5
4) Carbon	5
5) Daggett	6
6) Davis	5
7) Duchesne	5
8) Emery	5
9) Garfield	5
10) Grand	5
11) Iron	5
12) Juab	5
13) Kane	6
14) Millard	6
15) Morgan	5
16) Piute	5
17) Rich	5
18) Salt Lake	5
19) San Juan	5
20) Sanpete	5
21) Sevier	5
22) Summit	5

signed.

2. "One percent of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year" includes any revenues collected by a judgment levy imposed in the prior year.

B. A taxing entity's share of a judgment or order shall include the taxing entity's share of any interest that must be paid with the judgment or order.

C. The judgment levy public hearing required by Section 59-2-918.5 shall be held as follows:

1. For taxing entities operating under a July 1 through June 30 fiscal year, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

2. For taxing entities operating under a January 1 through December 31 fiscal year:

a) for judgments issued from the prior June 1 through December 15, the public hearing shall be held at the same time as the hearing at which the annual budget is adopted;

b) for judgments issued from the prior December 16 through May 31, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

3. If the taxing entity is required to hold a hearing under Section 59-2-919, the judgment levy hearing required by C.1. and C.2.b) shall be held at the same time as the hearing required under Section 59-2-919.

D. If the Section 59-2-918.5 advertisement is combined with the Section 59-2-918 or 59-2-919 advertisement, the combined advertisement shall aggregate the general tax increase and judgment levy information.

E. In the case of taxing entities operating under a January 1 through December 31 fiscal year, the advertisement for judgments issued from the previous December 16 through May 31 shall include any judgments issued from the previous June 1 through December 15 that the taxing entity advertised and budgeted for at its December budget hearing.

F. All taxing entities imposing a judgment levy shall file with the Tax Commission a signed statement certifying that all judgments for which the judgment levy is imposed have met the statutory requirements for imposition of a judgment levy.

1. The signed statement shall contain the following information for each judgment included in the judgment levy:

- a) the name of the taxpayer awarded the judgment;
- b) the appeal number of the judgment; and
- c) the taxing entity's pro rata share of the judgment.

2. Along with the signed statement, the taxing entity must provide the Tax Commission the following:

- a) a copy of all judgment levy newspaper advertisements required;
- b) the dates all required judgment levy advertisements were published in the newspaper;
- c) a copy of the final resolution imposing the judgment levy;
- d) a copy of the Notice of Property Valuation and Tax Changes, if required; and
- e) any other information required by the Tax Commission.

G. The provisions of House Bill 268, Truth in Taxation - Judgment Levy (1999 General Session), do not apply to judgments issued prior to January 1, 1999.

R884-24P-58. One-Time Decrease in Certified Rate Based on Estimated County Option Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated sales tax revenue to be distributed to a county under Section 59-12-1102 shall be determined based on the following formula:

1. share-down of the commission's sales tax econometric model based on historic patterns, weighted 40 percent;

2. time series models, weighted 40 percent; and

3. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, weighted 20 percent.

R884-24P-59. One-Time Decrease in Certified Rate Based on Estimated Additional Resort Communities Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated additional resort communities sales tax revenue to be distributed to a municipality under Section 59-12-402 shall be determined based on the following formula:

1. time series model, econometric model, or simple average, based upon the availability of and variation in the data, weighted 75 percent; and

2. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Section 59-12-402, weighted 25 percent.

R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;
2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;
3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;
4. mobile and manufactured homes;
5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial vehicle, for purposes of Section 59-2-405.1, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the age of the vehicle under E. on the first day of the registration period for which the registrant:

1. in the case of an original registration, registers the vehicle; or
2. in the case of a renewal of registration, renews the registration of the vehicle in accordance with Section 41-1a-216.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the

armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by .015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.

A. Definitions.

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

2. "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, which is either self-propelled or pulled by another vehicle.

a) Recreational vehicle includes a travel trailer, a camping trailer, a motor home, and a fifth wheel trailer.

b) Recreational vehicle does not include a van unless specifically designed or modified for use as a temporary dwelling.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;

2. watercraft required to be registered with the state;

3. recreational vehicles required to be registered with the state; and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2-405 to determine the value of personal property that may be subtracted from the allocated unit value.

F. If a property's valuation is appealed to the county board of equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33.

G. The county assessor may change the fair market value of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

4. Personal property belonging to a Utah resident member

of the armed forces stationed in another state is not subject to the Section 59-2-405 uniform fee as long as the personal property is kept in another state.

5. Noncommercial trailers weighing 750 pounds or less are not subject to the Section 59-2-405 uniform fee or ad valorem property tax but may be registered at the request of the owner.

I. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the Section 59-2-405 uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2-217 and 59-2-309 as a condition precedent to registration.

J. The situs of personal property subject to the Section 59-2-405 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased personal property shall be the tax area of the purchaser's domicile, unless the personal property will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all personal property subject to state registration and its corresponding taxable situs.

4. Section 59-2-405 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405 uniform fee.

M. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-62. Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201.

A. Purpose. The purpose of this rule is to:

1. specify consistent mass appraisal methodologies to be used by the Property Tax Division (Division) in the valuation of tangible property assessable by the Commission; and

2. identify preferred valuation methodologies to be considered by any party making an appraisal of an individual unitary property.

B. Definitions:

1. "Cost regulated utility" means any public utility assessable by the Commission whose allowed revenues are determined by a rate of return applied to a rate base set by a state or federal regulatory commission.

2. "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and best use, subject to regulatory constraints.

3. "Rate base" means the aggregate account balances

reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

4. "Unitary property" means operating property that is assessed by the Commission pursuant to Section 59-2-201(1)(a) through (c).

a) Unitary properties include:

(1) all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state; and

(2) all property of public utilities as defined in Section 59-2-102.

b) These properties, some of which may be cost regulated utilities, are defined under one of the following categories.

(1) "Telecommunication properties" include the operating property of local exchange carriers, local access providers, long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers, and other similar properties.

(2) "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations, including electric generation, transmission, and distribution companies, and other similar entities.

(3) "Transportation properties" include the operating property of all airlines, air charter services, air contract services, including major and small passenger carriers and major and small air freighters, long haul and short line railroads, and other similar properties.

C. All tangible operating property owned, leased, or used by unitary companies is subject to assessment and taxation according to its fair market value as of January 1, and as provided in Utah Constitution Article XIII, Section 2. Intangible property as defined under Section 59-2-102 is not subject to assessment and taxation.

D. General Valuation Principles. Unitary properties shall be assessed at fair market value based on generally accepted appraisal theory as provided under this rule.

1. The assemblage or enhanced value attributable to the tangible property should be included in the assessed value. See *Beaver County v. WilTel, Inc.*, 995 P.2d 602 (Utah 2000). The value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the reconciliation process.

2. The preferred methods to determine fair market value are the cost approach and a yield capitalization income indicator as set forth in E.

a) Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary to more accurately estimate fair market value.

b) Direct capitalization and the stock and debt method typically capture the value of intangible property at higher levels than other methods. To the extent intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the reconciliation process, as set forth in E.4.

c) Preferred valuation methods as set forth in this rule are, unless otherwise stated, rebuttable presumptions, established for purposes of consistency in mass appraisal. Any party challenging a preferred valuation method must demonstrate, by a preponderance of evidence, that the proposed alternative establishes a more accurate estimate of fair market value.

3. Non-operating Property. Property that is not necessary to the operation of unitary properties and is assessed by a local county assessor, and property separately assessed by the Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

E. Appraisal Methodologies.

1. Cost Approach. Cost is relevant to value under the principle of substitution, which states that no prudent investor

would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. A cost indicator may be developed under one or more of the following methods: replacement cost new less depreciation (RCNLD), reproduction cost less depreciation (reproduction cost), and historic cost less depreciation (HCLD).

a) "Depreciation" is the loss in value from any cause. Different professions recognize two distinct definitions or types of depreciation.

(1) Accounting. Depreciation, often called "book" or "accumulated" depreciation, is calculated according to generally accepted accounting principles or regulatory guidelines. It is the amount of capital investment written off on a firm's accounting records in order to allocate the original or historic cost of an asset over its life. Book depreciation is typically applied to historic cost to derive HCLD.

(2) Appraisal. Depreciation, sometimes referred to as "accrued" depreciation, is the difference between the market value of an improvement and its cost new. Depreciation is typically applied to replacement or reproduction cost, but should be applied to historic cost if market conditions so indicate. There are three types of depreciation:

(a) Physical deterioration results from regular use and normal aging, which includes wear and tear, decay, and the impact of the elements.

(b) Functional obsolescence is caused by internal property characteristics or flaws in the structure, design, or materials that diminish the utility of an improvement.

(c) External, or economic, obsolescence is an impairment of an improvement due to negative influences from outside the boundaries of the property, and is generally incurable. These influences usually cannot be controlled by the property owner or user.

b) Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout. The use of replacement cost instead of reproduction cost eliminates the need to estimate some forms of functional obsolescence.

c) Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying any functional obsolescence.

d) Historic cost is the original construction or acquisition cost as recorded on a firm's accounting records. Depending upon the industry, it may be appropriate to trend HCLD to current costs. Only trending indexes commonly recognized by the specific industry may be used to adjust HCLD.

e) RCNLD may be impractical to implement; therefore the preferred cost indicator of value in a mass appraisal environment for unitary property is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value.

2. Income Capitalization Approach. Under the principle of anticipation, benefits from income in the future may be capitalized into an estimate of present value.

a) Yield Capitalization. The yield capitalization formula is $CF/(k-g)$, where "CF" is a single year's normalized cash flow, "k" is the nominal, risk adjusted discount or yield rate, and "g" is the expected growth rate of the cash flow.

(1) Cash flow is restricted to the operating property in existence on the lien date, together with any replacements intended to maintain, but not expand or modify, existing capacity or function. Cash flow is calculated as net operating income (NOI) plus non-cash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to working capital necessary to achieve the expected growth "g". Information necessary for the Division to calculate the cash flow

shall be summarized and submitted to the Division by March 1 on a form provided by the Division.

(a) NOI is defined as net income plus interest.

(b) Capital expenditures should include only those necessary to replace or maintain existing plant and should not include any expenditure intended primarily for expansion or productivity and capacity enhancements.

(c) Cash flow is to be projected for the year immediately following the lien date, and may be estimated by reviewing historic cash flows, forecasting future cash flows, or a combination of both.

i) If cash flows for a subsidiary company are not available or are not allocated on the parent company's cash flow statements, a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. The subsidiary's total is divided by the parent's total to derive the allocation percentage to estimate the subsidiary's cash flow.

ii) If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, the Division may estimate cash flow using the best information available.

(2) The discount rate (k) shall be based upon a weighted average cost of capital (WACC) considering current market debt rates and equity yields. WACC should reflect a typical capital structure for comparable companies within the industry.

(a) The cost of debt should reflect the current market rate (yield to maturity) of debt with the same credit rating as the subject company.

(b) The cost of equity is estimated using standard methods such as the capital asset pricing model (CAPM), the Risk Premium and Dividend Growth models, or other recognized models.

i) The CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 50% in the correlation.

ii) The CAPM formula is $k(e) = R(f) + (\text{Beta} \times \text{Risk Premium})$, where $k(e)$ is the cost of equity and $R(f)$ is the risk free rate.

a. The risk free rate shall be the current market rate on 20-year Treasury bonds.

b. The beta should reflect an average or value-weighted average of comparable companies and should be drawn consistently from Value Line or an equivalent source. The beta of the specific assessed property should also be considered.

c. The risk premium shall be the arithmetic average of the spread between the return on stocks and the income return on long term bonds for the entire historical period contained in the Ibbotson Yearbook published immediately following the lien date.

(3) The growth rate "g" is the expected future growth of the cash flow attributable to assets in place on the lien date, and any future replacement assets.

(a) If insufficient information is available to the Division, either from public sources or from the taxpayer, to determine a rate, "g" will be the expected inflationary rate in the Gross Domestic Product Price Deflator obtained in Value Line. The growth rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

(b) A discounted cash flow (DCF) method is impractical to implement in a mass appraisal environment, but may be used to value individual properties.

(c) Direct Capitalization is an income technique that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by a capitalization rate or by multiplying the normalized income estimate by an income

factor.

3. Market or Sales Comparison Approach. The market value of property is directly related to the prices of comparable, competitive properties. The market approach is estimated by comparing the subject property to similar properties that have recently sold.

a) Sales of comparable property must, to the extent possible, be adjusted for elements of comparison, including market conditions, financing, location, physical characteristics, and economic characteristics. When considering the sales of stock, business enterprises, or other properties that include intangible assets, adjustments must be made for those intangibles.

b) Because sales of unitary properties are infrequent, a stock and debt indicator may be viewed as a surrogate for the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liabilities plus shareholder's equity.

4. Reconciliation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, quantity, and quality of data, as well as the strength and weaknesses of each value indicator. Weighting percentages used to correlate the value approaches will generally vary by industry, and may vary by company if evidence exists to support a different weighting. The Division must disclose in writing the weighting percentages used in the reconciliation for the final assessment. Any departure from the prior year's weighting must be explained in writing.

F. Property Specific Considerations. Because of unique characteristics of properties and industries, modifications or alternatives to the general value indicators may be required for specific industries.

1. Cost Regulated Utilities.

a) HCLD is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. HCLD is calculated by taking the historic cost less depreciation as reflected in the utility's net plant accounts, and then:

(1) subtracting intangible property;

(2) subtracting any items not included in the utility's rate base (e.g., deferred income taxes and, if appropriate, acquisition adjustments); and

(3) adding any taxable items not included in the utility's net plant account or rate base.

b) Deferred Income Taxes, also referred to as DFIT, is an accounting entry that reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude deferred income taxes from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by deferred income taxes for rate base regulated companies, they shall be removed from HCLD.

c) Items excluded from rate base under F.1.a)(2) or b) should not be subtracted from HCLD to the extent it can be shown that regulators would likely permit the rate base of a potential purchaser to include a premium over existing rate base.

2. Railroads.

a. The cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value.

R884-24P-63. Performance Standards and Training Requirements Pursuant to Utah Code Ann. Section 59-2-406.

A. The party contracting to perform services shall develop a written customer service performance plan within 60 days after the contract for performance of services is signed.

1. The customer service performance plan shall address:

a) procedures the contracting party will follow to minimize

the time a customer waits in line; and

b) the manner in which the contracting party will promote alternative methods of registration.

2. The party contracting to perform services shall provide a copy of its customer service performance plan to the party for whom it provides services.

3. The party for whom the services are provided may, no more often than semiannually, audit the contracting party's performance based on its customer service performance plan, and may report the results of the audit to the county commission or the state tax commissioners, as applicable.

B. Each county office contracting to perform services shall conduct initial training of its new employees.

C. The Tax Commission shall provide regularly scheduled training for all county offices contracting to perform motor vehicle functions.

R884-24P-64. Determination and Application of Taxable Value for Purposes of the Property Tax Exemptions for Disabled Veterans and the Blind Pursuant to Utah Code Ann. Sections 59-2-1104 and 59-2-1106.

A. For purposes of Sections 59-2-1104 and 59-2-1106, taxable value of vehicles subject to the Section 59-2-405.1 uniform fee shall be calculated by dividing the Section 59-2-405.1 uniform fee the vehicle is subject to by .015.

R884-24P-65. Assessment of Transitory Personal Property Pursuant to Utah Code Ann. Section 59-2-402.

A. "Transitory personal property" means tangible personal property that is used or operated primarily at a location other than a fixed place of business of the property owner or lessee.

B. Transitory personal property in the state on January 1 shall be assessed at 100 percent of fair market value.

C. Transitory personal property that is not in the state on January 1 is subject to a proportional assessment when it has been in the state for 90 consecutive days in a calendar year.

1. The determination of whether transitory personal property has been in the state for 90 consecutive days shall include the days the property is outside the state if, within 10 days of its removal from the state, the property is:

a) brought back into the state; or

b) substituted with transitory personal property that performs the same function.

D. Once transitory personal property satisfies the conditions under C., tax shall be proportionally assessed for the period:

1. beginning on the first day of the month in which the property was brought into Utah; and

2. for the number of months remaining in the calendar year.

E. An owner of taxable transitory personal property who removes the property from the state prior to December and who qualifies for a refund of taxes assessed and paid, shall receive a refund based on the number of months remaining in the calendar year at the time the property is removed from the state and for which the tax has been paid.

1. The refund provisions of this subsection apply to transitory personal property taxes assessed under B. and C.

2. For purposes of determining the refund under this subsection, any portion of a month remaining shall be counted as a full month.

F. If tax has been paid for transitory personal property and that property is subsequently moved to another county in Utah:

1. No additional assessment may be imposed by any county to which the property is subsequently moved; and

2. No portion of the assessed tax may be transferred to the subsequent county.

R884-24P-66. Appeal to County Board of Equalization

Pursuant to Utah Code Ann. Section 59-2-1004.

A.1. "Factual error" means an error that is:
 a) objectively verifiable without the exercise of discretion, opinion, or judgment, and
 b) demonstrated by clear and convincing evidence.
 2. Factual error includes:
 a) a mistake in the description of the size, use, or ownership of a property;
 b) a clerical or typographical error in reporting or entering the data used to establish valuation or equalization;
 c) an error in the classification of a property that is eligible for a property tax exemption under:
 (1) Section 59-2-103; or
 (2) Title 59, Chapter 2, Part 11;
 d) valuation of a property that is not in existence on the lien date; and
 e) a valuation of a property assessed more than once, or by the wrong assessing authority.

B. Except as provided in D., a county board of equalization shall accept an application to appeal the valuation or equalization of a property owner's real property that is filed after the time period prescribed by Section 59-2-1004(2)(a) if any of the following conditions apply:

1. During the period prescribed by Section 59-2-1004(2)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal.

2. During the period prescribed by Section 59-2-1004(2)(a), the property owner or an immediate family member of the property owner died, and no co-owner of the property was capable of filing an appeal.

3. The county did not comply with the notification requirements of Section 59-2-919(4).

4. A factual error is discovered in the county records pertaining to the subject property.

5. The property owner was unable to file an appeal within the time period prescribed by Section 59-2-1004(2)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Section 59-2-1004(2)(a), and no co-owner of the property was capable of filing an appeal.

C. Appeals accepted under B.4. shall be limited to correction of the factual error and any resulting changes to the property's valuation.

D. The provisions of B. apply only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

E. The provisions of this rule apply only to appeals to the county board of equalization. For information regarding appeals of county board of equalization decisions to the Commission, please see Section 59-2-1006 and R861-1A-9.

R884-24P-67. Information Required for Valuation of Low-Income Housing Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-301.3.

A. The purpose of this rule is to provide an annual reporting mechanism to assist county assessors in gathering data necessary for accurate valuation of low-income housing projects.

B. The Utah Housing Corporation shall provide the following information that it has obtained from the owner of a low-income housing project to the commission:

1. for each low-income housing project in the state that is eligible for a low-income housing tax credit:

- a) the Utah Housing Corporation project identification number;
- b) the project name;
- c) the project address;
- d) the city in which the project is located;

- e) the county in which the project is located;
- f) the building identification number assigned by the Internal Revenue Service for each building included in the project;
- g) the building address for each building included in the project;
- h) the total apartment units included in the project;
- i) the total apartment units in the project that are eligible for low-income housing tax credits;
- j) the period of time for which the project is subject to rent restrictions under an agreement described in B.2.;
- k) whether the project is:
 - (1) the rehabilitation of an existing building; or
 - (2) new construction;
- l) the date on which the project was placed in service;
- m) the total square feet of the buildings included in the project;
- n) the maximum annual federal low-income housing tax credits for which the project is eligible;
- o) the maximum annual state low-income housing tax credits for which the project is eligible; and
- p) for each apartment unit included in the project:
 - (1) the number of bedrooms in the apartment unit;
 - (2) the size of the apartment unit in square feet; and
 - (3) any rent limitation to which the apartment unit is subject; and

2. a recorded copy of the agreement entered into by the Utah Housing Corporation and the property owner for the low-income housing project; and

3. construction cost certifications for the project received from the low-income housing project owner.

C. The Utah Housing Corporation shall provide the commission the information under B. by January 31 of the year following the year in which a project is placed into service.

D. 1. Except as provided in D.2., by April 30 of each year, the owner of a low-income housing project shall provide the county assessor of the county in which the project is located the following project information for the prior year:

- a) operating statement;
- b) rent rolls; and
- c) federal and commercial financing terms and agreements.

2. Notwithstanding D.1., the information a low-income project housing owner shall provide by April 30, 2004 to a county assessor shall include a 3-year history of the information required under D.1.

E. A county assessor shall assess and list the property described in this rule using the best information obtainable if the property owner fails to provide the information required under D.

KEY: taxation, personal property, property tax, appraisals December 13, 2005

Art. XIII, Sec 2	9-2-201
	11-13-25
	41-1a-202
	41-1a-301
	59-1-210
	59-2-102
	59-2-103
	59-2-103.5
	59-2-104
	59-2-201
	59-2-210
	59-2-211
	59-2-301
	59-2-301.3
	59-2-302
	59-2-303
	59-2-305

59-2-306
59-2-401
59-2-402
59-2-404
59-2-405
59-2-405.1
59-2-406
59-2-508
59-2-515
59-2-701
59-2-702
59-2-703
59-2-704
59-2-704.5
59-2-705
59-2-801
59-2-918 through 59-2-924
59-2-1002
59-2-1004
59-2-1005
59-2-1006
59-2-1101
59-2-1102
59-2-1104
59-2-1106
59-2-1107 through 59-2-1109
59-2-1113
59-2-1202
59-2-1202(5)
59-2-1302
59-2-1303
59-2-1317
59-2-1328
59-2-1330
59-2-1347
59-2-1351
59-2-1365

R926. Transportation, Program Development.**R926-8. Public Partnering.****R926-8-1. Guidelines for Partnering with Local Governments - Purpose.**

Pursuant to Utah Code Ann. Section 72-2-123 (2004), this rule is issued in order to increase the ability to carry out improvements on State highways by allowing counties and municipalities to provide local matching dollars or participate through other methods, such as providing right-of-way.

R926-8-2. Process for Approving or Denying Proposals.

(1) If a county or municipality wishes to participate in a State highway improvement program, it shall notify the department and the Transportation Commission, in writing, at the earliest available opportunity and provide the information listed in Paragraphs (a) through (e). The county or municipality is encouraged to work with the department in formulating and developing the necessary information.

(a) the specific improvement;

(b) whether the improvement has already been programmed into the Statewide Transportation Improvement Program (STIP) or Transportation Improvement Program (TIP) and, if not, whether it is in the Long-Range Plan and the phase of the Long-Range Plan;

(c) a textual description of the improvement, along with any engineering or technical information that may have been prepared;

(d) whether any environmental or other federal clearances or permits will be necessary and, if so, the status of any federal applications;

(e) the type of local participation being proposed and the source of any funding; and

(f) a textual description of the benefit that the improvement will bring to the State highway system and the county or municipality along with its costs.

(2) Proposals for participation with local matching dollars will be accepted only if:

(a) environmental clearances are completed or highly probable; and

(b) the improvement is already programmed in the Statewide Transportation Improvement Program (STIP) or the Transportation Improvement Program (TIP); or

(c) the improvement is part of the Long-Range Plan and the Transportation Commission determines that advancing the project will not defer other projects that are already prioritized and programmed in the Statewide Transportation Improvement Program (STIP) or Transportation Improvement Program (TIP).

(d) The Transportation Commission may not consider local matching dollars, as provided under Utah Code Ann. Section 72-2-123, unless the statute provides an equal opportunity to raise local matching dollars for state highway improvements within each county, as directed by Senate Bill 25, 2005 General Session.

(3) Local matching dollars cannot be funded by federal funds, except with:

(a) Federal transportation (highway) formula funds normally programmed by local entities; or

(b) Federal discretionary funds with prior joint agreement by UDOT and the local entity. Nevertheless, earmarks in transportation authorizing legislation cannot be used for local match.

(4) Private sources or contributions may be considered part of local matching dollars if they pass through the local government.

(5) Upon receiving a partnering proposal, the Transportation Commission will be notified in a forthcoming public meeting. The department shall evaluate the proposal and all accompanying information to see whether it complies with these rules, is complete, and feasible. The department shall also

calculate an independent cost estimate.

(6) The department shall review the proposal and make a recommendation to the Transportation Commission at a public meeting along with the reasons for recommending denial or approval using the criteria listed in these rules for its review.

(7) At anytime in this process, the department may contact the county or municipality for additional information and may incorporate amendments requested by the county or municipality in its evaluation.

(8) The department shall notify the county or municipality of the date, time, and location of the Transportation Commission meeting that will hear the proposal. The department shall provide the county or municipality with at least 30 days written notice.

R926-8-3. Factors Used to Consider Proposals.

(1) In deciding whether to approve a county's or municipality's request for partnering, the Transportation Commission shall evaluate the proposal with the following factors in mind:

(a) whether the requested improvement is part of the Statewide Transportation Improvement Program (STIP), the Transportation Improvement Program (TIP), or the Long-Range Plan and, if part of the Long-Range Plan, will not delay any of the projects already included in the STIP;

(b) the benefits of the improvement to the State highway system and the county or municipality as well as the costs;

(c) level of local commitment, based on the amount or percentage of funding proposed;

(d) whether the proposed improvement was subject to a local planning initiative;

(e) whether the improvement will alleviate significant existing or future congestion or hazards to the traveling public or provide other substantial improvements to the transportation system;

(f) whether the proposal has the potential to extend department resources to other needs; and

(g) fulfills a need widely recognized by the public, elected officials, and transportation planners.

(2)(a) If a proposed improvement is to a surface street that approaches an interchange or ramp or for a new interchange or ramp and is being undertaken for economic development, the county or municipality shall provide at least a fifty percent (50%) local match. The match can include private contributions that are administered through the local entity.

(b) If a proposed improvement is to a surface street that approaches an interchange or ramp or for a new interchange or ramp and is being undertaken to relieve traffic congestion or safety, the local match, if any, may be determined based on the benefit derived by the local entity.

R926-8-4. Record of Proposal and Interlocal Agreements.

(1) The department shall maintain a record on each partnering proposal. Except for individual records in the file that may be classified private or protected, the contents of the file shall otherwise be public.

(2) If the Transportation Commission agrees to the partnering proposal, the department shall develop an interlocal agreement with the county or municipality that will set forth the proposal, the method of participation, the work that will be done, and projected timelines.

**KEY: transportation, local governments, partnering, highways
December 7, 2005**

72-2-123

R986. Workforce Services, Employment Development.**R986-600. Workforce Investment Act.****R986-600-601. Authority for Workforce Investment Act (WIA) and Other Applicable Rules.**

(1) The Department provides services to eligible clients under the authority granted in the Workforce Investment Act, (WIA) 29 USC 2801 et seq. Funding is provided by the federal government through the WIA. Utah is required to file a State Plan to obtain the funding. A copy of the State Plan is available at Department administrative offices and on the Internet. The regulations contained in 20 CFR 652, 20 CFR 660 through 20 CFR 671 and 29 CFR 37 (2000) are also applicable.

(2) The provisions of Rule R986-100 apply to WIA unless expressly noted otherwise in these rules even though R986-100 refers to public assistance and WIA funding does not meet the technical definition of public assistance. The residency requirements of R986-100-106 and the application for assistance requirement of R986-100-111 do not apply to WIA.

R986-600-602. Workforce Investment Act (WIA).

(1) The goal of WIA is to increase a customer's occupational skills, employment, retention and earnings; to decrease welfare dependency; and to improve the quality of the workforce and national productivity.

(2) WIA is for individuals who need assistance finding employment to achieve self-sufficiency.

(3) Services are available for the following groups: adult, dislocated workers, and youth services.

R986-600-603. Youth Services.

(1) The goals of WIA youth services are to provide options for improving educational and skill competencies; to provide effective connections to employers; to ensure access to mentoring, training opportunities and support services; to provide incentives for achievement; and to provide opportunities for leadership, citizenship and community service.

(2) WIA youth services are available to low-income youth who are between the ages of 14 and 21 years old and who have barriers which interfere with the ability to complete an educational program or to secure and hold employment.

(a) Services to youths include eligibility determination, assessment, employment planning and referral to community resources delivering youth services. The Department may provide youth services or the services may be provided under contract as determined by competitive bid.

(b) Youth may be referred to appropriate community resources based on need. Services include educational achievement services, employment services, summer employment opportunities, supportive services, leadership development, mentoring, and follow-up services.

(c) A bonus/incentive/stipend may be paid to provide recognition of achievement to eligible youth.

R986-600-604. Adults, Youth, and Dislocated Workers.

The Department offers three levels of service for adults, youth and dislocated workers:

- (1) core services,
- (2) intensive services,
- (3) training services.

R986-600-605. Core Services.

(1) There are no eligibility requirements for core services offered by the Department.

(2) Core services include:

(a) providing the following informational resources:

(i) outreach, intake, and orientation to, and information about, available services, including resource and referral services;

(ii) local, regional and national labor market information

including job vacancy listings and occupations in demand and the skills necessary to obtain those jobs and occupations.

(iii) the performance of and program costs for all eligible providers of training and education services.

(iv) performance measures with respect to the one-stop delivery system;

(b) assessment of skill levels, aptitudes, abilities, and supportive service needs;

(c) job search and placement assistance, and where appropriate, career counseling;

(d) follow-up services will be provided for a period of not less than 12 months after active participation ends for all youth. If requested, follow-up services will also be provided for 12 months after the first day of employment to adults and dislocated workers who have been placed in unsubsidized employment and,

(e) determining if a client is eligible for and assistance in applying for: WIA funded programs, unemployment insurance benefits, financial aid assistance available for training and educational programs not funded under WIA, food stamps, other supportive services such as child care, medical services, and transportation.

R986-600-606. Intensive Services.

(1) Intensive services are available to adults and dislocated workers:

(a) who are unemployed, registered at an Employment Center, and who desire employment; or

(b) who are employed, registered at an Employment Center, meet the self-sufficiency definition, and need to improve or change their current employment status. Self-sufficiency for WIA is defined as:

(i) declared income from the customer's primary job is less than the WIA income eligibility standards as found in R986-600-617(4) for a family of eight; or

(ii) the customer is at risk of losing his or her current level of income as evidenced by;

(A) a notice of lay-off or closure,

(B) the inability to retain his or her current job due to changes such as the requirement for increased skills,

(C) technological or industry changes, or

(D) the potential future income from the customer's primary job will be less than the WIA income eligibility standards for a family of eight.

(2) Intensive services are available to youth who:

(a) establish appropriateness and need, and

(b) require additional assistance to complete an educational program or to secure and hold employment, and

(c) meet the regional service priority level.

(3) intensive services for adults, dislocated workers and youth consist of:

(a) an assessment as provided in R986-600-620,

(b) development of an employment plan as provided in R986-600-621.

(c) Short-term prevocational services, including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct, to prepare individuals for unsubsidized employment or training,

(d) case management, counseling and career planning, and

(e) supportive services.

(4) Additional intensive services available to youth include:

(a) leadership development,

(b) mentoring,

(c) comprehensive guidance and counseling, and

(d) follow-up services.

R986-600-607. Training Services.

(1) If the client establishes appropriateness and need, training services are available to adults and dislocated workers:

- (a) who are unemployed and are unable to achieve self-sufficiency through intensive services.
- (2) Training services include employment related education and work site learning.
- (3) Training services are available to youth who:
 - (a) establish appropriateness and need, and
 - (b) require additional assistance to complete an educational program or to secure and hold employment, and
 - (c) meet the regional service priority level.
- (4) Training services for youth consist of:
 - (a) tutoring,
 - (b) alternative school,
 - (c) occupational skills training,
 - (d) paid and unpaid internships, and/or
 - (e) summer youth employment opportunities.

R986-600-608. Eligibility Requirements, General Definition.

- (1) Core services are available to all customers.
- (2) There are different eligibility criteria for low-income youth services (ages 14-21), and adult (18 and over) and dislocated workers. Eligibility requirements for intensive and training services must be determined before an adult, youth, or dislocated worker can receive those services. If a client is eligible for services in more than one category, the Department or youth contract provider will determine the most appropriate program placement for the client. The Department may choose to contract out these services for youth.

R986-600-609. Citizenship, Alienage and Residency Requirements.

An individual seeking intensive or training services must be a citizen of the United States or be employment eligible in the United States. Employment eligible is defined by the WIA Act, section 188 (a)(5) as citizens and nationals of the US, lawfully admitted permanent resident aliens, refugees, asylees and parolees and other immigrants authorized by the U.S. Attorney General to work in the US.

R986-600-610. Selective Service Registration Requirements.

Male applicants must be in compliance with Selective Service registration requirements to receive intensive or training services, which includes youth services.

R986-600-611. Income Eligibility Requirements.

- (1) Applicants for all youth and adult programs must meet the income eligibility requirements in this rule.
- (2) Dislocated workers do not need to meet income eligibility requirements.

R986-600-612. Prioritization Factors Used for Determining Eligibility for Adult and Dislocated Workers.

- (1) For adults and dislocated workers, in addition to meeting the eligibility requirements found in rules R996-600-608 through R996-600-611, the Department will prioritize clients' eligibility based on prioritization factors developed by the Department. Current prioritization factors are available at the Department. When a client is approved for intensive or training services, the Department will estimate the anticipated cost to the Department associated with that services and "obligate" and reserve that amount for accounting purposes. The total amount of money obligated and reserved will determine which prioritization factors are operational at any given time.
- (2) WIA Youth Councils set regional priority levels for services for youth based on the needs of youth in specific regions or sub-region areas.
- (3) Because the funding is separate and distinct for each program, the prioritization factors operate independently for

each of the two affected programs.

R986-600-613. Categorical Income Eligibility.

(1) A client is deemed to have met the income eligibility requirements for youth services, and adult services, if the client is receiving or is a member of a household that has been determined to be eligible for food stamps within the last six months or is currently receiving financial assistance from the Department or is homeless. Categorical income eligibility does not apply to expedited food stamps.

(2) In addition, a client is deemed to have met the income eligibility requirements for youth services if the youth is a runaway or a foster child.

(3) If a client is not eligible under paragraphs (1) and (2) above, the client must meet the low income eligibility guidelines in this rule.

R986-600-614. How to Determine Who Is Included in the Family.

Family size must be determined to establish income eligibility for adult and youth services. Family size is determined by counting the maximum number of family members in the residence during the previous six months, not including the current month. Family size must be verified only if the Department is using family income to determine low-income eligibility for adult or youth services.

(1) A customer can be considered a "family" of one, if the customer is:

- (a) age 18 or older and living on his or her own;
- (b) emancipated;
- (c) an adult child, age 22 or older, living with his or her parents and applying on his or her own behalf; or
- (d) living alone or with a family and has a verifiable disability that is a substantial barrier to employment.

(2) A 'family' is generally described as two or more persons related by blood, marriage, or decree of court, living in a single residence. A dependent child is a child the parent or guardian claimed as a dependent of the parent or guardian's tax return.

- (a) Family members included in the income determination:
 - (i) A husband and wife and dependent children age 21 and under;
 - (ii) A parent or legal guardian and dependent children age 21 and under; or
 - (iii) A husband and wife, if there are no dependent children.

(b) "Living in a single residence" includes family members residing elsewhere on a voluntary, temporary basis, such as attending school or visiting relatives. It does not include involuntary temporary residence elsewhere, such as incarceration, or court-ordered placement outside the home.

(c) Two people living in a single residence but who are not married are not members of the same 'family'. If they have children together, for WIA reporting purposes, each is considered a single parent and the children are considered part of each persons family.

R986-600-615. Assets.

Assets are not counted when determining eligibility for WIA services.

R986-600-616. Countable Income.

(1) Countable income is total annual cash receipts before taxes are deducted, from all sources with the exceptions listed below under "Excludable Income". If income is not specifically excluded, it is counted. Countable income, for WIA purposes includes:

- (a) money, wages, and salaries before any deductions,
- (b) net receipts from self-employment, including farming,

(c) Job Corps payments to participants,
 (d) railroad retirement,
 (e) strike benefits from union funds,
 (f) workers' compensation benefits,
 (g) veterans' payments, except disability payments,
 (h) training stipends,
 (i) alimony,
 (j) military family allotments or other regular support from an absent family member or someone not living in the household,

(k) private pensions or government employee pensions, including military retirement pay, except Social Security payments are excluded,

(l) any insurance, annuity, regular disability, and social security payments, other than social security disability (SSI or SSDI) or veterans disability.

(m) college or university scholarships, grants, fellowships, and assistantship (excluding Pell Grants),

(n) dividends,

(o) interest,

(p) net rental income,

(q) net royalties, including tribal payments from casino royalties,

(r) periodic receipts from estates or trusts, and

(s) net gambling or lottery winnings.

(2) Excludable income, which is income that is not counted, is:

(a) cash welfare payments under a Federal, state or local welfare program, including public assistance under FEP, FEPTP, GA, WTE, SSI, Emergency Assistance,

(b) child support,

(c) unemployment compensation,

(d) capital gains and assets drawn down as withdrawals from a bank, the sale of property, a house or car,

(e) SSI, SSDI, and veterans disability payments,

(f) educational financial assistance received under title IV of the Higher Education Act as amended by section 479(B) 1992 and other needs-based scholarship assistance and Pell grants. This includes some Work-Study programs,

(g) foster child care payments,

(h) tax refunds,

(i) gifts,

(j) loans,

(k) lump-sum inheritances,

(l) one-time insurance payments or compensation for injury,

(m) Earned Income Credit from the IRS,

(n) income received by a veteran while on active military duty in the Armed Forces if the veteran applies for WIA services within six months of discharge,

(o) benefit payments to veterans under 38 U.S.C 4212, part 3,

(p) non-cash benefits such as employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the value of rent from owner-occupied non farm or farm housing, federal noncash benefits programs such as Medicare, Medicaid, food stamps, school lunches and housing assistance, and

(q) other amounts specifically excluded by Federal statute.

R986-600-617. How to Calculate Income.

(1) To determine if a client meets the income eligibility standards, all income from all sources of all family members during the previous six months is counted. That amount is multiplied by two to arrive at an annual income and compared to the income guidelines, which are updated annually.

(2) Income averaging can be used if complete income records are not available for the six month period.

(3) Allowable business expenses are deducted from self-employment but no other deductions from income are allowed.

(4) The client family is income eligible if the annual income meets the higher of:

(a) the poverty line as determined by the Department of Human Services, or

(b) 70% of the LLSIL (lower living standard income level) as determined by Department of Labor and available at the Department of Workforce Services.

R986-600-618. Dislocated Worker.

(1) A dislocated worker is an individual who meets one of the following criteria:

(a)(i) has been terminated or laid off, or has received a notice of termination or layoff from employment, and

(ii)(1) is eligible for or has exhausted unemployment compensation entitlement, or

(ii)(2) has been employed for a duration sufficient to demonstrate attachment to the workforce, but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer that were not covered under unemployment compensation law, and

(iii) is unlikely to return to the individual's previous industry or occupation. 'Unlikely to return' means that labor market information shows a lack of jobs in either that industry OR occupation, or the customer lacks the skills to re-enter the industry or occupation, or the client declares that they will not return to that industry or occupation.

(b)(i) Has been terminated or laid off, or has received a notice of termination or layoff, from employment as a result of any permanent closure of, or any substantial layoff at, a plant, facility, or enterprise, or

(ii) is employed at a facility at which the employer has made a general announcement that such facility will close within 180 days; or

(iii) for purposes of eligibility to receive rapid response services, is employed at a facility at which the employer has made a general announcement that such facility will close. Rapid response services are defined by WIA.

(c) Was self-employed (including employment as a farmer, a rancher, or a fisherman) but is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters.

(d) Is a displaced homemaker. A WIA displaced homemaker is an individual who has been providing unpaid services to family members in the home and who:

(i) has been dependent on the income of another family member but is no longer supported by that income; and

(ii) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(2) The dislocation must have occurred within the prior two years.

(3) There are no income or asset guidelines for dislocated worker eligibility. Training appropriateness must still be determined before training services can be provided.

(4) The following documentation is acceptable to confirm dislocated worker status:

a. Unemployment Insurance records;

b. An individual layoff letter;

c. Rapid Response Unit analysis or review;

d. Public announcements of layoff;

e. If no other means of verification are available, the employer can provide verification; or

f. Worker self certification, although this is a last resort and requires documentation that other attempts to verify were unsuccessful.

(5) If the Department is providing services under a National Reserve Discretionary Grant, additional documentation may be needed.

R986-600-619. Participation Requirements.

Payment of any and all financial assistance, intensive and/or training services is contingent upon the client participating, to the maximum extent possible, in assessment and evaluation, and the completion of a negotiated employment plan.

R986-600-620. Participation in Obtaining an Assessment.

(1) When the Department or youth contract provider determines that a client has a need for intensive services, an employment counselor/case worker will be assigned to assess the needs of the client.

(2) The assessment evaluation is used to develop an employment plan.

(3) Completion of the assessment requires that the client provide information about:

(a) family circumstances including health, needs of the children, support systems, and relationships;

(b) personal needs or potential barriers to employment;

(c) education;

(d) work history;

(e) skills;

(f) financial resources and needs; and

(g) any other information relevant to the client's ability to become self-sufficient.

(4) The client may be required to participate in testing or completion of other assessment tools and may be referred to another person within the Department, another agency, or to a company or individual under contract with the Department to complete testing, assessment, and evaluation.

R986-600-621. Requirements of an Employment Plan.

(1) A client is required to sign and make a good faith effort to participate to the maximum extent possible in a negotiated employment plan. The client will be provided with a copy of the employment plan.

(2) The goal of the employment plan is obtaining marketable skills and employment and the plan must contain the soonest possible target date for entry into employment consistent with the needs of the client.

(3) An employment plan consists of activities designed to help an individual become employed.

(4) Each activity must be directed toward the goal of employment.

(5) The employment plan may require that the client:

(a) search for suitable, immediate employment.

(b) participate in an educational program to obtain a high school diploma or its equivalent, if the client does not have a high school diploma;

(c) obtain education or training necessary to obtain employment;

(d) obtain medical, mental health, or substance abuse treatment;

(e) resolve transportation and child care needs;

(f) resolve any other barriers identified as preventing or limiting the ability of the client to obtain employment, and/or

(g) participate in rehabilitative services as prescribed by the State Office of Rehabilitation.

(6) The client must meet the performance expectations of each activity in the employment plan in order to stay eligible for intensive or training services.

(7) The client must cooperate with the Department's efforts to monitor and evaluate the client's activities and progress under the employment plan, which may include providing ongoing information and/or documentation relative to their progress and providing the Department with a release of information, if necessary to facilitate the Department's monitoring of compliance.

(8) Where available and appropriate, supportive services

may be provided as needed for each activity.

(9) The client agrees, as part of the employment plan, to cooperate with other agencies, or with individuals or companies under contract with the Department, as outlined in the employment plan.

(10) An employment plan may, at the discretion of the Department, be amended to reflect new information or changed circumstances.

R986-600-622. Requirements of an Employment Plan for Youth.

(1) The focus of services for youth are separated by age into two categories; Younger Youth, 14-18 years old; and 19-21 years old.

(2) Employment plans for all youth must reflect intentions to assist with preparing for post-secondary education and/or employment; finding effective connections to the job market and employers, and understanding the links between academic and occupational learning.

(3) The primary goal of the employment plan for Younger Youth is setting and achieving goals. Secondary goals may include graduating from high school, and/or being placed in post-secondary education, other advanced training, or employment.

(4) The goal of the employment plan for older youth is the same as in R986-600-621.

R986-600-623. Education and Training and Support Services as Part of an Employment Plan.

(1) A client's participation in education or training beyond that required to obtain a high school diploma or its equivalent is limited per exposure to the lesser of:

(a) 24 months which need not be continuous and which can be waived by a Department supervisor based on individual circumstances, or

(b) the completion of the education and training goals of the employment plan.

(2) Education and training will only be supported where:

(a) the client is unable to achieve self-sufficiency;

(b) the education or training will substantially increase the income level the client would be able to attain without the education or training;

(c) the plan must show that the client has the ability to be successful in the education or training and in the market thereafter;

(d) the education or training is required for the occupation;

(e) the client is willing to complete the education or training as quickly as is reasonable;

(f) the mental and physical health of the client indicates the education or training could be completed successfully and the client could perform the job once the schooling is completed; and

(g) the specific employment goal that requires the education or training is marketable in the area where the client resides or the client has agreed to relocate for the purpose of employment once the education/training is completed.

(3) Additional payments and/or services are allowable under certain circumstances based on individual need provided they are necessary and appropriate to enable the client to participate in activities authorized under this title (WIA).

R986-600-624. The Right to Appeal a Denial of Services.

If an applicant or a client who is currently receiving services is denied services the individual can request a hearing as provided in Rules R986-100-123 through R986-100-135. If the client is currently receiving services under WIA and requests a hearing within 10 days of the denial, services will continue pending the hearing as provided in Rule R986-100-134.

R986-600-651. Definitions.

(1) "State Council" means the State Council on Workforce Services.

(2) "Eligible Provider" means a occupational skills training provider eligible to receive funds for training adults and dislocated workers authorized under WIA and approved by the State Council.

(3) "Regional Council" means any of the Regional Councils on Workforce Services.

R986-600-652. Determining Initial Eligibility for Training Providers.

(1) Training providers are automatically eligible if they if they complete an application and are either:

(a) a postsecondary educational institution that:

(i) is eligible to receive federal funds under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), and

(ii) provides a program that leads to an associate degree, baccalaureate degree, or certificate; or

(b) an entity that provides programs under the "National Apprenticeship Act", 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.

(2) All other training providers must submit the following information:

(a) the name, mailing address, physical address, telephone number, and email address (if available) of the training facility;

(b) documentation of financial stability of the applicant, which may include audits or financial statements or evidence of compliance with the Utah Board of Regents' bonding requirements;

(c) the name of each program for which approval is requested;

(d) the percentage of all participants who complete each program;

(e) the percentage of all participants in each program who obtained unsubsidized employment;

(f) average placement wage of all participants in each program;

(g) if applicable, the rate of Utah state-recognized or industry-recognized licensure, certification, degrees, or equivalent attained by all program graduates. For example, CDL, Certified Nurse Aid, Licensed Practical Nurse, Novell Network Engineer;

(h) program costs including tuition and fees;

(i) a copy of the provider's student grievance procedure;

(j) the self-administered Department training provider accessibility checklist; and

(k) the number of years in business using the current name, and a list of other names under which the provider operated.

(3) Applications from providers in paragraph 2 above will be sent to the Regional Council staff in the region in which the provider does business or wishes to apply. Regional Councils recommend approval or disapproval for each provider and these results are sent to the State Council for final action.

(4) Performance information must meet standards established by the Department or the state council may grant an exception.

(5) All schools must be in business for a minimum of one year before approval will be granted.

(6) The Department will notify a provider in writing when a decision has been made concerning the provider's eligibility.

(7) A list of Initially Eligible providers including program performance and cost information will be published on the Internet.

R986-600-653. Distance Learning Providers.

(1) Distance learning is training that is made possible due to advances in computer technology. Using an online computer connection, distance learning can establish a setting for students

and instructors where lessons are assigned, completed, and returned, and discussions can be held online.

(2) Distance learning can only be approved when it is a part of a curriculum that:

(a) leads to the completion of a training program;

(b) requires students to interact with instructors;

(c) requires students to take periodic tests.

R986-600-654. Determining Subsequent Eligibility for Training Providers.

(1) Eligible providers shall apply annually to continue to receive WIA funds.

(2) Eligible providers shall submit student and program information as required, and in a format determined by the Department.

(3) The Department shall establish annual minimum performance requirements for continuing eligibility, and will consider the following as it establishes those requirements:

(a) the economic, geographic, and demographic factors in the state; and

(b) the characteristics of the populations served by providers, including the difficulties in serving such populations, where applicable.

(4) The Department shall establish annual minimum requirements for the following performance measures:

(a) program completion rates for all participants;

(b) the percentage of all participants who obtain employment;

(c) the average quarterly earnings of participants;

(5) Providers shall give the Department an annual list of social security numbers of all participants, by program; each participant's exit date from the program and a list of the completion rate and cost for each program for which approval is sought. The time and format for submitting this information will be determined by the Department.

(6) The Department may require providers to submit additional information to the Department.

(7) Training provider program employment and earnings performance information will be computed by the Department using the Social Security numbers provided by the training providers.

(8) The Department will notify a provider in writing when a decision has been made concerning the provider's subsequent eligibility.

(9) Providers must retain participant program records for three years from the date the participant completes the program.

(10) The Department may remove a provider from the list if the provider does not meet the performance levels established by the Department.

(11) The Department will remove a provider from the list if the provider has committed fraud or violated applicable state or federal law.

(12) The Department will remove a provider from the list for at least two years if the provider intentionally supplies inaccurate student or program performance information.

(13) The Department shall publish the program, performance, and cost information of each subsequently eligible provider on the list.

(14) Only providers on the list are eligible to receive funding or reimbursements from WIA funding.

R986-600-655. The Right to a Hearing and How to Request a Hearing.

(1) A provider may request a hearing to appeal a decision to deny eligibility or to remove the provider from the eligible provider list.

(2) Hearing requests will be made in writing to the Council, which will conduct the hearing at the next regularly scheduled meeting. The Council's decision on the provider's

eligibility will be final.

R986-600-656. Monitoring for Compliance of Equal Opportunity and Nondiscrimination.

(1) The Department monitors service providers for compliance with the equal opportunity and nondiscrimination requirements of WIA. This includes compliance with all applicable laws, regulations, contract provisions, corrective actions, and remedial actions.

(2) Each service provider's compliance will be reviewed annually. The review can be either an on-site review or a data review.

R986-600-657. Noncompliance.

(1) In the event the Department identifies specific instances of noncompliance with federal discrimination laws, the Department will;

(a) notify the service provider in writing of the finding(s) of noncompliance and the corrective action required to ensure compliance;

(b) establish a corrective action plan;

(c) notify the provider of the time lines for the completion of the plan; and

(d) ensure compliance with the corrective action plan.

(2) For training providers, the corrective action plan will provide that the training provider agree to stop all prohibited practices in order to remain eligible for WIA funding.

R986-600-658. Sanctions for Noncompliance and Right to Appeal.

(1) The Department may impose sanctions against a provider for failure to comply with federal nondiscrimination laws or required corrective actions.

(2) If the Department finds that a provider has not taken the required corrective action in the specified time limits the Department will issue a notice of final action informing the service provider of the Department's intent to;

(a) discontinue referral of participants to the provider,

(b) cancel the contract with the provider,

(c) make other changes deemed necessary to secure compliance, and/or

(d) refer the matter to another governmental entity.

(3) The service provider may appeal the decision of the Department by filing an appeal in writing within 30 days of the date of the notice of final action to: The Director, Civil Rights Center, US Department of Labor, 200 Constitution Ave NW, Room N4123, Washington DC, 20210.

**KEY: Workforce Investment Act
August 16, 2005
Notice of Continuation September 14, 2005**

35A-5

R994. Workforce Services, Unemployment Insurance.**R994-307. Social Costs -- Relief of Charges.****R994-307-101. Relief of Charges to Contributing Employers.**

(1) Under the following circumstances a written request is required for relief of charges:

(a) Separation Issues.

(i) Relief may be granted based only on the circumstance which caused the claim to be filed or a separation which occurred prior to the initial filing of the claim. If there is more than one separation from the same employer, charges or relief of charges will be based on the reason for the last separation occurring prior to the effective date of the claim. Separations occurring after the initial filing of a claim do not result in relief of charges on that claim, but may be the basis for relief of charges on a subsequent claim.

(A) The claimant voluntarily left work for that employer due to circumstances which would have resulted in a denial of benefits under Subsection 35A-4-405(1) of the Act.

(B) The separation from that employer would have resulted in an allowance of benefits made under the provisions of "equity and good conscience" under circumstances not caused or aggravated by the employer. For example: If the claimant quit because of a personal circumstance which was not the result of this employment the employer would be relieved of charges. However, if the quit was precipitated by a reduction in the claimant's hours of work, even though the change in working conditions was necessitated by economic conditions, the employer would NOT be relieved of charges.

(C) The claimant quit that employer for health reasons which were beyond reasonable control of the employer. Although the job may have caused or aggravated the health problems, the employer is eligible for relief if it was in compliance with industry safety standards.

(D) The claimant quit work for that employer not because of adverse working conditions, but solely due to a personal decision to accept work with another employer.

(E) The claimant quit work from that employer for personally compelling circumstances not within the employer's power to control or prevent.

(F) The claimant quit new work from that employer after a short trial period, and through no fault of the employer the new work was unsuitable as defined in Subsections 35-4-405(3)(c), (d), and (e).

(G) The claimant was discharged from that employer for circumstances which would have resulted in a denial of benefits under Section 35A-4-405(2) of the Act.

(H) The claimant was discharged for nonperformance due to medical reasons. The employer is eligible for relief:

(I) only if the employer complied with industry health and safety standards, and

(II) the non-performance was due to a chronic medical condition, and

(III) the medical circumstances are expected to continue. The medical problems may be attributed to the worker or to a dependent. A series of unrelated absences attributed to medical problems do not qualify as chronic without medical verification that the conditions will probably continue to cause absences.

(b) Non-Separation Issues.

(i) When the claimant worked for two or more employers during the base period and is separated from one or more of these employers, but continues in regular part-time work for one of those employers, the nonseparating, part-time employer will not be liable for benefit costs provided;

(A) the claimant earned wages from a nonseparating employer within seven days prior to the date when the claim was filed,

(B) the claimant is not working on an "on call" basis,

(C) the number of hours of work has not been reduced, and

(D) the nonseparating employer makes a request that it not be held liable for benefit costs within ten days of the first notification of the employer's potential liability.

(ii) The employer was previously charged for the same wages which are being used a second time to establish a new claim. For example, as the result of a change in the method of computing the base period, or overlapping base periods due to the effective date of the claim.

(iii) The claimant did not work for the employer during the base period.

(iv) The Department incorrectly used wages which were or should have been correctly reported by the employer in determining the claimant's weekly benefit amount or maximum benefit amount.

(c) The Department may, on its own motion, grant relief of charges without a written request if in the Department representative's discretion there is sufficient information in the record to justify relief.

(2) Under the following circumstances a written request is NOT required for relief of charges:

(a) All employers shall be relieved of benefit costs:

(i) resulting from the state's share of extended benefit payments;

(ii) which, during the same fiscal year, have been designated by the Department as benefit overpayments;

(iii) resulting from combined wage claims that are charged to Utah employers, which are insufficient when separately considered for a monetary claim under Utah law but have been transferred to a paying state;

(iv) resulting from payments made after December 31, 1985 to claimants who have been given Department approval to attend school. Relief is granted only for those benefit costs during the period of Department approval.

(b) An employer shall be relieved of benefit costs if the employer has terminated coverage.

**KEY: unemployment compensation, rates
December 31, 2005
Notice of Continuation June 11, 2003**

35A-4-303

R994. Workforce Services, Unemployment Insurance.**R994-406. Fraud, Fault and Nonfault Overpayments.****R994-406-101. Claimant Responsible for Providing Complete, Correct Information.**

(1) The claimant is responsible for providing all of the information requested in written documents as well as any verbal request from a Department representative. The claimant is also responsible for following all Department instructions.

(2) The claimant can not shift responsibility for providing correct information to another person such as a spouse, parent, or friend. The claimant is responsible for all information required on his or her claim.

R994-406-201. Nonfault Overpayments.

(1) If the claimant followed all instructions and provided complete and correct information as required in R994-406-101(1) and then received benefits to which he or she was not entitled due to an error made by the Department or an employer, the claimant is not at fault in the creation of the overpayment.

(2) The claimant is not liable to repay overpayments created through no fault of the claimant except that the sum will be deducted from any future benefits.

R994-406-202. Method of Repayment of Nonfault Overpayments.

Even though the claimant is without fault in the creation of the overpayment, 50% of the claimant's weekly benefit amount will be deducted from any future benefits payable to him or her until the overpayment is repaid. No billings will be made and no collection procedures will be initiated.

R994-406-203. Waiver of Recovery of Nonfault Overpayments.

(1) The Department may waive recovery of a nonfault overpayment if the claimant:

(a) requests a waiver within 10 days of notification of the opportunity to request a waiver, within 10 days of the first offset of benefits following a reopening, or upon a showing of a significant change in the claimant's financial circumstances. Good cause will be considered if the claimant can show the failure to request a waiver within these time limitations was due to circumstances which were beyond the claimant's control or were compelling and reasonable; and

(b) can show that recovery of the 50% offset as provided in R994-406-202 would render the claimant unable to pay for the basic needs of survival for his or her immediate family, dependents and other household members.

(i) The claimant must provide verification of financial resources and the social security numbers of family members, dependents and household members.

(ii) Before granting the waiver, the Department must consider all potential financial resources of the claimant, the claimant's family, dependents and other household members.

(iii) "Unable to pay for the basic needs of survival" means "economically disadvantaged" and is defined as 70% of the Lower Living Standard Income Level (LLSIL). Therefore, if the claimant's total family resources in relation to family size are not in excess of 70% of the LLSIL, the waiver will be granted provided the economic circumstances are not expected to change within the next 90 days. Individual expenses will not be considered. Available financial resources, current income, and anticipated income will be included and averaged for the three months.

(2) Any nonfault overpayment outstanding at the time the request is granted is forgiven and the claimant has no further repayment obligation.

(3) A waiver cannot be granted retroactively for any payments made against an overpayment or any of the overpayment which has already been offset except if the offset

was made pending a decision on a timely waiver request which is ultimately granted.

R994-406-301. Claimant Fault.

(1) Elements of Fault.

Fault is established if all three of the following elements are present, or as provided in subsection (4) of this section. If one or more elements cannot be established, the overpayment does not fall under the provisions of Subsection 35A-4-405(5).

(a) Materiality.

Benefits were paid to which the claimant was not entitled.

(b) Control.

Benefits were paid based on incorrect information or an absence of information which the claimant reasonably could have provided.

(c) Knowledge.

The claimant had sufficient notice that the information might be reportable.

(2) Claimant Responsibility.

The claimant is responsible for providing all of the information requested by the Department regarding his or her Unemployment Insurance claim. If the claimant has any questions about his or her eligibility for unemployment benefits, or the Department's instructions, the claimant must ask the Department for clarification before certifying to eligibility. If the claimant fails to obtain clarification, he or she will be at fault in any resulting overpayment.

(3) Receipt of Settlement or Back-Pay.

(a) A claimant is "at fault" for the resulting overpayment if he or she fails to advise the Department that grievance procedures are being pursued which may result in payment of wages for weeks during which he or she claims benefits.

(b) If the claimant advises the Department prior to receiving a settlement that he or she has filed a grievance with the employer and makes an assignment directing the employer to pay to the Department that portion of the settlement equivalent to the amount of unemployment compensation received, the claimant will not be "at fault" if an overpayment is created due to payment of wages attributable to weeks for which the claimant received benefits. If the grievance is resolved in favor of the claimant and the employer was properly notified of the wage assignment, the employer is liable to immediately reimburse the Department upon settlement of the grievance. If reimbursement is not made to the Department consistent with the provisions of the assignment, collection procedures will be initiated against the employer.

(c) If the claimant refuses to make an assignment of the wages claimed in a grievance proceeding, benefits will be withheld on the basis that the claimant is not unemployed because of anticipated receipt of wages. In this case, the claimant should file weekly claims and if back wages are not received when the grievance is resolved, benefits will be paid for weeks properly claimed provided the claimant is otherwise eligible.

(4) Receipt of Retirement Income.

Notwithstanding any other provision of this section, a claimant who could be eligible for retirement income but does not apply until after unemployment benefits have been paid, is "at fault" for any overpayment resulting from a retroactive payment of retirement benefits. See R994-401-203(1)(d) and (2)

R994-406-302. Repayment and Collection of Fault Overpayments.

(1) When the claimant has been determined to be "at fault" in the creation of an overpayment, the overpayment must be repaid. If the claimant is otherwise eligible and files for additional benefits during the same or any subsequent benefit year, 100% of the benefit payment to which the claimant is

entitled will be used to reduce the overpayment.

(2) Discretion for Repayment.

(a) Full restitution is required for all fault overpayments. However, legal collection proceedings may be held in abeyance at the Department's discretion and the overpayment will be deducted from future benefits payable during the current or subsequent benefit years. Discretion will only be exercised if the Department or the employer share fault in the creation of the overpayment but it is determined the claimant was more at fault under the provisions of rule R994-403-119e.

(3) Collection Procedures.

(a) The Department will send an initial overpayment notice on all outstanding fault or fraud overpayments. If, after 15 days, the claimant does not either make payment in full or enter into an installment payment agreement as provided in subsection (4) below the account is considered delinquent and the claimant is notified that a warrant will be filed unless a payment is received or an installment agreement entered into within 15 days. However, there may be other circumstances under which a warrant may be filed on any outstanding overpayment. A warrant attaches a lien to any personal or real property and establishes a judgment that is collectible under Utah Rules of Civil Procedure.

(b) All outstanding overpayments on which a lien has been filed are reported to the State Division of Finance for collection whereby any refunds due to the claimant from State income tax or any such rebates, refunds, or other amounts owed by the state and subject to legal attachment may be applied against the overpayment.

(c) No warrant will be issued on fault overpayments provided the claimant entered into an installment agreement within 30 days of the issuance of the initial overpayment notice and all payments are made in a timely manner in accordance with the installment agreement.

(4) Installment Payments.

(a) If repayment in full has not been made within 30 days of the initial overpayment notice or the claimant has not voluntarily entered into an installment agreement, the Department will allow the claimant to pay in installments by notifying the claimant in writing of the minimum installment payment which the claimant is required to make. If the claimant is unable to make the minimum installment payments, the claimant may request a review within ten days of the date written notice is mailed.

(b) Whether voluntarily or involuntary, installment payments will be established as follows:

If the entire overpayment is:

(i) \$3,000 or less, the monthly installment payment is equal to 50% of claimant's weekly benefit entitlement

(ii) \$3,001 to 5,000, the monthly installment payment is equal to 100% of claimant's weekly benefit entitlement

(iii) \$5,001 to 10,000 the monthly installment payment is equal to 125% of claimant's weekly benefit entitlement

(iv) \$10,001 or more the monthly installment payment is equal to 150% of claimant's weekly benefit entitlement

(c) Installment agreements will not be approved in amounts less than those established above except in cases where the claimant meets the requirements of economically disadvantaged as defined in R994-406-204(1)(b)(iii). On a periodic basis the Department may send notice to the claimant requesting verification of his or her disadvantaged status. If the claimant fails to provide the verification as requested, or no longer qualifies for a lesser installment payment, the Department will send the claimant a new monthly payment amount. The new installment payment amount may be in accordance with the percentages in subparagraph (b) or a lesser amount depending on the information received from the claimant.

(d) Minimum monthly installment agreement payments must be received by the Department by the last day of each

month. Payments not made timely are considered delinquent.

(5) Offsetting overpayments with subsequent eligible weeks.

If an overpayment is set up under Section R994-406-301 or R994-406-403 for weeks paid on a claim, the claimant may repay the overpayment by filing for open weeks in the same benefit year after the claim has been exhausted, provided the claimant is otherwise eligible. 100% of the compensation amount for each eligible week claimed will be credited to the established overpayment(s) up to the total amount of the outstanding overpayment balance owed to the Department.

R994-406-401. Claimant Fraud.

(1) All three elements of fraud must be proved to establish an intentional misrepresentation sufficient to constitute fraud. See section 35A-4-405(5). The three elements are:

(a) Materiality.

(i) Materiality is established when a claimant makes false statements or fails to provide accurate information for the purpose of obtaining;

(A) any benefit payment to which the claimant is not entitled, or

(B) waiting week credit which results in a benefit payment to which the claimant is not entitled.

(ii) A benefit payment received by fraud may include an amount as small as one dollar over the amount a claimant was entitled to receive.

(b) Knowledge.

A claimant must have known or should have known the information submitted to the Department was incorrect or that he or she failed to provide information required by the Department. The claimant does NOT have to know that the information will result in a denial of benefits or a reduction of the benefit amount. Knowledge can also be established when a claimant recklessly makes representations knowing he or she has insufficient information upon which to base such representations. A claimant has an obligation to read material provided by the Department or to ask a Department representative when he or she has a question about what information to report.

(c) Willfulness.

Willfulness is established when a claimant files claims or other documents containing false statements, responses or deliberate omissions. If a claimant delegates the responsibility to personally provide information or allows access to his or her Personal Identification Number (PIN) so that someone else may file a claim, the claimant is responsible for the information provided or omitted by the other person, even if the claimant had no advance knowledge that the information provided was false or important information was omitted.

(2) The Department relies primarily on information provided by the claimant when paying unemployment insurance benefits. Fraud penalties do not apply if the overpayment was the result of an inadvertent error. Fraud requires a willful misrepresentation or concealment of information for the purpose of obtaining unemployment benefits.

(3) The absence of an admission or direct proof of intent to defraud does not prevent a finding of fraud.

R994-406-402. Burden and Standard of Proof in Fraud Cases.

(1) The Department has the burden of proving each element of fraud.

(2) The elements of fraud must be established by clear and convincing evidence. There does not have to be an admission or direct proof of intent.

R994-406-403. Fraud Disqualification and Penalty.

(1) Penalty Cannot be Modified.

The Department has no authority to reduce or otherwise modify the period of disqualification or the monetary penalties imposed by statute. The Department cannot exercise repayment discretion for fraud overpayments and these amounts are subject to all collection procedures.

(2) Week of Fraud.

(a) A "week of fraud" shall include each week any benefits were received due to fraud. The only exception to this is if the fraud occurred during the waiting week causing the next eligible week to become the new waiting week. In that case, the new waiting week will not be considered as a week of fraud for disqualification purposes. However, because the new waiting week is a non-payable week, any benefits received during that week will be assessed as an overpayment and because the overpayment was as a result of fraud, a fraud penalty will also be assessed.

(b) If a claimant commits a fraudulent act during one week, and benefits are paid in later weeks which would not have been paid but for the original fraud, each week wherein benefits were paid is a week of fraud subject to an overpayment determination, a penalty and a disqualification period.

(c) If the only week of fraud was the waiting week and no benefit payments were made, there will be no disqualification period.

(3) Disqualification Period.

(a) The claimant is ineligible for benefits for a period of 13 weeks for the first week of fraud. For each additional week of fraud, the claimant will be ineligible for benefits for an additional six weeks. The total number of weeks of disqualification will not exceed 49 weeks for each fraud determination. The Department will issue a fraud determination on all weeks of fraud the Department knows about at the time of the determination.

(b) The disqualification period begins the Sunday following the date the Department fraud determination is made.

(4) Overpayment and Penalty.

(a) For any fraud decision where the initial fraud determination was issued on or before June 30, 2004, the claimant shall repay to the division an overpayment which is equal to the amount of the benefits actually received. In addition, a claimant shall be required to repay, as a civil penalty, the amount of benefits received as a direct result of fraud. "Benefits actually received" means the benefits paid or constructively paid by the Department. Constructively paid refers to benefits used to reduce or off-set an overpayment, deducted at the request of the claimant to pay income taxes, or used as a payment to the Office of Recovery Services for child support obligations or other payments as required by law. For example: The claimant has a weekly benefit amount of \$100 and reports no earnings during a week when he or she actually had \$50 in reportable earnings. Because a claimant may earn up to 30% of his or her weekly benefit amount with no deduction, the claimant was entitled to receive \$80 for that week and was thus overpaid the amount of \$20. If the elements of fraud are established, the claimant is disqualified during that week of fraud and all benefits paid for that week are considered an overpayment. The claimant would also be liable to repay, as a civil penalty, the \$20 received by direct reason of fraud. Therefore, in this example, the claimant would be liable for a total overpayment and penalty of \$120, an amount that would have to be repaid in its entirety before the claimant would be eligible for any further waiting week credit or unemployment benefits. The claimant would also be subject to a 13-week penalty period.

(b) For all fraud decisions where the initial department determination is issued on or after July 1, 2004, the claimant shall repay to the division the overpayment and, as a civil penalty, an amount equal to the overpayment. The overpayment in this subparagraph is the amount of benefits the claimant

received by direct reason of fraud. In the example in subsection (3)(a) of this section, the overpayment would be \$20 and the penalty would be \$20 for a total due of \$40. The overpayment and penalty would have to be repaid in its entirety before the claimant would be eligible for any further waiting week credit or unemployment benefits. The claimant would also be subject to a 13-week penalty period.

(5) Additional Penalties. Criminal prosecution of fraud may be pursued as provided by Subsection 35A-4-104(1) in addition to the administrative penalties.

R994-406-404. Repayment and Collection of Fraud Overpayments and Penalties.

Fraud overpayments and penalties will be collected in accordance with rule R994-406-302 except that a warrant will always issue in fraud overpayments even if the claimant enters into an installment agreement and is current in the monthly payments. Fraud overpayments and penalties may also be collected by civil action or warrant as provided by Subsections 35A-4-305(3) and 35A-4-305(5), respectively. The Department may use unemployment insurance benefits payable for weeks prior to the penalty period to reduce overpayments and penalties.

R994-406-405. Future Eligibility in Fraud Cases.

A claimant is ineligible for unemployment benefits or waiting week credit after a disqualification for fraud until any overpayment and penalty established in conjunction with the disqualification has been satisfied in full. Wage credits earned by the claimant cannot be used to pay benefits or transferred to another state until the overpayment and penalty are satisfied. An outstanding overpayment or penalty may NOT be satisfied by deductions from benefit payments for weeks claimed after the disqualification period ends, as a claimant is precluded from receiving any future benefits or waiting week credit as long as there is an outstanding fraud overpayment. However, a claimant may be permitted to file a new claim to preserve a particular benefit year. An overpayment is considered satisfied as of the beginning of the week during which payment is received by the Department. Benefits will be allowed as of the effective date of the new claim if a claimant repays the overpayment and penalty within seven days of the date the notice of the outstanding overpayment and penalty is mailed.

R994-406-406. Agency Error in Determining Disqualification Periods.

If the division has sufficient evidence to assess a disqualification prior to paying benefits, but fails to take action, a fraud disqualification will not be assessed even if the claimant provided false or information or deliberate omissions. The resulting overpayment will be assessed under the provisions of Subsections 35A-4-406(4)(b) or 35A-4-406(5)(a).

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