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

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

(2) Two weeks prior to the Committee meeting or appeal hearing the Executive Secretary shall send a notice of the meeting to at least one newspaper of general circulation within the geographic jurisdiction.

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

**R35-1-2. Procedures for Appeal Hearings.**

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

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

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

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

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

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

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

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

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

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

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

(12) The following provisions govern any meeting at which one or more members of the Committee or a party appears telephonically or electronically pursuant to Utah Code Section 52-4-7.8.

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

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

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

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

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

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

**R35-1-4. Committee Minutes.**

(1) All meetings of the Committee shall be recorded. Access to the audio recordings shall be provided by the Executive Secretary at the Utah State Archives, Research Center.

(2) Written minutes of the meetings and appeal hearings shall be maintained by the Executive Secretary. A copy of the approved minutes shall be made available for public access at the Utah State Archives.

**KEY: government documents, state records committee, records appeal hearings**
**March 14, 2006 63-2-502(2)(a)**
**Notice of Continuation July 2, 2004**

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

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

**R37-1-2. Authority.**

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

**R37-1-3. Definitions.**

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

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

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

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

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

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

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

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

(1) Liability

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

(b) Limits - Maximum liability under Section 63-30d-604 UCA for situations subject to the Governmental Immunity Act; higher limits for other situations as indicated in coverage policies issued to each covered entity.

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

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

(i) In the event of an occurrence, personal injury, act, error, omission, incident, or any other situation likely to give rise to a claim covered by the Fund, written notice containing particulars sufficient to identify the covered entity or person and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the potential claimant, and of available witnesses, shall be given by or for the covered entity or person to the Fund or any of its authorized agents as soon as practicable. The covered entity shall promptly take, at its own expense, all reasonable steps to prevent additional injury or damage from arising out of the same or similar conditions; provided (1) that a failure to take preventive measures shall not constitute a breach of this condition unless the Fund has requested the covered entity, in writing, to undertake the preventive measures and (2) the expense shall not be recoverable from the Fund.

(ii) If claim is made or suit is brought against the covered entity or person, whether in court or through an administrative proceeding with the Utah Anti-discrimination Division, the Federal Equal Employment Opportunity Commission or similar body, the covered entity or person shall immediately forward to the Fund a copy of every demand, notice, summons or other process received by it or its representative. Any covered person who is an employee or volunteer of the covered entity shall comply with all provisions of Sections 63-30d-902 UCA, 63-30d-903 UCA, or both before the Fund shall have any duty to defend or pay any judgment against such covered person.

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

(iv) In the event any employee or volunteer requests under the terms of Section 63-30d-902 UCA that the covered entity defend him relative to any action or claim which would be covered by the Fund, the covered entity shall immediately forward the request to the Fund and the Fund shall have the right to determine on behalf of the covered entity whether to defend, defend under a reservation of rights, or decline to defend.

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

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

(e) Special Automobile Condition - A $10,000 per accident deductible applies to amounts otherwise payable under this coverage because of an accident involving an automobile driven by a covered person who either:

(i) at the time of the accident was not a licensed driver for the type of vehicle involved; and who also was not so licensed at the closer to the accident date of:

(A) the date of his employment as a driver of the covered entity;

(B) the date of the covered entity became or should have become aware he was not so licensed; or

(C) one year prior to the accident date; or

(D) at the time of such accident the covered entity knew or should have known that the employee:

(I) had a vehicle accident which was his fault,

(II) had been convicted of driving under the influence of alcohol or drugs, or

(III) had been convicted of reckless driving, during the one year period prior to such accident and who had not completed a Fund approved driver safety program before the accident, provided, however, that this provision shall not apply if the date of the accident is less than thirty days after the covered entity knew of or should have known of the incident under a, b or c above.

(2) Property

(a) Risks Covered - Virtually all insurable risks of loss.

(b) Property Covered - Real and personal property owned by covered entities, for which they are liable or for which they have assumed responsibility, and which has been reported to the Fund.

(c) Limits - Replacement cost in most cases; sub-limits apply for earthquake and flood damage.

(d) Deductible - $1,000 per occurrence applies to each and every loss, as indicated in the coverage policy.

(e) A $100,000 deductible applies to each and every loss occurrence at any location for which:

(I) the fund has recommended that the insured take a reasonable risk reduction action:

(II) the fund has given the insured thirty days notice that this higher deductible will apply, if the recommendation is not complied with; and

(III) the insured has not complied with the recommendation within thirty days of notice that without compliance this higher deductible will apply

This higher deductible will cease to apply when the insured has complied with the recommendation to the satisfaction of the fund as evidenced by written notice to the insured of the reduction of the deductible.

(f) Conditions - The following conditions apply to property coverage.

(i) In case of loss, the covered entity shall:

(A) give immediate notice of such loss to the Fund;

(B) protect the covered property from further damage, make reasonable temporary repairs required to protect the covered property, and keep an accurate record of repair expenditures;

(C) prepare an inventory of damaged personal property, showing in detail, quantity, description, replacement value, and amount of loss. Attach to the inventory all bills, receipts and related documents that substantiate the figures in the inventory;

(D) exhibit the remains of the damaged property as often as may be reasonably required by the Fund and submit to examination under oath;

(E) submit to the Fund within 60 days after requested a signed, sworn statement of loss that sets forth to the best of the covered entity's knowledge and belief:

(I) the time and cause of loss;

(II) interest of the covered entity and all others in the property involved and all encumbrances on the property;

(III) other policies of insurance that may cover the loss;

(IV) changes in title or occupancy of the property during the term of the policy;

(V) specifications of any damaged building and detailed estimates for repair of the damage;

(VI) an inventory of damaged personal property described in (C) above;

(F) give immediate notice of the loss to the proper police authority if loss is due to a violation of law.

(ii) Values Reporting

The covered entity agrees to submit a statement of replacement values of property covered by the Fund by April 1st each year or by a later date as indicated by the Fund. Required information will be in formats requested by the Fund. In addition, any acquisition valued in excess of $25,000,000 must be reported within ninety days of acquisition in order to be covered. The requirements of this condition apply to all types of covered property.

(3) Bond

(a) Risks Covered - Faithful performance; all employees except treasurers by title are covered.

(b) Limits - $10,000,000

(c) Deductible -

(I) Subject to (II) below a $1,000 deductible applies to each and every occurrence

(II) A $100,000 deductible applies to each and every loss occurrence or from any operation which;

(A) the fund has recommended that the insured take a reasonable risk reduction action:

(B) the fund has given the insured thirty days notice that this higher deductible will apply, if the recommendation is not complied with; and

(C) the insured has not complied with the recommendation within thirty days of notice that without compliance this higher deductible will apply

This higher deductible will cease to apply when the insured has complied with the recommendation to the satisfaction of the fund as evidenced by written notice to the insured of the reduction of the deductible.

(d) Conditions -

(i) Upon knowledge or discovery of loss under this coverage, the covered entity shall:

(A) give notice thereof at the earliest practicable moment, not to exceed 30 days, to the Fund and,

(B) file detailed proof of loss, duly sworn to, with the Fund within four months after the discovery of loss.

(ii) Upon the Fund's request, the covered entity shall produce for the Fund's examination all pertinent records, at reasonable times and places as the Fund shall designate, and shall cooperate with the Fund in all matters pertaining to loss or claims under this coverage.

(4) Automobile Physical Damage

(a) Risks Covered - Comprehensive and collision.

(b) Automobiles Covered - All automobiles of an entity except personal use automobiles.

(c) Limits - Actual cash value

(d) Deductible - $1,000 or less, according to coverage policy.

(e) Conditions -

(i) In the event of loss, the covered entity shall:

(A) protect the covered automobile, whether or not this coverage applies to the loss, and any further loss or damage due to the named insured's failure to protect shall not be recoverable under this coverage; reasonable expenses incurred in affording such protection shall be deemed incurred at the Fund's request;

(B) give notice thereof as soon as practicable to the Fund or any of its authorized agents and also, in the event of theft or larceny, to the police;

(C) file with the Fund within 90 days after loss, sworn proof of loss in such form and including such information as the Fund may reasonably require and, upon the Fund's request shall exhibit the damaged property and submit to examination under oath;

(D) cooperate with the Fund and, upon the Fund's request, shall assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the covered entity because of loss with respect to which this coverage applies; and shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

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

(a) In accordance with Subsection 63A-4-101(2)(b)(v) UCA, in the event of any coverage dispute between the Fund and any covered entity or person, there shall be no right of legal action against the Fund, unless such right is specifically required by statute. Coverage disputes shall be resolved by binding arbitration upon request of any covered entity or person. In the event of a request, the Fund and the requesting covered entity or person shall each select an arbitrator and the two arbitrators shall select a third arbitrator. Decisions made by a majority of the three arbitrators shall be binding upon the Fund and the requesting covered entity or person. The Fund and the requesting covered entity or person shall each pay the cost of their chosen arbitrator. The losing party shall pay the cost of the third arbitrator. The Fund and the covered entity or person may mutually agree on any alterative arbitration procedure.

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

**R37-1-6. Premium Establishment.**

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

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

(2) Entity accidents, claims and loss history

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

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

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

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

(7) Entity operations and activities.

(8) Actuarial studies

**R37-1-7. Risk Control Standards.**

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

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

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

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

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

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

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

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

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

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

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

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

(a) Entity Risk Coordinator.

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

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

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

(e) The covered entity's Safety Director.

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

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

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

The committee shall be normally chaired by the covered entity's risk coordinator. The committee shall be responsible for oversight and supervision of the entity's risk coordination and

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

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

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

(b) Preparing, or reviewing the preparation of, the Risk Management self evaluation forms and shall certify their accuracy.

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

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

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

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

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

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

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

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

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

**R37-1-8. Underwriting Standards.**

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

(1) Covered entities shall complete the Risk Management Self Inspection Forms within established time frames on the forms supplied by the Fund, unless special exemption has been granted by the State Risk Manager.

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

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

(a) Covered entities shall establish procedures to ensure that any employee or volunteer who does not have a valid drivers license is not allowed to operate an entity vehicle or his own vehicle on entity business.

(b) Covered entities shall develop procedures to ensure that records of drivers license checks and the results of these checks shall be kept confidential.

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

(5) Covered entities shall require and document that all employees who operate entity vehicles, or their own vehicles on entity business as an essential function of the job, complete yearly a Fund approved or provided driver safety course. All other employees who drive vehicles as part of the performance of entity business shall complete a Fund approved or provided driver safety program at the time of initial employment and at least once every three years.

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

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

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

(c) Drivers who are convicted of Driving under the Influence of Alcohol or Drugs, or Reckless Driving shall not be allowed to operate entity vehicles.

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

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

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

**KEY: risk management**
**March 31, 2006** **63A-4-101 et seq.**
**Notice of Continuation June 28, 2002**

**R51. Agriculture and Food, Administration.**
**R51-3. Government Records Access and Management Act.**
**R51-3-1. Purpose and Authority.**

Under authority of the Government Records Access and Management Act, Section 63-2-204, and Section 63-2-904. This rule provides procedures for access and denial of access to government records.

**R51-3-2. Duties of Divisions within the Department.**

Each Division Director shall comply with Section 63-2-903 and shall appoint a records officer to perform, or to assist in performing the following functions:

A. The duties set forth in Section 63-2-903; and

B. Review and respond to requests for access to division records.

**R51-3-3. Requests for Access.**

A. All requests for access to records shall be in writing. Requests shall be directed to the attention of the records officer of the particular division which the requester believes generated or possesses the records.

B. The division is not required to respond to requests submitted to the wrong person or location within the time limits set by the Government Records Access and Management Act.

C. A fee will be charged for copies of records provided. Amounts charged for photocopying will be as authorized in Section 4-1-6 and Subsection 63-2-203(1). Fees must be paid at the time of the request or before the records are provided to the requester.

**R51-3-4. Requests to Amend a Record.**

An individual may contest the accuracy or completeness of a document pertaining to that individual pursuant to Section 63-2-603. The request shall be made in writing to the records officer of the particular division.

Adjudicative proceedings under the GRAMA Act shall be informal and will be carried out in accordance with Section 63-2-401 et seq., with the exception of appeals.

**R51-3-5. Appeals of Requests to Amend a Record.**

Appeals of requests to amend a record shall be handled as informal hearings under the Utah Administrative Procedures Act.

**R51-3-6. Forms.**

Request forms are available from the records officer of each division.

**KEY: government documents, freedom of information, public records**
**1992 63-2-204**
**Notice of Continuation March 16, 2006**

**R51. Agriculture and Food, Administration.**
**R51-4. ADA Complaint Procedure.**
**R51-4-1. Authority and Purpose.**

A. This rule is promulgated pursuant to Subsection 63-46a-3(2). The Department of Agriculture and Food adopts and defines complaint procedures to provide for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act, pursuant to 28 CFR 35.107, July 1, 1992 Ed.

B. No qualified individual with a disability, by reason of disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of this department, or be subjected to discrimination by this department.

**R51-4-2. Definitions.**

A. "The ADA Coordinator" means the Department of Agriculture and Food coordinator or his designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities in accordance with the Americans With Disabilities Act, or provisions of this rule.

B. "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

(1) Office of Planning and Budget;
(2) Department of Human Resource Management;
(3) Division of Risk Management;
(4) Division of Facilities Construction Management, and
(5) Office of the Attorney General.

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

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

E. "Individual with a disability" means a person who has a disability which limits one of the major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the Department of Agriculture and Food, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the state.

**R51-4-3. Filing of Complaints.**

A. The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 180 days from the date of the alleged act of discrimination. However, any complaint alleging an act of discrimination occurring between January 26, 1992 and the effective date of this rule may be filed within 60 days of the effective date of this rule.

B. The complaint shall be filed with the department's ADA Coordinator in writing or in another acceptable format suitable to the individual.

C. Each complaint shall:

(1) include the individual's name and address;
(2) include the nature and extent of the individual's disability;
(3) describe the department's alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation;
(4) describe the action and accommodation desired, and
(5) be signed by the individual or by a legal representative.

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

**R51-4-4. Investigation of Complaint.**

A. The ADA coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in R51-4-3(C) of this rule if it is not made available by the individual.

B. When conducting the investigation, the coordinator may seek assistance from the department's legal, human resource and budget staff in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve:

(1) an expenditure of funds which is not absorbable within the agency's budget and would require appropriation authority;
(2) facility modifications; or
(3) reclassification or reallocation in grade, the coordinator shall consult with the ADA State Coordinating Committee.

**R51-4-5. Issuance of Decision.**

A. Within 15 working days after receiving the complaint, the ADA Coordinator shall issue a decision outlining in writing or in another acceptable or suitable format stating what action, if any, shall be taken on the complaint.

B. If the coordinator is unable to reach a decision within the 15 working day period, he shall notify the individual with a disability in writing or by another acceptable suitable format why the decision is being delayed and what additional time is needed to reach a decision.

**R51-4-6. Appeals.**

A. The individual may appeal the decision of the ADA Coordinator by filing an appeal within five working days from the receipt of the decision.

B. The appeal shall be filed in writing with the department's executive director or a designee other than the department's ADA Coordinator.

C. The filing of an appeal shall be considered as authorization by the individual to allow review of all information, including information classified as private or controlled, by the department's executive director or designee.

D. The appeal shall describe in sufficient detail why the coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

E. The executive director or designee shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making any decision that would involve:

(1) an expenditure of funds which is not absorbable and would require appropriation authority;
(2) facility modifications; or
(3) reclassification or reallocation in grade, he shall also consult with the State ADA Coordinating Committee.

F. The decision shall be issued within ten working days after receiving the appeal and shall be in writing or in another acceptable or suitable format to the individual.

G. If the executive director or his designee is unable to reach a decision within the ten working day period, he shall notify the individual in writing or by another acceptable or suitable format why the decision is being delayed and the additional time needed to reach a decision.

**R51-4-8. Relationship to Other Laws.**

This rule does not prohibit or limit the use of remedies available to individuals under the Utah Anti-Discrimination Complaint Procedures Section 67-19-32; the Federal ADA

Complaint Procedures, 28 CFR Subpart F, beginning with Part 35.170, July 1, 1992 edition; or any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

**KEY: developmentally disabled, discrimination, grievances**
**1992 63-46a-3(2)**
**Notice of Continuation March 16, 2006**

**R65. Agriculture and Food, Marketing and Development.**
**R65-8. Management of the Junior Livestock Show Appropriation.**
**R65-8-1. Authority.**

A. Promulgated under authority of Subsections 4-2-2(1)(j) and (n) for the management of the Junior Livestock Show Appropriation.

B. It is the intent of these rules to regulate the following elements:

1. Establishment of a forum to carry out the intent of these rules
2. Participation in the appropriation
3. Establishment of official show dates and entry deadlines
4. Equitable distribution of the appropriation
5. Maintenance of administrative control of the fund

**R65-8-2. Establishment of a Forum.**

A. There is established a Utah Junior Livestock Show Association to be composed of the President, or the President's representative, of each of the Junior Livestock Shows that are currently participating in the appropriation. The President of each show, or the President's representative, may vote on issues at the annual meeting.

B. The Association will hold an annual meeting to conduct the business associated with carrying out the intent of these rules. The meeting will be held at a time decided upon by the officers.

C. The Association will conduct an election during even numbered years to elect a Vice-President and Secretary. The Vice-President will succeed the President on even numbered years. The Treasurer function will be carried out by the Commissioner's designated liaison to the Association as contained in R65-8-6.

D. The President of each participating show, or the President's representative, will attend the annual meeting or submit a written explanation for non-attendance to the President of the Association.

E. Representatives from at least one-third of the member shows will constitute a quorum for conducting business at the annual meeting.

F. Membership dues will be set by the officers of the Association, but may not exceed $25.00 per year, payable at the annual meeting. Allocations from the show fund may not be used to pay dues.

**R65-8-3. Participation in the Appropriation.**

A. Junior Livestock Shows which are not currently participating in the appropriation but who would like to participate must submit a request in writing to the President of the Association. This request will be acted on at the next annual meeting.

B. Any resident of the state who is a 4-H or FFA member and who meets the age requirements of the specific show must be allowed to participate in any show receiving funds under the terms of these rules.

**R65-8-4. Establishment of Official Show Dates and Entry Deadlines.**

A. By November 15 of each year, each show will submit, on an official form provided, all entrance requirements, including show dates, entry deadlines, and livestock ownership requirements. These documents will be filed with the Secretary for compilation into an official notice of show dates, entry deadlines and ownership requirements for distribution to the members.

**R65-8-5. Equitable Distribution of Appropriation.**

A. The association will be responsible for developing and maintaining an official formula for distribution of the appropriation. This formula will be filed with the Treasurer for general review, and will be used to develop the allotment for each show.

**R65-8-6. Maintenance of Administrative Control of the Fund.**

A. The Commissioner will designate a department employee as liaison to the Association. This designee will act as Association Treasurer and will insure, on behalf of the Commissioner, that the fund is being managed according to Legislative intent.

**KEY: exhibitions, livestock**
**1992 4-2-2(1)(j)(n)**
**Notice of Continuation March 16, 2006**

**R68. Agriculture and Food, Plant Industry.**
**R68-7. Utah Pesticide Control Act.**
**R68-7-1. Authority.**

Promulgated under authority of Section 4-14-6.

**R68-7-2. Registration of Products.**

All pesticide products distributed in Utah shall be officially registered annually with the Utah Department of Agriculture and Food.

(1) Application for registration shall be made to the department on forms prescribed and provided by them and shall include the following information:

(a) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant.

(b) The name of the pesticide.

(c) A complete copy of the label which will appear on the pesticide.

(2) The department may require submission of the complete formula of any pesticide if it is deemed necessary for administration of the Utah Pesticide Control Act. If it appears to the department that the composition of the product is such as to warrant the proposed claims for it, and if the product and its labeling and any other information which may be required to be submitted comply with the requirements of the act, the product shall be registered.

(3) The registrant is responsible for the accuracy and completeness of all information submitted concerning application for registration of a pesticide.

(4) Once a pesticide is registered under the Act, no further registration is required: Provided that,

(a) the product remains in the manufacturer's or registrant's original container; and

(b) the claims made for it, the directions for its use, and other labeling information do not differ in substance from the representations made in connection with the registration.

(5) Whenever the name of a pesticide product is changed or there are changes in the product ingredients, a new registration shall be required. Other labeling changes shall not require re-registration, but the registrant shall submit copies of all changes to the department as soon as they are effective.

(6) Whenever a registered pesticide product is to be discontinued for any reason, except when suspended or canceled by the U.S. Environmental Protection Agency (EPA), the Utah Department of Agriculture and Food requires said product to be registered for two years from date of the notice of discontinuation. When a product is found in commercial trade after the discontinuation period, the department will require that the registrant register said product as outlined in Chapter 14, Utah Pesticide Control Act, 4-14-3(1).

(7) The department may exempt any pesticide that is determined either (1) to be adequately regulated by another federal agency, or (2) be of a character which is unnecessary to subject to Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

(8) A registrant who desires to register a pesticide to meet special local needs pursuant to Section 24(c) of FIFRA shall comply with Section 4-14-3 of the Utah Pesticide Control Act.

(9) No registration is required for a pesticide distributed in Utah pursuant to an experimental use permit issued by the EPA or under Section 4-14-5 of the Utah Pesticide Control Act.

(10) A registration fee determined by the department, pursuant to Subsection 4-2-2(2), shall be paid annually for each product, regardless of the number of products registered per applicant.

(11) Each registration is renewed for a period of one year upon payment of the annual renewal fee determined by the department, pursuant to Subsection 4-2-2(2). It shall be paid on or before June 30 of each year. If the renewal of a pesticide registration is not received prior to July 1 of that year, an additional fee determined by the department pursuant to Subsection 4-2-2(2), shall be assessed and added to the original registration fee and shall be paid by the applicant before the registration renewal for that pesticide shall be issued.

**R68-7-3. Product Labeling.**

(A) Each container of pesticide distributed in Utah shall bear a label showing the information set forth in Section 4-14-4.

(B) All pesticide labels shall contain statements, words, graphic material, and any other information required by the EPA.

**R68-7-4. Classification of Pesticides.**

The commissioner shall classify all pesticide products registered in Utah for "restricted use" or "general use" according to standards consistent with Section 3 of FIFRA. The commissioner shall consider all pesticides and uses classified as restricted by the EPA to be restricted in the State of Utah. He may also restrict the use of additional pesticides if he finds that the characteristics of such pesticides require that their uses be restricted to prevent damage to property other than the property to which they are directly applied or to persons, animals, crops or vegetation other than the pests which they are intended to destroy. Individuals not appropriately certified are prohibited from using restricted-use pesticides, with the exception of those competent individuals working under the direct supervision of a certified private applicator.

**R68-7-5. Classification of Pesticide Applicators.**

Pesticide applicators shall be classified as commercial, non-commercial, or private applicators according to the following criteria:

(1) Commercial Applicator - any person who uses any pesticide for hire or compensation.

(2) Non-commercial Applicator - any person working as an individual or an employee of a firm, entity or government agency who uses or demonstrates the use of any restricted-use pesticide and who does not qualify as a private applicator, nor require a commercial applicator's license.

(3) Private Applicator - any person or his employer who uses or supervises the use of any restricted-use pesticide for the purpose of producing any agricultural commodity on property owned or rented by him or his employer or (if applied without compensation other than trading of services between producers of agricultural commodities) on the property of another person.

**R68-7-6. Categorization of Pesticide Applicators.**

Applicators shall be categorized in one or more of the categories defined below, based on the application site and the type of work they perform.

(1) Agricultural Pest Control.

(a) Plant. This category includes applicators using pesticides to control pests in the production of agricultural crops including, but not limited to, field crops, vegetables, fruits, pasture, rangelands, and non-crop agricultural lands.

(b) Animal. This category includes applicators using pesticides on animals including, but not limited to, beef and dairy cattle, swine, sheep, horses, goats, poultry, and to places on or in which animals inhabit. Doctors of veterinary medicine or their employees engaged in the business of applying pesticides for hire, publicly representing themselves as pesticide applicators or engaged in large-scale use of pesticides, are included in this category.

(2) Forest Pest Control. This category includes applicators using pesticides in forests, forest nurseries, and forest seed-producing areas.

(3) Ornamental and Turf Pest Control. This category includes applicators using pesticides to control pests in the

maintenance and production of ornamental trees, shrubs, flowers and turf. This includes controlling pests on home foundations, sidewalks, driveways, and other similar locations.

(4) Seed Treatment. This category includes applicators using pesticides on seeds.

(5) Aquatic Pest Control.

(a) Surface Water: This category includes applicators applying pesticides to standing or running water, excluding applicators engaged in public health-related activities included in R68-7-6(8).

(b) Sewer Root Control: This category includes applicators using pesticides to control roots in sewers or in related systems.

(6) Right-of-Way Pest Control. This category includes applicators using pesticides in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way, or other similar areas.

(7) Structural and Health-related Pest Control. This category excludes any fumigation pesticide application and is limited to applicators using pesticides in, on, or around food handling establishments; human dwellings; institutions, such as schools and hospitals; industrial establishments, including warehouses, storage units and any other structures and adjacent areas, public or private; to control household pests, fabric pests, and stored-product pests and to protect stored, processed and manufactured products. This category includes vertebrate pest control in and around buildings.

(8) Public Health Pest Control. This category includes state, federal, or other governmental employees or persons working under their supervision applying or supervising the use of restricted-use pesticides in public-health programs for the management and control of pests having medical and public-health importance.

(9) Regulatory Pest Control.

(a) This category is limited to state and federal, employees or persons under their direct supervision, who apply pesticides in a mechanical ejection device, or other methods to control regulated pests.

(b) This category is limited to state and federal, employees or persons under their direct supervision, who apply pesticides in a protective collar, or other methods to control regulated pests.

(10) Demonstration, Consultation and Research Pest Control.

This category includes individuals who demonstrate or provide instruction to the public in the proper use, techniques, benefits and methods of applying restricted-use pesticides. This category includes, but is not limited to agricultural field representatives, extension personnel, commercial representatives, consultants and advisors, and persons conducting field research with restricted-use pesticides. In addition, they shall meet the specific standards that may be applicable to their particular activity.

(11) Aerial Application Pest Control. This category includes applicators applying pesticides by aircraft. Aerial applicators are required to be certified in the Aerial-Application Pest-Control Category and any other categories of intended application.

(12) Vertebrate Animal Pest Control. This category includes applicators applying pesticides in the control of vertebrate pests outdoors, such as rodents, birds, bats, predators or domestic animals.

(13) Fumigation/Stored-Commodities Pest Control. This category includes applicators using fumigants to control pests in soils, structures, railroad cars, stored grains, manufactured products, grain elevators, flour mills, and similar areas and items.

(14) Wood-Preservation Pest Control. This category includes applicators who apply wood-preservative pesticides to wood products, such as fence posts, electrical poles, railroad ties, or any other form of wood products.

(15) Wood-Destroying Organisms Pest Control. This category includes applicators using pesticides to control termites, carpenter ants, wood-boring or tunneling insects, bees, wasps, wood-decaying fungi and any other pests destroying wood products.

**R68-7-7. Standards of Competence for Certification of Applicators.**

Applicators must show competence in the use and handling of pesticides according to the hazards involved in their particular classification by passing the tests and becoming certified as outlined in R68-7-8. Upon their becoming certified, the department will issue a license which will qualify an applicator to purchase and apply pesticides in the appropriate classification.

Standards for certification of applicators as classified in R68-7-4 have been established by the EPA and such standards shall be a minimum for certification of applicators in the State of Utah.

(1) Commercial and Non-Commercial Applicators.

Commercial and non-commercial applicators shall demonstrate practical knowledge by written examination(s) of the principles and practices of pest control and safe use, storage and transportation of pesticides, to include the general standards applicable to all categories and the standards specifically identified for each category or subcategory designated by the applicant, as set forth in 40 CFR, Section 171.4 and the EPA approved Utah State Plan for certification of pesticide applicators. In addition, applicators applying pesticides by aircraft shall be examined on the additional standards specifically identified for this method of application as set forth herein.

(a) Aerial Application. Additional Standards.

Applicators shall demonstrate by examination practical knowledge of pest control in a wide variety of environments. These may include, but are not limited to, agricultural properties, rangelands, forestlands, and marshlands. Applicators must have the knowledge of the significance of drift and of the potential for non-target injury and the environmental contamination. Applicators shall demonstrate competency as required by the general standards for all categories of certified commercial and non-commercial applicators. They shall comply with all standards set forth by the Federal Aviation Administration (FAA) and submit proof of current registration by that agency as a requirement for licensing as an aerial applicator.

(b) Exemptions. The standards for commercial and non-commercial applicators do not apply to the following persons for purposes of these rules:

(1) Persons conducting laboratory-type research involving pesticides; and

(2) Doctors of medicine and doctors of veterinary medicine applying pesticides or drugs or medication during the course of their normal practice and who do not publicly represent themselves as pesticide applicators.

(2) Private Applicators. Private applicators shall show practical knowledge of the principles and practices of pest control and the safe use of pesticides, to include the standards for certification of private applicators as set forth in 40 CFR Section 171.5. In addition, private applicators applying restricted-use pesticides by aircraft shall show practical knowledge of the additional standards specifically identified for that method of application in R68-7-6(11) of these rules.

(3) Supervision of Non-Certified Applicators by Certified Private Applicators.

(a) A certified private applicator who functions in a supervisory role shall be responsible for the actions of any non-certified applicators under his instruction and control.

(b) A certified private applicator shall provide written or oral instruction for the application of a restricted-use pesticide applied by a non-certified applicator under his supervision when the certified applicator is not required to be physically present. If an applicator cannot read, instructions shall be given in a language understood by the applicator. The instructions shall include procedures for contacting the certified applicator in the event he is needed.

(4) The certified applicator shall be physically present to supervise the application of a restricted-use pesticide by a non-certified applicator if such presence is required by the label of the pesticide being applied.

**R68-7-8. Certification Procedures.**

(A) Commercial Applicators.

(1) License Required. No person shall apply any pesticide for hire or compensation to the lands of another at any time without becoming certified and obtaining a commercial applicator's license issued by the department. Application for such a license shall be made in writing on an approved form obtained from the department and shall include such information as prescribed by the department. Each individual performing the physical act of applying pesticides for hire or compensation must be licensed. A license fee determined by the department, pursuant to Subsection 4-2-2(2), shall be assessed at the time of certification and recertification.

(2) Written Examination. An applicant for a commercial pesticide license shall demonstrate competency and knowledge of pesticide applications by passing the appropriate written examinations. Examination and educational-material fees determined by the department, pursuant to Subsection 4-2-2(2), shall be assessed at the time of certification and recertification. Any person applying to become certified or recertified must demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions, copied or transcribed from pesticide containers randomly chosen by division personnel, and (b) demonstrate the mixing and application of pesticides in a safe way. All applicants for a commercial applicator license must pass the general examination and the examination(s) pertaining to the category(s) for which they desire to be licensed. Certification examinations shall be conducted by representatives of the commissioner by appointment. A score of 70 or above is required to pass any written examination. A score of less than 70 on the general standards or category examinations shall result in denial of certification of that test. A person must pass the general and at least one category examination before becoming certified. An applicant scoring less than 70% on any examination may retake the test again the same day, schedule permitting.

(3) License Issuance. If the department finds the applicant qualified to apply pesticides in the classifications applied for and for which the prescribed fee(s) have been paid, the department shall issue a commercial applicator's license. The license shall expire December 31 of each year unless it has been revoked or suspended prior by the commissioner for cause, which may include any of the unlawful acts given in R68-7-11. If an application for a commercial license is denied the applicant shall be informed of the reason. The applicator is required to have their license in their immediate possession at all times when making a pesticide application. If the license has been lost or misplaced and a duplicate is requested from the Department of Agriculture and Food, a fee determined by the department pursuant to Subsection 4-2-2(2), must be paid before a replacement license will be issued.

(4) License Renewal, Recertification.

(a) A license will be renewed without examination if the renewal notice is received by the Utah Department of Agriculture and Food of prior to January 1 of any year.

(b) If the renewal notice is received after January 1 but before (March 1), individuals will be required to pay the late fee, and no re-examination will be required.

(c) If the renewal notice is received after March 1, individuals will be required to recertify according to the original pesticide-applicator certification procedures.

Each license shall expire on December 31 of the year of its issuance. Commercial applicators may voluntarily pay a triennial license fee in lieu of the annual license fee. Commercial applicators must recertify every three years, and be subject to re-examination at any time. Information that may be required to insure a continuing level of competence and ability to use pesticides safely and properly due to changing technology, and to satisfy certification requirements as described herein, or meet any other requirements specified by the commissioner shall be added to this rule as often as necessary.

(d)Recertification options:

(i) Complete the original certification process of taking the required general and category test(s) and passing each required test with a score of 70% or above or;

(ii) Attend approved recertification courses and pass the required category examinations with a score of 70% or above or;

(iii) Participate in approved continuing education courses and accumulate 24 credits during the valid three years of certification.

(5) Records Maintained. Commercial applicators shall keep and maintain records of each pesticide application. These records must be recorded within 24 hours after the pesticide application is made. These application records must include the following information:

(a) Name and address of property owner;

(b) Location of treatment site, if different from (a);

(c) The month, day and year when the pesticide was applied;

(d) Brand name of pesticide, EPA registration number, rate of pesticide applied per unit area and total amount of pesticide used;

(e) Purpose of application;

(f) The name, address and license number of the certified applicator who applied the pesticide.

Such records shall be kept for a period of two years from the date of application of the pesticide and shall be available for inspection by the commissioner's designee at reasonable times. The commissioner's designee shall, upon request, be furnished a copy of such records by the commercial applicator.

(6) Exemption.

The provisions of this section relating to licenses and requirements for their issuance do not apply to a person applying pesticides for his neighbors provided he operates and maintains pesticide application equipment for his own use, is not engaged in the business of applying pesticides for hire or compensation, does not publicly represent himself as a pesticide applicator, and operates his pesticide application equipment only in the vicinity of his owned or rented property for the accommodation of his neighbors; provided, however, that when such persons use a restricted-use pesticide, they shall comply with the certification requirements specified herein.

(B) Non-Commercial Applicators.

(1) License Required. No non-commercial applicator shall use or demonstrate the use of any restricted-use pesticide without becoming certified and obtaining a non-commercial applicator's license issued by the department. Application for such license shall be made in writing on an approved form obtained from the department and shall include such information as is prescribed by the department. Each individual performing the physical act of applying restricted-use pesticides must be licensed.

(2) Written Examination. An applicant for a non-

commercial pesticide license shall demonstrate to the department competency and knowledge of pesticides and their applications by passing the appropriate written examinations. Examination and educational-material fees determined by the department pursuant to Subsection 4-2-2(2), shall be assessed at the time an individual takes the general and category tests. All applicants for a non-commercial applicator license must successfully pass a general examination based upon standards applicable to all categories. After passing the general examination, applicants must pass the examination(s) pertaining to the category(s) for which they desire to be licensed. Certification examinations shall be conducted by representatives of the commissioner by appointment. A score of 70 percent or above is required for passing any written examination. A score of less than 70 percent on the general or category examinations shall result in denial of certification in that category. A person must passs the general and at least one category examination before becoming certified. An applicator scoring less than 70 percent on any examination may retake the test again the same day, schedule permitting. Any person applying to become certified or recertified must demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions, copied or transcribed from pesticide containers randomly chosen by division personnel, and (b) demonstrate the mixing and application of pesticides in a safe way.

(3) License Issuance. If the department finds the applicant qualified to apply pesticides in the classification(s) applied for, the department shall issue a non-commercial applicator's license limited to such activities and classifications applied for. A prescribed examination and educational material fees shall be required. The applicator is required to have his/her license in his/her immediate possession at all times when making a pesticide application. If the applicator losses or misplaces their license and requests a replacement from the Department of Agriculture and Food, a fee will be charged as determined by the department pursuant to Subsection 4-2-2(2), and must be paid before a replacement license will be issued. The license shall expire December 31, three calendar years after the issuance of the certification, unless it has been suspended or revoked by the commissioner for cause, which may include any of the unlawful acts given in R68-7-11. If an application for a non-commercial license is denied the applicant shall be informed of the reason.

(4) License Renewal, Recertification. Non-commercial applicators must recertify every three years, and be subject to re-examination at any time. Information that may be required to insure a continuing level of competence and ability to use pesticides safely and properly due to changing technology, and to satisfying certification requirements as described herein, or any other requirements specified by the commissioner shall be added to this rule as often as necessary.

Recertification options are:

(a) Complete the original certification process of taking the required general and category test(s) and passing each required test with a score of 70% or above or;

(b) Attend approved recertification courses and pass the required category test(s) with a score of 70% or above or;

(c) Participate in approved continuing education courses and accumulate 24 credits during the valid three years of certification.

(5) Records Maintained. Non-commercial applicators shall keep and maintain records of each application of any restricted-use pesticides. These application records must be recorded within 24 hours after the pesticide application is made. These records must include the following information:

(a) Name and address of property owner;

(b) Location of treatment site, if different from (a);

(c) The month, day and year when the pesticide was applied;

(d) Brand name of pesticide, EPA registration number, rate of pesticide applied per unit area, and total amount of pesticide used;

(e) Purpose of application;

(f) The name, address, and license number of the certified applicator who applied the pesticide.

Such records shall be kept for a period of two years from the date of application of the pesticide and shall be available for inspection by the commissioner's designee at reasonable times. The commissioner's designee shall, upon request, be furnished a copy of such records by the non-commercial applicator.

(6) Exemption. The provisions of this section shall not apply to persons conducting laboratory research involving restricted-use pesticides as drugs or medication during the course of their normal practice.

(C) Private Applicators.

(1) License Required. No private applicator shall purchase, use or supervise the use of any restricted-use pesticide without a private applicator's license issued by the department. Issuance of such license shall be conditioned upon the applicator's complying with the certification requirements determined by the department as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons. Application for a license shall be made in writing on a designated form obtained from the department.

(2) Certification Methods. Any person applying to become licensed must demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions, copied or transcribed from pesticide containers randomly chosen by division personnel, and (b) demonstrate the mixing and application of pesticides in a safe way. All first-time Private Applicators must successfully pass a written test. A score of 70 percent or above is required for passing any written test. A score of less than 70 percent will result in the denial of certification.

(3) Emergency-Use Permit. A single restricted-use pesticide may be purchased and used by a non-certified person on a one-time-only basis if an emergency control situation is shown to exist. Before purchasing the product, the applicant shall participate in a discussion concerning safe use of the specific product with a representative of the Utah Department of Agriculture and Food. Following an adequate discussion of same, the Department of Agriculture and Food may issue the applicant a permit to purchase and use the product on a specific site on a one-time-only basis. The applicant shall be required to become certified before being authorized to further purchase and use restricted-use pesticides.

(4) License Issuance. If the department finds the applicant qualified to apply pesticides, the applicant shall be issued a private applicator's license. Examination and educational-material fees determined by the department pursuant to Subsection 4-2-2(2), shall be assessed at the time of certification and recertification. The license issued by the commissioner shall expire on December 31, three calendar years after issuance, unless the license has been revoked or suspended by the commissioner. If an application for a private license is denied, the applicant shall be informed of the reason. If the license has been lost or misplaced and a duplicate is requested from the Department of Agriculture and Food, a fee determined by the department pursuant to Subsection 4-2-2(2), must be paid before a replacement license will be issued.

(5) License Renewal, Recertification. A person applying to recertify must demonstrate the ability to : (a) read and understand three or more sets of pesticide label directions, copied or transcribed from pesticide containers randomly chosen by division personnel, and (b) demonstrate the mixing and application of pesticides in a safe way. All certified private applicators must recertify every three years, or more frequently if determined necessary by the department, by satisfying any of

the following procedures or any other requirements specified by the department.

(a) Training Course. Completion of a training course approved by the Utah Department of Agriculture and Food which may require passing a written test with a score of 70% or above or;

(b) Self-Study Program. Successful completion of an approved written test. A passing score of 70 percent or above is required or;

(c) Written Examination. Successful completion of an approved written test. A score of 70 percent or above is required to pass or;

(d) Accumulate nine credits of approved continuing education during the valid three years of certification.

(D) Employees of Federal Agencies. Federal Government Employees wishing to be certified in Utah shall be required to qualify as non-commercial applicators by passing the appropriate examinations, unless such requirement is waived upon presentation of adequate evidence of certification in the appropriate categories from another state with comparable certification requirements. In the event a federal agency develops an applicator certification plan which meets the Utah certification standards, employees of that agency who become certified under that plan may qualify for certification in the State of Utah.

(E) Certification of Out-of-State Applicants.

When a pesticide applicator is certified under an approved state plan of another state and desires to apply pesticides in Utah, he/she shall make application to the department and shall include, along with the proper fee and any other details required by the Act or these rules, a true copy of his credentials as proof of certification in the person's state of residence and a letter from that state's department of agriculture stating that he/she has not been convicted of a violation of any pesticide law and is currently licensed as a pesticide applicator in that state. The department may upon review of the credentials, issue a Utah certification to the applicator in accordance with the use situations for which the applicator is certified in another state without requiring determination of competency; provided that the state having certified the applicator will similarly certify holders of Utah licenses or certificates and has entered into a reciprocal agreement with the State of Utah. Out-of-state pesticide applicators who operate in Utah will be subject to all Utah laws and rules.

**R68-7-9. Dealer Licensing.**

(A) In order to facilitate rules of the distribution and sale of restricted-use pesticides, it is necessary to license dealers who dispense such materials.

(1) License Required.

It shall be unlawful for any person to act in the capacity of a restricted-use pesticide dealer, or advertise as, or presume to act as such a dealer at any time without first having obtained an annual license from the department. A license shall be required for each location or outlet located within this state from which such pesticides are distributed; provided, that any manufacturer, registrant or distributor who has no pesticide dealer outlet licensed within this state and who distributes a restricted-use pesticide directly into this state shall obtain a pesticide dealer's license for his principal out-of-state location or outlet; provided further, that any manufacturer, registrant or distributor who sells only through or to a pesticide dealer is not required to obtain a pesticide dealer's license.

(2) License Issuance. Application for a pesticide dealer's license shall be on a form prescribed by the department and shall be accompanied by a license fee determined by the department pursuant to subsection 4-2-2(2). If the department finds the applicant qualified to sell or distribute restricted-use pesticides and the applicant has paid the prescribed license fee, the department shall issue a restricted-use pesticides dealer's license. Pesticide dealers may voluntarily pay a triennial license fee in lieu of the annual license fee. This license shall expire December 31 of each year, unless it has been previously revoked or suspended by the commissioner for causes which may include any of the unlawful acts included in R68-7-11.

(3) License Renewal. License-renewal fees are payable annually before January 1. Pesticide dealers may voluntarily pay a triennial license fee in lieu of the annual license fee. If the renewal of a pesticide dealer's license is not received prior to January 1 of any one year, an additional fee determined by the department pursuant to Subsection 4-2-2(2), shall be assessed and added to the original license fee and shall be paid by the applicant before the license renewal shall be issued.

(4) Records Maintained. Each dealer outlet licensed to sell restricted-use pesticides shall be required by the department to maintain a restricted-use pesticide sales register by entering all restricted-use pesticide sales into the register at the time of sale. A register form, provided by the department, shall include the following information:

(a) The name and address of the purchaser.

(b) Brand name of restricted-use pesticide purchased.

(c) EPA registration number of restricted-use pesticide purchased.

(d) Month, day and year of purchase.

(e) Quantity purchased.

(f) Signature and license number of the purchaser, pesticide category, expiration date of license, or signature of purchaser's agent (uncertified person) if letter of authorization is on file. Letter of authorization must include names of agents, signature and license number of purchaser.

Such records shall be kept for a period of two years from the date of restricted-use pesticide sale and shall be available for inspection by the commissioner's designee at reasonable times. The commissioner's designee, upon request, shall be furnished a copy of such records by the restricted-use pesticide dealer.

(5) Exemption. Provisions of this section shall not apply to: (a) a licensed pesticide applicator who sells restricted-use pesticides only as an integral part of his pesticide application service when such pesticides are dispensed only through equipment used for such pesticide application (b) Federal, state, county, or municipal agency which provide restricted-use pesticides only for its own programs shall be exempt from the license fee but must meet all other requirements of a pesticide dealer.

(6) Responsible for Acts of Employees. Each pesticide dealer shall be responsible for the acts of each person employed by him in the solicitation and sale of restricted-use pesticides and all claims and recommendations for use of restricted-use pesticides. A dealer's license shall be subject to denial, suspension or revocation for any violation of the Pesticide Control Act or rules promulgated thereunder, whether committed by the dealer or by the dealer's officer, agent, or employee.

**R68-7-10. Transportation, Storage and Disposal of Pesticides and Pesticide Containers.**

No person shall transport, store, or dispose of any pesticide or pesticide containers in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife or beneficial insects or to pollute any waterway in a manner harmful to any wildlife therein.

**R68-7-11. Unlawful Acts.**

Any person who has committed any of the following acts is in violation of the Utah Pesticide Control Act or rules promulgated thereunder and is subject to penalties provided for in Sections 4-2-2 through 4-2-15:

(1) Made false or fraudulent claims through any media

misrepresenting the effect of pesticides or methods to be utilized;

(2) Applied known ineffective or improper pesticides;

(3) Operated in a faulty, careless or negligent manner;

(4) Neglected or, after notice, refused to comply with the provisions of the Act, these rules or of any lawful order of the department;

(5) Refused or neglected to keep and maintain records required by these rules, or to make reports when and as required;

(6) Made false or fraudulent records, invoices or reports;

(7) Engaged in the business of applying a pesticide for hire or compensation on the lands of another without having a valid commercial applicator's license;

(8) Used, or supervised the use of, a pesticide which is restricted to use by "certified applicators" without having qualified as a certified applicator;

(9) Used fraud or misrepresentation in making application for, or renewal of, a registration, license, permit or certification;

(10) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or permit;

(11) Used or caused to be used any pesticide in a manner inconsistent with its labeling or rules of the department if those rules further restrict the uses provided on the labeling;

(12) Aided or abetted a licensed or an unlicensed person to evade the provisions of the Act; conspired with such a licensed or an unlicensed person to evade the provisions of the Act; or allowed one's license or permit to be used by another person;

(13) Impersonated any federal, state, county, or other government official;

(14) Distributed any pesticide labeled for restricted use to any person unless such person or his agent has a valid license, or permit to use, supervise the use, or distribute restricted-use pesticide;

(15) Applied pesticides onto any land without the consent of the owner or person in possession thereof; except, for governmental agencies which must abate a public health problem.

(16) Applied pesticides known to be harmful to honeybees on crops on which bees are foraging during the period between two hours after sunrise and two hours before sunset; except, on property owned or operated by the applicator.

(17) For a commercial or a non-commercial applicator to apply a termiticide at less than label rate.

(18) For an employer of a commercial or non-commercial applicator to allow an employee to apply pesticide before that individual has successfully completed the prescribed pesticide certification procedures.

(19) For a pesticide applicator not to have his/her current license in his/her immediate possession at all times when making a pesticide application.

(20) To allow, through negligence, an application of pesticide to run off, or drift from the target area to cause plant, animal, human or property damage.

**KEY: inspections**
**January 1, 1997** **4-14-6**
**Notice of Continuation March 16, 2006**

**R70. Agriculture and Food, Regulatory Services.**
**R70-330. Raw Milk for Retail.**
**R70-330-1. Authority.**

A. Promulgated under the authority of Section 4-3-2.

B. Scope: This rule establishes the requirements for the production, distribution, and sale of raw milk for retail.

**R70-330-2. Raw Milk Defined.**

Raw milk for retail shall be milk as defined by law that has not been pasteurized. The word milk shall be interpreted to include the normal lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy hoofed mammals.

**R70-330-3. Permits.**

A permit shall be required to sell raw milk for retail. Such permit shall be suspended when these rules or applicable sections of the Utah Dairy Act, Utah Code Annotated (UCA), Vol. 1, Title 4, Chapter 3, are violated.

**R70-330-4. Building and Premises Requirements.**

The building and premises requirements at the time of the issuance of a new permit shall be the same as the current Grade A building guidelines. In addition to these guidelines, there shall be separate rooms provided for (1) packaging and sealing of raw milk, (2) the washing of returned multi-use containers when applicable, and (3) a sales room for the sale of raw milk in a properly protected area that is not located in any of the milk handling rooms. These rooms shall meet or exceed the construction standards of a Grade A milkhouse.

**R70-330-5. Sanitation and Operating Requirements.**

A. The Utah Department of Agriculture and Food, with the concurrence of the U.S. Food and Drug Administration (FDA) strongly advises against the consumption of raw milk. There are numerous documented outbreaks of milkborne disease involving Salmonella and Campylobacter infections directly linked to the consumption of un-pasteurized milk. Cases of raw milk associated campylobacteriosis have been reported in the states of Arizona, California, Colorado, Georgia, Kansas, Maine, Montana, New Mexico, Oregon, Pennsylvania, and Utah. An outbreak of samonellosis, involving 50 cases was confirmed in Ohio in 2002. Recent cases of E. coli 0157:H7, Listeria monocytogenes, and Yersinia enterocolitica infections have also been attributed to raw milk consumption.

B. Sanitation and operating requirements of all raw milk facilities shall be the same as that required on a Grade A dairy farm producing milk for pasteurization. Milk packaging areas and container washing areas at the raw milk facilities shall meet the requirements for Grade A pasteurized milk processing plants.

C. All milk shall be cooled to 41 degrees F. or less within two hours after milking, provided that the blend temperature after the first milking and subsequent milkings does not exceed 50 degrees F. Milk not handled in this manner may be deemed adulterated and shall not be sold.

D. The sale and delivery of raw milk shall be made on the premise where the milk is produced and packaged. The sale shall be to consumers for household use and not for resale. The sale of block cheese, when held at 35 degrees F. for 60 days or longer, may be sold at retail or for wholesale distribution, at locations other than the premise where the milk was produced.

E. All products made from raw milk including cottage cheese, buttermilk, sour cream, yogurt, heavy whipping cream, half and half, butter, and ice cream shall not be allowed for sale in Utah to individual consumers due to potential negative public health implications of such products.

**R70-330-6. Testing.**

A. Raw Milk for Retail Testing.

1. The requirements, standards, and enforcement procedures for testing raw milk for retail to include: added water, antibiotics, pesticides, and/or other adulterants shall be the same as those used for raw milk for Grade A.

2. The requirements, standards, and enforcement procedures for testing for Somatic Cell Count (SCC) in raw milk for retail, shall be that the Somatic Cell Count shall not exceed 350,000 cells per milliliter (ml).

3. The requirements, standards, and enforcement procedures for testing for bacteria and coliform shall be the same as those prescribed for Grade A pasteurized milk. The bacterial standard shall be a Standard Plate Count (SPC) of no more than 20,000 per ml.; Coliform count shall not exceed 10 per ml.

B. Animal Health Tests.

1. General herd health examination. Prior to inclusion in a raw milk supply, and each six months thereafter, all animals shall be examined by a veterinarian. Each animal in the herd must be positively identified as an individual. This examination shall include an examination of the milk by the California Mastitis Test (CMT), shall include a statement of the udder health of each animal, and a general systemic health evaluation.

2. Tuberculosis testing. Prior to inclusion in a raw milk supply, each animal shall have been tested for tuberculosis within 60 days prior to the beginning of milk production and shall be retested for tuberculosis once each year thereafter. All positively reacting animals shall be sent to slaughter in accordance with R58-10 and R58-11.

3. Brucellosis testing. Each animal from which raw milk for retail is produced shall be positively identified as a properly vaccinated animal or shall be negative to the official blood test for brucellosis within 30 days prior to the beginning of each lactation. All positively reacting animals shall be sent to slaughter in accordance with R58-10 and R58-11. Goats and sheep shall be tested once each year for brucellosis with the official blood test and all positively reacting animals shall be sent to slaughter in accordance with R58-10 and R58-11.

4. Bulk tank milk testing. All raw milk for retail shall be bulk tank tested at least four times yearly with the brucella milk ring test. If such brucella ring test is positive for brucellosis, then each animal in the herd shall be tested with the official blood test and any reactors found shall be immediately sent to slaughter in accordance with R58-10 and R58-11.

C. Personnel Health.

Each employee of the dairy working in the milk handling operation shall obtain a valid medical examination health card signed by a physician and approved by the department once each year or shall hold a valid food handler's permit. No person shall work in a milk handling operation if infected from any contagious illness or if they have on their hands or arms any exposed infected cut or lesion. If there is any question in this regard, the department may ask for an additional certification from a physician that this person is free from disease which may be transmitted by milk.

**R70-330-7. Packaging and Labeling.**

A. Label Requirements.

The consumer containers for raw milk for retail shall be furnished by the permittee and shall be labeled with the following information:

1. The common or usual name of the product without grade designation. The common name for raw milk is "Raw Milk". If it is other than cow's milk, the word "milk" shall be preceded with the name of the animal, i.e., "Raw Goat Milk".

2. The name, address, and zip code of the place of production and packaging.

3. Proper indication of the volume of the product either on the container itself or on the label.

4. Nutritional labeling information when applicable.

5. The phrase: "Studies have established a direct causal link between gastrointestinal disease and the consumption of raw milk. Raw milk, no matter how carefully produced, may be unsafe.", shall appear on the label in a conspicuous place. The height of the smallest letter shall be no less than one sixteenth inch.

6. Other provisions of labeling laws in effect in Utah as they apply to dairy/food products.

B. Products not labeled as required shall be deemed misbranded.

**KEY: food inspection**
**June 2, 2004 4-3-2**
**Notice of Continuation March 16, 2006**

**R70. Agriculture and Food, Regulatory Services.**
**R70-370. Butter.**
**R70-370-1. Authority.**

A. Promulgated Under the Authority of Section 4-3-2.

B. Scope - This rule shall apply to all butter sold, bought, processed, manufactured or distributed within the State of Utah.

**R70-370-2. Adoption of United States Standards.**

The United States Standards for Grades of Butter as specified in CFR 7 Chapter 1, subchapters 58.2621 through 58.2635, as revised January 1, 1993, are hereby adopted and incorporated by reference within this rule.

**R70-370-3. Sanitation and Processing Requirements.**

Butter shall be produced, handled, packed, cut and printed under conditions meeting all sanitary requirements of Title 4, Chapter 3 and R70-320.

**KEY: food inspection**
**1987 4-3-2**
**Notice of Continuation March 16, 2006**

**R70. Agriculture and Food, Regulatory Services.**
**R70-380. Grade A Condensed and Dry Milk Products and Condensed and Dry Whey.**
**R70-380-1. Authority.**

A. Promulgated Under the Authority of Section 4-3-2.

B. Scope: This rule shall apply to all Grade A condensed milk products and condensed and dry whey sold, bought, processed, manufactured or distributed within the State of Utah.

**R70-380-2. Adoption of Ordinance.**

The publication entitled: "The Grade-A Condensed and Dry Milk Products and Condensed and Dry Whey Supplement #1 to the Grade A Pasteurized Milk Ordinance", including administrative procedures and appendixes, as published in 1995 by the United States Public Health Service, including "Recommendations", is hereby incorporated by reference within this rule.

**R70-380-3. Changes in Ordinance.**

Changes in the Condensed and Dry Milk Regulations as approved by the U.S. Food and Drug Administration shall be reviewed by this department for possible application, and these rules shall be amended to reflect those new standards as necessary.

**R70-380-4. Regulatory Agency Defined.**

The definition of "regulatory agency" as given in Section 1(P) of the Dry Milk Ordinance 1995 revision shall mean the Commissioner of Agriculture and Food of the State of Utah or his authorized representative(s).

**R70-380-5. Penalty.**

Violation of any portion of the Grade A Dry Milk Ordinance 1995 recommendations may result in civil or criminal action, pursuant to 4-2-15.

**KEY: food inspection**
**March 4, 1997** **4-3-2**
**Notice of Continuation March 16, 2006**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**R70-410-3. Packaging.**

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

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

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

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

These rules are known as the "Private Probation Provider Licensing Act Rules".

**R156-50-102. Definitions.**

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

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

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

(3) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 50, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-50-502.

**R156-50-103. Authority.**

These rules are adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 50.

**R156-50-104. Organization - Relationship to Rule R156-1.**

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

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

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the education and equivalent training requirements for licensure in Subsection 58-50-5(1) are defined, established and defined as follows:

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

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

**R156-50-303. Renewal Cycle - Procedures.**

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 50 is established by rule in Section R156-1-308.

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

**R156-50-304. Continuing Education.**

(1) In accordance with Subsections 58-1-203(7) and 58-1-308(3)(b) and the continuing education requirement for renewal of licensure in Subsection 58-50-6(2), each person holding a license shall complete 40 hours of qualified continuing professional education (CPE) every two years.

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

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

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

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

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

**R156-50-502. Unprofessional Conduct.**

"Unprofessional conduct" includes the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) juvenile arrest and disposition records;

(b) adult arrest and disposition records;

(c) county attorney or city prosecutor file information;

(d) arresting officer's report;

(e) victim impact statement;

(f) driving history record;

(g) blood/breath alcohol content test results;

(h) treatment evaluations; and

(i) medical reports.

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

(a) the defendant;

(b) the victim, and

(c) the following when relevant and available:

(i) family;

(ii) friends;

(iii) school;

(iv) employers;

(v) military; and

(vi) past and present treatment providers.

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

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

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

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

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

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

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

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

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

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

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

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

(b) perform other monthly interviews;

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

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

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

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

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

**KEY: licensing, probation, private probation provider**

| | |
|---|---|
| **January 18, 2005** | **58-50-1** |
| **Notice of Continuation March 13, 2006** | **58-1-106(1)(a)** |
| | **58-1-202(1)(a)** |
| | **58-50-5(1)** |
| | **58-50-9(5)** |

**R162. Commerce, Real Estate.**
**R162-203. Changes to Residential Mortgage Licensure Statement.**
**R162-203-1. Status Changes.**

203.1. A licensee shall notify the Division within ten working days of any status change. Status changes are effective on the date the properly executed forms and non-refundable fees are received by the Division. Notice must be on the forms required by the Division.

203.1.1 Change in Entity. If a change in a licensed entity results in the creation of a new legal entity, the new entity may not operate under the license issued to the previous entity. If the change of partners in a partnership, either by the addition or withdrawal of partners, creates a new legal entity, the new entity may not operate under the license issued by the Division to the previous partnership. The dissolution of a corporation, partnership, limited liability company, association, or other entity that holds a license issued by the Division terminates that license.

203.1.1.1 Notification of Change in Entity. The control person of a licensed entity shall provide written notification to the Division of any change in the entity that will create a new legal entity or that will cause the dissolution of the entity prior to the effective date of the change.

203.1.2. Change of name requires submission of official documentations such as a marriage certificate, divorce decree, or driver's license.

203.1.3. Change of business, home address or mailing address requires written notification. A post office box without a street address is unacceptable as a business or home address. The licensee may designate any address to be used as a mailing address.

203.1.4. Change of name of a licensed entity shall be accompanied by evidence that the new name has been approved by the Division of Corporations and Commercial Code, Department of Commerce.

203.1.5. Change of control person of a licensed entity requires notice from the entity in the form required by the Division, signed by both the terminating control person and the new control person, and the applicable change fee.

**R162-203-2. Entity Affiliation.**

An individual licensed under the Utah Residential Mortgage Practices Act shall notify the Division on the form required by the Division of the entity for which that individual shall conduct residential mortgage lending before acting on behalf of that entity.

203.2.1. Transfers. Prior to transferring from one entity to another, or from one branch office to another, the licensee must mail, deliver, or electronically transmit to the Division written notice of the transfer on the form required by the Division.

**R162-203-3. Unavailability of Licensee.**

203.3.1 Mortgage Officers. If a mortgage officer is not available to properly execute the form required to terminate the license affiliation of the mortgage officer with a licensed entity, the control person of the entity may still terminate the mortgage officer's license affiliation with the entity, provided a letter advising the mortgage officer of the termination is mailed by the control person of the entity by certified mail to the last known address of the mortgage officer. A verified copy of the letter and proof of mailing by certified mail shall be attached to form required to terminate the mortgage officer's license affiliation with the entity when the form is submitted to the Division.

203.3.2 Control Person. If control person who will no longer be the control person designated by the entity is not available to properly execute the form that is required by the Division to substitute one control person for the other, the change in control person may still be made by the entity, provided a letter advising of the change is signed by a person who is legally authorized to make staffing decisions on behalf of the entity and mailed by certified mail to the last known address of the unavailable person. A verified copy of the letter and proof of mailing by certified mail shall be attached to the form required by the Division to substitute one control person for another when the form is submitted to the Division.

**R162-203-4. Inactivation.**

203.4 To voluntarily inactivate a license, the licensee shall deliver, mail, or electronically transmit to the Division a written request for license inactivation on the form required by the Division, which form shall have been signed by both the licensee and the licensee's control person.

203.4.1 The control person of the entity with which a mortgage officer is licensed may terminate the mortgage officer's license affiliation with the entity without the mortgage officer's consent, known as an "involuntarily inactivation" of the mortgage officer's license by complying with R162-203.3.1.

**R162-203-5. Activation.**

203.5 All licensees changing to active status must submit to the Division:

(a) the applicable non-refundable activation fee;

(b) a written request for activation on the form required by the Division; and

(c) if the licensee was on inactive status at the time of the most recent renewal, proof of successful completion of the number of hours of continuing education that would have been required to renew had the licensee been on active status at the time of the licensee's most recent renewal. To qualify as continuing education for activation, all continuing education hours submitted must have been completed within twenty-four months prior to applying to activate.

**KEY: residential mortgage loan origination**
**March 9, 2006 61-2c-205(3)**

**R162. Commerce, Real Estate.**
**R162-207. License Renewal.**
**R162-207-1. License Renewal.**

207.1 Renewal period. Registrations and licenses issued under the Utah Residential Mortgage Practices Act are valid for a period of two years.

207.1.1 Notwithstanding Section 207.1, an individual license shall be inactivated by the division on January 1, 2005 if the holder of that license has not by that date submitted proof to the division of having passed the examination required by Section 61-2c-202(4)(a)(i)(C). The holder of a license that has been inactivated under this section may not engage in the business of residential mortgage loans for which licensure under this chapter is required until the individual has provided to the division any forms required by the division to activate the license, along with proof of having passed the examination required by Section 61-2c-202(4)(a)(i)(C).

**R162-207-2. Renewal of Converted Licenses.**

207.2 If an individual whose existing registration was converted by the division to a license pursuant to R162-202.6 applies to renew after January 1, 2004, but before January 1, 2005, the division shall renew the license without requiring proof that the individual has passed the examination required by Section 61-2c-202(4)(a)(i)(C). The renewed license issued under the authority of this section shall be issued subject to Section 61-2c-202(4)(a)(ii).

**R162-207-3. Renewal Process.**

207.3.1 Renewal Notice. A license renewal notice shall be sent by the Division to the licensee at the mailing address shown on Division records. The renewal notice shall specify the requirements for renewal and shall require that the licensee document or certify that the requirements have been met. The licensee must apply to renew and pay all applicable fees on or before the expiration date shown on the notice.

207.3.2 Application for Renewal. All applications for renewal must be made in the form required by the division and shall include the following:

(a) A licensure statement in the form required by the division;

(b) The renewal fee and the Residential Mortgage Loan Education, Research, and Recovery Fund fee;

(c) If the applicant is an individual, proof using forms approved by the division of having completed during the two years prior to application the continuing education required by the commission under Section 61-2c-104;

(d) The current home street address and home telephone number of any individual applicant or control person of an entity applicant;

(e) A current mailing address for the applicant;

(f) Answers to a "Licensing Questionnaire" supplying information about events that occurred in the preceding two years related to mortgage licensure in other jurisdictions, license sanctions or surrenders, pending disciplinary actions, pending investigations, criminal convictions or pleas, and/or civil judgments or findings based on fraud, misrepresentation, or deceit;

(g) If, at the time of application for renewal, an individual applicant or a control person of an entity applicant is charged with, or since the last renewal has been convicted of or entered a plea to, any felony or misdemeanor, the following information must be provided on each conviction, plea, or charge: the charging document, the case docket, and the judgment and sentencing document, if applicable; and

(h) If, in the two years preceding application for renewal, an individual or entity applicant or a control person of an entity applicant has had a license or registration suspended, revoked, surrendered, canceled or denied based on misconduct in a professional capacity that relates to good moral character or the competency to transact the business of residential mortgage loans, the applicant must provide the documents stating the sanction taken against the license or registration and the reasons therefore.

207.3.3 Continuing Education Requirement. All active licensees are required to have completed their continuing education requirement prior to applying to renew.

207.3.3.1 Documentation of Continuing Education. Any licensee who renews online and certifies that the required continuing education has been completed shall maintain the original course completion certificates supporting that certification for two years following renewal. The licensee shall produce those certificates for audit upon request by the Division.

207.3.3.2 Out of State Courses. Continuing education credit will be given for a course taken in another state provided the course has been certified for continuing education purposes by the licensing agency in the other state and the subject matter of the course relates to protection of the public, but not to state-specific licensing laws. Evidence must be retained by the licensee, and provided to the Division upon request, that the course was certified by the other state at the time the course was taken.

207.3.3.3 Continuing Education Requirement upon activation of license. As a condition for the activation of an inactive license that was on inactive status at the time of the licensee's most recent renewal, the licensee shall supply the Division with proof of successful completion of the number of hours of continuing education that would have been required to renew had the license been on active status at the time of the licensee's most recent renewal. To qualify as continuing education for activation, all continuing education hours submitted must have been completed within twenty-four months prior to applying to activate.

207.3.4 Late Renewal. If all required renewal forms, fees, and documentation have not been received or postmarked by the expiration date of the license, the license shall expire. When an active license expires, an individual licensee's affiliation with a licensed entity automatically terminates.

207.3.4.1 A licensee may apply to renew an expired license within thirty days after the expiration date of the license by completing all of the renewal requirements, including the continuing education requirement, and paying a non-refundable late fee.

207.3.4.2 After the thirty day period, and until six months after the expiration date of the license, a licensee may apply to reinstate a license by completing all of the renewal requirements, including the continuing education requirement, paying a non-refundable late fee, and providing proof of successful completion of 12 hours of continuing education in addition to that required for a timely renewal on active status.

**R162-207-4. Current Entity Name Registration.**

207.4 An entity submitting an application for renewal must at the time of application have a name registration with the Utah Division of Corporations that is current and in good standing. The division will not process an application for renewal unless it can verify that the applicant's name registration is current and in good standing.

**R162-207-5. Incomplete Application.**

207.5 If an applicant makes a good faith attempt to submit a completed application for renewal prior to the expiration date of the applicant's current registration or license, but the application is incomplete, the Division may grant an extension for a period not to exceed 30 days to enable the applicant to provide the missing documents or information necessary to complete the application.

**R162-207-6. Nonrefundable Fees.**

207.6 All fees required in conjunction with an application for renewal are nonrefundable and will not be refunded if the applicant fails to complete an application or if a completed application is denied for failure to meet the renewal criteria.

**R162-207-7. Determining Fitness for Renewal.**

207.7 The commission and the division shall determine fitness for renewal in accordance with Section 202.5 above.

**R162-207-8. Applications Filed by Mail.**

207.8 The Division will consider a properly completed application for renewal that has been postmarked on or before the expiration date shown on the renewal notice to have been timely filed.

**R162-207-9. Misrepresentation on an Application.**

207.9 Any misrepresentation in an application for renewal, regardless of whether the application is filed with the Division by mail or made online, will be considered a separate violation of these rules and grounds for disciplinary action against the licensee.

**R162-207-10. Exemption from Continuing Education Requirement.**

207.10 A licensee may obtain an exemption from the continuing education requirement of R162-208.1 for a period not to exceed four years upon a finding by the Division that there is reasonable cause to grant the exemption.

207.10.1 Exemptions from the continuing education requirement may be granted for reasons including military service, prolonged absence from Utah for religious or secular service, and extended or serious illness.

207.10.2 A licensee seeking an exemption from the continuing education requirement shall apply to the Division for an exemption. An application for an exemption from the continuing education requirement shall set forth with specificity the reasons why the licensee is unable to complete the continuing education and the reasons why the licensee believes that an exemption would be reasonable.

207.10.3 A licensee may not seek a retroactive exemption by applying for the exemption after the time period for renewal and reinstatement of a license has already passed.

207.10.4 All applications for an exemption shall be considered in an informal proceeding before the Division Director or his designee and shall be based on the information submitted with the application. No hearing will be permitted.

207.10.5 Upon a finding of reasonable cause, the Division shall grant the exemption from the continuing education requirement for a specified period of time, not to exceed four years.

**KEY: residential mortgage loan origination**
**March 9, 2006** **61-2c-103(3)**
**61-2c-202(4)(a)(ii)**

**R251. Corrections, Administration.**
**R251-104. Declaratory Orders.**
**R251-104-1. Purpose.**

As required by Section 63-46b-21, UCA, the purpose of this rule is to define policy, procedures and requirements governing the submission, review, and disposition of petitions for declaratory orders determining the applicability of statutes, rules, and orders within the jurisdiction of the Department.

**R251-104-2. Authority.**

This rule is required by Title 63, Chapter 46b, the Utah Administrative Procedures Act, and is enacted under the authority of Section 63-46b-21.

**R251-104-3. Definitions.**

"Applicability" means whether a statute, rule or order should be applied to a given circumstance, and if so, how the statute, rule or order should be applied.

"Declaratory order" means an administrative interpretation or explanation of rights, status and other legal relations under a statute, rule or order.

"Department" means Utah Department of Corrections.

**R251-104-4. Policy.**

It is the policy of the Department that:

(1) any interested person may petition the Department for a declaratory order regarding statutes, orders, and rules which pertain to the jurisdiction of the Department;

(2) the Department shall provide forms, content and filing instructions to any person wishing to submit a petition for a declaratory order;

(3) the Department shall not review a petition for a declaratory order that is:

(a) not within the jurisdiction of the agency;

(b) irrelevant or immaterial; or

(c) otherwise excluded by state or federal law;

(4) the Department shall not review the petition if the person requesting the declaratory order has participated in an adjudicative proceeding concerning the same issue within 12 months of the date of the present request;

(5) the petition shall be reviewed and a declaratory order or progress report shall be issued by the Executive Director/designee within 30 days of receipt of the request;

(6) unless the petitioner and the Department agree in writing to an extension, or if the Department has not issued a declaratory order within 60 days after the receipt of the request for the declaratory order, the petition is to be considered as having been denied; and

(7) a declaratory order issued pursuant to Section 63-46b-21(6) has the same status and binding effect as any other order issued in an adjudicative proceeding.

**KEY: corrections, right of petition, appellate procedures**
**1993 63-46b-21**
**Notice of Continuation March 28, 2006**

**R251. Corrections, Administration.**
**R251-712. Release.**
**R251-712-1. Authority and Purpose.**

(1) This rule is authorized under Sections 64-13-7 and 64-13-10.

(2) The purpose of this rule is to provide the Department's policy regarding inmates leaving the institution on parole, termination, expiration of sentence, or being released to a detainer.

**R251-712-2. Definitions.**

"Detainer" means a hold on an inmate by another institution or jurisdiction who still has legal jurisdiction over the inmate in order to regain custody once released from the Utah State Prison.

**R251-712-3. Policy.**

It is the policy of the Department that:

(1) release transactions at the prison shall conform to statutory and other legal requirements;

(2) inmates leaving the prison, either on parole or to another jurisdiction shall be verified as to eligibility for release from the Utah State Prison;

(3) the Board of Pardons and Parole is the releasing authority for all inmates; and

(4) if an inmate is to be released to a detainer, it shall be the responsibility of the receiving agency to make arrangements for housing and transportation.

**KEY: corrections, prisons**

| | |
|---|---|
| **1994** | **64-13-7** |
| **Notice of Continuation March 28, 2006** | **64-13-10** |

**R277. Education, Administration.**
**R277-410. Accreditation of Schools.**
**R277-410-1. Definitions.**

A. "Accreditation" means the formal process for evaluation and approval under the Standards for Accreditation of the Northwest Association of Accredited Schools or the accreditation standards of the Board, available from the Utah State Office of Education Accreditation Specialist.

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

C. "Elementary school" for the purpose of this rule means grades K-6 in whatever kind of school the grade levels exists.

D. "Middle school" for the purpose of this rule means grades 7-8 in whatever kind of school the grade levels exist.

E. "Northwest" means the Northwest Association of Accredited Schools, the regional accrediting association of which Utah is a member.

F. "Secondary school" for the purpose of this rule means a school that includes grades 9-12 that offers credits toward high school graduation or diplomas or both in whatever kind of school the grade levels exist.

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

**R277-410-2. Authority and Purpose.**

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-1-402(1)(c)(i) which directs the Board to adopt rules for school accreditation, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify accreditation procedures and responsibility for public schools for which accreditation is required and for nonpublic schools which voluntarily request Northwest accreditation.

**R277-410-3. Accreditation of Public Schools.**

A. The USOE has responsibility to facilitate accreditation by the Board for Utah public schools. The Board is not responsible for the accreditation of nonpublic schools, including private, parochial, or other independent schools.

B. Utah public secondary schools, as defined in R277-410-1F, including charter schools, shall be members of Northwest and be accredited by Northwest, except as exempted by R277-412-3C and R277-413-3K.

C. Utah public elementary and middle schools, as defined in R277-410-1C and D, including charter schools, that desire accreditation shall be members of Northwest and meet the requirements of R277-413. Northwest accreditation is optional for Utah elementary and middle schools.

D. All Northwest accredited schools shall complete the annual accreditation report and file the report in accordance with USOE procedures.

E. If a school includes grade levels for which accreditation is both mandatory and optional, the school shall be accredited in its entirety.

**R277-410-4. Transfer or Acceptance of Credit.**

A. Utah public schools shall accept transfer credits from accredited secondary schools, accredited special purpose schools and the Utah Electronic High School consistent with R277-705.

B. Utah public schools shall accept transfer credits from supplemental education providers, which may or may not be accredited, and other credit sources consistent with R277-705.

**KEY: accreditation, public schools, nonpublic schools**
**March 6, 2006 Art X Sec 3**
**Notice of Continuation September 12, 2002 53A-1-402(1)(c)**
**53A-1-401(3)**

**R277. Education, Administration.**
**R277-477. Distribution of Funds from the School Trust Lands Account and Implementation of the School LAND Trust Program.**
**R277-477-1. Definitions.**

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

B. "Fall Enrollment Report" means the audited census of students registered in Utah public schools as reported in the audited October 1 Fall Enrollment Report from the previous year.

C. "Funds" means interest and dividend income as defined under Section 53A-16-101.5(2).

D. "Interest and Dividends Account" means an account created under Section 53A-16-101 established to collect interest and dividends from the permanent State School Fund until the end of the fiscal year at which time the funds are distributed to school districts through the School LAND Trust Program.

E. "Student" means a child in public school grades kindergarten through twelve counted on the audited October 1 Fall Enrollment Report of the school district, charter school, or USDB.

F. "USDB" means the Utah Schools for the Deaf and the Blind.

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

**R277-477-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which places general control and supervision of the public school system under the Board, by Section 53A-16-101.5(3)(c) which allows the Board to adopt rules regarding the time and manner in which the student count shall be made for allocation of school trust land funds, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to:

(1) provide direction in the distribution of interest and dividends from the Interest and Dividends Account created in Section 53A-16-101 and funded in Section 53A-16-101.5(2) through school districts;

(2) provide a process for the dissemination of accurate and uniform information to the Legislature, Board, local school boards schools, the School and Institutional Trust Lands Administration, State Treasurer, State Director of Finance, USOE, and others as necessary to facilitate effective administration and implementation of the School LAND Trust Program; and

(3) determine the time and manner in which the student count shall be made for allocation of the monies as provided in Section 53A-16-101.5(3)(c).

**R277-477-3. Distribution of Funds -- Determination of Proportionate Share.**

A. Funds shall be distributed to school districts and charter schools as provided under Section 53A-16-101.5(3)(a). The distribution shall be based on the state's total fall enrollment as reflected in the audited October 1 Fall Enrollment Report from the previous school year.

B. Each school district and the USOE, with regard to charter schools and the USDB, shall distribute funds received under R277-477-3A to each school on an equal per student basis.

C. Local school boards and the USOE may adjust distributions, maintaining an equal per student distribution for school openings and closures and for boundary changes occurring after the audited October 1 Fall Enrollment Report of the prior year.

D. All schools receiving funds shall have a school community council or a board designated to make school community council decisions, including elected parent members whose membership rotates, as required by Sections 53A-1a-108 and 53A-1a-511(4)(a), and a current school plan for enhancing or improving academic excellence consistent with Section 53A-16-101.5 approved by the local school board or State Charter School Board for state chartered schools.

E. The plan shall be electronically submitted to the USOE on the School LAND Trust website.

F. All charter schools shall be considered collectively as a school district to receive a base amount under Section 53A-16-101.5(3)(a)(i).

G. The USDB shall receive the average statewide per pupil base amount as the school's base allocation.

H. In order to receive its allocation, a school shall satisfy the requirements of Section 53A-16-101.5(4-7).

I. Plans shall include specific academic goals, steps to meet those goals, measurements to assess improvement and specific expenditures to implement plans that may include purchase of workbooks, textbooks, professional development, computer hardware and software, library and media supplies, or supplement funding for aides, teachers and specialists, and other tools for student academic improvement consistent with Section 53A-16-101.5(5).

J. Income from the Interest and Dividends Account shall be distributed to school districts after the close of the state fiscal year as the USOE receives the funds in the Interest and Dividends Account within the Uniform School Fund.

K. Each school board shall ensure timely distribution of the funds to eligible schools.

L. In a year-end report, each local board shall provide to the USOE:

(1) the names of schools and the funds distributed under this rule;

(2) required school plan information as designated in R277-477-4;

(3) a list of 10 percent of the district schools, or five schools implementing exemplary plans to be used to inform the public;

(4) the date on which funds were made available to each school; and

(5) the local school board of education meeting date(s) when School LAND Trust plans were approved.

M. Funds not used in the school approved plan may be carried over by the school to the next school year and added to the School LAND Trust Program funds available for expenditure in that school the following year. Schools shall provide an explanation for any carry over that exceeds one-half of the school's allocation in the school plan or report.

N. Funds from the School LAND Trust Program that are expended inconsistent with the requirements and academic intent of the law or inconsistent with the original school board/charter board approval shall be withheld by the USOE in subsequent years until the misappropriated funds have been restored.

O. Schools serving only youth in custody may form committees and submit plans to the district serving the students. Youth in custody schools shall receive the same per pupil distribution as other schools in the district providing services.

P. Plans submitted by schools chartered by the State Charter School Board shall be reviewed and approved by each charter school governing body and then submitted to the State Charter School Board for final approval.

Q. Plans submitted by schools chartered by local school boards shall be reviewed and approved by the charter school and then submitted to the local school board for approval.

R. Plans submitted by the USDB governing board shall be reviewed and approved by the State Superintendent or designee.

**R277-477-4. Information to USOE.**

A. Information on each school's plan to address critical

academic needs shall be completed via the School LAND Trust Program website maintained through the USOE for accurate and uniform reporting.

B. To facilitate submission of information by schools, each school board shall establish a timeline for timely submission of information and a district submission date for the district schools not later than May 15 of each year.

C. Timelines shall allow for school committee reconsideration and editing of the school plan following local school board requested changes.

D. USOE staff shall visit ten percent of the schools receiving funds from the School LAND Trust Program annually to discuss the program and website, receive information and suggestions, provide training, answer questions and review implementation of the plans and reported purchases.

E. School districts wishing to submit information to the School LAND Trust website through a comprehensive electronic plan shall meet the parameters for programming and data entry required by the USOE. They shall review School LAND Trust plans on the USOE website prior to local school board approval to ensure information consistent with the law has been downloaded by individual schools into the electronic plan visible on the School LAND Trust Program website.

**KEY: schools, trust lands funds**
**March 6, 2006** **Art X Sec 3**
**Notice of Continuation November 23, 2005** **53A-16-101.5(3)(c)**
**53A-1-401(3)**

**R277. Education, Administration.**
**R277-501. Educator Licensing Renewal and Timelines.**
**R277-501-1. Definitions.**

A. "Acceptable alternative professional development activities" means activities that do not fall within a specific category under R277-501-3 but are consistent with this rule.

B. "Accredited" means a teacher preparation program accredited by the National Council for Accreditation of Teacher Education (NCATE), the Teacher Education Accreditation Council (TEAC) or one of the major regional accrediting associations as defined under R277-503-1N.

C. "Accredited school" for purposes of this rule means a public or private school that has met standards considered to be essential for the operation of a quality school program and has had formal approval by the Northwest Association of Schools and Colleges.

D. "Active educator" for purposes of this rule means an individual holding a valid license issued by the Board who is employed by a Utah public or accredited private school in a role covered by the license or an individual who has taught successfully for three of the five years in the educator's renewal cycle in a Utah public or accredited private school.

E. "Active educator license" means a license that is currently valid for service in a position requiring a license.

F. "Approved Inservice" means training or courses, approved by the USOE under R277-519-3, in which current educators or individuals who have previously received a license may participate to renew a license, teach in another subject area or teach at another grade level.

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

H. "College/university course" means a course taken through an institution approved under Section 53A-6-108. "University level course" means a course having the same academic rigor and requirements similar to a university/college course and taught by appropriately trained individuals.

I. "Course work successfully completed" for purposes of this rule means the student earns a grade C or better.

J. "Documentation of professional development activities" means:

(1) an original report card or student transcript for university/college courses;

(2) certificate of completion for an approved inservice, conference, workshop, institute, symposium, educational travel experience and staff development;

(3) summary, explanation, or copy of the product and supervisor's signature, if available, or complete documentation of professional development activities that support district and school policies and further academic pursuit or educational innovations of professional development activities. All agendas, work products, and certificates shall be maintained by the educator;

(4) an agenda or conference program demonstrating sessions and duration of professional development activities.

K. "Educational research" means conducting educational research or investigating education innovations.

L. "Inactive educator" means an individual holding a valid license issued by the Board who was employed by a Utah public or accredited private school in a role covered by the license for less than three years in the individual's renewal period.

M. "Inactive educator license" means a license, other than a surrendered, suspended or revoked license, that is currently not valid due to the holder's failure to complete requirements for license renewal.

N. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate Contract, to applicants who have also met all ancillary requirements established by law or rule.

O. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license and:

(1) requirements established by law or rule;

(2) three years of successful education experience within a five-year period in a Utah public or accredited private school; and

(3) satisfaction of requirements under R277-522 for teachers whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public or accredited private school.

P. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received National Board Certification or a doctorate in education or in a field related to a content area in a unit of the public education system.

Q. "License" means an authorization issued by the Board which permits the holder to serve in a professional capacity in a Utah school.

R. "NASDTEC" means the National Association of State Directors of Teacher Education and Certification. NASDTEC maintains an Educator Information Clearinghouse for its members regarding persons whose licenses have been suspended or revoked.

S. "National Board Certification" means the successful completion of the National Board for Professional Teaching Standards (NBPTS) process, a three-year process, that may include national content-area assessment, an extensive portfolio, and assessment of video-taped classroom teaching experience.

T. "No Child Left Behind (NCLB) standards for highly qualified teachers" means that all teachers of Core academic subjects as defined under R277-510-1B, demonstrate adequate content knowledge of their teaching assignments as of July 1, 2006.

U. "Professional colleague" for purposes of this rule means a Utah Level 2 or 3 licensed educator who has adequate familiarity with the inactive educator's license area of concentration and endorsement(s).

V. "Professional development plan" means a document prepared by the educator consistent with this rule.

W. "Professional development points" means the points accumulated by a Utah license holder through activities approved under this rule for the purpose of satisfying requirements of Section 53A-6-104.

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

Y. "Verification of employment" means official documentation of employment as an educator.

**R277-501-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-6-104 which requires the Board to make rules requiring participation in professional development activities in order for educators to retain Utah licensure, and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide definitions and requirements for an educator to renew a Utah educator license. This rule requires verification of employment, development of a professional development plan and documentation of activities consistent with Section Title 53A, Chapter 6.

**R277-501-3. Categories of Acceptable Activities for a Licensed Educator.**

A. A college/university course:

(1) shall be successfully completed with a "C" or better, or a "pass."

(2) Each semester hour equals 18 license points; or

(3) Each quarter hour equals 12 license points.

B. Professional development:

(1) shall be state-approved under R277-519-3.

(2) may be requested from the USOE by:

(a) written request from a private provider on a form supplied by the USOE and received by the appropriate USOE subject specialist at least two weeks prior to the beginning date of the scheduled inservice, or

(b) a request submitted through the computerized inservice program connected to the USOE licensure system.

(i) The computerized process is available in most Utah school districts and area technology centers.

(ii) Such requests shall be made at least two weeks prior to the beginning of the scheduled inservice.

(3) Each clock hour of authorized inservice time equals one professional development point.

(4) The inservice shall be successfully completed through attendance and required project(s).

C. Conferences, workshops, institutes, symposia, educational travel experience or staff-development programs:

(1) Acceptable workshops and programs include those with prior written approval by the USOE, recognized professional associations, district supervisors, or school supervisors regardless of the source of sponsorship or funding.

(2) One license point is awarded for each clock hour of educational participation; license points may be limited to specific educational activities under R277-501-3C.

D. Content and pedagogy testing:

(1) Acceptable tests include those approved by the Board.

(2) 25 license points shall be awarded for each Board-approved test score report submitted.

(3) No more than two test score reports may be submitted in a license cycle for a maximum of 50 points.

(4) Each score report submitted shall have a different test number and title.

(5) The license renewal applicant is responsible for reporting of score test results. This information should be used by renewal applicants to design ongoing professional development.

E. Service in professional activities in an educational institution:

(1) Acceptable service includes that in which the license holder contributes to improving achievement in a school, district, or other educational institution, including planning and implementation of an improvement plan.

(2) One license point is awarded for each clock hour of participation.

(3) An inactive educator may earn professional development points by service in professional activities under the supervision of an active administrator.

F. Service in a leadership role in a national, state-wide or district recognized professional education organization:

(1) Acceptable service includes that in which the license holder assumes a leadership role in a professional education organization.

(2) One license point is awarded for each clock hour of participation with a maximum of 10 license points per year.

G. Educational research and innovation that results in a final, demonstrable product:

(1) Acceptable activities include conducting educational research or investigating educational innovations.

(2) This research activity shall follow school and district policy.

(3) An inactive educator may conduct research and receive professional development points on programs or issues approved by a practicing administrator.

(4) One license point is awarded for each clock hour of participation.

H. Acceptable alternative professional development activities:

(1) Acceptable activities are those that enhance or improve education yet may not fall into a specific category.

(2) These activities shall be approved by an educators's principal/supervisor or in the case of the inactive educator, a professional colleague, or a USOE or Utah school district specialist.

(3) One license point is awarded for each clock hour of participation.

I. Substituting in a Utah public or accredited private school may be an acceptable alternative professional development activity toward license renewal if the license holder is not an active educator as defined under R277-501-1D and is paid and authorized as a substitute. A substitute shall earn one point for every two hours of documented substitute time. Verification of hours shall be obtained from the employer or from the supervising principal. A license holder may earn up to 25 professional development points per year not to exceed a total of 50 points in a license cycle as a substitute.

J. A license-holder who instructs students in a professional or volunteer capacity in a Utah public or accredited private school may earn up to 25 professional development points per year not to exceed a total of 50 points in a license cycle. Paraprofessionals/volunteers may accrue one professional development point for every three hours of paraprofessional/volunteer service, as determined and verified by the building principal or supervisor.

K. Up to 50 license points may be earned in any one or any combination of categories E, F and G above.

**R277-501-4. Required Renewal License Points for Designated License Holders.**

A. Level 1, 2 and 3 license holders may accrue relicensure points beginning with the date of each new license renewal.

B. Level 1 license holder with no licensed educator experience.

(1) An educator desiring to retain active status shall earn at least 100 license points in each three year period.

C. Level 1 license holder with one year licensed educator experience in a Utah public or accredited private school within a three year period.

(1) An active educator shall earn at least 75 license points in each three year period; and

(2) any years taught shall have satisfactory evaluation(s).

D. Level 1 license holder with two years licensed educator experience in a Utah public or accredited private school within a three year period.

(1) An active educator shall earn at least 50 license points in each three year period; and

(2) Any years taught shall have satisfactory evaluation(s).

E. Level 1 license holder with three years licensed educator experience in a Utah public or accredited private school within a three year period.

(1) An active educator shall earn at least 25 professional development points in each three year period; and

(2) Any years taught shall have satisfactory evaluation(s).

F. An educator seeking a Level 2 license shall notify the USOE of completion of Level 2 license prerequisites consistent with R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers and R277-502, Educator Licensing and Data Retention.

G. Level 2 license holder:

(1) An active educator shall earn at least 95 license points within each five year period. License points shall be earned in activities defined under this rule that contribute to competence, performance, and effectiveness in the education profession.

(2) An inactive educator shall earn at least 200 license points within a five year period to maintain an active educator license.

(3) An inactive educator who works one year in a Utah

public or accredited private school within a five year period shall earn 165 license points within a five year period to maintain an active educator license.

(4) An inactive educator who works two years in a Utah public or accredited private school within a five year period shall earn 130 license points within a five year period to maintain an active educator license.

(5) Credit for any year(s) taught requires satisfactory evaluation(s).

H. Level 3 license holder:

(1) A Level 3 license holder with National Board Certification shall meet the National Board for Professional Teaching Standards (NBPTS) requirements consistent with the NBPTS schedule available from the USOE Educator Licensure Section. A Level 3 license holder shall be responsible to provide verification of NBPTS status prior to the license holder's designated renewal date.

(2) A Level 3 license holder with a doctorate degree from a regionally accredited college or university in education or in a field related to a content area in a unit of the public education system and shall meet the active or inactive educator Level 2 license holder requirements within a seven year period.

(3) An educator seeking a Level 3 license shall notify the USOE of completion of Level 3 license requirements. Level 3 license criteria apply to the license holder as of the license holder's renewal date following the notification to the USOE.

I. Teachers seeking license renewal who do not meet NCLB standards for highly qualified teachers under R277-510 shall focus 95 of the 200 required professional development points in teaching assignments in which the teacher does not hold an appropriate major, major equivalent, or other NCLB highly qualified criteria.

**R277-501-5. Renewal Timeline with Point Requirements for Educator Level 2 License Holders.**

A. A Level 2 active educator whose license expires June 30 shall earn 95 license points during the educator's five year renewal period and shall provide verification of employment.

B. A Level 2 inactive educator whose license expires June 30 shall earn 200 license points during the educator's five year renewal period.

**R277-501-6. Miscellaneous Renewal Information.**

A. A licensed educator shall develop and maintain a professional development plan. The plan:

(1) shall be based on the educator's professional goals and current or anticipated assignment,

(2) shall take into account the goals and priorities of the school/district,

(3) shall be consistent with federal and state laws and district policies, and

(4) may be adjusted as circumstances change.

(5) shall be reviewed and signed by the educator's supervisor or a professional colleague designated by the building administrator.

B. If an educator is not employed in a Utah public or accredited private school at the renewal date, the educator shall review the plan and documentation with a professional colleague who may sign the professional development plan and USOE verification form. The verification form signed by the professional colleague shall be provided to the USOE between January 1 and June 30 of the renewal year.

C. Each Utah license holder shall be responsible for maintaining a professional development plan.

(1) It is the educator's responsibility to retain copies of complete documentation of professional development activities with appropriate signatures.

(2) The professional development documentation shall be retained by the educator for a minimum of two renewal cycles.

D. The "Verification for License Renewal" form shall be submitted to the USOE Licensing Section, 250 East 500 South, P.O. Box 144200, Salt Lake City, Utah 84114-4200 between January 1 and June 30 of the educator's assigned renewal year.

(1) Forms submitted by mail that are not complete or do not bear original signatures shall not be processed.

(2) Failure to submit the verification form consistent with deadlines shall result in beginning anew the administrative licensure process, including all attendant fees and criminal background checks.

(3) The USOE may, at its own discretion, review or audit verification for license renewal forms or educator license renewal folders or records.

E. License holders may begin to acquire professional development points under this rule on the date identified on the license as the date of licensure.

F. This rule does not explain criteria or provide credit standards for state approved inservice programs. That information is provided in R277-519.

G. Credit for district lane changes or other purposes is determined by a school district and is awarded at a school district's discretion. Professional development points should not be assumed to be credit for school district purposes, such as salary or lane change credit.

H. A renewal fee set by the USOE shall be charged to educators who seek renewal from an inactive status or to make level changes. Educators with active licenses shall be charged a renewal fee consistent with R277-502.

I. The USOE may make exceptions to the provisions of this rule for unique and compelling circumstances.

(1) Exceptions may only be made consistent with the purposes of this rule and the authorizing statutes.

(2) Requests for exceptions shall be made in writing at least 30 days prior to the license holder's renewal date to the Coordinator of Educator Licensing, USOE.

(3) Approval or disapproval shall be made in a timely manner.

J. Licenses awarded under R277-521, Professional Specialist Licensing, are subject to renewal requirements under this rule.

(1) Specialists shall be considered licensed as of September 15, 1999 or at their official employment date, whichever is later.

(2) All specialists shall be considered Level 1, 2 or 3 license holders consistent with R277-521-3, 4 and 5.

(3) Years of work experience beginning September 15, 1999 count toward levels of licensure.

K. Consistent with Section 53A-6-104(2) and (4), an educator may comply with the professional development requirements of this rule by:

(1) satisfactory completion of the educator's employing school district's district-specific professional development plan; and

(2) submission by the employing school district of the names of educators who completed district-specific professional development plans; and

(3) submission of professional development information in a timely manner consistent with the educator's license renewal cycle; failure of timely notification by districts to the USOE may result in expiration of licenses and additional time and costs for relicensure.

L. Completion of relicensure requirements by an educator under R277-501-4 or R277-501-6K, may not satisfy HOUSSE requirements for highly qualified status under No Child Left Behind, as defined in R277-520.

M. Educators are individually responsible for tracking their renewal cycles and completing professional development in a timely manner.

**KEY: educational program evaluations, educator license renewal**
**March 6, 2006** **Art X Sec 3**
**Notice of Continuation February 23, 2005** **53A-6-104**
**53A-1-401(3)**

**R277. Education, Administration.**
**R277-510. Educator Licensing - Highly Qualified Teachers.**
**R277-510-1. Definitions.**

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

B. "Core academic subjects" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act (NCLB), Title IX, Part A, 20 U.S.C. 7801, Section 9101(11).

C. "Date of hire" means the date on which the initial employment contract is signed between educator and employer or the date on which an educator receives a Core academic subject assignment for the first time.

D. "Endorsement" means a qualification based on content area mastery obtained through a higher education major or minor or through a state-approved endorsement program.

E. "Highly qualified" means a teacher has met the specific requirements of ESEA, NCLB, Title IX, Part A, 20 U.S.C. 7801, Section 9101(23) or 34 CFR 200.56.

F. "HOUSSE" means High Objective Uniform State Standard of Evaluation permitted under ESEA, NCLB, Title IX, Part A, 20 U.S.C. 7801, Section 9101(23)(C)(ii).

G. "HOUSSE points" means points or hours earned in activities identified under R277-501-3A, B, or C.

H. "IDEA" means the federal Individuals with Disabilities Education Act, Title 1, Part A, Section 602.

I. "Multiple subject qualified" means that a licensed educator who is highly qualified in at least one Core academic subject may be designated highly qualified and provide instruction in science, social studies, language arts, and mathematics, or any combination of those courses, as assigned by the school district or the school.

J. "Multiple subject teacher" means a teacher in a necessarily existent small school as defined under R277-445 or as a special education teacher defined under R277-510H, or in a Youth in Custody program as defined under R277-709 or a board-designated alternative school whose size meets necessarily existent small school criteria as defined under R277-445, who teaches more than two Core academic subjects defined under R277-510-1B or under R277-700.

K. "Restricted endorsement" means an endorsement available and limited to teachers in necessarily existent small schools as determined under R277-445, teachers in alternative schools who meet the size criteria of R277-445, and teachers in youth in custody programs or to special educators seeking highly qualified status in mathematics, language arts, or science. Teacher qualifications shall include at least nine semester hours of USOE-approved university-level courses in each course taught by the teacher holding a restricted endorsement.

L. "Standard license area of concentration" means that the educator has successfully completed three years of teaching in the license area.

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

**R277-510-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities. Allows Board to license

B. The purpose of this rule is to provide definitions and requirements for an educator to meet federal requirements for highly qualified status.

**R277-510-3. NCLB Highly Qualified - Secondary Teachers.**

In order to meet the federal requirements under NCLB, a secondary educator shall have a bachelor's degree, an educator license and one of the following for each of the teacher's NCLB Core academic subject teaching assignments:

A. a University major degree, masters degree, doctoral degree or National Board Certification; or

B. documentation that the teacher has passed, at a level designated by the USOE, an appropriate Board-approved subject area test(s); or

C. documentation of coursework equivalent to a major degree (30 semester or 45 quarter hours); or

D. documentation of satisfaction of Utah's HOUSSE requirements for assignments as follows:

(1) an endorsement in a subject area directly related to the educator's academic major; or

(2) a current endorsement for the assignment and completion of 200 professional development points, accrued after the endorsement was approved by the USOE, directly related to the area in which the teacher seeks to meet the federal highly qualified teacher standard under R277-510-1E as applicable. No more than 100 points may be earned for successful teaching in related area(s); and

E. All Utah secondary teachers who teach Core academic subjects shall have points and documentation, determined by the employing school district, of highly qualified status before June 30, 2006. Documentation includes official transcripts, annual teaching evaluation(s), data of adequate student achievement.

**R277-510-4. NCLB Highly Qualified - Special Education Teachers.**

A. In order to meet the federal requirements under HOUSSE, NCLB, and the requirements of IDEA, a special educator assigned as the classroom teacher of record for any K-8 Core academic subject shall satisfy (1) and (2) and (3) or (1) and (2) and (4) or (1) and (2) and (5) before June 30, 2006 as provided below:

(1) has a current Utah educator license; and

(2) is assigned consistent with the teacher's current state educator license; and

(3) has met the requirements for highly qualified status under R277-510-5; or

(4) a K-8 special educator with a mild moderate endorsement defined under R277-504-1K(1), hearing impaired endorsement defined under R277-504-1K(3), visually impaired endorsement defined under R277-504-1K(4), or K-12 special educator with a severe license defined under R277-504-1K(2) shall pass a Board-approved content test at the state designated passing score; or

(5) documentation of satisfaction of Utah's HOUSSE requirements for assignments as follows:

(a) has completed a minimum of 36 semester hours of Core academic subject courses from an accredited college/university consistent with R277-503, or other professional development directly related to the educator's assignment. The teacher's employer shall review and retain documentation verifying completion of these requirements. Transcript credits shall have been completed with academic grades of C or better:

(i) nine semester hours of language arts/reading or the equivalent as approved by the USOE; and

(ii) six semester hours of physical/biological science or the equivalent as approved by the USOE; and

(iii) nine semester hours of social sciences or the equivalent as approved by the USOE; and

(iv) nine semester hours of college level mathematics or the equivalent as approved by the USOE; and

(v) three semester hours of the arts or the equivalent as approved by the USOE.

B. To meet the highly qualified requirements under NCLB, a K-12 special educator endorsed in mild moderate, or hearing impairments, or visual impairments, assigned as the classroom teacher of record for any K-12 course reported under

NCLB statute shall satisfy the following before June 30, 2006:

(1) has a current Utah educator license; and

(2) is assigned consistent with the educator's current state license; and

(3) shall satisfy highly qualified status in at least one Core academic subject by:

(a) meeting the requirements of R277-510-3; or

(b) having a restricted endorsement as defined under R277-510-1J or its equivalent, and passing an appropriate Board-approved subject assessment; and

(4) Special educators who teach two or more subjects shall satisfy highly qualified status by:

(a) satisfying R277-510-4B(3)(a) or (b); and

(b) submitting documentation that the educator has passed a Board-approved multiple subject test with a passing score at the state-designated passing score with subtest scores in the average range or higher; and

(c) shall not be assigned to teach a Core academic subject if the educator did not pass the appropriate subtest in the average range or higher.

(5) Special educators who teach two or more subjects may have two years beyond the special educator's date of hire or June 30, 2006 to become highly qualified in additional course assignments.

C. School districts/charter schools are responsible for monitoring and appropriately assigning special educators consistent with this rule.

D. Sixth grade special educators assigned in elementary school settings shall satisfy R277-510-4A to be highly qualified.

**R277-510-5. NCLB Highly Qualified - Elementary and Early Childhood Teachers.**

In order to meet the federal requirements of NCLB, an elementary/early childhood educator shall satisfy before June 30, 2006 R277-510-5A and B and C or A and B and D and E as provided below:

A. the educator has a current Utah educator license; and

B. the educator is assigned consistent with the teacher's current state educator license; and

C. an elementary/early childhood teacher shall pass Board-approved content test(s);

D. documentation of satisfaction of Utah's HOUSSE requirements for assignments as follows:

(1) has completed an elementary or early childhood major or both from an accredited college or university; or

(2) the teacher's employer shall review the teacher's college/university transcripts and subsequent professional development to document that the following have been satisfied with academic grades of C or better:

(a) nine semester hours of language arts/reading or the equivalent as approved by the USOE; and

(b) six semester hours of physical/biological science or the equivalent as approved by the USOE; and

(c) nine semester hours of social sciences or the equivalent as approved by the USOE; and

(d) nine semester hours of college level mathematics or the equivalent as approved by the USOE;

(e) three semester hours of the arts or the equivalent as approved by the USOE; and

E. the educator has obtained a Level 2 license with a standard license area of concentration.

**R277-510-6. NCLB Highly Qualified - Multiple Subject Teachers.**

A. In order to meet federal requirements under a HOUSSE standard, a multiple subject teacher, as defined under R277-510-1J, shall satisfy R277-510-6A(1), (2), (3) and (4) or (5) and (6)(a) or (b) as provided below:

(1) the educator has a current Utah educator license; and

(2) the educator is assigned consistent with the educator's current license; and

(3) the educator is highly qualified in at least one Core academic subject, as defined under R277-510-1B or R277-700; and

(4) the educator holds an endorsement as defined under R277-510-1C in each teaching assignment; or

(5) the educator holds a restricted endorsement as defined under R277-510-1K; and

(6) the educator submits a passing score on a Board-approved test providing:

(a) documentation that the teacher has passed, at a level designated by the USOE, an appropriate Board-approved subject area test(s); or

(b) documentation that the teacher has passed a Board-approved multiple subject test with a passing score.

B. In addition, an educator shall satisfy:

(1) R277-510-6A(1) and (2) and (4) and take the Board-approved content test or a Board-approved multiple subject test and pass at the state-designated passing score with all subtest scores in the average range or higher; or

(2) R277-510-6A(1) and (2) and (5) and take the Board-approved content test or a Board-approved multiple subject test and pass at the state-designated passing score with all subtest scores in the average range or higher.

C. An educator shall not be assigned to teach a Core academic subject if the educator did not pass the appropriate subtest in the average range or higher.

D. School districts/charter schools are responsible for monitoring and assigning educators consistent with this rule.

E. Multiple subject teachers in necessarily existent small school settings who are designated highly qualified in at least one Core academic subject, under R277-510-1B, shall have three school years from the date of hire to become highly qualified in additional Core academic subject teaching assignment(s).

F. A multiple subject teacher in necessarily existent small school settings shall have one additional three year period from the date of hire to become highly qualified in any and all additional Core academic subject teaching assignment(s).

**KEY: educators, highly qualified**
**March 6, 2006** **Art X Sec 3**
**53A-6-104**
**53A-1-401(3)**

**R277. Education, Administration.**
**R277-705. Secondary School Completion and Diplomas.**
**R277-705-1. Definitions.**

In addition to terms defined in Section 53A-1-602:

A. "Accredited" means evaluated and approved under the Standards for Accreditation of the Northwest Association of Accredited Schools or the accreditation standards of the Board, available from the Utah State Office of Education Accreditation Specialist.

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

C. "Criterion-referenced test (CRT)" means a test to measure performance against a specific standard. The meaning of the scores is not tied to the performance of other students.

D. "Cut score" means the minimum score a student must attain for each subtest to pass the UBSCT.

E. "Demonstrated competence" means subject mastery as determined by school district standards and review. School district review may include such methods and documentation as: tests, interviews, peer evaluations, writing samples, reports or portfolios.

F. "Diploma" means an official document awarded by a public school district or high school consistent with state and district graduation requirements and the provisions of this rule.

G. "Individualized Education Program (IEP)" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with the Utah Special Education Rules and Part B of the Individuals with Disabilities Education Act (IDEA).

H. "Secondary school" means grades 7-12 in whatever kind of school the grade levels exist.

I. "Section 504 Plan" means a written statement of reasonable accommodations for a student with a qualifying disability that is developed, reviewed, and revised in accordance with Section 504 of the Rehabilitation Act of 1973.

J. "Special purpose schools" means schools designated by regional accrediting agencies, such as Northwest. These schools typically serve a specific population such as students with disabilities, youth in custody, or schools with specific curricular emphasis. Their courses and curricula are designed to serve their specific populations and may be modified from traditional programs.

K. "Supplemental education provider" means a private school or educational service provider which may or may not be accredited, that provides courses or services similar to public school courses/classes.

L. "Transcript" means an official document or record(s) generated by one or several schools which includes, at a minimum: the courses in which a secondary student was enrolled, grades and units of credit earned, UBSCT scores and dates of testing, citizenship and attendance records. The transcript is usually one part of the student's permanent or cumulative file which also may include birth certificate, immunization records and other information as determined by the school in possession of the record.

M. "Utah Performance Assessment System for Students (U-PASS)" means:

(1) systematic norm-referenced achievement testing of all students in grades 3, 5, 8, and 11 required by this part in all schools within each school district by means of tests designated by the Board;

(2) criterion-referenced achievement testing of students in all grade levels in basic skills courses;

(3) direct writing assessments in grades 6 and 9;

(4) beginning with the 2003-2004 school year, a tenth grade basic skills competency test as detailed in Section 53A-1-611; and

(5) beginning with the 2002-2003 school year, the use of student behavior indicators in assessing student performance.

N. "Unit of credit" means credit awarded for courses taken consistent with this rule or upon school district/school authorization or for mastery demonstrated by approved methods.

O. "Utah Alternative Assessment (UAA)" means an assessment instrument for students in special education with disabilities so severe they are not able to participate in the components of U-PASS even with testing accommodations or modifications. The UAA measures progress on instructional goals and objectives in the student's individual education program (IEP).

P. "Utah Basic Skills Competency Test (UBSCT)" means a test to be administered to Utah students beginning in the tenth grade to include at a minimum components on English, language arts, reading and mathematics. Utah students shall satisfy the requirements of the UBSCT in addition to state and district graduation requirements prior to receiving a high school diploma indicating a passing score on all UBSCT subtests.

Q. "UBSCT Advisory Committee" means a committee that is advisory to the Board with membership appointed by the Board, including appropriate representation of special populations from the following:

(1) parents;
(2) high school principal(s);
(3) high school teacher(s);
(4) district superintendent(s);
(5) Coalition of Minorities Advisory Committee;
(6) Utah State Office of Education staff;
(7) local school board(s);
(8) higher education.

**R277-705-2. Authority and Purpose.**

A. This rule is authorized by Article X, Section 3 of the Utah Constitution, which places general control and supervision of the public schools under the Board; Section 53A-1-402(1)(b) and (c) which direct the Board to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements; Sections 53A-1-603 through 53A-1-611 which direct the Board to adopt rules for the conduct and administration of U-PASS; and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide consistent definitions, provide alternative methods for students to earn and schools to award credit, to provide rules and procedures for the assessment of all students as required by law, and to provide for differentiated diplomas or certificates of completion consistent with state law.

**R277-705-3. District Policy Explaining Credits Earned and Reciprocity for Credit for Demonstrated Competency.**

A. All Utah schools or school districts shall have a written policy explaining the process and standards for acceptance and reciprocity of credits earned by students.

(1) Policies need not repeat the requirements of state law or this rule.

(2) Policies shall provide a review process at the school or school district level for credit for demonstrated competency.

(3) Policies shall provide a review process for credit earned for home schooling. This provision does not require schools/school districts to grant credit for home school courses or programs.

B. Units of credit shall be awarded to students and be recorded on student transcripts for satisfaction of district-approved courses or subject matter.

C. Students may earn credit by any of the following methods, as designated by the school district policy:

(1) successful completion, as determined by the school district or school, of secondary school courses;

(2) successful completion, as determined by the school

district or school, of concurrent enrollment classes consistent with Section 53A-17a-120 and R277-713;

(3) demonstrated competency, as determined by the school district or school;

(4) assessment, as determined by the school district or school;

(5) review of student work or projects consistent with school district or school procedures and criteria; and

(6) following successful completion, as determined by the school district or school, of correspondence or electronic coursework offered by accredited education institutions with prior approval by the school district or school to the extent practicable and consistent with other provisions of this rule.

D. School districts or schools shall designate by written policy at least four methods or credit-earning processes in addition to traditional public school courses by which students of the district may earn credit.

E. Schools shall accept credits from accredited secondary schools, accredited special purpose schools and the Utah Electronic High School.

F. Schools shall accept credits from supplemental education providers and other credit sources with written approval from the student's principal or designee consistent with R277-705-3D prior to program enrollment.

G. Credits earned from supplemental education providers:

(1) shall be aligned with state Core Curriculum;

(2) shall have course content that matches Core course requirements; and

(3) shall have end of course tests that meet or exceed school district assessments.

H. Grades from supplemental education providers may be accepted, at the school/school district's discretion, as pass/fail grades.

I. Credits accepted consistent with R277-705-3E and F shall be recognized as original credit earned for specific courses, including Core courses. For instance, a tenth grade language arts course taken from an accredited provider, consistent with this rule and school district policy, shall count for tenth grade language arts for high school graduation.

J. School districts may not waive credits required for graduation, but may, consistent with this rule and documentation available to the district, grant credit based on demonstrated competency, assessment, or mastery.

K. School districts may require documentation of compliance with Section 53A-11-102 prior to reviewing student home school or competency work, testing, or materials.

L. A school district or school has the final decision-making authority for the awarding of credit consistent with state law, due process, and this rule.

**R277-705-4. Diplomas and Certificates of Completion.**

A. School districts or schools shall award diplomas and certificates of completion.

B. School districts or schools shall offer differentiated diplomas to secondary school students and adults to include:

(1) a high school diploma indicating on the diploma that a student successfully completed all state and district course requirements for graduation and passed all subtests of the UBSCT.

(2) a high school diploma indicating on the diploma that a student did not receive a passing score on all UBSCT subtests; the student shall have:

(a) met all state and district course requirements for graduation; and

(b) beginning with the graduating class of 2007, participated in UBSCT remediation consistent with school district or school policies and opportunities; and

(c) provided documentation of at least three attempts to take and pass all subtests of the UBSCT unless:

(i) the student took all subtests of the UBSCT offered while the student was enrolled in Utah schools; or

(ii) the student has been out of the secondary school system at least five years or more beginning June 1, 2006; or

(iii) a student's IEP team has determined that the student's participation in statewide assessment is through the UAA.

C. School districts or schools shall establish criteria for students to earn a certificate of completion that may be awarded to students who have completed their senior year, are exiting the school system, and have not met all state or district requirements for a diploma.

**R277-705-5. Students with Disabilities.**

A. A student with disabilities served by special education programs shall satisfy high school completion or graduation criteria, consistent with state and federal law and the student's IEP.

B. A student may be awarded a certificate of completion or a differentiated diploma, consistent with state and federal law and the student's IEP or Section 504 Plan.

**R277-705-6. Utah Basic Skills Competency Testing Requirements and Procedures.**

A. All Utah public school students shall participate in Utah Basic Skills Competency testing, unless alternate assessment is designated in accordance with federal law or regulations or state law.

B. Timeline:

(1) Beginning with students in the graduating class of 2006, UBSCT requirements shall apply.

(2) No student may take any subtest of the UBSCT before the tenth grade year.

(3) Tenth graders should first take the test in the second half of their tenth grade year.

(4) Exceptions may be made to this timeline with documentation of compelling circumstances and upon review by the school principal and USOE assessment staff.

C. UBSCT components, scoring and consequences:

(1) UBSCT consists of subtests in reading, writing and mathematics.

(2) Students who reach the established cut score for any subtest in any administration of the assessment have passed that subtest.

(3) Students shall pass all subtests to qualify for a high school diploma indicating a passing score on all UBSCT subtests unless they qualify under one of the exceptions of state law or this rule such as R277-705-6D.

(4) Students who do not reach the established cut score for any subtest shall have multiple additional opportunities to retake the subtest.

(5) Students who have not passed all subtests of the UBSCT by the end of their senior year may receive a diploma indicating that a student did not receive a passing score on all UBSCT subtests or a certificate of completion.

(6) The certificate of completion or diploma indicating that a student did not receive a passing score on all UBSCT subtests may be converted to a high school diploma indicating a passing score on all UBSCT subtests whenever the student completes all current state and district diploma requirements.

(7) Beginning in June 2006, an adult student enrolled in a Utah school district adult education program may receive an adult high school diploma indicating a passing score on all UBSCT subtests and by completing all state and district diploma requirements including provisions of this rule or may receive an adult high school diploma indicating that a student did not receive a passing score on all UBSCT subtests consistent with district and state requirements.

(8) Specific testing dates shall be calendared and published at least two years in advance by the Board.

D. Reciprocity and new seniors:

(1) Students who transfer from out of state to a Utah high school after the tenth grade year may be granted reciprocity for high school graduation exams taken and passed in other states or countries based on criteria set by the Board and applied by the local board.

(2) Students for whom reciprocity is not granted and students from other states or countries that do not have high school graduation exams shall be required to pass the UBSCT before receiving a high school diploma indicating a passing score on all UBSCT subtests if they enter the system before the final administration of the test in the student's senior year.

(3) The UBSCT Advisory Committee following review of applicable documentation shall recommend to the Board the type of diploma that a student entering a Utah high school in the student's senior year after the final administration of the UBSCT may receive.

E. Testing eligibility:

(1) Building principals shall certify that all students taking the test in any administration are qualified to be tested.

(2) Students are qualified if they:

(a) are enrolled in tenth grade, eleventh, or twelfth grade (or equivalent designation in adult education) in a Utah public school program; or

(b) are enrolled in a Utah private/parochial school (with documentation) and are least 15 years old or enrolled at the appropriate grade level; or

(c) are home schooled (with documentation required under Section 53A-11-102) and are at least 15 years old; and

(3) Students eligible for accommodations, assistive devices, or other special conditions during testing shall submit appropriate documentation at the test site.

F. Testing procedures:

(1) Three subtests make up the UBSCT: reading, writing, and mathematics. Each subtest may be given on a separate day.

(2) The same subtest shall be given to all students on the same day, as established by the Board.

(3) All sections of a subtest shall be completed in a single day.

(4) Subtests are not timed. Students shall be given the time necessary within the designated test day to attempt to answer every question on each section of the subtest.

(5) Makeup opportunities shall be provided to students for the UBSCT according to the following:

(a) Students shall be allowed to participate in makeup tests if they were not present for the entire UBSCT or subtest(s) of the UBSCT.

(b) School districts shall determine acceptable reasons for student makeup eligibility which may include absence due to illness, absence due to family emergency, or absence due to death of family member or close friend.

(c) School districts shall provide a makeup window not to exceed five school days immediately following the last day of each administration of the UBSCT.

(d) School districts shall determine and notify parents in an appropriate and timely manner of dates, times, and sites of makeup opportunities for the UBSCT.

(6) Arrangements for extraordinary circumstances or exceptions to R277-705-5 shall be reviewed and decided by the UBSCT Advisory Committee on a case-by-case basis consistent with the purposes of this rule and enabling legislation.

**R277-705-7. Security and Accountability.**

A. Building principals shall be responsible to secure and return completed tests consistent with Utah State Office of Education timelines.

B. School district testing directors shall account for all materials used, unused and returned.

C. Results shall be returned to students and parents/guardians no later than eight weeks following the administration of each test.

D. Appeals for failure to pass the UBSCT due to extraordinary circumstances:

(1) If a student or parent has good reason to believe, including documentation, that a testing irregularity or inaccuracy in scoring prevented a student from passing the UBSCT, the student or parent may appeal to the local board within 60 days of receipt of the test results.

(2) The local board shall consider the appeal and render a decision in a timely manner.

(3) The parent or student may appeal the local board's decision through the UBSCT Advisory Committee, under rules adopted by the Board.

(4) Appeals under this section are limited to the criteria of R277-705-7D(1).

**R277-705-8. Designation of Differentiated Diplomas and Certificates of Completion.**

A. As provided under Section 53A-1-611(2)(d), districts or schools shall designate in express language at least the following types of diplomas or certificates:

(1) High School Diploma indicating a passing score on all UBSCT subtests.

(2) High School Diploma indicating that a student did not receive a passing score on all UBSCT subtests.

(3) Certificate of Completion.

B. The designation shall be made on the face of the diploma or certificate of completion provided to students.

**R277-705-9. Student Rights and Responsibilities Related to Graduation, Transcripts and Receipt of Diplomas.**

A. School districts shall supervise the granting of credit and awarding of diplomas, but may delegate the responsibility to schools within the district.

B. A school district or school may determine criteria for a student's participation in graduation activities, honors, and exercises, independent of a student's receipt of a diploma or certificate of completion.

C. Diplomas or certificates, credit or unofficial transcripts may not be withheld from students for nonpayment of school fees.

D. School districts or schools shall establish consistent timelines for all students for completion of graduation requirements. Timelines shall be consistent with state law and this rule.

**KEY: curricula**
**March 6, 2006**

**Art X Sec 3**
**53A-1-402(1)(b)**
**53A-1-603 through 53A-1-611**
**53A-1-401(3)**

**R307. Environmental Quality, Air Quality.**
**R307-415. Permits: Operating Permit Requirements.**
**R307-415-1. Purpose.**

Title V of the Clean Air Act (the Act) requires states to develop and implement a comprehensive air quality permitting program. Title V of the Act does not impose new substantive requirements. Title V does require that sources subject to R307-415 pay a fee and obtain a renewable operating permit that clarifies, in a single document, which requirements apply to a source and assures the source's compliance with those requirements. The purpose of R307-415 is to establish the procedures and elements of such a program.

**R307-415-2. Authority.**

R307-415 is required by Title V of the Act and 40 Code of Federal Regulations (CFR) Part 70, and is adopted under the authority of Section 19-2-104.

**R307-415-3. Definitions.**

(1) The definitions contained in R307-101-2 apply throughout R307-415, except as specifically provided in (2).

(2) The following additional definitions apply to R307-415.

"Act" means the Clean Air Act, as amended, 42 U.S.C. 7401, et seq.

"Administrator" means the Administrator of EPA or his or her designee.

"Affected States" are all states:

(a) Whose air quality may be affected and that are contiguous to Utah; or

(b) That are within 50 miles of the permitted source.

"Air Pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, or radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term air pollutant is used.

"Applicable requirement" means all of the following as they apply to emissions units in a Part 70 source, including requirements that have been promulgated or approved by the Board or by the EPA through rulemaking at the time of permit issuance but have future-effective compliance dates:

(a) Any standard or other requirement provided for in the State Implementation Plan;

(b) Any term or condition of any approval order issued under R307-401;

(c) Any standard or other requirement under Section 111 of the Act, Standards of Performance for New Stationary Sources, including Section 111(d);

(d) Any standard or other requirement under Section 112 of the Act, Hazardous Air Pollutants, including any requirement concerning accident prevention under Section 112(r)(7) of the Act;

(e) Any standard or other requirement of the Acid Rain Program under Title IV of the Act or the regulations promulgated thereunder;

(f) Any requirements established pursuant to Section 504(b) of the Act, Monitoring and Analysis, or Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification;

(g) Any standard or other requirement governing solid waste incineration, under Section 129 of the Act;

(h) Any standard or other requirement for consumer and commercial products, under Section 183(e) of the Act;

(i) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in an operating permit;

(j) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the Act;

(k) Any standard or other requirement under rules adopted by the Board.

"Area source" means any stationary source that is not a major source.

"Designated representative" shall have the meaning given to it in Section 402 of the Act and in 40 CFR Section 72.2, and applies only to Title IV affected sources.

"Draft permit" means the version of a permit for which the Executive Secretary offers public participation under R307-415-7i or affected State review under R307-415-8(2).

"Emissions allowable under the permit" means a federally-enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit, including a work practice standard, or a federally-enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any hazardous air pollutant. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the Act, Acid Deposition Control.

"Final permit" means the version of an operating permit issued by the Executive Secretary that has completed all review procedures required by R307-415-7a through 7i and R307-415-8.

"General permit" means an operating permit that meets the requirements of R307-415-6d.

"Hazardous Air Pollutant" means any pollutant listed by the Administrator as a hazardous air pollutant under Section 112(b) of the Act.

"Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraphs (a), (b), or (c) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987. Emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road vehicle shall not be considered in determining whether a stationary source is a major source under this definition.

(a) A major source under Section 112 of the Act, Hazardous Air Pollutants, which is defined as: for pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of such hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well, with its associated equipment, and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

(b) A major stationary source of air pollutants, as defined in Section 302 of the Act, that directly emits or has the potential

to emit, 100 tons per year or more of any air pollutant, including any major source of fugitive emissions or fugitive dust of any such pollutant as determined by rule by the Administrator. The fugitive emissions or fugitive dust of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the Act, unless the source belongs to any one of the following categories of stationary source:

(i) Coal cleaning plants with thermal dryers;
(ii) Kraft pulp mills;
(iii) Portland cement plants;
(iv) Primary zinc smelters;
(v) Iron and steel mills;
(vi) Primary aluminum ore reduction plants;
(vii) Primary copper smelters;
(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(ix) Hydrofluoric, sulfuric, or nitric acid plants;
(x) Petroleum refineries;
(xi) Lime plants;
(xii) Phosphate rock processing plants;
(xiii) Coke oven batteries;
(xiv) Sulfur recovery plants;
(xv) Carbon black plants, furnace process;
(xvi) Primary lead smelters;
(xvii) Fuel conversion plants;
(xviii) Sintering plants;
(xix) Secondary metal production plants;
(xx) Chemical process plants;
(xxi) Fossil-fuel boilers, or combination thereof, totaling more than 250 million British thermal units per hour heat input;
(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(xxiii) Taconite ore processing plants;
(xxiv) Glass fiber processing plants;
(xxv) Charcoal production plants;
(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
(xxvii) Any other stationary source category, which as of August 7, 1980 is being regulated under Section 111 or Section 112 of the Act.

(c) A major stationary source as defined in part D of Title I of the Act, Plan Requirements for Nonattainment Areas, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tons per year or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tons per year or more in areas classified as "serious," 25 tons per year or more in areas classified as "severe," and 10 tons per year or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under Section 182(f)(1) or (2) of the Act, that requirements under Section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to Section 184 of the Act, sources with the potential to emit 50 tons per year or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas that are classified as "serious" and in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tons per year or more of carbon monoxide;

(iv) For PM-10 particulate matter nonattainment areas classified as "serious," sources with the potential to emit 70 tons per year or more of PM-10 particulate matter.

"Non-Road Vehicle" means a vehicle that is powered by an internal combustion engine (including the fuel system), that is not a self-propelled vehicle designed for transporting persons or property on a street or highway or a vehicle used solely for competition, and is not subject to standards promulgated under Section 111 of the Act (New Source Performance Standards) or Section 202 of the Act (Motor Vehicle Emission Standards).

"Operating permit" or "permit," unless the context suggests otherwise, means any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to these rules.

"Part 70 Source" means any source subject to the permitting requirements of R307-415, as provided in R307-415-4.

"Permit modification" means a revision to an operating permit that meets the requirements of R307-415-7f.

"Permit revision" means any permit modification or administrative permit amendment.

"Permit shield" means the permit shield as described in R307-415-6f.

"Proposed permit" means the version of a permit that the Executive Secretary proposes to issue and forwards to EPA for review in compliance with R307-415-8.

"Renewal" means the process by which a permit is reissued at the end of its term.

"Responsible official" means one of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) the operating facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million in second quarter 1980 dollars; or

(ii) the delegation of authority to such representative is approved in advance by the Executive Secretary;

(b) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(c) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of R307-415, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency;

(d) For Title IV affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act, Acid Deposition Control, or the regulations promulgated thereunder are concerned;

(ii) The responsible official as defined above for any other purposes under R307-415.

"Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any hazardous air pollutant.

"Title IV Affected source" means a source that contains one or more affected units as defined in Section 402 of the Act and in 40 CFR, Part 72.

**R307-415-4. Applicability.**

(1) Part 70 sources. All of the following sources are subject to the permitting requirements of R307-415, and unless exempted under (2) below are required to submit an application for an operating permit:

(a) Any major source;

(b) Any source, including an area source, subject to a standard, limitation, or other requirement under Section 111 of the Act, Standards of Performance for New Stationary Sources;

(c) Any source, including an area source, subject to a

standard or other requirement under Section 112 of the Act, Hazardous Air Pollutants, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under Section 112(r) of the Act, Prevention of Accidental Releases;

(d) Any Title IV affected source.

(2) Source category exemptions. The following source categories are exempted from the requirement to obtain an operating permit.

(a) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters;

(b) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145, Standard for Demolition and Renovation. For Part 70 sources, demolition and renovation activities within the source under 40 CFR 61.145 shall be treated as a separate source for the purpose of R307-415.

(3) Emissions units and Part 70 sources.

(a) For major sources, the Executive Secretary shall include in the permit all applicable requirements for all relevant emissions units in the major source.

(b) For any area source subject to the operating permit program under R307-415-4(1) or (2), the Executive Secretary shall include in the permit all applicable requirements applicable to emissions units that cause the source to be subject to the operating permit program.

(4) Fugitive emissions. Fugitive emissions and fugitive dust from a Part 70 source shall be included in the permit application and the operating permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of source categories contained in the definition of major source.

(5) Control requirements. R307-415 does not establish any new control requirements beyond those established by applicable requirements, but may establish new monitoring, recordkeeping, and reporting requirements.

(6) Synthetic minors. An existing source that wishes to avoid designation as a major Part 70 source under R307-415, must obtain federally-enforceable conditions which reduce the potential to emit, as defined in R307-101-2, to less than the level established for a major Part 70 source. Such federally-enforceable conditions may be obtained by applying for and receiving an approval order under R307-401. The approval order shall contain periodic monitoring, recordkeeping, and reporting requirements sufficient to verify continuing compliance with the conditions which would reduce the source's potential to emit.

**R307-415-5a. Permit Applications: Duty to Apply.**

For each Part 70 source, the owner or operator shall submit a timely and complete permit application. A pre-application conference may be held at the request of a Part 70 source or the Executive Secretary to assist a source in submitting a complete application.

(1) Timely application.

(a) Except as provided in the transition plan under (3) below, a timely application for a source applying for an operating permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program.

(b) Except as provided in the transition plan under (3) below, any Part 70 source required to meet the requirements under Section 112(g) of the Act, Hazardous Air Pollutant Modifications, or required to receive an approval order to construct a new source or modify an existing source under R307-401, shall file a complete application to obtain an operating permit or permit revision within 12 months after commencing operation of the newly constructed or modified source. Where an existing operating permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

(c) For purposes of permit renewal, a timely application is one that is submitted by the renewal date established in the permit. The Executive Secretary shall establish a renewal date for each permit that is at least six months and not greater than 18 months prior to the date of permit expiration. A source may submit a permit application early for any reason, including timing of other application requirements.

(2) Complete application.

(a) To be deemed complete, an application must provide all information sufficient to evaluate the subject source and its application and to determine all applicable requirements pursuant to R307-415-5c. Applications for permit revision need supply such information only if it is related to the proposed change. A responsible official shall certify the submitted information consistent with R307-415-5d.

(b) Unless the Executive Secretary notifies the source in writing within 60 days of receipt of the application that an application is not complete, such application shall be deemed to be complete. A completeness determination shall not be required for minor permit modifications. If, while processing an application that has been determined or deemed to be complete, the Executive Secretary determines that additional information is necessary to evaluate or take final action on that application, the Executive Secretary may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in R307-415-7b(2), shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified in writing by the Executive Secretary.

(3) Transition Plan. A timely application under the transition plan is an application that is submitted according to the following schedule:

(a) All Title IV affected sources shall submit an operating permit application as well as an acid rain permit application in accordance with the date required by 40 CFR Part 72 effective April 11, 1995, Subpart C-Acid Rain Permit Applications;

(b) All major Part 70 sources operating as of July 10, 1995, except those described in (a) above, and all solid waste incineration units operating as of July 10, 1995, that are required to obtain an operating permit pursuant to 42 U.S.C. Sec. 7429(e) shall submit a permit application by October 10, 1995.

(c) Area sources.

(i) Except as provided in (c)(ii) and (c)(iii) below, each Part 70 source that is not a major source, a Title IV affected source, or a solid waste incineration unit required to obtain a permit pursuant to section 129(e) (42 U.S.C. 7429), is deferred from the obligation to submit an application until 12 months after the Administrator completes a rulemaking to determine how the program should be structured for area sources and the appropriateness of any permanent exemptions in addition to those provided in R307-415-4(2).

(ii) General Permits.

(A) The Executive Secretary shall develop general permits and application forms for area source categories.

(B) After a general permit has been issued for a source category, the Executive Secretary shall establish a due date for permit applications from all area sources in that source category.

(C) The Executive Secretary shall provide at least six months notice that the application is due for a source category.

(iii) Regulation-specific Requirements.

(A) If a regulation promulgated under Section 111 or 112 (42 U.S.C. 7411 or 7412) requires an area source category to submit an application for a Part 70 permit, each area source covered by the requirement must submit an application in accordance with the regulation.

(d) Extensions. The owner or operator of any Part 70 source may petition the Executive Secretary for an extension of the application due date for good cause. The due date for major Part 70 sources shall not be extended beyond July 10, 1996. The due date for an area source shall not be extended beyond twelve months after the due date in (c)(i) above.

(e) Application shield. If a source submits a timely and complete application under this transition plan, the application shield under R307-415-7b(2) shall apply to the source. If a source submits a timely application and is making sufficient progress toward correcting an application determined to be incomplete, the Executive Secretary may extend the application shield under R307-415-7b(2) to the source when the application is determined complete. The application shield shall not be extended to any major source that has not submitted a complete application by July 10, 1996, or to any area source that has not submitted a complete application within twelve months after the due date in (c)(i) above.

(4) Confidential information. Claims of confidentiality on information submitted to EPA may be made pursuant to applicable federal requirements. Claims of confidentiality on information submitted to the Department shall be made and governed according to Section 19-1-306. In the case where a source has submitted information to the Department under a claim of confidentiality that also must be submitted to the EPA, the Executive Secretary shall either submit the information to the EPA under Section 19-1-306, or require the source to submit a copy of such information directly to EPA.

(5) Late applications. An application submitted after the deadlines established in R307-415-5a shall be accepted for processing, but shall not be considered a timely application. Submitting an application shall not relieve a source of any enforcement actions resulting from submitting a late application.

**R307-415-5b. Permit Applications: Duty to Supplement or Correct Application.**

Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

**R307-415-5c. Permit Applications: Standard Requirements.**

Information as described below for each emissions unit at a Part 70 source shall be included in the application except for insignificant activities and emissions levels under R307-415-5e. The operating permit application shall include the elements specified below:

(1) Identifying information, including company name, company address, plant name and address if different from the company name and address, owner's name and agent, and telephone number and names of plant site manager or contact.

(2) A description of the source's processes and products by Standard Industrial Classification Code, including any associated with each alternate scenario identified by the source.

(3) The following emissions-related information:

(a) A permit application shall describe the potential to emit of all air pollutants for which the source is major, and the potential to emit of all regulated air pollutants and hazardous air pollutants from any emissions unit, except for insignificant activities and emissions under R307-415-5e. For emissions of hazardous air pollutants under 1,000 pounds per year, the following ranges may be used in the application: 1-10 pounds per year, 11-499 pounds per year, 500-999 pounds per year. The mid-point of the range shall be used to calculate the emission fee under R307-415-9 for hazardous air pollutants reported as a range.

(b) Identification and description of all points of emissions described in (a) above in sufficient detail to establish the basis for fees and applicability of applicable requirements.

(c) Emissions rates in tons per year and in such terms as are necessary to establish compliance with applicable requirements consistent with the applicable standard reference test method.

(d) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(e) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(f) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants and hazardous air pollutants at the Part 70 source.

(g) Other information required by any applicable requirement, including information related to stack height limitations developed pursuant to Section 123 of the Act.

(h) Calculations on which the information in items (a) through (g) above is based.

(4) The following air pollution control requirements:

(a) Citation and description of all applicable requirements, and

(b) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(5) Other specific information that may be necessary to implement and enforce applicable requirements or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements.

(7) Additional information as determined to be necessary by the Executive Secretary to define alternative operating scenarios identified by the source pursuant to R307-415-6a(9) or to define permit terms and conditions implementing emission trading under R307-415-7d(1)(c) or R307-415-6a(10).

(8) A compliance plan for all Part 70 sources that contains all of the following:

(a) A description of the compliance status of the source with respect to all applicable requirements.

(b) A description as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(iii) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(c) A compliance schedule as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(iii) A schedule of compliance for sources that are not in

compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(d) A schedule for submission of certified progress reports every six months, or more frequently if specified by the underlying applicable requirement or by the Executive Secretary, for sources required to have a schedule of compliance to remedy a violation.

(e) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for a Title IV affected source, except as specifically superseded by regulations promulgated under Title IV of the Act, Acid Deposition Control, with regard to the schedule and methods the source will use to achieve compliance with the acid rain emissions limitations.

(9) Requirements for compliance certification, including all of the following:

(a) A certification of compliance with all applicable requirements by a responsible official consistent with R307-415-5d and Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification.

(b) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test method.

(c) A schedule for submission of compliance certifications during the permit term, to be submitted annually, or more frequently if specified by the underlying applicable requirement or by the Executive Secretary.

(d) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(10) Nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act, Acid Deposition Control.

**R307-415-5d. Permit Applications: Certification.**

Any application form, report, or compliance certification submitted pursuant to R307-415 shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under R307-415 shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

**R307-415-5e. Permit Applications: Insignificant Activities and Emissions.**

An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under R307-415-9. The following lists apply only to operating permit applications and do not affect the applicability of R307-415 to a source, do not affect the requirement that a source receive an approval order under R307-401, and do not relieve a source of the responsibility to comply with any applicable requirement.

(1) The following insignificant activities and emission levels are not required to be included in the permit application.

(a) Exhaust systems for controlling steam and heat that do not contain combustion products, except for systems that are subject to an emission standard under any applicable requirement.

(b) Air contaminants that are present in process water or non-contact cooling water as drawn from the environment or from municipal sources, or air contaminants that are present in compressed air or in ambient air, which may contain air pollution, used for combustion.

(c) Air conditioning or ventilating systems not designed to remove air contaminants generated by or released from other processes or equipment.

(d) Disturbance of surface areas for purposes of land development, not including mining operations or the disturbance of contaminated soil.

(e) Brazing, soldering, or welding operations.

(f) Aerosol can usage.

(g) Road and parking lot paving operations, not including asphalt, sand and gravel, and cement batch plants.

(h) Fire training activities that are not conducted at permanent fire training facilities.

(i) Landscaping, janitorial, and site housekeeping activities, including fugitive emissions from landscaping activities.

(j) Architectural painting.

(k) Office emissions, including cleaning, copying, and restrooms.

(l) Wet wash aggregate operations that are solely dedicated to this process.

(m) Air pollutants that are emitted from personal use by employees or other persons at the source, such as foods, drugs, or cosmetics.

(n) Air pollutants that are emitted by a laboratory at a facility under the supervision of a technically qualified individual as defined in 40 CFR 720.3(ee); however, this exclusion does not apply to specialty chemical production, pilot plant scale operations, or activities conducted outside the laboratory.

(o) Maintenance on petroleum liquid handling equipment such as pumps, valves, flanges, and similar pipeline devices and appurtenances when purged and isolated from normal operations.

(p) Portable steam cleaning equipment.

(q) Vents on sanitary sewer lines.

(r) Vents on tanks containing no volatile air pollutants, e.g., any petroleum liquid, not containing Hazardous Air Pollutants, with a Reid Vapor Pressure less than 0.05 psia.

(2) The following insignificant activities are exempted because of size or production rate and a list of such insignificant activities must be included in the application. The Executive Secretary may require information to verify that the activity is insignificant.

(a) Emergency heating equipment, using coal, wood, kerosene, fuel oil, natural gas, or LPG for fuel, with a rated capacity less than 50,000 BTU per hour.

(b) Individual emissions units having the potential to emit less than one ton per year per pollutant of PM10 particulate matter, nitrogen oxides, sulfur dioxide, volatile organic compounds, or carbon monoxide, unless combined emissions from similar small emission units located within the same Part 70 source are greater than five tons per year of any one pollutant. This does not include emissions units that emit air contaminants other than PM10 particulate matter, nitrogen oxides, sulfur dioxide, volatile organic compounds, or carbon monoxide.

(c) Petroleum industry flares, not associated with refineries, combusting natural gas containing no hydrogen sulfide except in amounts less than 500 parts per million by weight, and having the potential to emit less than five tons per year per air contaminant.

(d) Road sweeping.

(e) Road salting and sanding.

(f) Unpaved public and private roads, except unpaved haul

roads located within the boundaries of a stationary source. A haul road means any road normally used to transport people, livestock, product or material by any type of vehicle.

(g) Non-commercial automotive (car and truck) service stations dispensing less than 6,750 gal. of gasoline/month

(h) Hazardous Air Pollutants present at less than 1% concentration, or 0.1% for a carcinogen, in a mixture used at a rate of less than 50 tons per year, provided that a National Emission Standards for Hazardous Air Pollutants standard does not specify otherwise.

(i) Fuel-burning equipment, in which combustion takes place at no greater pressure than one inch of mercury above ambient pressure, with a rated capacity of less than five million BTU per hour using no other fuel than natural gas, or LPG or other mixed gas distributed by a public utility.

(j) Comfort heating equipment (i.e., boilers, water heaters, air heaters and steam generators) with a rated capacity of less than one million BTU per hour if fueled only by fuel oil numbers 1 - 6.

(3) Any person may petition the Board to add an activity or emission to the list of Insignificant Activities and Emissions which may be excluded from an operating permit application under (1) or (2) above upon a change in the rule and approval of the rule change by EPA. The petition shall include the following information:

(a) A complete description of the activity or emission to be added to the list.

(b) A complete description of all air contaminants that may be emitted by the activity or emission, including emission rate, air pollution control equipment, and calculations used to determine emissions.

(c) An explanation of why the activity or emission should be exempted from the application requirements for an operating permit.

(4) The executive secretary may determine on a case-by-case basis, insignificant activities and emissions for an individual Part 70 source that may be excluded from an application or that must be listed in the application, but do not require a detailed description. No activity with the potential to emit greater than two tons per year of any criteria pollutant, five tons of a combination of criteria pollutants, 500 pounds of any hazardous air pollutant or one ton of a combination of hazardous air pollutants shall be eligible to be determined an insignificant activity or emission under this subsection (4).

**R307-415-6a. Permit Content: Standard Requirements.**

Each permit issued under R307-415 shall include the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance;

(a) The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

(b) The permit shall state that, where an applicable requirement is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, Acid Deposition Control, both provisions shall be incorporated into the permit.

(c) If the State Implementation Plan allows a determination of an alternative emission limit at a Part 70 source, equivalent to that contained in the State Implementation Plan, to be made in the permit issuance, renewal, or significant modification process, and the Executive Secretary elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(2) Permit duration. Except as provided by Section 19-2-109.1(3), the Executive Secretary shall issue permits for a fixed term of five years.

(3) Monitoring and related recordkeeping and reporting requirements.

(a) Each permit shall contain the following requirements with respect to monitoring:

(i) All monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including 40 CFR Part 64 and any other procedures and methods that may be promulgated pursuant to sections 114(a)(3) or 504(b) of the Act. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;

(ii) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, which may consist of recordkeeping designed to serve as monitoring, periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to (3)(c) below. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph;

(iii) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(b) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

(i) Records of required monitoring information that include the following:

(A) The date, place as defined in the permit, and time of sampling or measurements;

(B) The dates analyses were performed;

(C) The company or entity that performed the analyses;

(D) The analytical techniques or methods used;

(E) The results of such analyses;

(F) The operating conditions as existing at the time of sampling or measurement;

(ii) Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(c) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require all of the following:

(i) Submittal of reports of any required monitoring every six months, or more frequently if specified by the underlying applicable requirement or by the Executive Secretary. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with R307-415-5d.

(ii) Prompt reporting of deviations from permit requirements including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The Executive Secretary shall define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements. Deviations from permit requirements due to unavoidable breakdowns shall be reported according to the

unavoidable breakdown provisions of R307-107. The Executive Secretary may establish more stringent reporting deadlines if required by the applicable requirement.

(d) Claims of confidentiality shall be governed by Section 19-1-306.

(4) Acid Rain Allowances. For Title IV affected sources, a permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the Act or the regulations promulgated thereunder.

(a) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the Acid Rain Program, provided that such increases do not require a permit revision under any other applicable requirement.

(b) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(c) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Act.

(5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(6) Standard provisions stating the following:

(a) The permittee must comply with all conditions of the operating permit. Any permit noncompliance constitutes a violation of the Air Conservation Act and is grounds for any of the following: enforcement action; permit termination; revocation and reissuance; modification; denial of a permit renewal application.

(b) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(c) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition, except as provided under R307-415-7f(1) for minor permit modifications.

(d) The permit does not convey any property rights of any sort, or any exclusive privilege.

(e) The permittee shall furnish to the Executive Secretary, within a reasonable time, any information that the Executive Secretary may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Executive Secretary copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to EPA along with a claim of confidentiality.

(7) Emission fee. A provision to ensure that a Part 70 source pays fees to the Executive Secretary consistent with R307-415-9.

(8) Emissions trading. A provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

(9) Alternate operating scenarios. Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the Executive Secretary. Such terms and conditions:

(a) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

(b) Shall extend the permit shield to all terms and conditions under each such operating scenario; and

(c) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of R307-415.

(10) Emissions trading. Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

(a) Shall include all terms required under R307-415-6a and 6c to determine compliance;

(b) Shall extend the permit shield to all terms and conditions that allow such increases and decreases in emissions; and

(c) Must meet all applicable requirements and requirements of R307-415.

**R307-415-6b. Permit Content: Federally-Enforceable Requirements.**

(1) All terms and conditions in an operating permit, including any provisions designed to limit a source's potential to emit, are enforceable by EPA and citizens under the Act.

(2) Notwithstanding (1) above, applicable requirements that are not required by the Act or implementing federal regulations shall be included in the permit but shall be specifically designated as being not federally enforceable under the Act and shall be designated as "state requirements." Terms and conditions so designated are not subject to the requirements of R307-415-7a through 7i and R307-415-8 that apply to permit review by EPA and affected states. The Executive Secretary shall determine which conditions are "state requirements" in each operating permit.

**R307-415-6c. Permit Content: Compliance Requirements.**

All operating permits shall contain all of the following elements with respect to compliance:

(1) Consistent with R307-415-6a(3), compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document, including any report, required by an operating permit shall contain a certification by a responsible official that meets the requirements of R307-415-5d;

(2) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the Executive Secretary or an authorized representative to perform any of the following:

(a) Enter upon the permittee's premises where a Part 70 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit;

(d) Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements;

(e) Claims of confidentiality on the information obtained during an inspection shall be made pursuant to Section 19-1-306;

(3) A schedule of compliance consistent with R307-415-5c(8);

(4) Progress reports consistent with an applicable schedule

of compliance and R307-415-5c(8) to be submitted semiannually, or at a more frequent period if specified in the applicable requirement or by the Executive Secretary. Such progress reports shall contain all of the following:

(a) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved;

(b) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted;

(5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include all of the following:

(a) Annual submission of compliance certification, or more frequently if specified in the applicable requirement or by the Executive Secretary;

(b) In accordance with R307-415-6a(3), a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(c) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may reference the permit or previous reports, as applicable):

(i) The identification of each term or condition of the permit that is the basis of the certification;

(ii) The identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. Such methods and other means shall include, at a minimum, the methods and means required under R307-415-6a(3). If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information;

(iii) The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in (ii) above. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR Part 64 occurred; and

(iv) Such other facts as the executive secretary may require to determine the compliance status of the source;

(d) A requirement that all compliance certifications be submitted to the EPA as well as to the Executive Secretary;

(e) Such additional requirements as may be specified pursuant to Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification, and Section 504(b) of the Act, Monitoring and Analysis;

(6) Such other provisions as the Executive Secretary may require.

**R307-415-6d. Permit Content: General Permits.**

(1) The Executive Secretary may, after notice and opportunity for public participation provided under R307-415-7i, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other operating permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the Executive Secretary shall grant the conditions and terms of the general permit. Notwithstanding the permit shield, the source shall be subject to enforcement action for operation without an operating permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be issued for Title IV affected sources under the Acid Rain Program unless otherwise provided in regulations promulgated under Title IV of the Act.

(2) Part 70 sources that would qualify for a general permit must apply to the Executive Secretary for coverage under the terms of the general permit or must apply for an operating permit consistent with R307-415-5a through 5e. The Executive Secretary may, in the general permit, provide for applications which deviate from the requirements of R307-415-5a through 5e, provided that such applications meet the requirements of Title V of the Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures required under R307-415-7i, the Executive Secretary may grant a source's request for authorization to operate under a general permit, but such a grant to a qualified source shall not be a final permit action until the requirements of R307-415-5a through 5e have been met.

**R307-415-6e. Permit Content: Temporary Sources.**

The owner or operator of a permitted source may temporarily relocate the source for a period not to exceed that allowed by R307-401-7. A permit modification is required to relocate the source for a period longer than that allowed by R307-401-7. No Title IV affected source may be permitted as a temporary source. Permits for temporary sources shall include all of the following:

(1) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(2) Requirements that the owner or operator receive approval to relocate under R307-401-7 before operating at the new location;

(3) Conditions that assure compliance with all other provisions of R307-415.

**R307-415-6f. Permit Content: Permit Shield.**

(1) Except as provided in R307-415, the Executive Secretary shall include in each operating permit a permit shield provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(a) Such applicable requirements are included and are specifically identified in the permit; or

(b) The Executive Secretary, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) An operating permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) Nothing in this paragraph or in any operating permit shall alter or affect any of the following:

(a) The emergency provisions of Section 19-1-202 and Section 19-2-112, and the provisions of Section 303 of the Act, Emergency Orders, including the authority of the Administrator under that Section;

(b) The liability of an owner or operator of a source for any violation of applicable requirements under Section 19-2-107(2)(g) and Section 19-2-110 prior to or at the time of permit issuance;

(c) The applicable requirements of the Acid Rain Program, consistent with Section 408(a) of the Act;

(d) The ability of the Executive Secretary to obtain information from a source under Section 19-2-120, and the ability of EPA to obtain information from a source under Section 114 of the Act, Inspection, Monitoring, and Entry.

**R307-415-6g. Permit Content: Emergency Provision.**

(1) Emergency. An "emergency" is any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) Effect of an emergency. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of (3) below are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An emergency occurred and that the permittee can identify the causes of the emergency;

(b) The permitted facility was at the time being properly operated;

(c) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

(d) The permittee submitted notice of the emergency to the Executive Secretary within two working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of R307-415-6a(3)(c)(ii). This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(5) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

**R307-415-7a. Permit Issuance: Action on Application.**

(1) A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(a) The Executive Secretary has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit;

(b) Except for modifications qualifying for minor permit modification procedures under R307-415-7f(1)and (2), the Executive Secretary has complied with the requirements for public participation under R307-415-7i;

(c) The Executive Secretary has complied with the requirements for notifying and responding to affected States under R307-415-8(2);

(d) The conditions of the permit provide for compliance with all applicable requirements and the requirements of R307-415;

(e) EPA has received a copy of the proposed permit and any notices required under R307-415-8(1) and (2), and has not objected to issuance of the permit under R307-415-8(3) within the time period specified therein.

(2) Except as provided under the initial transition plan provided for under R307-415-5a(3) or under regulations promulgated under Title IV of the Act for the permitting of Title IV affected sources under the Acid Rain Program, the Executive Secretary shall take final action on each permit application, including a request for permit modification or renewal, within 18 months after receiving a complete application.

(3) The Executive Secretary shall promptly provide notice to the applicant of whether the application is complete. Unless the Executive Secretary requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. A completeness determination shall not be required for minor permit modifications.

(4) The Executive Secretary shall provide a statement that sets forth the legal and factual basis for the draft permit conditions, including references to the applicable statutory or regulatory provisions. The Executive Secretary shall send this statement to EPA and to any other person who requests it.

(5) The submittal of a complete application shall not affect the requirement that any source have an approval order under R307-401.

**R307-415-7b. Permit Issuance: Requirement for a Permit.**

(1) Except as provided in R307-415-7d and R307-415-7f(1)(f)and 7f(2)(e), no Part 70 source may operate after the time that it is required to submit a timely and complete application, except in compliance with a permit issued under these rules.

(2) Application shield. If a Part 70 source submits a timely and complete application for permit issuance, including for renewal, the source's failure to have an operating permit is not a violation of R307-415 until the Executive Secretary takes final action on the permit application. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to R307-415-7a(3), and as required by R307-415-5a(2), the applicant fails to submit by the deadline specified in writing by the Executive Secretary any additional information identified as being needed to process the application.

**R307-415-7c. Permit Renewal and Expiration.**

(1) Permits being renewed are subject to the same procedural requirements, including those for public participation, affected State and EPA review, that apply to initial permit issuance.

(2) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with R307-415-7b and R307-415-5a(1)(c).

(3) If a timely and complete renewal application is submitted consistent with R307-415-7b and R307-415-5a(1)(c)and the Executive Secretary fails to issue or deny the renewal permit before the end of the term of the previous permit, then all of the terms and conditions of the permit, including the permit shield, shall remain in effect until renewal or denial.

**R307-415-7d. Permit Revision: Changes That Do Not Require a Revision.**

(1) Operational Flexibility.

(a) A Part 70 source may make changes that contravene an express permit term if all of the following conditions have been met:

(i) The source has obtained an approval order, or has met the exemption requirements under R307-401;

(ii) The change would not violate any applicable requirements or contravene any federally enforceable permit terms and conditions for monitoring, including test methods, recordkeeping, reporting, or compliance certification requirements;

(iii) The changes are not modifications under any provision of Title I of the Act; and the changes do not exceed the emissions allowable under the permit, whether expressed therein as a rate of emissions or in terms of total emissions.

(iv) For each such change, the source shall provide written notice to the Executive Secretary and send a copy of the notice to EPA at least seven days before implementing the proposed change. The seven-day requirement may be waived by the Executive Secretary in the case of an emergency. The written notification shall include a brief description of the change

within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change. The permit shield shall not apply to these changes. The source, the EPA, and the Executive Secretary shall attach each such notice to their copy of the relevant permit.

(b) Emission trading under the State Implementation Plan. Permitted sources may trade increases and decreases in emissions in the permitted facility, where the State Implementation Plan provides for such emissions trades, without requiring a permit revision provided the change is not a modification under any provision of Title I of the Act, the change does not exceed the emissions allowable under the permit, and the source notifies the Executive Secretary and the EPA at least seven days in advance of the trade. This provision is available in those cases where the permit does not already provide for such emissions trading.

(i) The written notification required above shall include such information as may be required by the provision in the State Implementation Plan authorizing the emissions trade, including at a minimum, when the proposed change will occur, a description of each such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the State Implementation Plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the State Implementation Plan and that provide for the emissions trade.

(ii) The permit shield shall not extend to any change made under this paragraph. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the State Implementation Plan authorizing the emissions trade.

(c) If a permit applicant requests it, the Executive Secretary shall issue permits that contain terms and conditions, including all terms required under R307-415-6a and 6c to determine compliance, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. Such changes in emissions shall not be allowed if the change is a modification under any provision of Title I of the Act or the change would exceed the emissions allowable under the permit. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The Executive Secretary shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements, and shall require the source to notify the Executive Secretary and the EPA in writing at least seven days before making the emission trade.

(i) The written notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(ii) The permit shield shall extend to terms and conditions that allow such increases and decreases in emissions.

(2) Off-permit changes. A Part 70 source may make changes that are not addressed or prohibited by the permit without a permit revision, unless such changes are subject to any requirements under Title IV of the Act or are modifications under any provision of Title I of the Act.

(a) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.

(b) Sources must provide contemporaneous written notice to the Executive Secretary and EPA of each such change, except for changes that qualify as insignificant under R307-415-5e. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirements that would apply as a result of the change.

(c) The change shall not qualify for the permit shield.

(d) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

(e) The off-permit provisions do not affect the requirement for a source to obtain an approval order under R307-401.

**R307-415-7e. Permit Revision: Administrative Amendments.**

(1) An "administrative permit amendment" is a permit revision that:

(a) Corrects typographical errors;

(b) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(c) Requires more frequent monitoring or reporting by the permittee;

(d) Allows for a change in ownership or operational control of a source where the Executive Secretary determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Executive Secretary;

(e) Incorporates into the operating permit the requirements from an approval order issued under R307-401, provided that the procedures for issuing the approval order were substantially equivalent to the permit issuance or modification procedures of R307-415-7a through 7i and R307-415-8, and compliance requirements are substantially equivalent to those contained in R307-415-6a through 6g;

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

(3) Administrative permit amendment procedures. An administrative permit amendment may be made by the Executive Secretary consistent with the following:

(a) The Executive Secretary shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected States provided that the Executive Secretary designates any such permit revisions as having been made pursuant to this paragraph. The Executive Secretary shall take final action on a request for a change in ownership or operational control of a source under (1)(d) above within 30 days of receipt of a request.

(b) The Executive Secretary shall submit a copy of the revised permit to EPA.

(c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(4) The Executive Secretary shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield for administrative permit amendments made pursuant to (1)(e) above which meet the relevant requirements of R307-415-6a through 6g, 7 and 8 for significant permit modifications.

**R307-415-7f. Permit Revision: Modification.**

The permit modification procedures described in R307-

415-7f shall not affect the requirement that a source obtain an approval order under R307-401 before constructing or modifying a source of air pollution. A modification not subject to the requirements of R307-401 shall not require an approval order in addition to the permit modification as described in this section. A permit modification is any revision to an operating permit that cannot be accomplished under the program's provisions for administrative permit amendments under R307-415-7e. Any permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

(1) Minor permit modification procedures.

(a) Criteria. Minor permit modification procedures may be used only for those permit modifications that:

(i) Do not violate any applicable requirement or require an approval order under R307-401;

(ii) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(iii) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(iv) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such term or condition would include a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I or an alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the Act, Early Reduction; and

(v) Are not modifications under any provision of Title I of the Act.

(b) Notwithstanding (1)(a)above and (2)(a) below, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the State Implementation Plan or an applicable requirement.

(c) Application. An application requesting the use of minor permit modification procedures shall meet the requirements of R307-415-5c and shall include all of the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(ii) The source's suggested draft permit;

(iii) Certification by a responsible official, consistent with R307-415-5d, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used;

(iv) Completed forms for the Executive Secretary to use to notify EPA and affected States as required under R307-415-8.

(d) EPA and affected State notification. Within five working days of receipt of a complete permit modification application, the Executive Secretary shall notify EPA and affected States of the requested permit modification. The Executive Secretary promptly shall send any notice required under R307-415-8(2)(b) to EPA.

(e) Timetable for issuance. The Executive Secretary may not issue a final permit modification until after EPA's 45-day review period or until EPA has notified the Executive Secretary that EPA will not object to issuance of the permit modification, whichever is first. Within 90 days of the Executive Secretary's receipt of an application under minor permit modification procedures or 15 days after the end of EPA's 45-day review period under R307-415-8(3), whichever is later, the Executive Secretary shall:

(i) Issue the permit modification as proposed;

(ii) Deny the permit modification application;

(iii) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

(iv) Revise the draft permit modification and transmit to EPA the new proposed permit modification as required by R307-415-8(1).

(f) Source's ability to make change. A Part 70 source may make the change proposed in its minor permit modification application immediately after it files such application if the source has received an approval order under R307-401 or has met the approval order exemption requirements under R307-413-1 through 6. After the source makes the change allowed by the preceding sentence, and until the Executive Secretary takes any of the actions specified in (1)(e)(i) through (iii) above, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(g) Permit shield. The permit shield under R307-415-6f shall not extend to minor permit modifications.

(2) Group processing of minor permit modifications. Consistent with this paragraph, the Executive Secretary may modify the procedure outlined in (1) above to process groups of a source's applications for certain modifications eligible for minor permit modification processing.

(a) Criteria. Group processing of modifications may be used only for those permit modifications:

(i) That meet the criteria for minor permit modification procedures under (1)(a) above; and

(ii) That collectively are below the following threshold level: 10 percent of the emissions allowed by the permit for the emissions unit for which the change is requested, 20 percent of the applicable definition of major source in R307-415-3, or five tons per year, whichever is least.

(b) Application. An application requesting the use of group processing procedures shall meet the requirements of R307-415-5c and shall include the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

(ii) The source's suggested draft permit.

(iii) Certification by a responsible official, consistent with R307-415-5d, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

(iv) A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under R307-415-7e(2)(a)(ii).

(v) Certification, consistent with R307-415-5d, that the source has notified EPA of the proposed modification. Such notification need only contain a brief description of the requested modification.

(vi) Completed forms for the Executive Secretary to use to notify EPA and affected States as required under R307-415-8.

(c) EPA and affected State notification. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under (2)(a)(ii) above, whichever is earlier, the Executive Secretary shall notify EPA and affected States of the requested permit

modifications. The Executive Secretary shall send any notice required under R307-415-8(2)(b)to EPA.

(d) Timetable for issuance. The provisions of (1)(e) above shall apply to modifications eligible for group processing, except that the Executive Secretary shall take one of the actions specified in (1)(e)(i) through (iv) above within 180 days of receipt of the application or 15 days after the end of EPA's 45-day review period under R307-415-8(3), whichever is later.

(e) Source's ability to make change. The provisions of (1)(f) above shall apply to modifications eligible for group processing.

(f) Permit shield. The provisions of (1)(g) above shall also apply to modifications eligible for group processing.

(3) Significant modification procedures.

(a) Criteria. Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications or as administrative amendments. Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant. Nothing herein shall be construed to preclude the permittee from making changes consistent with R307-415 that would render existing permit compliance terms and conditions irrelevant.

(b) Significant permit modifications shall meet all requirements of R307-415, including those for applications, public participation, review by affected States, and review by EPA, as they apply to permit issuance and permit renewal. The Executive Secretary shall complete review on the majority of significant permit modifications within nine months after receipt of a complete application.

**R307-415-7g. Permit Revision: Reopening for Cause.**

(1) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

(a) New applicable requirements become applicable to a major Part 70 source with a remaining permit term of three or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the terms and conditions of the permit have been extended pursuant to R307-415-7c(3).

(b) Additional requirements, including excess emissions requirements, become applicable to an Title IV affected source under the Acid Rain Program. Upon approval by EPA, excess emissions offset plans shall be deemed to be incorporated into the permit.

(c) The Executive Secretary or EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(d) EPA or the Executive Secretary determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(e) Additional applicable requirements are to become effective before the renewal date of the permit and are in conflict with existing permit conditions.

(2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

(3) Reopenings under (1) above shall not be initiated before a notice of such intent is provided to the Part 70 source by the Executive Secretary at least 30 days in advance of the date that the permit is to be reopened, except that the Executive Secretary may provide a shorter time period in the case of an emergency.

**R307-415-7h. Permit Revision: Reopenings for Cause by EPA.**

The Executive Secretary shall, within 90 days after receipt of notification that EPA finds that cause exists to terminate, modify or revoke and reissue a permit, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Executive Secretary may request a 90-day extension if a new or revised permit application is necessary or if the Executive Secretary determines that the permittee must submit additional information.

**R307-415-7i. Public Participation.**

The Executive Secretary shall provide for public notice, comment and an opportunity for a hearing on initial permit issuance, significant modifications, reopenings for cause, and renewals, including the following procedures:

(1) Notice shall be given: by publication in a newspaper of general circulation in the area where the source is located; to persons on a mailing list developed by the Executive Secretary, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public.

(2) The notice shall identify the Part 70 source; the name and address of the permittee; the name and address of the Executive Secretary; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan or compliance and monitoring certification, and all other materials available to the Executive Secretary that are relevant to the permit decision; a brief description of the comment procedures; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled.

(3) The Executive Secretary shall provide such notice and opportunity for participation by affected States as is provided for by R307-415-8.

(4) Timing. The Executive Secretary shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing.

(5) The Executive Secretary shall keep a record of the commenters and also of the issues raised during the public participation process, and such records shall be available to the public and to EPA.

**R307-415-8. Permit Review by EPA and Affected States.**

(1) Transmission of information to EPA.

(a) The Executive Secretary shall provide to EPA a copy of each permit application, including any application for permit modification, each proposed permit, and each final operating permit, unless the Administrator has waived this requirement for a category of sources, including any class, type, or size within such category. The applicant may be required by the Executive Secretary to provide a copy of the permit application, including the compliance plan, directly to EPA. Upon agreement with EPA, the Executive Secretary may submit to EPA a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with EPA's national database management system.

(b) The Executive Secretary shall keep for five years such

records and submit to EPA such information as EPA may reasonably require to ascertain whether the Operating Permit Program complies with the requirements of the Act or of 40 CFR Part 70.

(2) Review by affected States.

(a) The Executive Secretary shall give notice of each draft permit to any affected State on or before the time that the Executive Secretary provides this notice to the public under R307-415-7i, except to the extent R307-415-7f(1) or (2) requires the timing to be different, unless the Administrator has waived this requirement for a category of sources, including any class, type, or size within such category.

(b) The Executive Secretary, as part of the submittal of the proposed permit to EPA, or as soon as possible after the submittal for minor permit modification procedures allowed under R307-415-7f(1) or (2), shall notify EPA and any affected State in writing of any refusal by the Executive Secretary to accept all recommendations for the proposed permit that the affected State submitted during the public or affected State review period. The notice shall include the Executive Secretary's reasons for not accepting any such recommendation. The Executive Secretary is not required to accept recommendations that are not based on applicable requirements or the requirements of R307-415.

(3) EPA objection. If EPA objects to the issuance of a permit in writing within 45 days of receipt of the proposed permit and all necessary supporting information, then the Executive Secretary shall not issue the permit. If the Executive Secretary fails, within 90 days after the date of an objection by EPA, to revise and submit a proposed permit in response to the objection, EPA may issue or deny the permit in accordance with the requirements of the Federal program promulgated under Title V of the Act.

(4) Public petitions to EPA. If EPA does not object in writing under R307-415-8(3), any person may petition EPA under the provisions of 40 CFR 70.8(d) within 60 days after the expiration of EPA's 45-day review period to make such objection. If EPA objects to the permit as a result of a petition, the Executive Secretary shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. If the Executive Secretary has issued a permit prior to receipt of an EPA objection under this paragraph, EPA may modify, terminate, or revoke such permit, consistent with the procedures in 40 CFR 70.7(g) except in unusual circumstances, and the Executive Secretary may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

(5) Prohibition on default issuance. The Executive Secretary shall not issue an operating permit, including a permit renewal or modification, until affected States and EPA have had an opportunity to review the proposed permit as required under this Section.

**R307-415-9. Fees for Operating Permits.**

(1) Definitions. The following definition applies only to R307-415-9: "Allowable emissions" are emissions based on the potential to emit stated by the Executive Secretary in an approval order, the State Implementation Plan or an operating permit.

(2) Applicability. As authorized by Section 19-2-109.1, all Part 70 sources must pay an annual fee, based on annual emissions of all chargeable pollutants.

(a) Any Title IV affected source that has been designated as a "Phase I Unit" in a substitution plan approved by the Administrator under 40 CFR Section 72.41 shall be exempted from the requirement to pay an emission fee from January 1, 1995 to December 31, 1999.

(3) Calculation of Annual Emission Fee for a Part 70 Source.

(a) The emission fee shall be calculated for all chargeable pollutants emitted from a Part 70 source, even if only one unit or one chargeable pollutant triggers the applicability of R307-415 to the source.

(i) Fugitive emissions and fugitive dust shall be counted when determining the emission fee for a Part 70 source.

(ii) An emission fee shall not be charged for emissions of any amount of a chargeable pollutant if the emissions are already accounted for within the emissions of another chargeable pollutant.

(iii) An emission fee shall not be charged for emissions of any one chargeable pollutant from any one Part 70 source in excess of 4,000 tons per year.

(iv) Emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road vehicle shall not be counted when calculating chargeable emissions for a Part 70 source.

(b) The emission fee for an existing source prior to the issuance of an operating permit, shall be based on the most recent emission inventory available unless a Part 70 source elected, prior to July 1, 1992, to base the fee for one or more pollutants on allowable emissions established in an approval order or the State Implementation Plan.

(c) The emission fee after the issuance or renewal of an operating permit shall be based on the most recent emission inventory available unless a Part 70 source elects, prior to the issuance or renewal of the permit, to base the fee for one or more chargeable pollutants on allowable emissions for the entire term of the permit.

(d) When a new Part 70 source begins operating, it shall pay an emission fee for that fiscal year, prorated from the date the source begins operating. The emission fee for a new Part 70 source shall be based on allowable emissions until that source has been in operation for a full calendar year, and has submitted an inventory of actual emissions. If a new Part 70 source is not billed in the first billing cycle of its operation, the emission fee shall be calculated using the emissions that would have been used had the source been billed at that time. This fee shall be in addition to any subsequent emission fees.

(e) When a Part 70 source is no longer subject to Part 70, the emission fee shall be prorated to the date that the source ceased to be subject to Part 70. If the Part 70 source has already paid an emission fee that is greater than the prorated fee, the balance will be refunded.

(i) If that Part 70 source again becomes subject to the emission fee requirements, it shall pay an emission fee for that fiscal year prorated from the date the source again became subject to the emission fee requirements. The fee shall be based on the emission inventory during the last full year of operation. The emission fee shall continue to be based on actual emissions reported for the last full calendar year of operation until that source has been in operation for a full calendar year and has submitted an updated inventory of actual emissions.

(ii) If a Part 70 source has chosen to base the emission fee on allowable emissions, then the prorated fee shall be calculated using allowable emissions.

(f) Modifications. The method for calculating the emission fee for a source shall not be affected by modifications at that source, unless the source demonstrates to the Executive Secretary that another method for calculating chargeable emissions is more representative of operations after the modification has been made.

(g) The Executive Secretary may presume that potential emissions of any chargeable pollutant for the source are equivalent to the actual emissions for the source if recent

inventory data are not available.

(4) Collection of Fees.

(a) The emission fee is due on October 1 of each calendar year or 45 days after the source has received notice of the amount of the fee, whichever is later.

(b) The Executive Secretary may require any person who fails to pay the annual emission fee by the due date to pay interest on the fee and a penalty under 19-2-109.1(7)(a).

(c) A person may contest an emission fee assessment, or associated penalty, under 19-2-109.1(8).

**KEY: air pollution, environmental protection, operating permit, emission fee**
**August 3, 2004 19-2-109.1**
**Notice of Continuation February 9, 2004 19-2-104**

**R309. Environmental Quality, Drinking Water.**
**R309-105. Administration: General Responsibilities of Public Water Systems.**
**R309-105-1. Purpose.**

The purpose of this rule is to set forth the general responsibilities of public water systems, water system owners and operators.

R309-105-2 Authority.
R309-105-3 Definitions.
R309-105-4 General.
R309-105-5 Exemptions from Monitoring Requirements.
R309-105-6 Construction of Public Drinking Water Facilities.
R309-105-7 Source Protection Plans.
R309-105-8 Existing Water System Facilities.
R309-105-9 Minimum Pressure.
R309-105-10 Operation and Maintenance Procedures.
R309-105-11 Operator Certification.
R309-105-12 Cross Connection Control.
R309-105-13 Finished Water Quality.
R309-105-14 Operational Reports.
R309-105-15 Annual Reports.
R309-105-16 Reporting Test Results.
R309-105-17 Record Maintenance.
R309-105-18 Emergencies.

**R309-105-2. Authority.**

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

**R309-105-3. Definitions.**

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

**R309-105-4. General.**

Water suppliers are responsible for the quality of water delivered to their customers. In order to give the public reasonable assurance that the water which they are consuming is satisfactory, the Board has established rules for the design, construction, water quality, water treatment, contaminant monitoring, source protection, operation and maintenance of public water supplies.

**R309-105-5. Exemptions from Monitoring Requirements.**

(1) The applicable requirements specified in R309-205, R309-210 and R309-215 for monitoring shall apply to each public water system, unless the public water system meets all of the following conditions:

(a) Consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(b) Obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;

(c) Does not sell water to any person; and

(d) Is not a carrier which conveys passengers in interstate commerce.

(2) When a public water system supplies water to one or more other public water systems, the Executive Secretary may modify the monitoring requirements imposed by R309-205, R309-210 and R309-215 to the extent that the interconnection of the systems justifies treating them as a single system for monitoring purposes.

(3) In no event shall the Executive Secretary authorize modifications in the monitoring requirements which are less stringent than requirements established by the Federal Safe Drinking Water Act.

**R309-105-6. Construction of Public Drinking Water Facilities.**

The following requirements pertain to the construction of public water systems.

(1) Approval of Engineering Plans and Specifications

(a) Complete plans and specifications for all public drinking water projects, as described in R309-500-5, shall be approved in writing by the Executive Secretary prior to the commencement of construction. A 30-day review time should be assumed.

(b) Appropriate engineering reports, supporting information and master plans may also be required by the Executive Secretary as needed to evaluate the proposed project. A certificate of convenience and necessity or an exemption therefrom, issued by the Public Service Commission, shall be filed with the Executive Secretary prior to approval of any plans or specifications for projects described in R309-105-6(3)(a).

(2) Acceptable Design and Construction Methods

(a) The design and construction methods of all public drinking water facilities shall conform to the applicable standards contained in R309-204 and R309-500 through R309-550 of these rules. The Executive Secretary may require modifications to plans and specifications before approval is granted.

(b) There may be times in which the requirements of the applicable standards contained in R309-204 and R309-500 through R309-550 are not appropriate. Thus, the Executive Secretary may grant an "exception" to portions of these standards if it can be shown that the granting of such an exception will not jeopardize the public health.

(c) Alternative or new treatment techniques may be developed which are not specifically addressed by the applicable standards contained in R309-204 and R309-500 through R309-550. These treatment techniques may be accepted by the Executive Secretary if it can be shown that:

(i) They will result in a finished water meeting the requirements of R309-200 of these regulations.

(ii) The technique will produce finished water which will protect public health to the same extent provided by comparable treatment processes outlined in the applicable standards contained in R309-204 and R309-500 through R309-550.

(iii) The technique is as reliable as any comparable treatment process governed by the applicable standards contained in R309-204 and R309-500 through R309-550.

(3) Description of "Public Drinking Water Project"

Refer to R309-500-5 for the description of a public drinking water project and R309-500-6 for required items to be submitted for plan approval.

(4) Specifications for the drilling of a public water supply well may be prepared and submitted by a licensed well driller holding a current Utah Well Driller's Permit if authorized by the Executive Secretary.

(5) Drawing Quality and Size

Drawings which are submitted shall be compatible with Division of Drinking Water Document storage. Drawings which are illegible or of unusual size will not be accepted for review. Drawing size shall not exceed 30" x 42" nor be less than 8-1/2" x 11".

(6) Requirements After Approval of Plans for Construction

After the approval of plans for construction, and prior to operation of any facilities dealing with drinking water, the items required by R309-500-9 shall be submitted and an operating permit received.

**R309-105-7. Source Protection.**

(1) Public Water Systems are responsible for protecting their sources of drinking water from contamination. R309-600 and R309-605 sets forth minimum requirements to establish a

uniform, statewide program for implementation by PWSs to protect their 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.

(2) 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.

(3) 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.

**R309-105-8. Existing Water System Facilities.**

(1) All public water systems shall deliver water meeting the applicable requirements of R309-200 of these rules.

(2) Existing facilities shall be brought into compliance with R309-204 and R309-500 through R309-550 or shall be reliably capable of delivering water meeting the requirements of R309-200.

(3) In situations where a water system is providing water of unsatisfactory quality, or when the quality of the water or the public health is threatened by poor physical facilities, the water system management shall solve the problem(s).

**R309-105-9. Minimum Water Pressure.**

(1) Unless otherwise specifically approved by the Executive Secretary, no water supplier shall allow any connection to the water system where water pressure at the point of connection will fall below 20 psi during the normal operation of the water system.

(2) Unless otherwise specifically approved by the Executive Secretary, public water systems constructed after March 1, 2006 shall be designed and shall meet the following minimum water pressures at points of connection:

(a) 20 psi during conditions of fire flow and fire demand experienced during peak day demand;

(b) 30 psi during peak instantaneous demand; and

(c) 40 psi during peak day demand.

(3) Individual home booster pumps are not allowed as indicated in R309-540-5(4)(c).

**R309-105-10. Operation and Maintenance Procedures.**

All routine operation and maintenance of public water supplies shall be carried out with due regard for public health and safety. The following sections describe procedures which shall be used in carrying out some common operation and maintenance procedures.

(1) Chemical Addition

(a) Water system operators shall determine that all chemicals added to water intended for human consumption are suitable for potable water use and comply with ANSI/NSF Standard 60.

(b) No chemicals or other substances shall be added to public water supplies unless the chemical addition facilities and chemical type have been reviewed and approved by the Division of Drinking Water.

(c) Chlorine, when used in the distribution system, shall be added in sufficient quantity to achieve either "breakpoint" and yield a detectable free chlorine residual or a detectable combined chlorine residual in the distribution system at points to be determined by the Executive Secretary. Residual checks shall be taken daily by the operator of any system using disinfectants. The Executive Secretary may, however, reduce the frequency of residual checks if he determines that this would be an unwarranted hardship on the water system operator and, furthermore, the disinfection equipment has a verified record of reliable operation. Suppliers, when checking for residuals, shall use test kits and methods which meet the requirements of the U.S. EPA. The "DPD" test method is recommended for free chlorine residuals. Information on the suppliers of this equipment is available from the Division of Drinking Water.

(2) New and Repaired Mains

(a) All new water mains shall meet the requirements of R309-550-6 with regard to materials of construction. All products in contact with culinary water shall comply with ANSI/NSF Standard 61.

(b) All new and repaired water mains or appurtenances shall be disinfected in accordance with AWWA Standard C651-92. The chlorine solution shall be flushed from the water main with potable water prior to the main being placed in use.

(c) All products used to recoat the interiors of storage structures and which may come in contact with culinary water shall comply with ANSI/NSF Standard 61.

(3) Reservoir Maintenance and Disinfection

After a reservoir has been entered for maintenance or re-coating, it shall be disinfected prior to being placed into service. Procedures given in AWWA Standard C651-92 shall be followed in this regard.

(4) Spring Collection Area Maintenance

(a) Spring collection areas shall be periodically cleared of deep rooted vegetation to prevent root growth from clogging collection lines. Frequent hand or mechanical clearing of spring collection areas is strongly recommended. It is advantageous to encourage the growth of grasses and other shallow rooted vegetation for erosion control and to inhibit the growth of more detrimental flora.

(b) No pesticide (e.g., herbicide) may be applied on a spring collection area without the prior written approval of the Executive Secretary. Such approval shall be given 1) only when acceptable pesticides are proposed; 2) when the pesticide product manufacturer certifies that no harmful substance will be imparted to the water; and 3) only when spring development meets the requirements of these rules (see R309-204-7).

(5) Security

All water system facilities such as spring junction boxes, well houses, reservoirs, and treatment facilities shall be secure.

(6) Seasonal Operation

Water systems operated seasonally shall be disinfected and flushed according to the techniques given in AWWA Standard C651-92 and C652-92 prior to each season's use. A satisfactory bacteriologic sample shall be achieved prior to use. During the non-use period, care shall be taken to close all openings into the system.

(7) Pump Lubricants

All oil lubricated pumps for culinary wells shall utilize mineral oils suitable for human consumption as determined by the Executive Secretary. To assure proper performance, and to prevent the voiding of any warranties which may be in force, the water supplier should confirm with individual pump manufacturers that the oil which is selected will have the necessary properties to perform satisfactorily.

**R309-105-11. Operator Certification.**

All community and non-transient non-community water systems or any public system that employs treatment techniques for surface water or ground water under the direct influence of surface water shall have an appropriately certified operator in accordance with the requirements of these rules. Refer to R309-300, Certification Rules for Water Supply Operators, for specific requirements.

**R309-105-12. Cross Connection Control.**

(1) The water supplier shall not allow a connection to his system which may jeopardize its quality and integrity. Cross

connections are not allowed unless controlled by an approved and properly operating backflow prevention assembly. The requirements of Chapter 6 of the 2000 International Plumbing Code and its amendments as adopted by the Department of Commerce under R156-56 shall be met with respect to cross connection control and backflow prevention.

(2) Each water system shall have a functioning cross connection control program. The program shall consist of five designated elements documented on an annual basis. The elements are:

(a) a legally adopted and functional local authority to enforce a cross connection control program (i.e., ordinance, bylaw or policy);

(b) providing public education or awareness material or presentations;

(c) an operator with adequate training in the area of cross connection control or backflow prevention;

(d) written records of cross connection control activities, such as, backflow assembly inventory; and

(e) test history and documentation of on-going enforcement (hazard assessments and enforcement actions) activities.

(3) Suppliers shall maintain, as proper documentation, an inventory of each pressure atmospheric vacuum breaker, double check valve, reduced pressure zone principle assembly, and high hazard air gap used by their customers, and a service record for each such assembly.

(4) Backflow prevention assemblies shall be inspected and tested at least once a year, by an individual certified for such work as specified in R309-305. Suppliers shall maintain, as proper documentation, records of these inspections. This testing responsibility may be borne by the water system or the water system management may require that the customer having the backflow prevention assembly be responsible for having the device tested.

(5) Suppliers serving areas also served by a pressurized irrigation system shall prevent cross connections between the two. Requirements for pressurized irrigation systems are outlined in Section 19-4-112 of the Utah Code.

**R309-105-13. Finished Water Quality.**

All public water systems are required to monitor their water according to the requirements of R309-205, R309-210 and R309-215 to determine if the water quality standards of R309-200 have been met. Water systems are also required to keep records and, under certain circumstances, give public notice as required in R309-220.

**R309-105-14. Operational Reports.**

(1) Treatment techniques for acrylamide and epichlorohydrin.

(a) Each public water system shall certify annually in writing to the Executive Secretary (using third party or manufacturer's certification) that when acrylamide and epichlorohydrin are used in drinking water systems, the combination (or product) of dose and monomer level does not exceed the levels specified in R309-215-8(2)(c).

(b) Certifications may rely on manufacturers data.

(2)(a) All water systems using chemical addition or specialized equipment for the treatment of drinking water shall regularly complete operational reports. This information shall be evaluated to confirm that the treatment process is being done properly, resulting in successful treatment.

(b) The information to be provided, and the frequency at which it is to be gathered and reported, will be determined by the Executive Secretary.

**R309-105-15. Annual Reports.**

All community water systems shall be required to complete annual report forms furnished by the Division of Drinking Water. The information to be provided should include: the status of all water system projects started during the previous year; water demands met by the system; problems experienced; and anticipated projects.

**R309-105-16. Reporting Test Results.**

(1) If analyses are made by certified laboratories other than the state laboratory, these results shall be forwarded to the Division as follows:

(a) The supplier shall report to the Division the analysis of water samples which fail to comply with the Primary Drinking Water Standards of R309-200. Except where a different reporting period is specified in R309-205, R309-210 or R309-215, this report shall be submitted within 48 hours after the supplier receives the report from his lab. The Division may be reached at (801)536-4200.

(b) Monthly summaries of bacteriologic results shall be submitted within ten days following the end of each month.

(c) All results of TTHM samples shall be reported to the Division within 10 days of receipt of analysis for systems monitoring pursuant to R309-210-9.

(d) For all samples other than samples showing unacceptable results, bacteriologic samples or TTHM samples, the time between the receipt of the analysis and the reporting of the results to the Division shall not exceed 40 days.

(e) Arsenic sampling results shall be reported to the nearest 0.001 mg/L.

(2) Disinfection byproducts, maximum residual disinfectant levels and disinfection byproduct precursors and enhanced coagulation or enhanced softening.

(a) Systems required to sample quarterly or more frequently shall report to the State within 10 days after the end of each quarter in which samples were collected, except for systems monitoring TTHMs in accordance with R309-210-9. Systems required to sample less frequently than quarterly shall report to the State within 10 days after the end of each monitoring period in which samples were collected. The Executive Secretary may chose to perform calculations and determine whether the MCL was exceeded, in lieu of having the system report that information.

(b) Disinfection byproducts. Systems shall report the information specified.

(i) Systems monitoring for TTHMs and HAA5 under the requirements of R309-210-8(2) on a quarterly or more frequent basis shall report:

(A) The number of samples taken during the last quarter.

(B) The location, date, and result of each sample taken during the last quarter.

(C) The arithmetic average of all samples taken in the last quarter.

(D) The annual arithmetic average of the quarterly arithmetic averages of this section for the last four quarters.

(E) Whether, based on R309-210-8(6)(b)(i), the MCL was violated.

(ii) Systems monitoring for TTHMs and HAA5 under the requirements of R309-210-8(2) less frequently than quarterly (but at least annually) shall report:

(A) The number of samples taken during the last year.

(B) The location, date, and result of each sample taken during the last monitoring period.

(C) The arithmetic average of all samples taken over the last year.

(D) Whether, based on R309-210-8(6)(b)(i), the MCL was violated.

(iii) Systems monitoring for TTHMs and HAA5 under the requirements of R309-210-8(2) less frequently than annually shall report:

(A) The location, date, and result of the last sample taken.

(B) Whether, based on R309-210-8(6)(b)(i), the MCL was violated.

(iv) Systems monitoring for chlorite under the requirements of R309-210-8(2) shall report:

(A) The number of entry point samples taken each month for the last 3 months.

(B) The location, date, and result of each sample (both entry point and distribution system) taken during the last quarter.

(C) For each month in the reporting period, the arithmetic average of all samples taken in each three sample set taken in the distribution system.

(D) Whether, based on R309-210-8(6)(b)(ii), the MCL was violated.

(v) System monitoring for bromate under the requirements of R309-210-8(2) shall report:

(A) The number of samples taken during the last quarter.

(B) The location, date, and result of each sample taken during the last quarter.

(C) The arithmetic average of the monthly arithmetic averages of all samples taken in the last year.

(D) Whether, based on R309-210-8(6)(b)(iii), the MCL was violated.

(c) Disinfectants. Systems shall report the information specified to the Executive Secretary within ten days after the end of each month the system serves water to the public, except as otherwise noted:

(i) Systems monitoring for chlorine or chloramines under the requirements of R309-210-8(3)(a) shall report and certify, by signing the report form provided by the Executive Secretary, that all the information provided is accurate and correct and that any chemical introduced into the drinking water complies with ANSI/NSF Standard 60:

(A) The number of samples taken during each month of the last quarter.

(B) The monthly arithmetic average of all samples taken in each month for the last 12 months.

(C) The arithmetic average of all monthly averages for the last 12 months.

(D) The additional data required in R309-210-8(3)(a)(ii).

(E) Whether, based on R309-210-8(6)(c)(i), the MRDL was violated.

(ii) Systems monitoring for chlorine dioxide under the requirements of R309-210-8(3) shall report:

(A) The dates, results, and locations of samples taken during the last quarter.

(B) Whether, based on R309-210-8(6)(c)(ii), the MRDL was violated.

(C) Whether the MRDL was exceeded in any two consecutive daily samples and whether the resulting violation was acute or nonacute.

(d) Disinfection byproduct precursors and enhanced coagulation or enhanced softening. Systems shall report the information specified.

(i) Systems monitoring monthly or quarterly for TOC under the requirements of R309-215-12 and required to meet the enhanced coagulation or enhanced softening requirements in R309-215-13(2)(b) or (c) shall report:

(A) The number of paired (source water and treated water) samples taken during the last quarter.

(B) The location, date, and results of each paired sample and associated alkalinity taken during the last quarter.

(C) For each month in the reporting period that paired samples were taken, the arithmetic average of the percent reduction of TOC for each paired sample and the required TOC percent removal.

(D) Calculations for determining compliance with the TOC percent removal requirements, as provided in R309-215-13(3)(a).

(E) Whether the system is in compliance with the enhanced coagulation or enhanced softening percent removal requirements in R309-215-13(2) for the last four quarters.

(ii) Systems monitoring monthly or quarterly for TOC under the requirements of R309-215-12 and meeting one or more of the alternative compliance criteria in R309-215-13(1)(b) or (c) shall report:

(A) The alternative compliance criterion that the system is using.

(B) The number of paired samples taken during the last quarter.

(C) The location, date, and result of each paired sample and associated alkalinity taken during the last quarter.

(D) The running annual arithmetic average based on monthly averages (or quarterly samples) of source water TOC for systems meeting a criterion in R309-215-13(1)(b)(i) or (iii) or of treated water TOC for systems meeting the criterion in R309-215-13(1)(b)(ii).

(E) The running annual arithmetic average based on monthly averages (or quarterly samples) of source water SUVA for systems meeting the criterion in R309-215-13(1)(b)(v) or of treated water SUVA for systems meeting the criterion in R309-215-13(1)(b)(vi).

(F) The running annual average of source water alkalinity for systems meeting the criterion in R309-215-13(1)(b)(iii) and of treated water alkalinity for systems meeting the criterion in R309-215-13(1)(c)(i).

(G) The running annual average for both TTHM and HAA5 for systems meeting the criterion in R309-215-13(1)(b)(iii) or (iv).

(H) The running annual average of the amount of magnesium hardness removal (as $CaCO_3$, in mg/L) for systems meeting the criterion in R309-215-13(1)(c)(ii).

(I) Whether the system is in compliance with the particular alternative compliance criterion in R309-215-13(1)(b) or (c).

(3) The public water system, within 10 days of completing the public notification requirements under R309-220 for the initial public notice and any repeat notices, shall submit to the Division a certification that it has fully complied with the public notification regulations. The public water system shall include with this certification a representative copy of each type of notice distributed, published, posted, and made available to the persons served by the system and to the media.

(4) All samples taken in accordance with R309-215-6 shall be submitted within 10 days following the end of the operational period specified for that particular treatment. Finished water samples results for the contaminant of concern that exceed the Primary Drinking Water Standards of R309-200, shall be reported to the Division within 48 hours after the supplier receives the report. The Division may be reached at (801) 536-4000.

(5) Documentation of operation and maintenance for point-of-use or point-of-entry treatment units shall be provided to the Division annually. The Division shall receive the documentation by January 31 annually.

**R309-105-17. Record Maintenance.**

All public water systems shall retain on their premises or at convenient location near their premises the following records:

(1) Records of bacteriologic analyses made pursuant to this Section shall be kept for not less than five years. Records of chemical analyses made pursuant to this Section shall be kept for not less than ten years. Actual laboratory reports may be kept, or data may be transferred to tabular summaries, provided that the following information is included:

(a) The date, place and time of sampling, and the name of the person who collected the sample;

(b) Identification of the sample as to whether it was a routine distribution system sample, check sample, raw or

process water sample or other special purpose sample.

(c) Date of analysis;

(d) Laboratory and person responsible for performing analysis;

(e) The analytical technique/method used; and

(f) The results of the analysis.

(2) Lead and copper recordkeeping requirements.

(a) Any water system subject to the requirements of R309-210-6 shall retain on its premises original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, Executive Secretary determinations, and any other information required by R309-210-6.

(b) Each water system shall retain the records required by this section for no fewer than 12 years.

(3) Records of action taken by the system to correct violations of primary drinking water regulations shall be kept for a period not less than three years after the last action taken with respect to the particular violation involved.

(4) Copies of any written reports, summaries or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by any local, State or Federal agency, shall be kept for a period not less than ten years after completion of the sanitary survey involved.

(5) Records concerning a variance or exemption granted to the system shall be kept for a period ending not less than five years following the expiration of such variance or exemption.

(6) Records that concern the tests of a backflow prevention assembly and location shall be kept by the system for a minimum of not less than five years from the date of the test.

(7) Copies of public notices issued pursuant to R309-220 and certifications made to the Executive Secretary agency pursuant to R309-105-16 shall be kept for three years after issuance.

**R309-105-18. Emergencies.**

(1) The Executive Secretary or the local health department shall be informed by telephone by a water supplier of any "emergency situation". The term "emergency situation" includes the following:

(a) The malfunction of any disinfection facility such that a detectable residual cannot be maintained at all points in the distribution system.

(b) The malfunction of any "complete" treatment plant such that a clearwell effluent turbidity greater than 5 NTU is maintained longer than fifteen minutes.

(c) Muddy or discolored water (which cannot be explained by air entrainment or re-suspension of sediments normally deposited within the distribution system) is experienced by a significant number of individuals on a system.

(d) An accident has occurred which has, or could have, permitted the entry of untreated surface water and/or other contamination into the system (e.g. break in an unpressurized transmission line, flooded spring area, chemical spill, etc.)

(e) A threat of sabotage has been received by the water supplier or there is evidence of vandalism or sabotage to any public drinking water supply facility which may affect the quality of the delivered water.

(f) Any instance where a consumer reports becoming sick by drinking from a public water supply and the illness is substantiated by a doctor's diagnosis (unsubstantiated claims should also be reported to the Division of Drinking Water, but this is not required).

(2) If an emergency situation exists, the water supplier shall then contact the Division in Salt Lake City within eight hours. Division personnel may be reached at all times through 801-536-4123.

(3) All suppliers are advised to develop contingency plans to cope with possible emergency situations. In many areas of the state the possibility of earthquake damage shall be realistically considered.

**KEY: drinking water, watershed management**
**March 8, 2006 19-4-104**
**Notice of Continuation May 16, 2005 63-46b-4**

**R309. Environmental Quality, Drinking Water.**
**R309-150. Water System Rating Criteria.**
**R309-150-1. Authority.**

Under authority of Utah Code Annotated, Section 19-4-104, the Drinking Water Board adopts this rule in order to evaluate a public water system's standard of operation and service delivered in compliance with R309-101 through R309-113 and R309-301 through R309-302 hereinafter referred to as Rules.

**R309-150-2. Extent of Coverage.**

These rules shall apply to all public water systems as defined in R309-101.

**R309-150-3. Definitions.**

Approved - means that the public water system is operating in substantial compliance with all the Rules as measured by this rule.

Board - means the Drinking Water Board.

Community Water System - means a public water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents.

Contaminant - means any physical, chemical, biological, or radiological substance or matter in water.

Corrective Action - means a provisional rating for a public water system not in compliance with the Rules, but making all the necessary changes outlined by the Executive Secretary to bring them into compliance.

Executive Secretary - means the Executive Secretary of the Drinking Water Board.

Major Bacteriological Routine Monitoring Violation- means that no routine bacteriological sample was taken as required by R309-104-4.6.1.

Major Bacteriological Repeat Monitoring Violation - means that no repeat bacteriological sample was taken as required by R309-104-4.6.2.

Major Chemical Monitoring Violation - means that no initial background chemical sample was taken as required in R309-106-3(1)(b).

Maximum Contaminant Level (MCL) - The maximum permissible level of a contaminant in water which is delivered to any user of a public water system. Individual maximum contaminant levels (MCLs) are listed in R309-103.

Minor Bacteriological Routine Monitoring Violation- means that not all of the routine bacteriological samples were taken as required by R309-104-4.6.1.

Minor Bacteriological Repeat Monitoring Violation - means that not all of the repeat bacteriological samples were taken as required by R309-104-4.6.2.

Minor Chemical Monitoring Violation - means that the required chemical sample(s) was not taken in accordance with R309-104-4.

Non-Community Water System - means a public water system that is not a community water system or a non-transient non-community water system.

Non-Transient, Non-Community Water System - means a public water system that is not a community water system and that regularly serves at least 25 of the same persons for more than six months per year. Examples are separate systems serving workers and schools.

Not Approved - means the water system does not fully comply with the Rules as measured by this rule.

Public Water System - means a system, either publicly or privately owned, providing water for human consumption and other domestic uses which has at least fifteen service connections, or regularly serves an average of at least twenty-five individuals for at least sixty days out of the year. Such term includes collection, treatment, storage and distribution facilities under control of the operator and used primarily in connection with the system. Additionally, the term includes collection, pretreatment or storage facilities used primarily in connection with system but not under such control.

Routine Chemical Monitoring Violation - means no routine chemical sample(s) was taken as required in R309-104-4.

Sanitary Seal - A cap that prevents contaminants from entering a well through the top of the casing.

Shall - means that a particular action is obliged and has to be accomplished.

Unregulated Contaminant - A known or suspected disease causing contaminant for which no maximum contaminant level has been established.

**R309-150-4. Water System Ratings.**

(1) The Executive Secretary shall assign a rating to each public water system in order to provide a concise indication of its condition and performance. This rating shall be assigned based on the evaluation of the operation and performance of the water system in accordance with the requirements of the Rules. Points shall be assessed to Not Approved and Corrective Action rated water systems for each violation of these requirements (R309-101 through R309-113 and R309-301 through R309-302) as the requirements apply to each individual water system. The number of points that shall be assessed are outlined in the following sections of this rule. The number of points represent the threat to the quality of the water and thereby public health.

(2) Points are assessed in the following categories: Quality, Monitoring and Public Notification; Physical Deficiencies; Operator Certification; Cross Connection Control; Drinking Water Source Protection; Administrative Issues; and Reporting and Record Maintenance.

(3) Based upon the accumulation of points, the public water system shall be assigned one of the following ratings.

(a) Approved - In order to qualify for an Approved rating, the public water system must maintain a point total less than the following:

(i) Community water system - 150 points;

(ii) Non-Transient Non-Community water system - 120 points; and

(iii) Non-Community water system - 100 points.

(b) Not Approved - In order for a public water system to receive a Not Approved rating the accumulation of points for the water system must exceed the totals listed above.

(c) Corrective Action - In order to qualify for a Corrective Action rating the public water system must submit the following:

(i) A written agreement to the Executive Secretary stating a willingness to comply with the requirements set forth in the Rules; and

(ii) A compliance schedule and time table agreed upon by the Executive Secretary outlining the necessary construction or changes to correct any physical deficiencies or monitoring failures; and

(iii) Proof of the financial ability of the water system or that the financial arrangements are in place to correct the water system deficiencies.

(iv) The Corrective Action rating shall continue until the total project is completed or until a suitable construction inspection or sanitary survey is conducted to determine the effectiveness of the improvements or the accumulation of points drops below the threshold for a not approved rating whichever is later.

(4) The water system point accumulation shall be adjusted on a quarterly basis or as current information is available to the Executive Secretary. The appropriate water system rating shall then be adjusted to reflect the current point total.

(5) The Executive Secretary may at any time rate a water system not approved if an immediate threat to public health

exists. This rating shall remain in place until such time as the threat is alleviated and the cause is corrected.

(6) Any water system may appeal its assigned rating or assessed points to the Drinking Water Board by filing a request for a hearing with the Executive Secretary. The Executive Secretary shall place this matter on the agenda of the next regular meeting and so inform the appellant. The request for a hearing must be received by the Executive Secretary at least 14 calendar days prior to a scheduled Board meeting in order to be placed on the Board's agenda.

**R309-150-5. Quality, Monitoring and Public Notification Violations.**

(1) Bacteriologic: All points assessed to public water systems via this subsection are based on violations of the quality standards in R309-103.2.6; or the monitoring requirements in R309-104-4.6; and the associated public notification requirements in R309-104-7. The bacteriological assessments shall be updated on a monthly basis with the total number of points reflecting the most recent twelve month period or the most recent 4 quarters for those water systems that collect bacteriological samples quarterly.

(a) For each major bacteriological routine monitoring violation 35 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(b) For each minor bacteriological routine monitoring violation 10 points shall be assessed. For each failure to perform the associated public notification 2 points shall be assessed.

(c) For each major bacteriological repeat monitoring violation 40 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(d) For each minor bacteriological repeat monitoring violation 10 points shall be assessed. For each failure to perform the associated public notification 2 points shall be assessed.

(e) For each additional monitoring violation (R309-104-4.6.2.e.) 10 points shall be assessed. For each failure to perform the associated public notification 2 points shall be assessed.

(f) For each non-acute bacteriological MCL violation (R309-103-2.7.a) 40 points shall be assessed. For each failure to perform the associated public notification 10 points shall be assessed.

(g) For each acute bacteriological MCL violation (R309-103-2.7.b.) 50 points shall be assessed. For each failure to perform the associated public notification 10 points shall be assessed.

(2) Chemical: All points assessed to public water systems via this subsection are based on violations of the quality standards in R309-103.2; or the monitoring requirements in R309-104-4; and the associated public notification requirements in R309-104-7. The chemical assessments shall be updated on a quarterly basis with the total number of points reflecting the most recent compliance period unless otherwise specified. Points for any chemical MCL violation shall remain on record until the quality issue is resolved. Points for any monitoring violation shall be deleted as the required chemical samples are taken and the analytical results are reported to the Executive Secretary.

(a) Inorganic and Metal Contaminants:

(i) For each major chemical monitoring violation for inorganic and metal contaminants 20 points shall be assessed. For each failure to perform the associated public notification 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for inorganic and metal contaminants 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(iii) For each MCL exceedance for inorganic and metal contaminants 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(b) Sulfate (for non-community water systems only):

(i) For each major chemical monitoring violation for sulfate 20 points shall be assessed. For each failure to perform the associated public notification 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for sulfate 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(iii) For each MCL exceedance for sulfate 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(c) Radiologic Contaminants:

(i) For each major chemical monitoring violation for radiological contaminants 20 points shall be assessed. For each failure to perform the associated public notification 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for radiological contaminants 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(iii) For each MCL exceedance for radiological contaminants 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(d) Asbestos Contaminants:

(i) For each major chemical monitoring violation for source water or distribution system asbestos 20 points shall be assessed. For each failure to perform the associated public notification 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for source water or distribution system asbestos 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(iii) For each MCL exceedance for source water or distribution system asbestos 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(e) Nitrate:

(i) For each routine chemical monitoring violation for nitrate 35 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(ii) For each MCL exceedance of nitrate 50 points shall be assessed. For each failure to perform the associated public notification 10 points shall be assessed.

(f) Nitrite:

(i) For each routine chemical monitoring violation for nitrite 35 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(ii) For each MCL exceedance of nitrite 50 points shall be assessed. For each failure to perform the associated public notification 10 points shall be assessed.

(g) Volatile Organic Chemicals:

(i) For each major chemical monitoring violation for volatile organic chemical contaminants 20 points shall be assessed. For each failure to perform the associated public notification 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for volatile organic chemical contaminants 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(iii) For each MCL exceedance for volatile organic chemical contaminants 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(h) Pesticides/PCBs/SOCs

(i) For each major chemical monitoring violation for pesticide/PCB/SOC contaminants 20 points shall be assessed. For each failure to perform the associated public notification 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for pesticide/PCB/SOC contaminants 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(iii) For each MCL exceedance for pesticide/PCB/SOC contaminants 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(i) Unregulated Organics:

(i) For each routine chemical monitoring violation for unregulated contaminants 5 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(j) Total Trihalomethanes:

(i) For each routine chemical monitoring violation for total trihalomethanes 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(ii) For each MCL exceedance for total trihalomethanes 30 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(k) Lead and Copper:

(i) For each major chemical monitoring violation for lead and copper contaminants 20 points shall be assessed. For each failure to perform the associated public notification 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for lead and copper contaminants 10 points shall be assessed. For each failure to perform the associated public notification 1 point shall be assessed.

(iii) A system which fails to install, by the designated deadline, optimal corrosion control if the lead or copper action level has been exceeded shall be assessed 35 points. For each failure to perform the associated public notification 10 point shall be assessed.

(iv) A system which fails to install source water treatment if the source waters exceed the lead or copper action level shall be assessed 35 points. For each failure to perform the associated public notification 10 points shall be assessed.

(v) A system which fails to complete public notification/education if the lead/copper action levels have been exceeded shall be assessed 10 points for each calendar quarter that the system fails to provide public notification/education.

(vi) A system which still exceeds the lead action level and is not on schedule for lead line replacement shall be assessed 5 points annually. For each failure to perform the associated public notification 2 point shall be assessed.

(l) Groundwater Turbidity:

(i) For each monitoring violation for turbidity 35 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

(ii) For each confirmed MCL exceedance of turbidity 50 points shall be assessed. For each failure to perform the associated public notification 10 points shall be assessed.

(m) Surface Water Treatment:

(i) Plant Operation: Based upon the following criteria (a. through d.) 20 to 150 points shall be assessed as appropriate to indicate the threat to public health. For the associated failure to perform public notification 1 to 10 points shall be assessed. The surface water treatment assessments shall be updated on a monthly basis with the total number of points reflecting the most recent twelve month period.

(A) Number of events where disinfectant level in water entering the distribution system is less than 0.2 milligrams per liter for more than 4 hours; or

(B) Number of events where turbidity exceeds 5 NTU; or

(C) Each month where the percentage of turbidity interpretations meeting the treatment plant limit is less than 95 percent; or

(D) Each month where the percentage of distribution sampling violations for detectable levels of disinfectant is greater than 5 percent.

(ii) For water systems having sources which are classified as under direct influence from surface water and which fail to abandon, retrofit or provide conventional complete treatment or it's equivalent within 18 months of notification shall be assessed 20 to 50 points based upon the degree and seasonality of the surface water influence. For the associated failure to perform public notification 10 points shall be assessed. The points shall be assessed as the failure occurs and shall remain on record until adequate treatment is provided or the source is physically disconnected.

**R309-150-6. Physical Facilities.**

All points assessed to public water systems via this subsection are based upon violation of R309-113 and R309-200 through R309-211. These points shall be assessed and updated upon notification of the Executive Secretary and shall remain until the violation or deficiency no longer exists.

(1) New Source Approval:

(a) Use of an unapproved source shall be assessed 150 points.

(2) Surface Water Diversion Structures and Impoundments:

(a) For each surface water intake structure that does not allow for withdrawal of water from more than one level if quality significantly varies with depth 2 points shall be assessed.

(b) Where no facilities exist for release (wasting) of less desirable water held in storage 2 points shall be assessed.

(c) Where the diversion facilities do not minimize frazil ice formation by holding intake velocities to less than 0.5 feet per second 2 points shall be assessed.

(d) Where diversion facilities are not adequately protected from damage by ice buildup 2 points shall be assessed.

(e) Where diversion facilities are not capable of keeping large quantities of fish or debris from entering the intake 2 points shall be assessed.

(f) Where reservoirs have not had brush and trees removed to the high water level 2 points shall be assessed.

(g) Where reservoir watershed management has not provided adequate precautions to limit nutrient loading 10 points shall be assessed.

(3) Well Sources

(a) For each well which is not equipped with a sanitary seal, or has any unsealed opening into the well casing 50 points shall be assessed.

(b) For each well which does not utilize food grade mineral oil for pump lubrication 25 points shall be assessed.

(c) For each well casing which does not terminate at least 12 inches above the pumphouse floor, 18 inches above ground, and/or five feet above the highest flood elevation, or is not fitted with an acceptable pitless adaptor 1 to 20 points shall be assessed based upon whether the adjacent land slopes toward or away from the wellhead; the integrity of the cement surrounding the wellhead and other factors that would jeopardize the integrity of the wellhead seal.

(d) For each well casing vent which is not properly covered with a No. 14 mesh screen 5 points shall be assessed.

(e) For each well which has discharge piping that is not properly equipped with 1) a smooth nosed sampling tap 2) check valve 3) pressure gauge 4) means of measuring flow and 5) shutoff valve 1 to 5 points shall be assessed depending upon the number of the above components that are present.

(f) For each well where there is no means to release

trapped air from the discharge piping 5 points shall be assessed.

(g) For each well house which does not have a drain-to-daylight installed 5 points shall be assessed.

(4) Spring Sources:

(a) For each spring source which allows surface water to stand or pond upon the spring collection area (within 50 feet from collection devices) 1 to 20 points shall be assessed. The number of points shall be based upon the size and extent of the ponding; the possible source (rainfall or incomplete collection); or the presence of moss or other indicators of long term presence of standing water.

(b) For each spring area which does not have a minimum of ten feet of relative impervious soil or an acceptable liner 10 points shall be assessed.

(c) For each spring area that has deep rooted vegetation within the fenced collection area 10 points shall be assessed.

(d) For each spring area that has deep rooted vegetation interfering with the spring collection 10 points shall be assessed.

(e) For each spring which does not have a proper collection/junction box; and does not have the following: a proper shoebox lid, gasket, No. 14 mesh screen on the vent line and lock; 1 to 25 points shall be assessed. The number of points shall be determined by the number of the above items that are present.

(f) For each spring collection area without a proper fence (unless the spring is located in a remote area where no grazing or public access is possible as specified in R309-106(5)(e)) 10 points shall be assessed.

(g) For each spring collection area that does not have a diversion channel capable of diverting surface water away from the collection area 5 points shall be assessed.

(h) For each spring system which does not have a permanent flow measuring device 5 points shall be assessed.

(i) For each spring area with an overflow/drain that is not properly screened with a No. 4 mesh screen or does not have adequate freefall (12 to 24 inches) between the drain invert and the surrounding ground 5 to 10 points shall be assessed. The number of points shall be based upon the presence of a screen and the slope of the ground surrounding the overflow/drain outlet.

(5) Disinfection by gaseous chlorine:

(a) A chlorinated water system that does not maintain a detectable chlorine residual throughout the distribution system shall be assessed 10 points.

(b) An improperly heated, lighted, and vented chlorinator building shall be assessed 2 points.

(c) A chlorinated water system that does not have a test kit to measure chlorine residual shall be assessed 2 points.

(d) A chlorinated water system that does not have a cylinder wrench located on the yoke valve shall be assessed 2 points.

(e) A chlorinated water system that utilizes one ton cylinders and does not have proper chlorine leak detection and repair kit equipment shall be assessed 15 points.

(f) A chlorinated water system that utilizes 150 pound cylinders and does not have proper chlorine leak detection and repair kit equipment shall be assessed 2 points.

(g) A chlorinated water system that does not have chlorine cylinders properly restrained or isolated from operating areas shall be assessed 2 points.

(h) A chlorinated water system that does not have a feeder vent properly vented to the outside and screened with a No. 14 mesh screen shall be assessed 2 points.

(i) A chlorinated water system without means to measure chlorine feed and cylinder usage shall be assessed 2 points.

(j) A chlorinated water system without access to a properly stored gas mask or stores a gas mask in the same room where chlorine gas is handled shall be assessed 5 points.

(k) A chlorination station without a means of measuring the volume of water treated shall be assessed 2 points.

(6) Disinfection by liquid hypochlorite:

(a) A chlorinated water system that does not maintain a detectable chlorine residual throughout the distribution system shall be assessed 10 points.

(b) An improperly housed and secured hypochlorinator station shall be assessed 2 points.

(c) A chlorinated water system that does not have a test kit to measure chlorine residual shall be assessed 2 points.

(d) A chlorinated water system that does not maintain a spare parts repair kit for the positive displacement pumps shall be assessed 2 points.

(e) A hypochlorination station without a means of measuring the volume of water treated shall be assessed 2 points.

(7) Storage:

(a) A water system with an uncovered finished water storage reservoir shall immediately be assessed a rating of not approved.

(b) For each storage reservoir access that is not an overlapping (shoe box) type lid, locked and is at least 4 inches above the top of the tank 10 points shall be assessed.

(c) For each improperly vented storage reservoir 5 points shall be assessed.

(d) For each storage reservoir overflow that: is not properly screened, is not sloped for drainage, or is connected to a sewer without an appropriate air gap; 5 to 15 points shall be assessed based on the number and severity of the above items that are present.

(e) For each storage reservoir with inadequate or improper means of drainage 2 points shall be assessed.

(f) For each storage reservoir where the roof and sidewalls are not water tight shall be assessed 10 to 50 points based upon the size and number of cracks, the loss of structural integrity and the access of contamination to the drinking water.

(g) For each storage reservoir without an access ladder, or railing where required (elevated tank) 2 points shall be assessed.

(h) For each storage reservoir with internal coatings not in compliance with ANSI/NSF standard 61 30 points shall be assessed.

(8) Distribution System:

(a) A water system which fails to provide at least the water pressure as required in R309-105-9 at all times and at all locations within the distribution system shall be assessed 50 points.

(b) A water system using unapproved pipe and materials shall be assessed 30 points.

(c) A water system with pipelines installed improperly without adequate clearance or separation from sewer lines shall be assessed 30 points.

(d) For each air vacuum release valve which is not properly screened and turned down 2 points shall be assessed up to a maximum of 20 points per system.

(e) For each flooded air vacuum release valve chamber 20 points shall be assessed up to a maximum of 50 points per system.

(9) Quantity requirements

(a) A water system which does not have sufficient source capacity to meet peak daily and average yearly flow requirements shall be assessed from 5 to 50 points. The number of points shall be based upon the severity of the shortage including the number of times and duration of water outages or low pressure.

(b) A water system which does not have sufficient storage capacity to meet average daily flow requirements shall be assessed from 5 to 50 points. The number of points shall be based upon the severity of the shortage including the number of times and duration of water outages.

**R309-150-7. Operator Certification.**

Operator certification:

(1) A water system that is required to have a certified operator and does not shall be assessed 30 points.

(2) A water system where the operator is not certified at the appropriate level shall be assessed 10 points.

(3) A grade 3 or 4 water system that does not have all direct responsible charge operators (as specified in R309-301-5) certified at no more than one grade level below the level of the system shall be assessed 5 to 15 points. The number of points shall be based on the percentage of time that the water system is operated by operators not certified at the required level.

(4) A water system may be credited up to a maximum of 20 points which shall remain on record for as long as the conditions apply. The following items are eligible for credit:

(a) A water system that is not required to have a certified operator and does shall be credited 10 points.

(b) A water system that has operators that are certified at a higher level than required shall be credited 10 points.

(c) A water system that has operators certified in other areas that are not required by that water system, such as treatment or backflow prevention certification, shall be credited 10 points.

**R309-150-8. Cross Connection Control Program.**

Cross Connection Control Program:

(1) A water system which does not have any of the below listed components of a cross connection control program in place shall be assessed 50 points.

(2) A water system which only has some of the components of a cross connection control program in place shall be assessed the following number of points:

(a) A water system which does not have local authority to enforce a cross connection control program (i.e., ordinance, bylaw or policy) shall be assessed 10 points.

(b) A water system that does not provided public education or awareness material or presentations on an annual basis shall be assessed 10 points.

(c) A water system that does not have an operator with training in the area of cross connection control or backflow prevention shall be assessed 10 points.

(d) A water system with no written records of cross connection control activities, such as, backflow assembly inventory and test history, shall be assessed 10 points.

(e) A water system that does not have on-going enforcement activities (hazard assessments and enforcement actions) shall be assessed 10 points.

**R309-150-9. Drinking Water Source Protection.**

Drinking water source protection (well, spring or tunnel): Points shall be assessed for each source after a system fails to complete source protection plans as specified in R309-113. The points shall remain until such time as the source protection plan is completed and concurred with.

(1) For each groundwater source for which a protection area has not been delineated shall be assessed 5 points.

(2) For each groundwater source for which there is no inventory of potential contamination sources 5 points shall be assessed.

(3) For each groundwater source for which potential contamination sources assessed are not adequately controlled 5 points shall be assessed.

(4) For each groundwater source where there is not a plan to address any new potential contamination sources that may be located in protection areas shall be assessed 5 points.

(5) For each water system that completes a source protection plan prior to the required deadline in R309-113, the system shall receive a credit of 20 points that shall remain on record until the deadline requiring a plan for the system's source(s) passes.

**R309-150-10. Administrative Issues.**

Points in this area shall be assessed at the time that the failure occurs or upon notification of the Executive Secretary and shall remain until the issue is resolved unless otherwise specified.

(1) Administrative Data -

(a) A water system which has not designated a person or organizational official responsible for the system including a current address and phone number shall be assessed 10 points.

(b) A water system project constructed without proper plan approval shall be assessed 1 to 50 points based on an evaluation of the project which shall include the structural or engineering integrity of the project; whether the plans and specifications were prepared and stamped by a licensed professional engineer; the adequacy of the materials used and the impact on the operation of the water system (good or bad). The points assessed shall remain on record for a period of one year.

(2) A water system with a current written Emergency Response Program shall be credited 10 points that shall remain on record as long as the Program remains current.

(3) A water system with a written Financial Management Plan including an appropriate rate structure, infra-structure replacement fund, and master plan shall be credited 10 points that shall remain on record as long as the Plan is current.

(4) Sampling Site Plans:

(a) A water system which does not have an adequate bacteriological sampling site plan shall be assessed 5 points.

(b) A water system which does not have a lead/copper sampling site plan shall be assessed 10 points.

(5) Customer Complaint:

(a) 1 to 100 points may be assessed for valid and documented customer complaints. The customer complaints include but are not limited to the following:

(i) Turbidity;

(ii) Pressure;

(iii) Taste and Odor;

(iv) Sickness (water suspected); and

(v) Waterborne Disease Outbreak (R309-104-9).

(vi) Periods of Water Outage

(b) The number of points shall be based upon the extent and documentation of the problem and the potential impact to public health. The documentation shall consist of an investigation by Department of Environmental Quality, Department of Health or Local Health Department personnel and may include an epidemiological study linking the drinking water to reported outbreaks of illness where appropriate.

(c) In the case of a documented waterborne disease outbreak the water system shall automatically be rated Not Approved for at least the duration of the threat to the quality of the drinking water and as long as it takes the water system to correct any deficiency that caused the outbreak.

(d) Points shall only be assessed once per issue and shall not be additive based on the number of calls per issue. These points shall be assessed and updated upon verification of the complaint by the Executive Secretary and shall remain on record until the issue or deficiency no longer exists. Points may have already been assessed in other areas as appropriate.

(6) Agency Directives - When a directive consistent with the authority of the Drinking Water Board is not complied with 1 to 100 points may be assessed to a water system. Agency directives include but are not limited to the following:

(a) Administrative Orders;

(b) Rule defined action;

(c) Rule defined compliance schedule;

(d) Variance/Exemption requirements; and

(e) Bilateral Compliance Agreement.

Points shall be assessed based upon the severity of the non-

compliance, the threat to public health and the underlying basis for the original directive.

(7) Data Falsification - The Executive Secretary may assess a water system points for data falsification. The water system may be assessed 1 to 50 points for each occurrence based upon:

(a) the severity of the falsification;
(b) the threat to public health;
(c) the intent of the water system personnel; and
(d) the type of falsification.
(i) Reports only good data
(ii) Doctored results from the laboratory
(iii) Non-valid sample

Data reported to the Executive Secretary includes but is not limited to Water Treatment Plant Reports, Chlorination Reports, bacteriological and chemical analyses, and Annual Reports.

**R309-150-11. Reporting and Record Maintenance Issues.**

Points may be assessed for failure to provide required reports to the Executive Secretary by the reporting deadline. The points shall be assigned as the failure occurs and shall remain on record for a period of one year.

(1) Monthly Reports:

(a) For each failure to report the monthly water treatment plant report 10 points shall be assessed.

(b) For each failure to report the monthly chlorination report 10 points shall be assessed.

(2) Annual Reports - For failure to provide the annual report 2 points shall be assessed.

**KEY: drinking water, environmental protection, water system rating, administrative procedures**
**March 8, 2006 19-4-104**
**Notice of Continuation May 16, 2005 63-46b-4**

**R309. Environmental Quality, Drinking Water.**
**R309-405. Compliance and Enforcement: Administrative Penalty.**
**R309-405-1. Authority.**

Utah Code Annotated, Sections 19-4-104 and 19-4-109

**R309-405-2. Purpose, Scope, and Applicability.**

(1) This rule sets the criteria and procedures the Board will use in assessing penalties to public drinking water systems for violation of its rules.

(2) This guidance and ensuing criteria is intended to be flexible and liberally construed to achieve a fair, just, and equitable result with the intent of returning a public water system to compliance.

(3) This rule is applicable to all public drinking water systems.

**R309-405-3. Limits on Authority and Liability.**

Nothing in this rule should be construed to limit the Board's ability to take enforcement actions under Utah Code Annotated, Section 19-4-109.

**R309-405-4. Assessment of a Penalty and Calculation of Settlement Amounts.**

(1) Where the Executive Secretary determines that a penalty may be appropriate, the Executive Secretary shall propose a penalty amount by sending a notice of agency action, under Title 63, chapter 46b of the Administrative Procedures Act, to the public water system. The notice of agency action shall provide that the public water system may submit comments and/or information on the proposed penalty to the Executive Secretary within 30 days. The criteria the Executive Secretary will use in establishing a proposed penalty amount shall be as follows:

(a) Major Violations: $600 to $1000 per day for each day of violation. This category includes violations with high potential for impact on drinking water users, major deviations from the requirements of the rules or Safe Drinking Water Act, intentional fraud, falsification of data, violations which result in a public water system being considered by the Environmental Protection Agency to be: "Significant Non-Compliers" (SNC), or violations that may have a substantial adverse effect on the regulatory program. Specific violations that are subject to a major violation category can include the following:

(i) Violations subject to $1000 per day penalty:

(A) Any violation defined by R309-220-5 which would trigger a Tier 1 public notification.

(B) Not having any elements of a source protection plan as required in R309-600 for ground water sources and R309-605 for surface water sources.

(C) Failure to respond to an Administrative Order issued by the Drinking Water Board.

(D) Introduction by the water system of a source water that has not been evaluated and approved for use as a public drinking water source under R309-515.

(E) Construction or use of an interconnection to another public water system which has not been reviewed and approved in accordance with R309-550-9.

(F) Having over 20 IPS points (Improvement Priority System points based on R309-150, the Water System Rating Criteria) specifically for operating pressures below that required by R309-105-9.

(G) Having 50 IPS points specifically for an inadequate well seal as required in R309-515.

(H) Having over 50 IPS points (not including the deficiencies in (F) and (G) above) specifically assessed in the physical facility section of an IPS report.

(I) Use of a surface water source without proper filtration treatment in accordance with R309-525 or 530.

(J) Exceeding the rated water treatment plant capacity as determined by review under R309-525 or 530.

(K) Insufficient disinfection contact time as evaluated under R309-215-7.

(ii) Violations subject to $800 per day penalty:

(A) Not having any of the required components of a cross connection control program in place as required by R309-105-12.

(B) Any violation of the turbidity requirements outlined in R309-215-9(4)(b)(iii -iv) for individual filter turbidities using consecutive readings taken 15 minutes apart.

(b) Moderate Violations: $400 to $600 per day for each day of violation. This category includes violations with a moderate potential for impact on drinking water users, moderate deviations from the requirements of the rules or Safe Drinking Water Act with some requirements implemented as intended, or violations that may have a significant notable adverse effect on the regulatory program. Specific violations that are subject to a moderate violation category can include the following:

(i) Violations subject to $600 penalty:

(A) Any violation defined by R309-220-6 which would trigger a Tier 2 public notification.

(B) Having a disapproved status on a source protection plan (R309-600 and 605) for a period longer than 90 days.

(C) Installation or use of disinfection equipment that has not been evaluated and approved for use under R309-520.

(D) Having measured turbidity spikes of greater than 0.5 or 1.0 NTU in two consecutive fifteen minute readings as defined in R309-215-9(4)(b)(i) or (ii) respectively.

(E) Insufficient source capacity, storage capacity, or delivery capacity as established by review of the system design under R309-500 through 550.

(F) Not complying with plan approval requirements as set forth in R309-500. The term infrastructure can include the disinfection process, surface water treatment process, and physical facilities such as water treatment plants, storage reservoirs, sources and distribution piping.

(c) Minor Violations: Up to $400 per day for each day of violation. This category includes violations with a minor potential for impact on drinking water users, slight deviations from the rules or Act with most of the requirements implemented, or violations that may have a minor adverse effect on the regulatory program. Specific violations that are subject to a minor violation category can include the following:

(i) Violations subject to $400 per day penalty:

(A) Any violation defined by R309-220-7 which would trigger a Tier 3 public notification or a violation of the monitoring requirements of R309-515-4(5), except for turbidity monitoring for surface water treatment facilities and violations termed as minor monitoring as outlined in R309-150-3 (minor bacteriological routine monitoring violation, minor bacteriological repeat monitoring violation and minor chemical monitoring violation).

(B) Failure to upgrade a Preliminary Evaluation Report for a source protection plan as required in R309-600 and 605.

(C) Failure to update a source protection plan as required in R309-600 and 605.

(D) Construction or use of a storage reservoir that has not been evaluated for use under R309-545.

(ii) Violations subject to $200 per day penalty:

(A) Lacking individual components of a cross connection control program as required by R309-105-12.

(B) Not having a certified operator on staff as required in R309-300-5(10) after 1 year or 4 operator certification exam cycles.

(C) Any minor monitoring violation as defined by R309-150-3 (minor bacteriological routine monitoring violation, minor bacteriological repeat monitoring violation and minor chemical monitoring violation).

(D) Any violation of the turbidity requirements outlined in R309-215-9(4)(b)(i-ii) for individual filter turbidities using consecutive readings taken 15 minutes apart.

(2) The Executive Secretary will assess the penalty, if any, after reviewing information submitted by the public water system. The public water system may appeal the assessment of the penalty to the Board by requesting a formal hearing under R309-115 and the Utah Administrative Procedures Act within 30 days of the date of assessment of the penalty.

**R309-405-5. Factors for Seeking or Negotiating Amount of Penalties.**

The Executive Secretary, in assessing the penalty, may take into account the following factors:

(1) Economic benefit. The costs a person or organization may save by delaying or avoiding compliance with applicable laws or rules.

(2) Gravity of the violation. This component of the calculation shall be based on:

(a) The extent of deviation from the rules;

(b) The potential for harm to drinking water users, regardless of the extent of harm that actually occurred;

(c) The degree of cooperation or noncooperation and good faith efforts to comply. Good faith takes into account the openness in dealing with the violations, promptness in correction of problems, and the degree of cooperation with the State;

(d) History of compliance or noncompliance. The penalty amount may be adjusted upward in consideration of previous violations and the degree of recidivism. Likewise, the penalty amount may be adjusted downward when it is shown that the violator has a good compliance record; and,

(e) Degree of willfulness or negligence. Factors to be considered include how much control the violator had over the violation and the foreseeability of the events constituting the violation, whether the violator made or could have made reasonable efforts to prevent the violation, whether the violator knew, or should have known, of the legal requirements which were violated, and degree of recalcitrance.

(3) The number of days of non compliance

(4) Public sensitivity. The actual impact of the violation(s) that occurred.

(5) Response and investigation costs incurred by the State and others.

(6) The possible deterrent effect of a penalty to prevent future violations.

**R309-405-6. Satisfaction of Penalty Under Stipulated Penalty Agreement.**

The Executive Secretary may accept the following methods of payment or satisfaction of a penalty to promote compliance and to achieve the purposes set forth in Utah Code Annotated Section 19-4-109:

(1) Payment of the penalty may be extended based on a person or organization's inability to pay. This should be distinguished from an unwillingness to pay. In cases of financial hardship, the Executive Secretary may accept payment of the penalty under an installment plan or delayed payment schedule with interest.

(2) In circumstances where there is a demonstrated financial hardship, the Executive Secretary may allow a portion of the penalty to be deferred and eventually waived if no further violations are committed within a period designated by the Executive Secretary.

(3) In some cases, the Executive Secretary may allow the violator to satisfy the penalty by completing a Supplemental Environmental Project (SEP) approved by the Executive Secretary. The following criteria shall be used in determining the eligibility of such projects:

(a) The project must be in addition to all regulatory compliance obligations;

(b) The project must relate to some or all of the issues of the violation;

(c) The project must primarily benefit the drinking water users;

(d) The project must be defined, measurable and have a beginning and ending date;

(e) The project must be agreed to in writing between the public water system and the Executive Secretary;

(f) The project must not generate the public perception favoring violations of the laws and rules.

**R309-405-7. Penalty Policy for Civil Proceedings.**

Pursuant to Utah Code Annotated Section 19-4-109(2)(b), any person who willfully violates any rule or order made or issued pursuant to the Utah Safe Drinking Water Act, Utah Code Annotated Section 19-4-101 et seq, is subject to a civil penalty of not more than $5000 per day for each day of violation. The Board and Executive Secretary shall apply the provisions of R309-405-4, 5, and 6 in pursuing or resolving willful violations except that the penalty range per day for each day of violation for major violations shall be $3000 to $5,000, for moderate violations shall be $2000 to $3000, and for minor violations shall be up to $2000.

**KEY: drinking water, environmental protection, administrative procedures, penalties**
**March 8, 2006 19-4-104**
**Notice of Continuation May 16, 2005 63-46b-4**

**R309. Environmental Quality, Drinking Water.**
**R309-510. Facility Design and Operation: Minimum Sizing Requirements.**
**R309-510-1. Purpose.**

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

**R309-510-2. Authority.**

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

**R309-510-3. Definitions.**

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

**R309-510-4. General.**

This rule provides estimations which shall be used in the design of new systems, or if there is an absence of data collected by the public water system meeting the required confidence level for a reduction mentioned below, when evaluating water sources, storage facilities and pipelines. Within each of these three broad categories, the designer shall ascertain the contributions on demand from the indoor use of water, the outdoor use of water, and fire suppression activities (if required by local authorities). These components must be added together to determine the total demand on a given facility.

**R309-510-5. Reduction of Requirements.**

If acceptable data are presented, at or above the 90% confidence level, showing that the requirements made herein are excessive for a given project, the requirements may be appropriately reduced on a case by case basis by the Executive Secretary. In the case of Recreational Home Developments, in order to qualify for a quantity reduction, not only must the actual water consumption be less than quantities required by rule (with the confidence level indicated above) but enforceable policy restrictions must have been approved which prevent the use of such dwellings as a permanent domicile and these restrictions shall have been consistently enforced.

**R309-510-6. Water Conservation.**

This rule is based upon typical current water consumption patterns in the State of Utah. They may be excessive in certain settings where legally enforceable water conservation measures exist. In these cases the requirements made in this section may be reduced on a case-by-case basis by the Executive Secretary.

**R309-510-7. Source Sizing.**

(1) Peak Day Demand and Average Yearly Demand.

Sources shall legally and physically meet water demands under two separate conditions. First, they shall meet the anticipated water demand on the day of highest water consumption. This is referred to as the peak day demand. Second, they shall also be able to provide one year's supply of water, the average yearly demand.

(2) Estimated Indoor Use.

In the absence of firm water use data, Tables 510-1 and 510-2 shall be used to estimate the peak day demand and average yearly demand for indoor water use.

TABLE 510-1
Source Demand for Indoor Use

| Type of Connection | Peak Day Demand | Average Yearly Demand | |
|---|---|---|---|
| Year-round use | | | |
| Residential | 800 gpd/conn | 146,000 gal./conn | |
| ERC | 800 gpd/ERC | 146,000 gal./ERC | |
| Seasonal/Non-residential use | | | |
| Modern Recreation Camp | 60 gpd/person | | (see note 1) |
| Semi-Developed Camp | | | |
| a. with pit privies | 5 gpd/person | | (see note 1) |
| b. with flush toilets | 20 gpd/person | | (see note 1) |
| Hotel, Motel, and Resort | 150 gpd/unit | | (see note 1) |
| Labor Camp | 50 gpd/person | | (see note 1) |
| Recreational Vehicle Park | 100 gpd/pad | | (see note 1) |
| Roadway Rest Stop | 7 gpd/vehicle | | (see note 1) |
| Recreational Home Development | 400 gpd/conn | | (see note 1) |

Note 1. Annual demand shall be based on the number of days the system will be open during the year times the peak day demand unless data acceptable to the Division, with a confidence level of 90% or greater showing a lesser annual consumption, can be presented.

TABLE 510-2
Source Demand for Individual Establishments[a]
(Indoor Use)

| Type of Establishment | Peak Day Demand (gpd) |
|---|---|
| Airports | |
| a. per passenger | 3 |
| b. per employee | 15 |
| Boarding Houses | |
| a. for each resident boarder and employee | 50 |
| b. for each nonresident boarders | 10 |
| Bowling Alleys, per alley | |
| a. with snack bar | 100 |
| b. with no snack bar | 85 |
| Churches, per person | 5 |
| Country Clubs | |
| a. per resident member | 100 |
| b. per nonresident member present | 25 |
| c. per employee | 15 |
| Dentist's Office | |
| a. per chair | 200 |
| b. per staff member | 35 |
| Doctor's Office | |
| a. per patient | 10 |
| b. per staff member | 35 |
| Fairgrounds, per person | 1 |
| Fire Stations, per person | |
| a. with full-time employees and food prep. | 70 |
| b. with no full-time employees and no food prep. | 5 |
| Gyms | |
| a. per participant | 25 |
| b. per spectator | 4 |
| Hairdresser | |
| a. per chair | 50 |
| b. per operator | 35 |
| Hospitals, per bed space | 250 |
| Industrial Buildings, per 8 hour shift, per employee (exclusive of industrial waste) | |
| a. with showers | 35 |
| b. with no showers | 15 |
| Launderette, per washer | 580 |
| Movie Theaters | |
| a. auditorium, per seat | 5 |
| b. drive-in, per car space | 10 |
| Nursing Homes, per bed space | 280 |
| Office Buildings and Business Establishments, per shift, per employee (sanitary wastes only) | |
| a. with cafeteria | 25 |
| b. with no cafeteria | 15 |
| Picnic Parks, per person (toilet wastes only) | 5 |
| Restaurants | |
| a. ordinary restaurants (not 24 hour service) | 35 per seat |
| b. 24 hour service | 50 per seat |
| c. single service customer utensils only | 2 per customer |
| d. or, per customer served (includes toilet and kitchen wastes) | 10 |
| Rooming House, per person | 40 |
| Schools, per person | |

| | |
|---|---|
| a. boarding | 75 |
| b. day, without cafeteria, gym or showers | 15 |
| c. day, with cafeteria, but no gym or showers | 20 |
| d. day, with cafeteria, gym and showers | 25 |
| Service Stations[b] ,per vehicle served | 10 |
| Skating Rink, Dance Halls, etc., per person | |
| a. no kitchen wastes | 10 |
| b. Additional for kitchen wastes | 3 |
| Ski Areas, per person (no kitchen wastes) | 10 |
| Stores | |
| a. per public toilet room | 500 |
| b. per employee | 11 |
| Swimming Pools and Bathhouses[c] ,per person | 10 |
| Taverns, Bars, Cocktail Lounges, per seat | 20 |
| Visitor Centers, per visitor | 5 |

NOTES FOR TABLE 510-2:

1. Source capacity must at least equal the peak day demand of the system. Estimate this by assuming the facility is used to its maximum.

2. Generally, storage volume must at least equal one average day's demand.

3. Peak instantaneous demands may be estimated by fixture unit analysis as per Appendix E of the 200 International Plumbing Code.

(a) When more than one use will occur, the multiple use shall be considered in determining total demand. Small industrial plants maintaining a cafeteria and/or showers and club houses or motels maintaining swimming pools and/or laundries are typical examples of multiple uses. Uses other than those listed above shall be considered in relation to established demands from known or similar installations.

(b) or 250 gpd per pump,

(c) 20 x {Water Area ($Ft^2$) / 30} + Deck Area ($Ft^2$)

(3) Estimated Outdoor Use.

In the absence of firm water use data, Table 510-3 shall be used to estimate the peak day demand and average yearly demand for outdoor water use. The following procedure shall be used:

(a) Determine the location of the water system on the map entitled Irrigated Crop Consumptive Use Zones and Normal Annual Effective Precipitation, Utah as prepared by the Soil Conservation Service (available from the Division). Find the numbered zone, one through six, in which the water system is located (if located in an area described "non-arable" find nearest numbered zone).

(b) Determine the net number of acres which may be irrigated. This is generally done by starting with the gross acreage, then subtract out any area of roadway, driveway, sidewalk or patio pavements along with housing foundation footprints that can be reasonably expected for lots within a new subdivision or which is representative of existing lots. Before any other land area which may be considered "non-irrigated" (e.g. steep slopes, wooded areas, etc.) is subtracted from the gross area, the Division shall be consulted and agree that the land in question will not be irrigated.

(c) Refer to Table 510-3 to determine peak day demand and average yearly demand for outdoor use.

(d) The results of the indoor use and outdoor use tables shall be added together and source(s) shall be legally and physically capable of meeting this combined demand.

TABLE 510-3
Source Demand for Irrigation
(Outdoor Use)

| Map Zone | Peak Day Demand (gpm/irrigated acre) | Average Yearly Demand (AF/irrigated acre) |
|---|---|---|
| 1 | 2.26 | 1.17 |
| 2 | 2.80 | 1.23 |
| 3 | 3.39 | 1.66 |
| 4 | 3.96 | 1.87 |
| 5 | 4.52 | 2.69 |
| 6 | 4.90 | 3.26 |

(4) Accounting for Variations in Source Yield.

The design engineer shall consider whether flow from the source(s) may vary. Where flow varies, as is the case for most springs, the minimum flowrate shall be used in determining the number of connections which may be supported by the source(s). Where historical records are sufficient, and where peak flows from the source(s) correspond with peak demand periods, the Executive Secretary may grant an exception to this requirement.

**R309-510-8. Storage Sizing.**

(1) General.

Each storage facility shall provide:

(a) equalization storage volume, to satisfy peak day demands for water for indoor use as well as outdoor use,

(b) fire suppression storage volume, if the water system is equipped with fire hydrants and intended to provide fire fighting water, and

(c) emergency storage, if deemed appropriate by the water supplier or the Executive Secretary, to meet demands in the event of an unexpected emergency situation such as a line break or a treatment plant failures.

(2) Equalization Storage.

(a) All public drinking water systems shall be provided with equalization storage. The amount of equalization storage which must be provided varies with the nature of the water system, the extent of outdoor use and the location of the system.

(b) Required equalization storage for indoor use is provided in Table 510-4. Storage requirements for non-community systems which are not listed in this table shall be determined by calculating the average day demands from the information given in Table 510-2.

TABLE 510-4
Storage Volume for Indoor Use

| Type | Volume Required (gallons) |
|---|---|
| **Community Systems** | |
| Residential; | |
| per single resident service connection | 400 |
| Non-Residentail; | |
| per Equivalent Residential Connection (ERC) | 400 |
| **Non-Community Systems** | |
| Modern Recreation Camp; per person | 30 |
| Semi-Developed Camp; per person | |
| a. with Pit Privies | 2.5 |
| b. with Flush Toilets | 10 |
| Hotel, Motel and Resort; per unit | 75 |
| Labor Camp; per unit | 25 |
| Recreational Vehicle Park; per pad | 50 |
| Roadway Rest Stop; per vehicle | 3.5 |
| Recreational Home Development; per connection | 400 |

(c) Where the drinking water system provides water for outdoor use, such as the irrigation of lawns and gardens, the equalization storage volumes estimated in Table 510-5 shall be added to the indoor volumes estimated in Table 510-4. The procedure for determining the map zone and irrigated acreage for using Table 510-5 is outlined in Section R309-510-7(3).

TABLE 510-5
Storage Volume for Outdoor Use

| Map Zone | Volume Required (gallons/irrigated acre) |
|---|---|
| 1 | 1,782 |
| 2 | 1,873 |
| 3 | 2,528 |
| 4 | 2,848 |
| 5 | 4,081 |
| 6 | 4,964 |

(3) Fire Suppression Storage.

Fire suppression storage shall be required if the water system is intended to provide fire fighting water as evidenced by fire hydrants connected to the piping. The design engineer shall consult with the local fire suppression authority regarding needed fire flows in the area under consideration. This information shall be provided to the Division. Where no local

fire suppression authority exists, needed fire suppression storage shall be assumed to be 120,000 gallons (1000 gpm for 2 hours).

(4) Emergency Storage.

Emergency storage shall be considered during the design process. The amount of emergency storage shall be based upon an assessment of risk and the desired degree of system dependability. The Executive Secretary may require emergency storage when it is warranted to protect public health and welfare.

**R309-510-9. Distribution System Sizing.**

(1) General Requirements.

The distribution system shall be designed to insure that minimum water pressures as required in R309-105-9 exist at all points within the system. If the distribution system is equipped with fire hydrants, the Division will require a letter from the local fire authority stating the fire flow and duration required of the area to insure the system shall be designed to provide minimum pressures as required in R309-105-9 to exist at all points within the system when needed fire flows are imposed upon the peak day demand flows of the system.

(2) Indoor Use, Estimated Peak Instantaneous Demand.

(a) For community water systems and large non-community systems, the peak instantaneous demand for each pipeline shall be assumed for indoor use as:

$Q = 10.8 \times N^{0.64}$

where N equals the total number of ERC's, and Q equals the total flow (gpm) delivered to the total connections served by that pipeline.

For Recreational Vehicle Parks, the peak instantaneous flow for indoor use shall be based on the following:

TABLE 510-6

Peak Instantaneous Demand for Recreational Vehicle Parks

| Number of Connections | Formula |
|---|---|
| 0 to 59 | $Q = 4N$ |
| 60 to 239 | $Q = 80 + 20N^{0.5}$ |
| 240 or greater | $Q = 1.6N$ |

NOTES FOR TABLE 510-6:
Q is total peak instantaneous demand (gpm) and N is the maximum number of connections. However, if the only water use is via service buildings the peak instantaneous demand shall be calculated for the number of fixture units as presented in Appendix E of the 2000 International Plumbing Code.

(b) For small non-community water systems the peak instantaneous demand to be estimated for indoor use shall be calculated on a per-building basis for the number of fixture units as presented in Appendix E of the 2000 International Plumbing Code.

(3) Outdoor Use, Estimated Peak Instantaneous Demand.

Peak instantaneous demand to be estimated for outdoor use is given in Table 510-7. The procedure for determining the map zone and irrigated acreage for using Table 510-7 is outlined in Section R309-510-7(3).

TABLE 510-7

Peak Instantaneous Demand for Outdoor Use

| Map Zone | Peak Instantaneous Demand (gpm/irrigated acre) |
|---|---|
| 1 | 4.52 |
| 2 | 5.60 |
| 3 | 6.78 |
| 4 | 7.92 |
| 5 | 9.04 |
| 6 | 9.80 |

(4) Fire Flows.

(a) Distribution systems shall be designed to deliver needed fire flows if fire hydrants are provided. The design engineer shall consult with the local fire suppression authority regarding needed fire flows in the area under consideration. This information shall be provided to the Division. Where no local fire suppression authority exists, needed fire flows shall be assumed to be 1000 gpm unless the local planning commission provides a letter indicating that the system will not be required to provide any fire flows, in which case fire hydrants will not be allowed to be installed on any mains.

(b) If a distribution system is equipped with fire hydrants, the system shall be designed to insure that minimum pressures required by R309-105-9 exist at all points within the system when fire flows are added to the peak day demand of the system. Refer to Section R309-510-7 for information on determining the peak day demand of the system.

**KEY: drinking water, minimum sizing, water conservation**
**March 8, 2006 19-4-104**
**Notice of Continuation September 16, 2002**

**R309. Environmental Quality, Drinking Water.**
**R309-540. Facility Design and Operation: Pump Stations.**
**R309-540-1. Purpose.**

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

**R309-540-2. Authority.**

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

**R309-540-3. Definitions.**

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

**R309-540-4. General.**

Pumping stations shall be designed to maintain the sanitary quality of water and to provide ample quantities of water at sufficient pressure.

**R309-540-5. Pumping Facilities.**

(1) Location.

(a) The pumping station shall be designed such that:

(i) the proposed site will meet the requirements for sanitary protection of water quality, hydraulics of the system, and protection against interruption of service by fire, flood or any other hazard;

(ii) the access to the pump station shall be six inches above the surrounding ground and the station located at an elevation which is a minimum of three feet above the 100-year flood elevation, or three feet above the highest recorded flood elevation, which ever is higher, or protected to such elevations;

(iii) the station is readily accessible at all times unless permitted to be out of service for the period of inaccessibility;

(iv) surrounding ground is graded so as to lead surface drainage away from the station; and

(v) the station is protected to prevent vandalism and entrance by animals or unauthorized persons.

(2) Pumping Stations.

(a) Building structures for both raw and drinking water shall:

(i) have adequate space for the installation of additional pumping units if needed, and for the safe servicing of all equipment;

(ii) be of durable construction, fire and weather resistant, with outward-opening doors;

(iii) have an interior floor elevation at least six inches above the exterior finished grade;

(iv) have any underground facilities, especially wet wells, waterproofed;

(v) have all interior floors drained in such a manner that the quality of drinking water contained in any wet wells will not be endangered. All floors shall slope at least one percent (one foot every 100 feet) to a suitable drain; and

(vi) provide a suitable outlet for drainage from pump glands without discharging onto the floor.

(b) Suction wells shall:

(i) be watertight;

(ii) have floors sloped to permit removal of water and entrained solids;

(iii) be covered or otherwise protected against contamination; and

(iv) have two pumping compartments or other means to allow the suction well to be taken out of service for inspection, maintenance, or repair.

(c) Servicing equipment shall consist of:

(i) crane-ways, hoist beams, eyebolts, or other adequate facilities for servicing or removal of pumps, motors or other heavy equipment;

(ii) openings in floors, roofs or wherever else needed for removal of heavy or bulky equipment; and

(iii) a convenient tool board, or other facilities as needed, for proper maintenance of the equipment.

(d) Stairways and ladders shall:

(i) be provided between all floors, and in pits or compartments which must be entered; and

(ii) have handrails on both sides, and treads of non-slip material. They shall have risers not exceeding nine inches and treads wide enough for safety.

(e) Heating provisions shall be adequate for:

(i) the comfort of the operator; and

(ii) the safe and efficient operation of the equipment.

(f) Ventilation shall:

(i) conform to existing local and/or state codes; and

(ii) forced ventilation of at least six changes of air per hour shall be provided for all rooms, compartments, pits and other enclosures below ground floor, and any area where unsafe atmosphere may develop or where excessive heat may be built up.

(g) Lighting.

Pump stations shall be adequately lighted throughout. All electrical work shall conform to the requirements of the relevant state and/or local building codes.

(h) Sanitary and other conveniences.

Plumbing shall be so installed as to prevent contamination of a public water supply. Wastes shall be discharged in accordance with the plumbing code, R317-4, or R317-1-3.

(3) Pumps.

(a) Capacity.

Capacity shall be provided such that the pump or pumps shall be capable of providing the peak day demand of the system or the specific portion of the system serviced.

The pumping units shall:

(i) have ample capacity to supply the peak day demand against the required distribution system pressure without dangerous overloading;

(ii) be driven by prime movers able to meet the maximum horsepower condition of the pumps without use of service factors;

(iii) be provided readily available spare parts and tools; and

(iv) be served by control equipment that has proper heater and overload protection for air temperature encountered.

(b) Suction Lift.

Suction lift, where possible, shall be avoided. If suction lift is necessary, the required lift shall be within the pump manufacturer's recommended limits and provision shall be made for priming the pumps.

(c) Priming.

Prime water shall not be of lesser sanitary quality than that of the water being pumped. Means shall be provided to prevent back siphonage. When an air-operated ejector is used, the screened intake shall draw clean air from a point at least 10 feet above the ground or other source.

(4) Booster Pumps.

(a) Booster pumps shall be located or controlled so that:

(i) they will not produce negative pressure in their suction lines;

(ii) automatic cutoff pressure shall be at least 10 psi in the suction line;

(iii) automatic or remote control devices shall have a range between the start and cutoff pressure which will prevent excessive cycling; and

(iv) a bypass is available.

(b) Inline booster pumps (pumps withdrawing water directly from distribution lines without the benefit of storage and feeding such water directly into other distribution lines rather than storage), in addition to the other requirements of this section, shall have at least two pumping units (such that with any one pump out of service, the remaining pump or pumps shall be capable of providing the peak day demand of the specific portion of the system serviced), shall be accessible for servicing and repair and located or controlled so that the intake pressure shall be at least 20 psi when the pump or pumps are in normal operation.

(c) Individual home booster pumps shall not be allowed for any individual service from the public water supply main.

(5) Automatic and remote controlled stations.

All remote controlled stations shall be electrically operated and controlled and shall have signaling apparatus of proven performance. Installation of electrical equipment shall conform with the applicable state and local electrical codes and the National Electrical Code.

(6) Appurtenances.

(a) Valves.

Valves shall be used to permit satisfactory operation, maintenance, and repair of the equipment. If foot valves are necessary, they shall have a net valve area of at least 2 1/2 times the area of the suction pipe and they shall have a positive-acting check valve on the discharge side between the pump and the shut-off valve.

(b) Piping.

Piping within and near pumping stations shall:

(i) be designed so that the friction losses will be minimized;

(ii) not be subject to contamination;

(iii) have watertight joints;

(iv) be protected against surge or water hammer; and

(v) be such that each pump has an individual suction line or that the lines shall be so manifolded that they will insure similar hydraulic and operating conditions.

(c) Gauges and Meters.

Each pump shall:

(i) have a standard pressure gauge on its discharge line;

(ii) have a compound gauge (capable of indicating negative pressure or vacuum as well as positive pressure) on its suction line; and

(iii) have recording gauges in the larger stations.

(d) Water Seal.

Where pumps utilize water seals, the seals shall:

(i) not be supplied with water of a lesser sanitary quality than that of the water being pumped; and

(ii) when pumps are sealed with potable water and are pumping water of lesser sanitary quality, the seal shall be provided with a break tank open to atmospheric pressure, and have an air gap of at least six inches or two pipe diameters, whichever is greater, between the feeder line and the spill line of the tank.

(e) Controls.

Controls shall be designed in such a manner that they will operate their prime movers, and accessories, at the rated capacity without dangerous overload. Where two or more pumps are installed, provision shall be made for alternation. Provision shall be made to prevent energizing the motor in the event of a backspin cycle. Electrical controls shall be protected against flooding. Equipment shall be provided or other arrangements made to prevent surge pressures from activating controls which switch on pumps or activate other equipment outside the normal design cycle of operation.

(f) Standby Power.

Standby power, to ensure continuous service when the primary power has been interrupted, shall be provided from at least two independent sources or a standby or an auxiliary source shall be provided. If standby power is provided by onsite generators or engines, the fuel storage and fuel line must be designed to protect the water supply from contamination.

(g) Water Pre-Lubrication.

When automatic pre-lubrication of pump bearings is necessary and an auxiliary direct drive power supply is provided, the pre-lubrication line shall be provided with a valved bypass around the automatic control so that the bearings can, if necessary, be lubricated manually before the pump is started or the pre-lubrication controls shall be wired to the auxiliary power supply.

**R309-540-6. Hydropneumatic Systems.**

(1) General.

Hydropneumatic systems shall comply with all appropriate sections of R309-540-5.

Unpressurized ground level or elevated storage, designed in accordance with R309-545, shall be provided in addition to the diaphragm or air tanks. Diaphragm or air pressure tank storage shall not be considered for fire protection purposes or effective system storage.

(2) Location.

If diaphragm or air tanks and appurtenances are located below ground, adequate provisions for drainage, ventilation, maintenance, and flood protection shall be made and the electrical controls shall be located above grade so as to be protected from flooding as required by R309-540-5(6)(e). Any discharge piping from combination air release/vacuum relief valves(air/vac's) or pressure relief valves located in below ground chambers shall comply with all the pertinent requirements of R309-550-6(6).

(3) Operating Pressures.

The system shall be designed to provide minimum pressures in R309-105-9 at all points in the distribution system. A pressure gauge shall be installed on the pressure tank inlet line.

(4) Piping.

In addition to the bypass required by R309-540-5(4)(iv) on the pumps, the diaphragm or air tanks shall have sufficient bypass piping to permit operation of the hydropneumatic system while one or more of the tanks are being repaired or painted.

(5) Pumps.

At least two pumping units shall be provided. With any pump out of service the remaining pump or pumps shall be capable of providing the peak instantaneous demand of the system as described in R309-510-9(2), while recharging the pressure tank at 115 percent of the upper pressure setting. Pump cycling shall not exceed 15 starts per hour, with a maximum of ten starts per hour preferred.

(6) Pressure Tanks.

(a) Pressure tanks shall meet the requirement of state and local laws and regulations for the manufacture and installation of unfired pressure vessels. Interior coatings or diaphragms used in pressure tanks that will come into contact with the drinking water shall comply with ANSI/NSF Standard 61. Non diaphragm pressure tanks shall have an access manhole, a drain, control equipment consisting of pressure gauge, water sight glass, automatic or manual air blow-off, means for adding air, and pressure operated start-stop controls for the pumps.

(b) The minimum volume of the pressure tank or combination of tanks shall be greater than or equal to the sum of S and the value of CX divided by 4W.

where the following values are used in the equation above:

C = minutes per operating cycle, four minutes to meet the requirements of R309-540-6(5) above or preferably six minutes, and is equal to pump ON time plus pump OFF time.

X = output capacity rating of the pump(s) at the high pressure condition in the tank(s), in gpm.

W = percent of volume withdrawn during a given drop in tank pressure: specifically, between $P_h$ and $P_l$. $W = 100(P_h - P_l)/P_h$ where $P_h$ = high pressure in tank in psia (high absolute pressure) and $P_l$ = low pressure in tank is psia (low absolute pressure). Values of W range typically from 0.26 to 0.31 for pressure differentials of 15 to 30 psi and high system pressures of 45 to 85 psi at elevations of approximately 5,000 feet.

S = water seal volume in gallons, the volume of inactive water remaining in tank at low pressure condition.

(7) Air Volume.

The method of adjusting the air volume shall be acceptable to the Executive Secretary. Air delivered by compressors to the pressure tank shall be adequately filtered, oil free, and be of adequate volume. Any intake shall be screened and draw clean air from a point at least 10 feet above the ground or other source of possible contamination, unless the air is filtered by an apparatus approved by the Executive Secretary. Discharge piping from air relief valves shall be designed and installed with screens to eliminate the possibility of contamination from this source.

(8) Water Seal.

For air pressure tanks without an internal diaphragm the volume of water remaining in a air pressure tank at the lower pressure setting shall be sufficient to provide an adequate water seal at the outlet to prevent the leakage of air.

The following water seal depths shall be considered as minimum requirements.

(a) Horizontal outlets shall maintain sufficient depth, as measured from the centerline of the horizontal outlet pipe, such that the depth is greater than or equal to the sum of d and twice the value $v^2$ divided by 2G.

(b) Vertical outlets, if unbaffled, the depth shall be the same as in (a) except measured from the pipe outlet; if baffled, the depth shall be greater than or equal to the value $v^2$ divided by 2G.

where the following values are used in the equations above:

v = the axial velocity in the pipe outlet for the peak instantaneous demand flow rate of the system.

d = the diameter of the outlet pipe in ft.

G = the gravitational constant of 32.2 ft/sec/sec.

(9) Standby Power Supply.

Where a hydropneumatic system is intended to serve a public water system, categorized as a community water system as defined in R309-110, a standby source of power shall be provided.

**KEY: drinking water, pumps, hydropneumatic systems, individual home booster pumps**
**March 8, 2006 19-4-104**
**Notice of Continuation September 16, 2002**

**R309. Environmental Quality, Drinking Water.**
**R309-545. Facility Design and Operation: Drinking Water Storage Tanks.**
**R309-545-1. Purpose.**

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

**R309-545-2. Authority.**

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

**R309-545-3. Definitions.**

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

**R309-545-4. General.**

Storage for drinking water shall be provided as an integral part of each public drinking water system unless an exception to rule is approved by the Executive Secretary. Pipeline volume in transmission or distribution lines shall not be considered part of any storage volumes.

**R309-545-5. Size of Tank(s).**

Required Storage Capacity: In the absence of firm water use data, at or above the 90% confidence level, storage tanks shall be sized in accordance with the recommended minimums of R309-510.

**R309-545-6. Tank Material and Structural Adequacy.**

(1) Materials.

The materials used in drinking water storage structures shall provide stability and durability as well as protect the quality of the stored water. Steel tanks shall be constructed from new, previously unused, plates and designed in accordance with AWWA Standard D-100.

(2) Structural Design.

The structural design of drinking water storage structures shall be sufficient for the environment in which they are located. The design shall incorporate a careful analysis of potential seismic risks.

**R309-545-7. Location of Tanks.**

(1) Pressure Considerations.

The location of the reservoir and the design of the water system shall be such that the minimum working pressure in the distribution system shall meet the minimum pressures as required in R309-105-9.

(2) Connections.

Tanks shall be located at an elevation where present and anticipated connections can be adequately served. System connections shall not be placed at elevations such that minimum pressures as required in R309-105-9 cannot be continuously maintained.

(3) Sewer Proximity.

Sewers, drains, standing water, and similar sources of possible contamination shall be kept at least 50 horizontal feet from the reservoir.

(4) Standing Surface Water.

The area surrounding a ground-level drinking water storage structure shall be graded in a manner that will prevent surface water from standing within 50 horizontal feet of the structure.

(5) Ability to Isolate.

Drinking water storage structures shall be designed and located so that they can be isolated from the distribution system. Storage structures shall be capable of being drained for cleaning or maintenance without necessitating loss of pressure in the distribution system.

(6) Earthquake and Landslide Risks.

Potential geologic hazards shall be taken into account in selecting a tank location. Earthquake and landslide risks shall be evaluated.

(7) Security.

The site location and design of a drinking water storage reservoir shall take into consideration security issues and potential for vandalism.

**R309-545-8. Tank Burial.**

(1) Flood Elevation.

The bottom of drinking water storage reservoirs shall be located at least three feet above the 100 year flood level or the highest known maximum flood elevation, whichever is higher.

(2) Ground Water.

When the bottom of a drinking water storage reservoir is to be below normal ground surface, it shall be placed above the local ground water table elevation.

(3) Covered Roof.

When the roof of a drinking water storage reservoir is to be covered by earth, the roof shall be sloped to drain toward the outside edge of the tank.

**R309-545-9. Tank Roof and Sidewalls.**

(1) Protection From Contamination.

All drinking water storage structures shall have suitable watertight roofs and sidewalls which shall also exclude birds, animals, insects, and excessive dust.

(2) Openings.

Openings in the roof and sidewalls shall be kept to a minimum and comply with the following:

(a) Any pipes running through the roof or sidewall of a metal drinking water storage structure shall be welded, or properly gasketed. In new concrete tanks, these pipes shall be connected to standard wall castings with seepage rings which have been poured in place. Vent pipes, in additions to seepage rings, shall have raised concrete curbs which direct water away from the vent pipe and are formed as a single pour with the roof deck. No roof drains or any other pipes which may contain water of less quality than drinking water shall ever penetrate the roof, walls, or floor of a drinking water storage tank.

(b) Openings in a storage structure roof or top, designated to accommodate control apparatus or pump columns, shall be welded, gasketed, or curbed and sleeved as above, and shall have additional proper shielding to prevent vandalism.

(c) Openings shall be kept as far away as possible from the storage tank outlet and other sources of surface water.

(3) Adjacent Compartments.

Drinking water shall not be stored or conveyed in a compartment adjacent to wastewater when the two compartments are separated by a single wall.

(4) Slope of Roof.

The roof of all storage structures shall be designed for drainage. Parapets, or similar construction which would tend to hold water and snow, shall not be utilized unless adequate waterproofing and drainage are provided. Downspout or roof drain pipes shall not enter or pass through the reservoir.

**R309-545-10. Internal Features.**

The following shall apply to internal features of drinking

water storage structures:

(1) Drains.

If a drain is provided, it shall not discharge to a sanitary sewer. If local authority allows discharge to a storm drain, the drain discharge shall have a physical air gap of at least two pipe diameters between the discharge end of the pipe and the overflow rim of the receiving basin.

(2) Internal Catwalks.

Internal catwalks, if provided and located so as to be over the drinking water, shall have a solid floor with raised edges. The edges and floor shall be so designed that shoe scrapings or dirt will not fall into the drinking water.

(3) Inlet and Outlet.

To minimize potential sediment flow from the structure, the normal outlet pipes from all reservoirs shall be located in a manner to provide a silt trap prior to discharge into the distribution system.

(4) Disinfection.

If the drinking water reservoir is to be utilized as a contact basin for disinfection purposes, the design engineer shall conduct tracer studies or other tests, previously approved by the Executive Secretary, to determine the minimum contact time and the potential for short circuiting.

**R309-545-11. ANSI/NSF International, Standard 61.**

(1) ANSI/NSF Standard 61 Certification.

All interior surfaces or coatings shall consist of products which are certified by laboratories approved by ANSI and which comply with ANSI/NSF Standard 61 or other standards approved by the Executive Secretary. This requirement applies to any pipes and fittings, protective materials (e.g. paints, coatings, concrete admixtures, concrete release agents, concrete sealers), joining and sealing materials (e.g. adhesives, caulks, gaskets, primers and sealants) and mechanical devices (e.g. electrical wire, switches, sensors, valves, submersible pumps) which are located so as to come into contact with the drinking water.

(2) Curing Time and Volatile Organic Compounds.

If products which require a cure or set time are utilized in such a way as to come into contact with the drinking water, then water shall not be introduced into the vessel until any required curing time has passed. It shall be the responsibility of the water purveyor to assure that no tastes or odors, toxins or other compounds, which result in MCL exceedances, are imparted to the water as a result of tank repair.

**R309-545-12. Steel Tanks.**

(1) Paints.

Proper protection shall be given to all metal surfaces, both internal and external, by paints or other protective coatings. Internal coatings shall comply with ANSI/NSF Standard 61.

(2) Cathodic Protection.

If installed, internal cathodic protection shall be designed, installed and maintained by personnel trained in corrosion engineering.

**R309-545-13. Tank Overflow.**

All water storage structures shall be provided with an overflow which is discharged at an elevation between 12 and 24 inches above the ground surface with an appropriate air gap. The discharges shall not cause erosion.

(1) Diameter.

All overflow pipes shall be of sufficient capacity to permit waste of water in excess of the filling rate.

(2) Slope.

All overflow pipes shall Be sloped for complete drainage,

(3) Screen.

All overflow pipes shall be screened with No. 4 mesh non-corrodible screen installed at a location least susceptible to damage by vandalism,

(4) Visible Discharge.

All overflow pipes shall be located so that any discharge is visible,

(5) Cross Connections.

All overflow pipes shall not be connected to, or discharge into, any sanitary sewer system.

(6) Paint.

If an overflow pipe within a reservoir is painted or otherwise coated, such coating shall comply with ANSI/NSF Standard 61.

**R309-545-14. Access Openings.**

Drinking water storage structures shall be designed with reasonably convenient access to the interior for cleaning and maintenance.

(1) Height.

There shall be at least one opening above the water line which shall be framed at least four inches above the surface of the roof at the opening; or if on a buried structure, shall be elevated at least 18 inches above any earthen cover over the structure. The frame shall be securely fastened and sealed to the tank roof so as to prevent any liquid contaminant entering the tank. Concrete drinking water storage structures shall have raised curbs around access openings, formed and poured continuous with the pouring of the roof and sloped to direct water away from the frame.

(2) Shoebox Lid.

The frame of any access opening shall be provided with a close fitting solid shoebox type cover which extends down around the frame at least two inches and is furnished with a gasket(s) between the lid and frame,

(3) Locking Device.

The lid to any access opening shall have a locking device.

**R309-545-15. Venting.**

Drinking water storage structures shall be vented. Overflows shall not be considered as vents. Vents provided on drinking water storage reservoirs shall:

(1) Inverted Vent.

Be downturned or shielded to prevent the entrance of surface water and rainwater.

(2) Open Discharge.

On buried structures, have the discharge 24 to 36 inches above the earthen covering.

(3) Blockage.

Be located and sized so as to avoid blockage during winter conditions.

(4) Pests.

Exclude birds and animals.

(5) Dust.

Exclude insects and dust, as much as this function can be made compatible with effective venting.

(6) Screen.

Be fitted with No. 14 mesh or finer non-corrodible screen.

(7) Screen Protector.

Be fitted with additional heavy gage screen or substantial covering which will protect the No. 14 mesh screen against vandalism and, further, discourage purposeful attempts to contaminate the reservoir.

**R309-545-16. Freezing Prevention.**

All drinking water storage structures and their appurtenances, especially the riser pipes, overflows, and vents, shall be designed to prevent freezing which may interfere with proper functioning.

**R309-545-17. Level Controls.**

Adequate level control devices shall be provided to

maintain water levels in storage structures.

**R309-545-18. Security.**

Locks on access manholes, and other necessary precautions shall be provided to prevent unauthorized entrance, vandalism, or sabotage.

**R309-545-19. Safety.**

(1) Utah OSHA.

The safety of employees shall be considered in the design of the storage structure. Ladders, ladder guards, platform railings, and safely located entrance hatches shall be provided where applicable. As a minimum, such matters shall conform to pertinent laws and regulations of the Utah Occupational Safety and Health Administration.

(2) Ladders.

Generally, ladders having an unbroken length in excess of 20 feet shall be provided with appropriate safety devices. This requirement shall apply both to interior and exterior reservoir ladders.

(3) Requirements for Elevated Tanks.

Elevated tanks shall have railings or handholds provided for transfer from the access tube to the water compartment.

**R309-545-20. Disinfection.**

Drinking water storage structures shall be disinfected before being put into service for the first time, and after being entered for cleaning, repair, or painting. The reservoir shall be cleaned of all refuse and shall then be washed with potable water prior to adding the disinfectant. AWWA Standard C652-92 shall be followed for reservoir disinfection, with the exception there shall be no delivery of waters used in the disinfection process to the distribution system, unless specifically authorized, in writing, by the Executive Secretary.

Upon completing any of the three methods for storage tank chlorination, as outlined in AWWA C652-92, the water system must properly dispose of residual super-chlorinated waters in the outlet pipes. Other super-chlorinated waters, which are not to be ultimately diluted and delivered into the distribution system, shall also be properly disposed.

Chlorinated water discharged from the storage tank shall be disposed of in an acceptable manner and in conformance with the rules of the Utah Water Quality Board (see R317 of the Utah Administrative Code).

**R309-545-21. Incorporation by Reference.**

The following list of Standards shall be considered as incorporated by reference in this specific rule. The most recent published copy of the referenced standard will apply in each case.

(1) AWWA Standards.

(a) C652-92, Disinfection of Water Storage Reservoirs.

(b) D100-96, Welded Steel Tanks for Water Storage.

(c) D101-53(R86), Inspecting and Repairing Steel Water Tanks, Standpipes, Reservoirs, and Elevated Tanks for Water Storage.

(d) D102-97, Coating Steel Water-Storage Tanks.

(e) D103-97, Factory-Coated Bolted Steel Tanks for Water Storage.

(f) D104-97, Automatically Controlled, Impressed-Current Cathodic Protection for the Interior of Steel Water Tanks.

(g) D110-95, Wire-Wound Circular Prestressed-Concrete Water Tanks (including addendum D110a-96).

(h) D115-95, Circular Prestressed Concrete Water Tanks With Circumferential Tendons.

(i) D120-84(R89), Thermosetting Fiberglass-Reinforced Plastic Tanks.

(j) D130-96, Flexible-Membrane-Lining and Floating-Cover Materials for Potable-Water Storage.

(2) NSF International Standards.

(a) NSF 60, Drinking Water Treatment Chemicals - Health Effects.

(b) NSF 61, Drinking Water System Components - Health Effects.

(3) Utah OSHA.

Applicable standards of the Utah Occupational Safety and Health Administration are hereby incorporated by reference.

**R309-545-22. Operation and Maintenance of Storage Tanks.**

(1) Inspection and Cleaning.

Tanks which are entered for inspection and cleaning shall be disinfected in accordance with AWWA Standard C652-92 prior to being returned to service. When diver(s) enter storage tanks that have not been drained for inspection purposes, they shall comply with section five of the above standard unless the tank is constructed of steel, in which case they shall comply additionally with AWWA Standard D101-53(R86).

(2) Recoating or Repairing.

Any substance used to recoat or repair the interior of drinking water storage tank shall be certified to conform with ANSI/NSF Standard 61. If the tank is not drained for recoating or repairing, any substance or material used to repair interior coatings or cracks shall be suitable for underwater application, as indicated by the manufacturer, as well as comply with both ANSI/NSF Standards 60 and 61.

(3) Seasonal Use.

Water storage tanks which are operated seasonally shall be flushed and disinfected in accordance with AWWA Standard C652-92 prior to each season's use. Certification of proper disinfection, as evidenced by at least one satisfactory bacteriologic sample, shall be obtained by the system management and kept on file for inspection by personnel of the Division. During the non-use period, care shall be taken to see that openings to the water storage tank (those which are normally closed and sealed during normal use) are closed and secured.

**KEY: drinking water, storage tanks, access, overflow and drains**
**March 8, 2006 19-4-104**
**Notice of Continuation September 16, 2002**

**R309. Environmental Quality, Drinking Water.**
**R309-550. Facility Design and Operation: Transmission and Distribution Pipelines.**
**R309-550-1. Purpose.**

The purpose of this rule is to provide specific requirements for the design and installation of transmission and distribution pipelines which are utilized to deliver culinary drinking water to facilities of public drinking water systems or to consumers. It is intended to be applied in conjunction with rules R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

**R309-550-2. Authority.**

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

**R309-550-3. Definitions.**

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

**R309-550-4. General.**

Transmission and distribution pipelines shall be designed, constructed and operated to convey adequate quantities of water at ample pressure, while maintaining water quality.

**R309-550-5. Water Main Design.**

(1) Distribution System Pressure.

The distribution system shall be designed to maintain minimum pressures as required in R309-105-9 (at ground level) at all points of connection, under all conditions of flow, but especially during peak day flow conditions, including fire flows.

(2) Assumed Flow Rates.

Flow rates to be assumed when designing or analyzing distribution systems shall be as given in R309-510 of these rules.

(3) Computerized Network Analysis.

(a) All water mains shall be sized after a hydraulic analysis based on flow demands and pressure requirements. If the calculations needed to conduct this hydraulic analysis are complex, a computerized network analysis shall be performed to verify that the distribution system will be capable of meeting the requirements of this rule.

(b) Where improvements will upgrade more than 50% of an existing distribution system, or where a new distribution system is proposed, a hydraulic analysis of the entire system shall be prepared and submitted for review prior to plan approval.

(c) In the analysis and design of water distribution systems, the following Hazen-William coefficients shall be used: PVC pipe = 140; Ductile Iron Pipe = 120; Cement-Mortar Lined Ductile Iron Pipe = 130 to 140.

(4) Minimum Water Main Size.

For water mains not connected to fire hydrants, the minimum line size shall be 4-inch diameter. Minimum water main size serving a fire hydrant lateral shall be 8-inch diameter unless a hydraulic analysis indicates that required flow and pressures can be maintained by smaller lines.

(5) Fire Protection.

If a public water system is required to provide water for fire suppression by the local fire authority, or if the system has installed fire hydrants on existing distribution mains for that purpose:

(a) The design of the distribution system shall be consistent with Appendix B of the 2003 International Fire Code. As specified in this code, minimum fire-flow requirements are:

(i) 1000 gpm for one- and two-family dwellings with an area of less than 3600 square feet.

(ii) 1500 gpm or greater for all other buildings.

(b) The location of fire hydrants shall be consistent with Appendix C of the 2003 International Fire Code. As specified in this code, average spacing between hydrants must be no greater than 500 ft.

(c) An exception to the fire protection requirements of (a) and (b) may be granted if a suitable statement is received from the local fire protection authority.

(d) Water mains not designed to carry fire flows shall not have fire hydrants connected to them.

(e) The design engineer shall verify that the pipe network design permits fire-flows to be met at representative locations while minimum pressures as required in R309-105-9 are maintained at all times and at all points in the distribution system.

(f) As a minimum, the flows to be assumed during a fire-flow analysis shall be the "peak day demand" plus the fire flow requirement.

(6) Geologic Considerations.

The character of the soil through which water mains are to be laid shall be considered. This information shall accompany any submittal for a pipeline project.

(7) Dead Ends.

(a) In order to provide increased reliability of service and reduce head loss, dead ends shall be minimized by making appropriate tie-ins whenever practical.

(b) Where dead-end mains occur, they shall be provided with a fire hydrant if flow and pressure are sufficient, or with an approved flushing hydrant or blow-off for flushing purposes. Flushing devices shall be sized to provide flows which will give a velocity of at least 2.5 fps in the water main being flushed. No flushing device shall be directly connected to any sewer.

(8) Valves.

Sufficient valves shall be provided on water mains so that inconvenience and sanitary hazards will be minimized during repairs. Valves shall be located at not more than 500 foot intervals in commercial districts and at not more than one block or 800 foot intervals in other districts. Where systems serve widely scattered customers and where future development is not expected, the valve spacing shall not exceed one mile.

(9) Corrosive Soils.

The design engineer shall consider the materials to be used when corrosive soils or waters will be encountered.

(10) Special Precautions in Areas of Groundwater Contamination by Organic Compounds.

Where distribution systems are installed in areas of groundwater contaminated by organic compounds:

(a) pipe and joint materials which are not subject to permeation of the organic compounds shall be used.

(b) non-permeable materials shall be used for all portions of the system including water main, service connections and hydrants leads.

(11) Separation of Water Mains from Other Sources of Contamination.

Design engineers shall exercise caution when locating water mains at or near certain sites such as sewage treatment plants or industrial complexes. Individual septic tanks shall be located and avoided. The engineer shall contact the Division to establish specific design requirements for locating water mains near any source of contamination.

**R309-550-6. Component Materials and Design.**

(1) NSF Standard for Health Effects.

All materials which may contact drinking water, including pipes, gaskets, lubricants and O-Rings, shall be ANSI-certified as meeting the requirements of NSF Standard 61, Drinking Water System Components - Health Effects. To permit field-verification of this certification, all such components shall be appropriately stamped with the NSF logo.

(2) Restrictions on Asbestos and Lead.

(a) The use of asbestos cement pipe shall not be allowed.

(b) Pipes and pipe fittings containing more than 8% lead shall not be used. Lead-tip gaskets shall not be used. Repairs to lead-joint pipe shall be made using alternative methods.

(3) AWWA Standards for Mechanical Properties.

Pipe, joints, fittings, valves and fire hydrants shall conform to NSF Standard 61 or Standard 14, and applicable sections of ANSI/AWWA Standards C104-95 through C550-90 and C900-97 through C950-95.

(4) Used Materials.

Only materials which have been used previously for conveying potable water may be reused. Used materials shall meet the above standards, be thoroughly cleaned, and be restored practically to their original condition.

(5) Fire Hydrant Design.

Hydrant drains shall not be connected to or located within 10 feet of sanitary sewers or storm drains.

(6) Air Relief Valves.

At high points in water mains where air can accumulate, provisions shall be made to remove air by means of hydrants or air relief valves. Automatic air relief valves shall not be used in situations where flooding may occur.

(a) Air Relief Valve Vent Piping.

The open end of an air relief vent pipe from automatic valves shall, where possible as determined by public water system management, be extended to at least one foot above grade and provided with a screened (#14 mesh, non-corrodible) downward elbow. Alternately, the open end of the pipe may be extended to as little as one foot above the top of the pipe if the valve's chamber is not subject to flooding and provided with a drain-to-daylight (See (b) below). Blow-offs or air relief valves shall not be connected directly to any sewer.

(b) Chamber Drainage.

Chambers, pits or manholes containing valves, blow-offs, meters, other such appurtenances to a distribution system, shall not be connected directly to any storm drain or sanitary sewer. They shall be provided with a drain to daylight. Where this is not possible, underground gravel filled absorption pits may be used if the site is not subject to flooding and conditions will assure adequate drainage. Where a chamber contains an air relief valve, and it is not possible to provide a drain-to-daylight, the vent pipe from the valve shall be extended to at least one foot above grade (See (a) above). Only when it is both impossible to extend the vent pipe above grade, and impossible to provide a drain-to-daylight may a gravel filled sump be utilized to provide chamber drainage (assuming local ground conditions permit adequate drainage without ground water intrusion).

**R309-550-7. Separation of Water Mains and Transmission Lines from Sewers and Other Pollution Sources.**

(1) Basic Separation Standards.

The horizontal distance between pressure water mains and sanitary sewer lines shall be at least ten feet. Where a water main and a sewer line must cross, the water main shall be at least 18 inches above the sewer line. Separation distances shall be measured edge-to-edge (i.e. from the nearest edges of the facilities). Water mains and sewer lines shall not be installed in the same trench.

(2) Exceptions to Basic Separation Standards.

Local conditions, such as available space, limited slope, existing structures, etc., may create a situation where there is no alternative but to install water mains or sewer lines at a distance less than that required by Subsection (1), above. Exceptions to the rule may be provided by the Executive Secretary if it can be shown that the granting of such an exception will not jeopardize the public health.

(3) Special Provisions.

The following special provisions apply to all situations:

(a) The basic separation standards are applicable under normal conditions for sewage collection lines and water distribution mains. More stringent requirements may be necessary if conditions such as high groundwater exist.

(b) Sewer lines shall not be installed within 25 feet horizontally of a low head (5 psi or less pressure) water main.

(c) Sewer lines shall not be installed within 50 feet horizontally of any transmission line segment which may become unpressurized.

(d) New water mains and sewers shall be pressure tested where the conduits are located ten feet apart or less.

(e) In the installation of water mains or sewer lines, measures shall be taken to prevent or minimize disturbances of the existing line.

(f) Special consideration shall be given to the selection of pipe materials if corrosive conditions are likely to exist. These conditions may be due to soil type and/or the nature of the fluid conveyed in the conduit, such as a septic sewage which produces corrosive hydrogen sulfide.

(g) Sewer Force Mains

(i) Sewer force mains shall not be installed within ten feet (horizontally) of a water main.

(ii) When a sewer force main must cross a water line, the crossing shall be as close as practical to the perpendicular. The sewer force main shall be at least 18 inches below the water line.

(iii) When a new sewer force main crosses under an existing water main, all portions of the sewer force main within ten feet (horizontally) of the water main shall be enclosed in a continuous sleeve.

(iv) When a new water main crosses over an existing sewer force main, the water main shall be constructed of pipe materials with a minimum rated working pressure of 200 psi or equivalent pressure rating.

(4) Water Service Laterals Crossing Sewer Mains and Laterals.

Water service laterals shall conform to all requirements given herein for the separation of water and sewer lines.

**R309-550-8. Installation of Water Mains.**

(1) Standards.

(a) The specifications shall incorporate the provisions of the manufacturer's recommended installation procedures or the following standards:

(i) AWWA Standard C600-99, Installation of Ductile Iron Water Mains and Their Appurtenances

(ii) ASTM D2774, Recommended Practice for Underground Installation of Thermoplastic Pressure Piping and PVC Pipe

(b) The provisions of the following publication shall be followed for PVC pipe design and installation:

PVC Pipe - Design and Installation, AWWA Manual M23, 1990, published by the American Water Works Association

(2) Bedding.

A continuous and uniform bedding shall be provided in the trench for all buried pipe. Stones larger than the backfill materials described below shall be removed for a depth of at least six inches below the bottom of the pipe.

(3) Backfill.

Backfill material shall be tamped in layers around the pipe and to a sufficient height above the pipe to adequately support and protect the pipe. The material and backfill zones shall be as

specified by the standards referenced in Subsection (1), above. As a minimum:

(a) For plastic pipe, backfill material with a maximum particle size of 3/4 inch shall be used to surround the pipe.

(b) For ductile iron pipe, backfill material shall contain no stones larger than 2 inches.

(4) Dropping Pipe into Trench.

Under no circumstances shall the pipe or accessories be dropped into the trench.

(5) Burial Cover.

All water mains shall be covered with sufficient earth or other insulation to prevent freezing unless they are part of a non-community system that can be shut-down and drained during winter months when temperatures are below freezing.

(6) Thrust Blocking.

All tees, bends, plugs and hydrants shall be provided with reaction blocking, tie rods or joints designed to prevent movement.

(7) Pressure and Leakage Testing.

All types of installed pipe shall be pressure tested and leakage tested in accordance with AWWA Standard C600-99.

(8) Surface Water Crossings.

(a) Above Water Crossings

The pipe shall be adequately supported and anchored, protected from damage and freezing, and accessible for repair or replacement.

(b) Underwater Crossings

A minimum cover of two feet or greater, as local conditions may dictate, shall be provided over the pipe. When crossing water courses which are greater than 15 feet in width, the following shall be provided:

(i) The pipe shall be of special construction, having restrained joints for any joints within the surface water course and flexible restrained joints at both edges of the water course.

(ii) Valves shall be provided at both ends of water crossings so that the section can be isolated for testing or repair; the valves shall be easily accessible, and not subject to flooding; and the valve nearest to the supply source shall be in a manhole.

(iii) Permanent taps shall be made on each side of the valve within the manhole to allow insertion of testing equipment to determine leakage and for sampling purposes.

(9) Sealing Pipe Ends During Construction.

The open ends of all pipeline under construction shall be covered and effectively sealed at the end of the day's work.

(10) Disinfecting Water Distribution Systems.

All new water mains or appurtenances shall be disinfected in accordance with AWWA Standard C651-99. The specifications shall include detailed procedures for the adequate flushing, disinfection and microbiological testing of all water mains. On all new and extensive distribution system construction, evidence of satisfactory disinfection shall be provided to the Division. Samples for coliform analyses shall be collected after disinfection is complete and the system is refilled with potable water. A standard heterotrophic plate count is advisable. The use of water for culinary purposes shall not commence until the bacteriologic tests indicate the water to be free from contamination.

**R309-550-9. Cross Connections and Interconnections.**

(1) Physical Cross Connections.

There shall be no physical cross connections between the distribution system and pipe, pumps, hydrants, or tanks which are supplied from, or which may be supplied or contaminated from, any source except as approved by the Executive Secretary.

(2) Recycled Water.

Neither steam condensate nor cooling water from engine jackets or other heat exchange devices shall be returned to the potable water supply.

(3) System Interconnects.

The approval of the Executive Secretary shall be obtained for interconnections between different potable water supply systems.

**R309-550-10. Water Hauling.**

Water hauling is not an acceptable permanent method for culinary water distribution in community water systems. Proposals for water hauling shall be submitted to and approved by the Executive Secretary.

(1) Exceptions.

The Executive Secretary may allow its use for non-community public water supplies if:

(a) consumers could not otherwise be supplied with good quality drinking water, or

(b) the nature of the development, or ground conditions, are such that the placement of a pipe distribution system is not justified.

(2) Emergencies.

Hauling may also be necessary as a temporary means of providing culinary water in an emergency.

**R309-550-11. Service Connections and Plumbing.**

(1) Service Taps.

Service taps shall be made so as to not jeopardize the sanitary quality of the system's water.

(2) Plumbing.

(a) Service lines shall be capped until used.

(b) Water services and plumbing shall conform to the Utah Plumbing Code. Solders and flux containing more than 0.2% lead and pipe and pipe fittings containing more than 8% lead shall not be used.

(3) Individual Home Booster Pumps.

Individual booster pumps shall not be allowed for any individual service from the public water supply mains. Exceptions to the rule may be provided by the Executive Secretary if it can be shown that the granting of such an exception will not jeopardize the public health.

(4) Service Lines.

The portion of the service line under the control of the water supplier is considered to be part of the distribution system and shall comply with all requirements given herein.

(5) Service Meters and Building Service Line.

Connections between the service meter and the home shall be in accordance with the Utah Plumbing Code.

(6) Allowable Connections.

All dwellings or other facilities connected to a public water supply shall be in conformance with the Utah Plumbing Code.

**R309-550-12. Transmission Lines.**

(1) Unpressurized Flows.

Transmission lines shall conform to all applicable requirements in this rule. Transmission line design shall minimize unpressurized flows.

(2) Proximity to Concentrated Sources of Pollution.

A water supplier shall not route an unpressurized transmission line any closer than fifty feet to any concentrated source of pollution (i.e. septic tanks and drain fields, garbage dumps, pit privies, sewer lines, feed lots, etc.). Furthermore, unpressurized transmission lines shall not be placed in boggy areas or areas subject to the ponding of water.

(3) Exceptions.

Where the water supplier cannot obtain a fifty foot separation distance from concentrated sources of pollution, it is permitted to use a Class 50 ductile iron pipe with joints acceptable to the Executive Secretary. Reasonable assurance must be provided to assure that contamination will not be able to enter the unpressurized pipeline.

**R309-550-13. Operation and Maintenance.**

(1) Disinfection After Line Repair.

The disinfection procedures of Section 4.7, AWWA Standard C651-99 shall be followed if any water main is cut into or repaired.

(2) Cross Connections.

The water supplier shall not allow a connection which may jeopardize water quality. Cross connections are not allowed unless controlled by an approved and properly operating backflow prevention assembly. The requirements of the Utah Plumbing Code shall be met with respect to cross connection control and backflow prevention.

Suppliers shall maintain an inventory of each pressure vacuum breaker assembly, spill-resistant vacuum breaker assembly, double check valve assembly, reduced pressure principle backflow prevention assembly, and high hazard air gap used by their customers, and a service/inspection record for each such assembly.

Backflow prevention assemblies shall be inspected and tested at least once a year, by an individual certified for such work. This responsibility may be borne by the water system or the water system management may require that the customer having the backflow prevention assembly be responsible for having the device tested.

Suppliers serving areas also served by a pressurized irrigation system shall prevent cross connections between the two. Requirements for pressurized irrigation systems are outlined in Section 19-4-112 of the Utah Code.

(3) NSF Standards.

All pipe and fittings used in routine operation and maintenance shall be ANSI-certified as meeting NSF Standard 61 or Standard 14.

(4) Seasonal Operation.

Water systems operated seasonally shall be disinfected and flushed according to the techniques given in AWWA Standard C651-99 for pipelines and AWWA Standard C652-92 for storage facilities prior to each season's use. A satisfactory bacteriologic sample shall be achieved prior to use. During the non-use period, care shall be taken to close all openings into the system.

**KEY: drinking water, transmission and distribution pipelines, connections, water hauling**
**March 8, 2006 19-4-104**
**Notice of Continuation September 16, 2002**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**
**R414-2A. Inpatient Hospital Services.**
**R414-2A-1. Introduction and Authority.**

This rule defines the scope of inpatient hospital services that are available to Medicaid clients for the treatment of disorders other than mental disease. This rule is authorized under Utah Code 26-18-3 and governs the services allowed under 42 CFR 440.10.

**R414-2A-2. Definitions.**

(1) "Admission" means the acceptance of a Medicaid client for inpatient hospital services.

(2) "Diagnosis Related Group (DRG)" is the CMS-coding that determines reimbursement for the resources that a hospital uses to treat a client with a specific diagnosis or medical need and is further described in R414-2A-9 of this rule.

(3) "Hyperbaric Oxygen Therapy" is therapy that places the patient in an enclosed pressure chamber for medical treatment.

(4) "Inpatient" is an individual whose severity of illness requires 24 hours or more of continuous care in a hospital.

(5) "Inpatient Hospital Services" are services that a hospital provides for the care and treatment of inpatients with disorders other than mental illness, under the direction of a physician or other practitioner of the healing arts.

(6) "Leave of Absence" from an inpatient facility is a patient's absence for therapeutic or rehabilitative purposes where the patient does not return by midnight of the same day.

(7) "Observation" means monitoring a patient to evaluate the patient's condition, symptoms, diagnosis, or appropriateness of inpatient admission.

(8) "Other Practitioner of the Healing Arts" means a doctor of dental surgery or a podiatrist.

(9) "Prepaid Mental Health Plan" means the prepaid, capitated program through which the Department pays contracted community mental health centers to provide all needed inpatient and outpatient mental health services to residents of the community mental health center's catchment area who are enrolled in the plan.

**R414-2A-3. Client Eligibility Requirements.**

Inpatient hospital services are available to categorically and medically needy individuals who are under the care of a physician or other practitioner of the healing arts.

**R414-2A-4. Hospital Admission Requirements.**

(1) Each hospital providing inpatient services must have a utilization review plan as described in 42 CFR 482.30.

(2) The attending physician or other practitioner of the healing arts must sign a physician acknowledgement statement that meets the requirements of 42 CFR 412.46.

(3) For psychiatric patients, the attending physician must certify and recertify the need for inpatient psychiatric services as described in 42 CFR 441.152.

**R414-2A-5. Prepaid Mental Health Plan.**

A Medicaid client residing in a county for which a prepaid mental health contractor provides mental health services must obtain authorization for inpatient psychiatric services from the prepaid mental health contractor for the client's county of residence.

**R414-2A-6. Service Coverage.**

(1) Inpatient hospital services encompass all medically necessary and therapeutic medical services and supplies that the physician or other practitioner of the healing arts orders that are appropriate for the diagnosis and treatment of a patient's illness.

(2) The Department does not pay for physician services rendered by a non-Medicaid provider.

(3) Diagnostic services performed by the admitting hospital or by an entity wholly owned or operated by the hospital within three days prior to the date of admission to the hospital, are inpatient services.

(4) Medical supplies, appliances, drugs, and equipment required for the care and treatment of a client during an inpatient stay are reimbursed as part of payment under the DRG.

(5) Services associated with pregnancy, labor, and vaginal or C-section delivery are reimbursed as inpatient service as part of payment under the DRG, even if the stay is less than 24 hours

(6) Services provided to an inpatient that could be provided on an outpatient basis are reimbursed as part of payment under the DRG.

(7) Inpatient hospital psychiatric services are available only to clients not residing in a county covered by a prepaid mental health plan.

**R414-2A-7. Limitations.**

(1) Inpatient admissions for 24 hours or more solely for observation or diagnostic evaluation do not qualify for reimbursement under the DRG system.

(2) Inpatient hospital care for treatment of alcoholism or drug dependency is limited to medical treatment of symptoms associated with drug or alcohol detoxification.

(3) Abortion procedures must first be reviewed and preauthorized by the Department as meeting the requirements of Utah Code 26-18-4 and 42 CFR 441.203.

(4) Sterilization and hysterectomy procedures must first be reviewed and preauthorized by the Department as meeting the requirements of 42 CFR 441, Subpart F.

(5) Organ transplant services are governed by R414-10A, Transplant Services Standards.

(6) Take home supplies, dressings, non-rental durable medical equipment, and drugs are reimbursed as part of payment under the DRG.

(7) Hyperbaric oxygen therapy is limited to service in a hospital facility in which the hyperbaric unit has been accredited or approved by the Undersea and Hyperbaric Medical Society.

(8) Inpatient services solely for pain management do not qualify for reimbursement under the DRG system. Pain management is adjunct to other Medicaid services.

(9) Medicaid does not cover inpatient admissions for the treatment of eating disorders.

(10) Physician services provided by a physician who is paid by a hospital are inpatient services reimbursed as part of payment billed on a 1500 form. Payment for physician services provided by providers who are not paid by the hospital is governed by R414-10, Physician Services.

(11) Inpatient rehabilitation services must first be reviewed and preauthorized.

(12) Inpatient psychiatric services not covered by mental health contractual agreements must first be reviewed and preauthorized by the Department to assure that the admission meets the requirements of 42 CFR 412.27 and Part 441, Subpart D.

**R414-2A-8. Coinsurance.**

Each Medicaid client is responsible for a coinsurance payment as established in the Utah State Medicaid Plan and incorporated by reference in R414-1.

**R414-2A-9. Reimbursement Methodology.**

(1) Payments for inpatient hospital services are paid on a prospectively determined amount for each qualifying patient discharge under a Diagnosis Related Group (DRG) system. DRG weights are established to recognize the relative amount of resources consumed to treat a particular type of patient. The DRG classification scheme assigns each hospital patient to one

of over 500 categories or DRGs based on the patient's diagnosis, age and sex, surgical procedures performed, complicating conditions, and discharge status. Each DRG is assigned a weighting factor which reflects the quantity and type of hospital services generally needed to treat a patient with that condition. A preset reimbursement is assigned to each DRG. The DRG system allows for outliers for those discharges that have significant variance from the norm.

(2) For purposes of reimbursement, the day of admission is counted as a full day and the day of discharge is not counted.

(3) When a patient receives SNF-level, ICF-level, or other sub-acute care in an acute-care hospital or in a hospital with swing-bed approval, payment is made at the swing-bed rate.

(4) Reimbursement for services in the emergency department is limited to codes and diagnoses that are medically necessary emergency services. The provider manual lists appropriate emergency codes. The provider must list the discharge diagnosis on the claim form as one of the first five diagnoses.

(5) If a patient is readmitted for the same or a similar diagnosis within 30 days of a discharge, the Department may review and evaluate both claims to determine if, based on severity of illness and intensity of service, the claims should be combined into a single DRG payment or paid separately. Cost effectiveness may also be part of this determination but is not a primary factor.

(6) Exceptions to the 30-day readmission policy must still meet the severity of illness requirements for the allowance of a second DRG payment and are limited to:

(a) pregnancy;

(b) chemotherapy; and

(c) hyperbilirubinemia appearing in newborn infants within the first week of life.

(7) The Department pays for physician interpretation of laboratory services separately from the DRG payment. Laboratory technical services are included within the DRG for the inpatient admission.

(8) If an observation stay meets the intensity and severity for inpatient hospitalization and exceeds 24 hours, the patient becomes an inpatient and the observation services are reimbursed as part of payment under the DRG.

**KEY: Medicaid**
**March 3, 2006** **26-1-5**
**Notice of Continuation November 26, 2002** **26-18-3**
**26-18-3.5**

**R590. Insurance, Administration.**
**R590-93. Replacement of Life Insurance and Annuities.**
**R590-93-1. Authority.**

This rule is promulgated pursuant to Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A and pursuant to Subsection 31A-23a-402(8), which allows the commissioner to define methods of competition and acts and practices found to be unfair or deceptive.

**R590-93-2. Purpose and Scope.**

(1) The purpose of this rule is:

(a) to regulate the activities of insurers and producers with respect to the replacement of existing life insurance and annuities; and

(b) to protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions. It will:

(i) assure that purchasers receive information with which a decision can be made in the purchaser's own best interest;

(ii) reduce the opportunity for misrepresentation and incomplete disclosure; and

(iii) establish penalties for failure to comply with requirements of this rule.

(2) Unless otherwise specifically included, this rule shall not apply to transactions involving:

(a) credit life insurance;

(b) group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual. Group life insurance or group annuity certificates marketed through direct response solicitation shall be subject to the provisions of Section R590-93-8;

(c) group life insurance and annuities used to fund prearranged funeral contracts;

(d) an application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner;

(e) proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;

(f)(i) policies or contracts used to fund:

(A) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(B) a plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;

(C) a governmental or church plan defined in Section 414, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the Internal Revenue Code; or

(D) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(ii) Notwithstanding Subsection (i), this rule shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurer has been notified that plan participants may choose from among two or more insurers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. As used in this subsection, direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement or, when initiated by an individual employee, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual employee;

(g) where new coverage is provided under a life insurance policy or contract and the cost is borne wholly by the insured's employer or by an association of which the insured is a member;

(h) existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed;

(i) immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this rule; or

(j) structured settlements.

(3) Registered contracts shall be exempt from the requirements of Subsections R590-93-6(1)(c) and R590-93-7(2) with respect to the provision of illustrations or policy summaries; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required instead.

**R590-93-3. Definitions.**

In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purposes of this rule.

(1) "Direct-response solicitation" means a solicitation through a sponsoring or endorsing entity or individually solely through mails, telephone, the Internet or other mass communication media.

(2) "Existing insurer" means the insurance company whose policy or contract is or will be changed or affected in a manner described within the definition of "replacement."

(3) "Existing policy or contract" means an individual life insurance policy, herein referred to as policy, or annuity contract, herein referred to as contract, in force, including a policy under a binding or conditional receipt or a policy or contract that is within an unconditional refund period.

(4) "Financed purchase" means the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from values of an existing policy to pay all or part of any premium due on the new policy. For purposes of a regulatory review of an individual transaction only, if a withdrawal, surrender or borrowing involving the policy values of an existing policy is used to pay premiums on a new policy owned by the same policyholder and issued by the same company within four months before or 13 months after the effective date of the new policy, it will be deemed prima facie evidence of the policyholder's intent to finance the purchase of the new policy with existing policy values. This prima facie standard is not intended to increase or decrease the monitoring obligations contained in Subsection R590-93-5(1)(e).

(5) "Illustration" means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years as defined in R590-177, Life Insurance Illustrations Rule.

(6) "Notice" means Appendix A and Appendix C, Important Notice: Replacement of Life Insurance or Annuities, and Appendix B, Notice Regarding Replacement, from the National Association of Insurance Commissioners, dated 2000 and which are incorporated herein by reference. The notice is to be made available by the replacing insurer and must be imprinted with the name, address, and telephone number of the replacing insurer.

(7)(a) "Policy summary" for policies or contracts other

than universal life policies, means a written statement regarding a policy or contract which shall contain to the extent applicable, but need not be limited to, the following information:

(i) current death benefit;

(ii) annual contract premium;

(iii) current cash surrender value;

(iv) current dividend;

(v) application of current dividend; and

(vi) amount of outstanding loan.

(b) "Policy summary" for universal life policies, means a written statement that shall contain at least the following information:

(i) the beginning and end date of the current report period;

(ii) the policy value at the end of the previous report period and at the end of the current report period;

(iii) the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type, e.g., interest, mortality, expense and riders;

(iv) the current death benefit at the end of the current report period on each life covered by the policy;

(v) the net cash surrender value of the policy as of the end of the current report period; and

(vi) the amount of outstanding loans, if any, as of the end of the current report period.

(8) "Replacing insurer" means the insurance company that issues or proposes to issue a new policy or contract that replaces an existing policy or contract or is a financed purchase.

(9) "Registered contract" means a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

(10) "Replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:

(a) lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;

(b) converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(c) amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(d) reissued with any reduction in cash value; or

(e) used in a financed purchase.

(11) "Sales material" means a sales illustration and any other written, printed or electronically presented information created, or completed or provided by the company or producer and used in the presentation to the policy or contract holder related to the policy or contract purchased.

**R590-93-4. Duties of Producers.**

(1) A producer who initiates an application shall submit to the insurer, with or as part of the application, a statement signed by both the applicant and the producer as to whether the applicant has existing policies or contracts. If the answer is "no," the producer's duties with respect to replacement are complete.

(2) If the applicant answered "yes" to the question regarding existing coverage referred to in Subsection (1), the producer shall present and read to the applicant, not later than at the time of taking the application, the Notice regarding replacements in the form as described in Appendix A or other substantially similar form approved by the commissioner. However, no approval shall be required when amendments to the Notice are limited to the omission of references not applicable to the product being sold or replaced. The Notice shall be signed by both the applicant and the producer attesting that the Notice has been read aloud by the producer or that the applicant did not wish the Notice to be read aloud, in which case the producer need not have read the Notice aloud, and left with the applicant. With respect to an electronically completed application and Notice, the producer is not required to leave a copy of the electronically completed Notice with the applicant.

(3) The Notice shall list each existing policy or contract contemplated to be replaced, properly identified by name of insurer, the insured or annuitant, and policy or contract number if available; and shall include a statement as to whether each policy or contract will be replaced or whether a policy will be used as a source of financing for the new policy or contract. If a policy or contract number has not been issued by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

(4) In connection with a replacement transaction the producer shall leave with the applicant at the time an application for a new policy or contract is completed the original or a copy of all sales material. With respect to electronically presented sales material, it shall be provided to the policy or contract holder in printed form no later than at the time of policy or contract delivery.

(5) Except as provided in Subsection R590-93-6(3), in connection with a replacement transaction the producer shall submit to the insurer to which an application for a policy or contract is presented, a copy of each document required by this section, a statement identifying any preprinted or electronically presented company approved sales materials used, and copies of any individualized sales materials, including any illustrations related to the specific policy or contract purchased.

**R590-93-5. Duties of Insurers that Use Producers.**

Each insurer shall:

(1) maintain a system of supervision and control to insure compliance with the requirements of this rule that shall include at least the following:

(a) inform its producers of the requirements of this rule and incorporate the requirements of this rule into all relevant producer training manuals prepared by the insurer;

(b) provide to each producer a written statement of the company's position with respect to the acceptability of replacements providing guidance to its producer as to the appropriateness of these transactions;

(c) a system to review the appropriateness of each replacement transaction that the producer does not indicate is in accord with Subsection (b) above;

(d) procedures to confirm that the requirements of this rule have been met;

(e) procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer, but that have not been reported as such by the applicant or producer. Compliance with this rule may include, but shall not be limited to, systematic customer surveys, interviews, confirmation letters, or programs of internal monitoring;

(2) have the capacity to monitor each producer's life insurance policy and annuity contract replacements for that insurer, and shall produce, upon request, and make such records available to the department. The capacity to monitor shall include the ability to produce records for each producer's:

(a) life replacements, including financed purchases, as a percentage of the producer's total annual sales for life insurance;

(b) number of lapses of policies by the producer as a percentage of the producer's total annual sales for life insurance;

(c) annuity contract replacements as a percentage of the producer's total annual annuity contract sales;

(d) number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the company's monitoring system as required by Subsection R590-93-5(1)(e); and

(e) replacements, indexed by replacing producer and existing insurer;

(3) require with or as a part of each application for life insurance or an annuity a signed statement by both the applicant and the producer as to whether the applicant has existing policies or contracts;

(4) require with each application for life insurance or annuity that indicates an existing policy or contract, a completed Notice regarding replacements as contained in Appendix A;

(5) when the applicant has existing policies or contracts, each insurer shall be able to produce copies of any sales material required by Subsection R590-93-4(5), the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased, and the producer's and applicant's signed statements with respect to financing and replacement for at least five years after the termination or expiration of the proposed policy or contract;

(6) ascertain that the sales material and illustrations required by Subsection R590-93-4(5) of this rule meet the requirements of this rule and are complete and accurate for the proposed policy or contract;

(7) if an application does not meet the requirements of this rule, notify the producer and applicant and fulfill the outstanding requirements; and

(8) maintain records in any media or by any process that accurately reproduces the actual document.

**R590-93-6. Duties of Replacing Insurers that Use Producers.**

(1) Where a replacement is involved in the transaction, the replacing insurer shall:

(a) verify that the required forms are received and are in compliance with this rule;

(b) with respect to an electronically completed Notice, the replacing insurer shall send a printed copy of the electronically executed Notice to the applicant within five working days of the date the Notice is received by the company;

(c) notify any other existing insurer that may be affected by the proposed replacement within five business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available illustration or the policy summary for the proposed policy or disclosure document for the proposed contract within five business days of a request from an existing insurer;

(d) be able to produce copies of the notification regarding replacement required in Subsection R590-93-4(2), indexed by producer, for at least five years or until the next regular examination by the insurance department of a company's state of domicile, whichever is later; and

(e) provide to the policy or contract holder notice of the right to return the policy or contract within 20 days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it; such notice may be included in Appendix A or C. This subsection does not preempt the requirements of 31A-22-423.

(2) In transactions where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control, allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide periods up to the face amount of the existing policy or contract. With regard to financed purchases the credit may be limited to the amount the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.

(3) If an insurer prohibits the use of sales material other than that approved by the company, as an alternative to the requirements made of an insurer pursuant to Subsection R590-93-4(5) with regard to sales materials, the insurer may:

(a) require with each application a statement signed by the producer that:

(i) represents that the producer used only company-approved sales material; and

(ii) states that copies of all sales material were left with the applicant in accordance with Subsection R590-93-4(4); and

(b) within ten days of the issuance of the policy or contract:

(i) notify the applicant by sending a letter or by verbal communication with the applicant by a person whose duties are separate from the marketing area of the insurer, that the producer has represented that copies of all sales material have been left with the applicant in accordance with Subsection R590-93-4(4);

(ii) provide the applicant with a toll free number to contact company personnel involved in the compliance function if such is not the case; and

(iii) stress the importance of retaining copies of the sales material for future reference; and

(c) be able to produce a copy of the letter or other verification in the policy file for at least five years after the termination or expiration of the policy or contract.

**R590-93-7. Duties of the Existing Insurer.**

Where a replacement is involved in the transaction, the existing insurer shall:

(1) retain and be able to produce all replacement notifications received, indexed by replacing insurer, for at least five years or until the conclusion of the next regular examination conducted by the insurance department of its state of domicile, whichever is later;

(2) send a letter to the policy or contract holder of the right to receive information regarding the existing policy or contract values including, if available, an in force illustration or policy summary if an in force illustration cannot be produced. The information shall be provided within five business days of receipt of the request from the policy or contract holder; and

(3) upon receipt of a request to borrow, surrender or withdraw any policy values, send a notice, advising the policy holder that the release of policy values may affect the guaranteed elements, non-guaranteed elements, face amount or surrender value of the policy from which the values are released. The notice shall be sent separate from the check if the check is sent to anyone other than the policyholder. In the case of consecutive automatic premium loans, the insurer is only required to send the notice at the time of the first loan.

**R590-93-8. Duties of Insurers with Respect to Direct Response Solicitations.**

(1) In the case of an application that is initiated as a result of a direct response solicitation, the insurer shall require, with or as part of each completed application for a policy or contract, a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue or change an existing policy or contract. If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, the Notice regarding replacement in Appendix B, or other substantially similar form approved by the commissioner.

(2) If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:

(a) provide to applicants or prospective applicants with the policy or contract a Notice, as described in Appendix C, or other substantially similar form approved by the commissioner. In these instances the insurer may delete the references to the producer, including the producer's signature, and references not applicable to the product being sold or replaced, without having to obtain approval of the form from the commissioner. The insurer's obligation to obtain the applicant's signature shall be satisfied if it can demonstrate that it has made a diligent effort

to secure a signed copy of the Notice referred to in this subsection. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed Notice referred to in this section; and

(b) comply with the requirements of Subsection R590-93-6(1)(c), if the applicant furnishes the names of the existing insurers, and the requirements of Subsections R590-93-6(1)(d), R590-93-6(1)(e), and R590-93-6(2).

**R590-93-9. Violations and Penalties.**

(1) Any failure to comply with this rule shall be considered a violation of 31A-23a-402. Examples of violations include:

(a) any deceptive or misleading information set forth in sales material;

(b) failing to ask the applicant in completing the application the pertinent questions regarding the possibility of financing or replacement;

(c) the intentional incorrect recording of an answer;

(d) advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer; or

(e) advising a policy or contract holder to write directly to the company in such a way as to attempt to obscure the identity of the replacing producer or company.

(2) Policy and contract holders have the right to replace existing life insurance policies or annuity contracts after indicating in or as a part of applications for new coverage that replacement is not their intention; however, patterns of such action by policy or contract holders of the same producer shall be deemed prima facie evidence of the producer's knowledge that replacement was intended in connection with the identified transactions, and these patterns of action shall be deemed prima facie evidence of the producer's intent to violate this rule.

(3) Where it is determined that the requirements of this rule have not been met, the replacing insurer shall provide to the policy holder an in force illustration if available or a policy summary for the replacement policy or disclosure document for the replacement contract and the appropriate Notice regarding replacements in Appendix A or C.

(4) Violations of this rule shall subject the violators to penalties that may include the revocation or suspension of a producer's or company's license, monetary fines and the forfeiture of any commissions or compensation paid to a producer as a result of the transaction in connection with which the violations occurred. In addition, where the commissioner has determined that the violations were material to the sale, the insurer may be required to make restitution, restore policy or contract values and pay interest at the legal rate as provided in Title 15 of the Utah Code on the amount refunded in cash.

**R590-93-10. Relationship to Other Statutes and Rules.**

If any portion of this rule is inconsistent with any provision of any statute or other rule dealing with life insurance or annuity marketing practices or disclosure, said inconsistent portion shall be interpreted so as to provide the greatest information or protection to the policyholder.

**R590-93-11. Severability.**

If any section, term, or provision of this rule shall be adjudged invalid for any reason, such judgment shall not affect, impair or invalidate any other section, term, or provision of this rule and the remaining sections, terms, and provision shall be and remain in full force.

**R590-93-12. Enforcement Date.**

The commissioner will begin enforcing this rule September 1, 2005.

**KEY: life insurance, annuity replacement**
**June 8, 2005 31A-2-201**
**Notice of Continuation April 28, 2004 31A-23a-402**

**R590. Insurance, Administration.**
**R590-99. Delay or Failure to Record Documents and the Insuring of Properties with the False Appearance of Unmarketability as Unfair Title Insurance Practices.**
**R590-99-1. Authority.**

This rule is promulgated pursuant to the general authority vested in the commissioner by Section 31A-2-201(2)(3) to make reasonable rules necessary for, or as an aid to, the effectuation of any provision of the Utah Insurance Code, and pursuant to the specific authority of Section 31A-23a-402 allowing the commissioner to prescribe a classification of material inducements constituting unlawful trade practices, and to define unfair or deceptive acts or practices prohibited in the business of insurance.

**R590-99-2. Purpose.**

Title insurance is designed to provide indemnification against loss, including a loss resulting from a determination of unmarketability of the insured's interest in real property. The burden of proving any loss, together with the measure of damages, is the obligation of the insured. Normally, a claim of unmarketability of title or a claim involving a "defect, lien or encumbrance" not excluded from coverage will arise in connection with a proposed sale or loan requiring a review of the insured property as to current marketability. The insured owner, as a potential seller or borrower, may then be placed in the position of being forced or coerced into dealing only with his prior insurer or agent purely as the result of time constraints in meeting the requirements of his transaction, and as the only practical alternative to processing his claim and proving his damage as an insured under his existing coverage. The commissioner is advised and is aware that, in some instances, this circumstance has resulted from the intentional delay, neglect or refusal by insurers, through their agents, to record or deliver for recording documentation necessary to support policy insuring provisions, resulting in the false appearance of unmarketability, in the record only, of property which would otherwise be marketable. This practice is deemed to be an unfair or deceptive act or practice detrimental to free competition in the business of insurance and injurious to the public.

**R590-99-3. Definitions.**

For the purpose of this rule, the commissioner adopts the definitions as particularly set forth in Section 31A-1-301 and in addition the following:

A. "Document" means any instrument in writing relating to real property described in any title insurance policy, contract or commitment, and reasonably required for the support of the insuring provisions.

B. "Record" means to cause to be delivered to the county recorder, or other public official as may be appropriate, any document in the possession or control of any title insurance company or title insurance agent for which a request to record has been made by an insured party.

**R590-99-4. Definition and Classification of Unfair or Deceptive Practices and Material Inducements.**

A. Any knowing conduct by a title insurance company or title insurance agent which results in the failure, neglect, refusal to record, or to obtain for recording, any document which, unless recorded, results in the apparent unmarketability of title or a title which may not be insurable by another insurer, is defined as an unfair or deceptive act or practice as prohibited by Section 31A-23a-402.

B. The issuance or agreement to issue title insurance, or the affirmation of current marketability of title, when the possible recording of documents of title has not occurred, and the record does not manifest a title which would be insurable according to generally accepted title insurance standards, is classified and proscribed as an advantage and material inducement to obtaining title insurance business as prohibited under Section 31A-23a-402(2)(c)(i).

**R590-99-5. Severability.**

If any provision or clause of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of this provision to other persons or circumstances may not be affected by it.

**KEY: insurance law**
**1994 31A-2-201**
**Notice of Continuation February 26, 2002 31A-23-302**

**R590. Insurance, Administration.**
**R590-144. Commercial Aviation Insurance Exemption From Rate and Form Filing.**
**R590-144-1. Authority.**

This Rule is promulgated by the insurance commissioner pursuant to:

(a) Section 31A-2-201, which provides general authority to adopt rules for the implementation of the Utah Insurance Code;

(b) Section 31A-19a-103, which authorizes the commissioner to exempt any market segment from provisions of Chapter 19a, Rate Regulation; and

(c) Subsection 31A-21-101(5), which authorizes the commissioner to exempt any class of insurance contract or class of insurer from provisions of Chapter 21, Insurance Contracts in General.

**R590-144-2. Purpose.**

The purpose of this rule is to exempt commercial aviation insurance, as defined in this rule, from the rate filing requirements of Chapter 19a and the form filing requirements of Chapter 21.

Because of the unique nature of commercial aviation risks, aviation insurance premiums rely on individual risk analysis, underwriting judgment and the negotiation of a sophisticated business transaction between the insurer and an informed insured. Similarly, because of their unique nature, commercial aviation insurance risks have individually tailored manuscript-type policies.

As the commercial aviation market segment is highly specialized, competitive and global in nature, the commissioner has determined that exemption from the rate and form filing requirements of the Utah Insurance Code will not harm Utah insureds, creditors, or the public and is not necessary to the regulation of these insurance products.

**R590-144-3. Scope.**

This rule applies to all insurers licensed to write commercial aviation insurance as it is defined in this rule. This rule also applies to all rate service organizations.

**R590-144-4. Definitions.**

For the purpose of this rule the commissioner adopts the definitions as particularly set forth in Section 31A-1-301, Section 31A-19a-102, and in addition thereto, the following:

(1) "Aviation insurance" means:

(a) All kinds and classes of property insurance on aircraft and all kinds of property and interests with respect to, appertaining to or in connection with any and all risks or perils of aerial navigation, transit or transportation.

(b) All kinds and classes of casualty insurance in connection with the construction, repair, maintenance, operation or use of aircraft, and all kinds and classes of casualty insurance in connection with the maintenance, operation or use of airports, including public liability and property damage.

(2) "Commercial aviation insurance" means any class of aviation insurance except insurance of aircraft used for private business and pleasure.

(3) "Private business and pleasure" means predominant use of aircraft for pleasure or personal transportation purposes. The incidental use of aircraft in furtherance of an occupational or business interest is permissible.

**R590-144-5. Rule.**

(1) Insurers and rate service organizations are exempt from the rate filing requirements of Section 31A-19a-203, for commercial aviation insurance. This rule does not exempt such insurers from the rate standards of 31A-19a-201.

(2) Insurers and rate service organizations are exempt from the form filing requirements of Section 31A-21-201, for commercial aviation insurance. This rule does not permit such insurers to issue contracts that do not conform to the general provisions of Chapter 21.

(3) All insurers must maintain fully documented underwriting files which must be made available to the commissioner upon request. The underwriting file must show that rates are not excessive, inadequate or unfairly discriminatory. The file must also show that contracts are not inequitable, unfairly discriminatory, misleading, deceptive, obscure, encourage misrepresentation, or are otherwise in violation of Utah law.

**R590-144-6. Severability.**

If any provision or clause of this rule or the application of it to any person is for any reason held to be invalid, the remainder of the Rule and the application of any provisions to other persons or circumstances shall not be affected.

**KEY: insurance**

| | |
|---|---|
| **1991** | **31A-2-201** |
| **Notice of Continuation March 14, 2006** | **31A-19a-103** |
| | **31A-21-101** |

**R590. Insurance, Administration.**
**R590-177. Life Insurance Illustrations Rule.**
**R590-177-1. Authority.**

This rule is issued based upon the authority granted the commissioner under Section 31A-23-302(8).

**R590-177-2. Purpose.**

The purpose of this rule is to provide rules for life insurance policy illustrations that will protect consumers and foster consumer education. The rule provides illustration formats, prescribes standards to be followed when illustrations are used, and specifies the disclosures that are required in connection with illustrations. The goals of this rule are to ensure that illustrations do not mislead purchasers of life insurance and to make illustrations more understandable. Insurers will, as far as possible, eliminate the use of footnotes and caveats and define terms used in the illustration in language that would be understood by a typical person within the segment of the public to which the illustration is directed.

**R590-177-3. Applicability and Scope.**

This rule applies to all group and individual life insurance policies and certificates except:

A. variable life insurance;

B. individual and group annuity contracts;

C. credit life insurance; or

D. life insurance policies with no illustrated death benefits on any individual exceeding $10,000.

The provisions of this rule will take effect January 1, 1997 and shall apply to policies sold on or after the effective date.

**R590-177-4. Definitions.**

For the purposes of this rule:

A. "Actuarial Standards Board" means the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

B. "Contract premium" means the gross premium that is required to be paid under a fixed premium policy, including the premium for a rider for which benefits are shown in the illustration.

C. "Currently payable scale" means a scale of non-guaranteed elements in effect for a policy form as of the preparation date of the illustration or declared to become effective within the next 95 days.

D. "Disciplined current scale" means a scale of non-guaranteed elements constituting a limit on illustrations currently being illustrated by an insurer that is reasonably based on actual recent historical experience, as certified annually by an illustration actuary designated by the insurer. Further guidance in determining the disciplined current scale as contained in standards established by the Actuarial Standards Board may be relied upon if the standards:

(1) are consistent with all provisions of this rule;

(2) limit a disciplined current scale to reflect only actions that have already been taken or events that have already occurred;

(3) do not permit a disciplined current scale to include any projected trends of improvements in experience or any assumed improvements in experience beyond the illustration date; and

(4) do not permit assumed expenses to be less than minimum assumed expenses.

E. "Generic name" means a short title descriptive of the policy being illustrated such as "whole life," "term life" or "flexible premium adjustable life."

F. "Guaranteed elements" and "non-guaranteed elements"

(1) "Guaranteed elements" means the premiums, benefits, values, credits or charges under a policy of life insurance that are guaranteed and determined at issue.

(2) "Non-guaranteed elements" means the premiums, benefits, values, credits or charges under a policy of life insurance that are not guaranteed or not determined at issue.

G. "Illustrated scale" means a scale of non-guaranteed elements currently being illustrated that is not more favorable to the policy owner than the lesser of:

(1) the disciplined current scale; or

(2) the currently payable scale.

H. "Illustration" means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years and that is one of the three types defined below:

(1) "Basic illustration" means a ledger or proposal used in the sale of a life insurance policy that shows both guaranteed and non-guaranteed elements.

(2) "Supplemental illustration" means an illustration furnished in addition to a basic illustration that meets the applicable requirements of this rule, and that may be presented in a format differing from the basic illustration, but may only depict a scale of non-guaranteed elements that is permitted in a basic illustration.

(3) "In force illustration" means an illustration furnished at any time after the policy that it depicts has been in force for one year or more.

I. "Illustration actuary" means an actuary meeting the requirements of Section 11 who certifies to illustrations based on the standard of practice promulgated by the Actuarial Standards Board.

J. "Lapse-supported illustration" means an illustration of a policy form failing the test of self-supporting as defined in this rule, under a modified persistency rate assumption using persistency rates underlying the disciplined current scale for the first five years and 100% policy persistency thereafter.

K.(1) "Minimum assumed expenses" means the minimum expenses that may be used in the calculation of the disciplined current scale for a policy form. The insurer may choose to designate each year the method of determining assumed expenses for all policy forms from the following:

(a) fully allocated expenses;

(b) marginal expenses; and

(c) a generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the National Association of Insurance Commissioners or by the commissioner.

(2) Marginal expenses may be used only if greater than a generally recognized expense table. If no generally recognized expense table is approved, fully allocated expenses must be used.

L. "Non-term group life" means a group policy or individual policies of life insurance issued to members of an employer group or other permitted group where:

(1) every plan of coverage was selected by the employer or other group representative;

(2) some portion of the premium is paid by the group or through payroll deduction; and

(3) group underwriting or simplified underwriting is used.

M. "Policy owner" means the owner named in the policy or the certificate holder in the case of a group policy.

N. "Premium outlay" means the amount of premium assumed to be paid by the policy owner or other premium payer out-of-pocket.

O. "Self-supporting illustration" means an illustration of a policy form for which it can be demonstrated that, when using experience assumptions underlying the disciplined current scale, for all illustrated points in time on or after the fifteenth policy anniversary or the twentieth policy anniversary for second-or-later-to-die policies, or upon policy expiration if sooner, the accumulated value of all policy cash flows equals or exceeds the total policy owner value available. For this purpose, policy owner value will include cash surrender values and any other

illustrated benefit amounts available at the policy owner's election.

**R590-177-5. Policies to Be Illustrated.**

A. Each insurer marketing policies to which this rule is applicable shall notify the commissioner whether a policy form is to be marketed with or without an illustration. For all policy forms being actively marketed on the effective date of this rule, the insurer shall identify in writing those forms and whether or not an illustration will be used with them. For policy forms filed after the effective date of this rule, the identification shall be made at the time of filing. Any previous identification may be changed by notice to the commissioner.

B. If the insurer identifies a policy form as one to be marketed without an illustration, any use of an illustration for any policy using that form prior to the first policy anniversary is prohibited.

C. If a policy form is identified by the insurer as one to be marketed with an illustration, a basic illustration prepared and delivered in accordance with this rule is required, except that a basic illustration need not be provided to individual members of a group or to individuals insured under multiple lives coverage issued to a single applicant unless the coverage is marketed to these individuals. The illustration furnished an applicant for a group life insurance policy or policies issued to a single applicant on multiple lives may be either an individual or composite illustration representative of the coverage on the lives of members of the group or the multiple lives covered.

D. Potential enrollees of non-term group life subject to this rule shall be furnished a quotation with the enrollment materials. The quotation shall show potential policy values for sample ages and policy years on a guaranteed and non-guaranteed basis appropriate to the group and the coverage. This quotation may not be considered an illustration for purposes of this rule, but all information provided shall be consistent with the illustrated scale. A basic illustration shall be provided at delivery of the certificate to enrollees for non-term group life who enroll for more than the minimum premium necessary to provide pure death benefit protection. In addition, the insurer shall make a basic illustration available to any non-term group life enrollee who requests it.

**R590-177-6. General Rules and Prohibitions.**

A. An illustration used in the sale of a life insurance policy shall satisfy the applicable requirements of this rule, be clearly labeled "life insurance illustration" and contain the following basic information:

(1) name and address of insurer;

(2) name and business address of agent, broker or insurer's authorized representative, if any;

(3) name, age and sex of proposed insured, except where a composite illustration is permitted under this rule;

(4) underwriting or rating classification upon which the illustration is based;

(5) generic name of policy, the company product name, if different, and form number;

(6) initial death benefit; and

(7) dividend option election or application of non-guaranteed elements, if applicable.

B. When using an illustration in the sale of a life insurance policy, an insurer or its agent, broker or other authorized representatives may not:

(1) represent the policy as anything other than a life insurance policy;

(2) use or describe non-guaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;

(3) state or imply that the payment or amount of non-guaranteed elements is guaranteed;

(4) use an illustration that does not comply with the requirements of this rule;

(5) use an illustration that at any policy duration depicts policy performance more favorable to the policy owner than that produced by the illustrated scale of the insurer whose policy is being illustrated;

(6) provide an applicant with an incomplete illustration;

(7) represent in any way that premium payments will not be required for each year of the policy in order to maintain the illustrated death benefits, unless that is the fact;

(8) use the term "vanish" or "vanishing premium," or a similar term that implies the policy becomes paid up, to describe a plan for using non-guaranteed elements to pay a portion of future premiums;

(9) except for policies that can never develop nonforfeiture values, use an illustration that is "lapse-supported"; or

(10) use an illustration that is not "self-supporting."

C. If an interest rate used to determine the illustrated non-guaranteed elements is shown, it may not be greater than the earned interest rate underlying the disciplined current scale.

**R590-177-7. Standards for Basic Illustrations.**

A. Format. A basic illustration shall conform with the following requirements:

(1) The illustration shall be labeled with the date on which it was prepared.

(2) Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the illustration, e.g., the fourth page of a seven-page illustration shall be labeled "page 4 of 7 pages".

(3) The assumed dates of payment receipt and benefit pay-out within a policy year shall be clearly identified.

(4) If the age of the proposed insured is shown as a component of the tabular detail, it shall be issue age plus the numbers of years the policy is assumed to have been in force.

(5) The assumed payments on which the illustrated benefits and values are based shall be identified as premium outlay or contract premium, as applicable. For policies that do not require a specific contract premium, the illustrated payments shall be identified as premium outlay.

(6) Guaranteed death benefits and values available upon surrender, if any, for the illustrated premium outlay or contract premium shall be shown and clearly labeled guaranteed.

(7) If the illustration shows any non-guaranteed elements, they cannot be based on a scale more favorable to the policy owner than the insurer's illustrated scale at any duration. These elements shall be clearly labeled non-guaranteed.

(8) The guaranteed elements, if any, shall be shown before corresponding non-guaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the non-guaranteed elements, e.g., "see page one for guaranteed elements."

(9) The account or accumulation value of a policy, if shown, shall be identified by the name this value is given in the policy being illustrated and shown in close proximity to the corresponding value available upon surrender.

(10) The value available upon surrender shall be identified by the name this value is given in the policy being illustrated and shall be the amount available to the policy owner in a lump sum after deduction of surrender charges, policy loans and policy loan interest, as applicable.

(11) Illustrations may show policy benefits and values in graphic or chart form in addition to the tabular form.

(12) Any illustration of non-guaranteed elements shall be accompanied by a statement indicating that:

(a) the benefits and values are not guaranteed;

(b) the assumptions on which they are based are subject to change by the insurer; and

(c) actual results may be more or less favorable.

(13) If the illustration shows that the premium payer may

have the option to allow policy charges to be paid using non-guaranteed values, the illustration must clearly disclose that a charge continues to be required and that, depending on actual results, the premium payer may need to continue or resume premium outlays. Similar disclosure shall be made for premium outlay of lesser amounts or shorter durations than the contract premium. If a contract premium is due, the premium outlay display may not be left blank or show zero unless accompanied by an asterisk or similar mark to draw attention to the fact that the policy is not paid up.

(14) If the applicant plans to use dividends or policy values, guaranteed or non-guaranteed, to pay all or a portion of the contract premium or policy charges, or for any other purpose, the illustration may reflect those plans and the impact on future policy benefits and values.

B. Narrative Summary. A basic illustration shall include the following:

(1) a brief description of the policy being illustrated, including a statement that it is a life insurance policy;

(2) a brief description of the premium outlay or contract premium, as applicable, for the policy. For a policy that does not require payment of a specific contract premium, the illustration shall show the premium outlay that must be paid to guarantee coverage for the term of the contract, subject to maximum premiums allowable to qualify as a life insurance policy under the applicable provisions of the Internal Revenue Code;

(3) a brief description of any policy features, riders or options, guaranteed or non-guaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the policy;

(4) identification and a brief definition of column headings and key terms used in the illustration; and

(5) a statement containing in substance the following: "This illustration assumes that the currently illustrated nonguaranteed elements will continue unchanged for all years shown. This is not likely to occur, and actual results may be more or less favorable than those shown."

C. Numeric Summary.

(1) Following the narrative summary, a basic illustration shall include a numeric summary of the death benefits and values and the premium outlay and contract premium, as applicable. For a policy that provides for a contract premium, the guaranteed death benefits and values shall be based on the contract premium. This summary shall be shown for at least policy years 5, 10 and 20 and at age 70, if applicable, on the three bases shown below. For multiple life policies the summary shall show at least policy years 5, 10, 20 and 30 on the three bases shown below.

(a) Policy guarantees;

(b) Insurer's illustrated scale;

(c) Insurer's illustrated scale used but with the non-guaranteed elements reduced as follows:

(i) dividends at 50% of the dividends contained in the illustrated scale used;

(ii) non-guaranteed credited interest at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used; and

(iii) all non-guaranteed charges, including term insurance charges, and mortality and expense charges, at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used.

(2) In addition, if coverage would cease prior to policy maturity or age 100, the year in which coverage ceases shall be identified for each of the three bases.

D. Statements. Statements substantially similar to the following shall be included on the same page as the numeric summary and signed by the applicant, or the policy owner in the case of an illustration provided at time of delivery, as required in this rule.

(1) A statement to be signed and dated by the applicant or policy owner reading as follows: "I have received a copy of this illustration and understand that any non-guaranteed elements illustrated are subject to change and could be either higher or lower. The agent has told me they are not guaranteed."

(2) A statement to be signed and dated by the insurance agent, broker or other authorized representative of the insurer reading as follows: "I certify that this illustration has been presented to the applicant and that I have explained that any non-guaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration."

E. Tabular Detail.

(1) A basic illustration shall include the following for at least each policy year from one to ten and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and except for term insurance beyond the twentieth year, for any year in which the premium outlay and contract premium, if applicable, is to change:

(a) the premium outlay and mode the applicant plans to pay and the contract premium, as applicable;

(b) the corresponding guaranteed death benefit, as provided in the policy; and

(c) the corresponding guaranteed value available upon surrender, as provided in the policy.

(2) For a policy that provides for a contract premium, the guaranteed death benefit and value available upon surrender shall correspond to the contract premium.

(3) Non-guaranteed elements may be shown if described in the contract. In the case of an illustration for a policy on which the insurer intends to credit terminal dividends, they may be shown if the insurer's current practice is to pay terminal dividends. If any non-guaranteed elements are shown they must be shown at the same durations as the corresponding guaranteed elements, if any. If no guaranteed benefit or value is available at any duration for which a non-guaranteed benefit or value is shown, a zero shall be displayed in the guaranteed column.

**R590-177-8. Standards for Supplemental Illustrations.**

A. A supplemental illustration may be provided so long as:

(1) it is appended to, accompanied by or preceded by a basic illustration that complies with this rule;

(2) the non-guaranteed elements shown are not more favorable to the policy owner than the corresponding elements based on the scale used in the basic illustration;

(3) it contains the same statement required of a basic illustration that non-guaranteed elements are not guaranteed; and

(4) for a policy that has a contract premium, the contract premium underlying the supplemental illustration is equal to the contract premium shown in the basic illustration. For policies that do not require a contract premium, the premium outlay underlying the supplemental illustration shall be equal to the premium outlay shown in the basic illustration.

B. The supplemental illustration shall include a notice referring to the basic illustration for guaranteed elements and other important information.

**R590-177-9. Delivery of Illustration and Record Retention.**

A.(1) If a basic illustration is used by an insurance agent, broker or other authorized representative of the insurer in the sale of a life insurance policy and the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this rule, shall be submitted to the insurer at the time of policy application. A copy also shall be provided to the applicant.

(2) If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be sent with the policy. The revised illustration shall

conform to the requirements of this rule, shall be labeled "Revised Illustration" and shall be signed and dated by the applicant or policy owner and agent, broker or other authorized representative of the insurer no later than the time the policy is delivered. A copy shall be provided to the insurer and the policy owner.

B.(1) If no illustration is used by an insurance agent, broker or other authorized representative in the sale of a life insurance policy or if the policy is applied for other than as illustrated, the agent, broker or representative shall certify to that effect in writing on a form provided by the insurer. On the same form the applicant shall acknowledge that no illustration conforming to the policy applied for was provided and shall further acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than at the time of policy delivery. This form shall be submitted to the insurer at the time of policy application.

(2) If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed no later than the time the policy is delivered. A copy shall be provided to the insurer and the policy owner.

C. If the basic illustration or revised illustration is sent to the applicant or policy owner by mail from the insurer, it shall include instructions for the applicant or policy owner to sign the duplicate copy of the numeric summary page of the illustration for the policy issued and return the signed copy to the insurer. The insurer's obligation under this subsection shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the numeric summary page. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed numeric summary page.

D. A copy of the basic illustration and a revised basic illustration, if any, signed as applicable, along with any certification that either no illustration was used or that the policy was applied for other than as illustrated, shall be retained by the insurer until three years after the policy is no longer in force. A copy need not be retained if no policy is issued.

**R590-177-10. Annual Report; Notice to Policy Owners.**

A. In the case of a policy designated as one for which illustrations will be used, the insurer shall provide each policy owner with an annual report on the status of the policy that shall contain at least the following information:

(1) for universal life policies, the report shall include the following:

(a) the beginning and end date of the current report period;

(b) the policy value at the end of the previous report period and at the end of the current report period;

(c) the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type e.g., interest, mortality, expense and riders;

(d) the current death benefit at the end of the current report period on each life covered by the policy;

(e) the net cash surrender value of the policy as of the end of the current report period;

(f) the amount of outstanding loans, if any, as of the end of the current report period; and

(g) for fixed premium policies: if, assuming guaranteed interest, mortality and expense loads and continued scheduled premium payments, the policy's net cash surrender value is such that it would not maintain insurance in force until the end of the next reporting period, a notice to this effect shall be included in the report; or

(h) for flexible premium policies: if assuming guaranteed interest, mortality and expense loads, the policy's net cash surrender value will not maintain insurance in force until the end of the next reporting period unless further premium payments are made, a notice to this effect shall be included in the report.

(2) For all other policies, where applicable:

(a) current death benefit;

(b) annual contract premium;

(c) current cash surrender value;

(d) current dividend;

(e) application of current dividend; and

(f) amount of outstanding loan.

(3) Insurers writing life insurance policies that do not build nonforfeiture values shall only be required to provide an annual report with respect to these policies for those years when a change has been made to nonguaranteed policy elements by the insurer."

B. If the annual report does not include an in force illustration, it shall contain the following notice displayed prominently:

"IMPORTANT POLICY OWNER NOTICE: You should consider requesting more detailed information about your policy to understand how it may perform in the future. You should not consider replacement of your policy or make changes in your coverage without requesting a current illustration. You may annually request, without charge, such an illustration by calling (insurer's phone number), writing to (insurer's name) at (insurer's address) or contacting your agent. If you do not receive a current illustration of your policy within 30 days from your request, you should contact your state insurance department."

The insurer may vary the sequential order of the methods for obtaining an in force illustration.

C. Upon the request of the policy owner, the insurer shall furnish an in force illustration of current and future benefits and values based on the insurer's present illustrated scale. This illustration shall comply with the requirements of Section 6A, 6B, 7A and 7E. No signature or other acknowledgment of receipt of this illustration may be required.

D. If an adverse change in non-guaranteed elements that could affect the policy has been made by the insurer since the last annual report, the annual report shall contain a notice of that fact and the nature of the change prominently displayed.

**R590-177-11. Annual Certifications.**

A. The board of directors of each insurer shall appoint one or more illustration actuaries.

B. The illustration actuary shall certify that the disciplined current scale used in illustrations is in conformity with the "Actuarial Standard of Practice No. 24 for Compliance with the NAIC Life Insurance Illustrations Model Regulation Adopted by the Actuarial Standards Board," and that the illustrated scales used in insurer-authorized illustrations meet the requirements of this rule. The Actuarial Standard of Practice may be obtained from the Insurance Department, the NAIC or the Actuarial Standards Board.

C. The illustration actuary shall:

(1) be a member in good standing of the American Academy of Actuaries;

(2) be familiar with the standard of practice regarding life insurance policy illustrations;

(3) not have been found by the commissioner, following appropriate notice and hearing, to have:

(a) violated any provision of, or any obligation imposed by, the insurance law or other law in the course of his or her dealings as an illustration actuary;

(b) been found guilty of fraudulent or dishonest practices;

(c) demonstrated his or her incompetence, lack of cooperation, or untrustworthiness to act as an illustration actuary; or

(d) resigned or been removed as an illustration actuary within the past five years as a result of acts or omissions

indicated in any adverse report on examination or as a result of a failure to adhere to generally acceptable actuarial standards;

(4) not fail to notify the commissioner of any action taken by a commissioner of another state similar to that under Subsection (3) above;

(5) disclose in the annual certification whether, since the last certification, a currently payable scale applicable for business issued within the previous five years and within the scope of the certification has been reduced for reasons other than changes in the experience factors underlying the disciplined current scale. If nonguaranteed elements illustrated for new policies are not consistent with those illustrated for similar in force policies, this shall be disclosed in the annual certification. If nonguaranteed elements illustrated for both new and in force policies are not consistent with the nonguaranteed elements actually being paid, charged or credited to the same or similar forms, this shall be disclosed in the annual certification; and

(6) disclose in the annual certification the method used to allocate overhead expenses for all illustrations:

(a) fully allocated expenses;

(b) marginal expenses; or

(c) a generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the commissioner.

D.(1) The illustration actuary shall file a certification with the board and with the commissioner:

(a) annually for all policy forms for which illustrations are used; and

(b) before a policy form is illustrated.

(2) If an error in a previous certification is discovered, the illustration actuary shall notify the board of directors of the insurer and the commissioner promptly.

E. If an illustration actuary is unable to certify the scale for any policy form illustration the insurer intends to use, the actuary shall notify the board of directors of the insurer and the commissioner promptly of his or her inability to certify.

F. A responsible officer of the insurer, other than the illustration actuary, shall certify annually:

(1) that the illustration formats meet the requirements of this rule and that the scales used in insurer-authorized illustrations are those scales certified by the illustration actuary; and

(2) that the company has provided its agents with information about the expense allocation method used by the company in its illustrations and disclosed as required in Subsection C(6) of this section.

G. The annual certifications shall be provided to the commissioner each year by a date determined by the insurer.

H. If an insurer changes the illustration actuary responsible for all or a portion of the company's policy forms, the insurer shall notify the commissioner of that fact promptly and disclose the reason for the change.

**R590-177-12. Penalties.**

An insurer or agent or broker that violates this rule is engaging in an unfair or deceptive act or practice in the business of insurance and is subject to the penalties provided for in Section 31A-23-216, 31A-23-217, and 31A-2-308 in addition to any other penalties provided by the laws of the state.

**R590-177-13. Separability.**

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid by any court of law, the remainder of the rule and its application to other persons or circumstances may not be affected.

**KEY: insurance**
**November 20, 1997 31A-23-302**
**Notice of Continuation March 31, 2006**

**R590. Insurance, Administration.**
**R590-200. Diabetes Treatment and Management.**
**R590-200-1. Authority.**

This rule is 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 set minimum standards by rule for coverage of diabetes is provided in Section 31A-22-626.

**R590-200-2. Purpose.**

The purpose of this rule is to establish minimum standards of coverage for diabetes. Diabetes includes individuals with:

(1) complete insulin deficiency or type 1 diabetes;

(2) insulin resistance with partial insulin deficiency or type 2 diabetes; and

(3) elevated blood glucose levels induced by pregnancy or gestational diabetes.

This coverage will be provided at the levels consistent with the coverage provided for the treatment of other illnesses or diseases.

**R590-200-3. Applicability and Scope.**

(1) This rule applies to all health care insurance policies sold in Utah.

(2) This rule does not prohibit an insurer from requesting additional information required to determine eligibility of a claim under the terms of the policy, certificate or both, as issued to the claimant.

**R590-200-4. Definitions.**

For purposes of this rule the commissioner adopts the definitions as particularly set forth in Section 31A-1-301 and in addition, the following:

(1) "Health care insurance" means insurance providing health care benefits or payment of health care expenses incurred, including prescription insurance. Health care insurance does not include accident and health insurance providing benefits for:

(a) dental and vision;
(b) replacement of income;
(c) short term accident;
(d) fixed indemnity;
(e) credit accident and health;
(f) supplements to liability;
(g) workers compensation;
(h) automobile medical payments;
(i) no fault automobile;
(j) Medicare supplement insurance plans;
(k) equivalent self-insurance;
(l) any type of accident and health insurance that is a part of or attached to another type of policy; or
(m) long term care insurance.

(2) "Diabetes" means diabetes mellitus, which is a common chronic, serious systemic disorder of energy metabolism that includes a heterogeneous group of metabolic disorders that can be characterized by an elevated blood glucose level. The terms diabetes and diabetes mellitus are considered synonymous and defined to include persons using insulin, persons not using insulin, individuals with elevated blood glucose levels induced by pregnancy, or persons with other medical conditions or medical therapies which wholly or partially consist of elevated blood glucose levels.

(3) "Diabetes self-management training" means a program designed to help individuals to learn to manage their diabetes in an outpatient setting. They learn self-management skills that include making lifestyle changes to effectively manage their diabetes and to avoid or delay the complication, hospitalizations and emergency room visits associated with this illness. This training includes medical nutrition therapy.

(4) "Medical equipment" means non-disposable/durable equipment used to treat diabetes and will be treated per the standard deductibles, copayments, out of pocket maximums and coinsurance of the policy.

(5) "Medical nutrition therapy" means the assessment of patient nutritional status followed by therapy including diet modification, planning and counseling services which are furnished by a registered licensed dietitian.

(6) "Medical supplies" means the generally accepted single-use items used to manage, monitor, and treat diabetes, and to administer diabetes specific medications. Medical supplies will be treated per the standard deductibles, copayments, out of pocket maximums and coinsurance of the policy.

**R590-200-5. Minimum Standards and General Provisions.**

(1) Coverage for the treatment of diabetes is subject to the deductibles, copayments, out-of-pocket maximums and coinsurance of the plan.

(2)(a) All health care insurance policies will cover diabetes self-management training and patient management, including medical nutrition therapy, when deemed medically necessary and prescribed by an attending physician covered by the plan.

(b) The diabetes self-management training services must be provided by a diabetes self-management training program that is accepted by the plan and is:

(i) recognized by the federal Health Care Financing Administration; or

(ii) certified by the Department of Health; or

(iii) approved or accredited by a national organization certifying standards of quality in the provision of diabetes self-management education.

(c) Diabetes self-management training programs shall be provided upon a health care insurance policyholder's/dependent's diagnosis with diabetes, upon a significant change in a health care insurance policyholder's/dependent's diabetes related condition, upon a change in a health care insurance policyholder's/dependent's diagnostic levels, or upon a change in treatment regimen when deemed medically necessary and prescribed by an attending physician covered by the plan. The plan must provide no less than the minimum standards required by the selected self-management training services provider program.

(3) All health care policies will cover the following when deemed medically necessary:

(a) blood glucose monitors, including commercially available blood glucose monitors designed for patients use and for persons who have been diagnosed with diabetes;

(b) blood glucose monitors to the legally blind which includes commercially available blood glucose monitors designed for patient use with adaptive devices and for persons who are legally blind and have been diagnosed with diabetes;

(c) test strips for glucose monitors, which include test strips whose performance achieved clearance by the FDA for marketing;

(d) visual reading and urine testing strips, which includes visual reading strips for glucose, urine testing strips for ketones, or urine test strips for both glucose and ketones. Using urine test strips for glucose only is not acceptable as the sole method of monitoring blood sugar levels;

(e) lancet devices and lancets for monitoring glycemic control;

(f) insulin, which includes commercially available insulin preparations including insulin analog preparations available in either vial or cartridge;

(g) injection aids, including those adaptable to meet the needs of the legally blind, to assist with insulin injection;

(h) syringes, which includes insulin syringes, pen-like insulin injection devices, pen needles for pen-like insulin

injection devices and other disposable parts required for insulin injection aids;

(i) insulin pumps, which includes insulin infusion pumps.

(j) "medical supplies" for use with insulin pumps and insulin infusion pumps to include infusion sets, cartridges, syringes, skin preparation, batteries and other disposable supplies needed to maintain insulin pump therapy;

(k) "medical supplies" for use with or without insulin pumps and insulin infusion pumps to include durable and disposable devices to assist with the injection of insulin and infusion sets;

(l) prescription oral agents of each class approved by the FDA for treatment of diabetes, and a variety of drugs, when available, within each class; and

(m) glucagon kits.

**R590-200-6. 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 provisions 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**
**April 30, 2001 31A-2-201**
**Notice of Continuation March 31, 2006 31A-22-626**

**R590. Insurance, Administration.**
**R590-234. Single Risk Limitation.**
**R590-234-1. Authority.**

This rule is promulgated by the insurance commissioner pursuant to Subsection 31A-2-201(3) and 31A-20-108(2)(b).

**R590-234-2. Purpose and Scope.**

(1) The purpose of this rule is to set forth procedures necessary to determine compliance with 31A-20-108, in cases where unlimited insurance policies are issued.

(2) This rule applies to all entities that write unlimited insurance policies, except title, workers' compensation, occupational disease, and employers' liability insurance policies.

**R590-234-3. Definitions.**

In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Unlimited Insurance Policy" means an insurance policy that does not specify a maximum limit for benefits to be paid under the policy.

(2) "Single risk" includes all losses reasonably expected as a result of the same event.

(3) "Single Risk Limitation" is 10% of capital and surplus, as prescribed by 31A-20-108(2).

**R590-234-4. Calculation of Single Risk Limitation for Unlimited Insurance Policies.**

In cases where unlimited insurance policies are issued, the insurer shall use $2,000,000 as the maximum potential risk, for purposes of determining compliance with the single risk limitation.

**R590-234-5. Enforcement Date.**

The commissioner will begin enforcing the provisions of this rule 45 days from the rule's effective date.

**R590-234-6. Severability.**

If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances may not be affected by it.

**KEY: single risk limitation**
**March 22, 2006** **31A-2-201**
**31A-20-108**

**R592. Insurance, Title and Escrow Commission.**
**R592-2. Title Insurance Administrative Hearings and Penalty Imposition.**
**R592-2-1. Authority.**

This rule is promulgated pursuant to Subsections 31A-2-404(2)(e) and (h), which direct the Title and Escrow Commission to make rules pertaining to the conduct of title administrative hearings, the delegation of title administrative hearings, and the imposition of penalties for violations of statute or rule.

**R592-2-2. Purpose and Scope.**

(1) The purpose of this rule is

(a) to establish procedures for the Commission:

(i) to delegate authority to the department's administrative law judge to conduct an administrative hearing for a title license applicant, a title licensee, or a title continuing education program; or

(ii) to conduct an administrative hearing for a title license applicant, a title licensee, or a title continuing education program; and

(b) to establish procedures for the Commission and the commissioner to concur with penalties imposed on a title licensee, applicant for a title license, unlicensed person doing business as a title licensee, and continuing education providers submitting title continuing education programs for approval, for violations of statute, rule, Order of the Commissioner, or Order of the Commission.

(2) This rule applies to all title licensees, applicants for a title insurance license, unlicensed persons doing business as a title licensee, and continuing education providers submitting title continuing education programs for approval.

**R592-2-3. Definitions.**

"Title licensee" has the same meaning as found in Section 31A-2-402(3).

**R592-2-4. Administrative Hearings.**

The Title and Escrow Commission may delegate the conduct of administrative hearings involving a title license applicant, a title licensee, or a title continuing education program to the department's administrative law judge.

(1) The Commission will receive a periodic report listing each administrative hearing requested by a title license applicant, a title licensee, a title continuing education program or by the commissioner to resolve an investigation of a title licensee's conduct, the denial of a title license application, or the disapproval of a title continuing education program.

(2) The Commission will review the report at each meeting and, either:

(a) delegate the conduct of the requested administrative hearing to the department's administrative law judge; or

(b) determine that the Commission will conduct the requested administrative hearing.

(3) For an administrative hearing conducted by the Commission, the Commission will:

(a) set the date, time, and place of the administrative hearing;

(b) notify the title license applicant, the title licensee, or the continuing education program of the date, time, and place of the administrative hearing;

(c) conduct the hearing:

(i) hear the evidence; and

(ii) make a decision based on the evidence presented;

(d) impose penalties, with the concurrence of the commissioner, in accordance with Sections 31A-2-308, 31A-23a-111, 31A-23a-112, 31A-26-213, and 31A-26-214; and

(e) issue an Order on Hearing.

(4) The department's administrative law judge will assist the Commission in its conduct of an administrative hearing by ruling on admissibility of evidence and motions pertaining to the hearing.

**R592-2-5. Imposition of Penalties.**

(1) The department will investigate alleged violations of statute or rule by a title licensee, applicants for a title insurance license, unlicensed person doing business as a title licensee, and continuing education providers submitting title continuing education programs for approval.

(2) If the resolution of the investigation is other than an administrative hearing or is an administrative hearing conducted by the department's administrative law judge, and the administrative proceeding imposes a penalty, the Commission must concur with the penalty imposed, prior to the imposition of the penalty.

(3) If the resolution of the investigation is an administrative hearing conducted by the Commission, and the administrative hearing imposes a penalty, the commissioner must concur with the penalty imposed, prior to the imposition of the penalty.

**R592-2-6. Severability.**

If any section, term, or provision of this rule shall be adjudged invalid for any reason, such judgment shall not affect, impair or invalidate any other section, term, or provision of this rule and the remaining sections, terms, and provisions shall be and remain in full force.

**R592-2-7. Enforcement Date.**

The commissioner will begin enforcing this rule upon the rule's effective date.

**KEY: title insurance**
**September 30, 2005** **31A-2-402**

**R628. Money Management Council, Administration.**
**R628-4. Bonding of Public Treasurers.**
**R628-4-1. Authority.**

This rule is issued pursuant to Section 51-7-15.

**R628-4-2. Fidelity Bond.**

Every public treasurer shall secure a fidelity bond in the amount shown in R628-4-4. Bonds must be issued by a corporate surety licensed to do business in the state of Utah and having a current A.M. Best Rating of "A" or better. Bonds should be effective as of the date the treasurer assumes the duties of the office or is sworn in.

**R628-4-3. Budgeted Gross Revenue.**

The basis used shall be the budgeted gross revenue for the previous accounting year. Budgeted gross revenue includes all funds collected or handled by the public treasurer. For purposes of this rule, taxes, fees, service charges, interest, proceeds from sale of assets, and borrowing proceeds are examples of revenue categories which are considered.

**R628-4-4. Amount of Bond.**

TABLE

| Budget | | | Percent for Bond | | |
|---|---|---|---|---|---|
| $ 0 | to | $ 10,000 | n/a | but not less than | $ 0 |
| 10,001 | to | 100,000 | 9% | but not less than | 5,000 |
| 100,001 | to | 500,000 | 8% | but not less than | 9,000 |
| 500,001 | to | 1,000,000 | 7% | but not less than | 40,000 |
| 1,000,001 | to | 5,000,000 | 6% | but not less than | 70,000 |
| 5,000,001 | to | 10,000,000 | 5% | but not less than | 300,000 |
| 10,000,001 | to | 25,000,000 | 4% | but not less than | 500,000 |
| 25,000,001 | to | 50,000,000 | 3% | but not less than | 1,000,000 |
| 50,000,001 | to | 500,000,000 | 2% | but not less than | 1,500,000 |
| over | | 500,000,000 | | not less than | 10,000,000 |

**KEY: bonding requirements, public treasurers, accounts, state and local affairs**
**1990 51-7-15**
**Notice of Continuation October 6, 2005**

**R628. Money Management Council, Administration.**
**R628-16. Certification as a Dealer.**
**R628-16-1. Authority.**

This rule is issued pursuant to Sections 51-7-3(1) and 51-7-18.

**R628-16-2. Scope.**

This rule establishes the criteria applicable to all broker-dealers and agents for certification by the Director of the Securities Division of the Department of Commerce (the "Director") as eligible to conduct investment transactions under the State Money Management Act. It further establishes the application contents and procedures, and the procedures for termination and reinstatement of certification.

**R628-16-3. Purpose.**

This rule establishes a uniform standard to evaluate the financial condition and the standing of a broker-dealer to determine if investment transactions with public treasurers by broker-dealers would expose public funds to undue risk.

**R628-16-4. Definitions.**

The following terms are defined in Section 51-7-3 of the State Money Management Act, and when used in this rule, have the same meaning as in the Act:

A. "Certified dealer";
B. "Council";
C. "Director"; and
D. "Public treasurer".

The following terms are defined in Section 61-1-13 of the Utah Uniform Securities Act, and when used in this rule, have the same meaning as in that Act:

A. "Agent".

**R628-16-5. General Rule.**

No public treasurer may conduct any investment transaction through a broker-dealer or any agent representing a broker-dealer unless that broker-dealer has been certified by the Director as eligible to conduct investment transactions with public treasurers.

**R628-16-6. Application to Become a Certified Dealer.**

A. Any broker-dealer wishing to become a certified dealer under the State Money Management Act must submit an application to the Utah Securities Division.

B. The application must include:

(1) Primary Reporting Dealers: Proof of status as a primary reporting dealer, including proof of recognition by the Federal Reserve Bank, if applicant is a primary reporting dealer.

(2) Office Address: The address of the applicant's principal office. Broker-dealers who are not primary reporting dealers must have and maintain an office and a resident principal in Utah; the application shall include the address of the Utah office and the identity of the resident principal.

(3) Broker-Dealer Registration: Proof of registration with the Division under its laws and rules, effective as of the date of the application, of the following:

(a) the broker-dealer;
(b) its resident principal (if one is required); and
(c) any agents of a firm doing business in the state of Utah.

(4) Corporate Authority: A Certificate of Good Standing, obtained from the state in which the applicant is incorporated. An applicant who is a foreign corporation also must submit a copy of its Certificate of Authority to do business in Utah, obtained from the Corporations Division of the Department of Commerce (hereinafter the "Corporations Division").

(5) Financial Statements: With respect to applicants who are not primary reporting dealers, financial statements, prepared by an independent certified public accountant in accordance with generally accepted accounting principles, indicating that the applicant has, as of its most recent fiscal year end:

(a) Net Capital: Minimum net capital, as calculated under rule 15c3-1 of the General Rules and Regulations under the Securities and Exchange Act of 1934 (the Uniform Net Capital Rule), of at least 5% of the applicant's aggregate debt balances, as defined in the rule, and;

(b) Total Capital: Total capital as follows:

(i) of at least $10 million or;

(ii) of at least $25 million, calculated on a consolidated basis, with respect to an applicant which is a wholly-owned subsidiary.

(6) Government Securities Act Registration: Proof of the firm's registration under the Government Securities Act of 1986 (100 Stat 3208).

(7) Account Documents: Copies of all agreements, contracts, or other documents that the applicant requires or intends to require to be signed by the public treasurer to open or maintain an account. These documents must meet the following requirements:

(a) The Director shall not certify any applicant who requires, or proposes to require, that any dispute arising out of transactions between the applicant and the public treasurer must be submitted to arbitration. The applicant must provide copies of agreements signed or to be signed, which allow the public treasurer to select the forum and method for dispute resolution, whether that forum be arbitration, mediation or litigation in any state or federal court.

(b) Any customer agreement shall provide that suit may be litigated in a Utah court, and that Utah law shall apply in settling disputes, where relevant.

(8) Knowledge of Money Management Act: A notarized statement, signed by a principal and by any agent who has any contact with a public treasurer or its account, that the agent is familiar with the authorized investments as enumerated in Section 51-7-11(3) and the rules of the Council, and with the investment objectives of the public treasurer, as set forth in Section 51-7-17(1).

(9) Fee: A non-refundable fee as described in Section 51-7-18.3(2), payable to the Division.

**R628-16-7. Certification.**

A. Initial Certification: The initial application for certification must be received on or before the last day of the month for approval at the following month's council meeting.

B. Date of Effectiveness: All certifications shall be effective upon approval by the council.

C. Expiration; Renewal: All certifications not otherwise terminated shall expire on June 30 of each year, unless renewed. Renewal applications must be received on or before April 30 of each year.

**R628-16-8. Renewal of Application.**

A. Certified dealers wishing to keep their status as certified dealers must reapply annually, on or before April 30 of each year, for recertification to be effective July 1 of each year.

B. The renewal application must contain all of the documents and meet all of the requirements as set forth above with respect to initial applications.

C. The renewal application must be accompanied by an annual renewal fee as described in Section 51-7-18.3(2).

**R628-16-9. Post Certification Requirements.**

Certified dealers are required to notify the Division of any changes to any items or information contained in the original application within 20 calendar days of the change. The notification shall provide copies, where necessary, of relevant documents.

**R628-16-10. Notification of Certification.**

The Director shall provide a list of certified broker-dealers and agents to the Money Management Council at least semiannually. The Council shall mail this list to each public treasurer.

**R628-16-11. Grounds for Suspension or Termination of Status as a Certified Dealer.**

Any one of the following constitutes grounds for suspension or termination of status as a certified dealer:

A. Termination of the dealer's status as a primary reporting dealer if the dealer gained certification as a primary reporting dealer.

B. Denial, suspension or revocation of the dealer's registration under the Government Securities Act, or by the Division, or by any other state's securities agency.

C. Failure to maintain a principal office operated by a resident registered principal in this state, if applicable.

D. Failure to maintain registration with the Utah Securities Division by the firm or any of its agents having any contact with a public treasurer.

E. Failure to remain in good standing in Utah with the Corporations Division, or to maintain a certificate of authority, as applicable.

F. Failure to submit within 10 days of the due date the required financial statements, or failure to maintain the required minimum net capital and total capital.

G. Requiring the public treasurer to sign any documents, contracts, or agreements which require that disputes be submitted to mandatory arbitration.

H. The sale, offer to sell, or any solicitation of a public treasurer by an agent or by a resident principal, where applicable, who is not certified.

I. Failure to pay the annual renewal fee.

J. Making any false statement or filing any false report with the Division.

K. Failure to file amended reports as required in section R628-16-9.

L. The sale, offer to sell, or any solicitation of a public treasurer, by the certified dealer or any of its employees or agents, of any instrument or in any manner not authorized by the Money Management Act or rules of the Council.

M. Failure to respond to requests for information from the Division or the Council within 15 days after receipt of a request for information.

N. Failure to maintain registration under the federal Government Securities Act.

O. Engaging in a dishonest or unethical practice in connection with any investment transaction with a public treasurer. "Dishonest or unethical practice" includes, those acts and practices enumerated in Rule R164-6-1g.

**R628-16-12. Procedures for Suspension or Termination and Reinstatement of Status.**

A. Where it appears to the Division or to the Council that grounds may exist to suspend a certified dealer or terminate status as a certified dealer, the Council shall proceed under the Utah Administrative Procedures Act, Chapter 46b, Title 63.

B. All proceedings to suspend a certified dealer or to terminate status as a certified dealer are designated as informal proceedings under the Utah Administrative Procedures Act.

C. In any hearings held, the Chair of the Council shall be the presiding officer, and that person may act as the hearing officer, or may designate another person from the Council or the Division to be the hearing officer. At the election of the presiding officer, other members of the Council may issue recommendations to the hearing officer after the close of the hearing.

D. The Notice of Agency Action, or any petition filed in connection with it, required under the Utah Administrative Procedures Act, shall include a statement of the grounds for termination, and the remedies required to cure the violation.

E. After the date of service of the Notice of Agency Action, the certified dealer and its agents shall not conduct any investment transaction with any public treasurer if so ordered by the Money Management Council. The order issued by the hearing officer at the conclusion of the proceedings shall lift this prohibition if the order allows the certified dealer to keep its status as a certified dealer.

**KEY: cash management, public investments, securities regulation, stock brokers**
**August 27, 2001 51-7-3(1)**
**Notice of Continuation November 3, 2005 51-7-18(2)(b)(v)**

**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 Division of Forestry, Fire and State Lands (FFSL) wildfire representative (per participating agreement between county and FFSL) will create or review Wildland Urban Interface area maps, to be recorded and field 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) Section 405.1 After "When required by a code official, a fire protection plan shall be prepared" add the words "and approved prior to the first building permit issuance or subdivision approval."

(mm) Chapter 5, Delete Table 502

(nn) Section 505.2 Replace "Class B roof covering" with "Class A roof covering"

(oo) Section 506.2 replace "Class C roof covering" with "Class A roof covering"

(pp) Section 602 Delete

(qq) Section 603.2 Replace "for the purpose of Table 503.1" with "for individual buildings or structures on a property"

(rr) Section 603.2 Replace "10 feet or to the property line" with "30 feet or to the property line"

(ss) Section 603.2 replace "along the grade" with "on a horizontal plane"

(tt) Section 603.2 replace "may be increased" with "may be modified"

(uu) Section 603.2 Delete "crowns of trees and structures"

(vv) 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.

(ww) 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.

(xx) 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

(yy) Section 604.1 Add "annually, or as necessary" after "maintained"

(zz) Section 604.4 First sentence should read "Individual trees and/or small clumps of trees or brush crowns extending to within . . . "

(aaa) Section 607 change "20 feet" to "30 feet"

(bbb) Chapter 7 Delete

(ccc) Appendix A is included as optional recommendations rather than mandatory

(ddd) Appendix B Last sentence changed to "Continuous maintenance of the clearance is required."

(eee) Appendix C Below title, add "This appendix is to be used to determine the fire hazard severity."

(fff) Appendix C-A1. Change to "One-lane road in, one-lane road out" and points change to 1, 10 and 15.

(ggg) Appendix C-A2. Points change to 1 and 5

(hhh) 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.

(iii) Appendix C-A4. Points are now 1, 5, 8 and 10

(jjj) Appendix C-A5 Change to "Present but unapproved" for 3 points, and "not present" for 5 points

(kkk) 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.

(lll) 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.

(mmm) 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.

(nnn) Appendix C-E. Change the points to 1, 5, 10, 15 and 20.

(ooo) 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.

(ppp) The new totals for "Moderate Hazard" are 50-75; "High Hazard" are 76-100; "Extreme Hazard" are 101+.

(qqq) 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**

**R657. Natural Resources, Wildlife Resources.**
**R657-19. Taking Nongame Mammals.**
**R657-19-1. Purpose and Authority.**

(1) Under authority of Sections 23-13-3, 23-14-18 and 23-14-19, this rule provides the standards and requirements for taking and possessing nongame mammals.

(2) A person capturing any live nongame mammal for a personal, scientific, educational, or commercial use must comply with R657-3 Collection, Importation, Transportation and Subsequent Possession of Zoological Animals.

**R657-19-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Immediate family" means the landowner's or lessee's spouse, children, son-in-law, daughter-in-law, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, stepchildren, and grandchildren.

(b) "Nongame mammal" means:

(i) any species of bats;

(ii) any species of mice, rats, or voles of the families Heteromyidae, Cricetidae, or Zapodidae;

(iii) opossum of the family Didelphidae;

(iv) pikas of the family Ochotonidae;

(v) porcupine of the family Erethizontidae;

(vi) shrews of the family Soricidae; and

(vii) squirrels, prairie dogs, and marmots of the family Sciuridae.

**R657-19-3. General Provisions.**

(1) A person may not purchase or sell any nongame mammal or its parts.

(2)(a) The live capture of any nongame mammals is prohibited under this rule.

(b) The live capture of nongame mammals species may be allowed as authorized under Rule R657-3.

(3) Section 23-20-8 does not apply to the taking of nongame mammal species covered under this rule.

**R657-19-4. Nongame Mammal Species - Certificate of Registration Required.**

(1) A certificate of registration is required to take any of the following species of nongame mammals:

(a) bats of any species; and

(b) pika - Ochotona princeps.

(2) A certificate of registration is required to take any shrew - Soricidae, all species.

(3) A certificate of registration is required to take a Utah prairie dog, Cynomys parvidens, as provided in Sections R657-19-6, R657-19-7, R657-19-8 and R657-19-9.

(4) A certificate of registration is required to take any of the following species of nongame mammals in Washington County:

(a) cactus mouse - Peromyscus eremicus;

(b) kangaroo rats - Dipodomys, all species;

(c) Southern grasshopper mouse - Onychomys torridus; and

(d) Virgin River montane vole - Microtus montanus rivularis, which occurs along stream-side riparian corridors of the Virgin River.

(5) A certificate of registration is required to take any of the following species of nongame mammals in San Juan and Grand counties:

(a) Abert squirrel - Sciurus aberti;

(b) Northern rock mouse - Peromyscus nasutus; and

(c) spotted ground squirrel - Spermophilus spilosoma.

(6) The division may deny a certificate of registration to any applicant, if:

(a) the applicant has violated any provision of:

(i) Title 23 of the Utah Code;

(ii) Title R657 of the Utah Administrative Code;

(iii) a certificate of registration;

(iv) an order of the Wildlife Board; or

(v) any other law that bears a reasonable relationship to the applicant's ability to safely and responsibly perform the activities that would be authorized by the certificate of registration;

(b) the applicant misrepresents or fails to disclose material information required in connection with the application;

(c) taking the nongame mammal as proposed in the application violates any federal, state or local law;

(d) the application is incomplete or fails to meet the issuance criteria set forth in this rule; or

(e) the division determines the activities sought in the application may significantly damage or are not in the interest of wildlife, wildlife habitat, serving the public, or public safety.

**R657-19-5. Nongame Mammal Species - Certificate of Registration Not Required.**

(1) All nongame mammal species not listed in Section R657-19-4 as requiring a certificate of registration, may be taken:

(a) without a certificate of registration;

(b) year-round, 24-hours-a-day; and

(c) without bag or possession limits.

(2) A certificate of registration is not required to take any of the following species of nongame mammals, however, the taking is subject to the provisions provided under Section R657-19-10:

(a) White-tailed prairie dog, Cynomys leucurus; and

(b) Gunnison prairie dog, Cynomys gunnisoni.

**R657-19-6. Utah Prairie Dog Provisions.**

(1)(a) A person may not take a Utah Prairie dog, Cynomys parvidens, without first obtaining a certificate of registration from the division.

(b) A certificate of registration for taking Utah prairie dogs may be issued as provided in Subsection (i) or Subsection (ii), or Subsection (iii), if the taking will not further endanger the existence of the species:

(i) in cases where Utah Prairie dogs are causing damage to agricultural lands as provided in the rules of the U.S. Fish and Wildlife Service; or

(ii) as provided in a valid Incidental Take permit issued by the U.S. Fish and Wildlife Service under an approved Habitat Conservation Plan; or

(iii) as provided under a valid Incidental Take permit issued by the U.S. Fish and Wildlife Service allowing take of Utah prairie dogs on specified private lands as part of an approved conservation agreement enacted between the U.S. Fish and Wildlife Service and the owner of those private lands.

(c) A person may apply for a certificate of registration at the division's southern regional office, 1470 North Airport Road, Suite 1, Cedar City, Utah 84720.

(d) A landowner, lessee, or their immediate family member, or an employee on a regular payroll and not hired specifically to take Utah prairie dogs, may apply for a certificate of registration.

(e)(i) A person, other than those listed in Subsection (d), may apply for a certificate of registration to take Utah prairie dogs as a designee of the landowner or lessee provided the application includes:

(A) an explanation of the need for the certificate of registration to be issued;

(B) justification for utilization of the designee; and

(C) the landowner or lessee's signature.

(ii) A maximum of two designee certificates of registration may be issued per landowner or lessee.

(iii) Each designee application shall be considered individually based upon the explanation and justification provided.

(f) An application for a certificate of registration must include:

(i) full name;

(ii) complete mailing address;

(iii) phone number;

(iv) date of birth;

(v) weight and height;

(vi) gender;

(vii) color of hair and eyes;

(viii) social security number;

(ix) driver's license number, if issued;

(x) proof of hunter education certification if the applicant was born after December 31, 1965; and

(xi) the township, range, section and 1/4 section of the agricultural lands where the prairie dogs will be taken.

(g) An applicant must be at least 14 years of age at the time of application and must abide by the provisions for children being accompanied by adults while hunting with a weapon pursuant to Section 23-20-20.

(h) After review of the application, a certificate of registration may be issued.

(i) A maximum of four certificates of registration may be issued to any landowner or lessee, including those issued to the landowner or lessee's designees.

(j) A certificate of registration shall be issued on an individual basis and shall be valid only for the person to whom the certificate of registration is issued.

(k) A certificate of registration is not transferrable and must be signed by the holder prior to use.

(l) If the application and permitting process is accomplished by U.S. Mail, the certificate of registration shall only become valid after a copy of the signed certificate of registration is received by the division's southern regional office.

(2)(a) A person may take Utah prairie dogs with a firearm during daylight hours or by trapping as specified on the certificate of registration.

(b) A person may not use any chemical toxicant to take Utah prairie dogs.

(c) In addition to the requirements of this rule, any person taking Utah prairie dogs must comply with state laws, and local ordinances and laws.

(d) A person at least 14 years of age and under 16 years of age who takes Utah Prairie dogs must be accompanied by an adult with a valid certificate of registration to take Utah Prairie dogs on the same property.

**R657-19-7. Areas Open to Taking Utah Prairie Dogs -- Dates Open --Limits on Number of Utah Prairie Dogs Taken.**

(1) A person who obtains a valid certificate of registration may take Utah prairie dogs only on private lands within the following counties:

(a) Beaver;

(b) Garfield;

(c) Iron;

(d) Kane;

(e) Millard;

(f) Piute;

(g) Sanpete;

(h) Sevier;

(i) Washington; and

(j) Wayne.

(2) Taking of a Utah prairie dog on any land or by any method, other than as provided in the valid certificate of registration, including any public land, is a violation of state and federal law.

(3) Any person, who is specifically named on a valid certificate of registration, may remove Utah prairie dogs, as provided in the certificate of registration.

(4) The taking of any Utah prairie dog outside the areas provided in this section is prohibited, except by division employees while acting in the performance of their assigned duties.

(5) The taking of Utah prairie dogs is limited to the dates designated on the certificate of registration. All dates are confined to June 1 through December 31, except as provided in Subsection R657-19-6(1)(b)(iii).

(6)(a) A person may take only the total number of Utah prairie dogs designated in the certificate of registration, except as provided in Subsection R657-19-6(1)(b)(iii).

(b) The total range-wide take of Utah prairie dogs causing agricultural damage is limited to no more than 6,000 Utah prairie dogs annually.

(c) If the division determines that taking Utah prairie dogs has an adverse effect on conservation of the species, taking shall be further restricted or prohibited.

**R657-19-8. Monthly Reports of Take of Utah Prairie Dogs.**

(1) The following information must be reported to the division's southern regional office, 1470 North Airport Road, Suite 1, Cedar City, Utah 84720, every 30 days:

(a) the name and signature of the certificate of registration holder;

(b) the person's certificate of registration number;

(c) the number of Utah prairie dogs taken; and

(d) the location, method of take, and method of disposal of each Utah prairie dog taken during the 30-day period.

(2) Failure to report the information required in Subsection (1), within 30 days, may result in the denial of future applications for a certificate of registration to take Utah prairie dogs.

**R657-19-9. Unlawful Possession of Utah Prairie Dogs.**

A person may not possess a Utah prairie dog or its parts, without first obtaining a valid certificate of registration and a federal permit.

**R657-19-10. White-tailed and Gunnison Prairie Dogs.**

(1)(a) A license or certificate of registration is not required to take either white-tailed or Gunnison prairie dogs.

(b) There are no bag limits for white-tailed or Gunnison prairie dogs for which there is an open season.

(2)(a) White-tailed prairie dogs, Cynomys leucurus, may be taken in the following counties from January 1 through March 31, and June 16 through December 31:

(i) Carbon County;

(ii) Daggett County;

(iii) Duchesne County;

(iv) Emery County;

(v) Morgan;

(vi) Rich;

(vii) Summit County;

(viii) Uintah County, except in the closed area as provided in Subsection (2)(b)(i);

(ix) Weber; and

(x) all areas west and north of the Colorado River in Grand and San Juan counties.

(b) White-tailed prairie dogs, Cynomys leucurus, may not be taken in the following closed area in order to protect the reintroduced population of black-footed ferrets, Mustela nigripes:

(i) Boundary begins at the Utah/Colorado state line and Uintah County Road 403, also known as Stanton Road, northeast of Bonanza; southwest along this road to SR 45 at Bonanza; north along this highway to Uintah County Road 328, also known as Old Bonanza Highway; north along this road to

Raven Ridge, just south of US 40; southeast along Raven Ridge to the Utah/Colorado state line; south along this state line to point of beginning.

(3) The taking of White-tailed prairie dogs, Cynomys leucurus, is prohibited from April 1 through June 15, except as provided in Subsection (5).

(4)(a) The taking of Gunnison prairie dogs, Cynomys gunnisoni, is prohibited in all areas south and east of the Colorado River, and north of the Navajo Nation in Grand and San Juan counties from April 1 through June 15.

(b) Gunnison prairie dogs may be taken in the area provided in Subsection (4)(a) from June 16 through March 31.

(5) Gunnison prairie dogs and White-tailed prairie dogs causing agricultural damage or creating a nuisance on private land may be taken at any time, including during the closed season from April 1 through June 15.

**R657-19-11. Violation.**

(1) Any violation of this rule is a Class C misdemeanor as provided in Section 23-13-11(2).

(2) In addition to this rule any animal designated as a threatened or endangered species is governed by the Endangered Species Act and the unlawful taking of these species may also be a violation of federal law and rules promulgated thereunder.

(3) Pursuant to Section 23-19-9, the division may suspend a certificate of registration issued under this rule.

**KEY: wildlife, game laws**
**March 6, 2006** **23-13-3**
**Notice of Continuation August 15, 2003** **23-14-18**
**23-14-19**

**R657. Natural Resources, Wildlife Resources.**
**R657-24. Compensation for Mountain Lion and Bear Damage.**
**R657-24-1. Purpose and Authority.**

Under authority of Section 23-24-1, this rule provides the procedures, standards, requirements and limits for obtaining compensation for damages to livestock by mountain lion and black bear.

**R657-24-2. Definitions.**

(1) Terms used in this rule are defined in Sections 23-13-2 and 23-24-1(1).

(2) In addition:

(a) "Black bear" means Ursus americanus.

(b) "Fair market value" means the average commercial livestock prices from July 1 through June 30, as determined by the Utah Livestock and Auction Reporting Service.

(c) "Injury" means an act by a mountain lion or bear that results in the death of livestock within 30 days of the act or a permanent injury to livestock.

(d) "Livestock" means cattle, sheep, goats, or turkeys.

(e) "Mountain lion" means Felis concolor.

**R657-24-3. Notification of Damage -- Payment of Damage Claims.**

(1) When livestock are damaged by a bear or mountain lion, the owner may receive compensation in accordance with Section 23-24-1(2).

(2)(a) Notification must be made in writing to one of the regional division offices within four working days of discovering the damage.

(b) Notification may be made orally to expedite field investigations, and must be followed in writing within four working days after the damage is discovered.

(3)(a) Claims for damage payments received from July 1 through June 30 are assessed and accepted or denied based on information reported on the livestock damage form.

(b) Claims accepted for damage payments are held until all damage claims for the July 1 through June 30 period have been collected.

(c) If the total amount of the damage claims exceed the appropriated funds for this purpose, damage payments will be prorated for all eligible claims.

(4) Damage payments will be paid only for confirmed losses.

(5)(a) The division or animal damage control specialists will document on approved livestock damage forms the type and magnitude of livestock losses experienced by livestock producers.

(b) Where agreement with the type or magnitude of losses is not achieved by animal damage control specialists, a division representative shall follow up with an additional field investigation to assess damage claims.

**KEY: wildlife, damages, livestock**
**March 6, 2006 23-24-1**
**Notice of Continuation October 7, 2005 4-23-7**

**R657. Natural Resources, Wildlife Resources.**
**R657-33. Taking Bear.**
**R657-33-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, of the Utah Code, the Wildlife Board has established this rule for taking and pursuing bear.

(2) Specific dates, areas, number of permits, limits and other administrative details which may change annually are published in the proclamation of the Wildlife Board for taking and pursuing bear.

**R657-33-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Bait" means any lure containing animal, mineral or plant materials.

(b) "Baiting" means the placing, exposing, depositing, distributing or scattering of bait to lure, attract or entice bear on or over any area.

(c) "Bear" means Ursus americanus, commonly known as black bear.

(d) "Canned hunt" means that a bear is treed, cornered, held at bay or its ability to escape is otherwise restricted for the purpose of allowing a person who was not a member of the initial hunting party to arrive and take the bear.

(e) "Cub" means a bear less than one year of age.

(f) "Evidence of sex" means the teats, and sex organs of a bear, including a penis, scrotum or vulva.

(g) "Green pelt" means the untanned hide or skin of a bear.

(h) "Limited entry hunt" means any hunt listed in the hunt table, published in the proclamation of the Wildlife Board for taking bear, which is identified as a limited entry hunt and does not include pursuit only.

(i) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits and sportsman permits.

(j) "Pursue" means to chase, tree, corner or hold a bear at bay.

(k)(i) "Valid application" means:

(A) it is for a species that the applicant is eligible to possess a permit;

(B) there is a hunt for that species regardless of estimated permit numbers; and

(C) there is sufficient information on the application to process the application, including personal information, hunt information, and sufficient payment.

(ii) Applications missing any of the items in Subsection (i) may still be considered valid if the application is timely corrected through the application correction process.

(l) "Waiting period" means a specified period of time that a person who has obtained a bear permit must wait before applying for any other bear permit.

**R657-33-3. Permits for Taking Bear.**

(1)(a) To take a bear, a person must first obtain a valid limited entry bear permit for a specified hunt unit as provided in the proclamation of the Wildlife Board for taking bear.

(b) To pursue bear, a person must first obtain a valid bear pursuit permit from a division office.

(2) Any limited entry bear permit purchased after the season opens is not valid until seven days after the date of purchase.

(3) Residents and nonresidents may apply for limited entry bear permits and purchase bear pursuit permits.

**R657-33-4. Purchase of License or Permit by Mail.**

(1) A person may purchase a bear pursuit permit by mail by sending the following information to a division office: full name, complete mailing address, phone number, date of birth, weight, height, sex, color of hair and eyes, driver's license number (if available), proof of hunter education certification and fee.

(2)(a) Personal checks, business checks, cashier's check or money orders will be accepted.

(b) Personal and business checks drawn on an out-of-state will not be accepted.

(c) Checks must be made payable to the Utah Division of Wildlife Resources.

**R657-33-5. Hunting Hours.**

Bear may be taken or pursued only between one-half hour before official sunrise through one-half hour after official sunset.

**R657-33-6. Firearms and Archery Equipment.**

(1) A person may use the following to take bear:

(a) any firearm not capable of being fired fully automatic, except a firearm using a rimfire cartridge; and

(b) a bow and arrows.

(2) A person may not use a crossbow to take bear, except as provided in Rule R657-12.

**R657-33-7. Traps and Trapping Devices.**

(1) Bear may not be taken with a trap, snare or any other trapping device, except as authorized by the division.

(2) Bear accidentally caught in any trapping device must be released unharmed.

(3)(a) Written permission must be obtained from a division representative to remove the carcass of a bear from any trapping device.

(b) The carcass shall remain the property of the state of Utah and must be surrendered to the division.

**R657-33-8. State Parks.**

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated by the Division of Parks and Recreation in Section R651-603-5.

(2) Hunting with a rifle, handgun or muzzleloader in park areas designated open is prohibited within one mile of all area park facilities, including buildings, camp or picnic sites, overlooks, golf courses, boat ramps and developed beaches.

(3) Hunting with shotguns and archery tackle is prohibited within one quarter mile of the above stated areas.

**R657-33-9. Prohibited Methods.**

(1) Bear may be taken or pursued only during open seasons and using methods prescribed in this rule and the proclamation of the Wildlife Board for taking and pursuing bear. Otherwise, under the Wildlife Resources Code, it is unlawful for any person to possess, capture, kill, injure, drug, rope, trap, snare, or in any way harm or transport bear.

(2) After a bear has been pursued, chased, treed, cornered, legally baited or held at bay, a person may not, in any manner, restrict or hinder the animal's ability to escape.

(3) A person may not engage in a canned hunt.

(4) A person may not take any wildlife from an airplane or any other airborne vehicle or device or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles.

**R657-33-10. Spotlighting.**

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland or forest where protected wildlife are generally found

is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed weapon to hunt or take wildlife.

**R657-33-11. Party Hunting.**

A person may not take a bear for another person.

**R657-33-12. Use of Dogs.**

(1) Dogs may be used to take or pursue bear only during open seasons as provided in the proclamation of the Wildlife Board for taking bear.

(2) The owner and handler of dogs used to take or pursue bear must have a valid bear permit or bear pursuit permit in possession while engaged in taking or pursuing bear.

(3) When dogs are used in the pursuit of a bear, the licensed hunter intending to take the bear must be present when the dogs are released and must continuously participate in the hunt thereafter until the hunt is completed.

(4) When dogs are used to take a bear and there is not an open pursuit season, the owner and handler of the dogs must have a valid pursuit permit and be accompanied by a licensed hunter as provided in Subsection (3), or have a valid limited entry bear permit for the limited entry unit being hunted.

**R657-33-13. Certificate of Registration Required for Bear Baiting.**

(1) A certificate of registration for baiting must be obtained before establishing a bait station.

(2) Certificates of registration are issued only to holders of valid limited entry bear archery permits.

(3) A certificate of registration may be obtained from the division office within the region where the bait station will be established.

(4) The following information must be provided to obtain a Certificate of Registration for baiting: a 1:24000 USGS quad map with the bait location marked, or the Universal Transverse Mercator (UTM) or latitude and longitude coordinates of the bait station, including the datum, type of bait used and written permission from the appropriate landowner for private lands.

(5)(a) Any person interested in baiting on lands administered by the U.S. Forest Service or Bureau of Land Management must verify that the lands are open to baiting before applying for a limited entry bear archery permit.

(b) Information on areas that are open to baiting on National Forests must be obtained from district offices. Baiting locations and applicable travel restrictions must be verified by the district supervisor prior to applying for a Certificate of Registration.

(c) Areas generally closed to baiting stations by these federal agencies include:

(i) designated Wilderness Areas;

(ii) heavily used drainages or recreation areas; and

(iii) critical watersheds.

(d) The division shall send a copy of the certificate of registration to the private landowner or appropriate district office of the land management agency that manages the land where the bait station will be placed, as identified by the hunter on the application for a certificate of registration.

(6) A $5 handling fee must accompany the application.

(7) Only hunters listed on the certificate of registration may hunt over the bait station and the certificate of registration must be in possession while hunting over the bait station.

(8) Any person tending a bait station must be listed on the certificate of registration.

**R657-33-14. Use of Bait.**

(1)(a) A person who has obtained a limited entry bear archery permit may use archery tackle only, even when hunting bear away from the bait station.

(b) A person may establish or use no more than two bait stations. The bait station(s) may be used during both open seasons.

(c) Bear lured to a bait station may not be taken with any firearm or the use of dogs.

(d) Bait may not be contained in or include any metal, glass, porcelain, plastic, cardboard, or paper.

(e) The bait station must be marked with a sign provided by the division and posted within 10 feet of the bait.

(2)(a) Bait may be placed only in areas open to hunting and only during the open seasons.

(b) All materials used as bait must be removed within 72 hours after the close of the season or within 72 hours after the person or persons, who are registered for that bait station harvest a bear.

(3) A person may use nongame fish as bait, except those listed as prohibited in Rule R657-13 and the proclamation of the Wildlife Board for Taking Fish and Crayfish. No other species of protected wildlife may be used as bait.

(4)(a) Domestic livestock or its parts, including processed meat scraps, may be used as bait.

(b) A person using domestic livestock or their parts for bait must have in possession:

(i) a certificate from a licensed veterinarian certifying that the domestic livestock or their parts does not have a contagious disease, and stating the cause and date of death; and

(ii) a certificate of brand inspection or other proof of ownership or legal possession.

(5) Bait may not be placed within:

(a) 100 yards of water or a public road or designated trail; or

(b) 1/2 mile of any permanent dwelling or campground.

(6) Violations of this rule and the proclamation of the Wildlife Board for taking and pursuing bear concerning baiting on federal lands may be a violation of federal regulations and prosecuted under federal law.

**R657-33-15. Tagging Requirements.**

(1) The carcass of a bear must be tagged in accordance with Section 23-20-30.

(2) The carcass of a bear must be tagged with a temporary possession tag before the carcass is moved from or the hunter leaves the site of kill.

(3) A person may not hunt or pursue bear after the notches have been removed from the tag or the tag has been detached from the permit.

(4) The temporary possession tag:

(a) must remain attached to the pelt or unskinned carcass until the permanent possession tag is attached; and

(b) is only valid for 48 hours after the date of kill.

(5) A person may not possess a bear pelt or unskinned carcass without a valid permanent possession tag affixed to the pelt or unskinned carcass. This provision does not apply to a person in possession of a properly tagged carcass or pelt within 48 hours after the kill, provided the person was issued and is in possession of a valid permit.

**R657-33-16. Evidence of Sex and Age.**

(1) Evidence of sex must remain attached to the carcass or pelt of each bear until a permanent tag has been attached by the division.

(2) The pelt and skull must be presented to the division in

an unfrozen condition to allow the division to gather management data.

(3) The division may seize any pelt not accompanied by its skull.

**R657-33-17. Permanent Tag.**

(1) Each bear must be taken by the permit holder to a conservation officer or division office within 48 hours after the date of kill to have a permanent possession tag affixed to the pelt or unskinned carcass.

(2) A person may not possess a green pelt after the 48-hour check-in period, ship a green pelt out of Utah, or present a green pelt to a taxidermist if the green pelt does not have a permanent possession tag attached.

**R657-33-18. Transporting Bear.**

Bear that have been legally taken may be transported by the permit holder provided the bear is properly tagged and the permittee possesses a valid permit.

**R657-33-19. Exporting Bear from Utah.**

(1) A person may export a legally taken bear or its parts if that person has a valid license and permit and the bear is properly tagged with a permanent possession tag.

(2) A person may not ship or cause to be shipped from Utah, a bear pelt without first obtaining a shipping permit issued by an authorized division representative.

**R657-33-20. Donating.**

(1) A person may donate protected wildlife or their parts to another person in accordance with Section 23-20-9.

(2) A written statement of donation must be kept with the protected wildlife or parts showing:

(a) the number and species of protected wildlife or parts donated;

(b) the date of donation;

(c) the license or permit number of the donor and the permanent possession tag number; and

(d) the signature of the donor.

(3) A green pelt of any bear donated to another person must have a permanent possession tag affixed.

(4) The written statement of donation must be retained with the pelt.

**R657-33-21. Purchasing or Selling.**

(1) Legally obtained tanned bear hides may be purchased or sold.

(2) A person may not purchase, sell, offer for sale or barter a gall bladder, tooth, claw, paw or skull of any bear.

**R657-33-22. Waste of Wildlife.**

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts in accordance with Section 23-20-8.

(2) The skinned carcass of a bear may be left in the field and does not constitute waste of wildlife, however, the division recommends that hunters remove the carcass from the field.

**R657-33-23. Livestock Depredation.**

(1) If a bear is harassing, chasing, disturbing, harming, attacking or killing livestock, or has committed such an act within the past 72 hours:

(a) in depredation cases, the livestock owner, an immediate family member or an employee of the owner on a regular payroll, and not hired specifically to take bear, may kill the bear;

(b) a landowner or livestock owner may notify the division of the depredation or human health and safety concerns, which shall authorize a local hunter to take the offending bear or notify a Wildlife Services specialist, supervised by the USDA Wildlife Program; or

(c) the livestock owner may notify a Wildlife Services specialist of the depredation who may take the depredating bear.

(2) Depredating bear may be taken at any time by a Wildlife Services specialist while acting in the performance of the person's assigned duties and in accordance with procedures approved by the division.

(3) A depredating bear may be taken by those persons authorized in Subsection (1)(a) with:

(a) any weapon authorized for taking bear; or

(b) with the use of snares only with written authorization from the director of the Division and subject to all the conditions and restrictions set out in the written authorization.

(i) The option in Subsection (3)(b) may only be authorized in the case of a chronic depredation situation where numerous livestock have been killed by a depredating bear and must be verified by Wildlife Services or Division personnel.

(4)(a) Any bear taken pursuant to this section must be delivered to a division office or employee within 72 hours.

(b) A bear that is killed in accordance with Subsection (1)(a) shall remain the property of the state, except the division may sell a bear damage permit to a person who has killed a depredating bear if that person wishes to maintain possession of the bear.

(c) A person may acquire only one bear annually.

(5)(a) Hunters interested in taking depredating bear as provided in Subsection (1)(b) may contact the division.

(b) Hunters will be contacted by the division to take depredating bear as needed.

**R657-33-24. Questionnaire.**

Each permittee who receives a questionnaire should return the questionnaire to the division regardless of success. Returning the questionnaire helps the division evaluate population trends, harvest success and other valuable information.

**R657-33-25. Taking Bear.**

(1) A person may take only one bear during the season and from the limited entry area specified on the permit.

(2)(a) A person may not take or pursue a female bear with cubs.

(b) Any bear, except a cub or a sow accompanied by cubs, may be taken during the prescribed seasons.

(3) Limited entry permits may be obtained by following the application procedures provided in this rule and the proclamation of the Wildlife Board for taking and pursuing bear.

(4)(a) A mandatory orientation course is required for hunters who draw a permit to hunt black bear.

(b) Permits for bear hunts will be distributed to successful applicants upon completion of the orientation course.

(5) Season dates, closed areas and limited entry permit areas are published in the proclamation of the Wildlife Board for taking and pursuing bear.

**R657-33-26. Bear Pursuit.**

(1) Bear may be pursued only by persons who have obtained a bear pursuit permit. The bear pursuit permit does not allow a person to kill a bear.

(2) Pursuit permits may be obtained at Division offices and through participating online license agents.

(3) A person may not:

(a) take or pursue a female bear with cubs;

(b) repeatedly pursue, chase, tree, corner or hold at bay the same bear during the same day; or

(c) possess a firearm or any device that could be used to kill a bear while pursuing bear.

(i) The weapon restrictions set forth in Subsection (c) do

not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing or attempting to utilize the concealed weapon to injure or kill bear.

(4) If eligible, a person who has obtained a bear pursuit permit may also obtain a limited entry bear permit.

(5) When dogs are used to take a bear and there is not an open pursuit season, the owner and handler of the dogs must have a valid pursuit permit and be accompanied by a licensed hunter as provided in Section R657-33-12.

(6) Season dates, closed areas and bear pursuit permit areas are published in the proclamation of the Wildlife Board for taking and pursuing bear.

**R657-33-27. General Application Information.**

(1) A person may not apply for or obtain more than one bear permit within the same calendar year, except as provided in Subsection R657-33-27(2).

(2) Limited entry bear permits are valid only for the hunt unit and for the specified season designated on the permit.

**R657-33-28. Waiting Period.**

(1) Any person who purchases a permit valid for the current season, may not apply for a permit for a period of two years.

(2) Any person who draws a permit for the current season, may not apply for a permit for a period of two years.

**R657-33-29. Application Procedure.**

(1) Applications are available from license agents and division offices.

(2)(a) Group applications are not accepted. A person may not apply more than once annually.

(b) Applicants may select up to three hunt unit choices when applying for limited entry bear permits. Hunt unit choices must be listed in order of preference.

(c) Applicants must specify on the application whether they want a limited entry bear permit or a limited entry bear archery permit.

(i) The application may be rejected if the applicant does not specify either a limited entry bear permit or limited entry bear archery permit.

(ii) Any person obtaining a limited entry bear archery permit must also obtain a certificate of registration if intending to use bait as provided in Section R657-33-14.

(3)(a) Applications must be mailed by the date prescribed in the proclamation of the Wildlife Board for taking and pursing bear. Applications filled out incorrectly or received later than the date prescribed in the bear proclamation may be rejected.

(b) If an error is found on an application, the applicant may be contacted for correction.

(c) The opportunity to correct an error is not guaranteed.

(4)(a) Late applications received by the date published in the proclamation of the Wildlife Board for taking bear will not be considered in the drawing, but will be processed for the purpose of entering data into the division's draw database to provide:

(i) future preprinted applications;

(ii) notification by mail of late application and other draw opportunities; or

(iii) re-evaluation of division or third-party errors.

(b) The handling fee will be used to process the late application. Any permit fees submitted with the application will be refunded.

(c) Late applications received after the date published in the proclamation of the Wildlife Board for taking bear, will not be processed and will be returned.

(5) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.

(6) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Section R657-33-32(6)(b).

(7) To apply for a resident permit, a person must establish residency at the time of purchase.

(8) The posting date of the drawing shall be considered the purchase date of a permit.

**R657-33-30. Fees.**

(1) Each application must include:

(a) the permit fee; and

(b) the nonrefundable handling fee.

(2) Fees must be paid in accordance with Rule R657-42-8.

**R657-33-31. Drawings and Remaining Permits.**

(1) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

(2) Applicants will be notified by mail or e-mail of draw results by the date published in the proclamation of the Wildlife Board for taking and pursuing bear. The drawing results will be posted on the Division's Internet address.

(3) Permits remaining after the drawing will be sold on a first-come, first-served basis beginning and ending on the dates provided in the proclamation of the Wildlife Board for taking and pursuing bear. These permits may be purchased by either residents or nonresidents.

(4) Waiting periods do not apply to the purchase of remaining permits. However, waiting periods are incurred as a result of purchasing remaining permits.

(5)(a) A person may withdraw their application for the bear drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking and pursuing bear.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the address published in the proclamation of the Wildlife Board for taking bear.

(6)(a) An applicant may amend their application for the limited entry bear permit drawing by requesting such in writing by the initial application deadline.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the address published in the proclamation of the Wildlife Board for taking bear.

(c) The applicant must identify in their statement the requested amendment to their application.

(d) If the application is amended, and that amendment results in an error, the division reserves the right to reject the entire application.

(8) Handling fees will not be refunded.

**R657-33-32. Bonus Points.**

(1) A bonus point is awarded for:

(a) a valid unsuccessful application in the drawing; or

(b) a valid application when applying for a bonus point in the bear drawing.

(2)(a) A person may apply for one bear bonus point each year, except a person may not apply in the drawing for both a limited entry bear permit and a bear bonus point in the same year.

(b) A person may not apply for a bonus point if that person

is ineligible to apply for a permit.

(c) Group applications will not be accepted when applying for bonus points.

(3)(a) Each applicant receives a random drawing number for:

(i) the current valid limited entry bear application; and

(ii) each bonus point accrued.

(b) The applicant will retain the lowest random number for the drawing.

(4)(a) Fifty percent of the permits for each hunt unit will be reserved for applicants with bonus points.

(b) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points.

(c) If reserved permits remain, the reserved permits will be designated by random number to eligible applicants with the next greatest number of bonus points.

(d) The procedure in Subsection (c) will continue until all reserved permits have been issued or no applications for that hunt unit remain.

(e) Any reserved permits remaining and any applicants who were not selected for reserved permits will be returned to the drawing.

(5) Bonus points are forfeited if a person obtains a limited entry bear permit except as provided in Subsection (6).

(6) Bonus points are not forfeited if a person is successful in obtaining a Conservation Permit.

(7) Bonus points are not transferable.

(8)(a) Bonus points are tracked using Social Security numbers or Division-issued hunter identification numbers.

(b) The Division shall retain paper copies of applications for three years prior to the current bear drawing for the purpose of researching bonus point records.

(c) The Division shall retain electronic copies of applications from 1996 to the current bear drawing for the purpose of researching bonus point records.

(d) Any requests for researching an applicant's bonus point records must be requested within the time frames provided in Subsection (b) and (c).

(e) Any bonus points on the Division's records shall not be researched beyond the time frames provided in Subsection (b) and (c).

(f) The Division may eliminate any bonus points earned that are obtained by fraud or misrepresentation.

**R657-33-33. Refunds.**

(1) Unsuccessful applicants, who applied in the drawing and who applied with a check or money order, will receive a refund in April.

(2) Unsuccessful applicants, who applied with a credit or debit card, will not be charged for a permit.

(3) The handling fees are nonrefundable.

**R657-33-34. Duplicate License and Permit.**

(1) Whenever any unexpired license, permit, tag or certificate of registration is destroyed, lost or stolen, a person may obtain a duplicate from a division office, for five dollars or half of the price of the original license, or permit, whichever is less.

(2) The division may waive the fee for a duplicate unexpired license, permit, tag or certificate of registration provided the person did not receive the original license, permit, tag or certificate of registration.

**KEY: wildlife, bear, game laws**
**March 6, 2006 23-14-18**
**Notice of Continuation December 31, 2002 23-14-19**
**23-13-2**

**R708. Public Safety, Driver License.**
**R708-6. Renewal By Mail.**
**R708-6-1. Purpose.**

Effective October 1, 1991, the Utah Driver License Division will conduct a license Renewal-By-Mail Program.

**R708-6-2. Authority.**

This rule is authorized by Section 53-3-214.

**R708-6-3. Provisions.**

(1) Drivers eligible for the license Renewal-By-Mail program may not have more than four traffic violations or any reckless driving convictions on their driving record during the five years prior to the date of expiration.

(a) During the same five year period, the driver's record may not contain suspension(s), revocation(s), or medical impairment which may represent a hazard to public safety.

(2) Drivers that have changed their name or do not have the appropriate restrictions as per (Section 53-3-208) on their present driver's license are not eligible to renew through the mail.

(3) The Driver License Division will contact eligible drivers by mail approximately 90 days prior to the expiration of their driver licenses.

(a) Drivers will be mailed an application form, medical questionnaire, and general instructions.

(b) Drivers renewing 6 months prior to their 65th birthday, or who are currently over 65 years old, must furnish a current Eye Examination Form or have an eye exam at a Driver License Examining Office before renewing through the mail.

(c) Drivers will mail in the completed application and appropriate fee to the Driver License Division, after which the division will mail out a renewal sticker to be placed on the back of the driver's present license.

(4) A driver whose current license has been renewed by mail, may not renew by mail in the following renewal cycle. Drivers may renew by mail only once in a ten year period.

(5) Drivers whose driving record would allow them to renew by mail but whose current license was previously renewed through the mail, will be sent a notification that must be taken to a Driver License Examination Office to complete the renewal process.

(6) It is the responsibility of drivers to insure that their present licenses are renewed before expiration. If a Renewal-By-Mail application is received after the expiration of a license, it will be returned to the applicant and they will be required to appear at a Driver License Examination Office.

(7) Commercial drivers under the "Commercial Driver License Act" do not qualify for the Renewal-by-Mail program as per Subsection 53-3-214(3)(b).

**KEY: driver licenses**
**1992** **53-3-214**
**Notice of Continuation March 23, 2006**

**R708. Public Safety, Driver License.**
**R708-16. Pedestrian Vehicle Rule.**
**R708-16-1. Authority.**

(1) This rule is authorized by Section 41-6a-1011.

**R708-16-2. Purpose.**

(1) To promote and regulate safety in the use of a pedestrian vehicle, for both the individual using the pedestrian vehicle, and any person or property around, or about, the area being used by a pedestrian vehicle. Specific conditions may be required prior to giving authorization to operate a pedestrian vehicle.

(2) To require a person to apply for authority to operate a pedestrian vehicle for any such vehicle with an excess of .5 brake horsepower capable of developing a speed of more than 8 mph and being used in an area other than a sidewalk or places where pedestrians are allowed.

(3) To review on an individual basis each application for authorization to operate a pedestrian vehicle according to need of the physically disabled person and pursuant to and in accordance with applicable rules adopted by the commissioner for the Department of Public Safety.

**R708-16-3. Application and Requirements for Authorization to Operate a Pedestrian Vehicle.**

(1) Application for authorization to operate a pedestrian vehicle shall be made at any field office of Driver License Division and shall require the following:

(a) Name, age and D.O.B., sex, address, description of disability.

(b) Type of pedestrian vehicle to be used which must be approved on the basis of the disability; i.e., golf-cart type vehicle, three-wheel vehicle,four-wheel vehicle.

(c) Statement of intended use of the pedestrian vehicle. Intended use should not create an undue safety hazard.

(d) A functional ability evaluation and a medical opinion that physical disability would not affect the safe operation of the pedestrian vehicle.

(e) All applicants must sign a waiver accepting all responsibility for being allowed to operate a pedestrian vehicle.

(f) Any physically disabled person, under the age of 18, must have parental or guardian approval and sign a waiver accepting responsibility for being allowed to operate a pedestrian vehicle.

(g) Each individual making application for use of a pedestrian vehicle must demonstrate his/her ability to safely operate the pedestrian vehicle.

(2) Authorization to operate a pedestrian vehicle shall be in the form of a certificate issued by the department.

(3) Operation of pedestrian vehicles must comply with all pedestrian, bicycle, or vehicle traffic laws as applicable to the type of pedestrian vehicle used. This includes lighting requirements if used during hours of darkness.

(4) The department may inspect intended routes and uses of vehicles and apply restrictions on use of pedestrian vehicles as may be necessary for the preservation of public safety.

(5) Authorization to operate a pedestrian vehicle must be reviewed every five years.

**R708-16-4. Special Requirements for Operation of a Pedestrian Vehicle.**

(1) Passengers are prohibited on pedestrian vehicles except that one passenger, as designated by the department and indicated on the pedestrian vehicle authorization document, may be allowed if inclusion of the passenger does not create a negative effect on the safe operation of the pedestrian vehicle, and if the pedestrian vehicle is designed to accommodate a passenger.

(2) Every pedestrian vehicle must display a Standard International "Handicapped" emblem inset on a standard slow moving vehicle designation.

(3) The department may require other markings or equipment as may be determined on an individual basis.

**R708-16-5. Fee.**

(1) The department may charge a $5.00 fee to cover administrative costs of issuing a permit to operate a pedestrian vehicle.

(2) All fees collected for permits shall remain in the department as a dedicated credit.

**R708-16-6. Denial, Suspension, and Revocation of Authorization to Operate a Pedestrian Vehicle.**

(1) Authorization to operate a pedestrian vehicle may be denied, suspended or revoked when, in the opinion of the department, it may not be in the best interest of public safety to issue or continue such authorization.

**R708-16-7. Adjudicative Proceedings.**

(1) All adjudicative proceedings including but not limited to the application for and denial, suspension or revocation of authorization to operate a pedestrian vehicle, shall be governed by the adjudicative proceedings set forth in the rule identified as R708-17. The adjudicative proceedings set forth in R708-17 are hereby incorporated into this rule by this reference.

**KEY: traffic regulations**
**September 19, 1996 41-6a-1011**
**Notice of Continuation March 23, 2006**

**R708. Public Safety, Driver License.**
**R708-18. Regulatory and Administrative Fees.**
**R708-18-1. Authority.**

This rule is authorized by Section 53-3-104(2), 53-3-105, 53-3-808, 53-3-905 and Subsection 63-38-3(2).

**R708-18-2. Definitions as used in this chapter.**

(1) "Accident Report" means an officer's report of an accident as described under Subsection 41-6a-402.

(2) "Accompanying data" means supplemental accident reports or addenda there to.

(3) "Driving Record", more commonly known as a Driver License Record (DLR) means a computer generated compilation of particular elements contained in the Driver License Division electronic database, consisting of:

(a) Driver's name;

(b) Driver's license or Driving Privilege Card number;

(c) Driver's date of birth;

(d) Driver's zip code;

(e) Member of military;

(f) Reportable arrests and convictions;

(g) Reportable notices from courts indicating failure to comply with terms of a citation or failure to comply with terms set by the court, pursuant to UCA 53-3-221(2) and 53-3-221(3).

(h) Reportable department actions;

(i) Driving Privilege Status;

(j) Driver license or Driving Privilege Card issue/expiration dates; and

(k) Driver license or Driving Privilege Card class/type/endorsement.

(4) Driving Record - "Certified Copy" means an authenticated Driving Record and/or accident report and/or accompanying data prepared under the seal of the division. (Other records or information may be included only under order or rule of the court.)

(5) "Photocopies" means the mechanical reproduction of an original digitized or filmed document.

(6) "Recording" means a verbatim magnetic tape or digitized recording of sworn, or unsworn testimony, or information.

**R708-18-3. Fees.**

The Driver License Division charges user fees for some services. A schedule of these fees is available for public examination at any Driver License office location. These fees are set by the legislature in Section 53-3-105, 808, and 905, and in the annual appropriations act as recorded in "The 'Laws of Utah' as passed at the General Session of the Legislature".

**R708-18-4. Exemptions.**

The fees established may not be charged to any municipal, county, state or federal agency as defined in Subsection 53-3-105(33)(b).

**R708-18-5. Records.**

All fees charged shall be receipted and recorded under normal accounting principles established by the Driver License Division.

**KEY: driver education, licensing, fees**
**October 27, 2005** **63-38-3(2)**
**Notice of Continuation March 20, 2006** **41-6a-402**
**53-3-104(2)**
**53-3-105**
**53-3-808**
**53-3-905**
**53-3-221(2)**
**53-3-221(3)**

**R708. Public Safety, Driver License.**
**R708-19. Automobile No-Fault Self-Insurance.**
**R708-19-1. Authority.**

This rule is authorized by Section 41-12A-201.

**R708-19-2. Purpose.**

The purpose of this rule is to set forth the methods approved by the department for providing the security required by Sections 41-12A-301 and 407. This rule is not intended to exclude any other methods of establishing equivalent security which may be approved by the department.

**R708-19-3. Amount of Deposit, Bond, or Letter of Credit.**

The Department requires an insurer to submit a certificate of self-funded coverage by depositing cash, a bond or letter of credit with the Department as per Section 41-12a-407.

**R708-19-4. Approved Methods.**

(1) The following methods are approved by the department for meeting the requirements of providing equivalent security.

(a) Depositing with the department an amount in cash at least equal to minimum amounts specified hereinafter. The cash shall be held on deposit in accordance with Section 41-12A-406 by the Utah State Treasurer to satisfy approved claims and any executions on any judgment issued against such person making said deposit for damages or benefits provided under the Financial Responsibility of Motor Vehicle Owners and Operators Act. The deposit shall not be subject to attachment or executions except as shall arise from the enforcement of the Act.

(b) Posting with the department a bond, on a form approved by the department from a surety company authorized to do business in this state, providing for payment at least equal to minimum amounts specified hereinafter to assure payment of damages and benefits imposed by the Financial Responsibility of Motor Vehicle Owners and Operators Act.

(c) Delivering to the department a letter of credit, which is irrevocable as to beneficiary for one year, which covers the same amounts specified hereinafter to assure payment of damages and benefits imposed by the Financial Responsibility of Motor Vehicle Owners and Operators Act (41-12a-101).

**R708-19-5. General Rules.**

(1) Each owner providing the equivalent security shall:

(a) Complete and have notarized and file an application obtained from and approved by the department.

(b) File an application for approval each year.

(c) Submit a detailed report to the department within 15 days after each accident for which benefits are claimed under this act, and

(d) Be subject to the same requirements and entitled to the same privileges as provided for insurance companies.

(e) Maintain a fleet of not less than 25 vehicles.

(2) In lieu of the foregoing, an owner may supply a certified copy of the Decision to Grant Self-Insurance from the Interstate Commerce Commission.

**KEY: self insurance plans**

| | |
|---|---|
| **1992** | **41-12A-201** |
| **Notice of Continuation March 23, 2006** | **41-12A-406** |
| | **41-12A-407** |

**R708. Public Safety, Driver License.**
**R708-20. Motor Vehicle Accident Prevention Course Standards.**
**R708-20-1. Authority and Purpose.**

Section 31A-19a-211 provides for an appropriate reduction of automobile insurance premiums for persons 55 years of age or older who successfully complete a motor vehicle accident prevention course.

The purpose of this rule is to establish procedures and standards for agencies or organizations who may conduct motor vehicle accident prevention courses as prescribed by this section.

**R708-20-2. Definitions.**

"Course" means a motor vehicle accident prevention course.

"Department" means the Department of Public Safety.

"Instructor" means an individual who has been approved by the course sponsor for the purpose of conducting an approved motor vehicle accident prevention course.

"Sponsor" means an organization or agency that conducts a motor vehicle accident prevention course.

**R708-20-3. Motor Vehicle Accident Course Application For Approval.**

Each sponsor who proposes to offer a course to the public for insurance reduction must submit a completed application to the department for approval on a form approved by the department.

A sponsor may file an application for approval at any time.

In order to be approved, a sponsor must comply with the following requirements:

1. The course must provide for a minimum of four hours classroom instruction which must be completed within a 30-day period from the date of enrollment.

2. The course curriculum shall include, but is not limited to, the following subjects:

a. How impairment of visual and audio perception affects driving performance and how to compensate for that impairment.

b. The effects of fatigue, medications, and alcohol on driving performance, when experienced alone or in combination, and precautionary measures to prevent or offset ill effects.

c. Updates on rules of the road and equipment, including but not limited to, safety belts and safe, efficient driving techniques under present day road and traffic conditions.

d. How to plan travel time and select routes for safety and efficiency.

e. How to make crucial decisions in dangerous, hazardous, and unforeseen situations.

f. The effects of physiological and physical problems that increase with age, their impact on driving, and how to compensate for these impairments, if possible.

3. Provide the department with all materials, manuals, and curriculum used in the course.

4. Provide an instructor preparation course to all instructor candidates. Only instructors who have completed this course may be employed by the sponsor.

5. Provide research documentation showing evidence of the effectiveness of the course. In the case of a course being new and having no documentation, evidence shall be submitted to the department when it becomes available.

6. Provide an address and telephone number where the course will be given and which may be disseminated to the public.

7. Designate an individual as representative of the course sponsor who is responsible for liaison with the department and include the representative's address and telephone number.

Course approval shall be valid for one year. At the end of one year a sponsor may make a renewal application on a form approved by the department. When approval is given, a certificate will be issued by the department to the sponsor upon approval of the course.

**R708-20-4. Withdrawal or Denial of Approval.**

Approval to conduct a course may be denied or withdrawn if it is determined by the department that a sponsor has failed to comply with any provisions of Section 31A-19a-211 or this rule.

**R708-20-5. Monitoring of Course.**

The sponsor will allow and cooperate with the department's monitoring of any curriculum or course instruction conducted for insurance reduction including the scheduling of on-site visits by department representatives to perform audits of course records, course curriculum, course instruction and the inspection of classroom facilities, in order to assure compliance of standards as prescribed by this rule.

**KEY: motor vehicles, accident prevention**
**January 2, 1997 31A-19a-211**
**Notice of Continuation March 21, 2006**

**R708. Public Safety, Driver License.**
**R708-33. Electric Assisted Bicycle Headgear.**
**R708-33-1. Authority.**

(1) This rule is promulgated in accordance with the electric assisted bicycle operators headgear specifications and standards as required by Subsection 41-6a-1505.

**R708-33-2. Purpose.**

(1) The purpose of this rule is to establish the specifications and standards for protective headgear while riding electric assisted bicycles.

**R708-33-3. Operator Headgear Requirement for Electric Assisted Bicycles.**

(1) In accordance with Subsection 41-6a-1505, all operators of electric assisted bicycles are required to wear protective headgear. The protective headgear must meet the specifications and standards as listed in Section R708-33-4.

**R708-33-4. Headgear Specifications and Standards for Operators of Electric Assisted Bicycles.**

(1) The standards and specifications as contained in the publication entitled "1995 Standard For Protective Headgear" as published by Snell Memorial Foundation, INC., 7 Flowerfield, Suite 28, St. James, New York 11780-1514, 1995 edition, are hereby incorporated by reference.

**R708-33-5. Copies Are Retained.**

(1) Copies of the incorporated-by-reference document, as listed above, is available for review at two locations: The Division of Administrative Rules, 3120 State Office Building, Salt Lake City, Utah 84114; and at the Utah Department of Public Safety, Driver License Division, 4501 South 2700 West, Salt Lake City, Utah 84119.

**KEY: electric assisted bicycle headgear**
**June 21, 1996 41-6a-1505**
**Notice of Continuation March 17, 2006**

**R708. Public Safety, Driver License.**
**R708-38. Anatomical Gift.**
**R708-38-1. Purpose.**

The purpose of this rule is to define the process for authenticating an applicant's intent to make an anatomical gift (organ donation) when applying for a driver license or identification card excluding renewal by mail.

**R708-38-2. Authority.**

This rule is authorized by Subsection 53-3-205(16)(a).

**R708-38-3. Process.**

An applicant who desires to make an anatomical gift shall authenticate their indication of intent by:

(a) applying for a driver license or identification card;

(b) marking the appropriate place on the application form indicating a desire to make an anatomical gift;

(c) signing the application in person or by some other electronic means affirming that the information entered is true and correct; and

(d) submitting the completed application at a driver license office or submitting the completed application by electronic means when available.

**KEY: anatomical gift**

| | |
|---|---|
| **July 3, 2001** | **53-3-205** |
| **Notice of Continuation March 20, 2006** | **26-28-2** |
| | **26-28-6** |

**R710. Public Safety, Fire Marshal.**
**R710-6. Liquefied Petroleum Gas Rules.**
**R710-6-1. Adoption, Title, Purpose and Scope.**

Pursuant to Title 53, Chapter 7, Section 305, Utah State Code Annotated 1953, the Liquefied Petroleum Gas (LPG) Board adopts minimum rules to provide regulation to those who distribute, transfer, dispense or install LP Gas and/or its appliances in the State of Utah.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 58, LP Gas Code, 2004 edition, except as amended by provisions listed in R710-6-8, et seq.

1.2 National Fire Protection Association (NFPA), Standard 54, National Fuel Gas Code, 2002 edition, except as amended by provisions listed in R710-6-8, et seq.

1.3 National Fire Protection Association (NFPA), Standard 1192, Standard on Recreational Vehicles, 2005 Edition, except as amended by provisions listed in R710-6-8, et seq.

1.4 International Fire Code (IFC), Chapter 38, 2003 edition, as published by the International Code Council, Inc. (ICC), except as amended by provisions listed in R710-6-8, et seq.

1.5 A copy of the above codes are on file with the Division of Administrative Rules, and the State Fire Marshal's Office. The definitions contained in the afore referenced codes shall also pertain to these rules.

1.6 Title.

These rules shall be known as "Rules Governing LPG Operations in the State of Utah" and may be cited as such, and will be hereinafter referred to as "these rules".

1.7 Validity.

If any article, section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the LPG Board such decision shall not affect the validity of the remaining portion of these rules.

1.8 Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes or standards as adopted, the more restrictive requirement shall govern, as determined by the enforcing authority.

**R710-6-2. Definitions.**

2.1 "Board" means the Liquefied Petroleum Gas Board.

2.2 "Concern" means a person, firm, corporation, partnership, or association, licensed by the Board.

2.3 "Dispensing System" means equipment in which LP Gas is transferred from one container to another in liquid form.

2.4 "Division" means the Division of the State Fire Marshal.

2.5 "Enforcing Authority" means the division, the municipal or county fire department, other fire prevention agency acting within its respective fire prevention jurisdiction, or the building official of any city or county.

2.6 "ICC" means International Code Council, Inc.

2.7 "IFC" means International Fire Code.

2.8 "License" means a written document issued by the Division authorizing a concern to be engaged in an LPG business.

2.9 "LPG" means Liquefied Petroleum Gas.

2.10 "LPG Certificate" means a written document issued by the Division to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

2.11 "NFPA" means the National Fire Protection Association.

2.12 "Possessory Rights" means the right to possess LPG, but excludes broker trading or selling.

2.13 "Public Place" means a highway, street, alley or other parcel of land, essentially unobstructed, which is deeded, dedicated or otherwise appropriated to the public for public use, and where the public exists, travels, traverses or is likely to frequent.

2.14 "Qualified Instructor" means a person holding a valid LPG certificate in the area in which he is instructing.

2.15 "UCA" means Utah State Code Annotated 1953 as amended.

**R710-6-3. Licensing.**

3.1 Type of license.

3.1.1 Class I: A licensed dealer who is engaged in the business of installing gas appliances or systems for the use of LPG and who sells, fills, refills, delivers, or is permitted to deliver any LPG.

3.1.2 Class II: A business engaged in the sale, transportation, and exchange of cylinders, but not transporting or transferring gas in liquid.

3.1.3 Class III: A business not engaged in the sale of LPG, but engaged in the sale and installation of gas appliances, or LPG systems.

3.1.4 Class IV: Those businesses listed below:

3.1.4.1 Dispensers

3.1.4.2 Sale of containers greater than 96 pounds water capacity.

3.1.4.3 Other LPG businesses not listed above.

3.2 Signature on Application.

The application shall be signed by an authorized representative of the applicant. If the application is made by a partnership, it shall be signed by at least one partner. If the application is made by a corporation or association other than a partnership, it shall be signed by the principal officers, or authorized agents.

3.3 Issuance.

Following receipt of the properly completed application, an inspection, completion of all inspection requirements, and compliance with the provision of the statute and these rules, the Division shall issue a license.

3.4 Original, Valid Date.

Original licenses shall be valid for one year from the date of application. Thereafter, each license shall be renewed annually and renewals thereof shall be valid for one year from issuance.

3.5 Renewal.

Application for renewal shall be made on forms provided by the SFM.

3.6 Refusal to Renew.

The Board may refuse to renew any license in the same manner, and for any reason, that they are authorized, pursuant to Article 5 of these rules to deny a license. The applicant shall, upon such refusal, have the same rights as are granted by Article 5 of this article to an applicant for a license which has been denied by the Board.

3.7 Change of Address.

Every licensee shall notify the Division, in writing, within thirty (30) days of any change of his address.

3.8 Under Another Name.

No licensee shall conduct his licensed business under a name other than the name or names which appears on his license.

3.9 List of Licensed Concerns.

3.9.1 The Division shall make available, upon request and without cost, to the Enforcing Authority, the name, address, and license number of each concern that is licensed pursuant to these rules.

3.9.2 Upon request, single copies of such list shall be furnished, without cost, to a licensed concern.

3.10 Inspection.

The holder of any license shall submit such license for inspection upon request of the Division or the Enforcing Authority.

3.11 Notification and LPG Certificate.

Every licensed concern shall, within twenty (20) days of employment, and within twenty (20) days of termination of any employee, report to the Division, the name, address, and LPG certificate number, if any, of every person performing any act requiring an LPG certificate for such licensed concern.

3.12 Posting.

Every license issued pursuant to the provisions of these rules shall be posted in a conspicuous place on the premises of the licensed location.

3.13 Duplicate License.

A duplicate license may be issued by the Division to replace any previously issued license, which has been lost or destroyed, upon the submission of a written statement from the licensee to the Division. Such statement shall attest to the fact that the license has been lost or destroyed. If the original license is found it shall be surrendered to Division within 15 days.

3.14 Registration Number.

Every license shall be identified by a number, delineated as P-(number).

3.15 Accidents, Reporting.

Any accident where a licensee and LPG are involved must be reported to the Board in writing by the affected licensee within 3 days upon receipt of information of the accident. The report must contain any pertinent information such as the location, names of persons involved, cause, contributing factors, and the type of accident. If death or serious injury of person(s), or property damage of $5000.00 or more results from the accident, the report must be made immediately by telephone and followed by a written report.

3.16 Board investigation of accidents.

At their discretion, the Board will investigate, or direct the Division to investigate, all serious accidents as defined in Subsection 3.15.

**R710-6-4. LP Gas Certificates.**

4.1 Application.

Application for an LPG certificate shall be made in writing to the Division. The application shall be signed by the applicant.

4.2 Examination.

Every person who performs any act or acts within the scope of a license issued under these rules, shall pass an initial examination in accordance with the provisions of this article.

4.3 Types of Initial Examinations:

4.3.1 Carburetion

4.3.2 Dispenser

4.3.3 HVAC/Plumber

4.3.4 Recreational Vehicle Service

4.3.5 Serviceman

4.3.6 Transportation and Delivery

4.4 Initial Examinations.

4.4.1 The initial examination shall include an open book written test of the applicant's knowledge of the work to be performed by the applicant. The written examination questions shall be taken from the adopted statute, administrative rules, NFPA 54, and NFPA 58.

4.4.2 The initial examination shall also include a practical or actual demonstration of some selected aspects of the job to be performed by the applicant.

4.4.3 To successfully complete the written and practical initial examinations, the applicant must obtain a minimum grade of seventy percent (70%) in each portion of the examination taken. Each portion of the examination will be graded separately. Failure of any one portion of the examination will not delete the entire test.

4.4.4 Examinations may be given at various field locations as deemed necessary by the Division. Appointments for field examinations are required.

4.4.5 As required in Sections 4.2 and 4.3, those applicants that have successfully completed the requirements of the Certified Employee Training Program (CETP), as written by the National Propane Gas Association, and that corresponds to the work to be performed by the applicant, shall have the requirement for initial examination waived, after appropriate documentation is provided to the Division by the applicant.

4.5 Original and Renewal Date.

Original LPG certificates shall be valid for one year from the date of issuance. Thereafter, each LPG certificate shall be renewed annually and renewals thereof shall be valid from for one year from issuance.

4.6 Renewal Date.

Application for renewal shall be made on forms provided by the Division.

4.7 Re-examination.

Every holder of a valid LPG Certificate shall take a re-examination every five years from the date of original certificate issuance, to comply with the provisions of Section 4.3 of these rules as follows:

4.7.1 The re-examination to comply with the provisions of Section 4.3 of these rules shall consist of an open book examination, to be mailed to the certificate holder at least 60 days before the renewal date.

4.7.2 The open book re-examination will consist of questions that focus on changes in the last five years to NFPA 54, NFPA 58, the statute, or the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the Board or Division.

4.7.3 The certificate holder is responsible to complete the re-examination and return it to the Division in sufficient time to renew.

4.7.4 The certificate holder is responsible to return to the Division with the re-examination the correct renewal fees to complete that certificate renewal.

4.8 Refusal to Renew.

The Division may refuse to renew any LPG certificate in the same manner and for any reason that is authorized pursuant to Article 5.

4.9 Inspection.

The holder of a LPG certificate shall submit such certificate for inspection, upon request of the Division or the enforcing authority.

4.10 Type.

4.10.1 Every LPG certificate shall indicate the type of act or acts to be performed and for which the applicant has qualified.

4.10.2 Any person holding a valid LPG certificate shall not be authorized to perform any act unless he is a licensee or is employed by a licensed concern.

4.10.3 It is the responsibility of the LPG certificate holder to insure that the concern they are employed by is licensed under this act.

4.11 Change of Address.

Any change in home address of any holder of a valid LPG certificate shall be reported by the registered person to the Division within thirty (30) days of such change.

4.12 Duplicate.

A duplicate LPG certificate may be issued by the Division to replace any previously issued certificate which has been lost or destroyed upon the submission of a written statement to the Division from the certified person. Such statement shall attest to the certificate having been lost or destroyed. If the original is found, it shall be surrendered to the Division within 15 days.

4.13 Contents of Certificate of Registration.

Every LPG certificate issued shall contain the following information:

4.13.1 The name and address of the applicant.

4.13.2 The physical description of applicant.

4.13.3 The signature of the LP Gas Board Chairman.

4.13.4 The date of issuance.

4.13.5 The expiration date.

4.13.6 Type of service the person is qualified to perform.

4.13.7 Have printed on the card the following: "This certificate is for identification only, and shall not be used for recommendation or advertising".

4.14 Minimum Age.

No LPG certificate shall be issued to any person who is under sixteen (16) years of age.

4.15 Restrictive Use.

4.15.1 No LPG certificate shall constitute authorization for any person to enforce any provisions of these rules.

4.15.2 A LPG certificate may be used for identification purposes only as long as such certificate remains valid and while the holder is employed by a licensed concern.

4.15.3 Regardless of the acts for which the applicant has qualified, the performance of only those acts authorized under the licensed concern employing such applicant shall be permissible.

4.15.4 Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a LPG certificate has qualified shall be permissible by such applicant.

4.16 Right to Contest.

4.16.1 Every person who takes an examination for a LPG certificate shall have the right to contest the validity of individual questions of such examination.

4.16.2 Every contention as to the validity of individual questions of an examination that cannot be reasonably resolved, shall be made in writing to the Division within 48 hours after taking said examination. Contentions shall state the reason for the objection.

4.16.3 The decision as to the action to be taken on the submitted contention shall be by the Board, and such decision shall be final.

4.16.4 The decision made by the Board, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

4.17 Non-Transferable.

LPG Certificates shall not be transferable to another individual. Individual LPG certificates shall be carried by the person to whom issued.

4.18 New Employees.

New employees of a licensed concern may perform the various acts while under the direct supervision of persons holding a valid LPG certificate for a period not to exceed 45 days from the initial date of employment. By the end of such period, new employees shall have taken and passed the required examination. In the event the employee fails the examination, re-examination shall be taken within 30 days. The employee shall remain under the direct supervision of an employee holding a valid LPG certificate, until certified.

4.19 Certificate Identification.

Every LPG certificate shall be identified by a number, delineated as PE-(number). Such number shall not be transferred from one person to another.

**R710-6-5. Adjudicative Proceedings.**

5.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

5.2 The issuance, renewal, or continued validity of a license or LPG certificate may be denied, suspended or revoked by the Division, if the Division finds that the applicant, person employed for, or the person having authority and management of a concern commits any of the following violations:

5.2.1 The person or applicant is not the real person in interest.

5.2.2 The person or applicant provides material misrepresentation or false statement in the application, whether original or renewal.

5.2.3 The person or applicant refuses to allow inspection by the Division or enforcing authority on an annual basis to determine compliance with the provisions of these rules.

5.2.4 The person, applicant, or concern for a license does not have the proper or necessary facilities, including qualified personnel, to conduct the operations for which application is made.

5.2.5 The person or applicant for a LPG certificate does not possess the qualifications of skill or competence to conduct the operations for which application is made. This can also be evidenced by failure to pass the examination and/or practical tests.

5.2.6 The person or applicant refuses to take the examination.

5.2.7 The person or applicant has been convicted of a violation of one or more federal, state or local laws.

5.2.8 The person or applicant has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules.

5.2.9 Any offense of finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the person or applicant were granted a license or certificate of registration.

5.2.10 There are other factors upon which a reasonable and prudent person would rely to determine the suitability of the person or applicant to safely and competently distribute, transfer, dispense or install LP Gas and/or it's appliances.

5.2.11 The person or applicant does not complete the re-examination process by the person or applicants certificate or license expiration date.

5.2.12 The person or applicant fails to pay the license fee, certificate of registration fee, examination fee or other fees as required in Section 6 of these rules.

5.3 A person whose license or certificate of registration is suspended or revoked by the Division shall have an opportunity for a hearing before the LPG Board if requested by that person within 20 days after receiving notice.

5.4 All adjudicative proceedings, other than criminal prosecution, taken by the Enforcing Authority to enforce the Liquefied Petroleum Gas Section, Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

5.5 The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall be the final authority on the suspension or revocation of a license or certificate of registration.

5.6 The Board shall direct the Division to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

5.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

5.8 After a period of three (3) years from the date of revocation, the Board may review the written application of a person whose license or certificate of registration has been revoked.

5.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

**R710-6-6. Fees.**

6.1 Fee Schedule.

6.1.1 License and LPG Certificates (new and renewals):
6.1.1.1 License
6.1.1.1.1 Class I - $450.00
6.1.1.1.2 Class II - $450.00
6.1.1.1.3 Class III - $105.00
6.1.1.1.4 Class IV - $150.00
6.1.1.2 Branch office license - $338.00
6.1.1.3 LPG Certificate - $30.00
6.1.1.4 LPG Certificate (Dispenser--Class B) - $10.00
6.1.1.5 Duplicate - $30.00
6.1.2 Examinations:
6.1.2.1 Initial examination - $20.00
6.1.2.2 Re-examination - $20.00
6.1.2.3 Five year examination - $20.00
6.1.3 Plan Reviews:
6.1.3.1 More than 5000 water gallons of LPG - $90.00
6.1.3.2 5,000 water gallons or less of LPG - $45.00
6.1.4 Special Inspections.
6.1.4.1 Per hour of inspection - $50.00
(charged in half hour increments with part half hours charged as full half hours).
6.1.5 Re-inspection (3rd Inspection or more) - $250.00
6.1.6 Private Container Inspection (More than one container) - $150.00
6.1.7 Private Container Inspection (One container) 75.00
6.2 Payment of Fees.
The required fee shall accompany the application for license or LPG certificate or submission of plans for review.
6.3 Late Renewal Fees.
6.3.1 Any license or LPG certificate not renewed on or before one year from the original date of issuance will be subject to an additional fee equal to 10% of the required fee.
6.3.2 When an LPG certificate has expired for more than one year, an application shall be made for an original certificate as if the application was being taken for the first time. Examinations will be retaken with initial examination fees.

**R710-6-7. Board Procedures.**
7.1 The Board will review the Division and Enforcing Authorities activities since the last meeting, and review and act on license and permit applications, review financial transactions, consider recommendations of the Division, and all other matters brought to the Board.
7.2 The Board may be asked to serve as a review board for items under disagreement.
7.3 Board meetings shall be presided over and conducted by the chairman and in his absence the vice chairman.
7.4 Meetings of the Board shall be conducted in accordance with an agenda, which shall be submitted to the members by the Division, not less than twenty-one (21) days before the regularly scheduled Board meeting.
7.5 The chairman of the Board and Board members shall be entitled to vote on all issues considered by the Board. A Board member who declares a conflict of interest or where a conflict of interest has been determined, shall not vote on that particular issue.
7.6 Public notice of Board meetings shall be made by the Division as prescribed in UCA Section 52-4-6.
7.7 The Division shall provide the Board with a secretary, who shall prepare minutes and shall perform all secretarial duties necessary for the Board to fulfill its responsibility. The minutes of Board meetings shall be completed and sent to Board members at least twenty-one (21) days prior to the scheduled Board meeting.
7.8 The Board may be called upon to interpret codes adopted by the Board.
7.9 The Board Chairman may assign member(s) various assignments as required to aid in the promotion of safety, health and welfare in the use of LPG.

**R710-6-8. Amendments and Additions.**
The following amendments and additions are hereby adopted by the Board:
8.1 All LP Gas facilities that are located in a public place shall be inspected by a certified LP Gas serviceman every five (5) years for leaks in all buried piping as follows:
8.1.1 All buried piping shall be pressure tested and inspected for leaks as set forth in NFPA Standard 54, Sections 4.1.1 through 4.3.4.
8.1.2 If a leak is detected and repaired, the buried piping shall again be pressure tested for leaks.
8.1.3 The certified LP Gas serviceman shall keep a written record of the inspection and all corrections made to the buried piping located in a public place.
8.1.4 The inspection records shall be available to be inspected on a regular basis by the Division.
8.2 Whenever the Division is required to complete more than two inspections to receive compliance on an LP Gas System, container, apparatus, appliance, appurtenance, tank or tank trailer, or any pertinent equipment for the storage, transportation or dispensation of LP Gas, the Division shall charge to the owner for each additional inspection, the re-inspection fee as stated in R710-6-6.1(e).
8.3 All LP Gas containers of more than 5000 water gallons shall be inspected at least biannually for compliance with the adopted statute and rules. The following containers are exempt from this requirement:
8.3.1 Those excluded from the act in UCA, Section 53-7-303.
8.3.2 Containers under federal control.
8.3.3 Containers under the control of the U.S. Department of Transportation and used for transportation of LP Gas.
8.3.4 Containers located at private residences.
8.4 Those using self-serve key or card services shall be trained in safe filling practices by the licensed dealer providing the services. A letter shall be sent to the Division by the licensed dealer stating that those using the self-serve key or card service have been trained.
8.5 IFC Amendments:
8.5.1 IFC, Section 3801.2 Permits. On line 2 after the word "105.7" add "and the adopted LPG rules".
8.5.2 IFC, Section 3803.1 - General. After the word "Code" on line 2 insert ",NFPA 54.
8.5.3 IFC, Section 3809.12 Location of storage outside of buildings. On line three replace the number "20" with the number "10".
8.6 NFPA, Standard 58 Amendments:
8.6.1 NFPA, Standard 58, Section 5.2.1.1 is amended to add the following section: (c) All new, used or existing containers of 5000 water gallons or less, installed in the State of Utah or relocated within the State of Utah shall meet the requirements listed in ASME, Boiler and Pressure Vessel Code, "Rules for the Construction of Unfired Pressure Vessels". All new, used or existing containers of more than 5000 water gallons, installed in the State of Utah or relocated within the State of Utah shall meet the requirements listed in ASME, Boiler and Pressure Vessel Code, "Rules for the Construction of Unfired Pressure Vessels", Section VIII, and shall either be registered by the National Board of Boiler and Pressure Vessel Inspectors or the Manufacturer's Data Report for Pressure Vessels, Form U-1A, be provided.
8.6.2 NFPA, Standard 58, Section 5.2.1.1 is amended to add the following section: (d) If an existing container is relocated within the State of Utah, and depending upon the container size, does not bear the required ASME construction code and/or National Board Stamping, the new owner may submit to the Division a request for "Special Classification Permit". Material specifications and calculations of the container shall be submitted to the Division by the new owner.

Also, the new owner shall insure that a review of the proposed container be completed by a registered professional engineer experienced in pressure vessel container design and construction, and the new owner submit that report to the Division. The Division will approve or disapprove the proposed container. Approval by the Division shall be obtained before the container is set or filled with LP Gas.

8.6.3 NFPA, Standard 58, Section 5.2.1.5 is amended to add the following section: (a) Repairs and alterations shall only be made by those holding a National Board "R" Certificate of Authorization commonly known as an R Stamp.

8.6.4 NFPA, Standard 58, Section 6.6.3 is amended to add the following section: 6.6.3.9 Skid mounted ASME horizontal containers greater than 2000 water gallons, with non-fireproofed steel mounted attached supports, resting on concrete, pavement, gravel or firm packed earth, may be mounted on the attached supports to a maximum of 12 inches from the top of the skid to the bottom of the container.

8.6.5 NFPA Standard 58, Sections 5.8.3.2(3)(a) and (b) are deleted and rewritten as follows:

Type K copper tubing without joints below grade may be used in exterior LP Gas piping systems only.

8.6.6 NFPA, Standard 58, Section 6.6.1.2 is amended to add the following: When guard posts are installed they shall be installed meeting the following requirements:

8.6.6.1 Constructed of steel not less than four inches in diameter and filled with concrete.

8.6.6.2 Set with spacing not more than four feet apart.

8.6.6.3 Buried three feet in the ground in concrete not less than 15 inches in diameter.

8.6.6.4 Set with the tops of the posts not less than three feet above the ground.

8.6.7 NFPA, Standard 58, Section 6.6.6 is amended to add the following: (M) All metallic equipment and components that are buried or mounded shall have cathodic protection installed to protect the metal.

8.6.7.1 Sacrificial anodes shall be installed as required by the size of the container. If more than one sacrificial anode is required they shall be evenly distributed around the container.

8.6.7.2 Sacrificial anodes shall be connected to the container or piping as recommended by the manufacturer or using accepted engineering practices.

8.6.7.3 Sacrificial anodes shall be placed as near the bottom of the container as possible and approximately two feet away from the container.

8.6.8 NFPA, Standard 58, Section 8.4.1.1(1) is amended as follows: On line one remove "5ft (1.5m)" and replace it with "10 ft (3m)".

**R710-6-9. Penalties.**

9.1 Civil penalties for violation of any rule or referenced code shall be as follows:

9.1.1 Concern failure to license - $210.00 to $900.00

9.1.2 Person failure to obtain LPG Certificate - $30.00 to $90.00

9.1.3 Failure of concern to obtain LPG Certificate for employees who dispense LPG - $210.00 to $900.00

9.1.4 Concern doing business under improper class - $140.00 to $600.00

9.1.5 Failure to notify SFM of change of address - $60.00

9.1.6 Violation of the adopted Statute or Rules - $210.00 to $900.00

9.2 Rationale.

9.2.1 Double the fee plus the cost of the license.

9.2.2 Double the fee plus the cost of the certificate.

9.2.3 Double the fee plus the cost of the license.

9.2.4 Double the fee.

9.2.5 Based on two hours of inspection fee at $30.00 per hour.

9.2.6 Triple the fee.

**KEY: liquefied petroleum gas**
**October 18, 2005** **53-7-305**
**Notice of Continuation March 30, 2006**

**R710. Public Safety, Fire Marshal.**
**R710-9. Rules Pursuant to the Utah Fire Prevention Law.**
**R710-9-1. Title, Authority, and Adoption of Codes.**

1.1 These rules shall be known as the "Rules Pursuant to the Utah Fire Prevention Law", and may be cited as such, and will be hereafter referred to as "these rules".

1.2 These rules are promulgated in accordance with Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, as amended.

1.3 These rules are adopted by the Utah Fire Prevention Board to provide minimum rules for safeguarding life and property from the hazards of fire and explosion, for board meeting conduct, procedures to amend incorporated references, establish board subcommittees, enforcement of the rules of the State Fire Marshal, and deputizing Special Deputy State Fire Marshals.

1.4 There is adopted as part of these rules the following code which is incorporated by reference:

1.4.1 International Fire Code (IFC), 2003 edition, excluding appendices, as promulgated by the International Code Council, Inc., except as amended by provisions listed in R710-9-6, et seq.

1.5 There is further adopted as part of these rules the following codes which are also incorporated by reference and supercede the adopted standards listed in the International Fire Code, 2003 edition, Chapter 45, Referenced Standards, as follows:

1.5.1 National Fire Protection Association (NFPA), NFPA 10, Standard for Portable Fire Extinguishers, 2002 edition, except as amended by provisions listed in R710-9-6, et seq.

1.5.2 National Fire Protection Association (NFPA), NFPA 13, Standard for Installation of Sprinkler Systems, 2002 edition, except as amended by provisions listed in R710-9-6, et seq.

1.5.3 National Fire Protection Association (NFPA), NFPA 13D, Standard for the Installation of Sprinkler Systems in One and Two Family Dwellings and Manufactured Homes, 2002 edition, except as amended by provisions listed in R710-9-6, et seq.

1.5.4 National Fire Protection Association (NFPA), NFPA 13R, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and including Four Stories in Height, 2002 edition, except as amended by provisions listed in R710-9-6, et seq.

1.5.5 National Fire Protection Association (NFPA), NFPA 70, National Electric Code, 2002 edition, as adopted by the Uniform Building Standards Act, Title 58. Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code R156-56-701. Wherever there is a section, figure or table in the International Fire Code (IFC) that references "ICC Electrical Standard", that reference shall be replaced with "National Electric Code".

1.5.6 National Fire Protection Association (NFPA), NFPA 72, National Fire Alarm Code, 2002 edition, except as amended in provisions listed in R710-9-6, et seq.

1.5.7 National Fire Protection Association (NFPA), NFPA 101, Life Safety Code, 2003 edition, except as amended in provisions listed in R710-9-6, et seq. Wherever there is a section, figure or table in NFPA 101 that references "NFPA 5000 - Building Construction and Safety Code", that reference shall be replaced with the "International Building Code".

1.5.8 National Fire Protection Association (NFPA), NFPA 160, Standard for Flame Effects Before an Audience, 2001 edition, except as amended by provisions listed in R710-9-6, et seq.

1.6 National Fire Protection Association (NFPA), NFPA 96, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 2001 edition, except as amended by provisions listed in R710-9-6, et seq.

**R710-9-2. Definitions.**

2.1 "Appreciable Depth" means a depth greater than 1/4 inch.

2.2 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his authorized deputies, or the local fire enforcement authority.

2.3 "Board" means Utah Fire Prevention Board.

2.4 "Division" means State Fire Marshal.

2.5 "ICC" means International Code Council, Inc.

2.6 "IFC" means International Fire Code.

2.7 "Institutional occupancy" means asylums, mental hospitals, hospitals, sanitariums, homes for the aged, residential health care facilities, children's homes or institutions, or any similar institutional occupancy.

2.8 "LFA" means Local Fire Authority.

2.9 "NFPA" means National Fire Protection Association.

2.10 "Place of assembly" means where 50 or more people gather together in a building, structure, tent, or room for the purpose of amusement, entertainment, instruction, or education.

2.11 "SFM" means State Fire Marshal or authorized deputy.

2.12 "Sub-Committee" means Fire Prevention Board Budget Sub-Committee or Amendment Sub-Committee.

2.13 "UCA" means Utah Code Annotated, 1953.

**R710-9-3. Conduct of Board Members and Board Meetings.**

3.1 Board meetings shall be presided over and conducted by the chairman and in his absence the vice chairman or the chairman's designee.

3.2 A quorum shall be required to approve any action of the Board.

3.3 The chairman of the Board and Board members shall be entitled to vote on all issues considered by the Board. A Board member who declares a conflict of interest or where a conflict of interest has been determined, shall not vote on that particular issue.

3.4 Meetings of the Board shall be conducted in accordance with an agenda, which shall be submitted to the members by the division, not less that 21 days before the regularly scheduled Board meetings.

3.5 Public notice of Board meetings shall be made by the Division as prescribed in UCA Section 52-4-6.

3.6 The division shall provide the Board with a secretary who shall prepare minutes and shall perform all secretarial duties necessary for the Board to fulfill its responsibility. The minutes of Board meetings shall be completed and sent to Board members at least 14 days prior to the scheduled Board meeting.

3.7 A Board members standing on the Board shall come under review after two unexcused absences in one year from regularly scheduled board meetings. The Board members name shall be submitted to the governors office for status review.

**R710-9-4. Deputizing Persons to Act as Special Deputy State Fire Marshals.**

4.1 Special deputy state fire marshals may be appointed by the SFM to positions of expertise within the regular scope of the Fire Marshal's Office.

4.2 Pursuant to Section 53-7-101 et seq., special deputy state fire marshals may also be appointed to assist the Fire Marshal's Office in establishing and maintaining minimum fire prevention standards in those occupancy classifications listed in the International Fire Code.

4.3 Special deputy state fire marshals shall be appointed after review by the State Fire Marshal in regard to their qualifications and the overall benefit to the Office of the State Fire Marshal.

4.4 Special deputy state fire marshals shall be appointed by completing an oath and shall be appointed for a specific period of time.

4.5 Special deputy state fire marshals shall have a picture identification card and shall carry that card when performing their assigned duties.

**R710-9-5. Procedures to Amend the International Fire Code.**

5.1 All requests for amendments to the IFC shall be submitted to the division on forms created by the division, for presentation to the Board at the next regularly scheduled Board meeting.

5.2 Requests for amendments received by the division less than 21 days prior to any regularly scheduled meeting of the Board may be delayed in presentation until the next regularly scheduled Board meeting.

5.3 Upon presentation of a proposed amendment, the Board shall do one of the following:

5.3.1 accept the proposed amendment as submitted or as modified by the Board;

5.3.2 reject the proposed amendment;

5.3.3 submit the proposed amendment to the Board Amendment Subcommittee for further study; or

5.3.4 return the proposed amendment to the requesting agency, accompanied by Board comments, allowing the requesting agency to resubmit the proposed amendment with modifications.

5.4 The Board Amendment Subcommittee shall report its recommendation to the Board at the next regularly scheduled Board meeting.

5.5 The Board shall make a final decision on the proposed amendment at the next Board meeting following the original submission.

5.6 The Board may reconsider any request for amendment, reverse or modify any previous action by majority vote.

5.7 When approved by the Board, the requesting agency shall provide to the division within 45 days, the completed ordinance.

5.8 The division shall maintain a list of amendments to the IFC that have been granted by the Board.

5.9 The division shall make available to any person or agency copies of the approved amendments upon request, and may charge a reasonable fee for multiple copies in accordance with the provisions of UCA, 63-2-203.

**R710-9-6. Amendments and Additions.**

The following amendments and additions are hereby adopted by the Board for application statewide:

6.1 Administration

6.1.1 IFC, Chapter 1, Section 102.3 is deleted and rewritten as follows: No change shall be made in the use or occupancy of any structure that would place the structure in a different division of the same group or occupancy or in a different group of occupancies, unless such structure maintains a reasonable level of fire and life safety and the change to use or occupancy does not create a distinct hazard to life or property as determined by the AHJ.

6.1.2 IFC, Chapter 1, Section 102.4 is deleted and rewritten as follows: The design and construction of new structures shall comply with the International Building Code. Repairs, alterations and additions to existing structures are allowed when such structure maintains a reasonable level of fire and life safety and the change does not create a distinct hazard to life or property as determined by the AHJ.

6.1.3 IFC, Chapter 1, Section 102.5 is deleted and rewritten as follows: The construction, alteration, repair, enlargement, restoration, relocation or movement of existing buildings or structures that are designated as historic buildings are allowed when such historic structures maintains a reasonable level of fire and life safety and the change does not create a distinct hazard to life or property as determined by the AHJ.

6.1.4 IFC, Chapter, 1, Section 102.4 is amended as follows: On line three after the words "Building Code." add the following sentence: "The design and construction of detached one- and two-family dwellings and multiple single-family dwellings (town houses) not more than three stories above grade plane in height with a separate means of egress and their accessory structures shall comply with the International Residential Code."

6.1.5 IFC, Chapter 1, Section 109.2 is amended as follows: On line three after the words "is in violation of this code," add the following "or other pertinent laws or ordinances".

6.2 Definitions

6.2.1 IFC, Chapter 2, Section 202, Educational Group E, Day care is amended as follows: On line three delete the word "five" and replace it with the word "four".

6.2.2 IFC, Chapter 2, Section 202, Institutional Group I, Group I-1 is amended to add the following: Add "Type 1" in front of the words "Assisted living facilities".

6.2.3 IFC, Chapter 2 Section 202, Institutional Group I, Group I-2 is amended as follows: On line three delete the word "five" and replace it with the word "three". After "Detoxification facilities" delete the rest of the paragraph, and add the following: "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 with at least six and not more than 16 residents shall be classified as a Group I-1 facility.

6.2.4 IFC, Chapter 2, Section 202, Institutional Group I, Group I-4, day care facilities, Child care facility is amended as follows: On line three delete the word "five" and replace it with the word "four". Also on line two of the Exception after Child care facility delete the word "five" and replace it with the word "four".

6.2.5 IFC, Chapter 2, Section 202 General Definitions, Occupancy Classification, Residential Group R-1 is amended to add the following: Exception: Boarding houses accommodating 10 persons or less shall be classified as Residential Group R-3.

6.2.6 IFC, Chapter 2, Section 202 General Definitions, Occupancy Classification, Residential Group R-2 is amended to add the following: Exception: Boarding houses accommodating 10 persons or less shall be classified as Residential Group R-3.

6.3 General Precautions Against Fire

6.3.1 IFC, Chapter 3, Section 304.1.2 is amended to delete the following sentence: "Vegetation clearance requirements in urban-wildland interface areas shall be in accordance with the International Urban/Wildland Interface Code."

6.3.2 IFC, Chapter 3, Section 311.1.1 is amended as follows: On line ten delete the words "International Property Maintenance Code and the" from this section.

6.3.3 IFC, Chapter 3, Section 315.2.1 is amended to add the following: Exception: Where storage is not directly below the sprinkler heads, storage is allowed to be placed to the ceiling on wall mounted shelves that are protected by fire sprinkler heads in occupancies meeting classification as light or ordinary hazard.

6.4 Elevator Recall and Maintenance

6.4.1 IFC, Chapter 6, Section 607.3 is deleted and rewritten as follows: Firefighter service keys shall be kept in a "Supra - Stor-a-key" elevator key box or similar box with corresponding key system that is adjacent to the elevator for immediate use by the fire department. The key box shall contain one key for each elevator and one key for lobby control.

6.5 Building Services and Systems

6.5.1 IFC, Chapter 6, Section 610.1 is amended to add the following: On line three after the word "Code" add the words "and NFPA 96".

6.6 Record Drawings

6.6.1 IFC, Chapter 9, Section 901.2.1 is amended to add the following: The code official has the authority to request record drawings ("as builts") to verify any modifications to the previously approved construction documents.

6.6.2 IFC, Chapter 9, Section 902.1 Definitions, RECORD DRAWINGS is deleted and rewritten as follows: Drawings ("as builts") that document all aspects of a fire protection system as installed.

6.7 Fire Protection Systems

6.7.1 Inspection and Testing of Automatic Fire Sprinkler Systems

The owner or administrator of each building shall insure the inspection and testing of water based fire protection systems as required in IFC, Chapter 9, Section 901.6.

6.7.2 IFC, Chapter 9, Section 903.2.7 Group R, is amended to add the following: Exception: 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.

6.7.3 IFC, Chapter 9, Section 903.2.7 is amended to add the following: Exception: Group R-4 fire areas not more than 4500 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.

6.7.4 IFC, Chapter 9, Section 903.6 is amended to add the following subsection: 903.6.2 Commercial cooking operation suppression. Automatic fire sprinkler systems protecting commercial kitchen exhaust hood and duct systems with appliances that generate appreciable depth of cooking oils shall be replaced with a UL300 listed system by May 1, 2004.

6.7.5 IFC, Chapter 9, Section 903.6 is amended to add the following subsection: 903.6.3 Dry chemical hood system suppression. Existing automatic fire-extinguishing systems using dry chemical that protect commercial kitchen exhaust hood and duct systems shall be removed and replaced with a UL300 listed system by January 1, 2006.

6.7.6 IFC, Chapter 9, Section 903.6 is amended to add the following subsection: 903.6.4 Wet chemical hood system suppression. Existing wet chemical fire-extinguishing systems not UL300 listed and protecting commercial kitchen exhaust hood and duct systems shall be removed, replaced or upgraded to a UL300 listed system by January 1, 2006.

6.7.7 IFC, Chapter 9, Section 903.6 is amended to add the following subsection: 903.6.5 Group A-2 occupancies. An automatic fire sprinkler system shall be provided throughout Group A-2 occupancies where indoor pyrotechnics are used.

6.7.8 IFC, Chapter 9 Section 904.11.6.4 is amended to add the following: Automatic fire extinguishing systems located in occupancies where usage is limited and less than six consecutive months, may be serviced annually if the annual service is conducted immediately before the period of usage, and approval is received from the AHJ.

6.7.9 IFC, Chapter 9, 906.2 is amended to add the following exception: 2. 30 day inspections shall not be required and maintenance shall be permitted to be once every three years for dry chemical or halogenated agent portable fire extinguishers that are connected to a supervised listed electronic monitoring system that meet the following: 2.1 Electronic monitoring shall confirm that extinguishers are properly positioned, properly charged, and unobstructed; 2.2 Loss of power or circuit continuity to the electronic monitoring device shall initiate a trouble signal; 2.3 The extinguishers shall be installed inside of a building or cabinet in a non-corrosive environment; 2.4 Electronic monitoring devices and supervisory circuits shall be tested every three years when extinguisher maintenance is performed; and, 2.5 A written log of required hydrostatic test dates for extinguishers shall be maintained by the owner to ensure that hydrostatic tests are conducted at the frequency required by NFPA 10.

6.7.10 NFPA, Standard 10, Section 6.2.1 is amended to add the following sentence: The use of a supervised listed electronic monitoring system shall be permitted to satisfy the 30 day fire extinguisher interval inspection requirement.

6.7.11 NFPA, Standard 10, Section 6.3.1 is amended to add the following: Fire extinguishers that are connected to a supervised listed electronic monitoring system are allowed to have the maintenance intervals extended to 3 years.

6.8 Backflow Protection

6.8.1 The potable water supply to automatic fire sprinkler systems and standpipe systems shall be protected against backflow in accordance with the International Plumbing Code as amended in the Utah Administrative Code, R156-56-707.

6.9 Retroactive Installations of Automatic Fire Alarm Systems in Existing Buildings

6.9.1 IFC, Chapter 9, Sections 907.3.1.1, 907.3.1.2, 907.3.1.3, 907.3.1.4, 907.3.1.5, 907.3.1.6, 907.3.1.7, and 907.3.1.8 are deleted.

6.10 Smoke Alarms

6.10.1 IFC, Chapter 9, Section 907.3.2 is amended to add the following: On line three after the word "occupancies" add "and detached one- and two-family dwellings and multiple single-family dwellings (townhouses)".

6.10.2 IFC, Chapter 9, Section 907.3.2.3 is amended to add the following: On line one after the word "occupancies" add "and detached one- and two-family dwellings and multiple single-family dwellings (townhouses)".

6.10.3 IFC, Chapter 9, Section 907.20.5 is amended to add the following sentences: Increases in nuisance alarms shall require the fire alarm system to be tested for sensitivity. Fire alarm systems that continue after sensitivity testing with unwarranted nuisance alarms shall be replaced as directed by the AHJ.

6.11 Means of Egress

6.11.1 IFC, Chapter 10, Section 1008.1.8.3 is amended to add the following: 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 the 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. 6. Doors in Group I-1 and I-2 occupancies, where the clinical needs of the patients require approved, listed delayed egress locks, they shall be installed on doors as allowed in IFC, Section 1008.1.8.6.

6.11.2 IFC, Chapter 10, Section 1009.3 is amended as follows: On line six of Exception 5 delete "7.75" and replace it with "8". On line seven of Exception 5 delete "10" and replace it with "9".

6.11.3 IFC, Chapter 10, 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.

6.11.4 IFC, Chapter 10, Section 1009.11.3 is amended to add the following: 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 (51mm)

down from the top of the crown. Such handrail is required to have an indention 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 (13mm) high. Edges within the handgrip shall have a minimum radius of 0.0625 inch (2mm). The handrail surface shall be smooth with no cusps so as to avoid catching clothing or skin.

6.11.5 IFC, Chapter 10, Section 1012.2 is amended to add the following exception: 3. For occupancies in Group R-3 and within individual dwelling units in occupancies in Grouop R-2, as applicable in Section 101.2, guards shall form a protective barrier not less than 36 inches (914mm).

6.11.6 IFC, Chapter 10, Section 1027.2 is amended to add the following: On line five after the word "fire" add the words "and building".

6.12 Fireworks

6.12.1 IFC, Chapter 33, Section 3301.1.3 is amended to add the following Exception: 10. The use of fireworks for display and retail sales is allowed as set forth in UCA 53-7-220 and UCA 11-3-1.

6.13 Flammable and Combustible Liquids

6.13.1 IFC, Chapter 34, Section 3404.4.3 is amended as follows: Delete 3403.6 on line three and replace it with 3403.4.

6.14 Liquefied Petroleum Gas

6.14.1 IFC, Chapter 38, Section 3809.12, is amended as follows: Delete 20 from line three and replace it with 10.

6.14.2 IFC, Chapter 38, Section 3809.14 is amended as follows: Delete 20 from line three and replace it with 10.

**R710-9-7. Fire Advisory and Code Analysis Committee.**

7.1 There is created by the Board a Fire Advisory and Code Analysis Committee whose duties are to provide direction to the Board in the matters of fire prevention and building codes.

7.2 The committee shall serve in an advisory position to the Board, members shall be appointed by the Board, shall serve for a term of three years, and shall consist of the following members:

7.2.1 A representative from the State Fire Marshal's Office.

7.2.2 The Code Committee Chairman of the Fire Marshal's Association of Utah.

7.2.3 A fire marshal or fire inspector from a local fire department or fire district.

7.2.4 A representative from the Department of Health.

7.2.5 The Chief Elevator Inspector from the Utah Labor Commission.

7.2.6 A representative from the Department of Human Services.

7.3 This committee shall join together with the Uniform Building Code Commission Fire Protection Advisory Committee to form the Unified Code Analysis Council.

7.4 The Council shall meet as directed by the Board or as directed by the Building Codes Commission or as needed to review fire prevention and building code issues that require definitive and specific analysis.

7.5 The Council shall select one of it's members to act in the position of chair and another to act as vice chair. The chair and vice chair shall serve for one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year.

7.6 The chair or vice chair of the council shall report to the Board or Building Codes Commission recommendations of the Council with regard to the review of fire and building codes.

**R710-9-8. Enforcement of the Rules of the State Fire Marshal.**

8.1 Fire and life safety plan reviews of new construction, additions, and remodels of state owned facilities shall be conducted by the SFM, or his authorized deputies. State owned facilities shall be inspected by the SFM, or his authorized deputies.

8.2 Fire and life safety plan reviews of new construction, additions, and remodels of public and private schools shall be completed by the SFM, or his authorized deputies, and the LFA.

8.3 Fire and life safety plan reviews of new construction, additions, and remodels of publicly owned buildings, privately owned colleges and universities, and institutional occupancies, with the exception of state owned buildings, shall be completed by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall complete the plan review.

8.4 The following listed occupancies shall be inspected by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall inspect.

8.4.1 Publicly owned buildings other than state owned buildings as referenced in 9.1 of this rule.

8.4.2 Public and private schools.

8.4.3 Privately owned colleges and universities.

8.4.4 Institutional occupancies as defined in Section 9-2 of this rule.

8.4.5 Places of assembly as defined in Section 9-2 of this rule.

8.5 The Board shall require prior to approval of a grant the following:

8.5.1 That the applying fire agency be actively participating in the statewide fire statistics reporting program.

8.5.2 The Board shall also require that the applying fire agency be actively working towards structural or wildland firefighter certification through the Utah Fire Service Certification System.

**R710-9-9. Fire Prevention Board Budget and Amendment Sub-Committees.**

9.1 There is created two Fire Prevention Board Sub-Committees known as the Budget Subcommittee and the Amendment Subcommittee. The subcommittees membership shall be appointed from members of the Board.

9.2 Membership on the Sub-Committee shall be by appointment of the Board Chair or as volunteered by Board members. Membership on the Sub-Committee shall be limited to four Board members.

9.3 The Sub-Committee shall meet as necessary and shall vote and appoint a chair to represent the Sub-Committee at regularly scheduled Board meetings.

**R710-9-10. Repeal of Conflicting Board Actions.**

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

**R710-9-11. Validity.**

The Utah Fire Prevention Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared invalid, it is the intent of the Utah Fire Prevention Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

**R710-9-12. Adjudicative Proceedings.**

12.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

12.2 If a city, county, or fire protection district refuses to establish a method of appeal regarding a portion of the IFC, the appealing party may petition the Board to act as the board of appeals.

12.3 A person may request a hearing on a decision made by the SFM, his authorized deputies, or the LFA, by filing an

appeal to the Board within 20 days after receiving final decision.

12.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM, his authorized deputies, or the LFA, to enforce the Utah Fire Prevention and Safety Act and these rules, shall commence in accordance with UCA, Section 63-46b-3.

12.5 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

12.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

12.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

12.8 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

**KEY: fire prevention, law**
**March 6, 2006** **53-7-204**
**Notice of Continuation June 12, 2002**

**R710. Public Safety, Fire Marshal.**
**R710-10. Rules Pursuant to Fire Service Training, Education, and Certification.**
**R710-10-1. Title, Authority, and Adoption of Codes.**

1.1 These rules shall be known as the "Rules Pursuant to Fire Service Training, Education, and Certification, and may be cited as such, and will be hereafter referred to as "these rules".

1.2 These rules are promulgated in accordance with Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, as amended.

1.3 These rules are adopted by the Utah Fire Prevention Board to provide minimum rules for fire service training, education and certification by establishing a Fire Service Education Administrator, a Fire Education Program Coordinator, the Fire Service Standards and Training Council, the Fire Service Certification Council, the Utah Fire and Rescue Academy, and standards for those agencies conducting non-affiliated fire service training.

1.4 There is adopted as part of these rules the following code which is incorporated by reference:

1.4.1 National Fire Protection Association (NFPA), NFPA 1403, Standard on Live Fire Training Evolutions, 2002 edition.

**R710-10-2. Definitions.**

2.1 "Academy" means Utah Fire and Rescue Academy.

2.2 "Academy Director" means the Director of the Utah Fire and Rescue Academy.

2.3 "Administrator" means Fire Service Education Administrator.

2.4 "Board" means Utah Fire Prevention Board.

2.5 "Career Firefighter" means one whose primary employment is directly related to the fire service.

2.6 "Certification Council" means the Fire Service Certification Council.

2.7 "Certification System" means the Utah Fire Service Certification System.

2.8 "Coordinator" means Fire Service Education Program Coordinator.

2.9 "Non-Affiliated" means an individual who is not a member of an organized fire department.

2.10 "Plan" means Fire Academy Strategic Plan.

2.11 "SFM" means State Fire Marshal or authorized deputy.

2.12 "Standards Council" means Fire Service Standards and Training Council.

2.13 "UCA" means Utah Code Annotated, 1953.

2.14 "Volunteer/Part-Paid Firefighter" means one whose primary employment is not directly related to the fire service.

**R710-10-3. Fire Service Education Administrator.**

3.1 There is created by the Board a Fire Service Education Administrator for the State of Utah. This Administrator shall be the State Fire Marshal.

3.2 The Administrator shall oversee statewide fire service education of all personnel receiving training monies from the Fire Academy Support Account.

3.2.1 The Administrator shall oversee fire service education in fire suppression, fire prevention, fire administration, operations, hazardous materials, rescue, fire investigation, and public fire education in the State of Utah.

3.3 The Administrator shall dedicate sufficient time and efforts to ensure that those monies dedicated from the Fire Academy Support Account are expended in the best interests of all personnel receiving fire service education.

3.4 The Administrator shall ensure equitable monies are expended in fire service education to volunteer, career, and prospective fire service personnel.

3.5 The Administrator shall as directed by the Board, solicit the legislature for funding to ensure that fire service personnel receive sufficient monies to receive the education necessary to prevent loss of life or property.

3.6 The Administrator shall oversee the Fire Department Assistance Grant program by completing the following:

3.6.1 Insure that a broad based selection committee is impaneled each year.

3.6.2 Compile for presentation to the Board the proposed grants.

3.6.3 Receive the Board's approval before issuing the grants.

3.7 The Administrator shall if necessary, establish proposed changes to fire service education statewide, insuring personnel receive the most proficient and professional training available, insure completion of agreements and contracts, and insure that payments on agreements and contracts are completed expeditiously.

3.8 The Administrator shall report to the Board at each regularly scheduled Board meeting the current status of fire service education statewide. The Administrator shall present any proposed changes in fire service education to the Board, and receive direction and approval from the Board, before making those changes.

**R710-10-4. Fire Service Education Program Coordinator.**

4.1 The Fire Service Education Program Coordinator shall assist the Administrator in statewide fire service education.

4.2 The Coordinator shall conduct fire service education evaluations, budget reviews, performance audits, and oversee the effectiveness of fire service education statewide.

4.3 The Coordinator shall ensure that there is an established Utah Fire Service Strategic Training Plan for fire service education statewide. The Coordinator shall work with the Academy Director to update the Strategic Plan and keep it current to the needs of the fire service.

4.4 The Coordinator shall report findings of audits, budgetary reviews, training contracts or agreements, evaluation of training standards, and any other necessary items of interest with regard to fire service education to the Administrator.

4.5 The Coordinator shall ensure that contracts are established each year for training and education of fire personnel that meets the needs of those involved in fire service education statewide.

4.6 The Coordinator shall be the staff assistant to the Fire Service Standards and Training Council and shall present agenda items to the Council Chair that need resolution or review. As the staff assistant to the Training Council, the coordinator shall ensure that appointed members attend, encourage that the decisions made further the interests of fire service education statewide, and ensure that the Board is kept informed of the Training Council's decisions.

**R710-10-5. Fire Service Standards and Training Council.**

5.1 There is created by the Board, the Fire Service Standards and Training Council, whose duties are to provide direction to the Board and Academy in matters relating to fire service standards, training, and certification.

5.2 The Standards Council shall serve in an advisory position to the Board, members shall be appointed by the Board, shall serve four year terms, and shall consist of the following members:

5.2.1 Representative from the Utah State Fire Chiefs Association.

5.2.2 Representative from the Utah State Firemen's Association.

5.2.3 Representative from the Fire Marshal's Association of Utah.

5.2.4 Specialist in hazardous materials representing the Hazardous Materials Institute.

5.2.5 Fire/arson investigator representing the Utah Chapter

of the International Association of Arson Investigators.

5.2.6 Specialist in wildland fire suppression and prevention from the Utah State Division of Forestry, Fire and State Lands.

5.2.7 Representative from the International Association of Firefighters.

5.2.8 Representative from the Utah Fire Service Certification Council.

5.2.9 Representative from the fire service that is an Advanced Life Support (ALS) provider to represent Emergency Medical Services.

5.2.10 Representative from the Utah Fire Training Officers Association.

5.3 The Standards Council shall meet quarterly and may hold other meetings as necessary for proper transaction of business. A majority of the Standards Council members shall be present to constitute a quorum.

5.4 The Standards Council shall select one of its members to act in the position of chair, and another member to act as vice chair. The chair and vice chair shall serve 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. If voted upon by the council, the vice chair will become the chair the next succeeding calendar year.

5.5 If a Standards Council member has two or more unexcused absences during a 12 month period, from regularly scheduled Standards Council meetings, it is considered grounds for dismissal pending review by the Board. The Coordinator shall submit the name of the Standards Council member to the Board for status review.

5.6 A member of the Standards Council may have a representative of their respective organization sit in proxy of that member, if submitted and approved by the Coordinator prior to the meeting.

5.7 The Chair or Vice Chair of the Standards Council shall report to the Board the activities of the Standards Council at regularly scheduled Board meetings. The Coordinator may report to the Board the activities of the Standards Council in the absence of the Chair or Vice Chair.

5.8 The Standards Council shall consider all subjects presented to them, subjects assigned to them by the Board, and shall report their recommendations to the Board at regularly scheduled Board meetings.

5.9 One-half of the members of the Standards Council shall be reappointed or replaced by the Board every two years.

**R710-10-6. Utah Fire Service Certification Council.**

6.1 There is created by the Board, the Utah Fire Service Certification Council, whose duties are to oversee fire service certification in the State of Utah.

6.2 The Certification Council shall be made up of 12 members, appointed by the Academy Director, approved by the Board, and each member shall serve three year terms.

6.3 The Certification Council shall be made up of users of the certification system and comprise both paid and volunteer fire personnel, members with special expertise, and members from various geographical locations in the state.

6.4 The purpose of the Certification Council is to provide direction on all aspects of certification, and shall report the activities of the Certification Council to the Fire Service Standards and Training Council.

6.5 Functioning of the Certification Council with regard to certification, re-certification, testing, meeting procedures, examinations, suspension, denial, annulment, revocation, appeals, and reciprocity, shall be conducted as specified in the Utah Fire Service Voluntary Certification Program, Policy and Procedures Manual.

6.6 A copy of the Utah Fire Service Voluntary Certification Program, Policy and Procedures Manual, shall be kept on file at the State Fire Marshal's Office and the Utah Fire and Rescue Academy.

**R710-10-7. Utah Fire and Rescue Academy.**

7.1 The primary fire service training school shall be known as the Utah Fire and Rescue Academy.

7.2 The Director of the Utah Fire and Rescue Academy shall report to the Administrator the activities of the Academy with regard to completion of the agreed academy contract.

7.3 The Academy Director may recommend to the Administrator or Coordinator new or expanded standards regarding fire suppression, fire prevention, public fire education, safety, certification, and any other items of necessary interest about the Academy.

7.4 The Academy shall receive approval from the Administrator, after being presented to the Standards and Training Council, any substantial changes in Academy training programs that vary from the agreed contract.

7.5 The Academy Director shall provide to the Coordinator by October 1st of each year, a numerical summary of those career, volunteer/part-paid, and non-affiliated students attending the Academy in the following categories:

7.5.1 Those who have received certification during the previous contract period at each certification level.

7.5.2 Those who have received an academic degree in any Fire Science category in the previous contract period.

7.5.3 Those who have completed other Academy classes during the previous contract period.

7.6 The Academy Director shall provide to the Coordinator by October 1st of each year, a numerical comparison of the categories required in Section 13.5, comparing attendance in the previous contract period.

7.7 The Academy Director shall provide to the Coordinator by October 1st of each year, in accepted budgeting practices, the following:

7.7.1 A cost analysis of classes to include the total spent for each class title, the average cost per class, the number of classes delivered, the number of participants per class title, and the cost per participant for each class title provided by the Academy.

7.7.2 A budget summary comparing amounts budgeted to actual expenditures for each budget code funded by the contract.

7.8 The Academy Director shall provide to the Coordinator by October 1st of each year, a numerical summary of those students attending Academy courses in the following categories:

7.8.1 Non-affiliated personnel enrolled in college courses.

7.8.2 Career fire service personnel enrolled in college credit courses.

7.8.3 Volunteer and part-paid fire service personnel enrolled in college credit courses.

7.8.4 Non-affiliated personnel enrolled in non-credit continuing education courses.

7.8.5 Career fire service personnel enrolled in non-credit continuing education courses.

7.8.6 Volunteer and part-paid fire service personnel enrolled in non-credit continuing education courses.

7.9 The Academy Director shall present to the Coordinator by January of each year, proposals to be incorporated in the Academy contract for the next fiscal year.

**R710-10-8. Non-Affiliated Fire Service Training.**

8.1 Those training organizations that desire to offer certification through the Certification System for non-affiliated personnel must receive approval in writing from the Standards Council and the Academy Director.

8.2 Before approval is granted, the training organization requesting approval shall demonstrate the following:

8.2.1 Complete a written application requesting approval

to conduct the training course.

8.2.2 Designate an approved course coordinator to oversee the course delivery and insure the course meets each of the applicable objectives.

8.2.3 Insure that qualified instructors are used to teach each subject.

8.2.4 Insure sufficient student to instructor ratios for all subjects or skills to be taught to include those designated high hazard.

8.2.5 Demonstrate that sufficient equipment and facilities will be provided to meet the training requirements of the course being taught.

8.2.6 Maintain course documentation as required through the Certification System to insure that all elements of the necessary training is completed.

8.2.7 Follow the accepted requirements of the Certification System for requesting testing and certification.

8.3 As required in Section 8.2.2 of these rules, the designated course coordinator shall meet the following requirements:

8.3.1 Be currently certified at the certification level as established by the Standards Council.

8.3.2 Insure that all assigned instructors meet the requirements as required in Section 8.4 of these rules.

8.3.3 Insure that the course syllabus and practical skills guide meet the requirements of the Certification System.

8.3.4 Insure that the requirements of Sections 8.2.4, 8.2.5, 8.2.6, and 8.2.7 of these rules are met.

8.4 As required in Section 8.2.3 of these rules, qualified instructors shall meet the following requirements:

8.4.1 Must be currently certified at the certification level as established by the Standards Council.

8.4.2 If the instructor is not certified, instructor qualification can be satisfied by special knowledge, experience or establishment of expertise.

**R710-10-9. Repeal of Conflicting Board Actions.**

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

**R710-10-10. Validity.**

The Utah Fire Prevention Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared invalid, it is the intent of the Utah Fire Prevention Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

**R710-10-11. Adjudicative Proceedings.**

11.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

11.2 A person may request a hearing on a decision made by the SFM, his authorized deputies, or the LFA, by filing an appeal to the Board within 20 days after receiving final decision.

11.3 All adjudicative proceedings, other than criminal prosecution, taken by the SFM, his authorized deputies, or the LFA, to enforce the Utah Fire Prevention and Safety Act and these rules, shall commence in accordance with UCA, Section 63-46b-3.

11.4 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

11.5 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

11.6 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

11.7 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

**KEY: fire training**
**March 6, 2006** **53-7-204**

**R850. School and Institutional Trust Lands, Administration.**
**R850-21. Oil, Gas and Hydrocarbon Resources.**
**R850-21-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Utah Code Title 53C et seq. which authorize the Director of the School and Institutional Trust Lands Administration to establish rules for the issuance of oil, gas and hydrocarbon leases and management of trust-owned lands and oil, gas and hydrocarbon resources.

**R850-21-150. Planning.**

Pursuant to Subsection 53C-2-201(1)(a), this category of activity carries no planning obligations by the agency beyond existing rule-based analysis and approval processes. Oil, gas and hydrocarbon development activities are regulated pursuant to R649.

**R850-21-175. Definitions.**

The following words and terms, when used in Section R850-21 shall have the following meanings, unless otherwise indicated:

1. Act: Utah Code 53C-1 et seq.

2. Agency: School and Institutional Trust Lands Administration or its predecessor agency.

3. Anniversary Date: the same day and month in succeeding years as the effective date of the lease.

4. Assignment(s): a conveyance of all or a portion of the lessee's record title, non-working interest, or working interest in a lease.

(a) Certification of Net Revenue Interest: the certification by oath of an assignor to the agency that the total net working revenue interest (NRI) in the lease which the assignment affects has not been reduced to less than 80 per cent of 100 per cent NRI. Certification shall only be required for leases issued after April1, 2005.

(b) Mass Assignment: an assignment that affects more than one lease, including assignments which affect record title, working or non-working interests.

(c) Non-Working Interest Assignment: an assignment of interest in production from a lease other than the agency's royalty, the record title, or the working interest including but not limited to overriding royalties, production payments, net profits interests, and carried interests assignments but excluding liens and security interests.

(d) Record Title Assignment: an assignment of the lessee's interest in a lease which includes the obligation to pay rent, the rights to assign/or relinquish the lease, and the ultimate responsibility to the agency for obligations under the lease.

(e) Working Interest Assignment: a transfer of a non-record title interest in a lease, including but not limited to wellbore assignments, but excepting overriding royalty, oil payment, net-profit, or carried interests or other non-working interests.

5. Board of Trustees: the School and Institutional Trust Lands Board of Trustees created under Section 53C-1-202.

6. Bonus Bid: a payment reflecting an amount to be paid by an applicant in addition to the delay rentals and royalties set forth in a lease in an application as consideration for the issuance of such lease.

7. Committed Lands: a consolidation of all or a portion of lands subject to a lease approved by the director for pooling or unitization which form a logical unit for exploration, development or drilling operations.

8. Delay Rental: a sum of money as prescribed in the lease payable to the agency for the privilege of deferring the commencement of drilling operations or the commencement of production during the term of the lease.

9. Designated Operator: the person or entity that has been granted authority by the record title interest owner(s) in a lease and has been approved by the agency to conduct operations on the lease or a portion thereof.

10. Director: the person designated within the agency who manages the agency in fulfillment of its purposes as set forth in the Act.

11. Effective Date: unless otherwise defined in the lease, the effective date shall be the first day of the month following the date a lease is executed by the agency. An amended, extended or segregated lease will retain the effective date of the original lease.

12. Gas Well: a well capable of producing volumes exceeding 100,000 cubic feet of gas to each barrel of oil from the same producing horizon where both oil and gas are produced; or, a well producing gas only from a formation or producing horizon.

13. Lease: an oil, gas and hydrocarbon lease covering the commodities defined in R850-21-200(1) issued by the agency.

14. Lease Year: the twelve-month period commencing at 12:01 a.m. on the month and day of the effective date of the lease and ending on the last day of the twelfth month at 12 midnight.

15. Leasing Unit: a parcel of trust land lying within one or more sections that is offered for lease as an indivisible unit through a competitive oil and gas lease application process which would constitute one lease when issued.

16. Lessee: a person or entity holding a record title interest in a lease.

17. NGL: natural gas liquids.

18. Other Business Arrangement ("OBA"): an agreement entered into between the agency and a person or entity consistent with the purposes of the Act and approved by the Board of Trustees. By way of example, but not of limitation, OBAs may be for farmout agreements or joint venture agreements. An agreement for an OBA may be initiated by the agency or by a proponent of an agreement by filing a proposal for an OBA with the agency.

19. Paying Quantities: the gross income from the leased substances produced and sold (after deduction for taxes and lessor's royalty) that exceeds the cost of operation.

20. Qualified Interest Owner: a person or legal entity who meets the requirements of R850-3-200 of these rules.

21. Rental: the amount due and payable on the anniversary of the effective date of a lease to maintain the lease in full force and effect for the following lease year.

22. Shut-in Gas Well: a gas well which is physically capable of producing gas in paying quantities, but, for which the producible gas cannot be marketed at a reasonable price due to existing marketing or transportation conditions.

23. Shut-In or Minimum Royalty: the amount of money accruing and payable to the agency in lieu of rental or delay rental beginning from the first anniversary date of the lease on or after the initial discovery of oil or gas in paying quantities on the leasehold or the allocation of production to the leasehold. Minimum royalty accrues beginning from the anniversary date of a lease but is not payable until the end of the year. Actual royalty accruing from a lease or allocated to a unitized or communitized lease during the lease year is credited against the minimum royalty obligation for the lease year. If the royalty from production does not equal or exceed the required minimum royalty for the lease year, the lessee is obligated to pay the difference.

24. Surveyed Lot: an irregular part of a section identified by cadastral survey and maintained in the official records of the agency.

25. Trust Lands: those lands and mineral resources granted by the United States in the Utah Enabling Act to the State of Utah in trust, and other lands and mineral resources acquired by the trust, which must be managed for the benefit of

the state's public education system or the institutions designated as beneficiaries.

26. UDOGM: the Division of Oil, Gas and Mining of the Utah State Department of Natural Resources.

27. Except as specifically defined above, the definitions set forth at R850-1-200 shall also be applicable.

**R850-21-200. Classification of Oil, Gas and Hydrocarbons.**

Oil, Gas, and Hydrocarbon leases shall cover oil, natural gas, including gas producible from coal formations or associated with coal bearing formations, and other hydrocarbons (whether the same is found in solid, semi-solid, liquid, vaporous, or any other form) and also including sulfur, helium and other gases not individually described. The oil, gas, and hydrocarbon category shall not include coal, oil shale, tar sands or gilsonite.

**R850-21-300. Lease Application Process.**

1. The agency may issue leases competitively, non-competitively or enter into OBAs with qualified interest owners for the development of oil, gas and hydrocarbon resources.

(a) Competitive Bid Offering: when the agency designates leasing units for competitive bidding it shall award leases on the basis of the highest bonus bid per acre made by qualified application.

(i) Minimum Bonus Bid Amount: the minimum acceptable bonus bid for competitive bid offering for leasing units shall be not less than $1.00 per acre, or fractional acre thereof, which will constitute the (advance) rental for the first year of the lease.

(ii) Notice of Offering: notices of the offering of lands for competitive bid shall:

(A) run for a period of not less than fifteen (15) consecutive days after the notice is posted in the agency's office;

(B) describe the leasing unit;

(C) indicate the resource available for leasing; and

(D) state the last date on which bids may be received.

(iii) Opening of Bid Applications: bid applications shall be opened in the agency's office at 10 a.m. of the first business day following the last day on which bids may be received.

(iv) Content of Applications: each application shall be submitted in a sealed envelope which clearly identifies:

(A) the competitive bid;

(B) leasing unit number; and,

(C) the date of offering for which the bid is submitted.

(v) The application envelope must:

(A) describe only one leasing unit per application; and,

(B) contain one check for the application fee and a separate check for the amount of the bonus bid.

(vi) Withdrawal of Applications: applicants desiring to withdraw an application which has been filed under these competitive bid filing rules must submit a written request to the agency. If the request is received before sealed bids have been opened, all money tendered by the applicant, except the filing fee, shall be refunded. If a request is received after sealed bids have been opened, and if the applicant is awarded the bid, then unless the applicant accepts the offered lease, all money tendered shall be forfeited to the agency.

(vii) Non-Complying Applications: if the agency determines prior to lease issuance that an application did not comply with these rules at the time of bid opening, the application fee shall be retained by the agency and the application returned to the applicant without further consideration by the agency.

(viii) Identical Bids: in the case of identical successful bids, the agency may award the lease by public drawing or oral auction between the identical bidders, held at the agency's offices.

(b) Non-Competitive Leasing By Over-The-Counter Filing.

(i) The director may designate lands for non-competitive leasing by over-the-counter application if the lands have been offered in a competitive offering and have received no bids. Designated lands may be offered for a period of three (3) months from the date of the opening of bids for which no bid was received for said lands under the competitive bid offering.

(ii) The minimum acceptable offer for over-the-counter applications to lease designated lands shall be not less than $1 per acre, or fractional acre thereof, which will constitute the delay rental for the first year of the lease.

(iii) Applications for over-the-counter leases, when authorized, shall be filed on approved forms received from the office of the agency or as made available on its web site and delivered for filing in the main office of the agency during office hours. Except as provided, all over-the-counter applications received by personal delivery over the counter, are to be immediately stamped with the exact date and time of filing. All applications presented for filing at the opening of the office for business on any business day are stamped received as of 8 a.m., on that day. All applications received in the first delivery of the U.S. Mail of each business day are stamped received as of 8 a.m. on that day. The time indicated on the time stamp is deemed the time of filing unless the director determines that the application is materially deficient in any particular way. If an application is determined to be deficient, it will be returned to the applicant with a notice of the deficiency.

If an application is returned as deficient and is resubmitted in compliance with the rules within fifteen (15) days from the date of the determination of deficiency, it shall retain its original filing time. If the application is resubmitted at any later time, it is deemed filed at the time of resubmission.

(iv) Where two or more applications for the same lease contain identical bids and bear a time stamp showing the said applications were filed at the same time, the agency may award the lease by public drawing or oral auction between the identical bidders held at the agency's office.

(v) If an application or any part thereof is rejected, any money tendered for rental of the rejected portion shall be refunded or credited to the applicant minus the application fee.

(vi) An applicant who desires to withdraw its application must submit a written request to the agency. If the request is received prior to the time the agency approves the application, all money tendered by the applicant, except the application fee, shall be refunded. If the request is received after approval of the application, then, unless the applicant accepts the offered lease, all money tendered is forfeited to the agency.

**R850-21-400. Availability of Lands for Lease Issuance.**

1. A lease shall not be issued for lands comprising less than a quarter-quarter section or surveyed lot, unless the trust-owned land managed by the agency within any quarter-quarter section or surveyed lot is less than the whole thereof, in which case the lease will be issued only on the entire area owned and available for lease within the quarter-quarter section or surveyed lot.

2. Leases shall be limited to no more than 2560 acres or four sections and must all be located within the same township and range unless a waiver is approved by the director.

3. Any lease may be terminated by the agency in whole or in part upon lessee's failure to comply with any lease term or covenant or applicable laws and rules. Subject to the terms of any lease issued hereunder, any final agency action is appealable pursuant to Section 53C-2-409, in accordance with the provisions of the rules of the agency.

**R850-21-500. Lease Provisions.**

The following provisions, terms and conditions shall apply to all leases granted by the agency:

1. Delay Rentals and Rental Credits.

(a) The delay rental rate shall not be for less than $1 per acre, or fractional acre thereof, per year at the time the lease is offered.

(b) The minimum annual delay rental on any lease, regardless of the amount of acreage, shall in no case be less than $40.

(c) Delay rental payments shall be paid each year on or before the lease anniversary date, unless otherwise stated in the lease.

(d) Any overpayment of delay rental occurring from the lease applicant's incorrect calculation of acreage of lands described in the lease may, at the option of the agency, be credited toward the applicant's rental account.

(e) The agency may accept lease payments made by any party provided, however, that the acceptance of such payment(s) shall not be deemed to be recognition by the agency of any interest of the payee in the lease. Ultimate responsibility for such payments remains with the record title interest owner.

(f) Rental credits, if any, shall be governed by the terms of the lease which provide for such credits.

2. Royalty Provisions: the production royalty rate shall not be less than 12.5% of gross proceeds minus costs of transportation off lease, at the time the lease is offered.

3. Primary Lease Term: no lease shall establish a primary term in excess of ten (10) years.

4. Continuance of a Lease after Expiration of the Primary Term.

(a) A lease shall be continued after the primary term has expired so long as:

(i) the leased substance is being produced in paying quantities from the leased premises or from other lands pooled, communitized or unitized with committed lands; or

(ii) the agency determines that the lessee or designated operator:

(A) is engaged in diligent operations which are determined by the director to be reasonably calculated to advance or restore production of the leased substance from the leased premises or from other lands pooled, communitized, or unitized with committed lands; and

(B) pays the annual minimum royalty set forth in the lease.

(b) Diligent operations may include cessation of operations not to exceed 90 days in duration or a cumulative period of 180 days in one calendar year.

5. Pooling, Communitization or Unitization of Leases.

(a) Lessees, upon prior written authorization of the director, may commit leased trust lands or portions of such lands to unit, cooperative or other plans of development with other lands.

(b) The director may, with the consent of the lessee, modify any term of a lease for lands that are committed to a unit, cooperative, or other plan of development.

(c) Production allocated to leased trust lands under the terms of a unit, cooperative, or other plan of development shall be considered produced from the leased lands whether or not the point of production is located on the leased trust lands.

(d) The term of all leases included in any cooperative or unit plan of oil and gas development or operation in which the agency has joined, or shall hereafter join, shall be extended automatically for the term of the unit or cooperative agreement. Rentals on leases so extended shall be at the rate specified in the lease, subject to change in rates at the discretion of the director or as may be prescribed in the terms of the lease.

(e) Any lease eliminated from any cooperative or unit plan of development or operation, or any lease which is in effect at the termination of a cooperative or unit plan of development or operation, unless relinquished, shall continue in effect for the fixed term of the lease, or for two (2) years after its elimination from the plan or agreement or the termination thereof, whichever is longer, and so long thereafter as the leased substances are produced in paying quantities. Rentals under such leases shall continue at the rate specified in the lease.

6. Shut-in Gas Wells Producing Gas in Paying Quantities: to qualify as a shut-in gas well capable of producing gas in paying quantities:

(a) a minimum royalty shall be paid in an amount not less than the current annual minimum royalty provided for in the lease;

(b) the terms of the lease shall provide the basis upon which the minimum royalty is to be paid by the lessee for a shut-in gas well; and

(c) the director may, at any time, require written justification from the lessee that a well qualifies as a shut-in gas well. A shut-in gas well will not extend a lease more than five years beyond the original primary term of the lease.

7. Oil/Condensate/Gas/NGL Reporting and Records Retention.

(a) Notwithstanding the terms of the lease agreements, gas and NGL report payments are required to be received by the agency on or before the last day of the second month succeeding the month of production.

(b) The extension of payment and reporting time for gas and NGL's does not alter the payment and reporting time for oil and condensate royalty which must be received by the agency on or before the last day of the calendar month succeeding the month of production as currently provided in the lease form.

(c) A lessee, operator, or other person directly involved in developing, producing or disposing of oil or gas under a lease through the point of first sale or point of royalty computation, whichever is later, shall establish and maintain records of such activities and make any reports requested by the director to implement or require compliance with these rules. Upon request by the director or the director's designee, appropriate reports, records or other information shall be made available for inspection and duplication.

(d) Records of production, transportation and sales shall be maintained for six (6) years after the records are generated unless the director notifies the record holder that an audit has been initiated or an investigation begun, involving such records. When so notified, records shall be maintained until the director releases the record holder of the obligation to maintain such records.

8. When the agency approves the amendment of an existing lease by substituting a new lease form for the existing form(s), the amended lease will retain the effective date of the original lease.

9. Other lease provisions.

The agency may require, in addition to the lease provisions required by these rules, any other reasonable provisions to be included in the lease as it deems necessary, but which does not substantially impair the lessees' rights under the lease.

**R850-21-600. Transfer by Assignment or Operation of Law.**

1. Any lease may be assigned as to all or part of the acreage, to any person, firm, association, or corporation qualified to hold a lease provided, however, that all assignments must be approved by the director. No assignment is effective until approval is given. Any attempted or purported assignment made without approval by the director is void.

2. Transfer by Assignment.

(a) An assignment of either a record title, working or non-working interest in a lease must:

(i) be expressed in a good and sufficient written legal instrument;

(ii) be properly executed, acknowledged and clearly set forth:

(A) the serial number of the lease;

(B) the land involved;

(C) the name and address of the assignee;

(D) the name of the assignor;
(E) the interest transferred;
(iii) be accompanied by a certification that the assignee is a qualified interest owner; and
(iv) include a certification of net revenue interest.
(b) Lessees who are assigning a lease shall:
(i) prepare and execute the assignments in duplicate, complete with acknowledgments;
(ii) provide that each copy of the assignment have attached thereto an acceptance of assignment duly executed by the assignee; and
(iii) provide that all assignments forwarded to or deposited with the agency be accompanied by the prescribed fee.
(c) The director shall approve any assignment of interest which has been properly executed; if the required filing fee is paid for each separate lease in which an interest is assigned, and the assignment complies with the law and these rules, so long as the director determines that approval would not be detrimental to the interests of the trust beneficiaries.
(d) If approval of any assignment is withheld by the director, the transferee shall be notified of such decision and its basis. Any decision to withhold approval may be appealed pursuant to Rule R850-8 or any similar rule in place at the time of such decision.
(e) Any assignment of a portion of a lease, whether of a record title, working or non-working interest, covering less than a quarter-quarter section, a surveyed lot, or an assignment of a separate zone or a separate deposit, shall not be approved.
(f) An assignment shall be effective the first day of the month following the approval of the assignment by the director. The assignor or surety, if any, shall continue to be responsible for performance of any and all obligations as if no assignment had been executed until the effective date of the assignment. After the effective date of any assignment, the assignee is bound by the terms of the lease to the same extent as if the assignee were the original lessee, any conditions in the assignment to the contrary notwithstanding; provided, however, that the approved record title interest owner(s) shall retain ultimate responsibility to the agency for all lease obligations.
(g) A record title assignment of an undivided 100% record title interest in less than the total acreage covered by the lease shall cause a segregation of the assigned and retained portions. After the effective date of the approved assignment, the assignor shall be released or discharged from any obligation thereafter accruing to the assigned lands. Segregated leases shall continue in full force and effect for the primary term of the original lease or as further extended pursuant to the terms of the lease. The agency may re-issue a lease with a new lease number covering the assigned lands for the remaining unexpired primary term. The agency may, in lieu of re-issuing a lease, note the assignment in its records with all lands covered by the original lease maintained with the original lease number, and with each separate tract or interest resulting from an assignment with an additional identifying designation to the original number.
(h) Any assignment which would create a cumulative royalty and other non-working interest in excess of twenty per cent (20%) thereby reducing the net revenue interest in the lease to less than eighty per cent (80%) NRI shall not be approved by the agency.
(i) Mass assignments are allowed, provided:
(i) the requirements set forth in paragraph R850-21-600(2) are met;
(ii) the serial number, the lands covered thereby, and the percent of interest assigned therein are expressly described in an attached exhibit;
(iii) the prescribed fee is paid for each lease affected; and
(iv) a separate mass assignment is filed for each type of interest (record title, working or non-working interest) that is assigned.
(j) The agency shall not accept for filing, mortgages, deeds of trust, financing statements or lien filings affecting leases. To the extent a legal foreclosure upon interests in leases occurs under the terms of such agreements, assignments must be prepared as set forth in this section and filed with the agency, which will then be reviewed and approved in due course.
(k) The agency by approving an assignment does not adjudicate the validity of any assignment as it may affect third parties, nor estop the agency from challenging any assignment which is later adjudicated by a court of competent jurisdiction to be invalid or ineffectual.
3. Transfer by Operation of Law.
(a) Death: if an applicant or lessee dies, his/her rights shall be transferred to the heirs, devisees, executor or administrator of the estate, as appropriate, upon the filing of:
(i) a certified copy of the death certificate together with other appropriate documentation to verify change of ownership as required under the probate laws of the state of Utah (Section 75-1-101 et seq.);
(ii) a list containing the serial number of each lease interest affected;
(iii) a statement that the transferee(s) is a qualified interest owner;
(iv) the required filing fee for each separate lease in which an interest is transferred; and
(v) a bond rider or replacement bond for any bond(s) previously furnished by the decedent.
(b) Corporate Merger: if a corporate merger affects any interest in a lease because of the transfer of property of the dissolving corporation to the surviving corporation by operation of law, no assignment of any affected lease is required. A notification of the merger, together with a certified copy of the certificate of merger issued by the Utah Department of Commerce, shall be furnished to the agency, together with a list by serial number of all lease interests affected. The required filing fee must be paid for each separate lease in which an interest is transferred. A bond rider or replacement bond conditioned to cover the obligations of all affected corporations will be required as a prerequisite to recognition of the merger.
(c) Corporate Name Change: if a change of name of a corporate lessee affects any interest in a lease, the notice of name change shall be submitted in writing with a certificate from the Utah Department of Commerce evidencing its recognition of the name change accompanied by a list of lease serial numbers affected by the name change. The required filing fee must be paid for each separate lease in which an interest is transferred. A bond rider or replacement bond, conditioned to cover the obligations of all affected corporations, is required as a prerequisite to recognition of the name change.

**R850-21-700. Operations Plan and Reclamation.**

1. The lessee or designated operator shall submit to, and must receive the approval of, the agency for a plan of operations prior to any surface disturbance, drilling or other operations which disturb the surface of lands contained in a lease. Said plan shall include, at a minimum, all proposed access and infrastructure locations and proposed site reclamation. Prior to approval, the agency may require the lessee or designated operator to adopt a special rehabilitation program for the particular property in question. Before the lessee or designated operator shall commence actual drilling operations on any well or prior to commencing any surface disturbance associated with the activity on lands contained within a lease, the operator or lessee or designated operator shall provide a plan of operations to the agency simultaneously with the filing of the application for a permit to drill (APD) with UDOGM. The agency will review any request for drilling operations and will grant approval providing that the contemplated location and operations are not in violation of any rules or order of the

agency. Agency approval of the APD for oil, gas or hydrocarbon resources administered by the agency is required prior to approval by UDOGM. Notice of approval by the agency shall be given in an expeditious manner to UDOGM.

2. Prior to approval of the APD, the agency shall require the lessee or designated operator to:

(a) provide when requested, a cultural, paleontological and biological survey on lands under an oil, gas and hydrocarbon lease, including providing the agency a copy of any survey(s) required by other governmental agencies;

(b) provide for reasonable mitigation of impacts to other trust resources occasioned by surface or sub-surface operations on the lease;

(c) negotiate with the agency a surface use agreement, right-of-way agreement, or both for trust lands other than the leased lands where the surface of said lands are necessary for the development of the lease; and

(d) keep a log of geologic data accumulated or acquired by the lessee or designated operator about the land described in the lease. This log shall show the formations encountered and any other geologic information reasonably required by lessor and shall be available upon request by the agency. A copy of the log, as well as any data related to exploration drill holes shall be deposited with the agency at the agency's request.

3. Oil and gas drilling, or other operations which disturb the surface of lands contained within or on the leased lands shall require surface rehabilitation of the disturbed area as described in the plan of operations approved by the agency, and as required by the rules and regulations administered by the UDOGM.

In all cases, the lessee or designated operator shall agree to establish a slope on all excavations to a ratio not steeper than one foot vertically for each two feet of horizontal distance, unless otherwise approved by the agency prior to commencement of operations. This sloping shall be a concurrent part of the operation of the leased premises to the extent that the operation shall not at any time constitute a hazard. All pits, excavations, roads and pads shall be shaped to facilitate drainage and control erosion by following the best management practices. In no case shall the pits or excavations be allowed to become a hazard to persons or livestock. All material removed from the premises shall be stockpiled and be used to fill the pits and for leveling and reclamation of roads and pads, unless consent of the agency to do otherwise is obtained, so at the termination of the lease, the land will as nearly as practicable approximate its original configuration. All drill holes must be plugged in accordance with rules promulgated by UDOGM.

The agency shall require that all topsoil in the affected area be removed, stockpiled, and stabilized on the leased premises until the completion of operations. Upon reclamation, the stockpiled topsoil will be redistributed on the affected area and the land revegetated as prescribed by the agency. All mud pits shall be filled and materials and debris removed from the site.

4. All lessees or designated operators under oil, gas and hydrocarbon leases shall be responsible for compliance with all laws and notification requirements and operating rules promulgated by UDOGM with regard to oil, gas and hydrocarbon exploration, or drilling on lands within the state of Utah under The Oil and Gas Conservation Act (Section 40-6-1 et seq.). Lessees or designated operators shall fully comply with all the rules or requirements of agencies having jurisdiction and provide timely notifications of operations plans, well completion reports, or other information as may be requested or required by the agency.

**R850-21-800. Bonding.**

1. Bond Obligations.

(a) Prior to commencement of any operations which will disturb the surface of the land covered by a lease, the lessee or designated operator shall post with UDOGM a bond in a form and in the amount set forth in R649-3-1 et seq. and approved by UDOGM to assure compliance with those terms and conditions of the lease and these rules, involving costs of reclamation, damages to the surface and improvements on the surface and all other related requirements and standards set forth in the lease, rules, procedures and policies of the agency and UDOGM.

(b) A separate bond shall be posted with the agency by the lessee or the designated operator to assure compliance with all remaining terms and conditions of the lease not covered by the bond to be filed with UDOGM, including, but not limited to payment of royalties.

(c) These bonds shall be in effect even if the lessee or designated operator has conveyed all or part of the leasehold interest to an assignee(s) or subsequent operator(s), until the bonds are released by UDOGM and the agency either because the lessee or designated operator has fully satisfied bonding obligations set forth in this section or the bond is replaced with a new bond posted by an assignee or designated operator.

(d) Bonds held by the agency shall be in the form and subject to the requirements set forth herein:

(i) Surety Bonds.

Surety bonds shall be issued by a qualified surety company, approved by the agency and registered in the state of Utah;

(ii) Personal Bonds.

Personal bonds shall be accompanied by:

(A) a cash deposit to the School and Institutional Trust Lands Administration. The agency will not be responsible for any investment returns on cash deposits. Such interest will be retained in the account and applied to the bond value of the account unless the agency has approved the payment of interest to the operator; or

(B) a cashier's check or certified check made payable to the School and Institutional Trust Lands Administration; or

(C) negotiable bonds of the United States, a state, or a municipality. The negotiable bond shall be endorsed only to the order of, and placed in the possession of, the agency. The agency shall value the negotiable bond at its current market value, not at the face value; or

(D) negotiable certificates of deposit. The certificates shall be issued by a federally insured bank authorized to do business in Utah. The certificates shall be made payable or assigned only to the agency both in writing and upon the records of the bank issuing the certificate. The certificates shall be placed in the possession of the agency or held by a federally insured bank authorized to do business in Utah. If assigned, the agency shall require the banks issuing the certificates to waive all rights of setoff or liens against those certificates; or

(E) an irrevocable letter of credit: Letters of credit shall be issued by a federally insured bank authorized to do business in Utah and will be irrevocable during their terms. Letters of credit shall be placed in the possession of and payable upon demand only to the agency. Letters of credit shall be automatically renewable or the operator shall ensure continuous bond coverage by replacing letters of credit, if necessary, at least thirty (30) days before their expiration date with other acceptable bond types or letters of credit; or

(F) any other type of surety approved by the agency.

2. Bond Amounts.

The bond amount required for an oil, gas and hydrocarbon exploration project to be held by the agency for those lease obligations not covered by the bond held by UDOGM shall be:

(a) a statewide blanket bond in the minimum amount of $15,000 covering exploration and production operations on all agency leases held by lessee; or

(b) a project bond covering an individual, single-well exploration project involving one or more leases. The amount of the project bond will be determined by the agency at the time

lessee gives notice of proposed operations. This bond shall not be less than $5,000 unless waived in writing by the director.

3. Bond Default.

(a) Where, upon default, the surety makes a payment to the agency of an obligation incurred under the terms of a lease, the face of the bond and surety's liability shall be reduced by the amount of such payment.

(b) After default, where the obligation in default equals or is less than the face amount of the bond(s), the lessee or designated operator shall either post a new bond, restore the existing bond to the amount previously held, or post an adjusted amount as determined by the agency. Alternatively, the lessee or designated operator shall make full payment to the agency for all obligations incurred that are in excess of the face amount of the bond and shall post a new bond in the amount previously held or such other amount as determined by the agency. Operations shall be discontinued until the restoration of a bond or posting of a new bond occurs. Failure to comply with these requirements may subject all leases covered by such bond(s) to be cancelled by the agency.

(c) The agency will not give consent to termination of the period of liability of any bond unless an acceptable replacement bond has been filed or until all terms and conditions of the lease have been met.

(d) Any lessee or designated operator forfeiting a bond is denied approval of any future oil, gas or hydrocarbon exploration on agency lands except by compensating the agency for previous defaults and posting the full bond amount for reclamation or lease performance on subsequent operations as determined by the agency.

4. Bonds may be increased at any time in reasonable amounts as the agency may order, providing the agency first gives lessee thirty (30) days written notice stating the increase and the reason for the increase.

5. The agency may waive the filing of a bond for any period during which a bond meeting the requirements of this section is on file with another agency.

**R850-21-1000. Multiple Mineral Development (MMD) Area Designation.**

1. The agency may designate any land under its authority as a multiple mineral development area. In designated multiple mineral development areas the agency may require, in addition to all other terms and conditions of the lease, that the lessee furnish a bond or evidence of financial responsibility as specified by the agency, to assure that the agency and other lessees shall be indemnified and held harmless from and against unreasonable and all unnecessary damage to mineral deposits or improvements caused by the conduct of the lessee on trust lands. Written notice shall be given to all oil, gas and hydrocarbon and other mineral lessees holding a lease for any mineral commodity within the multiple mineral development area. Thereafter, in order to preserve the value of mineral resources the agency may impose any reasonable requirements upon any oil, gas and hydrocarbon or other mineral lessee who intends to conduct any mineral activity within the multiple mineral development area. The lessee is required to submit advance written notice of any activities to occur within the multiple mineral development area to the agency and any other information that the agency may request. All activities within the multiple mineral development area are to be deferred until the agency has specified the terms and conditions under which the mineral activity is to occur and has granted specific permission to conduct the activity. The agency may hold public meetings regarding mineral development within the multiple mineral development area.

2. The agency may grant a lease extension under a multiple mineral development area designation, providing that the lessee or designated operator requests an extension to the agency prior to the lease expiration date, and that the lessee or designated operator would have otherwise been able to request a lease extension as provided in Subsection 53C-2-405(4).

**KEY: oil gas and hydrocarbons, administrative procedures, lease provisions, operations**
**March 20, 2006** **53C-1-302(1)(a)(ii)**
**53C-2 et seq.**

**R850. School and Institutional Trust Lands, Administration.**
**R850-22. Bituminous-Asphaltic Sands and Oil Shale Resources.**
**R850-22-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Utah Code Title 53C et seq. which authorize the Director of the School and Institutional Trust Lands Administration to establish rules for the management of bituminous-asphaltic sands and oil shale resources and for the issuance of leases for such resources on trust lands.

**R850-22-150. Planning.**

Pursuant to Subsection 53C-2-201(1)(a), this category of activity carries no planning obligations by the agency beyond existing rule-based analysis and approval processes. Bituminous-asphaltic sands and oil shale development activities are regulated pursuant to R649.

**R850-22-175. Definitions.**

The following words and terms, when used in Section R850-22 shall have the following meanings, unless otherwise indicated:

1. Act: Utah Code 53C-1 et seq.

2. Agency: School and Institutional Trust Lands Administration or its predecessor agency.

3. Anniversary Date: the same day and month in succeeding years as the effective date of the lease or permit.

4. Beneficiaries: the public school system and other institutions for whom the State of Utah was granted lands in trust by the United States under the Utah Enabling Act.

5. Bonus Bid: a payment reflecting an amount to be paid by an applicant in addition to the rentals and royalties set forth in a lease application as consideration for the issuance of such lease.

6. Assignment(s): a conveyance of all or a portion of the lessee's record title interest or royalty interest in a lease.

(a) Certification of Net Revenue Interest: the certification by oath of an assignor to the agency that the total net working revenue interest (NRI) in the lease which the assignment affects has not been reduced to less than 80 per cent of 100 per cent NRI. Certification shall only be required for leases issued after April 1, 2005.

(b) Mass Assignment: an assignment that affects more than one lease, including assignments which affect record title, working or non-working interests.

(c) Non-Working Interest Assignment: an assignment of interest in production from a lease other than the agency's royalty, the record title, or the working interest including but not limited to overriding royalties, production payments, net profits interests, and carried interests assignments but excluding liens and security interests.

(d) Record Title Assignment: an assignment of the lessee's interest in a lease which includes the obligation to pay rent, the rights to assign or relinquish the lease, and the ultimate responsibility to the agency for obligations under the lease.

(e) Working Interest Assignment: a transfer of a non-record title interest in a lease, including but not limited to wellbore assignments, but excepting overriding royalty, oil payment, net-profit, or carried interests or other non-working interests.

7. Board of Trustees: the School and Institutional Trust Lands Board of Trustees created under Section 53C-1-202.

8. Committed Lands: a consolidation of all or a portion of lands subject to a lease approved by the director for unitization which forms a logical unit for exploration, development or drilling operations.

9. Designated Operator: the person or entity that has been granted authority by the record title interest owner(s) in a lease and has been approved by the agency to conduct operations on the lease or a portion thereof.

10. Director: the person designated within the agency who manages the agency in fulfillment of its purposes as set forth in the Act.

11. Effective Date: unless otherwise defined in the lease, the effective date shall be the first day of the month following the date a lease is executed by the agency. An amended, extended or segregated lease will retain the effective date of the original lease.

12. Lease: a bituminous-asphaltic sands or oil shale lease covering the commodities defined in R850-22-200 issued by the agency.

13. Lease Year: the twelve-month period commencing at 12:01 a.m. on the month and day of the effective date of the lease and ending on the last day of the twelfth month at 12 midnight.

14. Leasing Unit: a parcel of trust land lying within one or more sections that is offered for lease as an indivisible unit through a competitive lease application process which would constitute one lease when issued.

15. Lessee: a person or entity holding a record title interest in a lease.

16. Other Business Arrangement ("OBA"): an agreement entered into between the agency and a person or entity consistent with the purposes of the Act and approved by the Board of Trustees. By way of example, but not of limitation, OBAs may be for farmout agreements or joint venture agreements. An agreement for an OBA may be initiated by the agency or by a proponent of an agreement by filing a proposal for an OBA with the agency.

17. Over-the-Counter Lease: the issuance of a lease through application on a first come, first served basis.

18. Production in Paying Quantities (also referred to in older mineral leases as Production in Commercial Quantities): production of the leased substance in quantities sufficient to yield revenue in excess of operating costs.

19. Rental: the amount due and payable on or before the anniversary date of a lease to maintain the lease in full force and effect for the following lease year.

20. Record Title: the legal ownership of a mineral lease as established in the records of the agency.

21. Sub-lease: a transfer of a non-record title interest in a mineral lease.

22. Surveyed Lot: an irregular part of a section identified by cadastral survey and maintained in the official records of the agency.

23. Trust Lands: those lands and mineral resources granted by the United States in the Utah Enabling Act to the State of Utah in trust, and other lands and mineral resources acquired by the trust, which must be managed for the benefit of the state's public education system or the institutions designated as beneficiaries.

24. UDOGM: the Division of Oil, Gas and Mining of the Utah State Department of Natural Resources.

25. Except as specifically defined above, the definitions set forth at R850-1-200 shall also be applicable.

**R850-22-200. Classification of Bituminous-Asphaltic Sands and Oil Shale.**

1. The term "bituminous-asphaltic sands" means rock or sand impregnated with asphalt or heavy oil and is synonymous with the term "tar sands." This category does not cover any substances, either combustible or non-combustible, which are produced in a gaseous or rarefied state at ordinary temperature and pressure conditions other than gas which results from artificial introduction of heat. Nor does this category embrace any liquid hydrocarbon substance which occurs naturally in a liquid form in the earth regardless of depth, including drip

gasoline or other natural condensate recovered from gas. The bituminous-asphaltic sands category does not include coal, oil shale, or gilsonite.

2. The oil shale category shall include any sedimentary rock containing kerogen.

**R850-22-300. Lease Application Process.**

1. The agency may issue leases competitively, non-competitively or enter into OBAs with qualified interest owners for the development of bituminous-asphaltic sands and oil shale resources.

(a) Competitive Bid Offering: when the agency designates leasing units for competitive bidding it shall award leases on the basis of the highest bonus bid per acre made by qualified application.

(i) Minimum Bonus Bid Amount: the minimum acceptable bonus bid for competitive bid offering for leasing units shall be not less than $1.00 per acre, or fractional acre thereof, which will constitute the (advance) rental for the first year of the lease.

(ii) Notice of Offering: notices of the offering of lands for competitive bid shall:

(A) run for a period of not less than fifteen (15) consecutive days after the notice is posted in the agency's office;

(B) describe the leasing unit;

(C) indicate the resource available for leasing; and

(D) state the last date on which bids may be received.

(iii) Opening of Bid Applications: bid applications shall be opened in the agency's office at 10 a.m. of the first business day following the last day on which bids may be received.

(iv) Content of Applications: each application shall be submitted in a sealed envelope which clearly identifies:

(A) the competitive bid;

(B) leasing unit number; and,

(C) the date of offering for which the bid is submitted.

(v) The application envelope must:

(A) describe only one leasing unit per application; and,

(B) contain one check for the application fee and a separate check for the amount of the bonus bid.

(vi) Withdrawal of Applications: applicants desiring to withdraw an application which has been filed under these competitive bid filing rules must submit a written request to the agency. If the request is received before sealed bids have been opened, all money tendered by the applicant, except the filing fee, shall be refunded. If a request is received after sealed bids have been opened, and if the applicant is awarded the bid, then unless the applicant accepts the offered lease, all money tendered shall be forfeited to the agency.

(vii) Non-Complying Applications: if the agency determines prior to lease issuance that an application did not comply with these rules at the time of bid opening, the application fee shall be retained by the agency and the application returned to the applicant without further consideration by the agency.

(viii) Identical Bids: in the case of identical successful bids, the agency may award the lease by public drawing or oral auction between the identical bidders, held at the agency's offices.

(b) Non-Competitive Leasing By Over-The-Counter Filing.

(i) The director may designate lands for non-competitive leasing by over-the-counter application if the lands have been offered in a competitive offering and have received no bids.

(ii) The minimum acceptable offer for over-the-counter applications to lease designated lands shall be not less than $1 per acre, or fractional acre thereof.

(iii) Applications for over-the-counter leases, when authorized, shall be filed on approved forms received from the office of the agency or as made available on its web site and delivered for filing in the main office of the agency during office hours. Except as provided, all over-the-counter applications received by personal delivery over the counter, are to be immediately stamped with the date and time of filing. All applications presented for filing at the opening of the office for business on any business day are stamped received as of 8 a.m., on that day. All applications received in the first delivery of the U.S. Mail of each business day are stamped received as of 8 a.m. on that day. The time indicated on the time stamp is deemed the time of filing unless the director determines that the application is materially deficient in any particular way. If an application is determined to be deficient, it will be returned to the applicant with a notice of the deficiency.

If an application is returned as deficient and is resubmitted in compliance with the rules within fifteen (15) days from the date of the determination of deficiency, it shall retain its original filing time.

If the application is resubmitted at any later time, it is deemed filed at the time of resubmission.

(iv) Where two or more applications for the same lease contain identical bids and bear a time stamp showing the said applications were filed at the same time, the agency may award the lease by public drawing or oral auction between the identical bidders, held at the agency's office.

(v) If an application or any part thereof is rejected, any money tendered for rental of the rejected portion shall be refunded or credited to applicant, minus the application fee.

(vi) An applicant who desires to withdraw its application must submit a written request to the agency. If the request is received prior to the time the agency approves the application, all money tendered by the applicant, except the application fee, shall be refunded. If the request is received after approval of the application, then, unless the applicant accepts the offered lease, all money tendered is forfeited to the agency.

**R850-22-400. Availability of Lands for Lease Issuance.**

1. A lease shall not be issued for lands comprising less than a quarter-quarter section or surveyed lot, unless the trust land managed by the agency within any quarter-quarter section or surveyed lot is less than the whole thereof, in which case the lease will be issued only on the entire area owned and available for lease within the quarter-quarter section or surveyed lot.

2. Leases shall be limited to no more than 2560 acres or four sections and must all be located within the same township and range unless a waiver is approved by the director.

3. Any lease may be terminated by the agency in whole or in part upon lessee's failure to comply with any lease term or covenant or applicable laws and rules. Subject to the terms of any lease issued hereunder, any final agency action is appealable pursuant to Section 53C-2-409, in accordance with the provisions of the rules of the agency.

**R850-22-500. Bituminous-Asphaltic Sands and Oil Shale Lease Provisions.**

The following provisions, terms and conditions shall apply to all leases granted by the agency:

1. Rentals and Rental Credits.

(a) The rental rate shall not be for less than $1 per acre, or fractional acre thereof, per year at the time the lease is offered.

(b) The minimum annual rental on any lease, regardless of the amount of acreage, shall in no case be less than $500.

(c) Rental payments shall be paid in advance each year on or before the lease anniversary date, unless otherwise stated in the lease.

(d) Any overpayment of rental occurring from the lease applicant's incorrect calculation of acreage of lands described in the lease may, at the option of the agency, be credited toward the applicant's rental account.

(e) The agency may accept lease payments made by any

party provided, however, that the acceptance of such payment(s) shall not be deemed to be recognition by the agency of any interest of the payee in the lease. Ultimate responsibility for such payments remains with the record title interest owner.

(f) Rental credits, if any, shall be governed by the terms of the lease which provide for such credits.

2. Royalty Provisions: during the primary term of the lease, the lessee shall pay lessor a production royalty on the basis of eight percent (8%) of the gross value, including all bonuses and allowances received by lessee, of each marketable product produced from the leased substance and sold under a bonafide contract of sale. The royalty may, at the discretion of the lessor, be increased after the ten (10) year primary term at a rate not in excess of one percent (1%) per annum to a maximum of twelve and one-half percent (12.5%).

3. Primary Lease Term: no lease shall establish a primary term in excess of ten (10) years.

4. Continuance of a Lease after Expiration of a Primary Term.

(a) A lease shall be continued after the primary term has expired so long as:

(i) the leased substance is being produced in paying quantities from the leased premises or from other lands communitized or unitized with committed lands; or

(ii) the agency determines that the lessee or designated operator:

(A) is engaged in diligent operations which are determined by the director to be reasonably calculated to advance or restore production of the leased substance from the leased premises or from other lands communitized, or unitized with committed lands; and

(B) pays the annual minimum royalty set forth in the lease.

5. Communitization or Unitization of Leases.

(a) Lessees, upon prior written authorization of the director, may commit leased trust lands or portions of such lands to unit, cooperative or other plans of development with other lands.

(b) The director may, with the consent of the lessee, modify any term of a lease for lands that are committed to a unit, cooperative, or other plan of development.

(c) Production allocated to leased trust lands under the terms of a unit, cooperative, or other plan of development shall be considered produced from the leased lands whether or not the point of production is located on the leased trust lands.

(d) The term of all leases included in any cooperative or unit plan of development or operation in which the agency has joined, or shall hereafter join, shall be extended automatically for the term of the unit or cooperative agreement. Rentals on leases so extended shall be at the rate specified in the lease, subject to change in rates at the discretion of the director or as may be prescribed in the terms of the lease.

(e) Any lease eliminated from any cooperative or unit plan of development or operation, or any lease which is in effect at the termination of a cooperative or unit plan of development or operation, unless relinquished, shall continue in effect for the fixed term of the lease, or for two (2) years after its elimination from the plan or agreement or the termination thereof, whichever is longer, and so long thereafter as the leased substances are produced in paying quantities. Rentals under such leases shall continue at the rate specified in the lease.

6. When the agency approves the amendment of an existing lease by substituting a new lease form for the existing form(s), the amended lease will retain the effective date of the original lease.

7. Other Lease Provisions.

The agency may require, in addition to the lease provisions required by these rules, any other reasonable provisions to be included in the lease as it deems necessary, but which does not substantially impair the lessees' rights under the lease.

**R850-22-600. Transfer by Assignment or Operation of Law.**

1. Any lease may be assigned as to all or part of the acreage, to any person, firm, association, or corporation qualified to hold a lease provided, however, that all assignments must be approved by the director. No assignment is effective until approval is given. Any attempted or purported assignment made without approval by the director is void.

2. Transfer by Assignment.

(a) An assignment of either a record title, working or non-working interest in a lease must:

(i) be expressed in a good and sufficient written legal instrument;

(ii) be properly executed, acknowledged and clearly set forth:

(A) the serial number of the lease;

(B) the land involved;

(C) the name and address of the assignee;

(D) the name of the assignor;

(E) the interest transferred;

(iii) be accompanied by a certification that the assignee is a qualified interest owner; and

(iv) include a certification of net revenue interest.

(b) Lessees who are assigning a lease shall:

(i) prepare and execute the assignments in duplicate, complete with acknowledgments;

(ii) provide that each copy of the assignment have attached thereto an acceptance of assignment duly executed by the assignee; and

(iii) provide that all assignments forwarded to or deposited with the agency be accompanied by the prescribed fee.

(c) The director shall approve any assignment of interest which has been properly executed; if the required filing fee is paid for each separate lease in which an interest is assigned, and the assignment complies with the law and these rules, so long as the director determines that approval would not be detrimental to the interests of the trust beneficiaries.

(d) If approval of any assignment is withheld by the director, the transferee shall be notified of such decision and its basis. Any decision to withhold approval may be appealed pursuant to Rule R850-8 or any similar rule in place at the time of such decision.

(e) Any assignment of a portion of a lease, whether of a record title, working or non-working interest, covering less than a quarter-quarter section, a surveyed lot, or an assignment of a separate zone or a separate deposit, shall not be approved.

(f) An assignment shall be effective the first day of the month following the approval of the assignment by the director. The assignor or surety, if any, shall continue to be responsible for performance of any and all obligations as if no assignment had been executed until the effective date of the assignment. After the effective date of any assignment, the assignee is bound by the terms of the lease to the same extent as if the assignee were the original lessee, any conditions in the assignment to the contrary notwithstanding; provided, however, that the approved record title interest owner(s) shall retain ultimate responsibility to the agency for all lease obligations.

(g) A record title assignment of an undivided 100% record title interest in less than the total acreage covered by the lease shall cause a segregation of the assigned and retained portions. After the effective date of the approved assignment, the assignor shall be released or discharged from any obligation thereafter accruing to the assigned lands. Segregated leases shall continue in full force and effect for the primary term of the original lease or as further extended pursuant to the terms of the lease. The agency may re-issue a lease with a new lease number covering the assigned lands for the remaining unexpired primary term. The agency may, in lieu of re-issuing a lease, note the assignment in its records with all lands covered by the original lease maintained with the original lease number, and with each

separate tract or interest resulting from an assignment with an additional identifying designation to the original number.

(h) Any assignment which would create a cumulative royalty and other non-working interest in excess of twenty per cent (20%) thereby reducing the net revenue interest in the lease to less than eighty per cent (80%) NRI shall not be approved by the agency.

(i) Mass assignments are allowed, provided:

(i) the requirements set forth in paragraph R850-22-600(2) are met;

(ii) the serial number, the lands covered thereby, and the percent of interest assigned therein are expressly described in an attached exhibit;

(iii) the prescribed fee is paid for each lease affected; and

(iv) a separate mass assignment is filed for each type of interest (record title, working or non-working interest) that is assigned.

(j) The agency shall not accept for filing, mortgages, deeds of trust, financing statements or lien filings affecting leases. To the extent a legal foreclosure upon interests in leases occurs under the terms of such agreements, assignments must be prepared as set forth in this section and filed with the agency, which will then be reviewed and approved in due course.

(k) The agency by approving an assignment does not adjudicate the validity of any assignment as it may affect third parties, nor estop the agency from challenging any assignment which is later adjudicated by a court of competent jurisdiction to be invalid or ineffectual.

3. Transfer by Operation of Law.

(a) Death: if an applicant or lessee dies, his/her rights shall be transferred to the heirs, devisees, executor or administrator of the estate, as appropriate, upon the filing of:

(i) a certified copy of the death certificate together with other appropriate documentation to verify change of ownership as required under the probate laws of the state of Utah (Section 75-1-101 et seq.);

(ii) a list containing the serial number of each lease interest affected;

(iii) a statement that the transferee(s) is a qualified interest owner;

(iv) the required filing fee for each separate lease in which an interest is transferred; and

(v) a bond rider or replacement bond for any bond(s) previously furnished by the decedent.

(b) Corporate Merger: if a corporate merger affects any interest in a lease because of the transfer of property of the dissolving corporation to the surviving corporation by operation of law, no assignment of any affected lease is required. A notification of the merger, together with a certified copy of the certificate of merger issued by the Utah Department of Commerce, shall be furnished to the agency, together with a list by serial number of all lease interests affected. The required filing fee must be paid for each separate lease in which an interest is transferred. A bond rider or replacement bond conditioned to cover the obligations of all affected corporations will be required as a prerequisite to recognition of the merger.

(c) Corporate Name Change: if a change of name of a corporate lessee affects any interest in a lease, the notice of name change shall be submitted in writing with a certificate from the Utah Department of Commerce evidencing its recognition of the name change accompanied by a list of lease serial numbers affected by the name change. The required filing fee must be paid for each separate lease in which an interest is transferred. A bond rider or replacement bond, conditioned to cover the obligations of all affected corporations, is required as a prerequisite to recognition of the name change.

**R850-22-700. Operations Plan and Reclamation.**

1. All lessees, permittees or designated operators shall submit to the agency, and receive approval for, a plan of operations prior to any surface disturbance, drilling or other operations which disturb the surface of trust lands subject to a lease or permit. The operations plan shall include at a minimum proposed access and infrastructure locations and proposed site reclamation. Prior to approval, the agency may require the lessee, permittee or designated operator to adopt a special rehabilitation program for the particular property in question. Before the lessee, permittee or designated operator shall commence actual operations or prior to commencing any surface disturbance associated with the activity on lands subject to a lease or permit, the permittee, lessee or designated operator shall provide a plan of operations to the agency simultaneously with the filing of any required plan of operations or permit application with UDOGM. The agency will review any request for approval of operations and will grant approval providing that the proposed location and operations are not in violation of any rules or order of the agency. Before operations can commence, approval must be granted by the UDOGM, if required by statute, and by the agency. Notice of approval by the agency shall be given in an expeditious manner to UDOGM.

2. Prior to approval of any surface disturbing operation, the agency may require the lessee, permittee or designated operator to:

(a) provide when requested, a cultural, paleontological and biological survey on lands under lease or permit, including providing the agency a copy of any survey(s) required by other governmental agencies;

(b) provide for reasonable mitigation of impacts to other trust resources occasioned by surface or sub-surface operations on the lease;

(c) negotiate with the agency a surface use agreement, right-of-way agreement, or both for trust lands other than the leased or permitted lands, where the surface of said lands are necessary for the development of the lease or permit.

3. Maintain a record of geologic data accumulated or acquired by the lessee, permittee or designated operator concerning the land described in the lease or permit. This record shall show the formations encountered and any other geologic or development information reasonably required by the agency and shall be available upon request by the agency. A copy of the record, as well as any other data related to geologic exploration or resource development on trust lands shall be deposited with the agency at the agency's request.

4. All operation which disturbs the surface of lands contained within or on trust lands shall be required to be reclaimed by rehabilitation of the disturbed area as described in the plan of operations approved by the agency, and as required by the laws administered by the UDOGM or as required by any other state or federal agency.

(a) In all cases, at a minimum, the lessee, permittee or designated operator shall agree to establish a slope on all excavations to a ratio not steeper than one foot vertically for each two feet of horizontal distance, unless otherwise approved by the agency and UDOGM prior to commencement of operations. The establishment of a stable slope shall be a concurrent part of the operation of the leased or permitted premises such that operations shall at no time constitute a hazard. All pits, excavations, roads and pads shall be shaped to facilitate drainage and control erosion by following the best management practices.

(b) In no case shall the pits or excavations be allowed to become a hazard to persons or livestock. All material removed from trust lands shall be stockpiled and be used to fill the pits and for leveling and reclamation of roads and pads unless consent of the agency, and if applicable of UDOGM, to do otherwise is obtained, so at the termination of the lease, the land will as nearly as practicable approximate its original horizontal and vertical configuration. All drill holes must be plugged in

accordance with rules promulgated by UDOGM.

(c) The agency shall require of the lessee, permittee or designated operator that all topsoil in the area of surface disturbance be removed, stockpiled, and stabilized on the trust lands until the completion of operations and satisfactory use in reclamation. At the time of reclamation, the stockpiled topsoil shall be redistributed on the area of surface disturbance and the land revegetated as prescribed by the UDOGM and the agency. All mud pits and temporary debris and settlement basins shall be filled and materials and debris removed from the site.

5. All lessees, permittees or designated operators shall be responsible for compliance with all laws and notification requirements and operating rules promulgated by UDOGM or any other federal or state agency that may have regulatory jurisdiction over mineral development on trust lands or the leased or permitted substance.

**R850-22-800. Bonding.**

1. Bond Obligations.

(a) Prior to commencement of any operations which will disturb the surface of the land covered by a lease, the lessee or designated operator shall post with UDOGM, a bond in a form and in the amount set forth in R647-3-1 et seq. and approved by UDOGM to assure compliance with those terms and conditions of the lease and these rules, involving costs of reclamation, damages to the surface and improvements on the surface and all other related requirements and standards set forth in the lease, rules, procedures and policies of the agency and UDOGM.

(b) A separate bond shall be posted with the agency by the lessee or the designated operator to assure compliance with all remaining terms and conditions of the lease not covered by the bond to be filed with UDOGM, including, but not limited to payment of royalties.

(c) These bonds shall be in effect even if the lessee or designated operator has conveyed all or part of the leasehold interest to an assignee(s) or subsequent operator(s), until the bonds are released by UDOGM and the agency either because the lessee or designated operator has fully satisfied bonding obligations set forth in this section or the bond is replaced with a new bond posted by an assignee or designated operator.

(d) Bonds held by the agency shall be in the form and subject to the requirements set forth herein:

(i) Surety Bonds.

Surety bonds shall be issued by a qualified surety company, approved by the agency and registered in the state of Utah.

(ii) Personal Bonds.

Personal bonds shall be accompanied by:

(A) a cash deposit to the School and Institutional Trust Lands Administration. The agency will not be responsible for any investment returns on cash deposits. Such interest will be retained in the account and applied to the bond value of the account unless the agency has approved the payment of interest to the operator; or

(B) a cashier's check or certified check made payable to the School and Institutional Trust Lands Administration; or

(C) negotiable bonds of the United States, a state, or a municipality. The negotiable bond shall be endorsed only to the order of, and placed in the possession of, the agency. The agency shall value the negotiable bond at its current market value, not at the face value; or

(D) negotiable certificates of deposit. The certificates shall be issued by a federally insured bank authorized to do business in Utah. The certificates shall be made payable or assigned only to the agency both in writing and upon the records of the bank issuing the certificate. The certificates shall be placed in the possession of the agency or held by a federally insured bank authorized to do business in Utah. If assigned, the agency shall require the banks issuing the certificates to waive all rights of setoff or liens against those certificates; or

(E) an irrevocable letter of credit. Letters of credit shall be issued by a federally insured bank authorized to do business in Utah and will be irrevocable during their terms. Letters of credit shall be placed in the possession of and payable upon demand only to the agency. Letters of credit shall be automatically renewable or the operator shall ensure continuous bond coverage by replacing letters of credit, if necessary, at least thirty (30) days before their expiration date with other acceptable bond types or letters of credit; or

(F) any other type of surety approved by the agency.

2. Bond Amounts.

The bond amount required for an exploration or development project to be held by the agency for those lease obligations not covered by the bond held by UDOGM shall be:

(a) a project bond covering an individual, single-exploration project involving one or more leases. The amount of the project bond will be determined by the agency at the time lessee gives notice of proposed operations.

3. Bond Default.

(a) Where, upon default, the surety makes a payment to the agency of an obligation incurred under the terms of a lease, the face of the bond and surety's liability shall be reduced by the amount of such payment.

(b) After default, where the obligation in default equals or is less than the face amount of the bond(s), the lessee or designated operator shall either post a new bond, restore the existing bond to the amount previously held, or post an adjusted amount as determined by UDOGM or the agency. Alternatively, the lessee or designated operator shall make full payment to the agency for all obligations incurred that are in excess of the face amount of the bond and shall post a new bond in the amount previously held or such other amount as determined by the agency. Operations shall be discontinued until the restoration of a bond or posting of a new bond occurs. Failure to comply with these requirements may subject all leases covered by such bond(s) to be cancelled by the agency.

(c) The agency will not give consent to termination of the period of liability of any bond unless an acceptable replacement bond has been filed with UDOGM or the agency, or until all terms and conditions of the lease and all reclamation obligations of UDOGM have been met.

(d) Any lessee or designated operator forfeiting a bond is denied approval of any future oil, gas or hydrocarbon exploration on agency lands except by compensating the agency for previous defaults and posting the full bond amount for reclamation or lease performance on subsequent operations as determined by the agency.

4. Bonds may be increased at any time in reasonable amounts as the agency may order, providing the agency first gives lessee thirty (30) days written notice stating the increase and the reason for the increase.

5. The agency may waive the filing of a bond for any period during which a bond meeting the requirements of this section is on file with another agency.

**R850-22-1000. Multiple Mineral Development (MMD) Area Designation.**

1. The agency may designate any land under its authority as a multiple mineral development area. In designated multiple mineral development areas the agency may require, in addition to all other terms and conditions of the lease, that the lessee furnish a bond or evidence of financial responsibility as specified by the agency, to assure that the agency and other lessees shall be indemnified and held harmless from and against unreasonable and all unnecessary damage to mineral deposits or improvements caused by the conduct of the lessee on trust lands. Written notice shall be given to all lessees holding a lease for any mineral commodity within the multiple mineral development area. Thereafter, in order to preserve the value of

mineral resources the agency may impose any reasonable requirements upon any mineral lessee who intends to conduct any mineral activity within the multiple mineral development area. The lessee is required to submit advance written notice of any activities to occur within the multiple mineral development area to the agency and any other information that the agency may request. All activities within the multiple mineral development area are to be deferred until the agency has specified the terms and conditions under which the mineral activity is to occur and has granted specific permission to conduct the activity. The agency may hold public meetings regarding the mineral development within the multiple mineral development area.

2. The agency may grant a lease extension under a multiple mineral development area designation, providing that the lessee or designated operator requests an extension to the agency prior to the lease expiration date, and that the lessee or designated operator would have otherwise been able to request a lease extension as provided in Subsection 53C-2-405(4).

**KEY: bituminous-asphaltic sands, oil shale, administrative procedures, lease provisions**
**March 20, 2006** **53C-1-302(1)(a)(ii)**
**53C-2 et seq.**

**R850. School and Institutional Trust Lands, Administration.**
**R850-24. General Provisions: Mineral and Material Resources, Mineral Leases and Material Permits.**
**R850-24-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Subsections 53C-1-302(1)(a)(ii) and 53C-2-402(1) of the School and Institutional Trust Lands Management Act which authorize the Director of the School and Institutional Trust Lands Administration to establish rules for the issuance of mineral leases or material permits and management of trust lands and mineral and material resources.

**R850-24-125. Planning.**

Pursuant to Subsection 53C-2-201(1)(a), this category of activity carries no planning obligations by the agency beyond existing rule-based analysis and approval processes. Mineral and material development activities are regulated pursuant to R645, R647, and R649.

**R850-24-150. Scope - Mineral Estate Distinctions.**

1. For purposes of this section, mineral and material resources include all hardrock minerals and building stone; coal; and geothermal resources. Additional rules specific to these categories are found in section R850-25 for hardrock and material resources; section R850-26 for coal; and section R850-27 for geothermal resources. These general provisions do not cover oil, gas and hydrocarbons; bituminous-asphaltic sands and oil shale; or sand, gravel and cinders.

2. Common varieties of sand and gravel and volcanic cinder are not considered part of the mineral estate on trust lands in Utah. These commodities may only be obtained through a sand and gravel or volcanic cinder permit approved by the agency, pursuant to Section R850-23.

**R850-24-175. Definitions.**

The following words and terms, when used in sections R850-24 through R850-27 of this chapter shall have the following meanings, unless otherwise indicated:

1. Act: the School and Institutional Trust Lands Management Act, Utah Code Sections 53C-1 et seq.

2. Agency: School and Institutional Trust Lands Administration or its predecessor agency.

3. Anniversary Date: the same day and month in succeeding years as the effective date of the lease or permit.

4. Assignments and Transfers of Interest:

(a) Assignment: a transfer of all or a portion of the lessee's/permittee's record title interest in a mineral lease or material permit.

(b) Assignment of Overriding Interests: a transfer of an interest in a mineral lease or material permit that creates a right to share in the proceeds of production from the lease or permit, but confers no right to enter upon the leased or permitted lands or to conduct exploration, development or mining operations on the lands.

(c) Partial Assignment: an assignment of the lessee's record title interest in a part of the lands in a mineral lease or material permit and a segregation of the assigned lands into a separate lease or permit.

(d) Sublease/Operating Rights Assignment: a transfer of a non-record title interest in a mineral lease or materials permit, which authorizes the holder to enter upon the leased or permitted lands to conduct exploration, development and mining operations, but does not alter the relationship imposed by a lease on the lessor and the lessee.

(e) Transfer of Interest: any conveyance of an interest in a mineral lease or material permit by assignment, partial assignment, sublease, operating rights assignment, or other agreement.

5. Beneficiaries: the public school system and other institutions for whom the State of Utah was granted lands in trust by the United States under the Utah Enabling Act.

6. Board of Trustees: the board created under Utah Code Section 53C-1-202.

7. Bonus Bid: a payment reflecting an amount to be paid by the applicant in addition to the rentals and royalties set forth in a lease or permit as consideration for the issuance of such lease or permit.

8. Designated Operator: the person or entity that has been granted authority by the record title interest owner(s) in a lease or permit and has been approved by the agency to conduct operations on the lease, permit or a portion thereof.

9. Director: the director as defined in Utah Code Subsection 53C-1-103(3) and Sections 53C-1-301 - 303, or a person to whom the director has delegated authority.

10. Effective Date: unless otherwise defined in the lease or permit, the effective date shall be the first date of the month following the date a lease or permit is executed. An amended, extended, segregated or readjusted lease or permit will retain the effective date of the original lease or permit.

11. Lessee: a person or entity holding a record title interest in a mineral lease under R850-25, coal lease under R850-26, or geothermal steam lease under R850-27.

12. Mining Unit: a consolidation of trust mineral lands approved by the director forming a logical exploration, development, or mining operation.

13. Other Business Arrangement (OBA): an agreement entered into between the agency and a person or entity consistent with the purposes of the Act and approved by the Board of Trustees. By way of example, but not of limitation, OBAs may be for farmout agreements or joint venture agreements. An agreement for an OBA may be initiated by the agency or by a proponent of an agreement by filing a proposal for an OBA with the agency's assistant director for minerals or other designated person.

14. Over-the-Counter Permits: the issuance of a material permit through open sales on a first-come, first-served basis.

15. Permittee: a person or entity holding a record title interest in a material permit under R850-25.

16. Record Title Interest: a lessee's/permittee's interest in a lease/permit which includes the obligation to pay rent, the rights to assign or relinquish the lease/permit, and the ultimate responsibility to the agency for obligations under the lease or permit.

17. Sublease: a transfer of a non-record title interest in a mineral lease or material permit.

18. Surveyed Lot: an irregular part of a section identified by cadastral survey and maintained in the official records of the agency.

19. Trust Lands: those lands and mineral resources granted by the United States in the Utah Enabling Act to the State of Utah in trust, and other lands and mineral resources acquired by the trust, which must be managed for the benefit of the state's public education system or the institutions designated as beneficiaries.

20. UDOGM: the Division of Oil, Gas and Mining of the Utah Department of Natural Resources.

**R850-24-200. Insurance Requirements.**

Prior to the issuance of a permit or lease for mineral and material resources, the applicant may be required to obtain insurance of a type and in an amount acceptable to the agency. Proof of insurance shall be in the form of a certificate of insurance containing sufficient information to satisfy the agency that insurance provisions of the permit have been complied with.

1. Such insurance, if required, shall be placed with an insurer with a financial rating assigned by the Best Insurance

Guide of A:X or higher, unless this requirement is waived in writing by the agency.

2. The agency shall retain the right to review the coverage, form, and amount of the insurance required at any time and to require the permittee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection upon 30 days written notice.

**R850-24-400. Preference Rights for Unleased Mineral or Material.**

1. Any lessee or permittee who discovers any mineral or material on lands leased or permitted from the agency which are not included within that lease or permit shall have a preference right to a lease or permit covering the unleased mineral or unpermitted material, provided the unleased mineral or unpermitted material at the time of discovery is not included within a lease or permit application by another party.

2. The preference right lease or permit is subject to the rental, royalty, and development requirements provided in these rules and in the lease or permit form.

3. The preference right shall not extend to any unleased mineral or unpermitted material which have been withdrawn from leasing or permitting.

4. The preference right shall continue for a period of 60 days after the discovery of the unleased mineral or unpermitted material, provided the applicant notifies the agency within ten (10) days after the discovery and makes application to lease the unleased mineral or permit the unpermitted material within the sixty (60) day period after date of discovery.

**R850-24-500. Multiple Mineral and Material Development (MMD) Area.**

The agency may designate any land under its authority as a multiple mineral development area (MMDA).

1. In designated MMDAs, the agency may require, in addition to all other terms and conditions of a mineral lease or material permit, that the lessee or permittee in an area capable of multiple mineral or material development furnish a bond beyond that required in subsection R850-24-600(1)(a) or evidence of financial responsibility as specified by the agency, to assure that the agency and other mineral lessees, material permittees, sand and gravel permittees under R850-23, or bituminous-asphaltic sands lessees under R850-22 be indemnified and held harmless from and against all unreasonable and unnecessary damage to the leased resource, mineral or material deposits or improvements caused by the conduct of the lessee/permittee on trust lands.

2. Where a lessee/permittee intends to conduct multiple mineral or material development activities, the lessee/permittee shall:

(a) submit advance written notice to the agency and to other lessees/permittees holding a lease or permit for any mineral commodity within the MMDA of any activities that are to occur within the multiple mineral or material development area.

3. All activities within the MMDA are to be deferred until the agency has specified the terms and conditions under which the mineral activity is to occur and has granted specific written permission to conduct the activity.

4. To preserve the value of the mineral or material resources, the agency may impose additional requirements upon any lessee/permittee, or designated operator who intends to conduct any multiple mineral or material development activity within a multiple mineral or material development area.

5. The agency may hold public meetings regarding the mineral or material development in a multiple mineral or material development area.

6. The agency may grant an extension to a mineral lease or material permit in a multiple mineral or material development area provided that the mineral lessee, material permittee, or designated operator requests an extension prior to the expiration date of the lease or permit, and that the lessee, permittee, or designated operator would have otherwise been able to request a mineral lease or material permit extension as provided in the Act.

**R850-24-600. Bonding.**

1. Bond Obligations.

(a) Prior to commencement of any operations which will disturb the surface of the land covered by a mineral lease or material permit, the lessee, permittee, or designated operator shall post with the Utah Division of Oil, Gas and Mining a bond in the form and in the amount set forth in R647-3-1 et seq. and approved by UDOGM to assure compliance with those terms and conditions of the mineral lease or material permit involving costs of reclamation, damages to the surface and improvements on the surface, and all other requirements and standards set forth in the mineral lease, material permit, rules, procedures, and policies of the agency and the Utah Division of Oil, Gas, and Mining.

(b) A separate bond may be posted with the agency by the lessee or the designated operator to assure compliance with all remaining terms and conditions of the lease or permit not covered by the bond to be filed with UDOGM, including but not limited to payment of rentals and royalties.

(c) These bonds shall remain in effect even if the mineral lessee, material permittee, or designated operator has conveyed all or part of the leasehold interest to a sublessee(s), assignee(s), or subsequent operator(s), until the bond is released by UDOGM or the agency either because the lessee, permittee, or designated operator has fully satisfied the bonding obligations set forth in this section or the bond is replaced with a new approved bond posted by a sublessee, assignee, or new designated operator.

(d) The agency may waive the filing of a bond for any period during which a bond meeting the requirements of this section is on file with another agency.

(e) Bonds held by the agency shall be in the form and subject to the requirements set forth herein:

(i) Surety Bonds: shall be issued by a qualified surety company, approved by the agency and registered in the state of Utah;

(ii) Lessee/Permittee Bonds: shall be accompanied by:

(A) a cash deposit to the School and Institutional Trust Lands Administration. The agency will not be responsible for any investment returns on cash deposits. Such interest will be retained in the account and applied to the bond value of the account unless the agency has approved the payment of interest to the operator; or

(B) a cashier's check made payable to the School and Institutional Trust Lands Administration; or

(C) negotiable bonds of the United States, a state, or a municipality. The negotiable bond shall be endorsed only to the order of, and placed in the possession of, the agency. The agency shall value the negotiable bond at its current market value, not at the face value; or

(D) negotiable certificates of deposit. The certificates shall be issued by a federally insured bank authorized to do business in Utah. The certificates shall be made payable or assigned only to the agency both in writing and upon the records of the bank issuing the certificate. The certificates shall be placed in the possession of the agency or held by a federally insured bank authorized to do business in Utah. If assigned, the agency shall require the banks issuing the certificates to waive all rights of setoff or liens against those certificates; or

(E) an irrevocable letter of credit. Letters of credit shall be issued by a federally insured bank authorized to do business in Utah and will be irrevocable during their terms. Letters of

credit shall be placed in the possession of and payable upon demand only to the agency. Letters of credit shall be automatically renewable or the operator shall ensure continuous bond coverage by replacing letters of credit, if necessary, at least thirty (30) days before their expiration date with other acceptable bond types or letters of credit; or

(F) any other type of surety approved by the agency.

2. Increased amount of bonds.

The agency may increase the required bond amount at any time. The lessee, permittee, or designated operator shall be given thirty (30) days written notice stating the reason(s) for the increase and the new bond amount.

3. Bond Default.

(a) Where, upon default, the surety makes a payment to the agency of an obligation incurred under the terms of a mineral lease or material permit, the face of the bond and the surety's liability shall be reduced by the amount of such payment.

(b) After default, where the obligation in default equals or is less than the face amount of the bond(s), the lessee, permittee, or the designated operator, shall either post a new bond, restore the existing bond to the amount previously held, or post an adjusted amount as determined by the agency. Alternatively, the lessee, permittee, or designated operator, shall make full payment to the agency for all obligations incurred that are in excess of the face amount of the bond and shall post a new bond in the amount previously held or such other amount as determined by the agency. Operations shall be discontinued until the restoration of a bond or posting of a new bond occurs. Failure to comply with these requirements may subject all mineral leases or material permits covered by such bond(s) to be cancelled by the agency.

(c) The agency will not give consent to termination of the period of liability of any bond unless an acceptable replacement bond has been filed or until all the terms and conditions of the mineral lease or material permit have been met.

(d) Any lessee, permittee, or designated operator forfeiting a bond shall be denied approval of any future exploration or mining on trust-owned lands, except by compensating the agency for previous defaults and posting the full bond amount required by the agency.

**R850-24-700. Operations Plan and Reclamation.**

1. All lessees, permittees or designated operators shall submit to the agency, and receive approval for, a plan of operations prior to any surface disturbance, drilling or other operations which disturb the surface of trust lands subject to a lease or permit. The operations plan shall include at a minimum proposed access and infrastructure locations and proposed site reclamation. Prior to approval, the agency may require the lessee, permittee or designated operator to adopt a special rehabilitation program for the particular property in question. Before the lessee, permittee or designated operator shall commence actual operations or prior to commencing any surface disturbance associated with the activity on lands subject to a lease or permit, the permittee, lessee or designated operator shall provide a plan of operations to the agency simultaneously with the filing of any required plan of operations or permit application with UDOGM. The agency will review any request for approval of operations and will grant approval providing that the proposed location and operations are not in violation of any rules or order of the agency. Before operations can commence, approval must be granted by the UDOGM, if required by statute, and by the agency. Notice of approval by the agency shall be given in an expeditious manner to UDOGM.

2. Prior to approval of any surface disturbing operation, the agency may require the lessee, permittee or designated operator to:

(a) provide when requested, a cultural, paleontological and biological survey on lands under lease or permit, including providing the agency a copy of any survey(s) required by other governmental agencies;

(b) provide for reasonable mitigation of impacts to other trust resources occasioned by surface or sub-surface operations on the lease;

(c) negotiate with the agency a surface use agreement, right-of-way agreement, or both for trust lands other than the leased or permitted lands, where the surface of said lands are necessary for the development of the lease or permit.

3. Maintain a record of geologic data accumulated or acquired by the lessee, permittee or designated operator concerning the land described in the lease or permit. This record shall show the formations encountered and any other geologic or development information reasonably required by the agency and shall be available upon request by the agency. A copy of the record, as well as any other data related to geologic exploration or resource development on trust lands shall be deposited with the agency at the agency's request.

4. All operation which disturbs the surface of lands contained within or on trust lands shall be required to be reclaimed by rehabilitation of the disturbed area as described in the plan of operations approved by the agency, and as required by the laws administered by the UDOGM or as required by any other state or federal agency.

(a) In all cases, at a minimum, the lessee, permittee or designated operator shall agree to establish a slope on all excavations to a ratio not steeper than one foot vertically for each two feet of horizontal distance, unless otherwise approved by the agency and UDOGM prior to commencement of operations. The establishment of a stable slope shall be a concurrent part of the operation of the leased or permitted premises such that operations shall at no time constitute a hazard. All pits, excavations, roads and pads shall be shaped to facilitate drainage and control erosion by following the best management practices.

(b) In no case shall the pits or excavations be allowed to become a hazard to persons or livestock. All material removed from trust lands shall be stockpiled and be used to fill the pits and for leveling and reclamation of roads and pads unless consent of the agency, and if applicable of UDOGM, to do otherwise is obtained, so at the termination of the lease, the land will as nearly as practicable approximate its original horizontal and vertical configuration. All drill holes must be plugged in accordance with rules promulgated by UDOGM.

(c) The agency shall require of the lessee, permittee or designated operator that all topsoil in the area of surface disturbance be removed, stockpiled, and stabilized on the trust lands until the completion of operations and satisfactory use in reclamation. At the time of reclamation, the stockpiled topsoil shall be redistributed on the area of surface disturbance and the land revegetated as prescribed by the UDOGM and the agency. All mud pits and temporary debris and settlement basins shall be filled and materials and debris removed from the site.

5. All lessees, permittees or designated operators shall be responsible for compliance with all laws and notification requirements and operating rules promulgated by UDOGM or any other federal or state agency that may have regulatory jurisdiction over mineral development on trust lands or the leased or permitted substance.

**R850-24-800. Transfer by Assignment, Sublease or Otherwise and Overriding Royalties.**

Any mineral lease or material permit may be transferred as to all or part of the acreage, to any person, or entity firm, association, or corporation qualified to hold a lease or permit, provided however, that all transfers of interest are approved by the director. No transfer of interest is effective until written approval is given. Any transfer of interest made without approval is void.

1. The director shall not withhold approval of any transfer of interest which has been properly executed, for which the required filing fee has been paid for each separate lease or permit in which an interest is transferred, and the transfer complies with the law and these rules, unless the director determines that approval would interfere with the development of the mineral or material resources, or be detrimental to the interests of the trust beneficiaries.

(a) If approval of any transfer is withheld by the director, the transferee shall be notified of such decision and the reason(s) therefore. Any decision to withhold approval may be appealed pursuant to R850-8 or any similar rule in place at the time of such decision.

2. Unless otherwise authorized by the agency, a transfer of interest of a portion of a mineral lease or material permit covering less than a quarter-quarter section, a surveyed lot, an assignment of a separate zone or of a separate deposit will not be approved.

3. A transfer of interest shall take effect the first day of the month following the approval of the transfer by the director. The assignor, sublessor or surety, if any, shall continue to be responsible for performance of any and all obligations as if no transfer of interest had been executed until the effective date of the transfer. After the effective date of any transfer, the transferee is bound by the terms of the mineral lease or material permit to the same extent as if the transferee were the original lessee/permittee, any conditions in the transfer agreement to the contrary notwithstanding.

4. A partial assignment of any mineral lease or material permit shall segregate the assigned or retained portions thereof and, after the effective date, release or discharge the assignor from any obligation thereafter accruing with respect to the assigned lands. Segregated leases or permits shall continue in full force and effect for the primary term of the original lease or permit or as further extended pursuant to the terms of the lease or permit.

(a) The agency may re-issue a lease with a new lease number covering the assigned lands for the remaining unexpired primary term. The agency may, in lieu of re-issuing a lease, note the partial assignment in its records with all lands covered by the original lease maintained with the original lease number, and with each separate tract or interest resulting from an assignment with an additional identifying designation to the original lease number.

5. A transfer of interest in a mineral lease or material permit or of an overriding royalty must be a good and sufficient legal instrument, properly executed and acknowledged, and shall clearly set forth the serial number of the lease or permit, the land involved, the name and address of the transferee, and the interest transferred.

6. A transfer of interest must affect or concern only one mineral lease or material permit or a portion thereof.

7. Any transfer of interest which would create a cumulative overriding royalty in excess of 20% will not be approved by the agency. Any agreement to create or any assignment creating overriding royalties or payments out of production removed or sold from the leased or permitted lands is subject to approval by the agency, after notice and hearing, to require the proper parties thereto to suspend or modify the royalties or payments out of production in such a manner as may be reasonable when and during such period of time as they may constitute any undue economic burden upon the reasonable operations of the mineral lease or material permit.

8. Mineral lessees or material permittees who are transferring an interest in their mineral lease or material permit shall:

(a) prepare and execute the transfer of interest agreement(s) in duplicate, complete with acknowledgments;

(b) provide that each copy of the transfer of interest agreement have attached thereto an acceptance of transfer duly executed by the transferee; and

(c) provide that all transfer of interest agreements forwarded to or deposited with the agency be accompanied by the prescribed fee.

9. If an applicant, lessee, or permittee dies, his/her rights shall be transferred to the heirs, devisees, executor or administrator of the estate, as appropriate, upon the filing of a death certificate together with other appropriate documentation as the agency may require to verify change of ownership, and a list, by serial number of all mineral lease or material permit interests affected and a statement that all parties are qualified to do business with the agency. The required filing fee must be paid for each separate mineral lease or material permit in which an interest is transferred. A bond rider or replacement bond may be required by the agency for any bond(s) previously furnished by the decedent.

10. If a corporate merger affects mineral leases or material permits where the transfer of property of the dissolving corporation to the surviving corporation is accomplished by operation of law, no transfer of any affected lease permit is required. A notification of the merger shall be furnished with a list, by serial number of all lease or permit interests affected. The required filing fee must be paid for each separate lease or permit in which an interest is transferred. A bond rider or replacement bond conditioned to cover the obligations of all affected corporations may be required by the agency as a prerequisite to recognition of the merger.

11. If a change of name of a lessee or permittee affects mineral leases or material permits the notice of name change shall be submitted in writing with appropriate documentation evidencing the name change accompanied by a list of leases or permits affected by the name change. The required filing fee must be paid for each separate lease or permit subjected to a transfer of interest. A bond rider or replacement bond to accommodate the name change, conditioned to cover the obligations of all affected corporations may be required by the agency as a prerequisite to recognition of the change of name.

12. Pre-approval by the agency of a transfer of interest may be sought by the lessee/permittee, and if pre-approval is granted in writing by the director, it shall be binding on the agency subject to conclusion of the particular transfer for which such pre-approval was granted.

**R850-24-900. Lease Non-Execution or Cancellation - Fees Forfeited.**

In the event that applicant fails to sign and return a mineral lease or material permit as instructed by the agency, or a lease is cancelled for any other reason, all fees, advance rentals, and advance minimum royalties are forfeited by the applicant, lessee or permittee unless non-forfeiture or a refund is approved by the director.

**R850-24-1000. Readjustment of Leases and Permits.**

1. All mineral leases and material permits shall contain a provision setting forth the agency's right to readjust the terms and provisions of the mineral lease or the material permit on a periodic basis. The director shall establish as a term of the lease or the permit a schedule for readjustment at the time the lease or permit is offered. A mineral lease which is continued beyond its primary term shall remain subject to such readjustment provision(s).

2. All terms and conditions of a mineral lease and a material permit are subject to readjustment by the agency, including the amount of rent, minimum rental, royalty, minimum royalty, or any other provision as provided in the lease or permit.

3. The terms of the mineral lease or material permit, if readjusted, shall become effective as of the anniversary date

specified for readjustment set forth in the lease or permit upon written notification of the readjusted terms.

4. Notice of intent to exercise the agency's right to readjust under the terms of the lease or permit as of the specified anniversary date is timely given if given in writing prior to the specified anniversary date set forth in the lease or permit.

5. The agency shall have up to one year after exercising its option to readjust to review and communicate in writing the final terms of the lease or permit as readjusted.

6. Unless otherwise approved by the director, the lease or permit shall incorporate the terms of the current agency mineral lease or material permit form at the time of readjustment.

7. Failure of the lessee or permittee to accept or appeal the terms of any readjustment within 60 days of mailing by the agency to the last known address of the lessee or permittee, as reflected in the records of the agency, shall be considered a violation of the terms of the lease or permit and shall subject the same to forfeiture.

8. In the event of a conflict between this section and the terms of a readjustment provision in any lease or permit, the lease or permit terms shall supersede to the extent of the conflict.

9. A lessee or permittee may request a readjustment of a lease or permit, and if the director finds the readjustment to be in the best interest of the beneficiaries, such readjustment shall be made.

**KEY: mineral leases, material permits, mineral resources, lease operations**

**March 20, 2006** **53C-1-302(1)(a)(ii)**
**53C-2-201(1)(a)**
**53C-2-402(1)**

**R861. Tax Commission, Administration.**
**R861-1A. Administrative Procedures.**
**R861-1A-1. Administrative Procedures Pursuant to Utah Code Ann. Section 59-1-210.**

A. Definitions as used in this rule:

1. "Agency" means the Tax Commission of the state of Utah.

2. "Agency head" means the Tax Commission of the state of Utah, or one or more tax commissioners.

3. "Appeal" means appeal from an order of the Commission to an appropriate judicial authority.

4. "Commission" means the Tax Commission of the state of Utah.

5. "Conference" means an informal meeting of a party or parties with division heads, officers, or employees designated by division heads and informal meetings between parties to an adjudicative proceeding and a presiding officer.

6. "Division" means any division of the Tax Commission, including but not restricted to the Auditing Division, Property Tax Division, Motor Vehicle Division, Motor Vehicle Business Administration Division, Data Processing Division, and the Operations Division.

7. "Hearing" means a proceeding, formal or informal, at which the parties may present evidence and arguments to the presiding officer in relation to a particular order or rule.

8. "Officer" means an employee of the Commission in a supervisory or responsible capacity.

9. "Order" means the final disposition by the Commission of any particular controversy or factual matter presented to it for its determination.

10. "Presiding officer" means one or more tax commissioners, administrative law judge, hearing officer, and other persons designated by the agency head to preside at hearings and adjudicative proceedings.

11. "Quorum" means three or more members of the Commission.

12. "Record" means that body of documents, transcripts, recordings, and exhibits from a hearing submitted for review on appeal.

13. "Rule" means an officially adopted Commission rule.

14. "Rulemaking Power" means the Commission's power to adopt rules and to administer the laws relating to the numerous divisions.

15. All definitions contained in the Administrative Procedures Act, Utah Code Ann. Section 63-46b-2 as amended, are hereby adopted and incorporated herein.

**R861-1A-2. Rulemaking Power Pursuant to Utah Code Ann. Section 59-1-210 and 63-46a-4.**

A. Policy and Scope. In accordance with the responsibility placed upon it by law, the Commission shall enact appropriate rules. These rules shall prescribe practices and procedures for the Commission and other state and county officials and agencies over which the Commission has supervisory power and shall interpret laws the Commission is charged with administering when such interpretation is deemed necessary and in the public interest.

B. Preparation. In the preparation of rules the Commission may refer to appropriate materials and consult such parties as it deems advisable, whether or not such persons are employees of the Commission. Drafts of proposed rules may be submitted to the Office of the Attorney General for examination as to legality and form.

C. Notice and Hearing. The Commission may publish, by means of local communication, notice of its intent to exercise its rulemaking power in a particular area. Notice therein will be given of a scheduled hearing or hearings not sooner than 15 days after such notice, at which hearing or hearings any party who would be substantially affected by such exercise may present argument in support thereof or in objection thereto. Such notice and hearing or hearings will be instituted when the Commission deems them to be of substantial value and in the public interest or in accordance with Utah Code Ann. Section 63-46a-5. Such notice and hearing or hearings shall not be a prerequisite to the validity of any rule.

D. Adoption. Rules will be adopted by the Commission at formal meetings with a quorum present. Adopted rules will be written and entered into the official minutes of the Commission, which minutes are a public record available for examination by interested members of the public at the Commission offices. This proceeding and no other will be necessary for validity, unless otherwise required by the rulemaking procedures.

E. Effective Date. In accordance with Utah Code Ann. Section 63-46a-4.

F. Publication. Copies of adopted rules will be prepared and made available to interested parties requesting the same. Such rules may also be published periodically in booklets and bulletins. It shall be the policy of the Commission to provide for publication of all new rules at the time of each compilation of rules in the particular area. No rule, however, shall be deemed invalid by failure to prepare copies for distribution or to provide for publication in the manner herein described.

G. Petitions for Exercise of Rulemaking Power. The Commission may be petitioned to exercise its power to adopt a rule of general application. Such petition shall be submitted in writing by any party who would be substantially and directly affected by such rule. The Commission will have wide discretion in this area and will exercise this rulemaking power upon petition only when it deems that such exercise would be of substantial value to the citizens of Utah. If the Commission accepts such a petition, it may adopt such rule as it deems appropriate; however, the petitioning party may submit a proposed rule for the consideration of the Commission. If the Commission acts favorably upon such a petition, it will adopt and publish the rule in the manner hereinabove described, and in addition notify the petitioner of such adoption by mail at his last known address. If the Commission declines to act on such petition, it will so notify the petitioning party in the same manner.

H. Repeal and Amendment. The procedure above described for the enactment of rules shall also be followed for the amendment or repeal of existing rules.

**R861-1A-3. Division and Prehearing Conferences Pursuant to Utah Code Ann. Section 59-1-210 and 63-46b-1.**

A. Division Conferences. Any party directly affected by a Commission action or contemplated action may request a conference with the supervisor or designated officer of the division involved in relation to such action. Such request may be either oral or written, and such conference will be conducted in an informal manner in an effort to clarify and narrow the issues and problems involved. The party requesting such conference will be notified of the result of the same, either orally or in writing, in person or through counsel, at the conclusion of such conference or within a reasonable time thereafter. Such conference may be held at any time prior to a hearing, whether or not a petition for such hearing, appeal, or other commencement of an adjudicative proceeding has been filed.

B. Prehearing Conferences. In any matter pending before the Tax Commission, the presiding officer may, after prior written notice, require the parties to appear for a prehearing conference. Such prehearing conferences may be by telephone if the presiding officer determines that it will be more expeditious and will not adversely affect the rights of any party. Prehearing conferences will be for the purposes of encouraging settlement, clarifying the issues, simplifying the evidence,

facilitating discovery, and expediting the proceedings. In furthering those purposes, the presiding officer may request that the parties make proffers of proof or written prehearing conference statements as to what they believe the evidence will show at the hearing. After hearing such proffers of proof and reviewing written statements, the presiding officer may then advise the parties how he views each side of the evidence and state how he believes the Commission may rule if evidence at the hearing is as proffered at the prehearing conference, and then invite the parties to see if a stipulation can be reached which would settle the matter. If a settlement is reached by way of stipulation, the presiding officer may sign and enter an order in the proceeding. If a settlement is not reached, the presiding officer shall enter an order on the prehearing conference which clarifies the issues, simplifies the evidence, facilitates and limits discovery, and expedites the proceedings to a reasonable extent.

**R861-1A-9. Tax Commission as Board of Equalization Pursuant to Utah Code Ann. Sections 59-2-212, 59-2-1004, and 59-2-1006.**

A. Equalization Responsibilities. The Commission will sit as the State Board of Equalization in discharge of the equalization responsibilities given it by law. The Commission may sit on its own initiative to correct the valuation of property that has been overassessed, underassessed, or nonassessed as described in Section 59-2-212, and as a board of appeal from the various county boards of equalization described in Section 59-2-1004.

B. Proceedings. In all cases, appeals to the Commission shall be scheduled for hearing pursuant to Commission rules.

C. Appeals from county boards of equalization.

1. A notice of appeal filed by the taxpayer with the auditor pursuant to Section 59-2-1006 shall be presumed to have been timely filed unless the county provides convincing evidence to the contrary. In the absence of evidence of the date of mailing of the county board of equalization decision by the county auditor to the taxpayer, it shall be presumed that the decision was mailed three days after the meeting of the county board of equalization at which the decision was made.

2. If the county has not formally adopted board of equalization rules and procedures under Section 59-2-1001 that have been approved by the Commission, the procedures contained in this rule must be followed.

3. An appeal from a decision of a county board must be presented upon the same issues as were submitted to the county board in the first instance. The Commission shall consider, but is not limited to, the facts and evidence submitted to the county board.

4. The county board of equalization or county hearing officer shall prepare minutes of hearings held before them on property tax appeals. The minutes shall constitute the record on appeal.

a) For appeals concerning property value, the record shall include:

(1) the name and address of the property owner;

(2) the identification number, location, and description of the property;

(3) the value placed on the property by the assessor;

(4) the basis stated in the taxpayer's appeal;

(5) facts and issues raised in the hearing before the county board that are not clearly evident from the assessor's records; and

(6) the decision of the county board of equalization and the reasons for the decision.

b) Exempt Property. With respect to a decision affecting the exempt status of a property, the county board of equalization shall prepare its decision in writing, stating the reasons and statutory basis for the decision.

5. Appeals from dismissal by the county boards of equalization.

a) Decisions by the county board of equalization are final orders on the merits, and appeals to the Commission shall be on the merits except for the following:

(1) dismissal for lack of jurisdiction;

(2) dismissal for lack of timeliness;

(3) dismissal for lack of evidence to support a claim for relief.

b) On an appeal from a dismissal by a county board for the exceptions under C.5.a), the only matter that will be reviewed by the Commission is the dismissal itself, not the merits of the appeal.

c) An appeal may be dismissed for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.

6. An appeal filed with the Commission may be remanded to the county board of equalization for further proceedings if the Commission determines that:

a) dismissal under C.5.a)(1) or (3) was improper;

b) the taxpayer failed to exhaust all administrative remedies at the county level; or

c) in the interest of administrative efficiency, the matter can best be resolved by the county board.

7. An appeal filed with the Commission shall be remanded to the county board of equalization for further proceedings if the Commission determines that dismissal under C.5.a)(2) is improper under R884-24P-66.

8. To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:

a) the name and address of the property owner;

b) the identification number, location, and description of the property;

c) the value placed on the property by the assessor;

d) the taxpayer's estimate of the fair market value of the property; and

e) a signed statement providing evidence or documentation that supports the taxpayer's claim for relief.

9. If no signed statement is attached, the county will notify the taxpayer of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.

10. If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation under C.8.e), the county shall send the taxpayer a notice of intent to dismiss, and permit the taxpayer at least 20 calendar days to supply the evidence or documentation. If the taxpayer fails to provide the evidence or documentation within 20 days, the county board of equalization may dismiss the matter for lack of evidence to support a claim for relief.

11. If the minimum information required under C.8. is supplied and the taxpayer produces the evidence or documentation described in the taxpayer's signed statement under C.8.e), the county board of equalization shall render a decision on the merits of the case.

**R861-1A-10. Miscellaneous Provisions Pursuant to Utah Code Ann. Section 59-1-210.**

A. Rights of Parties. Nothing herein shall be construed to remove or diminish any right of any party under the Constitution of the United States, the Constitution of the state of Utah, or any existing law.

B. Effect of Partial Invalidation. If any part of these rules be declared unconstitutional or in conflict with existing statutory law by a court of competent jurisdiction, the remainder shall not be affected thereby and shall continue in full force and effect.

C. Enactment of Inconsistent Legislation. Any statute

passed by the Utah Legislature inconsistent with these rules or any part thereof will effect a repeal of that part of these rules with which it is inconsistent, but of no other part.

D. Presumption of Familiarity. It will be presumed that parties dealing with the Commission are familiar with:

1. these rules and the provisions thereof,

2. the revenue laws of the state of Utah, and

3. all rules enacted by the Commission in its administration thereof.

**R861-1A-11. Appeal of Corrective Action Order Pursuant to Utah Code Ann. Section 59-2-704.**

A. Appeal of Corrective Action Order. Any county appealing a corrective action order issued pursuant to Section 59-2-704, shall, within 10 days of the mailing of the order, request in writing a hearing before the Commission. The Commission shall immediately set the time and place of the hearing, which shall be held no later than June 30 of the tax year to which the corrective action order applies.

B. Hearings. Hearings on corrective action order appeals shall be conducted as formal hearings and shall be governed by the procedures contained in these rules. If the parties are able to stipulate to a modification of the corrective action order, and it is evident that there is a reasonable basis for modifying the corrective action order, an amended corrective action order may be executed by the Commission. One or more commissioners may preside at a hearing under this rule with the same force and effect as if a quorum of the Commission were present. However, a decision must be made and an order signed by a quorum of the Commission.

C. Decisions and Orders. The Commission shall render its decision and order no later than July 10 of the tax year to which the corrective action order applies. Upon reaching a decision, the Commission shall immediately notify the clerk of the county board of equalization and the county assessor of that decision.

D. Sales Information. Access to Commission property sales information shall be available by written agreement with the Commission to any clerk of the county board of equalization and county assessor appealing under this rule. All other reasonable and necessary information shall be available upon request, according to Commission guidelines.

E. Conflict with Other Rules. This rule supersedes all other rules that may otherwise govern these proceedings before the Commission.

**R861-1A-12. Policies and Procedures Regarding Public Disclosure Pursuant to Utah Code Ann. Section 59-1-210.**

This rule outlines the policies and procedures of the Commission regarding the public disclosure of and access to documents, workpapers, decisions, and other information prepared by the Commission under provisions of Utah Code Ann. Section 59-1-210.

A. Property Tax Orders. Property tax orders signed by the Commission will be mailed to the appropriately named parties in accordance with the Commission's rules of procedure. Property tax orders may also be made available to persons other than the named parties upon written request to the Commission. Nonparty requests will be subject to the following limitations.

1. If, upon consultation with the taxpayer, the Commission determines that a particular property tax order contains information which, if disclosed, would constitute a significant competitive disadvantage to the taxpayer, the Commission may either prohibit the disclosure of the order or require that applicable information be removed from the order prior to it being made publicly available.

2. The limitation in subsection 1. does not apply if the taxpayer affirmatively waives protection against disclosure of the information.

B. Other Tax Orders. Written orders signed by the Commission relating to all tax appeals other than property tax matters will also be mailed to the appropriately named parties in accordance with the Commission rules of procedure. Copies of these orders or information about them will not be provided to any person other than the named parties except for the following circumstances:

1. if the Commission determines that the parties have affirmatively waived any claims to confidentiality; or

2. if the Commission determines that the orders may be effectively sanitized through the deletion of references to the parties, specific tax amounts, or any other information attributable to a return filed with the Commission.

C. Imposition and Waiver of Penalty and Interest.

1. All facts surrounding the imposition of penalty and interest charges as well as requests for waiver of penalty and interest charges are considered confidential and will not be disclosed to any persons other than the parties specifically involved. These facts include the names of the involved parties, the amount of penalty and interest, type of tax involved, amount of the tax owed, reasons for the imposition of the penalty and interest, and any other information relating to imposition of the penalty and interest, except as follows:

(a) if the Commission affirmatively determines that a finding of fraud is involved and seeks the imposition of the appropriate fraud penalties, the Commission may make all pertinent facts available to the public once legal action against the parties has been commenced; or

(b) if the Commission determines that the parties have affirmatively waived their rights to confidentiality, the Commission will make all pertinent facts available to the public.

D. Commission Notes and Workpapers.

1. All workpapers, notes, and other material prepared by the commissioners, as well as staff and employees of the Commission, are to be considered confidential, and access to the specific material is restricted to employees of the Commission and its legal counsel only. Examples of this restricted material include audit workpapers and notes, ad valorem appraisal worksheets, and notes taken during hearings and deliberations. In the case of information prepared as part of an audit, the auditing division will, upon request, provide summary information of the findings to the taxpayer. These items will not be available to any person or party by discovery carried out pursuant to these rules or the Utah Rules of Civil Procedure.

2. Relevant workpapers of the property tax division prepared in connection with the assessment of property by the Commission, pursuant to the provisions of Utah Code Ann. Section 59-2-217, shall be provided to the owner of the property to which the assessment relates, at the owner's request.

E. Reciprocal Agreements. Pursuant to Utah Code Ann. Sections 59-7-537, 59-10-545 and 59-12-109, the Commission may enter into individual reciprocal agreements to share specific tax information with authorized representatives of the United States Internal Revenue Service, tax officials of other states, and representatives of local governments within the state of Utah; provided, however, that no information will be provided to any governmental entity if providing such information would violate any statute or any agreement with the Internal Revenue Service.

F. Other Agreements. Pursuant to Utah Code Ann. Section 59-12-109, the Commission may provide departments and political subdivisions of the state of Utah with copies of returns and other information required by Chapter 12 of Title 59. This information is available only in official matters and must be requested in writing by the head of the department or political subdivision. The request must specifically indicate the information being sought and how the information will be used. The Commission will respond in writing to the request and shall impose conditions of confidentiality on the use of the information disclosed.

G. Multistate Tax Commission. The Commission is

authorized to share specific tax information for audit purposes with the Multistate Tax Commission.

H. Statistical Information. The Commission authorizes the preparation and publication of statistical information regarding the payment and collection of state taxes. The information will be prepared by the various divisions of the Commission and made available after review and approval of the Commission.

I. Public Record Information. Pursuant to Utah Code Ann. 59-1-403(3)(c), the Commission may publicize the name and other appropriate information, as contained in the public record, concerning delinquent taxpayers, including their addresses, the amount of money owed by tax type, as well as any legal action taken by the Commission, including charges filed, property seized, etc. No information will be released which is not part of the existing public record.

**R861-1A-13. Requests for Accommodation and Grievance Procedures Pursuant to Utah Code Ann. Section 63-46a-3(2), 28 CFR 35.107 1992 edition, and 42 USC 12201.**

A. Disabled individuals may request reasonable accommodations to services, programs, or activities, or a job or work environment in the following manner.

1. Requests shall be directed to:
Accommodations Coordinator
Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134
Telephone: 801-297-3811 TDD: 801-297-3819 or relay at 711

2. Requests shall be made at least three working days prior to any deadline by which the accommodation is needed.

3. Requests shall include the following information:

a) the individual's name and address;

b) a notation that the request is made in accordance with the Americans with Disabilities Act;

c) a description of the nature and extent of the individual's disability;

d) a description of the service, program, activity, or job or work environment for which an accommodation is requested; and

e) a description of the requested accommodation if an accommodation has been identified.

B. The accommodations coordinator shall review all requests for accommodation with the applicable division director and shall issue a reply within two working days.

1. The reply shall advise the individual that:

a) the requested accommodation is being supplied; or

b) the requested accommodation is not being supplied because it would cause an undue hardship, and shall suggest alternative accommodations. Alternative accommodations must be described; or

c) the request for accommodation is denied. A reason for the denial must be included; or

d) additional time is necessary to review the request. A projected response date must be included.

2. All denials of requests under Subsections (1)(b) and (1)(c) shall be approved by the executive director or designee.

3. All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.

C. Disabled individuals who are dissatisfied with the reply to their request for accommodation may file a request for review with the executive director in the following manner.

1. Requests for review shall be directed to:
Executive Director
Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134
Telephone: 801-297-3841 TDD: 801-297-3819 or relay at 711

2. A request for review must be filed within 180 days of the accommodations coordinator's reply.

3. The request for review shall include:

a) the individual's name and address;

b) the nature and extent of the individual's disability;

c) a copy of the accommodation coordinator's reply;

d) a statement explaining why the reply to the individual's request for accommodation was unsatisfactory;

e) a description of the accommodation desired; and

f) the signature of the individual or the individual's legal representative.

D. The executive director shall review all requests for review and shall issue a reply within 15 working days after receipt of the request for review.

1. If unable to reach a decision within the 15 working day period, the executive director shall notify the individual with a disability that the decision is being delayed and the amount of additional time necessary to reach a decision.

2. All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.

E. The record of each request for review, and all written records produced or received as part of each request for review, shall be classified as protected under Section 63-2-304 until the executive director issues a decision.

F. Once the executive director issues a decision, any portions of the record that pertain to the individual's medical condition shall remain classified as private under Section 63-2-302 or controlled under Section 63-2-303, whichever is appropriate. All other information gathered as part of the appeal shall be classified as private information. Only the written decision of the executive director shall be classified as public information.

G. Disabled individuals who are dissatisfied with the executive director's decision may appeal that decision to the Tax Commission in the manner provided in Sections 63-46b-1 through 63-46b-22.

**R861-1A-15. Requirement of Social Security and Federal Identification Numbers Pursuant to Utah Code Ann. Section 59-1-210.**

A. Taxpayers shall provide the Tax Commission with their social security number or federal identification number, as required by the Tax Commission.

B. Sole proprietor and partnership applicants shall provide the Tax Commission with the following information for every owner or partner of the applying entity:

1. name;

2. home address;

3. social security number and federal identification number, as required by the Tax Commission.

C. Corporation and limited liability applicants shall provide the Tax Commission with the following information for every officer or managing member of the applying entity:

1. name;

2. home address; and

3. social security number and federal identification number, as required by the Tax Commission.

D. Business trust applicants shall provide the Tax Commission with the following information for the responsible trustees:

1. name;

2. home address; and

3. social security number and federal identification number, as required by the Tax Commission.

**R861-1A-16. Utah State Tax Commission Management Plan Pursuant to Utah Code Ann. Section 59-1-207.**

A. The executive director reports to the commission. The executive director shall meet with the commission periodically to report on the status and progress of this agreement, update the commission on the affairs of the agency and seek policy guidance. The chairman of the commission shall designate a liaison of the commission to coordinate with the executive director in the execution of this agreement.

B. The structure of the agency is as follows:

1. The Office of the Commission, including the commissioners and the following units that report to the commission:

a) Internal Audit;
b) Appeals;
c) Economic and Statistical; and
d) Public Information.

2. The Office of the Executive Director, including the executive director's staff and the following divisions that report to the executive director:

a) Administration;
b) Taxpayer Services;
c) Motor Vehicle;
d) Auditing;
e) Property Tax;
f) Technology Management;
g) Processing; and
h) Motor Vehicle Enforcement.

C. The commission hereby delegates full authority for the following functions to the executive director:

1. general supervision and management of the day to day operations and business of the agency conducted through the Office of the Executive Director and through the divisions set out in B.2;

2. management of the day to day relationships with the customers of the agency;

3. all original assessments, including adjustments to audit, assessment, and collection actions, except as provided in C.4. and D;

4. waivers of penalty and interest or offers in compromise agreements in amounts under $10,000, in conformance with standards established by the commission;

5. except as provided in D.7., voluntary disclosure agreements with companies, including multilevel marketers;

6. determination of whether a county or taxing entity has satisfied its statutory obligations with respect to taxes and fees administered by the Tax Commission;

7. human resource management functions, including employee relations, final agency action on employee grievances, and development of internal policies and procedures; and

8. administration of Title 63, Chapter 2, Government Records Access and Management Act.

D. The executive director shall prepare and, upon approval by the commission, implement the following actions, agreements, and documents:

1. the agency budget;
2. the strategic plan of the agency;
3. administrative rules and bulletins;
4. waivers of penalty and interest in amounts of $10,000 or more as per the waiver of penalty and interest policy;
5. offer in compromise agreements that abate tax, penalty and interest over $10,000 as per the offer in compromise policy;
6. stipulated or negotiated agreements that dispose of matters on appeal; and
7. voluntary disclosure agreements that meet the following criteria:

a) the company participating in the agreement is not licensed in Utah and does not collect or remit Utah sales or corporate income tax; and

b) the agreement forgives a known past tax liability of $10,000 or more.

E. The commission shall retain authority for the following functions:

1. rulemaking;
2. adjudicative proceedings;
3. private letter rulings issued in response to requests from individual taxpayers for guidance on specific facts and circumstances;
4. internal audit processes;
5. liaison with the governor's office;

a) Correspondence received from the governor's office relating to tax policy will be directed to the Office of the Commission for response. Correspondence received from the governor's office that relates to operating issues of the agency will be directed to the Office of the Executive Director for research and appropriate action. The executive director shall prepare a timely response for the governor with notice to the commission as appropriate.

b) The executive director and staff may have other contact with the governor's office upon appropriate notice to the commission; and

6. liaison with the Legislature.

a) The commission will set legislative priorities and communicate those priorities to the executive director.

b) Under the direction of the executive director, staff may be assigned to assist the commission and the executive director in monitoring legislative meetings and assisting legislators with policy issues relating to the agency.

F. Correspondence that has been directed to the commission or individual commissioners that relates to matters delegated to the executive director shall be forwarded to a staff member of the Office of the Executive Director for research and appropriate action. A log shall be maintained of all correspondence and periodically the executive director will review with the commission the volume, nature, and resolution of all correspondence from all sources.

G. The executive director's staff may occasionally act as support staff to the commission for purposes of conducting research or making recommendations on tax issues.

1. Official communications or assignments from the commission or individual commissioners to the staff reporting to the executive director shall be made through the executive director.

2. The commissioners and the Office of the Commission staff reserve the right to contact agency staff directly to facilitate a collegial working environment and maintain communications within the agency. These contacts will exclude direct commands, specific policy implementation guidance, or human resource administration.

H. The commission shall meet with the executive director periodically for the purpose of exchanging information and coordinating operations.

1. The commission shall discuss with the executive director all policy decisions, appeal decisions or other commission actions that affect the day to day operations of the agency.

2. The executive director shall keep the commission apprised of significant actions or issues arising in the course of the daily operation of the agency.

3. When confronted with circumstances that are not covered by established policy or by instances of real or potential conflicts of interest, the executive director shall refer the matter to the commission.

**R861-1A-18. Allocations of Remittances Pursuant to Utah Code Ann. Sections 59-1-210 and 59-1-705.**

A. Remittances received by the commission shall be applied first to penalty, then interest, and then to tax for the filing period and account designated by the taxpayer.

B. If no designation for period is made, the commission

shall allocate the remittance so as to satisfy all penalty, interest, and tax for the oldest period before applying any excess to other periods.

C. Fees associated with Tax Commission collection activities shall be allocated from remittances in the manner designated by statute. If a statute does not provide for the manner of allocating those fees from remittances, the commission shall apply the remittance first to the collection activity fees, then to penalty, then interest, and then to tax for the filing period.

**R861-1A-19. Definition of Bond Pursuant to Utah Code Ann. Section 59-1-505.**

A. The bond that a taxpayer may deposit with the Tax Commission pursuant to Section 59-1-505 shall consist of one of the following:

1. a surety bond;
2. an assignment of savings account; or
3. an assignment of certificate of deposit.

**R861-1A-20. Time of Appeal Pursuant to Utah Code Ann. Sections 59-1-301, 59-1-501, 59-2-1007, 59-7-517, 59-10-532, 59-10-533, 59-10-535, 59-12-114, 59-13-210, 63-46b-3, and 63-46b-14.**

A. A request for a hearing to correct a property tax assessment pursuant to Section 59-2-1007 must be in writing. The request is deemed to be timely if:

1. it is received in the Tax Commission offices on or before the close of business of the last day of the time frame provided by statute; or

2. the date of the postmark on the envelope or cover indicates that the request was mailed on or before June 1.

B. A petition for redetermination is deemed to be timely if:

1. the petition is received in the Tax Commission offices on or before the close of business of the last day of the time frame provided by statute; or

2. the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the time frame provided by statute.

C. Any party adversely affected by an order of the Commission may seek judicial review within the time frame provided by statute. Copies of the appeal shall be served upon the Commission and upon the Office of the Attorney General.

**R861-1A-21. Rulings by the Commission Pursuant to Utah Code Ann. Section 59-1-205.**

A. A quorum of the commission must participate in any order which constitutes final agency action on an adjudicative matter.

B. The party charged with the burden of proof or the burden of overcoming a statutory presumption shall prevail only if a majority of the participating commissioners rules in that party's favor.

**R861-1A-22. Petitions for Commencement of Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501, and 63-46b-3.**

A. Time for Petition. Unless otherwise provided by Utah statute, petitions for adjudicative actions shall be filed within the time frames specified in R861-1A-20. If the last day of the 30-day period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next Tax Commission business day.

B. Contents. A petition for adjudicative action need not be in any particular form, but shall be in writing and, in addition to the requirements of Utah Code Ann. Section 63-46b-3, shall contain the following:

1. name and street address and, if available, a fax number or e-mail address of petitioner or the petitioner's representative;

2. a telephone number where the petitioning party or that party's representative can be reached during regular business hours;

3. petitioner's tax identification, social security number or other relevant identification number, such as real property parcel number or vehicle identification number;

4. particular tax or issue involved, period of alleged liability, amount of tax in dispute, and, in the case of a property tax issue, the lien date;

5. if the petition results from a letter or notice, the petition will include the date of the letter or notice and the originating division or officer; and

6. in the case of property tax cases, the assessed value sought.

C. Effect of Nonconformance. The commission will not reject a petition because of nonconformance in form or content, but may require an amended or substitute petition meeting the requirements of this section when such defects are present. An amended or substitute petition must be filed within 15 days after notice of the defect from the commission.

**R861-1A-23. Designation of Adjudicative Proceedings Pursuant to Utah Code Ann. Section 63-46b-4.**

A. All matters shall be designated as formal proceedings and set for a prehearing conference, an initial hearing, or a scheduling conference pursuant to R861-1A-26.

B. A matter may be diverted to a mediation process pursuant to R861-1A-32 upon agreement of the parties and the presiding officer.

**R861-1A-24. Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-502.5, 63-46b-8, and 63-46b-10.**

A. At a formal proceeding, an administrative law judge appointed by the commission or a commissioner may preside.

1. Assignment of a presiding officer to a case will be made pursuant to agency procedures and not at the request of any party to the appeal.

2. Once assigned, the presiding officer will preside at all steps of the formal proceeding except as otherwise indicated in these rules or as internal staffing requirements dictate.

B. Unless waived by the petitioner, a formal proceeding includes an initial hearing pursuant to Section 59-1-502.5, and may also involve a formal hearing on the record.

1. Initial Hearing.

a) An initial hearing pursuant to Section 59-1-502.5 shall be in the form of a conference.

b) Any issue may be settled in the initial hearing, but any party has a right to a formal hearing on matters that remain in dispute at the conclusion of the initial hearing. As to those matters, a party must pursue a formal hearing and final agency action before pursuing judicial review of unsettled matters.

2. Formal Hearing on the Record.

a) Formal hearings on the record shall be conducted by a presiding officer under 2.b) or by the commission sitting as panel under 2.c).

b) Except as provided in 2.c., all formal hearings will be heard by the presiding officer.

(1) Within the time period specified by statute, the presiding officer shall sign a decision and order in accordance with Section 63-46b-10 and forward the decision to the Commission for automatic agency review.

(2) A quorum of the commission shall review the decision. If a majority of the participating commissioners concur with the decision, a statement affirming the decision shall be affixed to the decision and signed by the concurring commissioners to indicate that the decision represents final agency action. The order is subject to petition for reconsideration or to judicial review.

(3) If, on agency review, a majority of the commissioners disagree with the decision, the case may be remanded to the presiding officer for further action, amended or reversed. If the presiding officer's decision is amended or reversed, the commission shall issue its decision and order, and that decision and order shall represent final agency action on the matter.

c) The commission, on its own motion, upon petition by a party to the appeal, or upon recommendation of the presiding officer, may sit as a panel at the formal hearing on the record if the case involves an important issue of first impression, complex testimony and evidence, or testimony requiring a prolonged hearing.

(1) A panel of the commission shall consist of two or more commissioners

(2) An order issued from a hearing before a panel of commissioners shall constitute final agency action, and it is subject to petition for reconsideration or to judicial review.

**R861-1A-26. Procedures for Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501 and 63-46b-6 through 63-46b-11.**

A. Prehearing and Scheduling Conference.

1. At the conference, the parties and the presiding officer shall:

a) establish ground rules for discovery;

b) discuss scheduling;

c) clarify other issues;

d) determine whether to divert the action to a mediation process; and

e) determine whether the initial hearing will be waived and whether the commission will preside as a panel at the formal hearing on the record pursuant to R861-1A-24.

2. The prehearing and scheduling conference may be converted to an initial hearing upon agreement of the parties.

B. Notice of Hearing. At least ten days prior to a hearing date, the Commission shall notify the petitioning party or the petitioning party's representative by mail, e-mail, or facsimile of the date, time and place of any hearing or proceeding.

C. Proceedings Conducted by Telephone. Any proceeding may be held with one or more of the parties on the telephone if the presiding officer determines that it will be more convenient or expeditious for one or more of the parties and does not unfairly prejudice the rights of any party. Each party to the proceeding is responsible for notifying the presiding officer of the telephone number where contact can be made for purposes of conducting the hearing.

D. Representation.

1. A party may pursue a petition without assistance of counsel or other representation. However, a party may be represented by legal counsel or other representation at every stage of adjudication. Failure to obtain legal representation shall not be grounds for complaint at a later stage in the adjudicative proceeding or for relief on appeal from an order of the commission.

a) Legal counsel must enter an appearance.

b) Any representative other than legal counsel must submit a signed power of attorney authorizing the representative to act on the party's behalf and binding the party by the representative's action.

c) All documents will be directed to the party's representative. Documents may be transmitted by facsimile number, e-mail address or other electronic means if such transmission does not breach confidentiality. Otherwise, documents will be mailed to or served upon the representative's street address as shown in the petition for agency action.

2. Any division of the commission named as party to the proceeding may be represented by the Attorney General's Office.

E. Subpoena Power.

1. The presiding officer may issue subpoenas to secure the attendance of witnesses or the production of evidence.

a) The party requesting the subpoena must prepare it and submit it to the presiding officer for signature.

b) Service of the subpoena shall be made by the party requesting it in a manner consistent with the Utah Rules of Civil Procedure.

F. Motions.

1. Consolidation. The presiding officer has discretion to consolidate cases when the same tax assessment, series of assessments, or issues are involved in each, or where the fact situations and the legal questions presented are virtually identical.

2. Continuance. A continuance may be granted at the discretion of the presiding officer.

3. Default. The presiding officer may enter an order of default against a party in accordance with Section 63-46b-11.

a) The default order shall include a statement of the grounds for default and shall be delivered to all parties by electronic means or, if electronic transmission is unavailable, by U.S. mail.

b) A defaulted party may seek to have the default set aside according to procedures set forth in the Utah Rules of Civil Procedure.

4. Ruling on Procedural Motions. Procedural motions may be made during the hearing or by written motion.

a) Each motion shall include the grounds upon which it is based and the relief or order sought. Copies of written motions shall be served upon all other parties to the proceeding.

b) Upon the filing of any motion, the presiding officer may:

(1) grant or deny the motion; or

(2) set the matter for briefing, hearing, or further proceedings.

**R861-1A-27. Discovery Pursuant to Utah Code Ann. Section 63-46b-7.**

A. Discovery procedures in formal proceedings shall be established during the prehearing and scheduling conference in accordance with the Utah Rules of Civil Procedure and other applicable statutory authority.

B. The party requesting information or documents may be required to pay in advance the costs of obtaining or reproducing such information or documents.

**R861-1A-28. Evidence in Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-210, 76-8-502, 76-8-503, 63-46b-8.**

A. Except as otherwise stated in this rule, formal proceedings shall be conducted in accordance with the Utah Rules of Evidence, and the degree of proof in a hearing before the commission shall be the same as in a judicial proceeding in the state courts of Utah.

B. Every party to an adjudicative proceeding has the right to introduce evidence. The evidence may be oral or written, real or demonstrative, direct or circumstantial.

1. The presiding officer may admit any reliable evidence possessing probative value which would be accepted by a reasonably prudent person in the conduct of his affairs.

2. The presiding officer may admit hearsay evidence. However, no decision of the commission will be based solely on hearsay evidence.

3. If a party attempts to introduce evidence into a hearing, and that evidence is excluded, the party may proffer the excluded testimony or evidence to allow the reviewing judicial authority to pass on the correctness of the ruling of exclusion on appeal.

C. At the discretion of the presiding officer or upon stipulation of the parties, the parties may be required to reduce their testimony to writing and to prefile the testimony.

1. Prefiled testimony may be placed on the record without being read into the record if the opposing parties have had reasonable access to the testimony before it is presented. Except upon finding of good cause, reasonable access shall be not less than ten working days.

2. Prefiled testimony shall have line numbers inserted at the left margin and shall be authenticated by affidavit of the witness.

3. The presiding officer may require the witness to present a summary of the prefiled testimony. In that case, the witness shall reduce the summary to writing and either file it with the prefiled testimony or serve it on all parties within 10 days after filing the testimony.

4. If an opposing party intends to cross-examine the witness on prefiled testimony or the summary of prefiled testimony, that party must file a notice of intent to cross-examine at least 10 days prior to the date of the hearing so that witness can be scheduled to appear or within a time frame agreed upon by the parties.

D. The presiding officer shall rule and sign orders on matters concerning the evidentiary and procedural conduct of the proceeding.

E. Oral testimony at a formal hearing will be sworn. The oath will be administered by the presiding officer or a person designated by him. Anyone testifying falsely under oath may be subject to prosecution for perjury in accordance with the provisions of Sections 76-8-502 and 76-8-503.

F. Any party appearing in an adjudicative proceeding may submit a memorandum of authorities. The presiding officer may request a memorandum from any party if deemed necessary for a full and informed consideration of the issues.

**R861-1A-29. Agency Review and Reconsideration Pursuant to Utah Code Ann. Section 63-46b-13.**

A. Agency Review.

1. All written decisions and orders shall be submitted by the presiding officer to the commission for agency review before the decision or order is issued. Agency review is automatic, and no petition is required.

B. Reconsideration. Within 20 days after the date that an order is issued, any party may file a written request for reconsideration alleging mistake of law or fact, or discovery of new evidence.

1. The commission shall respond to the petition within 20 days after the date that it was received in the appeals unit to notify the petitioner whether the reconsideration is granted or denied.

(a) If no notice is issued within the 20-day period, the commission's lack of action on the request shall be deemed to be a denial and a final order.

(b) For purposes of calculating the 30 day limitation period for pursuing judicial review, the date of the commission's order on the reconsideration or the order of denial is the date of the final agency action.

2. If no petition for reconsideration is made, the 30 day limitation period for pursuing judicial review begins to run from the date of the final agency action.

**R861-1A-30. Ex Parte Communications Pursuant to Utah Code Ann. Sections 63-46b-5 and 63-46b-8.**

A. No commissioner or administrative law judge shall make or knowingly cause to be made to any party to an appeal any communication relevant to the merits of a matter under appeal unless notice and an opportunity to be heard are afforded to all parties.

B. No party shall make or knowingly cause to be made to any commissioner or administrative law judge an ex parte communication relevant to the merits of a matter under appeal for the purpose of influencing the outcome of the appeal. Discussion of procedural matters are not considered ex parte communication relevant to the merits of the appeal.

C. A presiding officer may receive aid from staff assistants if:

1. the assistants do not receive ex parte communications of a type that the presiding officer is prohibited from receiving, and,

2. in an instance where assistants present information which augments the evidence in the record, all parties shall have reasonable notice and opportunity to respond to that information.

D. Any commissioner or administrative law judge who receives an ex parte communication relevant to the merits of a matter under appeal shall place the communication into the case file and afford all parties an opportunity to comment on the information.

**R861-1A-31. Declaratory Orders Pursuant to Utah Code Ann. Section 63-46b-21.**

A. A party has standing to bring a declaratory action if that party is directly and adversely affected or aggrieved by an agency action within the meaning of the relevant statute. A party with standing may petition for a declaratory order to challenge:

1. the commission's interpretation of statutory language as stated in an administrative rule; or

2. the commission's grant of authority under a statute.

B. The commission shall not accept a petition for declaratory order on matters pending before the commission in an audit assessment, refund request, collections action or other agency action, or on matters pending before the court on judicial review of a commission decision.

C. The commission may refuse to render a declaratory order if the order will not completely resolve the controversy giving rise to the proceeding or if the petitioner has other remedies through the administrative appeals processes. The commission's decision to accept or reject a petition for declaratory order rests in part on the petitioner's standing to raise the issue and on a determination that the petitioner has not already incurred tax liability under the statutes or rules challenged.

D. A declaratory order that invalidates all or part of an administrative rule shall trigger the rulemaking process to amend the rule.

**R861-1A-32. Mediation Process Pursuant to Utah Code Section 63- 46b-1.**

A. Except as otherwise precluded by law, a resolution to any matter of dispute may be pursued through mediation.

1. The parties may agree to pursue mediation any time before the formal hearing on the record.

2. The choice of mediator and the apportionment of costs shall be determined by agreement of the parties.

B. If mediation produces a settlement agreement, the agreement shall be submitted to the presiding officer pursuant to R861-1A-33.

1. The settlement agreement shall be prepared by the parties or by the mediator, and promptly filed with the presiding officer.

2. The settlement agreement shall be adopted by the commission if it is not contrary to law.

3. If the mediation does not resolve all of the issues, the parties shall prepare a stipulation that identifies the issues resolved and the issues that remain in dispute.

4. If any issues remain unresolved, the appeal will be scheduled for a formal hearing pursuant to R861-1A-23.

**R861-1A-33. Settlement Agreements Pursuant to Utah Code Sections 59-1-210 and 59-1- 502.5.**

A. "Settlement agreement" means a stipulation, consent decree, settlement agreement or any other legally binding document or representation that resolves a dispute or issue between the parties.

B. Procedure:

1. Parties with an interest in a matter pending before a division of the Tax Commission may submit a settlement agreement for review and approval, whether or not a petition for hearing has been filed.

2. Parties to an appeal pending before the commission may submit a settlement agreement to the presiding officer for review and approval.

3. Each settlement agreement shall be in writing and executed by each party or each party's legal representative, if any, and shall contain:

a) the nature of the claim being settled and any claims remaining in dispute;

b) a proposed order for commission approval; and

c) a statement that each party has been notified of, and allowed to participate in settlement negotiations.

4. A settlement agreement terminates the administrative action on the issues settled before all administrative remedies are exhausted, and, therefore, precludes judicial review of the issues. Each settlement agreement shall contain a statement that the agreement is binding and constitutes full resolution of all issues agreed upon in the settlement agreement.

5. The signed agreement shall stay further proceedings on the issues agreed upon in the settlement until the agreement is accepted or rejected by the commission or the commission's designee.

a) If approved, the settlement agreement shall take effect by its own terms.

b) If rejected, action on the claim shall proceed as if no settlement agreement had been reached. Offers made during the negotiation process will not be used as an admission against that party in further adjudicative proceedings.

**R861-1A-34. Private Letter Rulings Pursuant to Utah Code Ann. Section 59-1-210.**

A. Private letter rulings are written, informational statements of the commission's interpretation of statutes or administrative rules, or informational statements concerning the application of statutes and rules to specific facts and circumstances.

1. Private letter rulings address questions that have not otherwise been addressed in statutes, rules, or decisions issued by the commission.

2. The commission shall not knowingly issue a private letter ruling on a matter pending before the commission in an audit assessment, refund request, or other agency action, or regarding matters that are pending before the court on judicial review of a commission decision. Any private letter ruling inadvertently issued on a matter pending agency or judicial action shall be set aside until the conclusion of that action.

3. Requests for private letter rulings must be addressed to the commission in writing. If the requesting party is dissatisfied with the ruling, that party may resubmit the request along with new facts or information for commission review.

B. The weight afforded a private letter ruling in a subsequent audit or administrative appeal depends upon the degree to which the underlying facts addressed in the ruling were adequate to allow thorough consideration of the issues and interests involved.

C. A private letter ruling is not a final agency action. Petitioner must use the designated appeal process to address judiciable controversies arising from the issuance of a private letter ruling.

1. If the private letter ruling leads to a denial of a claim, an audit assessment, or some other agency action at a divisional level, the taxpayer must use the appeals procedures to challenge that action within 30 days of the final division decision.

2. If the only matter at issue in the private letter ruling is a challenge to the commission's interpretation of statutory language or a challenge to the commission's authority under a statute, the matter may come before the commission as a petition for declaratory order submitted within 30 days of the date of the ruling challenged.

**R861-1A-35. Manner of Retaining Records Pursuant to Utah Code Ann. Sections 59-1-210, 59-5-104, 59-5-204, 59-6-104, 59-7-506, 59-8-105, 59-8a-105, 59-10-501, 59-12-111, 59-13-211, 59-13-312, 59-13-403, 59-14-303, and 59-15-105.**

A. Definitions.

1. "Database Management System" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

2. "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized, structured electronic format.

3. "Hard copy" means any documents, records, reports, or other data printed on paper.

4. "Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

5. "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

6. "Taxpayer" means the person required, under Title 59 or other statutes administered by the Tax Commission, to collect, remit, or pay the tax or fee to the Tax Commission.

B. If a taxpayer retains records in both machine-sensible and hard-copy formats, the taxpayer shall make the records available to the commission in machine-sensible format upon request by the commission.

C. Nothing in this rule shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not the taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this rule. However, this does not relieve the taxpayer of the obligation to comply with B.

D. Recordkeeping requirements for machine-sensible records.

1. Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the commission upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this rule are met.

2. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format.

3. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

4. Electronic Data Interchange Requirements.

a) Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in

combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record.

b) For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, and shipping detail. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method that allows the commission to interpret the coded information.

c) The taxpayer may capture the information necessary to satisfy D.4.b) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name, i.e., they contain only codes for that information, the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the commission. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

5. Electronic data processing systems requirements.

a) The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this rule.

6. Business process information.

a) Upon the request of the commission, the taxpayer shall provide a description of the business process that created the retained records. The description shall include the relationship between the records and the tax documents prepared by the taxpayer, and the measures employed to ensure the integrity of the records.

b) The taxpayer shall be capable of demonstrating:

(1) the functions being performed as they relate to the flow of data through the system;

(2) the internal controls used to ensure accurate and reliable processing; and

(3) the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

c) The following specific documentation is required for machine-sensible records retained pursuant to this rule:

(1) record formats or layouts;

(2) field definitions, including the meaning of all codes used to represent information;

(3) file descriptions, e.g., data set name; and

(4) detailed charts of accounts and account descriptions.

E. Records maintenance requirements.

1. The commission recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records. The NARA standards may be found at 36 C.F.R., Section 1234,(1995).

2. The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

F. Access to machine-sensible records.

1. The manner in which the commission is provided access to machine-sensible records as required in B. may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

2. Access will be provided in one or more of the following manners:

a) The taxpayer may arrange to provide the commission with the hardware, software, and personnel resources necessary to access the machine-sensible records.

b) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

c) The taxpayer may convert the machine-sensible records to a standard record format specified by the commission, including copies of files, on a magnetic medium that is agreed to by the commission.

d) The taxpayer and the commission may agree on other means of providing access to the machine-sensible records.

G. Taxpayer responsibility and discretionary authority.

1. In conjunction with meeting the requirements of D., a taxpayer may create files solely for the use of the commission. For example, if a data base management system is used, it is consistent with this rule for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and meets the requirements of D. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

2. A taxpayer may contract with a third party to provide custodial or management services of the records. The contract shall not relieve the taxpayer of its responsibilities under this rule.

H. Alternative storage media.

1. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this rule to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents that may be stored on these media include general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

2. Microfilm, microfiche and other storage-only imaging systems shall meet the following requirements:

a) Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche, or other storage-only imaging system must be maintained and made available on request. This documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

b) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained.

c) Upon request by the commission, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche, or other storage-only imaging system.

d) When displayed on equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

e) All data stored on microfilm, microfiche, or other storage-only imaging systems must be maintained and arranged

in a manner that permits the location of any particular record.

f) There is no substantial evidence that the microfilm, microfiche or other storage-only imaging system lacks authenticity or integrity.

I. Effect on hard-copy recordkeeping requirements.

1. Except as otherwise provided in this section, the provisions of this rule do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations. Hard-copy records may be retained on a recordkeeping medium as provided in H.

2. Hard-copy records not produced or received in the ordinary course of transacting business, e.g., when the taxpayer uses electronic data interchange technology, need not be created.

3. Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this rule. These details include those listed in D.4.a) and D.4.b).

4. Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

5. Nothing in this section shall prevent the commission from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

**R861-1A-36. Signatures Defined Pursuant to Utah Code Ann. Sections 41-1a-209, 59-10-512, 59-12-107, 59-13-206, and 59-13-307.**

A. "TaxExpress" means the filing of tax returns and tax payment information by telephone and Internet web site.

B. Taxpayers who file tax return information, other than electronic funds transfers, through the Tax Commission's TaxExpress system shall use the Tax Commission assigned personal identification number as their signature for all tax return information filed through that system.

C. Individuals who submit an application to renew their vehicle registration on the Internet web site authorized by the Tax Commission shall use the Tax Commission assigned personal identification number included with their registration renewal information as their signature for the renewal application submitted over the Internet.

D. Taxpayers who use the Tax Commission authorized Internet web site to file tax return information for tax types that may be filed on that web site shall use the personal identification number provided by the Tax Commission as their signature for the tax return information filed on that web site.

E. Taxpayers who file an individual income tax return electronically and who met the signature requirement of the Internal Revenue Service shall be deemed to meet the signature requirement of Section 59-10-512.

**R861-1A-37. Provisions Relating to Disclosure of Commercial Information Pursuant to Utah Code Ann. Section 59-1-404.**

(1) The provisions of this rule apply to the disclosure of commercial information under Section 59-1-404. For disclosure of information other than commercial information, see rule R861-1A-12.

(2) For purposes of Section 59-1-404, "assessed value of the property" includes any value proposed for a property.

(3) For purposes of Subsection 59-1-404(2), "disclosure" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:

(a) named party of a decision or order;

(b) party requesting a private letter ruling; or

(c) designated representative of a party described in (3)(a) or (3)(b).

(4) For purposes of Subsection 59-1-404(6), "published decision" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:

(a) named party of a decision or order;

(b) party requesting a private letter ruling; or

(c) designated representative of a party described in (4)(a) or (4)(b).

(5) Information that may be disclosed under Section 59-1-404(3) includes:

(a) the following information related to the property's tax exempt status:

(i) information provided on the application for property tax exempt status;

(ii) information used in the determination of whether a property tax exemption should be granted or revoked; and

(iii) any other information related to a property's property tax exemption;

(b) the following information related to penalty or interest relating to property taxes that the commission or county legislative body determines should be abated:

(i) the amount of penalty or interest that is abated;

(ii) information provided on an application or request for abatement of penalty or interest;

(iii) information used in the determination of the abatement of penalty or interest; and

(iv) any other information related to the amount of penalty or interest that is abated; and

(c) the following information related to the amount of property tax due on property:

(i) the amount of taxes refunded or deducted as an erroneous or illegal assessment under Section 59-2-1321;

(ii) information provided on an application or request that property has been erroneously or illegally assessed under Section 59-2-1321; and

(iii) any other information related to the amount of taxes refunded or deducted under (5)(c)(i).

(6)(a) Except as provided in (6)(b), commercial information disclosed during an action or proceeding may not be disclosed outside the action or proceeding by any person conducting or participating in the action or proceeding.

(b) Notwithstanding (6)(a), commercial information contained in a decision issued by the commission may be disclosed outside the action or proceeding if all of the parties named in the decision agree in writing to the disclosure.

(7) The commission may disclose commercial information in a published decision as follows.

(a) If the property taxpayer that provided the commercial information does not respond in writing to the commission within 30 days of the decision's issuance, requesting that the commercial information not be published and identifying the specific commercial information the taxpayer wants protected, the commission may publish the entire decision.

(b) If the property taxpayer that provided the commercial information indicates to the commission in writing the specific commercial information that the taxpayer wants protected, the commission may publish a version of the decision that contains commercial information not identified by the taxpayer under (7)(a).

(8) The commission may share commercial information gathered from returns and other written statements with the federal government, any other state, any of the political subdivisions of another state, or any political subdivision of this state, if these political subdivisions, or the federal government grant substantially similar privileges to this state.

**R861-1A-38. Class Actions Pursuant to Utah Code Ann. Section 59-1-304.**

A. Unless the limitations of Section 59-1-304(2) apply, the

commission may expedite the exhaustion of administrative remedies required by individuals desiring to be included as a member of the class.

B. In expediting exhaustion of administrative remedies, the commission may take any of the following actions:

1. publish sample claim forms that provide the information necessary to process a claim in a form that will reduce the burden on members of the putative class and expedite processing by the commission;

2. provide for waiver of initial hearings where requested by any party;

3. provide for expedited rulings on motions for summary judgment where the facts are not contested and the legal issues have been previously determined by the commission in ruling on the case brought by class representatives. The parties may waive oral hearing and have final orders issued based upon information submitted in the claims and division responses;

4. consolidate the cases for hearing at the commission, where a group of claims presents identical legal issues and it is agreed by the parties that the resolution of the legal issues would be dispositive of the claims;

5. designate a claim as a test or sample claim with any rulings on that test or sample claim to be applicable to all other similar claims, upon agreement of the claiming parties; or

6. any other action not listed in this rule if that action is not contrary to procedures required by statute.

**KEY: developmentally disabled, grievance procedures, taxation, disclosure requirements**

**March 6, 2006** **41-1a-209**

**Notice of Continuation April 22, 2002** **59-1-205**
**59-1-207**
**59-1-210**
**59-1-301**
**59-1-304**
**59-1-403**
**59-1-404**
**59-1-501**
**59-1-502.5**
**59-1-505**
**59-1-602**
**59-1-705**
**59-1-1004**
**59-10-512**
**59-10-532**
**59-10-533**
**59-10-535**
**59-12-107**
**59-13-206**
**59-13-210**
**59-13-307**
**59-10-544**
**59-14-404**
**59-2-212**
**59-2-701**
**59-2-705**
**59-2-1003**
**59-2-1004**
**59-2-1006**
**59-2-1007**
**59-2-704**
**59-2-924**
**59-7-517**
**63-46a-4**
**63-46b-1**
**76-8-502**
**76-8-503**
**59-2-701**
**63-46b-3**
**63-46b-4**
**63-46b-5**
**63-46b-6**
**63-46b-7**
**through**
**63-46b-11**
**63-46b-13**
**63-46b-14**
**63-46b-21**
**63-46a-3(2)**
**42 USC 12201**
**28 CFR 25.107 1992 Edition**

**R865. Tax Commission, Auditing.**
**R865-21U. Use Tax.**
**R865-21U-1. Nature of Use Tax Pursuant to Utah Code Ann. Section 59-12-103.**

A. The tax imposed on amounts paid or charged for transactions under Title 59, Chapter 12 is a:

1. sales tax, if the tax is collected and remitted by a seller on the seller's in-state or out-of-state sales; or

2. use tax, if the tax is remitted by a purchaser.

B. The two taxes are compensating taxes, one supplementing the other, but both cannot be applicable to the same transaction. The rate of tax is the same.

**R865-21U-2. Rules Common to Both Sales and Use Taxes Pursuant to Utah Code Ann. Section 59-12-118.**

A. The use tax is a complement to the sales tax and the rules promulgated are common to both taxes.

**R865-21U-3. Liability of Retailers Pursuant to Utah Code Ann. Section 59-12-107.**

A. Retailers, as defined by the act, are responsible for the collection of the tax from the purchaser and should give the purchaser a receipt thereof.

B. An example of a retailer would include a manufacturer's representative or a magazine-subscription solicitor located within this state and obtaining orders which are in turn shipped by the manufacturer or publisher to the customer in Utah.

C. A retailer is engaged in business in this state if any activity is conducted by him or his agents, as defined above, with the object of gain, benefit, or advantage--either direct or indirect--whether qualified or admitted to do business or not.

D. When tangible personal property is sold in interstate commerce for use or consumption in this state and the seller is engaged in the business of selling such tangible personal property in this state for use or consumption and delivery is made in this state, the sale is subject to use tax. The sale is taxable regardless of the fact that the purchaser's order may specify that the goods are to be manufactured or produced by the seller at a point outside this state and shipped directly to the purchaser from the point of origin. The seller is required to report all such transactions and collect and remit to this state the use tax on all taxable sales. If these conditions are met, it is immaterial that the contract of sale is closed by acceptance outside the state or that the contract is made before the property is brought into the state.

E. Delivery takes place in this state when physical possession of the tangible personal property is actually transferred to the buyer within this state. Also, when the tangible personal property is placed in the mail at a point outside this state and directed to the buyer in this state or placed on board a carrier at a point outside this state (or otherwise) and directed to the buyer in this state, delivery takes place in Utah.

**R865-21U-6. Liability of Purchasers and Receipt For Payment to Retailers Pursuant to Utah Code Ann. Section 59-12-107.**

A. Purchasers of tangible personal property--the storage, use, or other consumption of which is subject to tax--must account for the tax liability by paying the tax:

1. to the retailer from whom the property was purchased if such retailer holds a certificate of registration under the use tax act. When property is purchased from a registered retailer, the purchaser is not relieved from the tax liability unless a receipt is obtained from such retailer. This receipt need not be in any particular form but must show the name and registration number of the retailer, the name of the purchaser, the date of the sale, description of the property or reference to the sales invoice, the purchase price, and amount of tax. A sales invoice containing the above information, together with evidence of payment of such invoice, will constitute a receipt. Payment of the tax to a registered retailer under these conditions relieves the purchaser of any further liability.

2. directly to the Tax Commission if the retailer from whom the property was purchased does not hold a certificate of registration. Under these circumstances, one of the following procedures must be followed:

(a) if the purchases are made by a business required by Section 59-12-106 to hold or obtain a sales tax license or a use tax certificate of registration, the tax is paid on a sales and use tax return;

(b) if the purchases are made by any person as defined in Utah Code Ann. Section 59-12-102, who has no sales tax collection responsibility, and if the annual taxes due may be reasonably expected to exceed $400, such person must apply for registration as a consumer and pay the tax using a quarterly use tax return; or

(c) if the purchases are made by an individual who has no sales tax collection responsibility and the annual use tax liability is less than $400, the tax is remitted using the individual income tax return filed each year. The tax is computed by using the rates provided in the income tax instructions for the address of the consumer as shown on the individual income tax form. If a consumer files as a part-year resident, the latest address in Utah is the basis for the use tax rate to report purchases subject to use tax made during the Utah residency period. If the purchaser does not meet individual income tax filing requirements, the purchaser obtains an income tax filing form and reports and pays the use tax on this form. A statement to the effect that no income tax is due and that the return is submitted for payment of use tax only shall be included with this form. An individual required to report use tax under this subsection satisfies all Tax Commission filing requirements by reporting and remitting the tax due within the time allowed to timely file his individual income tax return.

**R865-21U-15. Automobiles, Construction Equipment, and Other Merchandise Purchased From Out-Of-State Vendors Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-107.**

A. Automobiles, construction equipment, and other merchandise purchased by Utah residents from out-of-state dealers are subject to Utah use tax even if incidental first use occurs outside the state. For example, a salesman whose residence is in Utah has a territory which extends into other states. He purchases a car while out of state and continues his itinerary. Upon return to Utah, the car is subject to the registration laws of this state, together with a use tax, if applicable, to be paid at time of registration. If tax was paid in another state, credit shall be allowed for the tax paid in accordance with Utah Code Ann. Section 59-12-104.

**R865-21U-16. Property Sold or Used In Interstate Commerce Pursuant to Utah Code Ann. Section 59-12-107.**

A. The fact that tangible personal property is purchased in interstate or foreign commerce does not exempt the property from the tax if the property is stored, used, or otherwise consumed within this state after the shipment in interstate or foreign commerce has ended.

B. The fact that tangible personal property is used in this state in interstate or foreign commerce following its storage in this state does not exempt the storage of the property from the tax. The fact that tangible personal property is used in this state in interstate or foreign commerce does not exempt the use of the property from the tax.

**KEY: taxation, user tax**
**June 29, 2004 59-12-103**
**Notice of Continuation March 7, 2006 59-12-107**

**59-12-104**
**59-12-118**

**R867. Tax Commission, Collections.**
**R867-2B. Delinquent Tax Collection.**
**R867-2B-1. Collection of Penalty Pursuant to Utah Code Ann. Section 59-1-302.**

A. The Tax Commission may impose a lien upon the real and personal property of an officer or director of a corporation liable to pay under Section 59-1-302.

B. The statute of limitations for imposing liens under A. is three years from the date of the penalty assessment.

**R867-2B-2. Jeopardy Assessment Pursuant to Utah Code Ann. Sections 59-1-701 and 59-1-702.**

A. Assessments made pursuant to Title 59, Chapter 19, Illegal Drug Stamp Act, shall meet the grounds for the jeopardy provisions under Sections 59-1-701 and 59-1-702 due to the nature of the tax and the likelihood that assets may be seized and sold by other creditors.

**R867-2B-3. Sale of Seized Property Pursuant to Utah Code Ann. Section 59-1-703.**

A. The Commission must approve all sales of seized property sold, pursuant to Section 59-1-703(8), prior to the Commission's final decision on the appeal.

B. The taxpayer will be notified in writing of the intent to sell the seized property at least ten days prior to the sale except when the seized property is perishable. Perishable property may be sold immediately.

C. Expenses of retaining the seized property will be determined by taking into account such things as the appraised value of the property, the storage costs for the projected appeal period, conservation, depreciation, and maintenance.

D. A taxpayer may stop a sale of seized property by posting a bond with the Tax Commission, equal to the appraised value of the property, within three days of the notice of sale.

**R867-2B-4. Uniform Affixing and Displaying of Drug Stamps Pursuant to Utah Code Ann. Section 59-19-104.**

A. Drug stamps issued as evidence of payment of the tax imposed on marihuana and controlled substances shall be affixed and displayed in a reasonably prominent position on the container of the marihuana or controlled substance for which they were issued.

1. For purposes of this rule, "container" means any substance or material that encloses or encircles, but is not consumed with, the marihuana or controlled substance.

2. If more than one container encloses or encircles the marihuana or controlled substance, the stamps shall be affixed to and displayed on the container closest to the marihuana or controlled substance.

B. If the marihuana or controlled substance is not encircled or enclosed in a container, the drug stamp shall be kept in reasonable proximity to the marihuana or controlled substance for which it was issued.

**KEY: taxation, controlled substances, seizure of property*, drug stamps***
**March 21, 1997** **59-1-302**
**Notice of Continuation March 7, 2006** **59-1-706**
**59-1-701**
**59-1-702**
**59-1-703**
**59-1-707**
**59-19-104**
**59-19-105**
**59-19-107**

**R884. Tax Commission, Property Tax.**
**R884-24P. Property Tax.**
**R884-24P-5. Abatement or Deferral of Property Taxes of Indigent Persons Pursuant to Utah Code Ann. Sections 59-2-1107 through 59-2-1109 and 59-2-1202(5).**

A. "Household income" includes net rents, interest, retirement income, welfare, social security, and all other sources of cash income.

B. Absence from the residence due to vacation, confinement to hospital, or other similar temporary situation shall not be deducted from the ten-month residency requirement of Section 59-2-1109(3)(a)(ii).

C. Written notification shall be given to any applicant whose application for abatement or deferral is denied.

**R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201.**

A. Definitions.

1. "Allowable costs" means those costs reasonably and necessarily incurred to own and operate a productive mining property and bring the minerals or finished product to the customary or implied point of sale.

a) Allowable costs include: salaries and wages, payroll taxes, employee benefits, workers compensation insurance, parts and supplies, maintenance and repairs, equipment rental, tools, power, fuels, utilities, water, freight, engineering, drilling, sampling and assaying, accounting and legal, management, insurance, taxes (including severance, property, sales/use, and federal and state income taxes), exempt royalties, waste disposal, actual or accrued environmental cleanup, reclamation and remediation, changes in working capital (other than those caused by increases or decreases in product inventory or other nontaxable items), and other miscellaneous costs.

b) For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.1.a).

c) For purposes of the capitalized net revenue method, allowable costs shall include straight- line depreciation of capital expenditures in addition to those items outlined in A.1.a).

d) Allowable costs does not include interest, depletion, depreciation other than allowed in A.1.c), amortization, corporate overhead other than allowed in A.1.a), or any expenses not related to the ownership or operation of the mining property being valued.

e) To determine applicable federal and state income taxes, straight line depreciation, cost depletion, and amortization shall be used.

2. "Asset value" means the value arrived at using generally accepted cost approaches to value.

3. "Capital expenditure" means the cost of acquiring property, plant, and equipment used in the productive mining property operation and includes:

a) purchase price of an asset and its components;
b) transportation costs;
c) installation charges and construction costs; and
d) sales tax.

4. "Constant or real dollar basis" means cash flows or net revenues used in the discounted cash flow or capitalized net revenue methods, respectively, prepared on a basis where inflation or deflation are adjusted back to the lien date. For this purpose, inflation or deflation shall be determined using the gross domestic product deflator produced by the Congressional Budget Office, or long-term inflation forecasts produced by reputable analysts, other similar sources, or any combination thereof.

5. "Discount rate" means the rate that reflects the current yield requirements of investors purchasing comparable properties in the mining industry, taking into account the industry's current and projected market, financial, and economic conditions.

6. "Economic production" means the ability of the mining property to profitably produce and sell product, even if that ability is not being utilized.

7. "Exempt royalties" means royalties paid to this state or its political subdivisions, an agency of the federal government, or an Indian tribe.

8. "Expected annual production" means the economic production from a mine for each future year as estimated by an analysis of the life-of-mine mining plan for the property.

9. "Fair market value" is as defined in Section 59-2-102.

10. "Federal and state income taxes" mean regular taxes based on income computed using the marginal federal and state income tax rates for each applicable year.

11. "Implied point of sale" means the point where the minerals or finished product change hands in the normal course of business.

12. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.

13. "Net revenue" for the capitalized net revenue method means, for any of the immediately preceding five years, the actual receipts from the sale of minerals (or if self - consumed, the value of the self-consumed minerals), plus actual related revenue cash flows, minus allowable costs.

14. "Non-operating mining property" means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan.

15. "Productive mining property" means the property of a mine that is either actively producing or currently capable of having economic production. Productive mining property includes all taxable interests in real property, improvements and tangible personal property upon or appurtenant to a mine that are used for that mine in exploration, development, engineering, mining, crushing or concentrating, processing, smelting, refining, reducing, leaching, roasting, other processes used in the separation or extraction of the product from the ore or minerals and the processing thereof, loading for shipment, marketing and sales, environmental clean-up, reclamation and remediation, general and administrative operations, or transporting the finished product or minerals to the customary point of sale or to the implied point of sale in the case of self-consumed minerals.

16. "Product price" for each mineral means the price that is most representative of the price expected to be received for the mineral in future periods.

a) Product price is determined using one or more of the following approaches:

(1) an analysis of average actual sales prices per unit of production for the minerals sold by the taxpayer for up to five years preceding the lien date; or,

(2) an analysis of the average posted prices for the minerals, if valid posted prices exist, for up to five calendar years preceding the lien date; or,

(3) the average annual forecast prices for each of up to five years succeeding the lien date for the minerals sold by the taxpayer and one average forecast price for all years thereafter for those same minerals, obtained from reputable forecasters, mutually agreed upon between the Property Tax Division and the taxpayer.

b) If self-consumed, the product price will be determined by one of the following two methods:

(1) Representative unit sales price of like minerals. The representative unit sales price is determined from:

(a) actual sales of like mineral by the taxpayer;
(b) actual sales of like mineral by other taxpayers; or
(c) posted prices of like mineral; or
(2) If a representative unit sales price of like minerals is unavailable, an imputed product price for the self-consumed minerals may be developed by dividing the total allowable costs by one minus the taxpayer's discount rate to adjust to a cost that includes profit, and dividing the resulting figure by the number of units mined.

17. "Related revenue cash flows" mean non-product related cash flows related to the ownership or operation of the mining property being valued. Examples of related revenue cash flows include royalties and proceeds from the sale of mining equipment.

18. "Self consumed minerals" means the minerals produced from the mining property that the mining entity consumes or utilizes for the manufacture or construction of other goods and services.

19. "Straight line depreciation" means depreciation computed using the straight line method applicable in calculating the regular federal tax. For this purpose, the applicable recovery period shall be seven years for depreciable tangible personal mining property and depreciable tangible personal property appurtenant to a mine, and 39 years for depreciable real mining property and depreciable real property appurtenant to a mine.

B. Valuation.

1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by:

a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and

b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.

2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division.

3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method. This method is outlined as follows:

a) Determine annual net revenue, both net losses and net gains, from the productive mining property for each of the immediate past five years, or years in operation, if less than five years. Each year's net revenue shall be adjusted to a constant or real dollar basis.

b) Determine the average annual net revenue by summing the values obtained in B.3.a) and dividing by the number of operative years, five or less.

c) Divide the average annual net revenue by the discount rate to determine the fair market value of the entire productive mining property.

d) Subtract from the fair market value of the entire productive mining property the fair market value, as of the lien date, of licensed vehicles and nontaxable items, to determine the taxable value of the productive mining property.

4. The discount rate shall be determined by the Property Tax Division.

a) The discount rate shall be determined using the weighted average cost of capital method, a survey of reputable mining industry analysts, any other accepted methodology, or any combination thereof.

b) If using the weighted average cost of capital method, the Property Tax Division shall include an after-tax cost of debt and of equity. The cost of debt will consider market yields. The cost of equity shall be determined by the capital asset pricing model, arbitrage pricing model, risk premium model, discounted cash flow model, a survey of reputable mining industry analysts, any other accepted methodology, or a combination thereof.

5. Where the discount rate is derived through the use of publicly available information of other companies, the Property Tax Division shall select companies that are comparable to the productive mining property. In making this selection and in determining the discount rate, the Property Tax Division shall consider criteria that includes size, profitability, risk, diversification, or growth opportunities.

6. A non-operating mine will be valued at fair market value consistent with other taxable property.

7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division may use other valuation methods to estimate the fair market value of a mining property.

8. The fair market value of a productive mining property may not be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property. The mine value shall include all equipment, improvements and real estate upon or appurtenant to the mine. All other tangible property not appurtenant to the mining property will be separately valued at fair market value.

9. Where the fair market value of assets upon or appurtenant to the mining property is determined under the cost method, the Property Tax Division shall use the replacement cost new less depreciation approach. This approach shall consider the cost to acquire or build an asset with like utility at current prices using modern design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional and economic factors.

C. When the fair market value of a productive mining property in more than one tax area exceeds the asset value, the fair market value will be divided into two components and apportioned as follows:

1. Asset value that includes machinery and equipment, improvements, and land surface values will be apportioned to the tax areas where the assets are located.

2. The fair market value less the asset value will give an income increment of value. The income increment will be apportioned as follows:

a) Divide the asset value by the fair market value to determine a quotient. Multiply the quotient by the income increment of value. This value will be apportioned to each tax area based on the percentage of the total asset value in that tax area.

b) The remainder of the income increment will be apportioned to the tax areas based on the percentage of the known mineral reserves according to the mine plan.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

**R884-24P-8. Security for Property Tax on Uranium and Vanadium Mines Pursuant to Utah Code Ann. Section 59-2-211.**

A. The security deposit allowed by Section 59-2-211 shall be requested from the mine owners or operators by giving notice in the manner required by Section 59-2-211. A list of mine owners and operators who have made lump sum security deposits with the Tax Commission will be furnished annually by the Tax Commission to any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah.

B. At the option of the mine owner or operator, within 30 days after receiving proper notice from the Tax Commission, or if the mine owner or operator has not complied with the request within the 30 day period, the Tax Commission may implement the following procedure:

1. Any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah shall withhold 4 percent, or any higher amount set by the Tax Commission, of the gross proceeds due to the mine operator or owner.

2. All amounts withheld shall be remitted to the Tax Commission by the last day of April, July, October, and January for the immediately preceding calendar quarter, in the manner set forth by the Tax Commission.

3. Not later than the last day of February, owners or operators of uranium and vanadium mines who have not made lump sum security deposits with the Tax Commission shall be provided with a statement from the Tax Commission showing all security deposit amounts withheld from their gross proceeds during the previous calendar year.

4. The Tax Commission shall provide the county treasurers with a list of all uranium and vanadium mine owners and operators who have had security deposit amounts withheld. The county treasurers shall then advise the Tax Commission in writing of the amount of taxes due from each mine owner or operator on the Tax Commission's list.

5. Once all county treasurers have responded, the Tax Commission shall forward to each county treasurer the taxes due, or the pro rata portion thereof, to the extent taxes have been withheld and remitted to the Tax Commission.

a. Any amount withheld in excess of the total taxes due to all counties shall be refunded to the appropriate mine owner or operator by the Tax Commission.

b. If the amount withheld is not sufficient to pay the full amount of taxes due, the county treasurers shall collect the balance of taxes directly from the mine owner or operator.

**R884-24P-10. Taxation of Underground Rights in Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201 and 59-2-210.**

A. Definitions.

1. "Person" is as defined in Section 68-3-12.

2. "Working interest owner" means the owner of an interest in oil, gas, or other hydrocarbon substances burdened with a share of the expenses of developing and operating the property.

3. "Unit operator" means a person who operates all producing wells in a unit.

4. "Independent operator" means a person operating an oil or gas producing property not in a unit.

5. One person can, at the same time, be a unit operator, a working interest owner, and an independent operator and must comply with all requirements of this rule based upon the person's status in the respective situations.

6. "Expected annual production" means the future economic production of an oil and gas property as estimated by the Property Tax Division using decline curve analysis. Expected annual production does not include production used on the same well, lease, or unit for the purpose of repressuring or pressure maintenance.

7. "Product price" means:

a) Oil: The weighted average posted price for the calendar year preceding January 1, specific for the field in which the well is operating as designated by the Division of Oil, Gas, and Mining. The weighted average posted price is determined by weighing each individual posted price based on the number of days it was posted during the year, adjusting for gravity, transportation, escalation, or deescalation.

b) Gas:

(1) If sold under contract, the price shall be the stated price as of January 1, adjusted for escalation and deescalation.

(2) If sold on the spot market or to a direct end-user, the price shall be the average price received for the 12-month period immediately preceding January 1, adjusted for escalation and deescalation.

8. "Future net revenue" means annual revenues less costs of the working interests and royalty interest.

9. "Revenue" means expected annual gross revenue, calculated by multiplying the product price by expected annual production for the remaining economic life of the property.

10. "Costs" means expected annual allowable costs applied against revenue of cost-bearing interests:

a) Examples of allowable costs include management salaries; labor; payroll taxes and benefits; workers' compensation insurance; general insurance; taxes (excluding income and property taxes); supplies and tools; power; maintenance and repairs; office; accounting; engineering; treatment; legal fees; transportation; miscellaneous; capital expenditures; and the imputed cost of self consumed product.

b) Interest, depreciation, or any expense not directly related to the unit will shall not be included as allowable costs.

11. "Production asset" means any asset located at the well site that is used to bring oil or gas products to a point of sale or transfer of ownership.

B. The discount rate shall be determined by the Property Tax Division using methods such as the weighted cost of capital method.

1. The cost of debt shall consider market yields. The cost of equity shall be determined by the capital asset pricing model, risk premium model, discounted cash flow model, a combination thereof, or any other accepted methodology.

2. The discount rate shall reflect the current yield requirements of investors purchasing similar properties, taking into consideration income, income taxes, risk, expenses, inflation, and physical and locational characteristics.

3. The discount rate shall contain the same elements as the expected income stream.

C. Assessment Procedures.

1. Underground rights in lands containing deposits of oil or gas and the related tangible property shall be assessed by the Property Tax Division in the name of the unit operator, the independent operator, or other person as the facts may warrant.

2. The taxable value of underground oil and gas rights shall be determined by discounting future net revenues to their present value as of the lien date of the assessment year and then subtracting the value of applicable exempt federal, state, and Indian royalty interests.

3. The reasonable taxable value of productive underground oil and gas rights shall be determined by the methods described in C.2. of this rule or such other valuation method that the Tax Commission believes to be reasonably determinative of the property's fair market value.

4. The value of the production assets shall be considered in the value of the oil and gas reserves as determined in C.2. above. Any other tangible property shall be separately valued at fair market value by the Property Tax Division.

5. The minimum value of the property shall be the value of the production assets.

D. Collection by Operator.

1. The unit operator may request the Property Tax Division to separately list the value of the working interest, and the value of the royalty interest on the Assessment Record. When such a request is made, the unit operator is responsible to provide the Property Tax Division with the necessary information needed to compile this list. The unit operator may make a reasonable estimate of the ad valorem tax liability for a given period and may withhold funds from amounts due to royalty. Withheld funds shall be sufficient to ensure payment of

the ad valorem tax on each fractional interest according to the estimate made.

a) If a unit operating agreement exists between the unit operator and the fractional working interest owners, the unit operator may withhold or collect the tax according to the terms of that agreement.

b) In any case, the unit operator and the fractional interest owner may make agreements or arrangements for withholding or otherwise collecting this tax. This may be done whether or not that practice is consistent with the preceding paragraphs so long as all requirements of the law are met. When a fractional interest owner has had funds withheld to cover the estimated ad valorem tax liability and the operator fails to remit such taxes to the county when due, the fractional interest owner shall be indemnified from any further ad valorem tax liability to the extent of the withholding.

c) The unit operator shall compare the amount withheld to the taxes actually due, and return any excess amount to the fractional interest owner within 60 days after the delinquent date of the tax. At the request of the fractional interest owner the excess may be retained by the unit operator and applied toward the fractional interest owner's tax liability for the subsequent year.

2. The penalty provided for in Section 59-2-210 is intended to ensure collection by the county of the entire tax due. Any unit operator who has paid this county imposed penalty, and thereafter collects from the fractional interest holders any part of their tax due, may retain those funds as reimbursement against the penalty paid.

3. Interest on delinquent taxes shall be assessed as set forth in Section 59-2-1331.

4. Each unit operator may be required to submit to the Property Tax Division a listing of all fractional interest owners and their interests upon specific request of the Property Tax Division. Working interest owners, upon request, shall be required to submit similar information to unit operators.

**R884-24P-14. Valuation of Real Property Encumbered by Preservation Easements Pursuant to Utah Code Ann. Section 59-2-303.**

A. The assessor shall take into consideration any preservation easements attached to historically significant real property and structures when determining the property's value.

B. After the preservation easement has been recorded with the county recorder, the property owner of record shall submit to the county assessor and the Tax Commission a notice of the preservation easement containing the following information:

1. the property owner's name;

2. the address of the property; and

3. the serial number of the property.

C. The county assessor shall review the property and incorporate any value change due to the preservation easement in the following year's assessment roll.

**R884-24P-16. Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-25.**

A. Definitions:

1. "Utah fair market value" means the fair market value of that portion of the property of a project entity located within Utah upon which the fee in lieu of ad valorem property tax may be calculated.

2. "Fee" means the annual fee in lieu of ad valorem property tax payable by a project entity pursuant to Section 11-13-25.

3. "Energy supplier" means an entity that purchases any capacity, service or other benefit of a project to provide electrical service.

4. "Exempt energy supplier" means an energy supplier whose tangible property is exempted by Article XIII, Sec. 2. of the Constitution of Utah from the payment of ad valorem property tax.

5. "Optimum operating capacity" means the capacity at which a project is capable of operating on a sustained basis taking into account its design, actual operating history, maintenance requirements, and similar information from comparable projects, if any. The determination of the projected and actual optimum operating capacities of a project shall recognize that projects are not normally operated on a sustained basis at 100 percent of their designed or actual capacities and that the optimum level for operating a project on a sustained basis may vary from project to project.

6. "Property" means any electric generating facilities, transmission facilities, distribution facilities, fuel facilities, fuel transportation facilities, water facilities, land, water or other existing facilities or tangible property owned by a project entity and required for the project which, if owned by an entity required to pay ad valorem property taxes, would be subject to assessment for ad valorem tax purposes.

7. "Sold," for the purpose of interpreting D, means the first sale of the capacity, service, or other benefit produced by the project without regard to any subsequent sale, resale, or lay-off of that capacity, service, or other benefit.

8. "Taxing jurisdiction" means a political subdivision of this state in which any portion of the project is located.

9. All definitions contained in the Interlocal Cooperation Act, Section 11-13-3, as in effect on December 31, 1989, apply to this rule.

B. The Tax Commission shall determine the fair market value of the property of each project entity. Fair market value shall be based upon standard appraisal theory and shall be determined by correlating estimates derived from the income and cost approaches to value described below.

1. The income approach to value requires the imputation of an income stream and a capitalization rate. The income stream may be based on recognized indicators such as average income, weighted income, trended income, present value of future income streams, performance ratios, and discounted cash flows. The imputation of income stream and capitalization rate shall be derived from the data of other similarly situated companies. Similarity shall be based on factors such as location, fuel mix, customer mix, size and bond ratings. Estimates may also be imputed from industry data generally. Income data from similarly situated companies will be adjusted to reflect differences in governmental regulatory and tax policies.

2. The cost approach to value shall consist of the total of the property's net book value of the project's property. This total shall then be adjusted for obsolescence if any.

3. In addition to, and not in lieu of, any adjustments for obsolescence made pursuant to B.2., a phase-in adjustment shall be made to the assessed valuation of any new project or expansion of an existing project on which construction commenced by a project entity after January 1, 1989 as follows:

a) During the period the new project or expansion is valued as construction work in process, its assessed valuation shall be multiplied by the percentage calculated by dividing its projected production as of the projected date of completion of construction by its projected optimum operating capacity as of that date.

b) Once the new project or expansion ceases to be valued as construction work in progress, its assessed valuation shall be multiplied by the percentage calculated by dividing its actual production by its actual optimum operating capacity. After the new project or expansion has sustained actual production at its optimum operating capacity during any tax year, this percentage shall be deemed to be 100 percent for the remainder of its useful life.

C. If portions of the property of the project entity are located in states in addition to Utah and those states do not apply a unit valuation approach to that property, the fair market value of the property allocable to Utah shall be determined by computing the cost approach to value on the basis of the net book value of the property located in Utah and imputing an estimated income stream based solely on the value of the Utah property as computed under the cost approach. The correlated value so determined shall be the Utah fair market value of the property.

D. Before fixing and apportioning the Utah fair market value of the property to the respective taxing jurisdictions in which the property, or a portion thereof is located, the Utah fair market value of the property shall be reduced by the percentage of the capacity, service, or other benefit sold by the project entity to exempt energy suppliers.

E. For purposes of calculating the amount of the fee payable under Section 11-13-25(3), the percentage of the project that is used to produce the capacity, service or other benefit sold shall be deemed to be 100 percent, subject to adjustments provided by this rule, from the date the project is determined to be commercially operational.

F. In computing its tax rate pursuant to the formula specified in Section 59-2-913(2), each taxing jurisdiction in which the project property is located shall add to the amount of its budgeted property tax revenues the amount of any credit due to the project entity that year under Section 11-13-25(3), and shall divide the result by the sum of the taxable value of all property taxed, including the value of the project property apportioned to the jurisdiction, and further adjusted pursuant to the requirements of Section 59-2-913.

G. B.1. and B.2. are retroactive to the lien date of January 1, 1984. B.3. is effective as of the lien date of January 1, 1989. The remainder of this rule is retroactive to the lien date of January 1, 1988.

**R884-24P-17. Reappraisal of Real Property by County Assessors Pursuant to Utah Constitution, Article XIII, Subsection 11, and Utah Code Ann. Sections 59-2-303, 59-2-302, and 59-2-704.**

A. The following standards shall be followed in sequence when performing a reappraisal of all classes of locally-assessed real property within a county.

1. Conduct a preliminary survey and plan.

a) Compile a list of properties to be appraised by property class.

b) Assemble a complete current set of ownership plats.

c) Estimate personnel and resource requirements.

d) Construct a control chart to outline the process.

2. Select a computer-assisted appraisal system and have the system approved by the Property Tax Division.

3. Obtain a copy of all probable transactions from the recorder's office for the three-year period ending on the effective date of reappraisal.

4. Perform a use valuation on agricultural parcels using the most recent set of aerial photographs covering the jurisdiction.

a) Perform a field review of all agricultural land, dividing up the land by agricultural land class.

b) Transfer data from the aerial photographs to the current ownership plats, and compute acreage by class on a per parcel basis.

c) Enter land class information and the calculated agricultural land use value on the appraisal form.

5. Develop a land valuation guideline.

6. Perform an appraisal on improved sold properties considering the three approaches to value.

7. Develop depreciation schedules and time-location modifiers by comparing the appraised value with the sale price of sold properties.

8. Organize appraisal forms by proximity to each other and by geographical area. Insert sold property information into the appropriate batches.

9. Collect data on all nonsold properties.

10. Develop capitalization rates and gross rent multipliers.

11. Estimate the value of income-producing properties using the appropriate capitalization method.

12. Input the data into the automated system and generate preliminary values.

13. Review the preliminary figures and refine the estimate based on the applicable approaches to value.

14. Develop an outlier analysis program to identify and correct clerical or judgment errors.

15. Perform an assessment/sales ratio study. Include any new sale information.

16. Make a final review based on the ratio study including an analysis of variations in ratios. Make appropriate adjustments.

17. Calculate the final values and place them on the assessment role.

18. Develop and publish a sold properties catalog.

19. Establish the local Board of Equalization procedure.

20. Prepare and file documentation of the reappraisal program with the local Board of Equalization and Property Tax Division.

B. The Tax Commission shall provide procedural guidelines for implementing the above requirements.

**R884-24P-19. Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702.**

(1) "State certified general appraiser," "state certified residential appraiser," and "state licensed appraiser" are as defined in Section 61-2b-2.

(2) The ad valorem training and designation program consists of several courses and practica.

(a) Certain courses must be sanctioned by either the Appraiser Qualification Board of the Appraisal Foundation (AQB) or the Western States Association of Tax Administrators (WSATA).

(b) The courses comprising the basic designation program are:

(i) Course A - Assessment Practice in Utah;

(ii) Course B - Fundamentals of Real Property Appraisal;

(iii) Course C - Mass Appraisal of Land;

(iv) Course D - Building Analysis and Valuation;

(v) Course E - Income Approach to Valuation;

(vi) Course G - Development and Use of Personal Property Schedules;

(vii) Course H - Appraisal of Public Utilities and Railroads (WSATA); and

(viii) Course J - Uniform Standards of Professional Appraisal Practice (AQB).

(c) The Tax Commission may allow equivalent appraisal education to be submitted in lieu of Course B, Course E, and Course J.

(3) Candidates must attend 90 percent of the classes in each course and pass the final examination for each course with a grade of 70 percent or more to be successful.

(4) There are four recognized ad valorem designations: ad valorem residential appraiser, ad valorem general real property appraiser, ad valorem personal property auditor/appraiser, and ad valorem centrally assessed valuation analyst.

(a) These designations are granted only to individuals working as appraisers, review appraisers, valuation auditors, or analysts/administrators providing oversight and direction to appraisers and auditors.

(b) An assessor, county employee, or state employee must hold the appropriate designation to value property for ad valorem taxation purposes.

(5) Ad valorem residential appraiser.

(a) To qualify for this designation, an individual must:

(i) successfully complete Courses A, B, C, D, and J;

(ii) successfully complete a comprehensive residential field practicum; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the appraiser may value residential, vacant, and agricultural property for ad valorem taxation purposes.

(6) Ad valorem general real property appraiser.

(a) In order to qualify for this designation, an individual must:

(i) successfully complete Courses A, B, C, D, E, and J;

(ii) successfully complete a comprehensive field practicum including residential and commercial properties; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the appraiser may value all types of locally assessed real property for ad valorem taxation purposes.

(7) Ad valorem personal property auditor/appraiser.

(a) To qualify for this designation, an individual must successfully complete:

(i) Courses A, B, G, and J; and

(ii) a comprehensive auditing practicum.

(b) Upon designation, the auditor/appraiser may value locally assessed personal property for ad valorem taxation purposes.

(8) Ad valorem centrally assessed valuation analyst.

(a) In order to qualify for this designation, an individual must:

(i) successfully complete Courses A, B, E, H, and J;

(ii) successfully complete a comprehensive valuation practicum; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the analyst may value centrally assessed property for ad valorem taxation purposes.

(9) If a candidate fails to receive a passing grade on a final examination, 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.

(10) A practicum involves the appraisal or audit of selected properties. The candidate's supervisor must formally request that the Property Tax Division administer a practicum.

(a) Emphasis is placed on those types of properties the candidate will most likely encounter on the job.

(b) The practicum will be administered by a designated appraiser assigned from the Property Tax Division.

(11) An appraiser trainee referred to in Section 59-2-701 shall be designated an ad valorem associate if the appraiser trainee:

(a) has completed all Tax Commission appraiser education and practicum requirements for designation under Subsections (5), (6), and (8); and

(b) has not completed the requirements for licensure or certification under Title 71, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(12) An individual holding a specified designation can qualify for other designations by meeting the additional requirements outlined above.

(13) Maintaining designated status requires completion of 28 hours of Tax Commission approved classroom work every two years.

(14) Upon termination of employment from any Utah assessment jurisdiction, or if the individual no longer works primarily as an appraiser, review appraiser, valuation auditor, or analyst/administrator in appraisal matters, designation is automatically revoked.

(a) Ad valorem designation status may be reinstated if the individual secures employment in any Utah assessment jurisdiction within four years from the prior termination.

(b) If more than four years elapse between termination and rehire, and:

(i) the individual has been employed in a closely allied field, then the individual may challenge the course examinations. Upon successfully challenging all required course examinations, the prior designation status will be reinstated; or

(ii) if the individual has not been employed in real estate valuation or a closely allied field, the individual must retake all required courses and pass the final examinations with a score of 70 percent or more.

(15) All appraisal work performed by Tax Commission designated appraisers shall meet the standards set forth in section 61-2b-27.

(16) If appropriate Tax Commission designations are not held by assessor's office personnel, the appraisal work must be contracted out to qualified private appraisers. An assessor's office may elect to contract out appraisal work to qualified private appraisers even if personnel with the appropriate designation are available in the office. If appraisal work is contracted out, the following requirements must be met:

(a) The private sector appraisers 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.

(b) All appraisal work shall meet the standards set forth in Section 61-2b-27.

(17) The completion and delivery of the assessment roll required under Section 59-2-311 is an administrative function of the elected assessor.

(a) There are no specific licensure, certification, or educational requirements related to this function.

(b) An elected assessor may complete and deliver the assessment roll as long as the valuations and appraisals included in the assessment roll were completed by persons having the required designations.

**R884-24P-20. Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301.**

A. For purposes of this rule:

1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.

2. Project means any undertaking involving construction, expansion or modernization.

3. "Construction" means:

a) creation of a new facility;

b) acquisition of personal property; or

c) any alteration to the real property of an existing facility other than normal repairs or maintenance.

4. Expansion means an increase in production or capacity as a result of the project.

5. Modernization means a change or contrast in character or quality resulting from the introduction of improved techniques, methods or products.

6. Functionally complete means capable of providing economic benefit to the owner through fulfillment of the purpose for which it was constructed. In the case of a cost-regulated utility, a project shall be deemed to be functionally complete when the operating property associated with the project has been capitalized on the books and is part of the rate base of that utility.

7. Allocable preconstruction costs means expenditures

associated with the planning and preparation for the construction of a project. To be classified as an allocable preconstruction cost, an expenditure must be capitalized.

8. Cost regulated utility means a power company, oil and gas pipeline company, gas distribution company or telecommunication company whose earnings are determined by a rate of return applied to rate base. Rate of return and rate base are set and approved by a state or federal regulatory commission.

9. Residential means single-family residences and duplex apartments.

10. Unit method of appraisal means valuation of the various physical components of an integrated enterprise as a single going concern. The unit method may employ one or more of the following approaches to value: the income approach, the cost approach, and the stock and debt approach.

B. All construction work in progress shall be valued at "full cash value" as described in this rule.

C. Discount Rates

For purposes of this rule, discount rates used in valuing all projects shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions.

D. Appraisal of Allocable Preconstruction Costs.

1. If requested by the taxpayer, preconstruction costs associated with properties, other than residential properties, may be allocated to the value of the project in relation to the relative amount of total expenditures made on the project by the lien date. Allocation will be allowed only if the following conditions are satisfied by January 30 of the tax year for which the request is sought:

a) a detailed list of preconstruction cost data is supplied to the responsible agency;

b) the percent of completion of the project and the preconstruction cost data are certified by the taxpayer as to their accuracy.

2. The preconstruction costs allocated pursuant to D.1. of this rule shall be discounted using the appropriate rate determined in C. The discounted allocated value shall either be added to the values of properties other than residential properties determined under E.1. or shall be added to the values determined under the various approaches used in the unit method of valuation determined under F.

3. The preconstruction costs allocated under D. are subject to audit for four years. If adjustments are necessary after examination of the records, those adjustments will be classified as property escaping assessment.

E. Appraisal of Properties not Valued under the Unit Method.

1. The full cash value, projected upon completion, of all properties valued under this section, with the exception of residential properties, shall be reduced by the value of the allocable preconstruction costs determined D. This reduced full cash value shall be referred to as the "adjusted full cash value."

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:

a) The full cash value of the project expected upon completion.

b) The expected date of functional completion of the project currently under construction.

(1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

c) The percent of the project completed as of the lien date.

(1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:

(a) 10 - Excavation-foundation

(b) 30 - Rough lumber, rough labor

(c) 50 - Roofing, rough plumbing, rough electrical, heating

(d) 65 - Insulation, drywall, exterior finish

(e) 75 - Finish lumber, finish labor, painting

(f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical

(g) 100 - Floor covering, appliances, exterior concrete, misc.

(2) In the case of all other projects under construction and valued under this section the percent of completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion; or in the case of nonresidential projects,

b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;

c) adjust the resulting product of E.3.a) or E.3.b) for the expected time of completion using the discount rate determined under C.

F. Appraisal of Properties Valued Under the Unit Method of Appraisal.

1. No adjustments under this rule shall be made to the income indicator of value for a project under construction that is owned by a cost-regulated utility when the project is allowed in rate base.

2. The full cash value of a project under construction as of January 1 of the tax year, shall be determined by adjusting the cost and income approaches as follows:

a) Adjustments to reflect the time value of money in appraising construction work in progress valued under the cost and income approaches shall be made for each approach as follows:

(1) Each company shall report the expected completion dates and costs of the projects. A project expected to be completed during the tax year for which the valuation is being determined shall be considered completed on January 1 or July 1, whichever is closest to the expected completion date. The Tax Commission shall determine the expected completion date for any project whose completion is scheduled during a tax year subsequent to the tax year for which the valuation is being made.

(2) If requested by the company, the value of allocable preconstruction costs determined in D. shall then be subtracted from the total cost of each project. The resulting sum shall be referred to as the adjusted cost value of the project.

(3) The adjusted cost value for each of the future years prior to functional completion shall be discounted to reflect the present value of the project under construction. The discount rate shall be determined under C.

(4) The discounted adjusted cost value shall then be added to the values determined under the income approach and cost approach.

b) No adjustment will be made to reflect the time value of money for a project valued under the stock and debt approach to value.

G. This rule shall take effect for the tax year 1985.

**R884-24P-24. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918 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 acquistion cost;

c) a listing, by month, of the counties where the equipment has situs; and

d) any other information required.

2. For purposes of this rule, situs is established when leased or rented equipment is kept in an area for thirty days. Once situs is established, any portion of thirty days during which that equipment stays in that area shall be counted as a full month of situs. In no case may situs exceed twelve months for any year.

3. The completed report shall be submitted to the Property Tax Division of the Tax Commission within thirty days after each reporting period.

a) Noncompliance will require accelerated reporting.

**R884-24P-29. Taxable Household Furnishings Pursuant to Utah Code Ann. Section 59-2-1113.**

A. Household furnishings, furniture, and equipment are subject to property taxation if:

1. the owner of the abode commonly receives legal consideration for its use, whether in the form of rent, exchange, or lease payments; or

2. the abode is held out as available for the rent, lease, or use by others.

**R884-24P-32. Leasehold Improvements Pursuant to Utah Code Ann. Section 59-2-303.**

A. The value of leasehold improvements shall be included in the value of the underlying real property and assessed to the owner of the underlying real property.

B. The combined valuation of leasehold improvements and underlying real property required in A. shall satisfy the requirements of Section 59-2-103(1).

C. The provisions of this rule shall not apply if the underlying real property is owned by an entity exempt from tax under Section 59-2-1101.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2000.

**R884-24P-33. 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 homesite.

5. A property with multiple uses, such as residential and commercial, shall receive the residential exemption only for the percentage of the property that is used as a primary residence.

6. If the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.

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 |

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 |

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 |
| 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 |

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 |

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 |

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 |
| 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 leafs, U.S. highways, and state highways extending through each county as determined by the Commission from current state Geographic Information System databases.

**R884-24P-57. Judgment Levies Pursuant to Utah Code Ann. Sections 59-2-918.5, 59-2-924, 59-2-1328, and 59-2-1330.**

A. Definitions.

1. "Issued" means the date on which the judgment is signed.

2. "One percent of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year"

includes any revenues collected by a judgment levy imposed in the prior year.

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. sharedown of the commission's sales tax econometric model based on historic patterns, weighted 40 percent;

2. time series models, weighted 40 percent; and

3. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, weighted 20 percent.

**R884-24P-59. One-Time Decrease in Certified Rate Based on Estimated Additional Resort Communities Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.**

A. The estimated additional resort communities sales tax revenue to be distributed to a municipality under Section 59-12-402 shall be determined based on the following formula:

1. time series model, econometric model, or simple average, based upon the availability of and variation in the data, weighted 75 percent; and

2. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Section 59-12-402, weighted 25 percent.

**R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.**

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P- 33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. mobile and manufactured homes;

5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial vehicle, for purposes of Section 59-2-405.1, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the age of the vehicle under E. on the first day of the registration period for which the registrant:

1. in the case of an original registration, registers the vehicle; or

2. in the case of a renewal of registration, renews the registration of the vehicle in accordance with Section 41-1a-216.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of

the armed forces stationed in another state is not subject to the Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by .015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

**R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.**

A. Definitions.

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

2. "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, which is either self-propelled or pulled by another vehicle.

a) Recreational vehicle includes a travel trailer, a camping trailer, a motor home, and a fifth wheel trailer.

b) Recreational vehicle does not include a van unless specifically designed or modified for use as a temporary dwelling.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;

2. watercraft required to be registered with the state;

3. recreational vehicles required to be registered with the state; and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2- 405 to determine the value of personal property that may be subtracted from the allocated unit value.

F. If a property's valuation is appealed to the county board of equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33.

G. The county assessor may change the fair market value of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

4. Personal property belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405 uniform fee as long as the personal property is kept in another state.

5. Noncommercial trailers weighing 750 pounds or less are not subject to the Section 59-2-405 uniform fee or ad valorem property tax but may be registered at the request of the owner.

I. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the Section 59-2-405 uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2- 217 and 59-2-309 as a condition precedent to registration.

J. The situs of personal property subject to the Section 59-2-405 uniform fee is determined in accordance with Section 59-2- 104. Situs of purchased personal property shall be the tax area of the purchaser's domicile, unless the personal property will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all personal property subject to state registration and its corresponding taxable situs.

4. Section 59-2-405 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405 uniform fee.

M. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

**R884-24P-62. Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201.**

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) + (Beta x 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**
**March 6, 2006** **Art. XIII, Sec 2**
**Notice of Continuation April 5, 2002** **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**

**R933. Transportation, Preconstruction, Right-of-Way Acquisition.**
**R933-2. Control of Outdoor Advertising Signs.**
**R933-2-1. Purpose.**

The purpose of these rules is to implement the Utah Outdoor Advertising Act Section 72-7-501 et seq. Nothing in these rules shall be construed to permit outdoor advertising that would disqualify the State for Federal participation of funds under the Federal standards applicable. The Transportation Commission and the Utah Department of Transportation shall, through designated personnel, control outdoor advertising on interstate and primary highway systems.

**R933-2-2. Federal Regulations.**

The federal regulations governing outdoor advertising contained in 23 CFR 750.101 through 750.713, April 1, 1994 are adopted and incorporated by this reference.

**R933-2-3. Definitions.**

All references in these Rules to Title 72, Chapter 7, Part 5, are to those sections of the Utah Code known as the Utah Outdoor Advertising Act. In addition to the definitions in that part, the following definitions are supplied:

(1) "Abandoned Sign" means any controlled sign, the sign facing of which has been partially obliterated, has been painted out, has remained blank or has obsolete advertising matter for a continuous period of 12 months or more.

(2) "Acceleration and deceleration lanes" means speed change lanes created for the purpose of enabling a vehicle to increase or decrease its speed to merge into, or out of, traffic on the main-traveled way. As used in the Act, an acceleration or deceleration lane begins and ends at a point no closer than 500 feet from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way. On-ramps and off-ramps are part of the interchange and shall not be considered an acceleration or deceleration lane under the Act or these rules.

(3) "Act" means the Utah Outdoor Advertising Act.

(4) "Advertising" means any message, whether in words, symbols, pictures or any combination thereof, painted or otherwise applied to the face of an outdoor advertising structure, which message is designed, intended, or used to advertise or inform, and which message is visible from any place on the main travel-way of the interstate or primary highway system.

(5) "Areas zoned for the primary purpose of outdoor advertising" as used in the Act is defined to include areas in which the primary activity is outdoor advertising.

(6) "Commercial or industrial zone" as defined in of the Act is further defined to mean, with regard to those areas outside the boundaries of urbanized counties and outside the boundaries of cities and towns referred to in that subsection, those areas not within 8,420 feet of an interstate highway exit-ramp or entrance-ramp as measured from the nearest point of the beginning or ending of the pavement widening at the exit from or entrance to the main traveled way that are reserved for business, commerce, or trade under enabling state legislation or comprehensive local zoning ordinances or regulations, and are actually used for commercial or industrial purposes, including the land along both sides of a controlled highway for 600 feet immediately abutting the area of use, measurements under this subsection being made from the outer edge of regularly used buildings, parking lots, gate-houses, entrance gates, or storage or processing areas.

(7) "Conforming Sign" means an off-premise sign maintained in a location that conforms to the size, lighting, spacing, zoning and usage requirements as provided by law and these rules.

(8) "Controlled Sign" means any off-premise sign that is designed, intended, or used to advertise or inform any part of the advertising or informative contents of which is visible from any place on the main traveled way of any interstate or federal-aid primary highway in this State.

(9) "Destroyed Sign" means a sign damaged by natural elements wherein the costs of re-erection exceeds 30% of the depreciated value of the sign as established by departmental appraisal methods.

(10) "Feeder systems" are secondary roads that bring traffic to the main-traveled way.

(11) "Freeway" means a divided highway for through traffic with full control access.

(12) "Grandfather Status" refers to any off-premise controlled sign erected in zoned or unzoned commercial or industrial areas, prior to May 9, 1967, even if the sign does not comply with the size, lighting, or spacing of the Act and these Rules. Signs only, and not sign sites, may qualify for Grandfather Status.

(13) "H-1" means highway service zone as defined in the Act.

(14) "Lease or Consent" means any written agreement by which possession of land, or permission to use land for the purpose of erecting or maintaining a sign, or both, is granted by the owner to another person for a specified period of time.

(15) "Legal copy" means the advertising copy on the sign that occupies at least 50% of the sign size.

(16) "Nonconforming Sign" means a sign that was lawfully erected, but that does not conform to State law or rules passed or made at a later date or that later fails to comply with State legislation or rules because of changed conditions. The term "illegally erected" or "illegally maintained" is not synonymous with the term, "nonconforming sign", nor is a sign with "grandfather" status synonymous with the term, "nonconforming sign."

(17) "Off-Premise Sign" means also, in supplement to the definition stated in the Act, an outdoor advertising sign that advertises an activity, service or product and that is located on premises other than the premises at which activity or service occurs or product is sold or manufactured.

(18) "On-Premise Sign", in supplement to the definition stated in the Act, does not include a sign that advertises a product or service that is only incidental to the principal activity or that brings rental income to the property owner or occupant.

(19) "Parkland" means any publicly owned land that is designed or used as a public park, recreation area, wildlife or waterfowl refuge, or historical site.

(20) "Point of the Gore" means the point of the area delineated by two solid white lines that is between a continuing lane of a through-roadway and a lane used to enter or exit the continuing lane, including similar areas between merging or splitting highways.

(21) "Property" as used in the definition of "On-Premise Sign" includes those areas from which the general public is serviced and which are directly connected with and are involved in assembling, manufacturing, servicing, repairing, or storing of products used in the business activity. This property does not include the site of any auxiliary facilities that are not essential to and customarily used in the conduct of business, nor does it include property not contiguous to the property on which the sign is situated.

(22) "Sale or Lease Sign" means any sign situated on the subject property that advertises that the property is for "sale" or "lease". This sign may not advertise any product or service unrelated to the business of selling or leasing the land upon which it is located, nor may it advertise a projected use of the land or a financing service available or being utilized in its development.

(23) "Scenic Area" as used in the Act includes a scenic byway.

(24) "Transient or Temporary Activity" means any industrial or commercial activity, not otherwise herein excluded,

that does not have a prior continuous history for a period of six months.

(25) "Un-zoned Area" in supplement to the definition stated in the Act, means an area in which no zoning is in effect. It does not include areas within comprehensive zoning or master plans adopted by local zoning authorities.

(26) "V-Type Sign" means any sign, the center pole of which is nearest the traveled portion of the highway and is a common pole to the two sign faces, or when a common pole is not used, a sign with the sign faces no further than 36 inches apart at the angle of the sign closest to the traveled portion of the highway, and the structure poles at the point nearest the traveled portion of the highway no further apart than 48 inches. Existing V-type signs now controlled and permitted are excluded from this definition.

(27) "Visible" means capable of being seen whether or not readable, without visual aid, by a person of normal visual acuity.

**R933-2-4. Permits.**

(1) All controlled outdoor advertising signs legally in existence prior to the effective date of the 1967 Act, or that are legally created thereafter, must have a permit. This includes off-premise signs located on the side of or on top of any fixed object or building and visible from the main traveled way of an interstate or federal-aid primary highway.

(2) Anyone preparing to erect a controlled sign shall apply for the permit before beginning construction of the sign. Permits shall be issued in the manner prescribed in the Act. Permits may be issued only for signs that are to be erected in commercial or industrial zones or in unzoned commercial or industrial areas, as defined by the Act. Insomuch as a sign cannot lawfully be constructed or maintained unless there is legal access to the property on which the sign is proposed to be located, a permit may not be issued if the applicant does not have legal access to that property.

(3) Permits may be issued only for signs already lawfully erected or to be lawfully erected within 90 days from the date of the issuance of the permit. Within 30 days from the date of issuance, the permit must be affixed to the completed sign for which the permit was issued as provided in Subsection R933-2-4(5).

(4) A permit affixed to a sign other than the sign for which it was issued is unlawful, and remedial action shall be taken by the permittee by the proper affixing of the permit to the correct sign within 30 days of notice to the permittee.

(5) Permits shall be permanently attached to the sign in a position to be readily visible from the nearest highway in the direction of travel to the sign faces. If the sign is a single-face cross-highway reader, then the permit must be attached to the sign in a position readily visible from the nearest traveled portion of the highway. The permittee is responsible for the proper placement of the permit on the sign.

(6) Sign permits that have been lost or destroyed must be replaced, and new permits for signs otherwise lawful shall be issued upon the payment of a $25 fee for each sign and the completion of a new permit application.

(7) Permits shall be issued on a one year fiscal basis, and shall be renewed on or before the first day of July of each year.

(8) The fee for a new permit is $100 for the one-year fiscal period or any part thereof. The permit expires June 30 of the fiscal year. The fee for permit renewal is $25 for the one-year fiscal period or any part thereof. Notwithstanding the specification in Subsections R933-2-4(8),(12), and (13)(a) of a $100 fee for a sign permit, the fee for the sign permit for a non-profit public service sign shall be $25, and the fee for renewal of the permit for that non-profit public service sign shall be $10.

(9) The fee for permits issued within a one-year fiscal period shall not be prorated.

(10) One-year permit renewals shall be made on renewal forms prepared by the Department. Completion of the renewal application and obtaining of the renewal permit prior to the expiration of the existing permit shall be the sole responsibility of the owner. The renewal may be applied for no sooner than 60 days prior to July 1 of the year in which the permit is to be renewed.

(11) Written proof of lease or consent from site owner to erect or maintain an outdoor advertising sign must be furnished by the applicant at the time of application for an original permit. This proof may consist of an affidavit showing the landowner's name and address, the sign owner's name, and the sign location by route, milepost, address, and county. On renewal of the permit the applicant must certify that the sign site is still under valid lease to the applicant.

(12) If a one-year permit on a conforming sign is not renewed on or before July 1 of the year of its term, a new permit application shall be required for a new permit, along with a fee of $100.

(13) A permit is non transferable, and the permittee shall be liable for any violation of the law regarding the permitted sign. No new permit may be issued for a sign for which a permit has already been issued, except as follows:

(a) Transfer of ownership of a permitted sign shall require the holder of the valid permit to release, in writing, his rights to continue to maintain his sign or use his location for outdoor advertising. The new owner applicant shall then submit to the Utah Department of Transportation the written release and proof of having obtained sign ownership, and a valid lease or consent for the remainder of the permit term. A $100 fee shall accompany the application and both application and fee must be received within 30 days of the ownership transfer.

(b) A conforming sign that is unlawful and forfeited by the permittee may be acquired and permitted, providing the new sign applicant submits the completed permit application and proof of possession of a valid land lease or consent to maintain a sign at the described location and providing the new application and the sign are otherwise lawful.

(14) A supplemental application fee of $100 shall be charged to cover administrative and inspection costs for every sign that was erected without a sign permit, Form R-299, or altered without prior written approval of the department, Form R-407. This supplemental fee is in addition to the regular $100 permit fee.

(15) Each application for a new permit must be accompanied by the approved building permit of the local governing authority or a written statement from that authority that building permits are not required under its ordinances.

(16) Where local authority has issued a building permit for construction of a sign, but construction is contrary to the Utah Outdoor Advertising Act, the action of the local authority does not require the State to issue a permit.

(17) Federal agencies, State agencies, counties, cities and towns that use outdoor advertising signs along the interstate or primary highway systems shall have a permit for each controlled sign as provided in the Act and these rules.

**R933-2-5. Sign Changes, Repairs, and Maintenance.**

(1) Sign changes or repairs, including those for signs in a commercial or industrial zone, are subject to the following requirements:

(a) The face of a controlled sign may be removed for maintenance and renovation or change of advertising copy using basically the same face material. The shape and size of advertising space may not be changed except as provided in these rules. Replacement of the sign face must be accomplished within a 60 day period from the date of its removal.

(b) A nonconforming sign with "Grandfather Status" may not be relocated, structurally altered, nor repositioned, including reversing the direction of the sign face.

(c) A conforming sign may be reshaped or modified as to height or size, or relocated upon proper written request, Form R-407, provided the change is in compliance with the Act and these rules. Any change shall be completed within 60 calendar days from the date of the approval of the request. A fee of $100 shall accompany the R-407 application to change the sign, in addition to any applicable fee under Subsection R933-2-4(14).

(d) A conforming sign that is damaged by vandals, storms, wind, or acts of nature can be re-erected or changed, or both, upon proper written request and approval on Form R-407.

(e) A nonconforming sign that is damaged but not destroyed by vandals or acts of nature may be repaired to the same size or shape upon proper written application and approval. Normal maintenance may be included in the repair, but no structural changes affecting the sign's value may be allowed. The sign may be purchased by the State if agreement is reached by the State and the sign owner. The compensation to the sign owner shall be the depreciated value of the sign immediately before damage, less cost of re-erection or repair.

(f) Repairs and ordinary maintenance may be made on conforming and nonconforming signs so long as repairs do not alter the basic advertising space or illumination, or change the material of the sign structure.

(g) Nonconforming signs destroyed by natural disaster are not eligible for compensation, unless at the time of destruction they have been appraised and committed for removal and the State has approved a purchase agreement.

(2) The following provisions govern maintenance:

(a) A legally permitted nonconforming sign may remain standing subject to the provisions of the Act and these rules so long as it is not changed, except for advertising copy, and is not purchased or condemned pursuant to law.

(b) Signs shall be properly maintained. Improper maintenance is considered:

(i) Paint faded or peeling extensively;

(ii) Message not visible or illegible;

(iii) Sheets or panels loose or sagging;

(iv) Structural supports leaning;

(v) Abandoned.

(c) A sign with any of the deficiencies listed in Subsection R933-2-5(2)(b) is not in a reasonable state of repair, is in violation of the law, and is subject to removal.

(d) The crossing of a right-of-way line of any State highway at other than an established access approach to erect or maintain a sign without the written permission of the Department, is unlawful.

**R933-2-6. Commercial and Industrial Usage: Limitations in Zoned or Unzoned Areas.**

(1) Controlled signs in zoned or unzoned industrial or commercial areas are subject to the following zoning and usage requirements:

(a) Commercial or industrial usage must be visible from a traveled portion of the highway and must be situated within 600 feet of the sign site, measured from the outer edge of the regularly used buildings, parking lot, storage or processing area of the activity.

(b) The sign site must be zoned commercial or industrial or be in an unzoned commercial or industrial area.

(2) Airport runways or parking or aircraft tie down areas are not zoned or unzoned commercial or industrial areas.

(3) Mining operations and related activities, including gravel pits are not zoned or unzoned commercial or industrial areas unless they are:

(a) Where the final and concentrated processing of mined or extracted minerals is effected; or

(b) Where the mined material which has been processed is regularly stored or held for sale or shipment.

(4) Farming or ranching areas or related dairy farm facilities, of whatever nature, are not zoned or unzoned commercial or industrial areas.

(5) Municipal or private golf courses or cemeteries are not zoned or unzoned commercial or industrial areas.

(6) A trailer or mobile home park, court, or facility does not qualify under Subsection 72-7-504(1)(d) or (e) regardless of the local zoning. An RV Park does not qualify under either of those subsections unless at least 3/4 of the total available trailer parking spaces are not occupied or reserved for rental on a month-to-month basis.

(7) Where an occupied residence is located along the highway right of way within 600 feet of a commercial or industrial activity, no controlled sign may be erected closer than 100 feet of the residence unless the owner of the residence expressly waives in writing the foregoing restriction. The waiver must be submitted with the permit application prior to the erection of a new sign.

(8) Where the width of the right of way in a commercial or industrial area is more than 300 feet, and there is commercial activity on only one side of the highway, that activity does not qualify the opposite side of the highway as commercial or industrial usage for the purpose of erecting new outdoor advertising signs.

**R933-2-7. Spacing For Permitted Signs.**

(1) Spacing of permitted signs shall be as follows:

(a) Signs in unincorporated areas may not be spaced less than 500 feet apart on the interstate and federal-aid primary system, as measured parallel to the highway right of way. Any sign allowed to be erected in a highway service zone H-1 may not be less than 500 feet from an existing controlled sign adjacent to an interstate highway or primary highway except that signs may be erected less than 500 feet from each other if the sign faces on the same side of the interstate highway or limited access primary highway are not simultaneously visible.

(b) No sign may be erected more than 100 feet on the perpendicular from the edge of the right of way of an interstate or primary highway except where a non-controlled highway or railroad right of way runs contiguous and adjacent to the edge of the controlled highway. The 100-foot corridor shall then be measured from a point on the perpendicular not to exceed 200 feet from the edge of the right of way of the interstate or primary highway. In no case may the outer edge of the corridor exceed 350 feet from the controlled right of way.

(c) Any sign located within the controlled area of both the interstate system and a primary system must meet the spacing requirements of both highway systems.

(d) If a sign message may be read from two or more routes, one or more of which is a controlled route, the more stringent of applicable control requirements applies.

(2) Height Above Highway:

No new structure, including the sign face, may be more than 50 feet in height above the elevation of the edge of the traveled surface of the highway. Where local zoning requirements or ordinances are in effect, the stricter of any applicable zoning requirements or ordinances apply.

**R933-2-8. Removal of Illegal Signs.**

(1) Removal Costs: The cost for the removal by the Utah Department of Transportation of an illegal or abandoned sign shall be assessed jointly and severally against the sign owner, landowner, occupant of the land or other responsible person, or any combination thereof, in accordance with Section 72-7-508.

(2) Storage Charges: Illegal or abandoned signs that have been removed by the Department after proper notice to the sign and site owner or occupant of the land shall be stored at the nearest department shed. There shall be a charge of $25 per month levied as the storage charges. The storage charges shall be in addition to the costs of the removal of the illegal or

abandoned sign.

(3) Redemption and Disposal: If the illegal or abandoned sign has not been claimed and redeemed within 30 days from the date of removal, notice to the sign owner, site owner, and occupant of the land shall be given. If the sign is not redeemed within 30 days thereafter, a designated Department official in the area in which the sign is stored shall proceed to dispose of the stored illegal or abandoned sign by either utilizing the material contained therein for Utah Department of Transportation maintenance purposes or destroying the sign. A statement of the sign disposal shall be made and filed with a designated person at the Department.

**R933-2-9. Termination of Non-Conforming Use Status.**

(1) The non-conforming use status of a controlled sign shall terminate under the following conditions:

(a) Failure of the sign owner to apply for a renewal permit on or before the date on which the permit expires;

(b) Structural alteration or change of the sign as to height, size, location or direction of sign face not constituting ordinary maintenance or a change of advertising matter;

(c) Destruction by storm, wind, act of nature, fire or vandalism;

(d) Abandonment;

(e) Failure to correct after receiving proper notice pursuant to Section 72-7-508, or failure to ask for a hearing after receiving proper notice pursuant to Section 72-7-508, or failure to file a written response as required by law, or failure to appeal from an adverse decision of the Department, or exhaustion of all legal remedies under Section 72-7-508.

(f) Purchase by the Department under Section 72-7-510.

(g) Acquisition at any time by the Department for highway construction.

**R933-2-10. Conforming Sign Becoming Nonconforming -- Removal.**

(1) Any legal conforming sign that becomes nonconforming after May 9, 1967, by reason of law or route classification, may not be required to be removed under the Utah Advertising Act until after the end of the fifth year after it had become nonconforming, except as otherwise provided for by law or contract.

**R933-2-11. On-Premise Signs -- Illegal Status - Removal.**

An on-premise sign loses its on-premise status when the business or activity it advertises has ceased to exist for a period of at least 12 months at the site of the sign, the sign is located within 1,000 feet of a controlled highway, and the message thereon is visible to the traveling public from that controlled highway. This sign may be removed at the expense of the sign owner or land owner or both without compensation to the sign or site owner as provided in Section 72-7-508 of the Act.

**R933-2-12. Directional Signs.**

(1) Directional signs shall conform to federal standards concerning the lighting, size, number, and spacing of the signs. There are no zoning or usage requirements for directional signs.

(2) The following standards apply only to directional signs that are erected and maintained adjacent to the interstate and federal-aid primary highway system, and that are visible from the main traveled way.

(a) A directional sign allowed under Sections 72-7-502 and 72-7-504 is subject to the following restrictions:

(i) No sign may exceed the following limits where all dimensions include border and trim, but exclude supports:

(A) Maximum area - 150 square feet;

(B) Maximum height - 20 feet;

(C) Maximum length - 20 feet.

(ii) A sign may be illuminated, subject to the following:

(A) Signs that are not effectively shielded so as to prevent light from being directed at any portion of the traveled way of an interstate or primary highway, or that cause glare or impair the vision of the driver of any motor vehicle, or that otherwise interfere with any driver's operation of a motor vehicle, are prohibited.

(B) No sign may be so illuminated as to obscure or interfere with the effectiveness of an official traffic sign, device, or signal.

(iii) Each location of a directional sign must be approved by the Department and is subject to the following restrictions:

(A) No directional sign may be located within 2,000 feet of an interchange or intersection at grade within the interstate system or other freeways or the primary system, measured from the nearest point of pavement widening at the exit from or entrance to the main traveled way.

(B) No directional sign may be located within 2,000 feet of a rest area, parkland, or scenic areas.

(C) Directional signs facing the same direction of travel shall be spaced no less than one mile apart.

(D) No more than one directional sign per activity facing the same direction of travel may be erected along a single route approaching the activity.

(E) Signs adjacent to the interstate or primary system shall be located within 15 air miles of the activity they advertise.

(iv) Any area of historical interest shall be approved by the Utah Historical Society before consideration for approval as an area for a directional sign.

(b) The following directional signs are prohibited:

(i) Signs advertising activities that are illegal under Federal or State law in effect at the location of those signs or activities;

(ii) Signs positioned in any manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or to obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic;

(iii) Signs erected or maintained upon trees or painted or drawn upon rocks, or other natural features;

(iv) Obsolete signs;

(v) Signs that are structurally unsafe or in disrepair;

(vi) Signs that contain or are illuminated by any flashing or moving light or animated by moving parts;

(vii) Signs located in rest areas, parklands, or scenic areas.

(3) Any directional sign erected or maintained under the Act and these rules may at any time be removed for cause upon order of the Department after notice and hearing, if requested and timely pursued, under Section 72-7-508.

**R933-2-13. Official Signs.**

(1) Prerequisites for erection and maintenance:

(a) Prior to erection of an official sign the public agency shall submit to the Department in the Region where the sign is to be located, a completed permit application form R-299 along with:

(i) Facsimile of the sign message to be erected;

(ii) Statement of the official duty or responsibility being performed;

(iii) Certified copy of the statute, resolution, or ordinance from the public body showing official action authorizing erection and maintenance of the sign.

(b) The sign must be erected off the highway right-of-way, owned and maintained by the public agency, and located within the zoning jurisdiction of the public agency.

(c) Standards, Criteria and Restrictions:

(i) Only information of general interest to the traveling public may be placed on an official sign. Commercial advertising of a particular service, product or facility is prohibited.

(ii) The sign must be within the zoning jurisdiction of the

city, town, or other public agency designated by the sign.

(iii) No city, town or other subdivision of the State may erect or maintain more than one sign at each approach to the off-ramp, facing oncoming traffic at the nearest point of turn off to a city, town or other subdivision and in no event may more than two official signs, one for each direction of travel upon the controlled highway, be erected and maintained by or for the purpose of designating a city or town or other subdivision.

(iv) No official sign may be located within 2,000 feet of an interchange or intersection at grade along the interstate or primary highway system, measured from the nearest point of pavement widening at the exit from the main traveled way.

(v) No official sign may be so illuminated as to interfere with the effectiveness of, or obscure, an official traffic sign, device, or signal.

(vi) Signs that are not effectively shielded so as to prevent light from being directed at any portion of the traveled way of an interstate or primary highway, or that cause glare or impair the vision of the driver of any motor vehicle, or that otherwise interfere with any driver's operation of a motor vehicle, are prohibited.

(vii) No sign may be located within 500 feet of a rest area, parkland, cemetery, or scenic area or other official sign.

(viii) No sign may be erected at a site prohibited under local zoning. The stricter commercial and industrial zoning and usage requirements applicable to controlled outdoor advertising signs do not apply to official signs, though all other relevant rules apply.

(ix) No sign message may be altered without prior written approval by the department.

(x) Any official sign erected or maintained under the Act and these Rules may at any time be removed for cause and without compensation after notice and hearing, if required. The owner of any official sign shall remove the sign at its own cost and expense.

**R933-2-14. Department Hearings.**

Any hearing regarding the legality of a sign shall be held in the region where the sign is located, and shall be held in accordance with the Act, and in accordance with the Utah Administrative Procedures Act and Rule R907-1 unless specifically stated otherwise in a governing statute.

**KEY: signs**
**March 31, 2006 Title 72, Chapter 7, Part 5**
**Notice of Continuation January 22, 2002 72-1-201**