

R27. Administrative Services, Fleet Operations.**R27-6. Fuel Dispensing Program.****R27-6-1. Authority.**

This rule is established pursuant to subsections 63A-9-401(1)(c)(vi), 63A-9-401(1)(e), and 63A-2-201.1(a) which require the Department of Administrative Services, Division of Fleet Operations (DFO) to make rules establishing requirements for fuel management programs, and to create and administer a fuel dispensing services program.

R27-6-2. Participation.

(1) Pursuant to Subsection 63A-9-401(2)(a)(1), each state agency and each institution of higher education shall subscribe to the fuel dispensing services provided by the division.

(2) Pursuant to Subsection 63A-9-401(2)(a)(ii), state agencies may not provide or subscribe to any other fuel dispensing services, systems, or products other than those provided by DFO.

(3) Counties, municipalities, school districts, special districts and federal agencies may subscribe to fuel dispensing services provided by DFO.

R27-6-3. State Fuel Network.

(1) The state fuel network consists of all fuel sites owned, leased or under the control of the DFO; all state agencies including institutions of higher education; all counties, municipalities, school districts, and special districts that subscribe to the services provided by DFO; and all privately owned fuel sites that participate in the Utah Fuel Card program.

R27-6-4. Cost Recovery.

(1) DFO shall establish, for each fiscal year, fuel rates designed to recover the costs associated with the purchase of fuels and overhead costs associated with running the state fuel dispensing network.

R27-6-5. Authority to Issue a State of Utah Fuel Card.

(1) Except when delegated pursuant to the provisions of R27-6-6, the authority to issue State of Utah Fuel Cards (fuel card) and assign Personal Identification Numbers (PIN) resides exclusively with DFO.

(2) All fueling cards associated with state vehicles shall be documented in the fleet information system. Only one fuel card shall be issued to each vehicle. The PIN issued by the fuel card system to individual employees for their exclusive use is an electronic "signature" of the person to whom it is issued. Use of the fuel card and PIN are restricted to fueling the vehicles to which the fuel card was issued.

(3) Requests for fuel cards and/or PINs shall be documented in the Information Technology Services (ITS) Helpdesk software.

(4) Standard Fuel Network Vehicle and Employee PIN worksheets shall be used when requesting fuel cards and PINs.

(5) DFO shall distribute to each agency a monthly report showing all active fuel cards issued to the respective agencies.

(a) Agencies shall review the monthly reports and notify the State Fuel Technicians in charge of fuel cards of any discrepancies discovered.

(b) State Fuel Technicians shall investigate the discrepancy and make the necessary changes to the fuel card program and the fleet information system.

(6) Agencies may request that a fuel card history report accompany the monthly active fuel card report.

(7) In the event that a fuel card is no longer required due to card expiration, malfunction, loss, misuse, or the vehicle's disposal, the card shall be deleted from the fleet fuel card system and identified as "expired" in the fleet information system. No modifications to the fuel card shall be allowed.

(8) Only State Fuel Technicians have the authority to make

changes to fuel card information and to delete fuel cards from the system.

(9) In the event that a fuel card is either lost or stolen, the operator shall immediately report the loss or theft of the fuel card to DFO.

R27-6-6. Delegation of Authority to Issue Fuel Cards and Assign PINS.

(1) The director of the Division of Fleet Operations, with the approval of the Executive Director of the Department of Administrative Services, may delegate the authority to issue fuel cards and assign PINs to other state agencies and institutions by contract or other means authorized by law, if,

(a) the state agency or institution has requested the authority; and

(b) in the judgment of the director, the state agency or institution has the necessary resources and skills to perform the delegated responsibilities.

(2) The delegation shall contain the following:

(a) a precise definition of each function to be delegated;

(b) a clear description of the standards to be met in performing each function delegated, including but not limited to,

(i) a provision that the vehicles for which the fuel cards are being issued, and to which the PINs are being assigned, are or will be capital only lease vehicles; and

(ii) a provision that the vehicle for which the fuel card is being issued, and to which the PIN is being assigned, is allocated or assigned to the agency issuing both the fuel card and the PIN; and

(iii) a provision that the vehicles for which the fuel cards are being issued, and to which the PINs are being assigned, are in DFO's fleet information system.

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

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

(3) An agency given the authority to issue fuel cards and assign PINs shall not issue fuel cards for vehicles not in DFO's fleet information system.

(4) An agreement to delegate functions to a state agency or institution may be terminated by DFO if the results of administrative audits conducted by either DFO or the Department of Administrative Services reveal a lack of compliance with the terms of the agreement by the state agency or institution.

(5) In the event that a fuel card, issued by an agency other than DFO is either lost or stolen, the operator shall immediately report the loss or theft of the fuel card to the issuing agency.

R27-6-7. Authorized Use of a State of Utah Fuel Card.

(1) The following procedures shall be followed when purchasing fuel from either a state run or a participating commercial public fueling site:

(a) Verify that the vendor is a participant in the State Fuel Network Program; and

(b) Follow the procedures that apply to the particular site and enter the correct information when prompted in order to purchase fuel.

(2) Except as provided in paragraph 3 of this section, the fuel card shall only be used to purchase:

(a) Fuel; and

(b) Fluids, car washes and minor miscellaneous items for state vehicles whose value, taken together, shall not exceed the monthly monetary limits determined by DFO.

(3) Agency requests for a fuel card for use by a supervisor for emergency purposes, or for use with small miscellaneous equipment shall be approved provided the agency:

(a) Represents that they have a reconciliation or fuel

transaction auditing process in place for the review of miscellaneous transactions in order to prevent theft, abuse and fraud relating to the use of the card; and

(b) Cooperates with DFO to insure all fuel dispensed using fuel cards not assigned to specific vehicles is properly documented in the fleet information system through the use of a manual fuel ticket.

R27-6-8. Reimbursements.

(1) Reimbursements for the use of the operator's personal funds in order to purchase fuel and/or other services shall be granted:

(a) when the operator has verified that the vendor is a participant in the State Fuel Network Program and at the time when fuel was being purchased, there was a problem with either the PIN or card reader that could not be repaired prior to purchase; or

(b) when the operator purchases from a vendor that is not a participant in the State Fuel Network and there is no participating vendor in the immediate vicinity of the non-participating vendor.

(c) at the discretion of the fuel network manager when circumstances indicate that the use of personal funds was necessary.

R27-6-9. Meter Rejects.

(1) Drivers of state vehicles are required to enter the correct mileage, excluding tenths of miles, when using the fuel card assigned to the vehicle.

(2) In the event that the driver makes an error in the mileage update, the driver or the agency's contact shall provide designated DFO personnel with a correct mileage update.

(3) In the event that an individual operating a state vehicle inputs a blatant error meter reject, DFO will impose on the agency, an one time charge (OTC) in accordance with applicable rate schedule. A blatant error meter reject occurs when the operator enters the same number as the mileage (e.g., 000000) or enters a fictitious number that is not close to the current odometer reading (e.g., 123456). DFO may, upon request by the agency, allow five business days during which to investigate a blatant error. If the blatant error is deemed to have been the result of equipment failure, DFO will not impose the OTC.

(4) Agency contacts shall, within five business days of the request, respond to a DFO request to investigate a meter reject. In the event that the agency fails to respond or make arrangements for an extension of the time period in which to investigate the meter reject, DFO will impose an OTC in accordance with the applicable rate schedule, upon the agency.

R27-6-10. Bulk Fuel Purchases.

(1) For all fuel sites for which DFO purchases fuel:

(a) The authority to purchase bulk fuel resides exclusively with DFO.

(b) All fuel stored at, or contained in, fuel sites for which DFO purchases fuel shall be the property of the State of Utah, DFO.

R27-6-11. Fuel Site Maintenance.

(1) All fuel sites in the state fuel network for which DFO purchases fuel shall be managed by the DFO. All fuel sites for which DFO does not purchase fuel shall be managed by the agency, subscribing county, municipality, school district, or special district that has ownership, possession, or control of the site.

(2) Except for privately owned, leased or controlled fuel sites, maintenance at all other fuel sites in the State Fuel Network, shall be performed only by personnel of the DFO and/or their authorized agents.

(3) Only DFO personnel and/or authorized agents shall be

authorized to disconnect power or communication from any fueling equipment, including, but not limited to, tanks and monitoring equipment.

(4) Personnel of agencies, subscribing counties, municipalities, school districts and special districts at fuel sites shall not perform, or give authorization to perform, any site maintenance.

(c) Personnel of agencies, subscribing counties, municipalities, school districts and special districts at fuel sites shall report any maintenance concerns to the DFO.

(d) Personnel of agencies, subscribing counties, municipalities, school districts and special districts at fuel sites shall provide DFO, its employees and/or authorized agents, 24-hour access to fuel sites for any maintenance or service needs.

(4) In the event that a fuel site operated by an agency, subscribing county, municipality, school district or special district is not part of the Utah Fuel card system, it shall be the responsibility of the fuel site personnel to keep records of all following information for entry into the fleet information system:

(a) Correct odometer reading;

(b) Operators' PIN;

(c) Vehicle number or license plate number;

(d) Other information as required by DFO.

R27-6-12. Underground Fuel Storage Tanks.

(1) DFO shall be responsible for coordinating the installation of state owned underground storage tanks and the upgrading, retrofitting, repair or removal of existing underground storage tanks located on or about property, easements or rights of way owned, leased or otherwise controlled by agencies.

(2) DFO shall be responsible for paying for all operations related to the installation, upgrading, retrofitting, repair or removal of underground fuel storage tanks listed in its Underground Storage Tank Inventory.

(3) The costs associated with all operations related to the installation, repair or removal of Underground Fuel Storage Tanks that are not contained in DFO Underground Storage Tank Inventory shall be the responsibility of the agency having ownership, possession or control of the site in which the storage tank is found.

(4) All agency fuel site personnel shall provide DFO, its employees and/or authorized agents, 24-hour access to fuel sites for any storage tank maintenance or service needs.

R27-6-13. Abuse and Neglect of Fueling Equipment.

Damage to fuel equipment that results from the abuse or neglect of an operator shall be the responsibility of the agency employing the operator at the time of the incident.

R27-6-14. Delegation of Authority to Manage and Maintain Fuel Storage Tanks.

(1) The director of the Division of Fleet Operations, with the approval of the Executive Director of the Department of Administrative Services, may delegate the authority to manage and maintain fuel storage tanks holding fuel that is not for use in motor vehicles, to other agencies or institution, by contract or other means authorized by law, if:

(a) the state agency or institution has requested the authority; and

(b) in the judgment of the director, the state agency or institution has the necessary resources and skills to perform the delegated responsibilities.

(2) The delegation shall contain the following:

(a) a precise definition of each function to be delegated;

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

(c) a provision for periodic administrative audits by either

DFO or the Department of Administrative Services; and

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

(3) An agreement to delegate functions to a state agency or institution may be terminated by DFO if the results of administrative audits conducted by either DFO or the Department of Administrative Services reveal a lack of compliance with the terms of the agreement by the state agency or institution.

KEY: fuel dispensing

January 10, 2005

63A-9-401(1)(c)(vi)

Notice of Continuation February 14, 2007

63A-9-401(1)(e)

63A-2-201.1(a)

R27. Administrative Services, Fleet Operations.**R27-8. State Vehicle Maintenance Program.****R27-8-1. Authority.**

This rule is established pursuant to Subsections 63A-9-401(1)(c)(i) and (iv), which require the Department of Administrative Services, Division of Fleet Operations (DFO) to establish rules governing maintenance operations for state vehicles, and preventative maintenance programs.

Unless specifically exempted in writing by DFO, agencies shall comply with the preventive maintenance and repair provisions of this rule.

R27-8-2. Preventive Maintenance.

(1) Preventive maintenance (PM) shall be performed in accordance with the schedule set forth in the Preventive Maintenance Program Coupon Book that accompanies each full service lease vehicle. The Preventive Maintenance Program Coupon Book is located in the glove compartment of each full service lease vehicle.

(2) The driver or agency shall take the vehicle to a vendor that participates in the vendor's service network. In the event that a driver needs to locate a service facility, the vendor will direct the driver to the nearest service facility that participates in the vendor's service network.

(3) Agencies leasing state vehicles are responsible for complying with annual safety and emission inspections required by state law.

(a) Inspection compliance certificates shall be forwarded to the DFO offices for vehicle registration.

(4) When taking a state vehicle in for preventive maintenance, the drivers shall present the Preventive Maintenance Coupon Book to the vendor.

R27-8-4. Repairs.

(1) In the event a state vehicle is in need of repair(s), the driver shall contact the vendor prior to having any services performed. A toll free telephone number is listed on the front cover of the Driver Operating Manual and the Program Information Booklet.

(a) The driver of the vehicle shall provide the vehicle number and odometer reading to the vendor.

(b) In the event that a driver needs to locate a service facility, the vendor will direct the driver to the nearest service facility that participates in the vendor's service network.

(c) In the event that the vehicle is already in a service facility, the driver shall direct the shop to contact the vendor. Authorization to perform the required repairs shall be given by the vendor.

(2) When taking a state-owned vehicle in for repair(s), the driver shall identify the vehicle as belonging to DFO, and not the division or department to which the vehicles are leased.

R27-8-5. Agency Maintained Repair Shop Parts Inventory.

(1) Agencies with capital only lease vehicles may, at their own expense maintain and operate maintenance and repair facilities to care for leased vehicles.

(2) All maintenance and repair shop personnel working on capital only lease vehicles shall be trained in the use of DFO's fleet information system, specifically the work-order ticket module of the system.

(3) All maintenance and repairs performed on capital only lease vehicles shall be entered into the fleet information system work-order module within 24 hours of the completion of the work.

(4) All maintenance and repairs performed or done on full service leased vehicles shall require prior approval from the vendor for preventive maintenance and repair services. The agency maintenance and repair facility shall bill the vendor for services rendered.

(5) Agency maintenance and repair facilities shall comply with all state and federal law, state and federal rules and regulations governing motor vehicle maintenance and repair facilities.

KEY: vehicle maintenance, repair, vendor approval

April 8, 2002

63A-9-401(1)(c)(i)

Notice of Continuation February 21, 2003

63A-9-401(1)(c)(iv)

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

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

R28-1-2. Authority.

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

R28-1-3. Definitions.

A. As used in this section "Personal handheld electronic device":

1. means an electronic device that is designed for personal handheld use and permits the user to store or access information, the primary value of which is specific to the user of the device; and,
2. includes a mobile phone, pocket personal computer, personal digital assistant, wireless, or similar device.

R28-1-4. Procedures.

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

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

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

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

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

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

transfers under this subsection. The 30-day holding period may be waived if shown to be in the best interest of the state.

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

1. Submitted, in writing, on the non-profit entity's official letterhead, to the Department of Human Services, Division of Services for People with Disabilities (DSPD);
2. Reviewed and approved by DSPD and forwarded to the USASP manager to properly track and arrange for distribution.

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

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

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

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

K. This section sets forth policy and procedure, which governs the sale of personal handheld electronic devices to a user who is provided such a device by an agency, and who subsequently leaves or changes employment. These personal handheld electronic devices usually rely on technology that is rapidly changing, resulting in the devices becoming continuously outdated as more capable devices are offered; therefore, their value depreciates significantly over the period of their service. Their usefulness is generally tied to a service contract with a service provider.

1. Personal handheld electronic device and related accessories and software may be purchased by the assigned user upon a change in employment status including termination, retirement, or transfer to another agency within state government; provided that the issuing agency is not obligated to continue the terms of the service contract.

2. Purchase of a handheld device is exempt from the requirements of related party transactions under R28-1-5.

3. Prior to a purchase of a handheld device, the following requirements shall be completed in substantially the following order:

- a. the agency that assigned or provided the personal handheld electronic device shall:
 - i. authorize, in writing to USASP, the sale to the assigned user in lieu of exchange or surplus;
 - ii. submit an SP-1 to USASP with a description of the items to be included in the sale of the personal handheld electronic device including the make, model, serial number, specifications (if available), list of accessories, software; and
 - iii. remove, or cause to be removed, from the personal handheld electronic device any:

(A) software owned or licensed by the agency as required by the software license agreement;

(B) information that is classified as protected, private, or controlled under the Title 63, Chapter 2, Government Records Access and Management Act; and

(C) Ensure in writing that the service contract is null and void to the issuing agency or transferable to the purchaser.

b. The USASP shall:

i. have an established fee that has been approved by the Department of Administrative Services Rate Committee;

ii. receive the SP-1 form, and;

iii. generate an invoice for the transaction upon receiving full payment of the fee from the designated purchaser of the device.

c. The designated purchaser of the device shall:

i. make full payment of the fee to the USASP for the item, and;

ii. sign the invoice and return the signed invoice to USASP.

d. The agency may be authorized by the division to transfer ownership of the personal handheld electronic device to the designated purchaser of the device.

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

1. The cost to the state;

2. The potential liability to the state;

3. The overall best interest of the state.

R28-1-5. Related Party Transactions.

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

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

1. Has purchasing authority.

2. Has maintenance authority.

3. Has disposition or signature authority.

4. Has authority regarding the disposal price.

5. Has access to restricted information.

6. Is perceived to be a related party using other criteria which may prohibit independence.

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

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

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

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

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

R28-1-6. Priorities.

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

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

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

1. State Agencies

2. State Universities, Colleges, and Community Colleges

3. Other tax supported educational agencies or political subdivisions in the State of Utah including cities, towns, counties and local law enforcement agencies

4. Other tax supported educational entities

5. Non-profit health and educational institutions

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

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

1. The cost to the state;

2. The potential liability to the state;

3. The overall best interest of the state.

R28-1-7. Accounting and Reimbursement.

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

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

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

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

R28-1-8. Payment.

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

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

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

D. The USASP Manager or designee may make exceptions

to the payment provisions of this rule for good cause. A good cause exception requires a weighing of:

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

R28-1-9. Bad Debt Collection.

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

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

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

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

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

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

R28-1-10. Public Sales of Surplus Property.

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

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

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

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

KEY: state property

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63A-9-801

63A-9-808.1

R58. Agriculture and Food, Animal Industry.**R58-1. Admission and Inspection of Livestock, Poultry, and Other Animals.****R58-1-1. Authority.**

A. Promulgated under the authority of Title 4, Chapter 31 and Subsections 4-2-2(1)(c)(i), 4-2-2(1)(j).

B. Intent: It is the intent of these rules to eliminate or reduce the spread of diseases among livestock by providing standards to be met in the movement of livestock within the State of Utah, INTRASTATE, and Import movements, INTERSTATE, of livestock, poultry and other animals.

R58-1-2. Definitions.

A. "Approved Livestock Market" - A livestock market which meets the requirements as outlined in 9 CFR 78, January 1, 2002 edition, which is incorporated by reference, Title 4, Chapter 30, and R58-7.

B. "Livestock Market Veterinarian" - A Utah licensed and accredited veterinarian appointed by the Department of Agriculture and Food to work in livestock markets in livestock health and movement matters.

C. "Official Random Sample Test, 95/10" - A sampling procedure utilizing official pseudorabies serologic tests which provides a 95 percent probability of detecting infection in a herd in which at least 10 percent of the swine are seropositive for pseudorabies. Each segregated group of swine on an individual premises must be considered a separate herd and sampled as follows:

- Less than 100 head -- Test 25
- 100 - 200 head ---- Test 27
- 201 - 999 head ---- Test 28
- 1,000 and over ---- Test 29

D. "Official Random Sample Test, 95/5" - A sampling procedure utilizing official pseudorabies serologic tests which provides a 95 percent probability of detecting infection in a herd in which at least five percent of the swine are seropositive for pseudorabies. Each segregated group of swine on an individual premises must be considered a separate herd and sampled as follows:

- Less than 100 head -- Test 45
- 100 - 200 head ---- Test 51
- 201 - 999 head ---- Test 57
- 1,000 and over ---- Test 59

E. "Qualified Feedlot" - A feedlot approved by the Utah Department of Agriculture and Food to handle INTRASTATE heifers, cows or bulls which originate from Utah herds. These animals shall be confined to a drylot area which is used to upgrade or finish feeding animals going only to slaughter.

F. "Reportable Disease List" - A list of diseases and conditions developed by the state veterinarian that may affect the health and welfare of the animal industry of the state, reportable to the state veterinarian.

G. "Test Eligible Cattle and Bison" - All cattle or bison six months of age or older, except:

1. Steers, spayed heifers;
2. Official calfhood vaccinates of dairy breeds under 20 months of age and beef breeds under 24 months of age which are not parturient, springers, or post parturient;
3. Official calfhood vaccinates, dairy or beef breeds of any age, which are Utah Native origin.
4. Utah Native Bulls from non-infected herds.

H. "Official Calfhood Vaccinate" - Female cattle of a dairy breed or beef breed vaccinated by a USDA Veterinary Services representative, State certified technician, or accredited Veterinarian with an approved dose of RB51 Vaccine or other USDA approved agent while from 4 to 12 months of age in accordance with its labeling. These cattle must be properly identified by official tattoos and ear tag or registration tattoo and be reported on an official vaccination certificate (VS Form 4-24)

within 30 days to the State Veterinarian.

I. "Exposed Animal", "Reactor", "Suspect", as defined in the United States Department of Agriculture; Animal and Plant Health Inspection Service and Veterinary Services Brucellosis Eradication Uniform Methods and Rules, and 9 CFR 78.

R58-1-3. Intrastate Cattle Movement - Rules - Brucellosis.

A. The State Veterinarian may require brucellosis testing of cattle, bison, and elk, moving intrastate as necessary to protect against potential disease threat or outbreak.

B. Utah Department of Agriculture and Food Livestock Inspectors will help regulate Intrastate movement of cattle according to Brucellosis rules at the time of change of ownership inspection.

R58-1-4. Interstate Importation Standards.

A. No animal, poultry or bird of any species or other animal including wildlife, that is known to be affected with or has been exposed to a contagious, infectious or communicable disease, or that originates from a quarantined area, shall be shipped, transported or moved into the State of Utah until written permission for such entry is first obtained from Veterinary Services Division, United States Department of Agriculture, Animal and Plant Health Inspection Service, and Utah Department of Agriculture and Food, State Veterinarian or Commissioner of Agriculture and Food.

B. Certificate of Veterinary Inspection. An official Certificate of Veterinary Inspection issued by an accredited veterinarian is required for importation of all animals and poultry. A copy of the certificate shall be immediately forwarded to the Utah Department of Agriculture and Food by the issuing veterinarian or the livestock sanitary official of the state of origin.

C. Permits. Livestock, poultry and other animal import permits may be issued by telephone to the consignor, a consignee or to an accredited veterinarian responsible for issuing a Certificate of Veterinary Inspection, and may be obtained from the Utah Department of Agriculture and Food, 350 North Redwood Road, PO Box 146500, Salt Lake City, Utah 84114-6500, Phone (801)538-7164; after hours and weekends, (435)882-0217; (801)773-5656.

R58-1-5. Cattle and Bison.

A. Import Permit and Certificate of Veterinary Inspection.

1. No cattle or bison may be imported into Utah without an import permit issued by the Department of Agriculture and Food. A Certificate of Veterinary Inspection and an import permit must accompany all cattle and bison imported into the state. All cattle and bison must carry some form of individual identification, 1) a brand registered with an official brand agency, or 2) an ear tag or a registration tattoo. Identification must be listed on the Certificate of Veterinary Inspection. Official individual identification used for testing purposes must be shown on the Certificate of Veterinary Inspection. The import permit number must be listed on the Certificate of Veterinary Inspection. This includes exhibition cattle. Commuter cattle are exempt as outlined in Subsection R58-1-5(B).

2. The following cattle are exempted from (1) above:

- a. Cattle consigned directly to slaughter at a state or federally inspected slaughter house; and
- b. Cattle consigned directly to a State or Federal approved Auction Market.

c. Movements under Subsections R58-1-5(A)(2)(a), and R58-1-5(A)(2)(b) must be in compliance with state and federal laws and regulations and must be accompanied by a weighbill, brand certificate, or similar document showing some form of positive identification, signed by the owner or shipper stating the origin, destination, number and description of animals and

purpose of movement.

B. Commuter Cattle. Commuter, temporary grazing, cattle may enter Utah or return to Utah after grazing if the following conditions are met.

1. A Certificate of Veterinary Inspection or a commuter permit approved by the import state and the State of Utah must be obtained prior to movement into Utah. This will allow movements for grazing for current season if the following conditions are met:

a. All cattle shall meet testing requirements as to State classification for interstate movements as outlined in 9 CFR 1-78, which is incorporated by reference; USDA, Animal and Plant Health Inspection Services, Brucellosis Eradication, Uniform Methods and Rules, October 1, 2003, and approved by cooperating States.

b. Commuter cattle shall not be mixed with quarantined, exposed, or suspect cattle nor change ownership during the grazing period.

2. No quarantined, exposed or reactor cattle shall enter Utah.

C. Brucellosis. Prior to importation of cattle or bison into Utah the following health restrictions must be met.

1. Bison heifers of vaccination age between four and 12 months must be officially vaccinated for brucellosis prior to entering Utah. All female bison cattle imported after July 1, 1984, must have a legible brucellosis calfhood vaccination tattoo to be imported or sold within the State of Utah, unless going directly to slaughter, or qualified feedlot to be sold for slaughter, or to an approved livestock market to be sold for slaughter or for vaccination.

a. Bison heifers of vaccination age may be vaccinated upon arrival by special permit.

2. Test eligible cattle imported from states designated as brucellosis free, that are acquired directly from the farm of origin and moving directly to the farm of destination are not required to be tested for brucellosis prior to movement.

3. Test eligible cattle imported from states designated as brucellosis free, that are acquired through "trading channels", or any "non-farm of origin source" must be tested negative for brucellosis within 30 days prior to entry.

4. All test eligible cattle imported from states that have not been designated as brucellosis free must test negative for brucellosis within 30 days before movement into Utah.

5. Exceptions to the above testing requirements include Test Eligible Cattle imported to Utah and moving directly to:

- a. an approved livestock market, or
- b. to a "qualified feedlot", or
- c. for immediate slaughter to a slaughtering establishment where federal or state inspection is maintained.

A brand inspection certificate, which indicates the intended destination is required for cattle entering the state under these provisions.

6. No reactor cattle or cattle from herds under quarantine for brucellosis will be allowed to enter the state except when consigned to a slaughtering establishment where recognized state or federal meat inspection is maintained. An import permit and a Veterinary Services Form 1-27 prior to shipment are also required.

7. Entry of cattle which have been retattooed is not permitted unless they are moved for immediate slaughter to a slaughtering establishment where state or federal inspection is maintained or to not more than one state or federal approved market for sale to a qualified feedlot or slaughtering establishment.

8. Entry of cattle which have been adult vaccinated is not permitted unless they are for immediate slaughter where state or federal inspection is maintained.

D. Tuberculosis.

A negative test is required within 60 days prior to shipment

for all breeding cattle originating within a quarantined area or from reactor or exposed herds.

E. Scabies.

No cattle affected with, or exposed to scabies shall be trailed, driven, shipped or otherwise moved into Utah. Cattle from a county where scabies have been diagnosed during the past 12 months must be officially treated within 10 days prior to shipment into Utah. The date of treating and products used must be shown on the Certificate of Veterinary Inspection; also the approved vat number and location.

F. Splenic or Tick Fever. No cattle infested with ticks, *Margaropus annulatus*, or exposed to tick infestations shall be shipped, trailed, or driven, or otherwise imported into the State of Utah for any purpose.

G. Exhibitions, Fairs, and Shows.

1. Dairy cattle and cattle for breeding purposes imported for exhibition or show purposes only to be returned to state of origin may enter provided:

a. The cattle are accompanied by the proper Certificate of Veterinary Inspection and import permit.

b. The cattle must have negative T.B. test within 60 days.

c. The cattle must have a negative brucellosis test within 30 days prior to entrance. Vaccinates under age are acceptable.

H. Trichomoniasis.

All bulls imported to Utah shall be in compliance with R58-21-3(A), which requires testing of all bulls over nine months of age for Trichomoniasis prior to entry, with some exceptions.

R58-1-6. Horses, Mules, and Asses.

Horses, mules and asses may be imported into the State of Utah when accompanied by an official Certificate of Veterinary Inspection. The certificate must state that the equine animals described were examined on the date indicated and found free from symptoms of any infectious or communicable disease such as CEM, Contagious Equine Metritis, and EIA, Equine Infectious Anemia. The Certificate of Veterinary Inspection must show a negative coggins test within one year previous to the time the certificate was issued. Utah horses returning to Utah as part of a commuter livestock shipment are exempted from the Certificate of Veterinary Inspection requirements; however, a valid Utah horse travel permit as outlined under Sections 4-24-22 or 4-24-23 and Section R58-9-4 is required for re-entering Utah.

R58-1-7. Swine.

A. Stocking, Feeding, and Breeding swine. Swine for stocking, breeding, feeding or exhibition may be shipped into the state if the following requirements are met:

1. Import Permit and Certificate of Veterinary Inspection - All swine must be accompanied by an approved Certificate of Veterinary Inspection stating they are clinically free from infectious or contagious disease or exposure and have not been fed raw garbage. The Certificate of Veterinary Inspection must show individual identification, ear tags, tattoos, registration numbers, micro chips or other permanent means. An import permit issued by the Department of Agriculture and Food must accompany all hogs, including feeder hogs imported into the state.

2. Test Status. The Certificate of Veterinary Inspection must list the brucellosis, and pseudorabies test status of the animals.

3. Quarantine - All swine shipped into the state for feeding or breeding purposes are subject to an 18 day quarantine beginning with the date of arrival at destination. The department shall be notified by the owner of date of arrival. Release from quarantine shall be given by the department only when satisfied that health conditions are satisfactory.

4. Brucellosis - All breeding and exhibition swine over the

age of three months shipped into Utah must pass a negative test for brucellosis within 30 days prior to movement into the state or originate from a validated brucellosis free herd. A validated brucellosis free herd number and date of last test is required to be listed on the Certificate of Veterinary Inspection.

5. Pseudorabies - All breeding, feeding and exhibition swine must pass a negative pseudorabies test within the last thirty days unless they originate from a recognized qualified pseudorabies free herd. However, feeder swine may come into the state from a herd of origin in a Stage III, IV, or V state as classified by the Official Pseudorabies Eradication Uniform Methods and Rules. A 30 day retest is required on all breeding and exhibition swine brought into the state. Swine which are infected or exposed to pseudorabies may not enter the state, except swine consigned to a slaughterhouse for immediate slaughter and must be moved in compliance with 9 CFR 1-71, which is incorporated by reference.

6. Erysipelas - Purebred and breeding swine shall be immunized with erysipelas bacterin not less than 15 days prior to importation.

7. Leptospirosis - All breeding and exhibition swine over four months of age shall have passed a negative leptospirosis test within 30 days of entry, or be part of an entire negative herd test within the previous 12 months or be vaccinated for leptospirosis at least 15 days prior to entry. Herd and vaccination status must be stated on the Certificate of Veterinary Inspection.

8. PRRS -- All breeding and exhibition swine 2 months of age and over must be tested negative for Porcine Reproductive and Respiratory Syndrome (PRRS) virus within 30 days prior to entry to Utah.

B. Immediate Slaughter

Swine shipped into Utah for immediate slaughter must not have been fed raw garbage, must be shipped in for immediate slaughter with no diversions, and must be free from any infectious or contagious disease in compliance with 9 CFR 71, which is incorporated by reference.

Exhibition swine that have attended livestock shows in Utah

shall not be returned to Utah farms but shall go directly to slaughter.

C. Prohibition of Non-domestic and Non-native Suidae and Tayassuidae.

Javelina or Peccary, and feral or wild hogs such as Eurasian or Russian wild hogs (*Sus scrofa*) are considered invasive species in Utah, capable of establishing wild reservoirs of disease such as brucellosis and pseudorabies. They are prohibited from entry to Utah except when approved by special application only for purposes of exhibition and after meeting the above vaccination and testing requirements.

R58-1-8. Sheep.

A. All sheep imported must be accompanied by a Certificate of Veterinary Inspection certifying the sheep are free of communicable diseases or exposure.

1. Blue Tongue. No sheep infected with or exposed to blue tongue may enter Utah. No sheep from an area under quarantine because of blue tongue may be transported into Utah without obtaining an import permit and a Certificate of Veterinary Inspection certifying that the sheep have originated from a flock free of blue tongue and have been vaccinated against blue tongue at least 30 days prior to entry.

2. Foot Rot. Sheep must be thoroughly examined for evidence of foot rot. The Certificate of Veterinary Inspection must certify that the sheep were examined and are free from foot rot.

3. A prior entry permit must be obtained by calling the Utah Department of Agriculture and Food, (801)538-7164.

4. Scrapie. Sheep entering Utah must comply with federal

Scrapie identification requirements as listed in 9 CFR 79, January 1, 2002 edition, which is incorporated by reference. Sheep from Scrapie infected, exposed, quarantined or source flocks may not be permitted to enter the state unless a flock eradication and control plan, approved by the State Veterinarian in Utah, has been implemented.

R58-1-9. Poultry.

All poultry imported into the state shall comply with Title 4, Chapter 29 and R58-6 governing poultry which requires a prior permit from the Department of Agriculture and Food. This number can be called for information concerning permits: (801)538-7164.

R58-1-10. Goats and Camelids.

A. Goats being imported into Utah must meet the following requirements:

1. Dairy goats must have a permit from the Department of Agriculture and Food (phone 801-538-7164) and, an official Certificate of Veterinary Inspection showing a negative tuberculosis test within 60 days, and a negative brucellosis test within 30 days prior to entry or be from a certified brucellosis free herd and tuberculosis free area. They must be free of communicable diseases or exposure thereto; there must be no evidence of Caseous Lymphadenitis (abscesses).

2. Meat type goats must have a Certificate of Veterinary Inspection indicating they are free from any communicable diseases or exposure and that there is no evidence of caseous lymphadenitis (abscesses).

3. Exemption - Goats for slaughter may be shipped into Utah directly to a slaughtering establishment or to a state and federally approved auction market for sale to such slaughtering establishment. However, they must be accompanied by a Certificate of Veterinary Inspection indicating they are free from any communicable diseases or exposure and that there is no evidence of caseous lymphadenitis, abscesses.

B. Camelids shall be accompanied by:

1. a Certificate of Veterinary Inspection;
2. Negative TB test within 60 days;
3. Negative Brucellosis within 30 days.

R58-1-11. Psittacine Birds.

No Psittacine birds shall be shipped into the State of Utah unless a permit is obtained from the Department prior to importation. Request for a permit must be made by an accredited veterinarian certifying that the birds are free from any symptoms of any infectious, contagious or communicable disease. The request must also state the number and kinds of birds to be shipped into Utah, their origin, date to be shipped and destination, all listed on the Certificate of Veterinary Inspection.

R58-1-12. Dogs and Cats.

All dogs, cats and ferrets over four months of age shall be accompanied by an official Certificate of Veterinary Inspection, showing vaccination against rabies within 12 months. The date of vaccination, name of product used, and expiration date must be given.

R58-1-13. Game and Fur-Bearing Animals.

A. Contagious or Communicable Disease. No game or fur bearing animals will be imported into Utah without a prior permit being obtained from the Department. Each shipment shall be accompanied by an official Certificate of Veterinary Inspection certifying they are free from all contagious and communicable diseases and exposure thereto.

B. Mink.

All mink entering Utah shall have originated on ranches or herds where virus enteritis has not been diagnosed within the

past three years.

C. Elk brought into the state under regulations governing elk farming and hunting shall meet the importation requirements of R58-18-11 and 12.

R58-1-14. Zoo Animals.

The entry of common zoo animals, as monkeys, apes, baboons, rhinoceros, giraffes, zebras, elephants, to be kept in zoos, or shown at exhibitions is authorized when a permit has been obtained from the Department. Movement of these animals must also be in compliance with the Federal Animal Welfare Act, 7 USC 2131-2156.

R58-1-15. Wildlife.

It is unlawful for any person to import into the State of Utah any species of live native or exotic wildlife except as provided in Title 23, Chapter 13. Fish and Wildlife Services, 1596 West North Temple, Salt Lake City, Utah 84116, (801)538-4887. All wildlife imports shall meet the same Department requirements as the domestic animals.

R58-1-16. Duties of Carriers.

Owners and operators of railroads, trucks, airplanes, and other conveyances are forbidden to move any livestock, poultry, or other animals into or within the State of Utah or through the State except in compliance with the provisions set forth in these rules.

A. Sanitation. All railway cars, trucks, airplanes, and other conveyances used in the transportation of livestock, poultry or other animals shall be maintained in a clean, sanitary condition.

B. Movement of Infected Animals. Owners and operators of railway cars, trucks, airplanes, and other conveyances that have been used for movement of any livestock, poultry, or other animals infected with or exposed to any infectious, contagious, or communicable disease as determined by the Department, shall be required to have cars, trucks, airplanes, and other conveyances thoroughly cleaned and disinfected under official supervision before further use is permissible for the transportation of livestock, poultry or other animals.

C. Compliance with Laws and Rules. Owners and operators of railroad, trucks, airplanes, or other conveyances used for the transportation of livestock, poultry, or other animals are responsible to see that each consignment is prepared for shipment in keeping with the State and Federal laws and regulations. Certificate of Veterinary Inspection, brand certificates, and permits should be attached to the waybill accompanying attendant in charge of the animals.

KEY: disease control

March 18, 2005

Notice of Continuation February 8, 2007

4-31

4-2-2(1)(j)

R58. Agriculture and Food, Animal Industry.**R58-6. Poultry.****R58-6-1. Authority.**

Promulgated under authority of Section 4-29-1.

R58-6-2. Definition of Poultry.

Domesticated fowl, including chickens, turkeys, waterfowl, ratites, and game birds, except doves and pigeons, which are bred for the primary purpose of producing eggs or meat.

R58-6-3. Certificate of Veterinary Inspection.

All poultry and hatching eggs entering Utah must have a Certificate of Veterinary Inspection or a National Poultry Improvement Plan Certificate and an entry permit; except birds for immediate slaughter consigned directly to a licensed slaughtering establishment. For an entry permit, this number may be called during business hours: (801) 538-7164.

R58-6-4. Pullorum-Typhoid Rating for Imported Poultry.

A. No poultry, hatching eggs or baby chicks shall be brought, shipped, or otherwise introduced into the State of Utah by any person, individual or corporation that does not originate from flocks or hatcheries that have a Pullorum-Typhoid Clean rating given by the official state agency of the National Poultry Improvement Plan (NPIP) of the state or country of origin, or

B. Poultry entering Utah from a flock or hatchery which does not have a clean rating through NPIP certification must have been tested negative for Salmonella Pullorum, Mycoplasma gallisepticum (MG), M. synoviae (MS), M. meleagridis (MM), within the last 30 days.

R58-6-5. Boxes, Crates and Containers.

Poultry or chicken boxes, crates and containers shall be new or disinfected before being used to move replacement birds into the State of Utah, except birds of the same and known health status as the previous shipment, and identified with a label cooperating in National Poultry Improvement Plan.

R58-6-6. Import Permit.

No permit shall be issued for importation until the Utah Department of Agriculture and Food receives responsible and complete information from the consignor that the birds to be imported would not present a disease hazard to Utah flocks.

R58-6-7. Quarantine of Diseased Poultry.

The Commissioner may quarantine diseased poultry, whenever any infectious or contagious diseases have been identified. The quarantine notice shall be posted in a conspicuous place on the outside of the coops and premises.

A. The coops and surroundings must be maintained in a sanitary condition.

B. No live poultry shall under any circumstances be removed from the quarantined coop or premises, except under permit from the State Department of Agriculture and Food or its authorized representative.

C. All dead birds shall be destroyed by burning or by being placed in a pit properly constructed for disposal of dead birds.

D. The attendant shall wear rubber footwear which shall be disinfected in a disinfectant recognized by U.S. Department of Agriculture each time before leaving the infected coops.

E. All crates, utensils or other paraphernalia used around the infected coops shall be thoroughly cleaned and disinfected before being removed from the infected premises; except egg cases and those are to be handled in such manner as may be designated by the attending veterinarian.

F. Truck drivers are forbidden to enter quarantined premises personally or with trucks.

G. No visitors will be allowed on infected premises.

H. All droppings and litter shall be buried or burned or thoroughly disinfected before being removed from the premises.

I. Vaccination shall be done by or under the direction of an accredited veterinarian only.

J. The quarantine shall be in effect until withdrawn by the Commissioner of Agriculture and Food or his designated agent.

R58-6-8. Cleaning and Disinfecting Feed Bags, Crates, etc.

A. Bags used for poultry feeds, mashes, etc., shall, before being filled at the mill or mixing plant, be cleaned and disinfected. All filth or litter shall be removed from them and the bags then disinfected with a disinfectant recognized by United States Department of Agriculture 9 CFR 1, 147.23, 24, and 25, January 1, 2001, edition.

B. Crates or other containers used for the transportation of poultry by any poultry producer or anyone buying and selling or otherwise transporting poultry shall be properly scraped, cleaned and disinfected with a disinfectant recognized by United States Department of Agriculture, 9 CFR 1, 147.23, 24, 25, January 1, 2001, edition, each time after being used.

R58-6-9. Handling or Disposal of Poultry Droppings and Litter.

A. Poultry houses and yards shall be maintained in a sanitary condition. All droppings and litter shall be cleaned regularly and disposed of either by hauling away and scattering over farm lands, or by burying or burning.

B. In case it is not practical to dispose of the droppings and litter regularly in the above manner, they shall be placed outside the coops and properly screened with fine mesh wire which will protect it from flies until it can be disposed of as provided in this rule.

KEY: disease control

April 2, 2002

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4-29-1

R58. Agriculture and Food, Animal Industry.**R58-18. Elk Farming.****R58-18-1. Authority.**

Regulations governing elk farming promulgated under authority of 4-39-106.

R58-18-2. Definitions.

In addition to the definitions found in Sections 4-1-8, 4-7-3, 4-24-2, 4-32-3 and 4-39-102, the following terms are defined for purposes of this rule:

(1) "Raised" as used in the act means any possession of domestic elk for any purpose other than hunting.

(2) "Separate location" as used in Subsection 4-39-203(5) means any facility that may be separated by two distinct perimeter fences, not more than 10 miles apart, owned by the same person.

(3) "Domestic elk" as used in this chapter, in addition to 4-39-102, means any elk which has been born inside of, and has spent its entire life within captivity.

(4) "Quarantine Facility" means a confined area where selected elk can be secured, contained and isolated from all other elk and livestock.

(5) "Secure Enclosure" means a perimeter fence or barrier that is so constructed as to prevent domestic elk from escaping into the wild or the ingress of native wildlife into the facility.

(6) "Elk" as used in this chapter means North American Wapiti or *Cervus Elaphus Canadensis*.

(7) "Affected herd" means a herd of Cervidae where an animal has been diagnosed with Chronic Wasting Disease (CWD) caused by protease resistant prion protein (PrP), and confirmed by means of an approved test, within the previous 5 years.

(8) "Trace Back Herd/Source Herd" means any herd of Cervidae where an animal affected with CWD has resided up to 36 months prior to death.

(9) "Trace Forward Herd" means any herd of Cervidae which has received animals that originated from a herd where CWD has been diagnosed, in the previous 36 months prior to the death of the affected (index) animal.

(10) "Adjacent Herd" means a herd of Cervidae occupying premises that border an affected herd, including herds separated by fences, roads or streams, herds occupying a premise where CWD was previously diagnosed, and herds that share the same license as the affected or source herd, even if separate records are maintained and no commingling has taken place.

(11) "Approved test" means approved tests for CWD surveillance shall be those laboratory or diagnostic tests accepted nationally by USDA and approved by the state veterinarian.

(12) "Herd of Origin" means the herd, which an imported animal has resided in, or does reside in, prior to importation.

(13) "Destination Herd" means the intended herd of residence, which will be occupied by the animal which is proposed for importation.

R58-18-3. Application and Licensing Process.

(1) Each applicant for a license shall submit a signed, complete, accurate and legible application on a department issued form.

(2) In addition to the application, a general plot plan should be submitted showing the location of the proposed farm in conjunction with roads, towns, etc. in the immediate area.

(3) A facility number shall be assigned to an elk farm at the time a completed application is received at the Department of Agriculture and Food building.

(4) A complete facility inspection and approval shall be conducted prior to the issuing of a license or entry of elk to any facility. This inspection shall be made by an approved Department of Agriculture and Food employee and Division of

Wildlife Resource employee. It shall be the responsibility of the applicant to request this inspection at least 72 hours in advance.

(5) Upon receipt of an application, inspection and approval of the facility and completion of the facility approval form and receipt of the license fee, a license will be issued.

(6) All licenses expire on July 1st in the year following the year of issuance.

(7) Elk may enter into the facility only after a license is issued by the department and received by the applicant.

R58-18-4. License Renewal.

(1) Each elk farm must make renewal application to the department on the prescribed form no later than April 30th indicating its desire to continue as an elk farm. This application shall be accompanied by the required fee.

(2) Any license renewal application received after April 30th will have a late fee assessed.

(3) Any license received after July 1st is delinquent and any animals on the farm will be quarantined until due process of law against the current owner has occurred. This may result in revocation of the license, loss of the facility number, closure of the facility and or removal of the elk from the premise.

(4) Prior to renewal of the license, the facility will again be inspected by a Utah Department of Agriculture and Food employee. Documentation that all fencing and facility requirements are met as required.

(5) An inventory check will be completed of all elk on the premise, and a visual general health check of all animals will be made. Documentation showing that genetic purity has been maintained throughout the year is also required for annual license renewal.

(6) The licensee shall provide a copy of the inventory sheet to the inspector at the time of inspection.

R58-18-5. Facilities.

(1) All perimeter fences and gates shall meet the minimum standard as defined in Section 4-39-201.

(2) Internal handling facilities shall be capable of humanely restraining an individual animal for the applying or reading of any animal identification, the taking of blood or tissue samples, or conducting other required testing by an inspector or veterinarian. Any such restraint shall be properly constructed to protect inspection personnel while handling the animals. Minimum requirements include a working pen, an alley way and a restraining chute.

(3) The licensee shall provide an isolation or quarantine holding facility which is adequate to contain the animals and provide proper feed, water and other care necessary for the physical well being of the animal(s) for the period of time necessary to separate the animal from other animals on the farm.

(4) Each location of a licensed facility with separate perimeter fences must have its own separate loading facility.

R58-18-6. Records.

(1) Licensed elk farms shall maintain accurate and legible office records showing the inventory of all elk on the facility. The inventory record of each animal shall include:

(a) Name and address of agent(s) which the elk was purchased from

(b) Identification number (tattoo or chip)

(c) Age

(d) Sex

(e) Date of purchase or birth

(f) Date of death or change of ownership

The inventory sheet may be one that is either provided by the department or may be a personal design of similar format.

(2) Any animal born on the property or transported into a facility must be added to the inventory sheet within seven days.

(3) Any elk purchased must be shown on the inventory

sheet within 30 days after acquisition, including source.

R58-18-7. Genetic Purity.

(1) All animals entering Utah must have written evidence of genetic purity. Written evidence of genetic purity will include one of the following:

- (a) Test charts from an approved lab that have run either a:
 - (i) Blood genetic purity test or
 - (ii) DNA genetic purity test.
- (b) Registration papers from the North American Elk Breeders Association.
- (c) Herd purity certification papers issued by another state agency.

(2) Genetic purity records must be kept on file and presented to the inspector at the time elk are brought into the state and also each year during the license renewal process.

(3) Any elk identified as having red deer genetic influence shall be destroyed, or immediately removed from the state.

R58-18-8. Acquisition of Elk.

(1) Only domesticated elk will be allowed to enter and be kept on any elk farm in Utah.

(2) All new elk brought into a facility shall be held in a quarantine facility until a livestock inspector has inspected the animal(s) to verify that all health, identification and genetic purity requirements have been met. New animals may not mingle with any elk already on the premise until this verification is completed by the livestock inspector.

R58-18-9. Identification.

(1) All elk shall be permanently identified with either a tattoo or micro chip.

(2) If the identification method chosen to use is the micro chip, a reader must be made available, by the owner, to the inspector at the time of any inspection to verify chip number. The chip shall be placed in the right ear.

(3) If tattooing is the chosen method of identification, each elk shall bear a tattoo number consisting of the following:

(a) UT (indicating Utah) followed by a number assigned by the department (indicating the facility number of the elk farm) and

(b) Any alphanumeric combination of letters or numbers consisting of not less than 3 digits, indicating the individual animal number herein referred to as the "ID number".

Example:

UTxxx

ID number (001)

(c) Each elk shall be tattooed on either the right peri-anal hairless area beside the tail or in the right ear.

(d) Each alphanumeric character must be at least 3/8 inch high.

(e) Each newly purchased elk will not need to be retattooed or chipped if they already have this type of identification.

(f) Any purchased elk not already identified shall be tattooed or chipped within 30 days after arriving on the farm.

(g) All calves must be tattooed within 15 days after weaning or in no case later than January 1st.

(4) In addition to one of the two above mentioned identification methods, each elk shall be identified by the official USDA ear tag or other ear tag approved by the director.

R58-18-10. Inspections.

(1) All facilities must be inspected within 60 days before a license or the renewal of an existing license is issued. It is the responsibility of the applicant to arrange for an appointment with the department for such inspection, giving the department ample time to respond to such a request.

(2) All elk must be inspected for inventory purposes within 60 days before a license renewal can be issued.

(3) All elk must be inspected when any change of ownership, moving out of state, leaving the facility, slaughter or selling of elk products, such as antlers, occurs except as indicated in (f) below.

(a) It is the responsibility of the licensee to arrange for any inspection with the local state livestock inspector.

(b) A minimum of 48 hours advance notice shall be given to the inspector.

(c) When inspected, the licensee or his representative shall make available such records as will certify ownership, genetic purity, and animal health.

(d) All elk to be inspected shall be properly contained in facilities adequate to confine each individual animal for proper inspection.

(e) Animals shall be inspected before being loaded or moved outside the facility.

(f) Animals moving from one perimeter fence to another within the facility may move directly from one site to another site without a brand inspection, but must be accompanied with a copy of the facility license.

(4) Any elk purchased or brought into the facility from an out-of-state source shall be inspected upon arrival at a licensed farm before being released into an area inhabited by other elk. All requirements of R58-18-10(3) above shall apply to the inspection of such animals.

(5) A Utah Brand Inspection Certificate shall accompany any shipment of elk or elk products, including velveted antlers, which are to be moved from a Utah elk farm. Shed antlers are excluded from needing an inspection. Proof of ownership and proper health papers shall accompany all interstate movement of elk to a Utah destination.

(6) Proof of ownership may include:

(a) A brand inspection certificate issued by another state.

(b) A purchase invoice from a licensed public livestock market showing individual animal identification.

(c) Court orders.

(d) Registration papers showing individual animal identification.

(e) A duly executed bill (notarized) of sale.

R58-18-11. Health Rules.

(1) Prior to the importation of elk, whether by live animals, gametes, eggs, sperm or other genetic material into the State of Utah, the importing party must obtain an entry permit from the Utah State Veterinarians office. (801-538-7164)

(a) An entry permit number shall be issued only if the destination is licensed as an elk farm by the Utah Department of Agriculture and Food.

(b) The entry permit number for Utah shall be obtained by the local veterinarian conducting the official health inspection by contacting the Utah Department of Agriculture and Food permit desk at 801-538-7164.

(2) All elk imported into Utah must be examined by an accredited veterinarian prior to importation and must be accompanied by a valid certificate of veterinary inspection, health certificate, certifying a disease free status.

(a) Minimum specific disease testing results or health statements must be included on the certificate of veterinary inspection.

(b) A negative tuberculosis test must be completed within 60 days prior to entry into the state. A retest is also optional at the discretion of the state veterinarian.

(c) If animals do not originate from a tuberculosis accredited, qualified or monitored herd, they may be imported only if accompanied by a certificate stating that such domestic cervidae have been classified negative to two official tuberculosis tests that were conducted not less than 90 days

apart, that the second test was conducted within 60 days prior to the date of movement. The test eligible age is six months or older, or less than six months of age if not accompanied by a negative testing dam.

(d) All elk being imported shall test negative for brucellosis if six months of age or older, by at least two types of official USDA brucellosis tests, one of which shall be the rivanol test.

(e) The certificate of veterinary inspection must also include the following signed statement: "To the best of my knowledge the elk listed herein are not infected with Johne's Disease (Paratuberculosis), Chronic Wasting Disease or Malignant Catarrhal Fever and have never been east of the 100 degree meridian."

(f) The certificate of veterinary inspection shall also contain the name and address of the shipper and receiver, the number, sex, age and any individual identification on each animal.

(3) Additional disease testing may be required at the discretion of the state veterinarian prior to importation or when there is reason to believe other disease(s), or parasites are present, or that some other health concerns are present.

(4) Imported or existing elk may be required to be quarantined at an elk farm if the state veterinarian determines the need for and the length of such a quarantine.

(5) Any movement of elk outside a licensed elk farm shall comply with standards as provided in the document entitled: "Uniform Methods and Rules (UM and R)", as approved and published by the USDA. The documents, entitled: "Tuberculosis Eradication in Cervidae, Uniform Methods and Rules", the May 15, 1994 edition, and "Brucellosis Eradication, Uniform Methods and Rules", the May 6, 1992 edition as published by the USDA, are hereby incorporated by reference into this rule. These are the standards for tuberculosis and brucellosis eradication in domestic cervidae. Copies of the methods and rules are on file and available for public inspection at the Division of Animal Industry, Department of Agriculture and Food offices located at 350 North Redwood Road, Salt Lake City, Utah.

(6) Treatment of all elk for internal and external parasites is required within 30 days prior to entry.

(7) All elk imported into Utah must originate from a state or province, which requires that all suspected or confirmed cases of Chronic Wasting Disease (CWD), be reported to the State Veterinarian or regulatory authority. The state or province of origin must have the authority to quarantine source herds and herds affected with or exposed to CWD.

(8) Due to the potential risk of the spread of CWD, no live elk shall be imported into Utah until July 1, 2003. Following this period and based on the State Veterinarian's approval all elk imported into Utah shall originate from states, which have implemented a Program for Surveillance, Control, and Eradication of CWD in Domestic Elk. All elk imported to Utah must originate from herds that have been participating in a verified CWD surveillance program for a minimum of 5 years. Animals will be accepted for movement only if epidemiology based on vertical and horizontal transmission is in place.

(9) No elk originating from a CWD affected herd, trace back herd/source herd, trace forward herd, adjacent herd, or from an area considered to be endemic to CWD, may be imported to Utah.

(10) Elk semen, eggs, or gametes, require a Certificate of Veterinary Inspection verifying the individual source animal has been tested for genetic purity for Rocky Mountain Elk genes and certifying that it has never resided on a premise where Chronic Wasting Disease has been identified or traced. An import Entry Permit obtained by the issuing veterinarian must be listed on the Certificate of Veterinary Inspection. Permits may be obtained by calling 801-538-7164 during the hours of 8:00 a.m. to 5:00

p.m., Monday through Friday.

R58-18-12. Chronic Wasting Disease Surveillance.

(1) The owner, veterinarian, or inspector of any elk which is suspected or confirmed to be affected with Chronic Wasting Disease (CWD) in Utah is required to report that finding to the State Veterinarian.

(2) Each elk farm, licensed in Utah, shall be required to submit the brain stem (obex portion of the medulla) of any elk over 16 months of age that dies or is otherwise slaughtered or destroyed, for testing for Chronic Wasting Disease (CWD) by an official test. The samples shall be collected by an accredited veterinarian, or an approved laboratory, or person trained and approved by the state veterinarian.

(3) Each hunting park, licensed in Utah, shall be required to submit the brain stem (obex portion of the medulla) of all elk over 16 months of age that die; or that are otherwise harvested, slaughtered, killed, or destroyed, for testing for Chronic Wasting Disease with an official test. The samples shall be collected by an accredited veterinarian, approved laboratory, or person trained and approved by the State Veterinarian.

(4) The CWD surveillance samples from elk residing on licensed elk farms and elk hunting parks shall be collected and preserved in formalin within 48 hours following the death of the animal, and submitted within 7 days, to a laboratory approved by the State Veterinarian. Training of approved personnel shall include collection, handling, shipping, and identification of specimens for submission.

(5) Laboratory fees and expenses incurred for collection and shipping of samples shall be the responsibility of the participating elk farm or hunting park.

(6) The disposition of CWD affected herds in Utah shall be determined by the State Veterinarian.

KEY: inspections

July 18, 2002

Notice of Continuation February 8, 2007

4-39-106

R58. Agriculture and Food, Animal Industry.**R58-22. Equine Infectious Anemia (EIA).****R58-22-1. Authority.**

Promulgated under authority of Title 4, Chapter 31 and Subsections 4-2-2(1)(c), 4-2-2(1)(j).

The intent of these rules is to eliminate or reduce the spread of Equine Infectious Anemia among equines by providing for a protocol for testing and handling of equines infected and exposed to Equine Infectious Anemia.

R58-22-2. Definitions.

Accredited Veterinarian - means a veterinarian approved by the Deputy Administrator of USDA, APHIS, VS in accordance with provisions of 9 CFR Part 161.

Coggins test - means a common name for the Agar Gel Immuno-diffusion (AGID) test for diagnosis of EIA.

Equine - means any animal in the family Equidae, including horses, asses, mules, ponies, and Zebras.

Equine Infectious Anemia (EIA) - means an infectious disease of equines caused by a lentivirus, equine infectious anemia virus (EIAV). The disease is characterized by three distinct clinical forms: acute, chronic and inapparent.

Identification - means permanent notation of equines that are determined to be EIA reactors by application of a hot iron, or freeze marking using the National Uniform Tag code number for the State of Utah (87), followed by the letter "A" on the left side of the neck or left shoulder.

Official test - means any test for the laboratory diagnosis of EIA that utilizes a diagnostic product that is (1) produced under license from the Secretary of Agriculture, and found to be efficacious for that diagnosis, under the Virus-Serum-Toxin Act of March 4, 1913, and subsequent amendments (21 U.S.C. 151 et seq.); and (2) conducted in a laboratory approved by the Administrator of APHIS.

Reactor - means any equine that has been subjected to an official laboratory test whose result is positive for EIA.

Exposed Animals - means all equines that have been exposed to EIA by reason of association with the affected animal.

R58-22-3. Equine Infectious Anemia - Rules - Prevention and Control.

The State Veterinarian shall have authority to conduct or supervise testing at an official laboratory to diagnose EIA and to quarantine and order disposition of any individuals or herds that are found to be positive for EIA, at such time as may be deemed necessary for the control and elimination of EIA., as granted under Section 4-31-16.

Personnel authorized to submit samples, approved laboratories, and official tests shall be those identified in the Uniform Methods and Rules, USDA, APHIS 91-55-037 Part II, B, C, and D, effective January 1, 1998, or subsequent revisions.

Procedures for handling equines which are classified as reactors:

Quarantine - When an equine has a positive result on an official test for EIA, the animal shall be placed under quarantine within 24 hours after positive test results are known and a second, confirmatory, test shall be performed under the direction of the state veterinarian. The equine shall remain in quarantine until final classification and disposition is made. Equines which have been located within 200 yards of the infected animal shall be quarantined and tested also.

Repeat testing and removal of reactors - When a reactor is disclosed in a herd, and removed, testing of all exposed equines for EIA must be repeated at no less than 45 day intervals until all remaining equines on the premise test negative, at which time the quarantine may be removed.

Identification of reactor equines - Equines that are determined to be reactors must be permanently identified using

the National Uniform Tag code number for Utah (87) followed by the letter "A". Markings must be permanently applied using a hot iron, or freeze marking by an APHIS representative, State representative, or accredited veterinarian. The marking shall be not less than two inches high and shall be applied to the left shoulder or left side of the neck of the reactor. Official identification is not necessary if the reactor is moved directly to slaughter under a permit and is in a conveyance sealed with an official seal.

Euthanasia and disposal - Once an equine has been classified as a reactor, it must be removed from the herd. This can be accomplished by euthanasia or removal to slaughter. If slaughter is chosen, the equine must be moved either to a federally or state inspected slaughtering establishment per the Code of Federal Regulations, Part 75.4. If euthanasia is chosen, the animal must be properly buried six feet underground and the carcass treated above and below with lime.

R58-22-4. Importation of Equines.

A. Equines imported to Utah shall be in compliance with R58-1-6.

KEY: inspections**August 2, 2000****Notice of Continuation February 8, 2007****4-2-2(1)(c)****4-2-2(1)(j)**

R58. Agriculture and Food, Animal Industry.**R58-23. Equine Viral Arteritis (EVA).****R58-23-1. Authority.**

Promulgated under authority of Title 4, Subsection 4-2-2(1)(i). It is the intent of this rule to eliminate or reduce the spread of Equine Viral Arteritis among equids by providing for a protocol for handling of equids and semen infected and/or exposed to Equine Arteritis Virus.

R58-23-2. Definitions.

(A) Accredited Veterinarian - means a veterinarian approved by the Deputy Administrator of the United States Department of Agriculture (USDA), Animal Plant Health Inspection Service (APHIS), Veterinary Services (VS) in accordance with provisions of 9 CFR Part 161.

(B) Approved Facility - means a facility that has current written approval from the State Veterinarian to house and/or breed a carrier stallion in the state of Utah.

(C) Approved Laboratory - means a laboratory that has been approved by the State Veterinarian.

(D) Carrier Stallion - means any stallion that tests positive for EAV, but has no proof of a negative semen test.

(E) Equine or Equid - means any animal in the family Equidae, including, but not limited to horses, asses, mules, ponies, and zebras.

(F) Equine Viral Arteritis (EVA) - means an infectious disease of equids caused by Equine Arteritis Virus (EAV). The disease is characterized by abortion in pregnant mares, illness and death in young foals, inflammation of blood vessels resulting in edema and the potential of establishing a carrier state in stallions.

(G) Equine Arteritis Virus (EAV) - means the viral organism that causes Equine Viral Arteritis.

(H) EVA Positive - means an equid who has been identified as having tested positive to EAV.

R58-23-3. Importation of Stallions.

(A) All stallions used for breeding entering Utah shall be tested for Equine Viral Arteritis by an accredited veterinarian within 30 days prior to entry.

(B) Exceptions to the above (R58-23-3(A)) are stallions that have proof of negative EVA status prior to vaccination and proof of subsequent yearly vaccination.

R58-23-4. Importation of EVA Positive Equids and Semen.

(A) All equids imported into Utah shall be in compliance with R58-1-6.

(B) No EVA carrier stallion used for breeding purposes shall be permitted to enter into Utah without a prior permit from the State Veterinarian.

(C) No semen from a carrier stallion shall be permitted to enter into Utah without a prior permit from the State Veterinarian.

(D) All EVA Carrier Stallions, used for breeding purposes, imported into Utah shall be taken directly to an approved facility and shall remain on said facility until permission from the State Veterinarian is obtained to move the animal to another approved facility.

(E) All semen from an EVA Carrier Stallion imported into Utah shall be shipped directly to an approved facility and shall remain on said facility until inseminated, transported to another approved facility and/or disposed of.

R58-23-5. Handling of EVA Positive Equids and Semen.

(A) All stallions used for breeding purposes identified as EVA positive shall have their semen tested by an accredited veterinarian at an approved laboratory prior to breeding of said stallion.

(B) All carrier stallions used for breeding purposes shall

be housed and maintained at an approved facility until permission from the State Veterinarian is given to move the stallion to another approved facility.

(C) All EVA infected semen shall only be collected, handled, evaluated, received, packaged and/or administered on an approved facility.

R58-23-6. Requirements for an Approved Facility.

(A) All equids, including but not limited to stallions, mares and geldings, on approved facilities shall be vaccinated for EVA no less than 21 days before the start of breeding season or no less than 21 days before arriving at an approved facility.

(B) Mares being bred to a carrier stallion, or inseminated with semen from a carrier stallion, shall remain on the approved facility for a minimum of 21 days after the initial breeding date.

(C) Adequate biosecurity precautions shall be in place during the breeding season. The adequacy of biosecurity may be monitored periodically by the Utah Department of Agriculture.

R58-23-7. Equine Viral Arteritis is a Reportable Disease.

(A) All EVA positive equids shall be reported to the State Veterinarian by the private veterinary practitioner immediately upon receiving a positive laboratory report on EVA.

(B) All EVA positive test results processed at a state owned laboratory shall be immediately reported to the State Veterinarian.

(C) The State Veterinarian may require testing of any stallion suspected of being exposed to EAV.

**KEY: Equine Viral Arteritis (EVA), inspections
February 28, 2007**

4-2-2(I)(I)

R68. Agriculture and Food, Plant Industry.**R68-20. Utah Organic Standards.****R68-20-1. Authority.**

Promulgated under authority of Sections 4-2-2(1)(j), 4-3-2, 4-4-2, 4-5-17(1), 4-9-2, 4-11-3, 4-12-3, 4-14-6(5), 4-16-3, 4-32-7(7)(a)(ii), 4-37-109(2).

A. The Utah Department of Agriculture and Food (UDAF) adopts and incorporates by reference CFR, June 7, 2006 edition, Title 7 Part 205, National Organic Program Final Rule.

1. UDAF will make available to all its applicants for certification and producers of organic products, copies of the National Organic Program Final Rule.

R68-20-2. Definitions and Terms.

A. For the purpose of this rule, words in the singular form shall be deemed to impart the plural and vice versa, as the case may demand.

1. "Commissioner" means the Commissioner of the Utah Department of Agriculture and Food, or the commissioner's representative.

2. "Distributor" means a handler that purchases products under its own name, usually from a shipper, processor, or another distributor. Distributors may or may not take physical possession of the merchandise. A distributor is required to be certified if that person both takes title to the organic products and substantially transforms, processes, repackages or re-labels these products.

3. "Food (and food products)" means material, usually of plant or animal origin, containing or consisting of essential body nutrients, as carbohydrates, fats, proteins, vitamins, and minerals, that is taken in and assimilated by an organism to maintain life and growth. Food products include all agricultural and horticultural products of the soil, apiary and apiary products, poultry and poultry products, livestock and livestock products, dairy products and aquaculture products.

4. "Registration" means an agreement or contract that grants a certified operator the right to use a certificate or certification mark in accordance with organic standards and certification requirements.

5. "Utah Department of Agriculture and Food Organic Seal" means the seal to be displayed on packaging of certified organic foods and food products intended for retail sale, indicating compliance with provisions of this rules.

R68-20-3. Compliance.

A. Violations of the State Organic Program will be handled in compliance to Section 4-2-12.

R68-20-4. Fees for Organic Certification.

Fees for Organic Certification Services.

A. Fees shall be in accordance with the fee schedule in the annual appropriations act passed by the Legislature and signed by the Governor. The person, firm, corporation or other organization requesting registration as a producer, handler, processor or certification agency or requesting inspection or laboratory services shall pay such fees. All fees are payable to the Utah Department of Agriculture and Food.

B. Registration of producers, handlers, processors or combinations thereof. Applications for registration may be obtained from the Utah Department of Agriculture and Food and submitted with the annual fees. Annual registration is required for all producers, handlers, processors or combinations thereof and shall be paid by April 1 each year.

C. Registration of Certification agencies Applications for registration may be obtained from the Utah Department of Agriculture and Food and submitted with the annual fees. Annual registration is required for all certification agencies and shall be paid by April 1 each year.

D. Gross sales fees. Payment of annual gross sales fees

shall accompany the annual registration application and fees and shall be based on the previous year's gross sales of state certified producers and processors.

R68-20-5. UDAF Seal.

Use of the UDAF Organic Seal

A. The UDAF seal may be used only for raw or processed agricultural products in paragraphs (a), (b), (e)(1), and (e)(2) of CFR 205.301.

B. The UDAF seal must replicate the form and design and must be printed legibly and conspicuously.

1. On a white background with a double black circle the words, Utah Department of Agriculture and Food, within the borders of the circles. At the bottom of the circle a teal green horizontal line.

2. Within the inner circle a black outline of the State of Utah, and inscribed in italics in a teal green color, slanting upward from left to right, the word "Certified Organic".

3. A copy of the seal is available at the Department of Agriculture and Food, 350 North Redwood Road, PO Box 146500, Salt Lake City, Utah 84114-6500.

KEY: inspections

February 28, 2007

Notice of Continuation February 4, 2005

4-2-2(1)(j)

4-3-2

4-4-2

4-5-17(1)

4-9-2

4-11-3

4-12-3

4-14-6(5)

4-16-3

4-32-7(7)(a)(ii)

4-37-109(2)

R70. Agriculture and Food, Regulatory Service.**R70-201. Compliance Procedures.****R70-201-1. Authority.**

This rule is promulgated by the Division of Regulatory Service (Division), within the Department of Agriculture and Food (Department) under authority of Section 4-2-2(1)(j).

R70-201-2. Definition of Terms.

(A) An Emergency Order means a written action by the Division, which is issued to a person, as a result of information that is known by the Division, which identifies an immediate and significant danger to the public's health, animal health, safety or welfare, and warrants prompt action pursuant to Section 63-46b-20.

Emergency orders include: "quarantine", "seized", "Utah Inspection and Condemned", "sealed", "reject", "retain", "denatured", "detained", and "suspect", and may be issued when division action is warranted to stop the sale of a product, or halt an immediate condition or service from occurring, pursuant to Sections 4-3-6, 4-3-9, 4-5-5(1)(a), 4-9-6, 4-9-7, 4-10-11(1) and 4-33-8(1).

(B) A Citation means a lawful notice, issued by the division, which is intended to immediately remedy a violation of agricultural statutes or rules by a person, business, operator, etc. Pursuant to Section 4-2-15, a citation may include a penalty assessment, or provide for a fine to take effect within a stated time period.

R70-201-3. Emergency Order.

The Division may issue an emergency order when it determines that there is an immediate and significant danger to public health, animal health, safety or welfare may be issued to secure the well-being, safety, or removal of danger to state citizens. Orders are intended to protect the public from unlawful agricultural and food products and services.

When an emergency order is justified, and conditions warrant immediate action by the Division, it shall: Promptly issue a written order, that includes the following information:

(1) name, street address, city, state, zip-code, phone-number, and title or position of the person being given the order, or name, street-address, city, state, zip-code, phone-number of the business, organization, corporation, firm, limited liability company, etc., and the name and title or position of the person in the business or organization to whom the order is given.

(2) a brief statement of findings of fact as determined by the division,

(3) references to statutes or administrative rules violated,

(4) the reasons for issuance of the emergency order,

(5) the signature of the agency representative, and

(6) a space/line for the signature of the person (a signature is not required if the person refuses).

This order shall be written and no product, condition, or service subject to the order shall be released, except upon the subsequent written release by the department.

R70-201-4. Citation.

The Commissioner or persons designated by the Commissioner, may enforce this rule by the issuance of a citation for violation, in order to secure subsequent payments of fines or the imposition of penalties:

The citation will include the following information:

(1) name, street address, city, state, zip-code, phone-number, and title or position of the person being given the order, or name, street-address, city, state, zip-code, phone-number of the business, organization, corporation, firm, limited liability company, etc., and the name and title or position of the person in the business or organization to whom the order is given.

(2) references to the statutes or rules violated,

(3) a brief statement to the findings of fact as determined

by the division,

(4) a penalty or fine amount,

(5) the signature of the agency representative,

(6) a space or line for the signature of the person (a signature is not required if the person refuses),

(7) a statement to the effect that a person is allowed to request an administrative hearing if the person feels that a citation was not warranted.

Fine or penalty amounts will be set by the department or the division, under the direction of the commissioner, for amounts up to \$5,000 per violation, or if the citation involves a criminal proceeding, the person may be found guilty of a class B misdemeanor. In accordance with Section 4-2-15, fine or penalty amounts shall be determined according to the following: PENALTY AMOUNTS: Citation per violation up to, but not to exceed \$500; if not paid within 15 days, 2 times citation amount; if not paid within 30 days, 4 times citation amount.

R70-201-5. Request for Hearing.

When any order or citation, as defined above, is issued, the person being charged with the violation may elect to file, within allowable time limits, a request for the department to schedule an informal Administrative Hearing in accordance with the provisions of Section 4-1-3.5.

KEY: agricultural law

April 15, 1998

Notice of Continuation February 2, 2007

4-2-2(1)(j)

R70. Agriculture and Food, Regulatory Services.**R70-320. Minimum Standards for Milk for Manufacturing Purposes, its Production and Processing.****R70-320-1. Authority.**

A. Promulgated Under Authority of Subsection 4-2-2(1)(j) and Section 4-3-2.

B. Scope: It is the intent of these rules to encourage the sanitary production of milk, to promote the sanitary processing of milk for manufacturing purposes.

R70-320-2. General.

A. The Commissioner of Agriculture and Food shall administer the provisions of these rules which are:

1. To establish and promulgate minimum standards for milk for manufacturing purposes, its production, transportation, grading, use, processing, and the packaging, labeling and storage of dairy products made therefrom.

2. To inspect dairy farms and dairy plants, to certify dairy farms for the production and sale of milk for manufacturing purposes and to license dairy plants to handle and process milk for manufacturing purposes, in conformity with minimum standards and specifications prescribed by such rules as may be issued hereunder in effectuation of the intent hereof.

3. To require the keeping of appropriate books and records by plants licensed hereunder.

4. To license qualified milk graders and bulk milk collectors.

B. The Utah Commissioner of Agriculture and Food may for good cause, after notice and opportunity for hearing, suspend or revoke certification and licenses issued hereunder.

C. No person, firm, or corporation shall produce, sell, offer for sale, or process milk for the manufacture of human food except in accordance with the provisions of these rules issued pursuant hereunto.

D. Violation of any portion of these rules may result in civil or criminal action, pursuant to Section 4-2-2.

E. All manufacturing dairy plants shall furnish the Department with a current list of their producers semi-annually. These lists shall be received no later than January 15th and July 15th of the current year.

R70-320-3. Definitions.

A. Definitions. Words used in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

1. Regulatory agency. The Utah Commissioner of Agriculture and Food or his authorized representative is authorized by law to administer this rule.

2. Department. The Utah Department of Agriculture and Food.

3. License. A license issued under this Regulation by the Department.

4. Fieldman. A person qualified and trained in the sanitary methods of production and handling of milk as set forth herein, and generally employed by a processing or manufacturing plant for the purpose of dairy farm inspections and quality control work.

5. Compliance Officer. An employee of the Department qualified, trained, and authorized to perform dairy farm or plant inspections, and raw milk grading.

6. Milk Grader. A person licensed by the Utah Department of Agriculture and Food who is qualified and trained for the grading of raw milk.

7. Producer. The person or persons who exercise control over the production of the milk delivered to a processing plant or receiving station and those who receive payment for this product. A "new producer" is one who has only recently entered into the production of milk for the market. A "transfer producer" is one who has been shipping milk to one plant and

transfers his shipment to another plant.

8. Milk hauler. Any person who transports raw milk and/or raw milk products from a dairy farm, milk plant, receiving or transfer station.

9. Farm Tank. A tank used to cool and/or store milk prior to transportation to the processing plant.

10. Transportation Tank and Bulk Tank. Tanks used to transport milk from a farm to a processing plant.

11. Dairy Farm or Farm. A place or premise where one or more milking cows are kept, a part or all of the milk produced thereon being delivered, sold, or offered for sale to a plant for manufacturing purposes.

12. Dairy Plant or Plant. Any place, premise, or establishment where milk or dairy products are received or handled for processing or manufacturing and/or prepared for distribution. When "plant" is used in connection with minimum specifications for plants or licensing of plants, it means only those plants that manufacture, process and/or distribute dairy products.

13. Milk. The normal lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows. The word "milk" used herein includes only milk for manufacturing purposes.

14. Milk for manufacturing purposes. Milk produced for processing and manufacturing into products for human consumption that meets the requirements of this rule.

15. Acceptable Milk. Milk that is produced under the requirements as outlined in this rule.

16. Probational Milk. Milk that may not be produced under the requirements as outlined in this rule and that may be accepted by plants for specific time periods.

17. Reject Milk. Milk that does not meet the requirements of this rule.

18. Suspended Milk. All of a producer's milk suspended from the market by the provisions of this rule.

19. Dairy Products. Butter, cheese (natural or processed), dry whole milk, nonfat dry milk, dry buttermilk, dry whey, evaporated (plain or sweetened), and such other products, for human consumption, as may be otherwise designated.

20. Farm Certification. Certification by a compliance officer that a producer's herd, milking facility and housing, milk procedure, cooling, milkhouse or milk room, utensils and equipment and water supply have been found to meet the applicable requirements of this rule.

21. Official Methods. Official Methods of Analysis of the Association of Official Analytical Chemists.

22. Standard Methods. Standard Methods for the Examination of Dairy Products.

23. 3-A Sanitary Standards. The standards for dairy equipment formulated by the 3-A Sanitary Standards Committees representing the International Association of Milk and Food Sanitarians, the United States Public Health Service, and the Dairy Industry Committee.

24. C-I-P or Cleaned-in-Place. The procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation.

25. Permit. A document issued by the Department in order to sell milk and milk products.

R70-320-4. Milk Permits.

By October 15, 1990, farms producing and selling milk for manufacturing purposes shall apply for a permit.

1. Permits shall be required for the sale of milk for manufacturing purposes.

2. Only one permit shall be issued per facility.

3. Farm permits shall be effective from the date of issuance unless suspended or revoked by the Department.

R70-320-5. Farm Inspection.

A. Each dairy farm operated by a producer of milk for manufacturing purposes shall be inspected initially and on any change of market by a compliance officer and shall have a passing score before the first milk is shipped. All dairy farms producing milk for manufacturing purposes shall be inspected no less than once in each six month period by a compliance officer.

B. Producers who cannot produce milk of wholesome sanitary quality will be suspended. Producers who are not in substantial compliance with Section R70-320-12 relating to requirements for a farm producing milk for manufacturing will be re-inspected after an appropriate time for correction of deficiencies. If the farm does not then meet the requirements for farms producing milk for manufacturing, the producer permit to sell milk for manufacturing from that farm shall be suspended until such time as the farm receives an acceptable score. The producer will be charged for the time and mileage expended by the department for any subsequent visits required.

R70-320-6. Minimum Quality Standards for Milk for Manufacturing Purposes.

A. Basis. The classification of raw milk for manufacturing purposes shall be based on sight and odor and quality control tests for sediment content, bacterial estimate and somatic cell.

B. Sight and odor. The odor of acceptable raw milk shall be fresh and sweet. The milk shall be free from objectionable off-odors that would adversely affect the finished product, and it shall not show any abnormal condition such as curdled, ropy, bloody, or mastitis condition as determined by an approved milk grader.

C. Sediment content classification. Milk in farm bulk tanks shall be classified for sediment content as follows:

TABLE
SEDIMENT CONTENT

Sediment Content Classification	Milk in farm bulk tanks Mixed sample, 0.40 in. diameter disc or equivalent
No. 1 (acceptable)	Not to exceed 0.50 mg. equivalent
No. 2 (acceptable)	Not to exceed 1.50 mg. equivalent
No. 3 (probational)	Not to exceed 2.50 mg. equivalent
No. 4 (reject)	Over 2.50 mg. equivalent

Sediment content based on comparison with applicable charts of Sediment Standards prepared by the United States Department of Agriculture.

1. Method of Testing. Methods for determining sediment content of milk shall be those described in the current edition of Standard Methods for the examination of dairy products.

2. Frequency of tests. At least once each month a sample shall be taken from each farm bulk tank and at irregular intervals.

3. Acceptance or rejection of milk. If the sediment disc is classified as No. 1, No. 2, or No. 3, the producer's milk may be accepted. If the sediment disc is classified as No. 4, the milk shall be rejected. If the shipment of milk is co-mingled with other milk in a transport tank, the next shipment shall not be accepted until its quality has been determined at the farm before being picked up; however, if the person making the test is unable to get to the farm before the next shipment, it may be accepted but no further shipments shall be accepted unless the milk meets the requirements of No. 3 or better. In the case of milk classified as No. 3 or No. 4, the producer shall be notified immediately and the next shipment shall be tested.

4. Retests. On tests of the next shipment, milk classified as No. 1, No. 2, or No. 3 shall be accepted, but No. 4 milk shall be rejected. Retests of bulk milk classified as No. 4 shall be made at the farm before pickup. The producers of No. 3 or No. 4 milk shall be notified immediately and the next shipment tested. This procedure of retesting successive and accepting

probational (No. 3) milk and rejecting No. 4 milk may be continued for a period, not to exceed ten calendar days. If at the end of this time, the producer's milk does not meet the acceptable sediment content classification (No. 1 or No. 2) it shall be suspended from the market.

D. Bacterial estimated classification. Milk shall be classified for bacterial estimate by one of the listed tests of the current standard methods.

TABLE

Bacterial estimate classification	Direct microscopic clump count, standard plate count or loop method
Acceptable	Not over 500,000 per ml.
Undergrade (probation 4 weeks)	Over 500,000 per ml

1. Method of testing. Methods for determining the bacterial estimate of milk shall be those described in the current edition of Standard Methods and the current edition of the Official Methods of the Analysis of the Association of Official Analytical Chemists or other methods approved by the Department.

2. Frequency of tests. At least once a month at irregular intervals, a mixed sample of each producer's milk shall be tested.

3. Acceptance of milk. If the sample of milk is classified as No. 1, the producer's milk may be accepted without qualification. If the sample is classified as undergrade, probational, the producer's milk may be accepted for a temporary period of four weeks. The producer of undergrade milk shall be notified immediately.

4. Retests. Additional samples shall be tested and classified at least weekly, and the producer shall be notified immediately of the results. This procedure of testing at least weekly and accepting undergrade milk may be continued for a period not exceeding four weeks. If at the end of this time the producer's milk does not meet the acceptable bacterial estimate requirements (No. 1 or No. 2) it shall be suspended from market.

E. Abnormal Milk. The Wisconsin Mastitis Test may be used as a screening test. A test of 18 mm or higher shall be considered to indicate abnormal milk and shall require confirmation by the Direct Microscopic Somatic Cell Count Method or an equivalent method according to the current edition of standard methods.

Somatic Cell Count: Samples exceeding 18 mm WMT to be confirmed by DMSCC or acceptable tests. Not to exceed 750,000 per ml.

1. Frequency of tests. At least four times in each six month period, at irregular intervals, a sample of each producer's milk shall be tested.

2. Notification to the department, written notice to the producer and a farm inspection are required whenever two of the last four somatic cell counts exceed the standard.

3. Within 21 days after the farm inspection, another sample shall be tested for somatic cell count. If the result exceeds the allowable limit for somatic cell count, the producer's permit shall be suspended until corrections are made and the somatic cell count is reduced to 750,000 or less.

F. Drug Residue Level.

1. All licensed dairy plants shall not accept for processing any milk testing positive for drug residue. All milk received at a licensed dairy plant shall be sampled and tested, prior to processing, for beta lactam drug residue. When directed by the regulatory agency, additional testing for other drug residues shall be performed. Samples shall be analyzed for beta lactams and other drug residues by methods evaluated by the Association of Official Analytical Chemists (AOAC) and

accepted by the Food and Drug Administration (FDA) as effective in determining compliance with "safe levels" or established tolerances. "Safe levels" and tolerances for particular drugs are established by the FDA.

2. Individual producer milk samples for beta lactam drug residue testing shall be obtained from each milk shipment, and shall be representative of all milk received from the producer.

3. A load sample shall be taken from the bulk milk shipment after its arrival at the plant and prior to further commingling. A sample shall be obtained at the plant using a procedure that includes all milk produced and received.

4. Follow-up to positive-testing. When a load sample tests positive for drug residue, industry personnel shall notify the appropriate state regulatory agency immediately, according to state policy, of the positive test result and of the intended disposition of the shipment of milk containing the drug residue. All milk testing positive for drug residue shall be disposed of in a manner that removes it from the human or animal food chain, except when acceptably reconditioned under FDA compliance policy guidelines.

5. Identification of producer. Each individual producer sample represented in the positive-testing load sample shall be singly tested as directed by the state regulatory agency to determine the producer of the milk sample testing positive for drug residue. Identification of the producer responsible for producing the milk testing positive for drug residue, and details of the final disposition of the shipment of milk containing the drug residue, shall be reported immediately to the state regulatory agency.

6. Milk shipment from the producer identified as the source of milk testing positive for drug residue shall cease immediately and may resume only after a sample from a subsequent milking does not test positive for drug residue.

7. Enforcement. A penalty sanctioned by the department shall be imposed on the producer for each occurrence of shipping milk testing positive for drug residue.

8. The producer shall review the "Milk and Dairy Beef Quality Assurance Program" with a licensed veterinarian within 30 days after each occurrence of shipping milk testing positive for drug residue. A signed copy of a certificate confirming that the "Quality Assurance Program" has been reviewed shall be signed by the responsible producer and a licensed veterinarian and forwarded to the department.

9. If a producer ships milk testing positive for drug residue three times within a 12-month period, the department shall initiate administrative procedures to suspend the producer's milk shipping privileges according to state policy.

10. Record of tests. Accurate records listing the results of drug residue tests for each load and individual producer shall be kept on file at the plant. Drug residue test results are to be retained for 12 months. Notifications to the department of positive drug residue tests and intended and final dispositions of milk testing positive for drug residue are to be retained for 12 months.

G. Pesticides.

Composite milk samples shall be sampled and tested for pesticides at a frequency which the department determines is adequate to protect the consumer. The test results from the samples shall not exceed established FDA limits. If a pesticide test is positive, an investigation shall be made to determine the cause and the cause shall be corrected. Milk and milk products containing residues in excess of actionable levels shall not be offered for sale.

R70-320-7. Animal Health.

A. Health of Herd.

1. General Health. All animals in the herd shall be maintained in a healthy condition, and shall be properly fed and kept.

2. Tuberculin Test. The herd shall be located in an area within the State which meets the requirements of a modified accredited area. If the herd is not located in such an area, it shall be tested annually under the jurisdiction of the aforesaid program. All additions to the herd shall be from an area or from herds meeting these same requirements.

3. Brucellosis Test. The herd shall be located in an area within the State which meets the requirements of a modified accredited area. If the area in which the herd is located does not meet these requirements, the herd shall be blood-tested annually or milk ring tested semi-annually. All additions to the herd shall be from an area or from herds meeting the requirements of Plan A for the eradication of brucellosis in accordance with the above Uniform Methods and Rules.

4. Mastitis and Drug Residues. Milk from cows known to be infected with mastitis or milk containing residues of drugs used in treating mastitis or any other infection shall not be sold or offered for sale for human food.

R70-320-8. Rejected Milk.

A. A plant shall reject specific milk from a producer if it fails to meet the requirements for sight and odor, as required by Subsection R70-320-6(B) or if it is classified No. 4 for sediment content, as required by Subsection R70-320-6(C) or if it fails to meet the provisions of Subsection R70-320-6(E), relating to abnormal milk.

B. Reject milk shall be identified with a reject tag, and harmless food coloring may be added.

C. Field Service. A fieldman shall visit each producer of probational status or reject milk within seven days from the date of the second consecutive substandard test to inspect equipment, utensils and methods of handling the milk and to make suggestions and recommendations for improving milk quality.

R70-320-9. Suspended Milk for Manufacturing.

A. The department may suspend the permit of a producer if one of the following occurs:

1. A new producer's milk does not meet the requirements for acceptable milk, as required by Subsections R70-320-6(C) and R70-320-6(D).

2. The milk has been in a probational (No. 3) sediment content classification for more than ten calendar days, as required by Subsection R70-320-6(C).

3. The milk has been classified "undergrade" for bacterial estimate for more than four successive weeks, as required by Subsection R70-320-6(D).

4. If three out of the last five samples tested for somatic cells exceed the allowable limit, as required by Subsection R70-320-6(E).

5. A growth inhibitor or pesticide residue exceeds actionable level, as required by Subsection R70-320-6(F).

6. If the producer refuses to permit farm inspection.

B. When a plant discontinues receiving milk from a producer for any of the reasons listed in this section, it shall notify the Department immediately and confirm such act in writing.

C. Milk from a producer whose milk has been excluded from the market may be re-accepted by a plant when the cause for exclusions has been corrected and the milk classified as acceptable.

R70-320-10. Testing of Milk.

A. Testing. An examination shall be made on the first shipment of milk from producers shipping milk to a plant for the first time or after a period of non-shipment. The milk shall meet the requirements for acceptable milk. Thereafter milk shall be tested in accordance with the rule.

B. Transfer producers.

1. When a producer discontinues milk delivery to one

plant and begins delivery to a different plant, the dairy farm shall be inspected by the Department and shall have a passing score before milk is shipped.

2. Quality control records may be obtained from the previous buyer for the previous six month period. The new buyer shall examine and classify each transfer producer's first shipment of milk and shall subsequently examine shipment in accordance with this rule.

R70-320-11. Record of Tests.

Accurate records listing the results of quality tests of each producer shall be kept on file at the receiving plant for not less than twelve months and shall be available for examination by the Department.

R70-320-12. Farms Producing Milk for Manufacturing.

A. Milking Facility and Housing.

1. A milking barn or milking parlor of adequate size and arrangement shall be provided to permit normal sanitary milking operations. It shall be well lighted and ventilated, and the floors and gutters in the milking area shall be constructed of concrete or other impervious material. The facility shall be kept clean, the manure removed daily and no swine, fowl, or other animals shall be permitted in any part of the milking area. Concentrates and feed, if stored in the building, shall be kept in a tightly covered box or bin.

2. Animal biologics and other drugs intended for treatment of animals, and insecticides approved for use in dairy operations, shall be clearly labeled and used in accordance with label instructions, and shall be stored in a manner which will prevent accidental contact with milk and milk contact surfaces. Only drugs that are approved by the FDA or biologics approved by the USDA for use in dairy animals that are properly labeled according to FDA or USDA regulations shall be administered. When drug storage is located in the milkroom, milkhouse, or milking area, the drugs shall be stored in a closed, tight-fitting storage unit. Drugs shall be segregated in such a way so that drugs labeled for use in lactating dairy animals are separated from drugs labeled for use in non-lactating dairy animals.

3. The yard or loafing area shall be of ample size to prevent overcrowding, shall be drained to prevent forming of water pools, and shall be kept clean.

B. Milking Procedure.

1. The udders and flanks of all milking cows shall be kept clean. The udders and teats shall be washed, sanitized and wiped dry with a clean damp cloth, paper towel or any other sanitary method. The milker's clothing shall be clean and his hands clean and dry. No person with an infected cut or open sore on the person's hands or arms shall milk cows, or handle milk or milk containers, utensils or equipment.

2. Milk stools and surcingles shall be kept clean and properly stored. Dusty operations shall not be conducted immediately before or during milking.

3. Milk must be protected against contamination while straining.

C. Cooling

1. Milk shall be cooled to 45 degrees F or lower within two hours after each milking and maintained at 45 degrees F or lower until transferred to the transport tank.

D. Milkhouse or Milkroom.

1. A milkhouse or milkroom conveniently located and properly constructed, lighted, and ventilated shall be provided for handling and storing the utensils and equipment. It shall not be used for any other purpose, and shall be equipped with hot water, two compartment wash vat, utensil rack and cooling facilities for the milk. It shall be partitioned, sealed, and screened to prevent the entrance of dust, flies, or other contamination. The floor of the building shall be of concrete or other impervious material and graded to a drain. The walls and

ceilings shall be constructed of smooth easily cleaned material. All outside doors shall be self-closing. At least 20 foot candles of light shall be provided in all working areas.

2. The farm tank shall be properly located in the milkroom. There shall not be less than 18 inches clearance with 24 inches recommended on three sides of the tank and a minimum of 36 inches on the outlet side of the tank for access to all areas for cleaning and servicing. It may not be located over a floor drain, under a ventilator or under a light fixture.

3. An adequate platform or slab constructed of concrete or other impervious material shall be provided outside the milk house, properly centered under a suitable port opening in the wall of the milkhouse. The opening shall be fitted with a tight self-closing door. The truck approach to the milkhouse or milkroom shall be properly graded and surfaced to prevent mud or pooling of water at the point of loading.

4. Building plan approval. Plans for new dairy building construction or remodeling shall be submitted to the Department for approval before construction begins.

E. Utensils and Equipment.

1. Utensils, milk coolers, milking machines (including pipeline systems) and other equipment used in the handling of milk shall be maintained in good repair, and shall be washed, rinsed and drained after each milking, stored in suitable facilities, and sanitized immediately before use. Farm bulk tanks shall meet 3-A Sanitary Standards for construction at the time of installation and shall be properly installed.

F. Water Supply.

1. The dairy farm water supply shall be approved, properly protected and of safe, sanitary quality, and have ample water and pressure for the cleaning of dairy utensils and equipment.

2. An automatic hot water storage tank (pressure type) of adequate size shall be provided but shall not be less than 30 gallon capacity and equipped with a thermostat capable of maintaining water temperature at least 140 degrees F. Gas water heaters, if used, shall be properly ventilated.

G. Sewage Disposal. Sewage shall be disposed of in a manner that complies with the State Health and EPA requirements.

H. There shall be available in the milkhouse or room a dairy type thermometer, accurate within two degrees F., integral with the tank construction or operation. The driver shall possess an accurate approved type thermometer. The driver shall check periodically the thermometer by a qualified method to determine its accuracy. Thermometers must be properly sanitized before each use.

I. Qualifications for Farm Certification. Farm certification requires compliance with the items listed on the Farm Certification Report Form as follows:

1. A rating of satisfactory for all items in A--Facilities and
2. A total rating of not less than 85 percent for the applicable items in B--Methods, provided no individual item is rated less than 75 percent of its maximum score.

R70-320-13. Minimum Specifications for Licensed Dairy Plants.

A. Building, Facilities, Equipment and Utensils.

1. Premises. The plant area and surroundings shall be kept clean. A drainage system shall be provided for rapid drainage of all water from plant buildings, including surface water around the plant and on the premises.

a. There shall be provided an area properly designed and constructed for the unloading and washing of bulk milk transport trucks. It will have a concrete floor sloped to a trapped drain.

(1) If the area is completely enclosed (walls and ceiling with the doors closed) during the unloading process and the dust cover or dome and the manhole cover is opened slightly and held in this position by the metal clamps used to close the cover

then a filter is not required. However, if the dust covers and/or manhole cover is open in excess of that provided by the metal clamps or the covers have been removed, a suitable filter is required for the manhole.

(2) If the area is not completely enclosed or doors of the unloading area are open during unloading, a suitable filter is required for the manhole and/or air inlet vent and suitable protection must be provided over the filter material either by design of the filter holding apparatus or a roof or ceiling over the area. Direct connections from milk tank truck to milk tank truck must be made from valve to valve and not through the manhole and the dust cover dome of the milk tank truck.

2. Buildings.

a. Construction and Maintenance. Buildings shall be of sound construction, and the exterior and interior shall be kept clean and in good repair to protect against dust, dirt, and mold, and to prevent the entrance or harboring of insects, rodents, vermin, and other animals.

(1) Outside doors, windows, skylights, and transoms shall be screened or otherwise covered. Outside doors shall open outward and be self-closing or be protected against the entrance of rodents and flies. Those leading to processing rooms shall be of metal construction. Window sills on new construction shall be sloping. Outside conveyor openings and other special type outside openings shall be protected by doors, screens, flaps, fans or tunnels. Outside openings for sanitary pipelines shall be covered when not in use; and service-pipe openings shall be completely cemented or have tight metal collars.

(2) All rooms, compartments, coolers, freezers, and dry storage space in which any raw material, packaging or ingredient supplies, or finished products are handled, processed, manufactured, packaged, or stored shall be so designed and constructed as to assure clean and orderly operations. Rooms for receiving milk shall be separated from the processing rooms by a partition or suitable arrangement of equipment or facilities to avoid contamination of milk or dairy products. Boiler and tool rooms shall be separated from other rooms. Toilet and dressing rooms shall be conveniently located and shall not open directly into any room in which milk, dairy products, or ingredients are handled, processed, packaged, or stored. Doors of all toilet rooms shall be self-closing, and fixtures shall be kept clean and in good repair.

(3) Plans for new plant construction or remodeling of existing plants shall be submitted to the Department for approval prior to such new construction or remodeling.

b. Interior Finishing. In all rooms, in which milk or dairy products are received, handled, processed, manufactured, packaged, or stored, except dry storage of packaged finished products, or in which equipment or utensils are washed; the walls, ceilings, partitions, and posts shall be smoothly finished with a washable material of light color that is impervious to moisture. The floors in these rooms shall be of concrete or other impervious material and shall be smooth, properly graded to drain, and have drains trapped. The plumbing shall be so installed as to prevent back-up sewage into the plant. On new construction or extensive remodeling, the floors shall be joined and coved with the walls to form watertight joints. Sound, smooth, wood floors may be used in certain packaging rooms where the nature of the product permits. Toilet and dressing rooms shall have impervious floors and smooth walls.

c. Ventilation. All rooms and compartments (including storage space and toilet and dressing rooms) shall be ventilated to maintain sanitary conditions, prevent undue condensation of water vapor, and minimize or eliminate objectionable odors.

d. Lighting. Lighting, whether natural or artificial, shall be of good quality and well distributed in all rooms and compartments. All rooms where milk or dairy products are handled, processed, manufactured, or packaged, or where equipment or utensils are washed, shall have at least 30 foot-

candles of light intensity on all working surfaces; areas where dairy products are examined for condition and quality, at least 50 foot-candles of light intensity; and all other rooms, at least 5 foot-candles of light intensity measured 30 inches above the floor. Light bulbs and fluorescent tubes shall be protected against shattering and/or falling into the product if broken.

e. Laboratory. Consistent with the size of the plant and the volume and variety of products manufactured, an adequate laboratory shall be provided, maintained, and properly staffed with qualified and trained personnel for quality control and analytical purposes. It shall be located reasonably close to the processing activity in a well lighted and ventilated room of sufficient size to permit proper performance of the tests necessary to evaluate the quality of raw and finished products. A central or commercial laboratory that serves more than one plant and that provides the same services may be utilized.

3. Facilities.

a. Water Supply. Both hot and cold water of safe and sanitary quality shall be available in sufficient quantity for all plant operations and facilities. Water from other lines, when officially approved, may be used for boiler feed water and condenser water, if such water lines carrying the sanitary water supply, and the equipment is so constructed and controlled as to preclude contamination of any milk product or milk product contact surface. There shall be no cross connections between safe and unsafe water lines. Culinary water in the plant is to be from an approved source.

(1) Bacteriological examination shall be made of the plant sanitary water supply at least once every six months by the appropriate regulatory agency to determine purity and safety for use in processing or manufacturing dairy products.

b. Employee Facilities. In addition to toilet and dressing rooms, the plant shall provide the following employee facilities: conveniently located sanitary drinking water; a locker or other suitable facility for each employee; handwashing facilities, including hot and cold running water, soap or other detergents and sanitary towels or air driers, in or adjacent to toilet and dressing rooms and at other places where necessary for the cleanliness of all personnel handling products and self-closing containers for used towels and other wastes.

(1) A durable, legible sign shall be posted conspicuously in each toilet and dressing room directing employees to wash their hands before returning to work.

c. Steam. Steam shall be supplied in sufficient volume and pressure for satisfactory operation of each applicable piece of equipment. Steam that may come into direct contact with milk or dairy products shall be conducted through a steam strainer and purifier equipped with a steam trap and shall be free from any compounds that may contribute flavors or endanger health. Only non-toxic boiler compounds shall be used.

d. Disposal of Wastes. The plant sewage system shall have sufficient slope and capacity to remove readily all waste from processing operations. Where a public sewer is not available, wastes shall be disposed of by methods approved by the appropriate government agency. Containers for the collection and holding of wastes shall be constructed of metal or other equally impervious material, kept covered with tight-fitting lids, and placed outside the plant on a concrete slab or on a rack at least 12 inches above the ground. Solid wastes shall be disposed of regularly and the containers cleaned before reuse, and dry waste paper shall be properly disposed of.

4. Equipment and Utensils.

a. Construction and Installation.

New equipment shall meet 3-A Sanitary Standards designed for the intended use. Equipment and utensils coming in contact with milk or dairy products, including sanitary pumps, piping, fittings, and connections, shall be constructed of stainless steel or equally corrosion resistant material; except that, where the use of stainless steel is not practicable. Copper

kettles for swiss cheese and copper evaporators and brass fillers for evaporated milk may be approved if free from corroded surfaces and kept in good condition. Wooden churns in use may be approved temporarily if maintained in good condition. Nonmetallic parts having product contact surfaces shall be of material that is resistant to abrasion, scratching, scoring and distortion, is non-toxic, fat-resistant, and relatively inert or non-absorbent or insoluble, and that will not adversely affect the flavor of the products.

(1) All equipment and piping shall be so designed and installed as to be easily accessible for cleaning and shall be kept in good repair and free from cracks and corroded surfaces. Milk pumps shall be of a sanitary type and easily dismantled for cleaning. New or rearranged equipment shall be set out at least 24 inches from any wall or spaced at least 24 inches between pieces of equipment that measure more than 48 inches on the parallel sides. (This shall not apply between storage tanks when the face of the tanks extends through the wall into the processing room.) All parts or interior surfaces of equipment, pipes (except certain piping cleaned in place), or fittings, including valves and connections, shall be accessible for inspection. Cleaned-in-place sanitary piping shall be properly installed and self-draining. Welded sanitary pipeline systems when used with C-I-P cleaning will be acceptable if properly engineered and installed.

b. Pasteurization Equipment.

Where pasteurization is intended or required, an automatic flow-diversion valve and holding tube, or its equivalent if not part of the existing equipment, shall be installed on all high-temperature short-time pasteurizing equipment to assure complete pasteurization. Equipment and operation shall be in accordance with 3-A Accepted Practices for the Sanitary Construction, Installation, Testing and Operation of High Temperature Short-Time Pasteurizers.

(1) Long stem indicating thermometers that are accurate within plus or minus 0.5 degrees F, for the applicable temperature range, shall be provided for determining temperatures of pasteurization of products in vats and for verifying the accuracy of recording thermometers. Short-stem indicating thermometers that are accurate within plus or minus 0.5 degrees for the applicable temperature range shall be installed in the proper stationary position in all high-temperature short-time and dome-type pasteurizers and all storage tanks where temperature readings are required.

(2) Recording thermometers that are accurate within 1 degree F plus or minus, between 142 degrees and 145 degrees F or in the case of 15-second pasteurization between 160 degrees and 163 degrees F shall be used on each pasteurizer to record pasteurization temperature.

c. Cleaning and Sanitizing. Equipment, sanitary piping, and utensils used in receiving, storing, processing, manufacturing, packaging, and handling of milk or dairy products, and all product contact surfaces of homogenizers, high-pressure pumps, and high-pressure lines shall be kept clean and sanitary. Stacks, elevators, conveyors, and the packing glands on all agitators, pumps, and vats shall be inspected at regular intervals and kept clean. Equipment coming in contact with milk or dairy products shall have effective bactericidal or sanitizing treatment immediately before use.

(1) Equipment not designed for C-I-P cleaning shall be disassembled daily and thoroughly cleaned and sanitized. Dairy cleansers, wetting agents, detergents, sanitizing agents, or other similar material may be used that will not contaminate or adversely affect dairy products. Steel wool or metal sponges shall not be used in the cleaning of any dairy equipment or utensils.

(2) C-I-P cleaning shall be used only on equipment and pipeline systems that are designed and engineered for that purpose. Installation and cleaning procedures shall be in

accordance with 3-A Method for the Installation and Cleaning of Cleaned-in-Place Sanitary Milk Pipelines for Milk and Milk Products Plants.

(3) Areas and equipment which can't be cleaned with water in the plant shall be thoroughly vacuumed regularly with a heavy-duty industrial vacuum cleaner and the material picked up shall be disposed of to destroy any insects present.

B. Plant Operations.

1. Milk and Milk Products.

All milk and milk products, including concentrated milk and milk products, shall be packaged at the plant where final pasteurization is performed. Such packaging shall be done without undue delay following final pasteurization.

a. Pasteurization.

When pasteurization is intended or required, or when a product is designated "pasteurized", pasteurization shall be accomplished by heating every particle of milk or skim milk to a temperature of not less than 145 degrees F and cream and other milk products to at least 150 degrees F and ice cream mix to at least 155 degrees F and holding them at those temperatures continuously for not less than 30 minutes, or milk or skim milk to a temperature of 161 degrees F and cream and other milk products to at least 166 degrees F for not less than 15 seconds, and ice cream mix to at least 175 degrees F for not less than 25 seconds, or by any other combination of temperature and time giving equivalent results. The phenol value of the pasteurized product shall be no greater than the maximum specified for the particular product, as determined by the phosphatase test, Method II, of the latest edition of "Official Methods of Analysis of the Association of Official Analytical Chemists".

b. Cream for Buttermaking. Cream for buttermaking shall be pasteurized at a temperature of not less than 165 degrees F and held continuously in a vat at such temperature for not less than 30 minutes, or at a temperature of not less than 185 degrees F for not less than 15 seconds, or any other temperature and holding time approved by the Department that will assure pasteurization and comparable keeping quality characteristics. If the vat method of pasteurization is used, vat covers shall be kept closed during the holding and cooling periods.

2. Cooling.

Processed fluid milk products shall be cooled promptly after heat treatment to such a temperature as will adequately inhibit development or other deterioration of quality.

3. Storage.

a. Utensils and portable equipment.

Utensils and portable equipment used in processing operations shall be stored above the floor, in clean, dry locations, and in self-draining positions on racks constructed of impervious, corrosion resistant material.

b. Raw product storage.

All milk shall be held and processed under conditions and at temperatures that will avoid contamination and rapid deterioration. Drip milk from can washers or any other source shall not be used for the manufacture of dairy products. Bulk milk in storage tanks within the dairy plant shall be handled in such a manner as to minimize bacterial increase and shall be maintained at 45 degrees F. or lower until processing begins. This does not preclude holding milk at higher temperatures for a period of time, where applicable to particular manufacturing or processing practices.

The bacteriological estimate of commingled milk in storage tanks shall be 1 million per m. or lower.

c. Non Refrigerated Products.

Dairy products in dry storage shall be arranged in aisles, rows, sections, or lots or in such a manner as to be orderly and easily accessible for inspection and as to permit adequate cleaning of the room. Dunnage or pallets shall be used when applicable. Dairy products shall not be stored with any product that would damage them or impair their quality. Open

containers shall be carefully protected from contamination.

d. Refrigerated Products. All products requiring refrigeration shall be stored under such optimum temperatures and humidity as will maintain their quality and condition. Products shall not be placed directly on the floors or be exposed to foreign odors or conditions such as dripping or condensation that might cause package or product damage.

e. Supplies.

Items in supply rooms shall be kept clean and protected and be so arranged as to permit inspection of supplies and cleaning and spraying of the room. Insecticides and rodenticides shall be properly labeled, segregated, and stored in a separate room or cabinet away from milk or dairy products or packaging supplies.

4. Laboratory Control Tests.

Quality control tests shall be made on flow samples as often as necessary to check the effectiveness of processing in order to correct processing deficiencies. Routine analyses shall be made on raw materials and finished products to assure adequate composition control. When applicable, keeping quality tests shall be made to determine product stability.

5. Packaging and General Identification.

a. Packaging. Dairy products shall be packaged in commercially acceptable containers or packaging material that will protect the quality of the contents in regular channels of trade. Prior to use packaging materials shall be protected against dust, mold and other possible contamination.

b. Butter liners shall be of approved plastic or waxed covered parchment or other material that may be approved by the Department.

c. General Identification.

Commercial bulk shipping containers for dairy products shall be legibly marked with the name of the product, net weight or content, name and address of processor, manufacturer or distributor, and plant license number. Consumer-packaged products shall be legibly marked with the name of product, net weight, or content, and name and address of packer or distributor.

C. Plant Licensing.

1. Qualifications.

Plant licensing requires compliance to specifications in Section 8a through 8c. In addition, licensing requires that

a. not more than 10 percent of the cans (including lids) shall show open seams, cracks, rust, milkstone, or any unsanitary condition;

b. where pasteurization is intended or required, and a high-temperature short-time unit is used, it shall be equipped with a flow-diversion valve and holding tube or its equivalent; and

c. a safe water line shall be provided with no cross-connections between safe and unsafe lines.

R70-320-14. Licensing Plant, Milk Graders, and Bulk Milk Collectors.

A. Necessity for Plant License.

Every plant receiving or processing milk for the manufacture of dairy products shall be inspected and licensed as provided in Section R70-320-13. A new plant shall be inspected and licensed as provided in Section R70-320-13 before buying or processing any milk for the manufacture of dairy products. No unlicensed plant shall handle, purchase or receive milk or manufacture dairy products therefrom.

1. All licensed plants shall be evaluated at least semi-annually after issuance of the initial license to determine eligibility for license renewal. The inspection procedure for license renewal shall be the same as that for initial licensing.

B. Application for License.

Applications to the Department for a new or renewal license for dairy plants, milk graders, and bulk milk haulers shall contain the name and address of the applicant and such other pertinent information as may be required.

C. Plant Inspection.

Each plant shall be inspected by a compliance officer. If, upon initial inspection, the compliance officer finds that the plant meets the requirements for licensing described in Subsections R70-320-8(A) and R70-320-8(C) and Sections R70-320-15 and R70-320-16, as indicated by the Plant Inspection Report Form, a license shall be issued to the plant as described in Section R70-320-13. If the plant does not meet the requirements for licensing, the plant shall be re-inspected by a compliance officer within 30 days of the initial inspection. A longer time may be allowed if major changes or new equipment is required. If at this time the plant meets the requirements for licensing, a license shall be issued. If the plant does not meet the requirements for licensing, it shall not be licensed, and its authorization to handle, purchase, or receive milk or to manufacture dairy products therefrom shall be withheld until such time as the plant qualifies for a license. The plant will be charged for mileage expended by the Department for any subsequent visits required for certification of the plant. Each completed Plant Inspection Report Form shall be left at the plant and a copy shall be kept by the Department.

D. Issuance of License.

1. Dairy Plants.

The Department shall license dairy plants that meet the specifications of Sections R70-320-13, R70-320-15 and R70-320-16 based upon the inspection procedure described in Section R70-320-13. The license certification shall be posted conspicuously at the plant. The license shall authorize the plant to test, purchase, and receive milk for manufacturing purposes and to manufacture dairy products therefrom, in compliance with the applicable provisions of the Utah Dairy Act and the rules and regulations issued pursuant thereto.

2. Milk Graders and Bulk Milk Haulers.

The Department shall license milk graders and bulk milk haulers who meet the requirements prescribed by the Department. The licenses of milk graders and bulk milk haulers shall authorize them to grade, accept, and reject raw milk in accordance with the provisions of Section R70-320-6.

E. Expiration, Suspension, and Revocation of License.

Licenses shall expire and become renewable each year the 31st of December, unless revoked earlier, and no license shall be transferable. If at any time an inspector determines that a licensed plant does not meet the requirements for licensing, he may allow a reasonable probationary period for the operator to bring his plant within the requirements for licensing.

If at the end of this time the plant does not meet the licensing requirements, the Department may revoke the plant license. The Department may suspend or revoke licenses of bulk milk haulers for any violation of these rules or Title 4, Chapter 3. An opportunity for a hearing shall be provided any licensee before suspension or revocation of this license.

F. Reinstatement.

If, after a period of withholding, probation, or revocation of a plant license, the operator makes the necessary corrections at the plant, he may apply to the Department for re-inspection and reinstatement. When the compliance officer determines that requirements for licensing have been met, the Department shall issue a license to the plant. The reinstatement of licenses for milk graders and bulk milk haulers which have been suspended or revoked shall be made only after satisfying the Department of their qualifications.

R70-320-15. Records Required to be Kept by Plants.

A. Availability.

All records required to be kept by plants shall be available for examination by the Department at all reasonable times.

B. Farm Certification Report Forms.

A copy of completed Farm Certification Report Forms shall be kept on file at the plant for at least 24 months.

C. Milk Quality Test Records.

Accurate records listing the results of quality tests on each producer's milk shall be kept on file at the plant for at least 12 months.

D. Water Supply Test Records.

The results of all plant water supply tests shall be kept on file at the plant for at least 12 months.

E. Laboratory Control Test Records.

Records of all laboratory control tests shall be kept on file at the plant for at least 12 months.

F. Pasteurization Recorder Charts.

Recorder charts showing the pasteurization record for each day shall be appropriately marked with the name of the product, date, and signature of the operator. The charts shall be kept on file at the plant for at least three months.

R70-320-16. Personnel Cleanliness and Health.

A. Cleanliness.

Plant employees shall wash their hands before beginning work and upon returning to work after using toilet facilities, eating, smoking, or otherwise soiling their hands. They shall keep their hands clean and follow good hygienic practices while on duty. Expectorating or use of tobacco in any form shall be prohibited in rooms and compartments where milk or dairy products are unpacked or exposed. Clean white or light colored washable outer garments and caps (paper caps or hairnets are acceptable) shall be worn by all persons engaged in handling milk or dairy products.

B. Health.

(1) No person afflicted with a communicable disease shall be permitted in any room or compartment where milk or dairy products are prepared, processed, or otherwise handled. No person who has a discharging or infected wound or sore, or lesion on hands, arm or other exposed portions of the body shall work in any plant processing or packaging rooms or in any capacity resulting in contact with milk or dairy products including dairy farms and bulk milk haulers.

(2) An employee returning to work following illness from a communicable disease shall have a certificate from his attending physician to establish proof of complete recovery.

R70-320-17. Transportation of Raw Milk.

A. Transportation of Milk.

Vehicles used for the transportation of milk shall be of the enclosed type, constructed and operated to protect the product from extreme temperatures, dust, or other adverse conditions, and they shall be kept clean.

B. Transport Trucks.

1. Construction.

Transport tanks shall be stainless steel lined and so constructed that the lining will not buckle, sag, or prevent complete drainage. All milk contact surfaces shall be smooth, easily cleaned, and maintained in good repair. The pump and hose cabinet shall be fully enclosed with tight-fitting doors. New and replacement transport tanks shall meet the applicable 3-A Sanitary Standards for Milk Transport Tanks.

2. Transfer of Milk to Transport Tank.

Milk shall be transferred from farm bulk tanks to transport tanks through stainless steel piping or approved tubing under sanitary conditions. This sanitary piping and tubing shall be clean and capped when not in use.

3. Cleaning and Sanitizing.

A covered or enclosed washing dock and other facilities shall be available for all plants that receive or ship milk in tanks. Milk transport tanks, sanitary piping, fittings, and pumps shall be cleaned and sanitized at least once each day, after use; provided that, if they are not to be used immediately after emptying a load of milk, they shall be washed promptly after use and given bactericidal treatment immediately before use.

Whenever a milk tank truck has been cleaned and sanitized as required by the regulatory agency, it shall bear a tag, or a record shall be made showing the date, time, place and signature of the employee or contract hauler doing the work unless the truck delivers to only one receiving unit where responsibility for cleaning and sanitizing can be definitely established without tagging. The tag shall not be removed until the tank is again washed and sanitized.

4. Transportation Trucks, Tanks, and Accessories.

The transportation truck, tank and accessories shall be used for no other purpose than the handling of milk unless such use is approved by the Department.

R70-320-18. Transport Tanks, Operators.

A. All milk haulers must possess a permit issued by the Department. A candidate or substitute milk hauler is required to obtain a permit within ten days from the date they commence hauling operations. The ten day period is for training and observation to provide the Department and company officials with an opportunity to check the hauler's pickup technique and observe the degree to which he is following required pickup practices. Training may take the form of instruction in pickup technique or may include a required period of observation apprenticeship in which the candidate accompanies a permittee in the performance of his duties.

1. An examination may be administered at the conclusion of the ten day period and candidates failing the test will be denied permits until indicated deficiencies are corrected.

2. Drivers shall be qualified to efficiently carry out the procedures necessary for the sanitary transfer of milk from the farm tank to the dairy plant. All milk haulers shall be subject to such examination as the Department may prescribe by rule in order to receive and retain such permit. The fee for the permit shall be \$25.00 and renewed annually.

B. The milk line shall be passed through a special port opening through the milkhouse wall with care to prevent contact with the ground. The port opening shall be closed when not in use.

C. It shall be the responsibility of the milk hauler to assure himself that, in the event the processor washes and sanitizes the truck, the operation has been adequately performed, and that prior to use, the truck tank has been properly sanitized with an approved sanitizer. In the event it is his responsibility to sanitize the truck tank, he shall do so with a solution of proper strength.

D. The milk hauler shall wash his hands immediately before taking a measurement and/or sample of the milk.

E. The milk shall be observed and checked for abnormalities or adulterations, and all abnormal or adulterated milk shall be rejected.

F. Drivers shall maintain a clean, neat, personal appearance and take measurements and collect milk samples for analysis in a sanitary manner using properly identified clean containers. All sampling procedures shall follow standard methods.

G. The following are the procedures for picking up bulk milk.

1. Take and record the tank reading. (If the tank is agitating when the hauler arrives, let it continue for five minutes before taking the butterfat sample. Then turn off the agitator and wait until the milk is quiescent before taking measurement.) Note: Cleanliness and dryness are essential to accurate readings. The rod must be warm enough so that moisture from the atmosphere will not condense on the rod after it has been dried or dusted, prior to inserting it into a tank to make a reading of the liquid level.

2. Turn on the agitator and agitate at least five minutes before taking a sample.

3. While tank is agitating, record temperature and time and

hook up the hose and electricity to the truck.

4. While agitator is running, take sample from three positions in tank center and both ends. Collect quality samples in same manner.

5. Shut off agitator and pump out tank.

6. Rinse tank and accessories free of milk with clean water immediately after emptying and disconnecting tubing.

H. After the milk is pumped to the transportation tank the milk conductor tubing shall be capped and returned to the vehicle storage cabinet. Care shall be taken to prevent contamination of the milk tubing.

R70-320-19. Supervision.

A. Regulatory Agency. The Department to insure compliance with the provisions of these rules shall:

1. Make periodic examinations of milk from a representative number of producers at each plant to determine whether the milk is being graded and tested in accordance with the applicable provisions of Section R70-320-6.

2. Examine the quality records of transfer producers at each plant periodically and when necessary determine the acceptability of such producer's milk.

3. Make periodic farm inspections and compare the results of such inspections with the completed Farm Certification Report Forms on file at the plant to determine whether the fieldmen are making proper inspections and reports.

4. Periodically examine the completed Farm Certification Report Forms and milk quality test records on individual producers at each plant.

5. Periodically inspect plant premises, buildings, equipment, facilities, operations, and sanitary practices.

6. Assist plant management, laboratory and field staffs with educational programs among producers relating to quality improvements of milk.

7. Perform such other services and institute such other supervisory procedures as may be necessary to ensure compliance with the provisions of these rules.

KEY: food inspection

1994

Notice of Continuation February 8, 2007

4-2-2(1)(j)

4-3-2

R70. Agriculture and Food, Regulatory Services.**R70-350. Ice Cream and Frozen Dairy Foods Standards.****R70-350-1. Authority.**

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

B. Scope: This rule shall apply to all frozen dairy foods and frozen dairy food mixes sold, bought, processed, manufactured, or distributed within the state of Utah.

R70-350-2. Standards of Identity.

A. Federal Standards Acceptance.

The standard for federally defined products of ice cream, ice milk, sherbet, water ice, and related products shall be the same in Utah as the most recently accepted federal standards of identity for these frozen desserts unless specifically excluded or modified by some provision of state rule or interpretation thereof.

B. Frozen Dairy Foods Mix.

Frozen Dairy Foods Mix shall be defined as the unfrozen combination of ingredients to be used in any frozen dairy product defined in this rule with or without fruits, fruit juices, candy, nut meats, flavoring or harmless color.

C. Shake Mix

Shake Mix shall be defined as a product resulting from agitation of frozen dairy food to which Grade A pasteurized milk has been added. The resulting product must have at least two percent but not more than seven percent milkfat and at least 11 percent milk solids; or it may be a product prepared from the same ingredients in the same manner as prescribed in the definition for ice milk except that it shall be sold or served in a semi-frozen state.

D. Frozen Yogurt, Frozen Lowfat Yogurt and Frozen Nonfat Yogurt.

Frozen yogurt, frozen lowfat yogurt, and nonfat frozen yogurt is the food made from dairy ingredients with or without added flavoring or seasoning, which has been pasteurized and fermented by one or more strains of *Lactobacillus bulgaricus*, including yogurt strains, *Streptococcus thermophilus* and *Lactobacillus acidophilus*. The parenthetical phrase "(heat-treated after culturing)" shall follow the name of the food if the dairy ingredients have been pasteurized after culturing. Fruits may be added before or after the mix is pasteurized and cultured. Such product may contain harmless edible stabilizers or emulsifiers not to exceed 0.6 percent. It shall have a titratable acidity of not less than 0.5 percent expressed as lactic acid; it shall contain no more than 10 coliform bacteria per gram; it shall contain not more than 10 colonies per gram each of molds, yeasts, and other fungi. The freezing and air incorporation shall not exceed 60 percent by volume of the product. Frozen yogurt shall contain not less than 3.25 percent milkfat. Frozen lowfat yogurt shall contain not less than 2 percent milkfat. Frozen nonfat yogurt shall contain less than 0.5 percent milkfat. Frozen fruit yogurt shall contain not less than 8 percent by weight of clean, mature, sound fruit or its equivalent in other forms. The milkfat content of frozen fruit yogurt may be reduced to not less than 2.8 percent milkfat and the milkfat content of lowfat frozen fruit yogurt may be reduced to not more than 1.3 percent milkfat. Frozen yogurt, frozen lowfat yogurt and nonfat frozen yogurt shall contain not less than 8.25 percent milk solids not fat.

E. Frozen yogurt mix, Frozen Lowfat yogurt mix, and Frozen nonfat yogurt mix are unfrozen products which are used in the manufacture of frozen yogurt, Frozen Lowfat yogurt, and Frozen Nonfat yogurt. They shall comply with all the requirements for frozen yogurt, Frozen Lowfat yogurt, and frozen nonfat yogurt.

R70-350-3. Bacterial Quality.

A. Sampling.

Samples of ice cream and frozen dairy foods shall be tested

by each processor at least once a month and from each distributor as often as may be required by the regulatory authorities. The products defined in this rule shall contain not more than 50,000 bacteria per milliliter by standard plate count, except cultured products with viable organisms shall be exempt from this bacterial count requirement. All products shall have a coliform count not exceeding 10 per gram.

B. Enforcement.

1. Whenever more than one of the last four consecutive coliform counts of samples taken on separate days by the processor or the Department is in excess of 10 per gram or more than one of the last four bacteria counts of samples taken on separate days by the processor or the Department is above 50,000 per milliliter, a written warning notice thereof shall be sent to the person concerned by the Department. An authorized regulatory agency shall then take an additional sample, but not before the lapse of three days after notification. Violation of the standards as shown by the results of these additional samples shall call for immediate enforcement action to require the discontinuance of the sale or distribution of the product from the establishment until additional samples taken by the authorized regulatory agency shall show the product to be in compliance with the applicable standards.

2. Frozen dairy foods shall, after pasteurization and before the addition of bulky flavorings such as fruits, nuts, and candy, meet the bacterial standards requirements listed in this section. Finished product without bulky flavorings shall also meet the requirements in this section. Bulky flavorings shall meet all food standards for composition, sanitation and adulteration in effect in Utah for foods.

R70-350-4. Pasteurization and Sanitation.

A. Pasteurization.

1. All products defined in this rule shall be pasteurized by heating every particle of the product to at least 155 degrees F and holding at that temperature or above for at least 30 minutes under the required safeguards in approved equipment as outlined in the 3-A standards; provided that any other method which is demonstrated to be equally efficient and is approved by the Department may be allowed.

2. Time and temperature record charts for pasteurization shall be dated and preserved for a period of at least six months at the plant of manufacture.

B. Reconstitution.

Whenever water must be used to reconstitute any defined product, the product shall be pasteurized after being reconstituted or it shall be reconstituted by pouring the concentrate or dry mix from the factory-packed container into a properly constructed, clean, and sanitized container.

C. Cooling.

All liquid ingredients which will support bacterial growth shall be kept or immediately cooled to 40 degrees F. or below.

D. Sanitation. All manufacturing, processing, storage, distribution or handling of any product regulated under this act shall be done in buildings or other approved facilities using utensils, equipment, and methods which are approved by the Department or other properly authorized regulatory agency.

R70-350-5. Adulteration and Misbranding.

A. Labeling. Labeling of packages shall include the name and address of the manufacturer, packer, or distributor; net contents, ingredients and common or usual name of the product. Also, labeling shall meet all other applicable requirements of state labeling rules and federal regulations adopted by reference under the Utah Foods Act, including nutritional labeling where applicable.

B. Imitations.

1. Any food product offered for sale in semblance or imitation of any food regulated under this rule shall be deemed

to be adulterated and misbranded if such food does not conform to the standards under this rule, notwithstanding the employment of any fanciful name or use of the word "imitation" to designate the product.

2. No person shall use "ice cream", "cream", "creme", "creamy", or "cremey", or any other word or phrase which may be construed to be misleading in either labeling or advertising, sale, or distribution of ice milk.

C. Adulteration.

Products defined in this rule shall be deemed to be adulterated if they were not produced under the sanitary requirements of this rule or if they contain any substance in sufficient quantity to be deleterious to the public health or if they meet the criteria of adulteration under Utah's dairy and food laws.

KEY: food inspection

1992

4-3-2

Notice of Continuation February 5, 2007

R70. Agriculture and Food, Regulatory Services.**R70-360. Procedure for Obtaining a License to Test Milk for Payment.****R70-360-1. Authority.**

- A. Promulgated Under the Authority of Section 4-3-2.
- B. Scope: This rule outlines the requirements that are necessary in order to obtain a license to test milk for payment.

R70-360-2. License Requirements.

- A. This license is issued to an individual and is not transferable.
- B. Licenses shall expire on December 31 of each year.
- C. In order to obtain a license to test milk for payment, an individual must demonstrate testing proficiency by successfully completing a series of split samples provided by the department. After an individual meets the criteria for certification, an application will be filled out and submitted along with payment of a license fee, determined by the department pursuant to Subsection 4-2-2(2), to the department for issuance of a license.

R70-360-3. Renewal Procedure.

Split samples may be made available to licensed testers periodically to check for competency in testing. The Department will provide the results to the tester. The split sample results will be evaluated. If a tester does not achieve accurate results, the Department will work with that tester to correct the problem.

R70-360-4. License Suspension or Revocation.

If any provision of this rule or the Utah Dairy Act is violated, the tester's license may be subject to suspension or revocation after due process of a hearing.

KEY: food inspection**1992****4-3-2****Notice of Continuation February 5, 2007**

R151. Commerce, Administration.**R151-2. Government Records Access and Management Act Rule.****R151-2-1. Purpose and Authority.**

This rule is made pursuant to Section 63-2-204, which allows agencies to specify where and to whom requests for access to records shall be directed; Subsection 63-2-904 (2), which allows an agency to specify at which levels certain requirements shall be undertaken; and Section 63-2-603, concerning requests to amend a record.

R151-2-2. 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:

- (1) the duties set forth in Section 63-2-903; and
- (2) responding to requests for access to division records.

R151-2-3. Requests for Access.

(1) Waiver of Written Requests: Notwithstanding Subsection 63-2-204 (1) requiring written requests for records, a division may at its discretion waive the requirement for a written request if the records requested are public, the records are readily accessible, and the request is filled promptly by allowing access or copying at the time the request is made.

(2) To whom directed: All requests for access to records shall be directed to the records officer of the particular division which the requester believes generated or possesses the records.

(3) Fees: A fee shall be charged for copies of records provided. That fee shall be established pursuant to Title 63, Chapter 38 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.

R151-2-4. Forms.

(1) The forms described as follows, or a written document containing substantially similar information to that requested in the forms, shall be completed by requesters in connection with records requests, unless a division waives written requests.

(a) Form 2-204(1), "Request for Records", shall be used by all persons requesting records from the department or its divisions. It is intended to assist persons who request records to comply with the requirements of Subsection 63-2-204 (1) regarding the contents of a request. The form requires the requester's name, address, telephone, organization, if any, a description of the records requested, and information regarding the requester's status, for records which are not public.

(b) Form 2-206(2), "Certification by Requesting Governmental Entity", shall be used by another governmental entity requesting controlled or private records from a division or the department, pursuant to Subsection 63-2-206 (2). This form requires both the information to be provided in Form 2-204(1) and certain representations required from the governmental entity, if the information sought is not public.

(c) Form 2-206(5), "Disclosure and Agreement", shall be used when another governmental entity requests controlled, private or protected records, pursuant to Subsection 63-2-206 (5). This form discloses to the governmental entity certain information regarding restrictions on access and obtains the written agreement of the governmental entity to abide with those restrictions.

(2) The department or its divisions may use forms to respond to requests for records.

R151-2-5. Designation of Authorized Officers.

(1) The determinations or weighing of interests permitted or required under the following sections by a "governmental entity" or the "head of a governmental entity" shall be made by the division director which has custody or control of the records,

or his designee:

(a) Subsection 63-2-201 (5) (b), which governs disclosure of certain private or protected records;

(b) Section 63-2-308, which governs business confidentiality claims;

(c) Subsection 63-2-202 (8), which governs disclosure for research purposes;

(d) Subsection 63-2-201 (10) (a), which governs intellectual property rights.

(2) The "chief administrative officer of the governmental entity" for purposes of appeals under Sections 63-2-401 and 63-2-603 shall be the Executive Director of the Department of Commerce or the Executive Director's designee.

R151-2-6. Designation of Requests to Amend Record.

Requests to amend a record under Section 63-2-603 are hereby designated as informal proceedings.

KEY: government documents, freedom of information, public records

July 2, 2002

Notice of Continuation February 15, 2007

63-2-204

63-2-201(5)(b)

63-2-201(10)(a)

63-2-202(8)

63-2-308

63-2-401

63-2-603

R152. Commerce, Consumer Protection.**R152-26. Telephone Fraud Prevention Act.****R152-26-1. Authority.**

These rules are promulgated pursuant to Section 13-2-5 to administer the Utah Telephone Fraud Prevention Act.

R152-26-2. Scope and Applicability.

These rules shall have the same scope and applicability as Title 13, Chapter 26.

R152-26-3. Definitions.

The following terms, in addition to the definitions appearing in Section 13-26-2, shall be used in construing this rule.

- (1) "Director" means the director of the Utah Department of Commerce, Division of Consumer Protection.
- (2) "Division" means the Utah Department of Commerce, Division of Consumer Protection.
- (3) "Registrant" means any person who has submitted an application for registration to the division pursuant to Section 13-26-3.

R152-26-4. Denial, Revocation, or Suspension of Registration.

(1) The director may deny an application for registration for the following reasons:

- (a) the registrant has committed any of the violations of law set forth in Section 13-26-11; or
- (b) the registrant has failed to comply with all of the requirements of Section 13-26-3 and these rules;

(2) The director may suspend or revoke a registration for any violation of Title 13, Chapter 26 by the registrant.

R152-26-5. Registration.

(1) A registrant shall submit an application for registration only on the form authorized by the division. An application may be summarily denied if:

- (a) it is submitted on a form not authorized by the division;
 - (b) it is submitted on the authorized form but it is not legible; or
 - (c) it is submitted on the authorized form but it is incomplete in some material respect.
- (2) The application shall include the following:
- (a) the registrant's name, address, telephone number and facsimile number, if any;
 - (b) the names, addresses, birth dates and places, and social security numbers of all registrant's officers, directors, members, principals and/or key employees;
 - (c) the registrant's previous business addresses during the previous ten years;
 - (d) other names, if any, that the registrant does business under;
 - (e) identification of all licenses or permits currently held by the registrant and any that have been revoked or suspended;
 - (f) disclosure of any judgment, injunctive order or conviction of any of registrant's officers, directors, members, principals, or key-employees of racketeering or any offense involving fraud, theft, embezzlement, fraudulent conversion of property, misappropriation of property or other similar crimes;
 - (g) the name and address of the registrant's registered agent;
 - (h) the location where telephone numbers are to be dialed; and
 - (i) a description of the goods or services that are to be the subject of the telephone solicitation.

(3) Each registrant shall submit copies of the following documents with their application:

- (a) All scripts to be used in the telephone solicitation;
- (b) Articles of incorporation or other organizational

documentation showing registrant's current legal status.

(4) At the option of the director, the processing of an application by the division's staff may be delayed to give the registrant an opportunity to cure technical defects in his application.

R152-26-7. Bonds, Irrevocable Letters of Credit and Certificates of Deposit.

(1) At the option of the registrant, a bond, irrevocable letter of credit or certificate of deposit may be tendered to the division to fulfill the requirements of Section 13-26-3(3)(a).

(2) Whichever type of instrument is tendered by a registrant, payment is immediately due and owing to the division when:

- (a) the director delivers a signed writing to the registrant's surety or issuing financial institution demanding payment of a specified sum of money; and
- (b) the registrant's liability in the amount specified is demonstrated by a certified copy of the division's final order or the civil judgment of any Utah or federal court, which copy shall be attached to the director's demand for payment.

(3) The division may make a demand on a bond, irrevocable letter of credit or certificate of deposit either in its own right or as the representative of consumers who have been injured by the registrant's violation of Title 13, Chapter 26.

(4) Instruments tendered to the division under Section 13-26-3(3)(a) may be executed in any form that the director deems commercially and legally reasonable and consistent with this rule. The division's acceptance of a non-conforming instrument does not result in a waiver of the requirements of this rule.

R152-26-8. Isolated Transaction Exemption.

For purposes of Section 13-26-4(2)(i), an "isolated transaction" means no more than two occurrences in any twelve month period.

R152-26-9. Right of Rescission.

(1) For purposes of Section 13-26-5(2), a written notification of cancellation is effective the earlier of:

- (a) when the notice is actually received by the seller; or
- (b) when the notice is placed in the custody of the U.S. Postal Service, provided the postage is prepaid and the letter is properly addressed to the seller.

(2) A rescission letter is in the custody of the U.S. Postal Service when the letter is actually placed in the possession of a U.S. Postal Service employee or in a receptacle for letters authorized by the U.S. Postal Service.

**KEY: telephone, fraud, consumer
February 23, 2007
Notice of Continuation June 3, 2002**

13-2-5

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

R156-1-101. Title.

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

R156-1-102. Definitions.

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

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

(2) "Aggravating circumstances" means any consideration or factors that may justify an increase in the severity of an action to be imposed upon an applicant or licensee. Aggravating circumstances include:

(a) prior record of disciplinary action, unlawful conduct, or unprofessional conduct;

(b) dishonest or selfish motive;

(c) pattern of misconduct;

(d) multiple offenses;

(e) obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the Division;

(f) submission of false evidence, false statements or other deceptive practices during the disciplinary process including creating, destroying or altering records after an investigation has begun;

(g) refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the Division;

(h) vulnerability of the victim;

(i) lack of good faith to make restitution or to rectify the consequences of the misconduct involved;

(j) illegal conduct, including the use of controlled substances; and

(k) intimidation or threats of withholding clients' records or other detrimental consequences if the client reports or testifies regarding the unprofessional or unlawful conduct.

(3) "Branching questionnaire", as used in Section R156-1-601, means an adaptive, progressive inquiry used by a physician to determine a health history and assessment, and serves as the basis for a diagnosis.

(4) "Cancel" or "cancellation" means nondisciplinary action by the division to rescind, repeal, annul, or void a license issued in error. Such action includes rescinding a license issued to an applicant whose payment of the required application fee is dishonored when presented for payment, or who has been issued a conditional license pending a criminal background check and the check cannot be completed due to the applicant's failure to resolve an outstanding warrant or to submit acceptable fingerprint cards.

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) replaces a temporary license;

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

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

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

(14) "Investigative subpoena authority" means, except as otherwise specified in writing by the director, the division regulatory and compliance officer, or if the division regulatory and compliance officer is unable to so serve for any reason, a bureau manager designated by the regulatory and compliance officer, or if both the division regulatory and compliance officer and the designated bureau manager are unable to so serve for any reason, a department administrative law judge.

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

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

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

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

(17) "Mitigating circumstances" means any consideration or factors that may justify a reduction in the severity of an action to be imposed upon an applicant or licensee.

(a) Mitigating circumstances include:

(i) absence of prior record of disciplinary action, unlawful conduct or unprofessional conduct;

(ii) absence of dishonest or selfish motive;

(iii) personal, mental or emotional problems provided such problems have not posed a risk to the health, safety or welfare of the public or clients served such as drug or alcohol abuse while engaged in work situations or similar situations where the licensee or applicant should know that they should refrain from engaging in activities that may pose such a risk;

(iv) timely and good faith effort to make restitution or rectify the consequences of the misconduct involved;

(v) full and free disclosure to the client or Division prior to the discovery of any misconduct;

(vi) inexperience in the practice of the occupation and profession provided such inexperience is not the result of failure to obtain appropriate education or consultation that the applicant or licensee should have known they should obtain prior to beginning work on a particular matter;

(vii) imposition of other penalties or sanctions; and

(viii) remorse.

(b) The following factors should not be considered as

mitigating circumstances:

(i) forced or compelled restitution;
(ii) withdrawal of complaint by client or other affected persons;

(iii) resignation prior to disciplinary proceedings;
(iv) failure of injured client to complain; and
(v) complainant's recommendation as to sanction.

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

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

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

(21) "Probation" means disciplinary action placing terms and conditions upon a license;

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

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

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

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

(24) "Reinstate" or "reinstatement" means to activate an expired license or to restore a license which is restricted, as defined in Subsection (26)(b), or is suspended, or placed on probation, to a lesser restrictive license or an active in good standing license.

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

(26) "Remove or modify restrictions" means to remove or modify restrictions, as defined in Subsection (26)(a), placed on a license issued to an applicant for licensure.

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

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

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

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

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

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

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

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

(33) "Warning or final disposition letters which do not

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

(a) division concerns;

(b) allegations upon which those concerns are based;

(c) potential for administrative or judicial action; and

(d) disposition of division concerns.

R156-1-103. Authority - Purpose.

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

R156-1-106. Division - Duties, Functions, and Responsibilities.

(1) In accordance with Subsection 58-1-106(2), the following responses to requests for lists of licensees may include multiple licensees per request and may include home telephone numbers and home addresses, subject to the restriction that the addresses and telephone numbers shall only be used by a requester for purposes for which the requester is properly authorized and shall not be sold or otherwise redisclosed by the requester:

(a) responses to requests from another governmental entity, government-managed corporation, a political subdivision, the federal government, another state, or a not-for-profit regulatory association to which the division is a member;

(b) responses to requests from an occupational or professional association, private continuing education organizations, trade union, university, or school, for purposes of education programs for licensees;

(c) responses to a party to a prelitigation proceeding convened by the division under Title 78, Chapter 14;

(d) responses to universities, schools, or research facilities for the purposes of research;

(e) responses to requests from licensed health care facilities or third party credentialing services, for the purpose of verifying licensure status for credentialing or reimbursement purposes; and

(f) responses to requests from a person preparing for, participating in, or responding to:

(i) a national, state or local emergency;

(ii) a public health emergency as defined in Section 26-23b-102; or

(iii) a declaration by the President of the United States or other federal official requesting public health-related activities.

(2) In accordance with Subsection 58-1-106(3)(a), the division may deny a request for an address or telephone number of a licensee to an individual who provides proper identification and the reason for the request, in writing, to the division, if the reason for the request is deemed by the division to constitute an unwarranted invasion of privacy or a threat to the public health, safety, and welfare.

(3) In accordance with Subsection 58-1-106(3)(c), proper identification of an individual who requests the address or telephone number of a licensee and the reason for the request, in writing, shall consist of the individual's name, mailing address, and daytime number, if available.

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

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

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

(3) The provisions of the other rules in Title R156 shall

contain specific or unique provisions applicable to particular occupations or professions.

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

R156-1-109. Presiding Officers.

In accordance with Subsection 63-46b-2(1)(h), Sections 58-1-104, 58-1-106, 58-1-109, 58-1-202, 58-1-203, 58-55-103, and 58-55-201, except as otherwise specified in writing by the director, or for Title 58, Chapter 55, the Construction Services Commission, the designation of presiding officers is clarified or established as follows:

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

(2) Subsections 58-1-109(2) and 58-1-109(4) are clarified with regard to defaults as follows. Unless otherwise specified in writing by the director, or with regard to Title 58, Chapter 55, by the Construction Services Commission, the department administrative law judge is designated as the presiding officer for entering an order of default against a party, for conducting any further proceedings necessary to complete the adjudicative proceeding, and for issuing a recommended order to the director or commission, respectively, determining the discipline to be imposed, licensure action to be taken, relief to be granted, etc.

(3) Except as provided in Subsection (4) or otherwise specified in writing by the director, the presiding officer for adjudicative proceedings before the division are as follows:

(a) Director. The director shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(f) through (g), and R156-46b-201(2)(a) through (b), however resolved, including stipulated settlements and hearings; and

(ii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(d), (h),(j), (m), (n), (p), and (q), and R156-46b-202(2)(a) through (d), however resolved, including memorandums of understanding and stipulated settlements.

(b) Bureau managers or program coordinators. Except for Title 58, Chapter 55, the bureau manager or program coordinator over the occupation or profession or program involved shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(a) through (c), provided that any evidentiary hearing requested shall be conducted by the appropriate board who shall be designated as the presiding officer to act as the fact finder at any evidentiary hearing and shall issue a recommended order to the division based upon the record developed at the hearing determining all issues pending before the division to the director for a final order, and R156-46b-201(1)(e). The authority of the presiding officer in formal adjudicative proceedings described in R156-46b-201(1)(e) shall be limited to approval of claims, conditional denial of claims, and final denial of claims based upon jurisdictional defects;

(ii) formal adjudicative proceedings described in Subsection R156-46b-201(1)(h), for purposes of determining whether a request for a board of appeal is properly filed as set forth in Subsections R156-56-105(1) through (4); and

(iii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(a) through (c), (e), (g), (i), (k), and (o).

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

(c) Contested Citation Hearing Officer. The regulatory and compliance officer or other contested citation hearing officer designated in writing by the director shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(l).

(d) Uniform Building Code Commission. The Uniform Building Code Commission shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-201(1)(f) for convening a board of appeal under Subsection 58-56-8(3), for serving as fact finder at any evidentiary hearing associated with a board of appeal, and for entering the final order associated with a board of appeal. An administrative law judge shall perform the role specified in Subsection 58-1-109(2).

(e) Residence Lien Recovery Fund Advisory Board. The Residence Lien Recovery Fund Advisory Board shall be the presiding officer for adjudicative proceedings described in Subsection R156-46b-201(1)(e) and R156-46b-202(1)(g) that exceed the authority of the program coordinator, as delegated by the board, or are otherwise referred by the program coordinator to the board for action.

(4) Unless otherwise specified in writing by the Construction Services Commission, the presiding officers and process for adjudicative proceedings under Title 58, Chapter 55, are established or clarified as follows:

(a) Commission.

(i) The commission shall be the presiding officer for all adjudicative proceedings under Title 58, Chapter 55, except as otherwise delegated by the commission in writing or as otherwise provided in these rules; provided, however, that all orders adopted by the commission as a presiding officer shall require the concurrence of the director.

(ii) Unless otherwise specified in writing by the commission, the commission is designated as the presiding officer:

(A) for formal adjudicative proceedings described in Subsections R156-46b-201(1)(g) and R156-46b-201(2)(a) through (b), however resolved, including stipulated settlements and hearings;

(B) informal adjudicative proceedings described in Subsections R156-46b-202(1)(d), (m), (n), (p), and (q), and R156-46b-202(2)(a) and (c), however resolved, including memorandums of understanding and stipulated settlements;

(C) to serve as fact finder and adopt orders in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed under Title 58, Chapter 55; and

(D) to review recommended orders of a board, an administrative law judge, or other designated presiding officer who acted as the fact finder in an evidentiary hearing involving a person licensed or required to be licensed under Title 58, Chapter 55, and to adopt an order of its own. In adopting its order, the commission may accept, modify or reject the recommended order.

(iii) If the commission is unable for any reason to act as the presiding officer as specified, it shall designate another presiding officer in writing to so act.

(iv) Orders of the commission shall address all issues before the commission and shall be based upon the record developed in an adjudicative proceeding conducted by the

commission. In cases in which the commission has designated another presiding officer to conduct an adjudicative proceeding and submit a recommended order, the record to be reviewed by the commission shall consist of the findings of fact, conclusions of law, and recommended order submitted to the commission by the presiding officer based upon the evidence presented in the adjudicative proceeding before the presiding officer.

(v) The commission or its designee shall submit adopted orders to the director for the director's concurrence or rejection within 30 days after it receives a recommended order or adopts an order, whichever is earlier. An adopted order shall be deemed issued and constitute a final order upon the concurrence of the director.

(vi) If the director or his designee refuses to concur in an adopted order of the commission or its designee, the director or his designee shall return the order to the commission or its designee with the reasons set forth in writing for the nonconcurrence therein. The commission or its designee shall reconsider and resubmit an adopted order, whether or not modified, within 30 days of the date of the initial or subsequent return, provided that unless the director or his designee and the commission or its designee agree to an extension, any final order must be issued within 90 days of the date of the initial recommended order, or the adjudicative proceeding shall be dismissed. Provided the time frames in this subsection are followed, this subsection shall not preclude an informal resolution such as an executive session of the commission or its designee and the director or his designee to resolve the reasons for the director's refusal to concur in an adopted order.

(vii) The record of the adjudicative proceeding shall include recommended orders, adopted orders, refusals to concur in adopted orders, and final orders.

(viii) The final order issued by the commission and concurred in by the director may be appealed by filing a request for agency review with the executive director or his designee within the department.

(ix) The content of all orders shall comply with the requirements of Subsection 63-46b-5(1)(i) and Sections 63-46b-10 and 63-46b-11.

(b) Director. Unless otherwise specified in writing by the commission, the director is designated as the presiding officer for conducting informal adjudicative proceedings specified in R156-46b-202(2)(b).

(c) Administrative Law Judge. Unless otherwise specified in writing by the commission, the department administrative law judge is designated as the presiding officer to conduct formal adjudicative proceedings before the commission and its advisory boards, as specified in Subsection 58-1-109(2).

(d) Bureau Manager. Unless otherwise specified in writing by the commission, the responsible bureau manager is designated as the presiding officer for conducting:

(i) formal adjudicative proceedings specified in Subsections R156-46b-201(1)(a) through (c), provided that any evidentiary hearing requested shall be conducted by the appropriate board or commission who shall be designated as the presiding officer to act as the fact finder at any evidentiary hearing and to adopt orders as set forth in these rules; and

(ii) informal adjudicative proceedings specified in Subsections R156-46b-202(1)(a) through (c), (e), (i), and (o).

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

(e) Plumbers Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Plumbers Licensing Board is designated as the presiding officer to serve as the fact finder and to issue

recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as plumbers.

(f) Electricians Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Electricians Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as electricians.

(g) Alarm System Security and Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Alarm System Security and Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as alarm companies or agents.

R156-1-110. Issuance of Investigative Subpoenas.

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

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

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

(2) The investigative subpoena authority may quash or modify an investigative subpoena if it is shown to be unreasonable or oppressive.

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

(1) The executive director shall appoint the members of peer or advisory committees established under Title 58 or Title R156.

(2) Except for ad hoc committees whose members shall be appointed on a case-by-case basis, the term of office of peer or advisory committee members shall be for four years. The executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the peer or advisory committee is appointed every two years.

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

(4) If a vacancy on a peer or advisory committee occurs, the executive director shall appoint a replacement to fill the unexpired term. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(5) If a peer or advisory committee member fails or refuses to fulfill the responsibilities and duties of a peer or advisory committee member, including the attendance at peer committee meetings, the executive director may remove the peer or advisory committee member and replace the member in

accordance with this section. After filling the unexpired term, the replacement may be appointed for only one additional full term.

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

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

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

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

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

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

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

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

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

(2) With the exception of the appointment and removal of members and filling of vacancies by the chairman of a board, emergency review committees, committees shall serve in accordance with Subsections R156-1-205(7), and (9) through (12).

R156-1-301. Application for Licensure - Filing Date - Applicable Requirements for Licensure - Issuance Date.

(1) The filing date for an application for licensure shall be the postmark date of the application or the date the application is received and date stamped by the division, whichever is earlier.

(2) Except as otherwise provided by statute, rule or order, the requirements for licensure applicable to an application for licensure shall be the requirements in effect on the filing date of the application.

(3) The issuance date for a license issued to an applicant for licensure shall be as follows:

(a) the date the approval is input into the division's electronic licensure database for applications submitted and processed manually; or

(b) the date printed on the verification of renewal certificate for renewal applications submitted and processed electronically via the division's Internet Renewal System.

R156-1-302. Consideration of Good Moral Character, Unlawful Conduct, Unprofessional Conduct, or Other Mental or Physical Condition.

Pursuant to the provisions of Subsection 58-1-401(1) and (2), if an applicant or licensee has failed to demonstrate good

moral character, has been involved in unlawful conduct, has been involved in unprofessional conduct, or has any other mental or physical condition which conduct or condition, when considered with the duties and responsibilities of the license held or to be held, demonstrates a threat or potential threat to the public health, safety or welfare, the Division may consider various relevant factors in determining what action to take regarding licensure including the following:

(1) aggravating circumstances, as defined in Subsection R156-1-102(2);

(2) mitigating circumstances, as defined in Subsection R156-1-102(17);

(3) the degree of risk to the public health, safety or welfare;

(4) the degree of risk that a conduct will be repeated;

(5) the degree of risk that a condition will continue;

(6) the magnitude of the conduct or condition as it relates to the harm or potential harm;

(7) the length of time since the last conduct or condition has occurred;

(8) the current criminal probationary or parole status of the applicant or licensee;

(9) the current administrative status of the applicant or licensee;

(10) results of previously submitted applications, for any regulated profession or occupation;

(11) results from any action, taken by any professional licensing agency, criminal or administrative agency, employer, practice monitoring group, entity or association;

(12) evidence presented indicating that restricting or monitoring an individual's practice, conditions or conduct can protect the public health, safety or welfare;

(13) psychological evaluations; or

(14) any other information the Division or the board reasonably believes may assist in evaluating the degree of threat or potential threat to the public health, safety or welfare.

R156-1-305. Inactive Licensure.

(1) In accordance with Section 58-1-305, except as provided in Subsection (2), a licensee may not apply for inactive licensure status.

(2) The following licenses issued under Title 58 that are active in good standing may be placed on inactive licensure status:

(a) advanced practice registered nurse;

(b) audiologist;

(c) certified nurse midwife;

(d) certified public accountant emeritus;

(e) certified registered nurse anesthetist;

(f) certified court reporter;

(g) certified social worker;

(h) chiropractic physician;

(i) clinical social worker;

(j) contractor;

(k) deception detection examiner;

(l) deception detection intern;

(m) dental hygienist;

(n) dentist;

(o) direct-entry midwife;

(p) genetic counselor;

(q) health facility administrator;

(r) hearing instrument specialist;

(s) licensed substance abuse counselor;

(t) marriage and family therapist;

(u) naturopath/naturopathic physician;

(v) optometrist;

(w) osteopathic physician and surgeon;

(x) pharmacist;

(y) pharmacy technician;

- (z) physician assistant;
- (aa) physician and surgeon;
- (bb) podiatric physician;
- (cc) private probation provider;
- (dd) professional counselor;
- (ee) psychologist;
- (ff) radiology practical technician;
- (gg) radiology technologist;
- (hh) security personnel;
- (ii) speech-language pathologist; and
- (jj) veterinarian.

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

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

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

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

(7) An inactive licensee whose license is activated during the last four months of a renewal cycle shall, upon payment of the appropriate fees, be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their activated license.

R156-1-308a. Renewal Dates.

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

(1) Acupuncturist	May 31	even years
(2) Advanced Practice Registered Nurse	January 31	even years
(3) Alternate Dispute Resolution Provdr	September 30	even years
(4) Architect	May 31	even years
(5) Athlete Agent	September 30	even years
(6) Athletic Trainer	May 31	odd years
(7) Audiologist	May 31	odd years
(8) Building Inspector	November 30	odd years
(9) Burglar Alarm Security	November 30	even years
(10) C.P.A. Firm	September 30	even years
(11) Certified Court Reporter	May 31	even years
(12) Certified Dietitian	September 30	even years
(13) Certified Nurse Midwife	January 31	even years
(14) Certified Public Accountant	September 30	even years
(15) Certified Registered Nurse Anesthetist	January 31	even years
(16) Certified Social Worker	September 30	even years
(17) Chiropractic Physician	May 31	even years
(18) Clinical Social Worker	September 30	even years
(19) Construction Trades Instructor	November 30	odd years
(20) Contractor	November 30	odd years
(21) Controlled Substance Precursor Distributor	May 31	odd years
(22) Controlled Substance Precursor Purchaser	May 31	odd years
(23) Controlled Substance Handler	May 31	odd years
(24) Cosmetologist/Barber	September 30	odd years
(25) Cosmetology/Barber School	September 30	odd years
(26) Deception Detection	November 30	even years
(27) Dental Hygienist	May 31	even years
(28) Dentist	May 31	even years
(29) Direct-entry Midwife	September 30	odd years
(30) Electrician		
Apprentice, Journeyman, Master, Residential Journeyman,		

(31) Residential Master	November 30	even years
(32) Electrologist	September 30	odd years
(33) Electrology School	September 30	odd years
(34) Environmental Health Scientist	May 31	odd years
(35) Esthetician	September 30	odd years
(36) Esthetics School	September 30	odd years
(37) Factory Built Housing Dealer	September 30	even years
(38) Funeral Service Director	May 31	even years
(39) Funeral Service	May 31	even years
Establishment		
(40) Genetic Counselor	September 30	even years
(41) Health Facility Administrator	May 31	odd years
(42) Hearing Instrument Specialist	September 30	even years
(43) Landscape Architect	May 31	even years
(44) Licensed Practical Nurse	January 31	even years
(45) Licensed Substance Abuse Counselor	May 31	odd years
(46) Marriage and Family Therapist	September 30	even years
(47) Massage Apprentice, Therapist	May 31	odd years
(48) Master Esthetician	September 30	odd years
(49) Medication Aide Certified	March 31	odd years
(50) Nail Technologist	September 30	odd years
(51) Nail Technology School	September 30	odd years
(52) Naturopath/Naturopathic Physician	May 31	even years
(53) Occupational Therapist	May 31	odd years
(54) Occupational Therapy Assistant	May 31	odd years
(55) Optometrist	September 30	even years
(56) Osteopathic Physician and Surgeon	May 31	even years
(57) Pharmacy (Class A-B-C-D-E)	September 30	odd years
(58) Pharmacist	September 30	odd years
(59) Pharmacy Technician	September 30	odd years
(60) Physical Therapist	May 31	odd years
(61) Physician Assistant	May 31	even years
(62) Physician and Surgeon	January 31	even years
(63) Plumber		
Apprentice, Journeyman, Residential Apprentice, Residential Journeyman		
(64) Podiatric Physician	November 30	even years
(65) Pre Need Funeral Arrangement Provider	September 30	even years
(66) Pre Need Funeral Arrangement Sales Agent	May 31	even years
(67) Private Probation Provider	May 31	odd years
(68) Professional Counselor	September 30	even years
(69) Professional Engineer	March 31	odd years
(70) Professional Geologist	March 31	odd years
(71) Professional Land Surveyor	March 31	odd years
(72) Professional Structural Engineer	March 31	odd years
(73) Psychologist	September 30	even years
(74) Radiology Practical Technician	May 31	odd years
(75) Radiology Technologist	May 31	odd years
(76) Recreational Therapy Technician, Specialist, Master Specialist	May 31	odd years
(77) Registered Nurse	January 31	odd years
(78) Respiratory Care Practitioner	September 30	even years
(79) Security Personnel	November 30	even years
(80) Social Service Worker	September 30	even years
(81) Speech-Language Pathologist	May 31	odd years
(82) Veterinarian	September 30	even years

(2) The following non-standard renewal terms and renewal or extension cycles are established by license classification in accordance with Subsection 58-1-308(1) and in accordance with specific requirements of the license:

(a) Certified Marriage and Family Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(b) Certified Professional Counselor Intern licenses shall

be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(c) Certified Social Worker Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first. An intern license may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(d) Funeral Service Apprentice licenses shall be issued for a two year term and may be extended for an additional two year term if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(e) Professional Employer Organization registrations expire every year on September 30.

(f) Psychology Resident licenses shall be issued for a two year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(g) Hearing Instrument Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examination, but a circumstance arose beyond the control of the licensee, to prevent the completion of the examination process.

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

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

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

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

The procedures for renewal of licensure shall be as follows:

(1) The division shall mail a renewal notice to each licensee at least 60 days prior to the expiration date shown on the licensee's license. The notice shall include directions for the licensee to renew the license via the Division's website.

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

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

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

(5) Licensees licensed during the last four months of a

renewal cycle shall be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their license.

R156-1-308d. Waiver of Continuing Education Requirements - Renewal Requirements.

(1)(a) In accordance with Subsection 58-1-203(1)(g), a licensee may request a waiver of any continuing education requirement established under this title or an extension of time to complete any requirement on the basis that the licensee was unable to complete the requirement due to a medical or related condition, humanitarian or ecclesiastical services, extended presence in a geographical area where continuing education is not available, etc.

(b) A request must be submitted no later than the deadline for completing any continuing education requirement.

(c) A licensee submitting a request has the burden of proof and must document the reason for the request to the satisfaction of the Division.

(d) A request shall include the beginning and ending dates during which the licensee was unable to complete the continuing education requirement and a detailed explanation of the reason why. The explanation shall include the extent and duration of the impediment, extent to which the licensee continued to be engaged in practice of his profession, the nature of the medical condition, the location and nature of the humanitarian services, the geographical area where continuing education is not available, etc.

(e) The Division may require that a specified number of continuing education hours, courses, or both, be obtained prior to reentering the practice of the profession or within a specified period of time after reentering the practice of the profession, as recommended by the appropriate board, in order to assure competent practice.

(f) While a licensee may receive a waiver from meeting the minimum continuing education requirements, the licensee shall not be exempted from the requirements of Subsection 58-1-501(2)(i), which requires that the licensee provide services within the competency, abilities and education of the licensee. If a licensee cannot competently provide services, the waiver of meeting the continuing education requirements may be conditioned upon the licensee limiting practice to areas in which the licensee has the required competency, abilities and education.

R156-1-308e. Automatic Expiration of Licensure Upon Dissolution of Licensee.

(1) A license that automatically expires prior to the expiration date shown on the license due to the dissolution of the licensee's registration with the Division of Corporations, with the registration thereafter being retroactively reinstated pursuant to Section 16-10a-1422, shall:

(a) upon written application for reinstatement of licensure submitted prior to the expiration date shown on the license, be retroactively reinstated to the date of expiration of licensure; and

(b) upon written application for reinstatement submitted after the expiration date shown on the current license, be reinstated on the effective date of the approval of the application for reinstatement, rather than relating back retroactively to the date of expiration of licensure.

R156-1-308f. Denial of Renewal of Licensure - Classification of Proceedings - Conditional Renewal of Licensure During Adjudicative Proceedings - Conditional Initial, Renewal, or Reinstatement Licensure During Audit or Investigation.

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

(2) When a renewal application is denied and the applicant

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

(3)(a) When an initial, renewal or reinstatement applicant under Subsections 58-1-301(2) through (3) or 58-1-308(5) or (6)(b) is selected for audit or is under investigation, the division may conditionally issue an initial license to an applicant for initial licensure, or renew or reinstate the license of an applicant pending the completion of the audit or investigation.

(b) The undetermined completion of a referenced audit or investigation rather than the established expiration date shall be indicated as the expiration date of a conditionally issued, renewed, or reinstated license.

(c) A conditional issuance, renewal, or reinstatement shall not constitute an adverse licensure action.

(d) Upon completion of the audit or investigation, the division shall notify the initial license, renewal, or reinstatement applicant whether the applicant's license is unconditionally issued, renewed, reinstated, denied, or partially denied or reinstated.

(e) A notice of unconditional denial or partial denial of licensure to an applicant the division conditionally licensed, renewed, or reinstated shall include the following:

(i) that the applicant's unconditional initial issuance, renewal, or reinstatement of licensure is denied or partially denied and the basis for such action;

(ii) the division's file or other reference number of the audit or investigation;

(iii) that the denial or partial denial of unconditional initial licensure, renewal, or reinstatement of licensure is subject to review and a description of how and when such review may be requested;

(iv) that the applicant's conditional license automatically will or did expire on the expiration date shown on the conditional license, and that the applicant will not be issued, renewed, or reinstated unless or until the applicant timely requests review; and

(v) that if the applicant timely requests review, the applicant's conditionally issued, renewed, or reinstated license does not expire until an order is issued unconditionally issuing, renewing, reinstating, denying, or partially denying the initial issuance, renewal, or reinstatement of the applicant's license.

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

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

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

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

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

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

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

(b) pay the established license renewal fee and

reinstatement fee.

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

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

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

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

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

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

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

(b) provide documentation that the applicant has continuously, since the expiration of the applicant's license in Utah, been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States;

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

(d) provide documentation that the applicant's application was submitted within six months after reestablishing domicile within Utah or terminating full-time government service; and

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

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

(1) Reinstatement of restricted, suspended, or probationary licensure during the term of limitation, suspension, or probation shall be in accordance with the disciplinary order which imposed the discipline.

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

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

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

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

- (1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and conditions of license reinstatement;
- (2) pay the established license renewal fee and the reinstatement fee;
- (3) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to be reinstated to engage in the occupation or profession for which the applicant was suspended, restricted, or placed on probation; and
- (4) pay any fines or citations owed to the Division prior to the expiration of license.

R156-1-308j. Relicensure Following Revocation of Licensure - Requirements.

An applicant for relicensure following revocation of licensure shall:

- (1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;
- (2) pay the established license fee for a new applicant for licensure; and
- (3) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was revoked.

R156-1-308k. Relicensure Following Surrender of Licensure - Requirements.

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

- (1) An applicant who surrendered a license that was active and in good standing at the time it was surrendered shall meet the requirements for licensure listed in Section R156-1-308.
- (2) An applicant who surrendered a license while the license was active but not in good standing as evidenced by the written agreement supporting the surrender of license shall:
 - (a) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;
 - (b) pay the established license fee for a new applicant for licensure;
 - (c) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was surrendered;
 - (d) pay any fines or citations owed to the Division prior to the surrender of license.

R156-1-308l. Reinstatement of Licensure and Relicensure - Term of Licensure.

Except as otherwise governed by the terms of an order issued by the division, a license issued to an applicant for reinstatement or relicensure issued during the last four months

of a renewal cycle shall, upon payment of the appropriate fees, be issued for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than requiring the licensee to immediately renew their reinstated or relicensed license.

R156-1-310. Cheating on Examinations.

(1) Policy.

The passing of an examination, when required as a condition of obtaining or maintaining a license issued by the division, is considered to be a critical indicator that an applicant or licensee meets the minimum qualifications for licensure. Failure to pass an examination is considered to be evidence that an applicant or licensee does not meet the minimum qualifications for licensure. Accordingly, the accuracy of the examination result as a measure of an applicant's or licensee's competency must be assured. Cheating by an applicant or licensee on any examination required as a condition of obtaining a license or maintaining a license shall be considered unprofessional conduct and shall result in imposition of an appropriate penalty against the applicant or licensee.

(2) Cheating Defined.

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

- (a) communication between examinees inside of the examination room or facility during the course of the examination;
- (b) communication about the examination with anyone outside of the examination room or facility during the course of the examination;
- (c) copying another examinee's answers or looking at another examinee's answers while an examination is in progress;
- (d) permitting anyone to copy answers to the examination;
- (e) substitution by an applicant or licensee or by others for the benefit of an applicant or licensee of another person as the examinee in place of the applicant or licensee;
- (f) use by an applicant or licensee of any written material, audio material, video material or any other mechanism not specifically authorized during the examination for the purpose of assisting an examinee in the examination;
- (g) obtaining, using, buying, selling, possession of or having access to a copy of the examination prior to administration of the examination.

(3) Action Upon Detection of Cheating.

- (a) The person responsible for administration of an examination, upon evidence that an examinee is or has been cheating on an examination shall notify the division of the circumstances in detail and the identity of the examinees involved with an assessment of the degree of involvement of each examinee;
 - (b) If cheating is detected prior to commencement of the examination, the examinee may be denied the privilege of taking the examination; or if permitted to take the examination, the examinee shall be notified of the evidence of cheating and shall be informed that the division may consider the examination to have been failed by the applicant or licensee because of the cheating; or
 - (c) If cheating is detected during the examination, the examinee may be requested to leave the examination facility and in that case the examination results shall be the same as failure of the examination; however, if the person responsible for administration of the examination determines the cheating detected has not yet compromised the integrity of the examination, such steps as are necessary to prevent further cheating shall be taken and the examinee may be permitted to

continue with the examination.

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

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

(4) Notification.

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

R156-1-404a. Diversion Advisory Committees Created.

(1) There are created diversion advisory committees of at least three members for the professions regulated under Title 58. The diversion committees are not required to be impaneled by the director until the need for the diversion committee arises. Diversion committees may be appointed with representatives from like professions providing a multi-disciplinary committee.

(2) Committee members are appointed by and serve at the pleasure of the director.

(3) A majority of the diversion committee members shall constitute a quorum and may act on behalf of the diversion committee.

(4) Diversion committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in diversion committees business.

R156-1-404b. Diversion Committees Duties.

The duties of diversion committees shall include:

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

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

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

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

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

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

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

R156-1-404d. Diversion - Procedures.

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

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

(3) If the director finds that a licensee meets the qualifications for diversion and should be diverted, the division

shall prepare and serve upon the licensee a proposed diversion agreement. The licensee shall have a period of time determined by the diversion committee not to exceed 30 days from the service of the proposed diversion agreement to negotiate a final diversion agreement with the director. The final diversion agreement shall comply with Subsections 58-1-404.

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

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

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

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

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

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

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

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

R156-1-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

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

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

(3) practicing a regulated occupation or profession in, through, or with a limited partnership which has omitted the words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd." in the commercial use of the name of the limited partnership;

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

(5) using a DBA (doing business as name) which has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing; or

(6) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", 2004, established by the Federation of State Medical Boards, which is hereby adopted and incorporated by reference.

R156-1-503. Reporting Disciplinary Action.

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

R156-1-601. Online Assessment, Diagnosis and Prescribing Protocols.

(1) In accordance with Subsection 58-1-501(4), a person licensed to prescribe under this title may prescribe legend drugs to a person located in this state following an online assessment and diagnosis in accordance with the following conditions:

(a) the prescribing practitioner is licensed in good standing in this state;

(b) an assessment and diagnosis is based upon a comprehensive health history and an assessment tool that requires the patient to provide answers to all the required questions and does not rely upon default answers, such as a branching questionnaire;

(c) only includes legend drugs and may not include controlled substances;

(d) the practice is authorized by these rules and a written agreement signed by the Division and the practitioner and approved by a panel comprised of three board members from the Physicians Licensing Board or the Osteopathic Physician and Surgeon's Licensing Board and three members from the Utah State Board of Pharmacy. The written agreement shall include:

(i) the specific name of the drug or drugs approved to be prescribed;

(ii) the policies and procedures that address patient confidentiality;

(iii) a method for electronic communication by the physician and patient;

(iv) a mechanism for the Division to be able to conduct audits of the website and records to ensure an assessment and diagnosis has been made prior to prescribing any medications; and

(v) a mechanism for the physician to have ready access to all patients' records.

**KEY: diversion programs, licensing, occupational licensing
June 19, 2006 58-1-106(1)(a)
Notice of Continuation March 1, 2007 58-1-308
58-1-501(4)**

**R156. Commerce, Occupational and Professional Licensing.
R156-22. Professional Engineers and Professional Land
Surveyors Licensing Act Rule.**

R156-22-101. Title.

This rule is known as the "Professional Engineers and Professional Land Surveyors Licensing Act Rule".

R156-22-102. Definitions.

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

(1) "Complete and final" as used in Section 58-22-603 means "complete construction plans" as defined in Subsection 58-22-102(3).

(2) "Direct supervision" as used in Subsection 58-22-102(10) means "supervision" as defined in Subsection 58-22-102(16).

(3) "Employee, subordinate, associate, or drafter of a licensee" as used in Subsections 58-22-102(16), 58-22-603(1)(b) and this rule means one or more individuals not licensed under this chapter, who are working for, with, or providing professional engineering, professional structural engineering, or professional land surveying services directly to and under the supervision of a person licensed under this chapter.

(4) "Engineering surveys" as used in Subsection 58-22-102(9) include all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects, but exclude the surveying of real property for the establishment of land boundaries, rights-of-way, easements, alignment of streets, and the dependent or independent surveys or resurveys of the public land survey system.

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

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

(b) is in an area where the licensee has demonstrated competence by adequate education, training and experience;

(c) arises from, and is directly related to, work performed in the licensed profession;

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

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

(6) "Recognized jurisdiction" as used in Subsection 58-22-302(4)(d)(i), for licensure by endorsement, means any state, district or territory of the United States, or any foreign country who issues licenses for professional engineers, professional structural engineers, or professional land surveyors, and whose licensure requirements include:

(a) Professional Engineer.

(i) a bachelors or post graduate degree in engineering or equivalent education as determined by the Center for Professional Engineering Services (CPEES) and four years of full time engineering experience under supervision of one or more licensed engineers; and

(ii) passing the NCEES Principles and Practice of Engineering Examination (PE).

(b) Professional Structural Engineer.

(i) a bachelors or post graduate degree in engineering or equivalent education as determined by the Center for Professional Engineering Services (CPEES) and four years of full time engineering experience under supervision of one or

more licensed engineers;

(ii) passing the NCEES Structural I and II Examination; and

(iii) three years of licensed experience in professional structural engineering.

(c) Professional Land Surveyor.

(i) a two or four year degree in land surveying or equivalent education as determined by the Center for Professional Engineering Services (CPEES) and four years of full time land surveying experience under supervision of one or more licensed professional land surveyors; or eight years of full time land surveying experience under supervision of one or more licensed professional land surveyors; and

(ii) passing the NCEES Principles and Practice of Land Surveying Examination (PLS) or passing a professional land surveying examination that is substantially equivalent to the NCEES Principles and Practice of Land Surveying Examination.

(7) "Responsible charge" by a principal as used in Subsection 58-22-102(7) means that the licensee is assigned to and is personally accountable for the production of specified professional engineering, professional structural engineering or professional land surveying projects within an organization.

(8) "TAC/ABET" means Technology Accreditation Commission/Accreditation Board for Engineering and Technology.

(9) "Under the direction of the licensee" as used in Subsection 58-22-102(16), as part of the definition of "supervision of an employee, subordinate, associate, or drafter of a licensee", means that the unlicensed employee, subordinate, associate, or drafter of a person licensed under this chapter engages in the practice of professional engineering, professional structural engineering, or professional land surveying only on work initiated by a person licensed under this chapter, and only under the administration, charge, control, command, authority, oversight, guidance, jurisdiction, regulation, management, and authorization of a person licensed under this chapter.

(10) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 22, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-22-502.

R156-22-103. Authority - Purpose.

This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 22.

R156-22-104. 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.

R156-22-302b. Qualifications for Licensure - Education Requirements.

(1) Education requirements - Professional Engineer.

In accordance with Subsections 58-22-302(1)(d) and 58-22-302(2)(d), the engineering program criteria is established as one of the following:

(a) The bachelors or post graduate engineering program shall be accredited by EAC/ABET or the Canadian Engineering Accrediting Board (CEAB).

(b) The post graduate engineering degree, when not accredited by EAC/ABET or CEAB, shall be earned from an institution which offers a bachelors or masters degree in an engineering program accredited by EAC/ABET or CEAB in the same specific engineering discipline as the earned post graduate degree and the applicant is responsible to demonstrate that the combined engineering related coursework taken (both undergraduate and post graduate) included coursework that meets or exceeds the engineering related coursework required for the EAC/ABET accreditation for the bachelor degree

program.

(c) If the degree was earned in a foreign country, the engineering curriculum shall be determined to be equivalent to a EAC/ABET accredited program by the Center for Professional Engineering Services (CPEES). Only deficiencies in course work in the humanities, social sciences and liberal arts and no more than five semester hours in math, science or engineering, not to exceed a total of 10 semester hours noted by the credentials evaluation may be satisfied by successfully completing the deficiencies in course work at a recognized college or university approved by the division in collaboration with the board. Engineering course work deficiencies must be completed at an EAC/ABET approved program.

(d) A TAC/ABET accredited degree is not acceptable to meet the qualifications for licensure as a professional engineer.

(2) Education requirements - Professional Land Surveyor.

In accordance with Subsection 58-22-302(3)(d), an equivalent land surveying program for licensure as a professional land surveyor is defined as an earned bachelors or masters degree from a curriculum related to land surveying and completion of a minimum of 22 semester hours or 32 quarter hours of course work in land surveying which shall include the following courses:

(a) successful completion of a minimum of one course in each of the following content areas:

- (i) boundary law;
- (ii) writing legal descriptions;
- (iii) public land survey system;
- (iv) surveying field techniques; and

(b) the remainder of the 22 semester hours or 32 quarter hours may be made up of successful completion of courses from the following content areas:

- (i) photogrammetry;
- (ii) studies in land records or land record systems;
- (iii) survey instrumentation;
- (iv) global positioning systems;
- (v) geodesy;
- (vi) control systems;
- (vii) land development;
- (viii) drafting, not to exceed six semester hours or eight quarter hours;
- (ix) algebra, geometry, trigonometry, not to exceed six semester hours or eight quarter hours;
- (x) geographic information systems.

R156-22-302c. Qualifications for Licensure - Experience Requirements.

(1) General Requirements. These general requirements apply to all applicants under this chapter and are in addition to the specific license requirements in Subsections (2), (3) and (4).

(a) Experience must be progressive on projects that are of increasing quality and requiring greater responsibility.

(b) Only experience of an engineering, structural engineering or surveying nature, as appropriate for the specific license, is acceptable.

(c) Experience is not acceptable if it is obtained in violation of applicable statutes or rules.

(d) Unless otherwise provided in Subsection (1)(e), experience shall be gained under the direct supervision of a person licensed in the profession for which the license application is submitted. Supervision of an intern by another intern is not permitted.

(e) Experience is also acceptable when obtained in a work setting where licensure is not required or is exempted from licensure requirements, including experience obtained in the armed services if:

(i) the experience is performed under the supervision of qualified persons and the applicant provides verifications of the credentials of the supervisor; and

(ii) the experience gained is equivalent to work performed by an intern obtaining experience under a licensed supervisor in a licensed or civilian setting, and the applicant provides verification of the nature of the experience.

(f) Proof of supervision. The supervisor shall provide to the applicant the certificate of qualifying experience in a sealed envelope with the supervisor's seal stamped across the seal flap of the envelope, which the applicant shall submit with the application for licensure.

(g) In the event the supervisor is unavailable or refuses to provide a certification of qualifying experience, the applicant shall submit a complete explanation of why the supervisor is unavailable and submit verification of the experience by alternative means acceptable to the board, which shall demonstrate that the work was profession-related work, competently performed, and sufficient accumulated experience for the applicant to be granted a license without jeopardy to the public health, safety or welfare.

(h) In addition to the supervisor's documentation, the applicant shall submit at least one verification of qualifying experience from a person licensed in the profession who has personal knowledge of the applicant's knowledge, ability and competence to practice in the profession applied for.

(i) Duties and responsibilities of a supervisor. The duties and responsibilities of a licensee under Subsection (1)(d) or other qualified person under Subsection (1)(e) include the following.

(i) A person may not serve as a supervisor for more than one firm.

(ii) A person who renders occasional, part time or consulting services to or for a firm may not serve as a supervisor.

(iii) The supervisor shall be in responsible charge of the projects assigned and is professionally responsible for the acts and practices of the supervisee.

(iv) The supervision shall be conducted in a setting in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised.

(v) The supervisor shall be available for advice, consultation and direction consistent with the standards and ethics of the profession.

(vi) The supervisor shall provide periodic review of the work assigned to the supervisee.

(vii) The supervisor shall monitor the performance of the supervisee for compliance with laws, standards and ethics applicable to the profession.

(viii) The supervisor shall provide supervision only to a supervisee who is an employee of a licensed professional or alternatively in a setting wherein both the supervisor and the supervisee are engaged in a work setting in which the work is exempt from licensure requirements.

(ix) The supervisor shall submit appropriate documentation to the division with respect to all work completed by the supervisee during the period of supervised experience, including the supervisor's evaluation of the supervisee's competence to practice in the profession.

(x) The supervisor shall assure each supervisee has obtained the degree which is a prerequisite to the intern beginning to obtain qualifying experience.

(2) Experience Requirements - Professional Engineer.

(a) In accordance with Subsection 58-22-302(1)(e), an applicant for licensure as a professional engineer shall complete the following qualifying experience requirements:

(i) Submit verification of qualifying experience, obtained while under the supervision of one or more licensed professional engineers, which experience has been certified by the licensed professional who provided the supervision

documenting completion of a minimum of four years of full time or equivalent part time qualifying experience in professional engineering approved by the division in collaboration with the board in accordance with the following:

(A) The qualifying experience must be obtained after meeting the education requirements.

(B) A maximum of three of the four years of qualifying experience may be approved by the board as follows:

(I) A maximum of three years of qualifying experience may be granted for teaching advanced engineering subjects in a college or university offering an engineering curriculum accredited by EAC/ABET.

(II) A maximum of three years of qualifying experience may be granted for conducting research in a college or university offering an engineering curriculum accredited by EAC/ABET provided the research is under the supervision of a licensed professional and is directly related to the practice of engineering, as long as such research has not been credited towards the education requirements. Therefore research which is included as part of the classwork, thesis or dissertation or similar work is not acceptable as additional work experience.

(III) A maximum of one year of qualifying experience may be granted for completion of a masters degree in engineering provided that both the earned bachelors and masters degree in engineering meet the program criteria set forth in Subsection R156-22-302b(1).

(IV) A maximum of two years of qualifying experience may be granted for completion of a doctorate degree in engineering provided that both the earned bachelors or masters degree and doctorate degree in engineering meet the program criteria set forth in Subsection R156-22-302b(1).

(b) The performance or supervision of construction work as a contractor, foreman or superintendent is not qualifying experience for licensure as a professional engineer.

(c) Experience should include demonstration of, knowledge, application, and practical solutions using engineering mathematics, physical and applied science, properties of materials and the fundamental principles of engineering design.

(3) Experience Requirements - Professional Structural Engineer.

(a) In accordance with Subsection 58-22-302(2)(e), each applicant shall submit verification of three years of full time or equivalent part time professional structural engineering experience obtained while under the supervision of one or more licensed professional structural engineers, which experience is certified by the licensed structural engineer supervisor and is in addition to the qualifying experience required for licensure as a professional engineer.

(b) Professional structural engineering experience shall include responsible charge of structural design in one or more of the following areas:

(i) structural design of any building or structure two stories and more, or 45 feet in height, located in a region of moderate or high seismic risk designed in accordance with current codes adopted pursuant to Section 58-56-4;

(ii) structural design for a major seismic retrofit/rehabilitation of an existing building or structure located in a region of moderate or high seismic risk; or

(iii) structural design of any other structure of comparable structural complexity.

(c) Professional structural engineering experience shall include structural design in all of the following areas:

(i) use of three of the following four materials as they relate to the design, rehabilitation or investigation of buildings or structures:

- (A) steel;
- (B) concrete;
- (C) wood; or

(D) masonry;

(ii) selection of framing systems including the consideration of alternatives and the selection of an appropriate system for the interaction of structural components to support vertical and lateral loads;

(iii) selection of foundation systems including the consideration of alternatives and the selection of an appropriate type of foundation system to support the structure;

(iv) design and detailing for the transfer of forces between stories in multi-story buildings or structures;

(v) application of lateral design in the design of the buildings or structures in addition to any wind design requirements; and

(vi) application of the local, state and federal code requirements as they relate to design loads, materials, and detailing.

(4) Experience Requirements - Professional Land Surveyor.

(a) In accordance with Subsections 58-22-302(3)(d), an applicant for licensure as a professional land surveyor shall complete the following qualifying experience requirements:

(i) Submit verification of qualifying experience obtained under the supervision of one or more licensed professional land surveyors who have provided supervision, which experience is certified by the licensed professional land surveyor supervisor and is in accordance with the following:

(A) Applicants who have met the education requirements in Subsection 58-22-302(3)(d)(i) shall document four years of full time or equivalent part time qualifying experience in land surveying which experience may be obtained before, during or after completing the education requirements for licensure.

(B) Prior to January 1, 2007, applicants who did not complete the education requirements in Subsection 58-22-302(3)(d)(i) shall document eight years of qualifying experience in land surveying.

(b) The four years of qualifying experience required in R156-22-302c(4)(a)(i)(A) and four of the eight years required in R156-22-302c(4)(a)(i)(B) shall comply with the following:

(i) Two years of experience should be specific to field surveying with actual "hands on" surveying, including all of the following:

- (A) operation of various instrumentation;
- (B) review and understanding of plan and plat data;
- (C) public land survey systems;
- (D) calculations;
- (E) traverse;
- (F) staking procedures;
- (G) field notes and manipulation of various forms of data encountered in horizontal and vertical studies; and

(ii) Two years of experience should be specific to office surveying, including all of the following:

- (A) drafting (includes computer plots and layout);
- (B) reduction of notes and field survey data;
- (C) research of public records;
- (D) preparation and evaluation of legal descriptions; and
- (E) preparation of survey related drawings, plats and record of survey maps.

(c) The remaining qualifying experience required in R156-22-302c(3)(a)(i)(B) shall include any aspects of the practice of land surveying under the supervision of a licensed professional land surveyor in accordance with Subsection 58-22-102(16).

R156-22-302d. Qualifications for Licensure - Examination Requirements.

(1) Examination Requirements - Professional Engineer.

(a) In accordance with Subsection 58-22-302(1)(f), the examination requirements for licensure as a professional engineer are defined, clarified or established as the following:

- (i) the NCEES Fundamentals of Engineering (FE)

Examination with a passing score as established by the NCEES except that an applicant who has completed an undergraduate degree from an EAC/ABET accredited program and has completed a Ph.D. or doctorate in engineering from an institution that offers EAC/ABET undergraduate programs in the Ph.D. field of engineering is not required to take the FE examination;

(ii) the NCEES Principles and Practice of Engineering (PE) Examination other than Structural II with a passing score as established by the NCEES; and

(iii) pass all questions on the open book, take home Utah Law and Rules Examination, which is included as part of the application for licensure forms.

(b) If an applicant was approved by the Utah Division of Occupational and Professional Licensing to take the examinations required for licensure as an engineer under prior Utah statutes and rules and did take and pass all examinations required under such prior rules, the prior examinations will be acceptable to qualify for reinstatement of licensure rather than the examinations specified under Subsection R156-22-302d(1)(a).

(c) Prior to submitting an application for pre-approval to sit for the NCEES PE examination, an applicant must have successfully completed the qualifying experience requirements set forth in Subsection R156-22-302c(1), and have successfully completed the education requirements set forth in Subsection R156-22-302b(1).

(d) The admission criteria to sit for the NCEES FE examination is set forth in Section 58-22-306.

(2) Examination Requirements - Professional Structural Engineer.

(a) In accordance with Subsection 58-22-302(2)(f), the examination requirements for licensure as a professional structural engineer are defined, clarified, or established as the following:

(i) the NCEES Fundamentals of Engineering Examination (FE) with a passing score as established by the NCEES;

(ii) the NCEES Structural I and Structural II Examinations with a passing score as established by the NCEES; and

(iii) as part of the application for license, pass all questions on the open book, take home Utah Law and Rules Examination.

(b) Prior to submitting an application for pre-approval to sit for the NCEES Structural II examination, an applicant must have successfully completed the experience requirements set forth in Subsection R156-22-302c(2).

(3) Examination Requirements - Professional Land Surveyor.

(a) In accordance with Subsection 58-22-302(3)(g), the examination requirements for licensure as a professional land surveyor are established as the following:

(i) the NCEES Fundamentals of Land Surveying (FLS) Examination with a passing score as established by the NCEES;

(ii) the NCEES Principles and Practice of Land Surveying (PLS) Examination with a passing score as established by the NCEES; and

(iii) the Utah Local Practice Examination with a passing score of at least 75.

(b) Prior to submitting an application for pre-approval to sit for the NCEES PLS examination, an applicant must have successfully completed the education and qualifying experience requirements set forth in Subsections R156-22-302b(2) and 302c(4).

(4) Examination Requirements for Licensure by Endorsement.

In accordance with Subsection 58-22-302(4)(d)(ii), the examination requirements for licensure by endorsement are established as follows:

(a) Professional Engineer: An applicant for licensure as a professional engineer by endorsement shall comply with the

examination requirements in Subsection R156-22-302d(1) except that the board may waive one or more of the following examinations under the following conditions:

(i) the NCEES FE Examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed;

(ii) the NCEES PE Examination for an applicant who is a principal for five of the last seven years preceding the date of the license application, who has been licensed for 20 years preceding the date of the license application, and who was not required to pass the NCEES PE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(b) Professional Structural Engineer: An applicant for licensure as a professional structural engineer by endorsement shall comply with the examination requirements in Subsection R156-22-302d(2) except that the board may waive the NCEES FE Examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(c) Professional Land Surveyor: An applicant for licensure as a professional land surveyor by endorsement shall comply with the examination requirements in Subsection R156-22-302d(3) except that the board may waive either the NCEES FLS Examination or the NCEES PLS Examination or both to an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FLS Examination or the PLS Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

R156-22-304. Continuing Education for Professional Engineers, Professional Structural Engineers and Professional Land Surveyors.

In accordance with Subsection 58-22-303(2) and Section 58-22-304, the qualifying continuing professional education standards for professional engineers, professional structural engineers and professional land surveyors are established as follows:

(1) During each two year period ending on December 31 of each even numbered year, a licensed professional engineer, professional structural engineer and professional land surveyor shall be required to complete not less than 24 hours of qualified professional education directly related to the licensee's professional practice.

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

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

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a professional engineer, professional structural engineer, or professional land surveyor;

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

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

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

(e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration

and completion are available for review.

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

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

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

(c) a maximum of four hours per two year period may be recognized for preparation of papers, articles, or books directly related to the practice of professional engineering, professional structural engineering or professional land surveying and submitted for publication; and

(d) a maximum of eight hours per two year period may be recognized at the rate of one hour for each hour served on committees or in leadership roles in any state, national or international organization for the development and improvement of the profession of professional engineering, professional structural engineering or professional land surveying but no more than four of the eight hours may be obtained from such activity in any one organization;

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

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

(6) If a licensee exceeds the 24 hours of qualified continuing professional education during the two year period, the licensee may carry forward a maximum of 12 hours of qualified continuing professional education into the next two year period.

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

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

(9) Any applicant for reinstatement who was not in compliance with the continuing education requirement at the time of the expiration of licensure shall be required to complete 24 hours of continuing education complying with this rule within two years prior to the date of application for reinstatement of licensure.

R156-22-305. Inactive Status.

(1) A person currently licensed and in good standing as a professional engineer, professional structural engineer or professional land surveyor may apply for a transfer of that license to inactive status if:

- (a)(i) the licensee is at least 60 years of age;
- (ii) the licensee is disabled; or

(iii) the division finds other good cause for believing that the licensee will not return to the practice as a professional engineer, professional structural engineer or professional land surveyor;

(b) the licensee makes application for transfer of status and registration and pays a registration fee determined by the department under Section 63-38-3.2; and

(c) the licensee, on application for transfer, certifies that he will not engage in the practice for which a license is required while on inactive status.

(2) Each inactive license shall be issued in accordance with the two-year renewal cycle established by Section R156-1-308a.

(3) Inactive status licensees may not engage in practice for which a license is required.

(4) Inactive status licensees are not required to fulfill the continuing professional education under this rule.

(5) Each inactive status licensee is responsible for renewing his inactive license according to division procedures.

(6) An inactive status licensee may reinstate his license to active status by:

(a) submitting an application in a form prescribed by the division;

(b) paying a fee determined by the department under Section 63-38-3.2; and

(c) showing evidence of having completed the continuing professional education requirement established in Subsection R156-22-304(9).

R156-22-501. Administrative Penalties - Unlawful Conduct.

In accordance with Subsections 58-1-501, 58-1-501(1)(a) through (d), 58-22-501 and 58-22-503, unless otherwise ordered by the presiding officer, the following fine schedule shall apply.

(1) Engaging in unlicensed practice or using any title that would cause a reasonable person to believe the user of the title is licensed under this chapter.

First Offense: \$800

Second Offense: \$1,600

(2) Engaging in, or representing oneself as engaged in the practice of professional engineering or land surveying as a corporation, proprietorship, partnership, or limited liability company unless exempted from licensure.

First Offense: \$800

Second Offense: \$1,600

(3) Impersonating another licensee or engaging in practice under this chapter using a false or assumed name, unless permitted by law.

First Offense: \$1,000

Second Offense: \$2,000

(4) Knowingly employing any person to practice under this chapter who is not licensed to do so.

First Offense: \$1,000

Second Offense: \$2,000

(5) Knowingly permits any person to use his or her license except as permitted by law.

First Offense: \$1,000

Second Offense: \$2,000

(6) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-22-503(1)(i).

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

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

(9) In all cases the presiding officer shall have the

discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount based upon the evidence reviewed.

R156-22-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

- (1) submitting an incomplete final plan, specification, report or set of construction plans to:
 - (a) a client, when the licensee represents, or could reasonably expect the client to consider the plan, specification, report or set of construction plans to be complete and final; or
 - (b) to a building official for the purpose of obtaining a building permit;
- (2) failing as a principal to exercise responsible charge;
- (3) failing as a supervisor to exercise supervision of an employee, subordinate, associate or drafter; or
- (4) failing to conform to the accepted and recognized standards and ethics of the profession including those stated in the "Model Rules of Professional Conduct" of the National Council of Examiners for Engineering and Surveying (NCEES), 1997, which is hereby incorporated by reference.

R156-22-601. Seal Requirements.

(1) In accordance with Section 58-22-601, all final plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats prepared by the licensee or prepared under the supervision of the licensee, shall be sealed in accordance with the following:

- (a) Each seal shall be a circular seal, 1-1/2 inches minimum diameter.
 - (b) Each seal shall include the licensee's name, license number, "State of Utah", and "Professional Engineer", "Professional Structural Engineer", or "Professional Land Surveyor" as appropriate.
 - (c) Each seal shall be signed and dated with the signature and date appearing across the face of each seal imprint.
 - (d) Each original set of final plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats, as a minimum, shall have the original seal imprint, original signature and date placed on the cover or title sheet.
 - (e) A seal may be a wet stamp, embossed, or electronically produced.
 - (f) Copies of the original set of plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats which contain the original seal, original signature and date is permitted, if the seal, signature and date is clearly recognizable.
- (2) A person who qualifies for and uses the title of professional engineer intern is not permitted to use a seal.

KEY: engineers, surveyors, professional land surveyors, professional engineers

February 22, 2007

58-22-101

Notice of Continuation January 13, 2003

58-1-106(1)(a)

58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.**R156-40a. Athletic Trainer Licensing Act Rule.****R156-40a-101. Title.**

This rule is known as the Athletic Trainer Licensing Act Rule.

R156-40a-104. Authority - Purpose.

This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 40a.

R156-40a-105. 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.

R156-40a-302a. Qualifications for Licensure.

In accordance with Subsection 58-40a-302(1), the "athletic training curriculum requirement" shall be the curriculum program standard for accreditation set forth in the Standards for the Accreditation of Entry-Level Athletic Training Education Programs, revised June 8, 2006, published by the Commission on Accreditation of Athletic Training Education (CAATE), which is hereby adopted and incorporated by reference.

R156-40a-304. 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 40a is established by rule in Subsection R156-1-308a(1).

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

KEY: licensing, occupational licensing, athletic trainers

February 22, 2007

58-40a-101

58-1-106(1)(a)

58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.**R156-42a. Occupational Therapy Practice Act Rule.****R156-42a-101. Title.**

This rule is known as the "Occupational Therapy Practice Act Rule".

R156-42a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 42a, as used in Title 58, Chapters 1 and 42a, or this rule:

(1) "General supervision", as used in Section 58-42a-304 and Subsection R156-42a-302b(2), means the supervising occupational therapist is:

(a) present in the area where the person supervised is performing services; and

(b) immediately available to assist the person being supervised in the services being performed.

(2) "Consult with the attending physician", as used in Subsection 58-42a-501(6), means that the occupational therapist will consult with the attending physician when an acute change of patient condition affects the occupational therapy services being performed.

(3) "Physical agent modalities", as used in Subsection 58-42a-102(9)(g), means specialized treatment procedures that produce a response in soft tissue through the use of light, water, temperature, sound or electricity such as hot packs, ice, paraffin, and electrical or sound currents.

(4) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 42a, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-42a-502.

R156-42a-103. Authority - Purpose.

This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 42a.

R156-42a-104. Organization - Relationship to Rule 156-1.

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

R156-42a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 42a is established by rule in R156-1-308.

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

R156-42a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) delegating supervision, or occupational therapy services, care or responsibilities not authorized under Title 58, Chapter 42a or this rule;

(2) engaging in or attempting to engage in the use of physical agent modalities when not competent to do so by education, training, or experience; and

(3) failing to provide general supervision as set forth in Title 58, Chapter 42a and this rule.

KEY: licensing, occupational therapy**February 22, 2007****58-1-106(1)(a)****Notice of Continuation September 2, 2004****58-1-202(1)(a)****58-42a-101**

R156. Commerce, Occupational and Professional Licensing.**R156-57. Respiratory Care Practices Act Rule.****R156-57-101. Title.**

This rule is known as the "Respiratory Care Practices Act Rule".

R156-57-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 57, as used in Title 58, Chapters 1 and 57, or this rule:

(1) "Other respiratory related durable medical equipment intended for use in the home", as used in Subsection 58-57-2(6)(k), means other new respiratory care technology intended for use in the home that was not approved on the market as of September 2006.

(2) "Supervised" as used in Subsection 58-1-307(1)(b) or "supervising" as used in Subsection 58-57-2(4)(e) means that the licensed respiratory care practitioner is present in the facility and shall be available to see the patient and give immediate consultation with respect to care.

R156-57-103. Authority - Purpose.

This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 57.

R156-57-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section 58-1-107.

R156-57-302a. Qualifications for Licensure - Examination Requirements.

In accordance with Subsection 58-57-4(2)(f) and Sections 58-57-5 and 58-1-309, all applicants for licensure shall pass the following examinations:

(1) the National Board for Respiratory Care (NBRC) Certification Examination for Entry Level Respiratory Therapists (CRT); or

(2) the NBRC Registry Examination for Advanced Respiratory Therapists (RRT).

R156-57-302b. Qualifications for Licensure - Education Requirements.

In accordance with Subsection 58-57-4(2)(e) and Section 58-57-5, "a respiratory care practitioner education program that is approved by the board" means a respiratory care educational program accredited by the Committee on Accreditation for Respiratory Care (COARC) as evidenced by NBRC certification as a CRT or RRT.

R156-57-303. 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 57 is established by rule in Section R156-1-308a.

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

KEY: licensing, respiratory care

February 22, 2007

Notice of Continuation October 30, 2006

58-57-1

58-1-106(1)(a)

58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-70a. Physician Assistant Practice Act Rules.
R156-70a-101. Title.

These rules are known as the "Physician Assistant Practice Act Rules".

R156-70a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 70a, as used in these rules:

(1) "Full time equivalent" or "FTE" means the equivalent of 2,080 hours of staff time for a one-year period.

(2) "Locum tenens" means a medical practice situation in which one physician assistant acts as a temporary substitute for the physician assistant who regularly will or does practice in that particular setting.

(3) "On-site supervision", as used in Section R156-70a-501, means the physician assistant will be working in the same location as the supervising physician.

R156-70a-103. Authority - Purpose.

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 70a.

R156-70a-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.

R156-70a-302. Qualification for Licensure - Examination Requirements.

In accordance with Subsection 58-70a-302(5), the examinations which must be successfully passed by applicants for licensure as a physician assistant are:

(1) the National Commission on Certification of Physician Assistants (NCCPA); and

(2) the Utah Physicians Assistant Law and Rules Examination.

R156-70a-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 70a is established by rule in Section R156-1-308.

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

R156-70a-304. Continuing Education.

In accordance with Subsection 58-70a-304(1)(a), the requirements for qualified continuing professional education (CPE) are as follows:

(1) CPE shall consist of 40 hours in each preceding two year licensure cycle in:

(a) category 1 offerings as established by the Accreditation Council for Continuing Medical Education (ACCME);

(b) approved programs sponsored by the American Academy of Physician Assistants (AAPA); or

(c) programs approved by other health-related continuing education approval organizations, provided the continuing education is nationally recognized by a healthcare accredited agency and the education is related to the practice as a physician assistant.

(2) If requested, the licensee shall provide documentation of completed qualified continuing professional education by any of the following means:

(a) certificates from sponsoring agencies;

(b) transcripts of participation on applicable institutions letterhead; or

(c) copy of current national certification by NCCPA.

(3) Continuing professional education for licensees who

have not been licensed for the entire two year period will be prorated from the date of licensure.

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

R156-70a-501. Working Relationship and Delegation of Duties.

In accordance with Section 58-70a-501, the working relationship and delegation of duties between the supervising physician and the physician assistant are specified as follows:

(1) The supervising physician shall provide supervision to the physician assistant to adequately serve the health care needs of the practice population and ensure that the patient's health, safety and welfare will not be adversely compromised. The degree of on-site supervision shall be outlined in the Delegation of Services Agreement maintained at the site of practice. Physician assistants may authenticate with their signature any form that may be authenticated by a physician's signature.

(2) There shall be a method of immediate consultation by electronic means whenever the physician assistant is not under the direct supervision of the supervising physician.

(3) The supervising physician shall review and co-sign sufficient numbers of patient charts and medical records to ensure that the patient's health, safety, and welfare will not be adversely compromised. The Delegation of Services Agreement, maintained at the site of practice, shall outline specific parameters for review that are appropriate for the working relationship.

(4) A supervising physician shall not supervise more than two full time equivalent (FTE) physician assistants without the prior approval of the division and the board, and if patient health, safety, and welfare will not be adversely compromised.

KEY: licensing, physician assistants

October 11, 2006

Notice of Continuation February 27, 2007

58-70a-101

58-1-106(1)(a)

58-1-202(1)(a)

R162. Commerce, Real Estate.**R162-102. Application Procedures.****R162-102-1. Application.**

102.1.1 Initial Review - An applicant for licensure or certification as an appraiser will be required to submit, on forms provided by the Division, documentation indicating successful completion of the education and experience required by the state of Utah.

102.1.1.1 The application may be reviewed by an Appraiser Education Review Committee appointed by the Real Estate Appraiser Licensing and Certification Board to determine if the education requirement has been met.

102.1.1.2 The candidate will provide evidence of meeting the experience requirement by completing the form required by the Division.

102.1.1.3 The candidate will submit the appropriate license or certification fee at the time of submission of the education and experience forms.

102.1.2 Exam Application

102.1.2.1 Upon determining the candidate has completed the education and experience requirements, the Division will issue to the candidate a form permitting the candidate to register to sit for the examination. The permission to register to sit for the examination shall be valid for twenty-four months after issuance, or twenty-four months after May 17, 2005, whichever is longer.

102.1.2.1.1 Effective January 1, 2003, as a prerequisite to sitting for the licensing/certification examination, the applicant will be required to submit proof of successful completion of the 15-hour National USPAP Course or its equivalent from an instructor or instructors, at least one of whom is a State-Certified Residential or State-Certified General Appraiser and has been certified by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation. Equivalency to the 15-hour National USPAP Course will be determined through the Course Approval Program of the Appraiser Qualifications Board (AQB) of the Appraisal Foundation.

102.1.2.2 The candidate will make application to take the examination by returning the application form and the appropriate testing fee to the testing service designated by the Division. If the applicant fails to take the examination, the fee will be forfeited.

102.1.3 Final Application

102.1.3.1 Within 90 days after successful completion of the exam, the appraiser applicant must return to the Division each of the following:

102.1.3.1.1 A report from the testing service indicating successful completion of the exam.

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

102.1.3.1.3 The fee for the federal registry.

R162-102-2. Status Change.

102.2.1 A licensed or certified appraiser must notify the Division within ten working days of any status change. Status changes are effective on the date the properly executed forms and appropriate fees are received by the Division. Notice must be made in writing on the forms required by the Division.

102.2.1.1 Change of name requires submission of official documentation such as a marriage or divorce certificate, or driver's license.

102.2.1.2 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. Any address may be designated as a mailing address.

102.2.2 State-licensed Appraisers, upon meeting the appropriate requirements for certification and upon filing a completed application within six months from their last renewal, will be allowed to transfer to the categories of either Certified Residential or Certified General by paying only a transfer fee.

102.2.2.1 Transfer to a certified category will not change the individual's expiration date.

R162-102-3. Renewal.

102.3.1 At least 30 days before expiration, a renewal notice shall be sent by the Division to the registered, licensed or certified appraiser at the mailing address shown on the Division records. The applicant for renewal must return the completed renewal notice and the applicable renewal fee to the Division on or before the expiration shown on the notice.

102.3.1.1 The licensed or certified appraiser must return proof of completion of 28 hours of continuing education taken during the preceding two years.

102.3.1.1.1 Even though the appraiser may have changed licensing categories, every third time the appraiser with a renewal date before January 1, 2004 renews, the appraiser will provide evidence of having completed, within the two years prior to the third renewal, a course in the Uniform Standards of Professional Appraisal Practice. This USPAP course may be either a 7-hour National USPAP course or any 15-hour USPAP course that includes passing of a final exam. The hours of credit from USPAP courses may be used to meet part of the continuing education requirement for that renewal period. The appraiser must obtain and study the Utah Real Estate Appraiser Licensing and Certification Act and the rules promulgated thereunder and must sign an attestation that he understands and will abide by them. Appraisers with a renewal date after January 1, 2004 will be required to comply with Section 102.3.1.1.4.

102.3.1.1.2 Those State-Licensed Appraisers who were Senior Appraisers prior to May 3, 1999 and who completed a USPAP course after January 1, 1993 will not be required to complete the USPAP course again in order to renew until their third renewal following the date upon which they completed the USPAP course as long as their renewal date is before January 1, 2004. Those State-Licensed Appraisers who have a renewal date that is after January 1, 2004 will be required to comply with Section 102.3.1.1.4.

102.3.1.1.3 Those appraisers who were State-Registered Appraisers prior to May 3, 2001 and who completed a USPAP course after January 1, 1993 will not be required to complete the USPAP course again in order to renew until their third renewal following the date upon which they completed the USPAP course as long as their renewal date is before January 1, 2004. Those formerly State-Registered Appraisers who have a renewal date that is after January 1, 2004 will be required to comply with Section 102.3.1.1.4.

102.3.1.1.4 Effective January 1, 2004, all appraisers must take the 7-hour National USPAP Update Course or its equivalent at least once every two years in order to maintain a license or certification. In order to qualify as continuing education for renewal, the course must have been taken from an instructor or instructors, at least one of whom is a State-Certified Residential or State-Certified General Appraiser and has been certified by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation. Equivalency to the 7-hour National USPAP Update Course will be determined through the Course Approval Program of the Appraiser Qualifications Board (AQB) of the Appraisal Foundation.

102.3.2 If the renewal fee and documentation are not received within the prescribed time period, the license or certification shall expire.

102.3.2.1 A license or certification may be renewed for a period of 30 days after the expiration date upon payment of a late fee in addition to the requirements of Section 102.3.1.

102.3.2.2 After this 30-day period and until six months after the expiration date, the license or certification may be reinstated upon payment of a reinstatement fee in addition to the requirements of Section 102.3.1. It shall be grounds for disciplinary sanction if, after the expiration date, the individual continues to perform work for which a license or certification is required.

102.3.2.3 A person who does not renew a license or certification within six months after the expiration date shall be relicensed or recertified as prescribed for an original application. The applicant will receive credit for previously credited preclicensing education. Applicants for a new license or certification will be required to complete a USPAP course and retake the examination for the classification for which they are applying.

102.3.3 If the Division has received renewal documents in a timely manner but the information is incomplete, the appraiser shall be extended a 15-day grace period to complete the application.

102.3.4 Renewal while on active military service. An appraiser who is unable to renew a license or certification because active military service has prevented the completion of the appraiser's required continuing education may submit a timely application for renewal that is complete, except for proof of continuing education, and may request that the application for renewal be held in suspense pending the completion of the continuing education requirement.

102.3.4.1 The appraiser will have 120 days after completion of active military service to complete the continuing education required for the renewal and submit proof of the continuing education to the Division.

102.3.4.2 An appraiser may not act as an appraiser in Utah after the expiration of the appraiser's current license while the appraiser's application for renewal is held in suspense by the Division pending the completion of military service and the completion of the continuing education required for renewal. The appraiser may not act as an appraiser in Utah until the appraiser submits proof of completion of the required continuing education and the appraiser's application for renewal is processed by the Division.

R162-102-4. Six-Month Temporary Permits.

102.4.1 A non-resident of this state may obtain a six-month temporary permit to perform one or more specific appraisal assignments in Utah. In order to qualify for a temporary permit, the specific appraisal assignments must be covered by a contract to provide appraisals. In order to obtain a temporary permit, an applicant must:

102.4.1.1 Submit an application in writing requesting temporary licensure or certification. The application shall include the name of the client, the specific property address(es) to be appraised, the type of property being appraised, and the estimated time to complete the assignment;

102.4.1.2 Answer and submit a "Utah Appraiser Qualifying Questionnaire" in the form designated by the Division;

102.4.1.3 Sign an irrevocable consent to service authorizing the Division to receive service of any lawful process on his behalf in any noncriminal proceeding arising out of his practice as an appraiser in this state;

102.4.1.4 Pay an application fee in the amount established by the Division; and

102.4.1.5 Provide the starting date of the appraisal assignment for which the temporary permit is being obtained.

102.4.2 A non-resident is limited to two temporary permits per calendar year, each of which may be extended one time for an additional six month period if the assignments have not been completed within the original six-month term of the temporary permit. A temporary permit may be extended by submitting any

forms required by the Division.

R162-102-5. Reciprocity.

102.5.1 An individual who is licensed or certified as an appraiser by another state may be licensed or certified in Utah by reciprocity on the following conditions:

102.5.1.1 The other state must have required the applicant to satisfactorily complete classroom hours of appraisal education approved by that state which are substantially equivalent in number to the hours required for the class of licensure or certification for which he is applying in Utah;

102.5.1.2 The education must have included a course in the Uniform Standards of Professional Appraisal Practice. Effective January 1, 2003, the course must either be the 15-hour National USPAP Course or its equivalent. Equivalency to the 15-hour National USPAP Course will be determined through the Course Approval Program of the Appraiser Qualifications Board (AQB) of the Appraisal Foundation;

102.5.1.3 The applicant must obtain and study the Utah Real Estate Appraiser Licensing and Certification Act and the rules promulgated thereunder and must sign an attestation that he understands and will abide by them;

102.5.1.4 The applicant must have passed an examination which has been approved by the AQB for the class of licensure or certification for which he is applying;

102.5.1.5 If the applicant resides outside of the state of Utah, he must sign an irrevocable consent to service authorizing the Division to receive service of any lawful process on his behalf in any noncriminal proceeding arising out of his practice as an appraiser in this state;

102.5.1.6 The applicant must provide a complete licensing history sent directly to the Division by his home state and any other state in which he has been licensed, which shall include the applicant's full name, home and business addresses and telephone numbers, the date first licensed, the type or types of licenses or certifications held, the date the current license or certification expires, and a statement concerning whether disciplinary action has ever been taken, or is pending, against the individual;

102.5.1.7 The applicant shall not have been convicted of a criminal offense involving moral turpitude relating to his ability to provide services as an appraiser; and

102.5.1.8 The applicant must agree, as a condition of licensure or certification, that he will furnish to the Division upon demand all records requested by the Division relating to his appraisal practice in Utah. Failure to do so will be considered grounds for revocation of license or certification.

KEY: real estate appraisals, licensing

June 28, 2006

Notice of Continuation February 15, 2007

61-2b-6(1)(I)

R162. Commerce, Real Estate.**R162-104. Experience Requirement.****R162-104-1. Measuring Experience.**

104.1.1 Except for those applicants who qualify under Section 104.17, appraisal experience shall be measured in points according to the Appraisal Experience Points Schedule in Section R162-104-18 of this rule and also in time accrued.

104.1.1.1 Experience for state-licensed applicants shall have been accrued in no fewer than 12 months. Experience for the certified residential applicants shall have been accrued in no fewer than 24 months, as required by the AQB. Experience for the certified general applicants shall have been accrued in no fewer than 30 months, as required by the AQB.

104.1.1.2 Applicants for the state-licensed category shall submit proof of at least 400 points of experience. Applicants for certified residential shall submit proof of at least 100 additional points accrued after state-licensed status was obtained, for a total of 500 points of experience. Applicants for certified general shall submit proof of at least 200 additional points accrued after state-licensed status was obtained, for a total of 600 points of experience.

R162-104-2. Maximum Points Per Year.

104.2 For applicants for certification, a maximum of 400 points will be credited for any one 12-month period. For applicants for licensure, a maximum of 400 points will be credited for any one 12-month period.

R162-104-3. Time Allowed for Meeting Experience Requirement.

104.3 Credit will be given for appraisal experience earned only within five years immediately preceding the licensure or certification application.

R162-104-4. Proof of Experience.

104.4 The Division shall require the applicant to furnish the following information for each appraisal for which points are claimed: property address or legal description, date of the appraisal, type of property, and any other information deemed appropriate by the Division.

R162-104-5. Compliance with USPAP and Licensing Requirements, USPAP Limited Appraisals.

104.5 No experience credit will be given for appraisals which were performed in violation of Utah law or the law of another jurisdiction, or the administrative rules adopted by the Division and the Board.

104.5.1 No experience credit will be given for appraisals unless the appraisals were done in compliance with USPAP.

104.5.2 In order to qualify as experience credit toward certification, the additional points for certification required by Section 104.1.1.2 must have been accrued while the applicant was licensed as an appraiser in Utah, or in another state if licensure was required in that state, at the time the appraisal was performed.

104.5.3 For the purposes of this rule, limited appraisals are defined as opinions of value performed under, and resulting from, invoking the departure provision of USPAP, but do not include mass appraisals. Limited appraisals shall be granted 50% of the credit awarded an appraisal which is not a limited appraisal. Limited appraisals where only an exterior inspection of the subject property is performed shall be granted 25% of the credit awarded an appraisal which is not a limited appraisal. Not more than 25% of the total experience required for licensure or certification may be earned from limited appraisals.

R162-104-7. State-Licensed and State-Certified Applicants.

104.7.1 Except for those applicants who qualify under Section 104.17, applicants applying for licensure as State-

Licensed Appraisers shall be awarded points from either the Residential Experience Points Schedule or the General Experience Points Schedule for their experience prior to licensure only if the experience claimed was gained in compliance with Section 105.3.

104.7.2 Applicants applying for certification as State-Certified Residential Appraisers must document at least 75% of the points submitted from the Residential Experience Points Schedule. No more than 25% of the total points submitted may be from the General Experience Points Schedule.

104.7.3 Applicants applying for certification as State-Certified General Appraisers may claim points for experience from either the Residential Experience Points Schedule or the General Experience Points Schedule, so long as at least 50% of the total points has been earned from the General Experience Points Schedule.

R162-104-8. Points from Authorship.

104.8 The cumulative points from appraisal textbook and article authorship shall not exceed 50% of the cumulative points submitted.

R162-104-9. Review or Supervision of Appraisals.

104.9 Review appraisals will be awarded experience credit when the appraiser has performed technical reviews of appraisals prepared by either employees, associates or others, provided the appraiser complied with Uniform Standards of Professional Appraisal Practice Standards Rule 3 when the appraiser was required to comply with the rule. The following points shall be awarded for review or supervision of appraisals:

104.9.1 Review of appraisals which does not include a physical inspection of the property and verification of the data, commonly known as a desk review, shall be worth 20% of the points awarded to the appraisal if a separate written review appraisal report is prepared. A maximum of 100 points may be earned by desk review of appraisals.

104.9.2 Review of appraisals which includes a physical inspection of the property and verification of the data, commonly known as a field review, shall be worth 50% of the points awarded to the appraisal if a separate written review appraisal report is prepared. A maximum of 100 points may be earned by field review of appraisals.

104.9.3 Supervision of appraisers shall be worth 20% of the points awarded to the appraisal. A maximum of 100 points may be earned by supervision of appraisers.

104.9.4 Not more than 50% of the total experience required for certification may be granted under Subsections R162-104-9(104.9.1) through R162-104-9(104.9.3) and R162-104-11(104.11.1) and R162-104-11(104.11.3) combined.

R162-104-10. Condemnation Appraisals.

104.10 Condemnation appraisals shall be worth an additional 50% of the points normally awarded for the appraisal if the condemnation appraisal included a before and after appraisal because of a partial taking of the property.

R162-104-11. Preliminary Valuation Estimates, Comparative Market Analysis, Real Estate Consulting Services, and Other Real Estate Experience.

104.11.1 Preliminary valuation estimates, range of value estimates or similar studies, and other real estate related experience gained by bankers, builders, city planners and managers, or other individuals may be granted credit for up to 50% of the experience required for certification in accordance with R162-104-17 of this rule, so long as the experience demonstrates to the Board that the applicant has the ability to arrive at a fair market value of property and to properly document value conclusions.

104.11.2 Comparative market analysis by real estate

licensees may be granted up to 100% experience credit toward certification in accordance with R162-104-17 of this rule, when the analysis is prepared in conformity with USPAP Standards Rules 1 and 2 and the individual can demonstrate to the Board that he is using similar techniques as appraisers to value properties and effectively utilize the appraisal process.

104.11.3 Appraisal analysis, real estate counseling or consulting services, and feasibility analysis/study will be awarded experience credit in accordance with R162-104-17 of this rule for up to 50% of the experience required toward certification so long as the services were performed in accordance with USPAP Standards Rules 4 and 5.

104.11.4 Not more than 50% of the total experience required for certification may be granted under Subsections R162-104-11(104.11.1) and R162-104-11(104.11.3) and R162-104-9(104.9.1) through R162-104-9(104.9.3) combined.

R162-104-12. Ad Valorem Appraisal and Benchmark Appraisal.

104.12 Ad valorem appraisal and benchmark appraisal by property type will earn the same number of points as fee appraisal where the individual can demonstrate that he performed highest and best use analysis, developed the model in model specification, or developed adjustments to the model in model calibration, and where the individual can demonstrate the appraisal was performed in accordance with Standards Rule 6 of the Uniform Standards of Professional Appraisal Practice.

R162-104-13. Experience Participation.

104.13 An applicant for certification must be able to prove more than 50% participation in the data collection, verification of data, reconciliation, analysis, identification of property and property interests, compliance with USPAP standards and all Advisory Opinions of USPAP, and preparation and development of the appraisal report in order to count the appraisal for experience credit. Experience credit will be granted to only one registered or licensed appraiser per completed appraisal even though more than one may have participated in the development of the appraisal.

R162-104-14. Unacceptable Experience.

104.14 An applicant will not receive points toward satisfying the experience requirement for licensure or certification for performing the following:

- (a) Appraisals of the value of a business as distinguished from the appraisal of commercial real estate; or
- (b) Personal property appraisals.

R162-104-15. Verification of Experience.

104.15 The Board, at its discretion, may verify the claimed experience by any of the following methods: verification with the clients; submission of selected reports to the Board; and field inspection of reports identified by the applicant at the applicant's office during normal business hours.

R162-104-16. Experience Review Committee.

104.16 There may be a committee appointed by the Board to review the experience claimed by applicants for licensure or certification.

104.16.1 The Committee shall:

104.16.1.1 Review all applications for adherence to the experience required for licensure or certification;

104.16.1.2 Correspond with applicants concerning submissions, if necessary; and

104.16.1.3 Make recommendations to the Division and the Board for licensure or certification approval or disapproval.

104.16.2 Committee composition. The Committee shall be composed of appraisers from the following categories: residential appraisers; commercial appraisers; farm and ranch

appraisers; right-of-way appraisers; and ad valorem appraisers.

104.16.2.1 The chairperson of the committee shall be appointed by the Board.

104.16.2.2 Meetings may be called upon the request of the chairperson or upon the written request of a quorum of committee members.

104.16.3 New Review. If the review of an application has been performed by the Experience Review Committee, and the Board has denied the application based on insufficient experience, the applicant may request that the Board review the issue again by making a written request within thirty days after the denial stating specific grounds upon which relief is requested. The Board shall thereafter consider the request and issue a written decision.

R162-104-17. Special Circumstances.

104.17 Applicants having experience in categories other than those shown on the Appraisal Experience Points Schedule, or applicants who believe the Experience Points Schedule does not adequately reflect their experience, or applicants who believe the Experience Points Schedule does not adequately reflect the complexity or time spent on an appraisal, may petition the Board on an individual basis for evaluation and approval of their experience as being substantially equivalent to that required for licensure or certification. Upon a finding that an applicant's experience is substantially equivalent to that required for licensure or certification, the Board may waive experience points, give an applicant credit for months of experience, or both.

104.17.1 Full-time elected county assessors and any person performing an appraisal for the purpose of establishing the fair market value of real estate for the assessment roll may, as an alternative to using the Appraisal Experience Points Schedule, be awarded points as provided in Section 104.17.2, provided that they have experience in at least three of the following categories and no more than one-third of their experience comes from any one of the following categories:

104.17.1.1 Property description/identification;

104.17.1.2 Highest and best use analysis;

104.17.1.3 Land value estimates;

104.17.1.4 Cost approach;

104.17.1.5 Sales comparison;

104.17.1.6 Income capitalization approach.

104.17.2 Full-time elected county assessors may be awarded 200 points for every year of service. Any person performing an appraisal for the purposes of establishing the fair market value of real estate for the assessment roll may be awarded 200 points for every year of full-time service that is substantiated by the applicant. If the applicant requests that experience points be granted for employment in other than one-year increments, the number of points allowable under this section may be prorated in proportion to the number of months of full-time employment substantiated by the applicant.

104.17.2.1 Part-time employment. Any person performing an appraisal for the purposes of establishing the fair market value of real estate for the assessment roll may be awarded a number of points for part-time service that has been pro-rated in proportion to the average number of hours worked per week during the months for which points are claimed. For the purposes of this rule, full-time service is defined as 40 hours per week.

104.17.3 Fulltime elected county assessors and any person performing an appraisal for the purposes of establishing the fair market value of real estate for the assessment roll are not subject to the limitations in Section 105.3.

104.17.4 Fulltime investigators with the Division who perform appraisal investigations may be awarded 200 points for every 18 months of service. They are not subject to the limitations in Section 105.3.

R162-104-18. Appraisal Experience Points Schedule.

104.18 Points shall be awarded as follows:

104.18.1 Residential Experience Points Schedule. The following points shall be awarded to form appraisals. Three points may be added to the points shown if the appraisal was a narrative appraisal instead of a form appraisal.

TABLE 1

(a) One-unit dwelling, including a site	1 point
(b) Multiple one-unit dwellings in the same subdivision or condominium project which are substantially similar 1-25 dwellings	1 point per dwelling up to a maximum of 6 points
Over 25 dwellings	A total of 10 points
(c) Two- to four-unit dwelling	4 points
(d) Employee Relocation Counsel reports completed on currently accepted Employee Relocation Counsel form	2 points
(e) Residential lot, 1-4 family	1 point
(f) Multiple lots in the same subdivision which are substantially similar 1-25 lots	1 point per lot up to a maximum of 6 points
Over 25 lots	A total of 10 points
(g) Small parcel up to 5 acres	1 point
(h) Vacant land, 20-500 acres	4 points
A maximum of 50 points may be awarded for appraisal of vacant land.	
(i) Recreational, farm, or timber acreage suitable for a house site, up to 10 acres	2 points
Over 10 acres	3 points
(j) All other unusual structures or acreages, which are much larger or more complex than typical properties	1-5 points as determined by the Board
(k) Residential appraisal textbook authorship, not to exceed 20 points per year	As determined by the Board
(l) Residential appraisal articles in journals of approved national appraisal organizations, not to exceed 20 points per year	10 points

104.18.2 General Experience Points Schedule. All appraisal reports claimed must be narrative appraisal reports.

TABLE 2

(a) Apartment buildings, 5-100 units	8 points
Over 100 units	10 points
(b) Hotel or motels, 50 units or fewer	6 points
51-150 units	8 points
Over 150 units	10 points
(c) Nursing home, rest home, care facilities, Fewer than 80 beds	8 points
Over 80 beds	10 points
(d) Industrial or warehouse building, Fewer than 20,000 square feet	6 points
Over 20,000 square feet, single tenant	8 points
Over 20,000 square feet, multiple tenants	10 points
(e) Office buildings	
Fewer than 10,000 square feet	6 points
Over 10,000 square feet, single tenant	8 points
Over 10,000 square feet, multiple tenants	10 points
(f) Entire condominium projects, using income approach to value	
5- to 30-unit project	6 points
31- or more-unit project	10 points
(g) Retail buildings	
Fewer than 10,000 square feet	6 points
More than 10,000 square feet, single tenant	8 points
More than 10,000 square feet, multiple tenants	10 points
(h) Commercial, multi-family, industrial, or other nonresidential use acreage	
Fewer than 10 acres	4 points
10 acres or more	6 points
100 acres or more, income approach to value	10 points
(i) All other unusual structures or assignments which are much larger or more complex than the properties described in (a) to (h) herein.	1 to 20 points as determined by Board
(j) Textbook authorship in general appraisal topics, not to exceed 20 points per year	As determined by Board

(k) General field journal articles in journals of approved national appraisal organizations, not to exceed 20 points per year	10 points
(l) Entire Subdivisions or Planned Unit Developments (PUDs)	
1- to 25-unit subdivision or PUD	6 points
Over 25-unit subdivision or PUD	10 points
(m) Feasibility or market analysis, maximum 100 points	1 to 20 points as determined by Board

Ad Valorem appraisals	
(n) Development and implementation of multiple regression model - land valuation guide, up to 5000 parcels	20 points
For each additional 5000 parcels, add 1 point	
(o) Depreciation study and analysis	20 points
(p) Sales ratio study and implementation - physical inspection and review, maximum 50 points	10 points
(q) Development of standards of practice for assessment administration and writing of those guidelines, maximum 40 points	10-20 points as determined by Board
(r) State-assessed property - gravel pits, mines, utilities	1-20 points as determined by Board

Farm and Ranch appraisals	Form	Narrative
(s) Separate grazing privileges or permits	4 pts.	5 pts.
(t) Irrigated cropland, pasture other than rangeland, 1 to 10 acres	2 pts.	3 pts.
11-50 acres	2.5 pts.	4 pts.
51-200 acres	3 pts.	5 pts.
201-1000 acres	5 pts.	8 pts.
More than 1000 acres	8 pts.	10 pts.
(u) Dry farm, 1 to 1000 acres	3 pts.	5 pts.
More than 1000 acres	4 pts.	8 pts.
(v) Improvements on properties other than a rural residence, maximum 2 points:		

Dwelling	1 pt.	1 pt.
Sheds	0.5 pt.	0.5 pt.
(w) Cattle ranches		
0-200 head	3 pts.	4 pts.
201-500 head	5 pts.	6 pts.
501-1000 head	6 pts.	8 pts.
More than 1000 head	8 pts.	10 pts.
(x) Sheep ranches		
0-2000 head	5 pts.	6 pts.
More than 2000 head	7 pts.	9 pts.
(y) Dairies, includes all improvements except a dwelling		
1-100 head	4 pts.	5 pts.
101-300 head	5 pts.	6 pts.
More than 300 head	6 pts.	7 pts.
(z) Orchards		
5-50 acres	6 pts.	8 pts.
More than 50 acres	8 pts.	10 pts.
(aa) Rangeland/timber		
0-640 acres	4 pts.	5 pts.
More than 640 acres	6 pts.	7 pts.
(bb) Poultry		
0-100,000 birds	6 pts.	8 pts.
More than 100,000 birds	8 pts.	10 pts.
(cc) Mink		
0-5000 cages	6 pts.	7 pts.
More than 5000 cages	8 pts.	10 pts.
(dd) Fish farms	8 pts.	10 pts.
(ee) Hog farms	8 pts.	10 pts.

104.18.2.1 Appraisals on commercial or multifamily form reports shall be worth 75% of the points normally awarded for the appraisal.

**KEY: real estate appraisal, experience
November 24, 2004 61-2b-1 through 61-2b-40
Notice of Continuation February 15, 2007**

R162. Commerce, Real Estate.**R162-106. Professional Conduct.****R162-106-1. Uniform Standards.**

106.1. As required by the Appraisal Foundation in accordance with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), all appraisers must comply with the edition of the Uniform Standards of Professional Appraisal Practice (USPAP) currently approved by the Board. Information on which version of USPAP is currently approved by the Board may be obtained from the division. All persons licensed or certified under this chapter must also observe the Advisory Opinions of USPAP. Copies of USPAP may be obtained from the Appraisal Foundation, 1029 Vermont Avenue N.W., Suite 900, Washington, D.C. 20005. Registered expert witnesses, licensed and certified appraisers and candidates for registration, licensure or certification may obtain copies from the division.

R162-106-2. Use of Terms.

106.2. The terms "State-Certified Residential Appraiser," "State-Certified General Appraiser," and State-Licensed Appraiser shall not be abbreviated or reduced to a letter or group of letters. If these terms are used on letterhead or in advertising, the appraiser's certificate number or license number must follow his name.

R162-106-3. Signatures and Use of Seal.

106.3.1. State-Licensed Appraisers. State-Licensed appraisers may not place a seal on an appraisal report or use a seal in any other manner likely to create the impression that the appraiser is a state-certified appraiser.

106.3.2. Signatures.

106.3.2.1. Signature stamps. Appraisers may not affix their signatures to appraisal reports by means of a signature stamp.

106.3.2.2. Appraisers may not affix their signatures to blank or partially completed appraisal reports which will be filled in later by anyone other than the appraiser who has signed the reports.

106.3.2.3. If it is necessary for an appraiser to delegate authority to another individual to sign the appraiser's signature on an appraisal report, the other individual may sign the report for the appraiser only if: a) the report explicitly discloses that the other individual has been authorized to sign the report for the appraiser; b) the permission must have been granted in writing and limited to a specific property address; c) a copy of the written permission to sign must be attached to the report; and d) the appraiser who signs the other's signature must write the word "by" followed by his own name after the other's signature.

106.3.2.4. Digital signatures. A digital signature may be used in place of a handwritten signature only if: a) the software program which generates the digital signature has a security feature; and b) the appraiser ensures that his signature is protected and that no one other than the appraiser has control of that signature.

R162-106-4. Testimony by an Appraiser.

106.4. Testimony. An appraiser who testifies as to an appraisal opinion in a deposition or an affidavit, or before any court, public body, or hearing officer, shall prepare a written appraisal report or a file memorandum prior to giving such testimony.

106.4.1. File memoranda. For the purpose of this rule, a file memorandum shall include work sheets, data sheets, the reasoning and conclusions upon which the testimony is based, and other sufficient information to demonstrate substantial compliance with USPAP Standards Rule 2-2, or in the case of mass appraisal, Standards Rule 6-7.

R162-106-5. Failure to Respond to Investigation.

106.5. When the Division notifies an appraiser or registered expert witness of a complaint, the notified individual must respond to the complaint in writing within ten business days of the notice from the Division. Failure to respond within the required time period to a notice of complaint, a subpoena, or any written request for information from the Division shall be considered a violation of these rules and separate grounds for disciplinary action against the appraiser or registered expert witness.

R162-106-6. Recordkeeping Requirements.

106.6. The true copy of an appraisal report which an appraiser is required by Section 61-2b-34(1) to retain shall be a photocopy or other exact copy of the report as it was provided to the client, including the appraiser's signature.

R162-106-7. Sales and Listing History.

In order to comply with Standard 1 of the Uniform Standards of Professional Appraisal Practice (USPAP), appraisers who are licensed or certified under this chapter shall analyze and report the listing history of the subject property for the three years preceding the appraisal if such information is available to the appraiser from a multiple listing service, listing agent(s), or the property owner.

R162-106-8. Draft Reports.

For the purpose of this rule, a "draft report" is defined as an appraisal report that is a work in progress and that has not yet been finished by the Appraiser.

106.8.1. One to Four Unit Residential Real Property. An appraiser may not release a draft report to a client in the appraisal of one to four unit residential real property.

106.8.2. An appraiser may release a draft report to a client in the appraisal of other than one to four unit residential real property if: a) the first page of the report prominently identifies the report as a draft; b) the draft report has been signed by the appraiser; and c) the appraiser complies with USPAP in the preparation of the draft report.

R162-106-9. Inspections.

All appraisal reports shall include a statement indicating whether or not the subject property was inspected as part of the appraisal process, and if any inspections were done, the following information concerning the inspections shall also be included:

- (a) the names of all appraisers and appraisal trainees who participated in each property inspection;
- (b) whether each inspection was an exterior inspection only or both an exterior and an interior inspection; and
- (c) the date that each inspection was performed.

KEY: real estate appraisals, conduct**September 25, 2005****Notice of Continuation February 15, 2007****61-2b-27**

R162. Commerce, Real Estate.**R162-210. Certification of Prelicensing Education Providers.****R162-210-1. Definitions.**

210.1.1 For the purposes of this rule, "school" includes:

(a) Any college or university accredited by a regional accrediting agency which is recognized by the United States Department of Education;

(b) Any community college, vocational-technical school, state or federal agency or commission;

(c) Any nationally recognized mortgage organization, any Utah mortgage organization, or any local mortgage organization which has been approved by the Utah Residential Mortgage Regulatory Commission; and

d) Any proprietary mortgage education school.

210.1.2 For the purposes of this rule, "applicant" shall include school directors, school owners and pending instructors.

210.1.3 "Distance Education" is defined as education in which the instruction does not take place in a traditional classroom setting, but rather through other media where teacher and student are separated by distance and sometimes by time.

R162-210-2. Application for School Certification.

210.2.1 A school offering prelicensing education must be certified by the Division of Real Estate before providing any education. Each school requesting approval of an educational program designed to meet the prelicensing education requirements must make application for approval on the form prescribed by the Division. The application must include the non-refundable application fee and the following information which will be used in determining the school's eligibility for approval:

(a) Name, phone number and address of the school, school director, and all owners of the school;

(b) A description of the type of school and a description of the school's physical facilities. All courses must be taught in an appropriate classroom facility and not in any private residence, except for courses approved for specific home-study purposes;

(c) A comprehensive course outline including a description of the course, the length of time to be spent on each subject area broken into class periods, and a minimum of three to five learning objectives for every three hours of classroom time. The curriculum must include all of the topics set forth in the Standard Curriculum approved by the Utah Residential Mortgage Regulatory Commission and the Division. A school may alter the sequence of presentation of the required topics, and may add topics in addition to those required by the Standard Curriculum;

(d) A list of each certified instructor the school intends to use and the instructor certification number which has been issued by the Division. A college or university may use any faculty member to teach an approved course provided the instructor demonstrates to the satisfaction of the Division the academic training or experience qualifying him to teach the course;

(e) An itemization of methods of instruction, including lecture method, slide presentation, cassette, videotape, movie, or other method;

(f) A list of the titles, authors and publishers of all required textbooks. All texts, workbooks, supplement pamphlets and any other materials must be appropriate and current in their application to the required course outline;

(g) A schedule of the days, times and locations of classes;

(h) A copy of the statement which shall be provided for each student outlining the days, times and locations of classes; the number of quizzes and examinations; the grading system, including methods of testing and standards of grading; the requirements for attendance; the school's evidence of notification to candidates of the qualifying questionnaire; and

the school's refund policy. The statement to the student shall state in capital letters no smaller than 1/4 inch the following language: "Any student attending the (school name) is under no obligation to affiliate with any of the mortgage entities that may be soliciting for licensees at this school;" and

(i) Any other information as the Division may require.

R162-210-3. School Certification and Renewal.

210.3.1 When a school has met all conditions of certification, and upon approval by the Division, a school will be issued certification. A school certification will expire 24 months from the date of issuance. A school shall apply for renewal for additional twenty-four month periods prior to the expiration of each current certification, using the form required by the Division.

R162-210-4. Rules of Conduct for Certified Schools.

210.4.1 A school shall teach the approved course of study as outlined in the Standard Course Outline approved by the Utah Residential Mortgage Regulatory Commission.

210.4.2 A school shall require each student to attend the required number of hours.

210.4.3 A school shall maintain a record of each student's attendance for a minimum of five years after enrollment.

210.4.4 A school shall not accept a student for a number of hours that is less than the full prelicensing curriculum without first having a written statement from the Division indicating the exact number of hours that an applicant for licensure by reciprocity is required by the Division to complete.

210.4.5 A school shall not make any misrepresentation in its advertising about any course of instruction, and shall be able to provide substantiation of any claims made in its advertising. School advertising and public notices shall not denigrate the mortgage profession and shall not make disparaging remarks about a competitor's services or methods of operation.

210.4.6 Guest Lecturers. No more than 20% of the required prelicensing education hours may be provided by guest lecturers. Guest lecturers shall be experts in the field on which they provide instruction. Prior to using any guest lecturer, a certified school shall provide to the Division the name of the guest lecturer and a resume which defines the knowledge and expertise of the guest lecturer, or other evidence of professional qualifications of the guest lecturer.

210.4.7 Minimum class time. A school shall not give a student credit for more credit hours of education than the student has actually completed. A credit hour is defined as 50 minutes of instruction within a 60 minute time period. A 10 minute break will be given for each 50 minutes of instruction.

210.4.8 Maximum class hours per day. Education credit will be limited to a maximum of eight credit hours per day.

210.4.9 Limitation on Non-lecture Methods of Instruction. Absent special approval from the Division: (a) Non-lecture methods of instruction will be limited to 50% of the total credit hours of the prelicensing curriculum; (b) Non-lecture methods of instruction will have an accompanying workbook for the student to complete during the instruction. The schools shall submit copies of the workbooks to the Division prior to using a non-lecture method of instruction; and (c) A school must have a certified instructor available to answer student questions within 48 hours after a non-lecture method of instruction has been used.

210.4.10 Proof of Course Integrity for Distance Education Courses. Distance education courses will be reviewed on a case by case basis and will be approved only if, in the opinion of the Division, assurance of the following can be provided: a) There is a method to insure that the person actually completing the course is the student who is to receive credit for the course; b) The course provides no fewer hours of actual instruction than the number of credit hours that will be granted for the course;

and c) There is a method to insure that the student comprehends the material.

210.4.11 Challenge by Examination. A student cannot challenge a course or any part of a course of study by examination in lieu of attendance at the course.

210.4.12 College Credit Hour Equivalents. A college or a university that provides Division-approved prelicensing education courses may schedule those courses within its regular quarter or semester schedule. A college quarter hour credit is the equivalent of 10 classroom hours of prelicensing education, and a college semester hour credit is the equivalent of 15 classroom hours of prelicensing education.

210.4.13 Within 15 calendar days after the occurrence of any material change in the information provided in the school's application for certification, the school shall give the Division written notice of that change.

210.4.14 A school shall not attempt by any means to obtain or to use in its educational offerings the questions from the prelicensing examination unless the questions have been dropped from the current bank of exam questions.

210.4.15 A school shall not give any valuable consideration to an individual or entity licensed with the Division under the Utah Residential Mortgage Practices Act for having referred students to the school, nor shall a school accept valuable consideration from an individual or entity licensed with the Division under the Utah Residential Mortgage Practices Act for having referred students to a licensed mortgage entity.

210.4.16 Licensed mortgage entities may be permitted by a school to solicit prospective mortgage officers at the school, provided that no solicitation may be made during the class time or the 10-minute breaks that are permitted during every hour of instruction. Such solicitation may be made only after the regularly scheduled class time has concluded. No student may be required to attend any such solicitation.

210.4.17 A school shall use only certified instructors or guest lecturers. The school shall notify the Division about which class sessions the guest lecturers will teach.

210.4.18 A school's owners and directors shall be responsible for the quality of instruction in the school and for adherence to the state laws and regulations regarding school and instructor certification.

210.4.19 School directors shall provide the instructor for each course with the required content outline for the course and shall assure that the required subject matter has been taught.

210.4.20 Disclosure Requirements Regarding Criminal History. For the purposes of this rule, criminal history is defined as any felony or misdemeanor convictions, any pleas in abeyance or diversion agreements, or any pending criminal charges.

210.4.20.1 Prior to accepting payment from a prospective student for a pre-licensing education course, a certified school shall provide a written disclosure to the prospective student stating that: a) a student with a criminal history may not qualify for a license; b) an applicant with a criminal history may be required to appear at a hearing before the Utah Residential Mortgage Regulatory Commission and the Director of the Division of Real Estate to obtain approval to license in light of the criminal history, and there is no guarantee that such an applicant will be approved; and c) all applicants for licensure will be required to submit to the Division with their applications fingerprint cards that will be used in criminal background checks.

210.4.20.2 The school shall be required to obtain the student's signature on the written disclosure required by Section 210.4.20.1 acknowledging receipt of the disclosure. The disclosure form and acknowledgment shall be retained in the school's records and made available for inspection by the Division for a minimum of two years following the date upon which the student completes the pre-licensing course.

R162-210-5. Instructor Application for Certification.

210.5.1 An instructor shall not teach a prelicensing course by himself without having been certified by the Division prior to teaching the course. Each applicant for certification as a prelicensing instructor shall make application for approval on the form required by the Division.

210.5.2 The applicant for instructor certification to teach Mortgage Officer prelicensing courses shall provide:

(a) Evidence of a minimum educational level of graduation from high school or its equivalent;

(b) Evidence of a minimum of five years of experience in the residential mortgage industry within the past ten years, or evidence of having completed appropriate college-level courses specific to the topic proposed to be taught;

(c) Evidence of a minimum of twelve months of fulltime teaching experience or an equivalent number of months of part time teaching experience, or attendance at Instructor Development Workshops totaling at least two days in length; and

(d) Evidence of having passed an examination designed to test the knowledge of the subject matter proposed to be taught.

210.5.3 Lending Manager Prelicensing Courses. In addition to the requirements of Section 210.5.2, an applicant for certification to teach the following specific Lending Manager prelicensing courses shall have experience as follows:

210.5.3.1 Management of a Residential Mortgage Loan Office. An applicant for certification to teach office management courses must have at least two years practical experience in managing an office that engaged in the business of residential mortgage loans.

210.5.3.2 Mortgage Lending Law. An applicant to teach mortgage lending law courses must be a current member of the Utah Bar Association or have graduated from an American Bar Association accredited law school, and must have at least two years practical experience in the field of real estate law.

210.5.3.3 Advanced Appraisal. An applicant to teach advanced appraisal courses must be a State-Certified appraiser and must hold an MAI designation or equivalent designation. The instructor applicant must have at least two years practical experience in appraising.

210.5.3.4 Advanced Finance. An applicant to teach advanced finance courses must have been associated with a lending institution as a loan officer or have a degree in finance. The instructor applicant must have at least two years practical experience in real estate finance.

210.5.4 Special Circumstances. Instructor applicants who cannot meet the requirements of Section 210.5.2, but who believe they are qualified to be certified as instructors, may petition the Utah Residential Mortgage Regulatory Commission on an individual basis for evaluation and approval of their qualifications as being substantially equivalent to those required for instructor certification.

R162-210-6. Instructor Certification and Renewal.

210.6.1. Upon approval by the Division, an instructor applicant will be issued a certification that expires twenty-four months following certification. An instructor shall apply for renewal for additional twenty-four month periods prior to the expiration of each current certification, using the form required by the Division.

210.6.2. As a condition of renewal of certification, the applicant shall include the following with the application for renewal:

(a) Proof of having taught at least 20 hours of in-class instruction in a certified mortgage education course during the preceding two years;

(b) Proof of attendance at an instructor development workshop sponsored by the Division during the preceding two years; and

(c) Proof of successful completion of 12 hours of live education courses taken in real estate financing related subjects;

210.6.3 A renewed certification will be issued for two full calendar years, expiring on December 31 of the second calendar year.

210.6.4 If an application for renewal of instructor certification, including all required fees and documentation, is not received prior to the expiration date of the current instructor certification, the instructor certification shall expire.

210.6.4.1 When an instructor certification expires, the certification may be reinstated for a period of thirty days after the expiration date of the certification upon payment of a non-refundable late fee in addition to completion of the requirements for a timely renewal.

210.6.4.2 After the thirty day period, and until three months after the expiration date, an instructor certification may be reinstated upon payment of a non-refundable late fee and completion of 6 classroom hours of education related to residential mortgages or teaching techniques in addition to completing all of the requirements for a timely renewal. After the three month period, an instructor will be required to apply as for an original certification.

R162-210-7. Determining Fitness for Certification.

210.7.1 In order to qualify for school certification, all school directors and all owners of the school must meet the criteria of honesty, integrity, truthfulness, reputation, and competency. In order to qualify for instructor certification, all instructors must meet the criteria of good moral character, honesty, integrity, truthfulness, reputation, and competency.

210.7.2 The determination of whether a person possesses these qualifications will be made by the Division, with the concurrence of the Commission. In determining fitness for certification, the Division and Commission may consider various factors, including:

(a) whether the person has had a license to practice in the mortgage profession, or any other regulated profession or occupation denied, restricted, suspended, or revoked or subjected to any other disciplinary action by this or another jurisdiction;

(b) whether the person has been permitted to resign or surrender a mortgage license or any other professional license or has ever allowed a license to expire while the applicant was under investigation, or while action was pending against the applicant by a mortgage licensing or any other regulatory agency;

(c) whether any action is pending against the person by any mortgage licensing or other regulatory agency;

(d) whether the person is currently under investigation for, or charged with, or has ever been convicted of or pled guilty or no contest to, or entered a plea in abeyance to, a misdemeanor or felony;

(e) the circumstances that led to any criminal convictions;

(f) the amount of time that has passed since the individual's last criminal conviction;

(g) whether the person has ever been placed on probation or ordered to pay a fine or restitution in connection with any criminal offense or a licensing action;

(h) whether a civil judgment has ever been entered against the person based on fraud, misrepresentation or deceit, and, if the judgment awarded damages against the person, whether the judgment has been fully satisfied;

(i) whether any restitution ordered by a court in a criminal conviction has been fully satisfied;

(j) whether the probation in a criminal conviction or a licensing action has been completed and fully served;

(k) whether there has been subsequent good conduct on the part of the person;

(l) any character testimony presented at the hearing and

any character references submitted by the individual;

(m) past acts related to honesty or moral character involving the business of residential mortgage loans;

(n) whether the individual has been guilty of dishonest conduct in the five years preceding application that would have been ground under Utah law for revocation or suspension of a certification had the individual then been certified;

(o) whether any tax and child support arrearages have been paid; and

(p) whether the individual has demonstrated competency in business subsequent to any part incompetence by the individual in the mortgage loan business.

R162-210-8. Division Evaluation and Monitoring of Courses and Instructors.

210.8.1 The Division shall cause certified prelicensing education courses to be evaluated for adherence to course content and other prescribed criteria, and for the effectiveness of the instructor.

210.8.2 On a randomly selected basis, the Division may assign monitors to attend courses for the purpose of evaluating the courses and the instructors. The monitors will complete a standard evaluation form provided by the Division and return the form to the Division within 10 days after the last class.

**KEY: residential mortgage loan origination
November 3, 2004**

61-2c-103(6)

R277. Education, Administration.**R277-617. Authorization of Student Clubs and Organizations.****R277-617-1. Definitions.**

- A. "Board" means Utah State Board of Education.
- B. "Club" means an organization for students that meets outside of regular classroom hours in a school.
- C. "School club" means a club organized and directed by school sponsors.
- D. "Supervised student club" means a club organized and operated by students with the permission of school authorities, and operated by students under the close supervision of a faculty supervisor.
- E. "Monitored student club" means a club organized and operated by students with the permission of school authorities; a faculty monitor is assigned to the club to provide support as necessary and to monitor activities to ensure compliance with applicable school policies.

R277-617-2. 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; provides direction to local boards under Section 53A-3-419; and reflects principles set forth by the United States Supreme Court in addressing the authority and responsibilities of public school officials:

- (1) "The undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior." *Bethel v. Fraser*, 478 U.S. 675 (1986)
- (2) "A school need not tolerate student speech that is inconsistent with its 'basic educational mission,' even though the government could not censor similar speech outside the school." *Hazelwood School Dist. v. Kuhlmeier*, 484 U.S. 260 (1988)
- (3) "We have also recognized an interest in protecting minors from exposure to vulgar and offensive spoken language. . . [v]ulgar speech and lewd conduct is [sic] wholly inconsistent with the fundamental values of public education." *Bethel v. Fraser*, 478 U.S. 675 (1986)
- (4) "[The Equal Access Act] does not limit a school's authority to prohibit meetings that would 'materially and substantially interfere with the orderly conduct of educational activities within the school' . . . [and] also preserves 'the authority of the school, its agents or employees, to maintain order and discipline on school premises, to protect the well-being of students and faculty, and to assure that attendance of students at meetings is voluntary.'" *Board of Education v. Mergens*, 496 U.S. 226 (1990)

B. The purpose of this rule is to provide guidance to local school boards regarding:

- (1) authorization of clubs;
- (2) protecting the physical, emotional, psychological, and moral well-being of students;
- (3) maintaining order and discipline on school premises; and
- (4) preventing material and substantial interference with the orderly conduct of a school's educational activities.

R277-617-3. Authorization of Clubs.

A. A local school board may authorize the following types of clubs by grade level:

- (1) Grades K-6: only school clubs may be authorized in any of grades K-6.
- (2) Grades 7-9: both school clubs and supervised student clubs are permissible in grades 7-9, except as provided in R277-617-3C.
- (3) Grades 10-12: school clubs, supervised student clubs, and monitored student clubs are permissible in grades 10-12.

B. Each local school board shall adopt policies governing the establishment of clubs in the schools of the district. The policies shall include the following:

(1) Students or school staff seeking authorization to establish a club shall prepare a club charter setting forth the name and purposes of the club, describing the types of activities in which club members may be engaged, and establishing limitations upon club activities. Those limitations shall include prohibitions against:

(a) Action or advocacy of imminent action which violates the law or administrative rule; this prohibition shall not apply to appropriate discussions concerning the changing of laws or rules, or actions taken through appropriate channels or procedures to effectuate such changes.

(b) Advocacy or approval of sexual activity outside of marriage, or presentations in violation of laws or regulations governing sex education or privacy rights of families or individuals.

(c) Action or advocacy of imminent action involving the harassment or the denigration of any person.

(d) Action or advocacy of imminent action with the intent to cause a person to fear to freely exercise or enjoy any right secured by the Constitution or laws of the United States or the state of Utah.

(2) Authorization to establish a club may not be granted unless the authorizing authority has made a specific finding that the club, if approved, would be in compliance with Section 53A-3-419.

(3) Selection and appointment of club sponsors, supervisors, and monitors shall be the responsibility of the school principal unless another person is designated in the board policy.

C. Religious clubs may be permitted for students in grades 7-12. Such clubs shall be authorized as monitored clubs.

D. Clubs shall not engage in or conduct mental health therapy, counseling or psychological services for which a license would be required under Title 58, Chapters 60 or 61.

E. A local board may permit administrative review and approval of club applications, but shall provide for an appeal by a student directly affected by an administrative decision.

F. A local board may delegate to schools the authority to decide the following, provided that all clubs of a given type (i.e. supervised or monitored student clubs) are given equal access:

- (1) the time and place that a club may meet; and
- (2) club access to the school newspaper, yearbook, bulletin boards, public address system, or any combination of the foregoing.

G. A local board may require informed, written parental consent prior to a student's attending or joining a club, provided that any such rule shall apply to all clubs of the grade level and type (school, supervised, monitored) in question.

H. A local board policy may provide for approval of a club name in an action separate from that relating to the approval of the club itself. The board may require:

(1) that a club name reasonably reflect the nature, purposes and activities of the club; and

(2) that the club name be such that it would not result in undue disruption of school operations, subject students to harassment or persecution, imply that the club would operate in violation of Section 53A-3-419 or other law or rule, or imply inappropriate association with outside organizations or groups.

I. A local board may limit access to clubs by persons who are not part of the school, including prohibiting outside persons from directing, conducting, controlling, or regularly attending club meetings.

J. A local board may adopt additional policies governing clubs in accordance with the board's obligation to teach students the boundaries of socially appropriate behavior and to restrict activities which are harmful or contrary to the basic educational

mission of the school. A board may also adopt additional policies which it finds to be necessary to protect the rights of parents and students; to protect the well-being of students and faculty; to maintain order and discipline on school premises; or to prevent material and substantial interference with the orderly conduct of a school's educational activities.

K. A local board which permits the formation of non-curricular related clubs may not adopt a policy prohibiting the formation of such a club simply on the basis of the controversial nature of the proposed club if the activities and assurances set forth in the charter and application are consistent with applicable laws and rules.

L. Local boards shall provide for oversight of club programs and activities to ensure compliance with the approved club charter and applicable laws and rules. Board policies shall set forth procedures and penalties applicable to cases of noncompliance.

R277-617-4. Limiting Authorization to Curriculum Related Clubs.

A. A local board may limit, or permit a secondary school to limit, clubs to those which are curriculum related.

B. A curriculum related club is defined as follows:

(1) The subject matter of the club is actually taught or soon will be taught in a regular course;

(2) The subject matter of the club concerns the body of courses as a whole;

(3) Participation in the club is required for a particular course; or

(4) Academic credit is given for participation in the club.

KEY: extracurricular activities

February 19, 1997

Notice of Continuation February 2, 2007

Art X Sec 3

53A-3-419

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. Required School District Policy Explaining Student Credit.

A. All Utah school districts or schools and charter schools shall have a policy, approved in an open meeting by the governing board, explaining the process and standards for acceptance and reciprocity of credits earned by students in accordance with Utah state law. Policies shall provide for specific and adequate notice to students and parents of all policy requirements and limitations.

B. School districts and schools shall adhere to the following standards for credits or coursework from schools, supplemental education providers accredited by the Northwest Association of Accredited Schools, and accredited distance learning schools:

(1) Public schools shall accept credits and grades awarded to students from schools or providers accredited by the Northwest Association of Accredited Schools or approved by the Board without alteration.

(2) School district or school policies may establish reasonable timelines and may require adequate and timely documentation of authenticity for credits and grades submitted.

C. School district or school policies shall provide various methods for students to earn credit from non-accredited sources, course work or education providers. Methods, as designated by the school district or school may include:

- (1) Satisfaction of coursework by demonstrated competency, as evaluated at the school district or school level;
- (2) Assessment as proctored and determined at the school or school level;
- (3) Review of student work or projects by school or school district administrators; and
- (4) Satisfaction of electronic or correspondence coursework, as approved at the school or school district level.

D. Schools/school districts may require documentation of compliance with Section 53A-11-102 prior to reviewing student home school or competency work, assessment or materials.

E. School/school district policies for participation in extracurricular activities, awards, recognitions, and enhanced diplomas may be determined locally consistent with the law and this rule.

F. A school district or school has the final decision-making authority for the awarding of credit and grades from non-accredited sources 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) 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. Adult Education Students.

A. Students who are officially enrolled in a school district as adult education students shall not be required to attempt or pass the UBSCT in order to qualify for an adult education diploma.

B. Adult education students are eligible only for an adult education secondary diploma.

C. After the 2006-2007 school year, adult education diplomas cannot be upgraded or changed to traditional, high school-specific diplomas.

D. School districts shall establish policies:

- (1) allowing or disallowing adult education student participation in graduation activities or ceremonies.
- (2) allowing or disallowing adult education students from attempting the UBSCT.
- (3) providing for wording, on adult education diplomas, including allowing or disallowing adult education diplomas to state that student did or did not pass UBSCT.
- (4) establishing timelines and criteria for satisfying adult education graduation/diploma requirements.

R277-705-7. 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 R277-705-7D.
- (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) 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.

R277-705-8. 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 R277-705-8D(1).

R277-705-9. 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.

R277-705-10. 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
December 11, 2006**

**Art X Sec 3
Notice of Continuation February 2, 2007 53A-1-402(1)(b)
53A-1-603 through 53A-1-611
53A-1-401(3)**

R277. Education, Administration.

March 10, 1997

Art X Sec 3

R277-915. Work-based Learning Programs for Interns.

Notice of Continuation February 2, 2007

53A-29-102

R277-915-1. Definitions.

53A-1-401(3)

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

B. "Intern" means a student enrolled in a school-sponsored work experience and career exploration program under Section 53A-29-102 involving both classroom instruction and work experience with a cooperating employer, for which the student receives no compensation.

C. "Work site" or "workplace" means the actual location where employment occurs for particular occupation(s), or an environment that simulates all aspects/elements of that employment, for instance school-based enterprises.

D. "Work-based learning" means activities that involve actual work experience or connect classroom learning to work.

E. "School-based enterprise" means businesses set up and run by supervised students learning to apply "practical" skills in the production of goods or services for sale or use by others.

R277-915-2. 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; by Section 53A-29-102 which provides that the Board shall provide rules to schools wishing to offer and operate internships in connection with work experience and career exploration programs; 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 direction to school districts as they provide work-based learning programs and to establish criteria to be included in those policies.

R277-915-3. Mandatory District Policy.

A. Each school district that has work-based learning programs that include assigning students to act as interns at off-campus sites or on-campus simulations shall establish a policy which provides procedures and criteria for at least the following issues:

(1) training for student interns, student intern supervisors, and cooperating employers regarding health hazards and safety procedures in the workplace;

(2) standards and procedures for approval of off-campus work sites;

(3) transportation options for students to and from the work site;

(4) appropriate supervision by employers at the work site;

(5) adequate insurance coverage provided either by the student, the program or the school district;

(6) appropriate supervision and evaluation of the student by the local education agency; and

(7) appropriate involvement and approval by the student's parents in the work-based intern program.

R277-915-4. Consistency with Law and State and Local Board Rules and Policies.

A. The work-based intern experience shall be consistent with the provisions of the Fair Labor Standards Act, Part 570, Subpart E, 29 C.F.R., pages 89.16 et seq., June 1995 and Administrative Letter Rulings: Department of Labor, Wage and Hour Division, pages 226 and 228, July 1996. These materials are contained within the Fair Labor Standards Handbook, are available in the School Law Section at the Utah State Office of Education and are hereby incorporated by reference.

B. Work-based intern programs shall operate consistently with Board rules and district policies including student transportation, credit toward graduation, attendance, and fee waivers.

KEY: public schools, intern program*

R307. Environmental Quality, Air Quality.**R307-110. General Requirements: State Implementation Plan.****R307-110-1. Incorporation by Reference.**

To meet requirements of the Federal Clean Air Act, the Utah State Implementation Plan must be incorporated by reference into these rules. Copies of the Utah State Implementation Plan are available at the Utah Department of Environmental Quality, Division of Air Quality.

R307-110-2. Section I, Legal Authority.

The Utah State Implementation Plan, Section I, Legal Authority, as most recently amended by the Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-3. Section II, Review of New and Modified Air Pollution Sources.

The Utah State Implementation Plan, Section II, Review of New and Modified Air Pollution Sources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-4. Section III, Source Surveillance.

The Utah State Implementation Plan, Section III, Source Surveillance, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-5. Section IV, Ambient Air Monitoring Program.

The Utah State Implementation Plan, Section IV, Ambient Air Monitoring Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-6. Section V, Resources.

The Utah State Implementation Plan, Section V, Resources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-7. Section VI, Intergovernmental Cooperation.

The Utah State Implementation Plan, Section VI, Intergovernmental Cooperation, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-8. Section VII, Prevention of Air Pollution Emergency Episodes.

The Utah State Implementation Plan, Section VII, Prevention of Air Pollution Emergency Episodes, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-9. Section VIII, Prevention of Significant Deterioration.

The Utah State Implementation Plan, Section VIII, Prevention of Significant Deterioration, as most recently amended by the Utah Air Quality Board on March 8, 2006, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-10. Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter.

The Utah State Implementation Plan, Section IX, Control

Measures for Area and Point Sources, Part A, Fine Particulate Matter, as most recently amended by the Utah Air Quality Board on July 6, 2005, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-11. Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide, as most recently amended by the Utah Air Quality Board on January 5, 2005, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-12. Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide, as most recently amended by the Utah Air Quality Board on November 3, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-13. Section IX, Control Measures for Area and Point Sources, Part D, Ozone.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part D, Ozone, as most recently amended by the Utah Air Quality Board on September 9, 1998, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-14. Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-15. Section IX, Control Measures for Area and Point Sources, Part F, Lead.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part F, Lead, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-16. (Reserved.)

Reserved.

R307-110-17. Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits, as most recently amended by the Utah Air Quality Board on July 6, 2005, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-18. Reserved.

Reserved.

R307-110-19. Section XI, Other Control Measures for Mobile Sources.

The Utah State Implementation Plan, Section XI, Other Control Measures for Mobile Sources, as most recently amended by the Utah Air Quality Board on February 9, 2000, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-20. Section XII, Involvement.

The Utah State Implementation Plan, Section XII,

Involvement, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-21. Section XIII, Analysis of Plan Impact.

The Utah State Implementation Plan, Section XIII, Analysis of Plan Impact, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-22. Section XIV, Comprehensive Emission Inventory.

The Utah State Implementation Plan, Section XIV, Comprehensive Emission Inventory, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-23. Section XV, Utah Code Title 19, Chapter 2, Air Conservation Act.

Section XV of the Utah State Implementation Plan contains Utah Code Title 19, Chapter 2, Air Conservation Act.

R307-110-24. Section XVI, Public Notification.

The Utah State Implementation Plan, Section XVI, Public Notification, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-25. Section XVII, Visibility Protection.

The Utah State Implementation Plan, Section XVII, Visibility Protection, as most recently amended by the Utah Air Quality Board on March 26, 1993, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-26. R307-110-26 Section XVIII, Demonstration of GEP Stack Height.

The Utah State Implementation Plan, Section XVIII, Demonstration of GEP Stack Height, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-27. Section XIX, Small Business Assistance Program.

The Utah State Implementation Plan, Section XIX, Small Business Assistance Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-28. Regional Haze.

The Utah State Implementation Plan, Section XX, Regional Haze, as most recently amended by the Utah Air Quality Board on May 5, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-29. Section XXI, Diesel Inspection and Maintenance Program.

The Utah State Implementation Plan, Section XXI, Diesel Inspection and Maintenance Program, as most recently amended by the Utah Air Quality Board on July 12, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-30. Section XXII, General Conformity.

The Utah State Implementation Plan, Section XXII,

General Conformity, as adopted by the Utah Air Quality Board on October 4, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-31. Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability, as most recently amended by the Utah Air Quality Board on March 31, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-32. Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County, as most recently amended by the Utah Air Quality Board on February 5, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-33. Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County, as most recently amended by the Utah Air Quality Board on October 6, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-34. Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County, as most recently amended by the Utah Air Quality Board on March 31, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-35. Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County, as most recently amended by the Utah Air Quality Board on November 3, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-36. Section XXIII, Interstate Transport.

The Utah State Implementation Plan, Section XXIII, Interstate Transport, as most recently adopted by the Utah Air Quality Board on February 7, 2007, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**KEY: air pollution, PM10, PM2.5, ozone
February 9, 2007**

19-2-104(3)(e)

Notice of Continuation June 16, 2006

R307. Environmental Quality, Air Quality.**R307-214. National Emission Standards for Hazardous Air Pollutants.****R307-214-1. Part 61 Sources.**

The provisions of 40 Code of Federal Regulations (CFR) Part 61, National Emission Standards for Hazardous Air Pollutants, effective as of October 20, 1994, are incorporated into these rules by reference. For source categories delegated to the State, references in 40 CFR Part 61 to "the Administrator" shall refer to the Executive Secretary.

R307-214-2. Part 63 Sources.

The provisions listed below of 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories, effective as of July 1, 2006, are incorporated into these rules by reference. References in 40 CFR Part 63 to "the Administrator" shall refer to the executive secretary, unless by federal law the authority is specific to the Administrator and cannot be delegated.

- (1) 40 CFR Part 63, Subpart A, General Provisions.
- (2) 40 CFR Part 63, Subpart B, Requirements for Control Technology Determinations for Major Sources in Accordance with 42 U.S.C. 7412(g) and (j).
- (3) 40 CFR Part 63, Subpart F, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.
- (4) 40 CFR Part 63, Subpart G, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.
- (5) 40 CFR Part 63, Subpart H, National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.
- (6) 40 CFR Part 63, Subpart I, National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.
- (7) 40 CFR Part 63, Subpart J, National Emission Standards for Polyvinyl Chloride and Copolymers Production.
- (8) 40 CFR Part 63, Subpart L, National Emission Standards for Coke Oven Batteries.
- (9) 40 CFR Part 63, Subpart M, National Emission Standards for Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.
- (10) 40 CFR Part 63, Subpart N, National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.
- (11) 40 CFR Part 63, Subpart O, National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations.
- (12) 40 CFR Part 63, Subpart Q, National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.
- (13) 40 CFR Part 63, Subpart R, National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).
- (14) 40 CFR Part 63, Subpart T, National Emission Standards for Halogenated Solvent Cleaning.
- (15) 40 CFR Part 63, Subpart U, National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins.
- (16) 40 CFR Part 63, Subpart AA, National Emission Standards for Hazardous Air Pollutants for Phosphoric Acid Manufacturing.
- (17) 40 CFR Part 63, Subpart BB, National Emission Standards for Hazardous Air Pollutants for Phosphate Fertilizer Production.
- (18) 40 CFR Part 63, Subpart CC, National Emission Standards for Hazardous Air Pollutants from Petroleum

Refineries.

- (19) 40 CFR Part 63, Subpart DD, National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.
- (20) 40 CFR Part 63, Subpart EE, National Emission Standards for Magnetic Tape Manufacturing Operations.
- (21) 40 CFR Part 63, Subpart GG, National Emission Standards for Aerospace Manufacturing and Rework Facilities.
- (22) 40 CFR Part 63, Subpart HH, National Emission Standards for Hazardous Air Pollutants for Oil and Natural Gas Production.
- (23) 40 CFR Part 63, Subpart JJ, National Emission Standards for Wood Furniture Manufacturing Operations.
- (24) 40 CFR Part 63, Subpart KK, National Emission Standards for the Printing and Publishing Industry.
- (25) 40 CFR Part 63, Subpart MM, National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semicheical Pulp Mills.
- (26) 40 CFR Part 63, Subpart OO, National Emission Standards for Tanks - Level 1.
- (27) 40 CFR Part 63, Subpart PP, National Emission Standards for Containers.
- (28) 40 CFR Part 63, Subpart QQ, National Emission Standards for Surface Impoundments.
- (29) 40 CFR Part 63, Subpart RR, National Emission Standards for Individual Drain Systems.
- (30) 40 CFR Part 63, Subpart SS, National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process (Generic MACT).
- (31) 40 CFR Part 63, Subpart TT, National Emission Standards for Equipment Leaks- Control Level 1 (Generic MACT).
- (32) 40 CFR Part 63, Subpart UU, National Emission Standards for Equipment Leaks-Control Level 2 Standards (Generic MACT).
- (33) 40 CFR Part 63, Subpart VV, National Emission Standards for Oil-Water Separators and Organic-Water Separators.
- (34) 40 CFR Part 63, Subpart WW, National Emission Standards for Storage Vessels (Tanks)-Control Level 2 (Generic MACT).
- (35) 40 CFR Part 63, Subpart XX, National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.
- (36) 40 CFR Part 63, Subpart YY, National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic MACT.
- (37) 40 CFR Part 63, Subpart CCC, National Emission Standards for Hazardous Air Pollutants for Steel Pickling-HCl Process Facilities and Hydrochloric Acid Regeneration Plants.
- (38) 40 CFR Part 63, Subpart DDD, National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production.
- (39) 40 CFR Part 63, Subpart EEE, National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors.
- (40) 40 CFR Part 63, Subpart GGG, National Emission Standards for Hazardous Air Pollutants for Pharmaceuticals Production.
- (41) 40 CFR Part 63, Subpart HHH, National Emission Standards for Hazardous Air Pollutants for Natural Gas Transmission and Storage.
- (42) 40 CFR Part 63, Subpart III, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production.
- (43) 40 CFR Part 63, Subpart JJJ, National Emission Standards for Hazardous Air Pollutants for Group IV Polymers

and Resins.

(44) 40 CFR Part 63, Subpart LLL, National Emission Standards for Hazardous Air Pollutants for Portland Cement Manufacturing Industry.

(45) 40 CFR Part 63, Subpart MMM, National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.

(46) 40 CFR Part 63, Subpart NNN, National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing.

(47) 40 CFR Part 63, Subpart OOO, National Emission Standards for Hazardous Air Pollutants for Amino/Phenolic Resins Production (Resin III).

(48) 40 CFR Part 63, Subpart PPP, National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production.

(49) 40 CFR Part 63, Subpart QQQ, National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelters.

(50) 40 CFR Part 63, Subpart RRR, National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.

(51) 40 CFR Part 63, Subpart TTT, National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting.

(52) 40 CFR Part 63, Subpart UUU, National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.

(53) 40 CFR Part 63, Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works.

(54) 40 CFR Part 63, Subpart AAAA, National Emission Standards for Hazardous Air Pollutants for Municipal Solid Waste Landfills.

(55) 40 CFR Part 63, Subpart CCCC, National Emission Standards for Manufacturing of Nutritional Yeast.

(56) 40 CFR Part 63, Subpart DDDD, National Emission Standards for Hazardous Air Pollutants for Plywood and Composite Wood Products.

(57) 40 CFR Part 63, Subpart EEEE, National Emission Standards for Hazardous Air Pollutants for Organic Liquids Distribution (non-gasoline).

(58) 40 CFR Part 63, Subpart FFFF, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Organic Chemical Manufacturing.

(59) 40 CFR Part 63, Subpart GGGG, National Emission Standards for Vegetable Oil Production; Solvent Extraction.

(60) 40 CFR Part 63, Subpart HHHH - National Emission Standards for Wet-Formed Fiberglass Mat Production.

(61) 40 CFR Part 63, Subpart IIII, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Automobiles and Light-Duty Trucks.

(62) 40 CFR Part 63, Subpart JJJJ, National Emission Standards for Hazardous Air Pollutants for Paper and Other Web Surface Coating Operations.

(63) 40 CFR Part 63, Subpart KKKK, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Metal Cans.

(64) 40 CFR Part 63, Subpart MMMM, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products.

(65) 40 CFR Part 63, Subpart NNNN - National Emission Standards for Large Appliances Surface Coating Operations.

(66) 40 CFR Part 63, Subpart OOOO, National Emission Standards for Hazardous Air Pollutants for Fabric Printing, Coating and Dyeing Surface Coating Operations.

(67) 40 CFR Part 63, Subpart PPPP, National Emissions Standards for Hazardous Air Pollutants for Surface Coating of

Plastic Parts and Products.

(68) 40 CFR Part 63, Subpart QQQQ, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Wood Building Products.

(69) 40 CFR Part 63, Subpart RRRR, National Emission Standards for Hazardous Air Pollutants for Metal Furniture Surface Coating Operations.

(70) 40 CFR Part 63, Subpart SSSS - National Emission Standards for Metal Coil Surface Coating Operations.

(71) 40 CFR Part 63, Subpart TTTT - National Emission Standards for Leather Tanning and Finishing Operations.

(72) 40 CFR Part 63, Subpart UUUU - National Emission Standards for Cellulose Product Manufacturing.

(73) 40 CFR Part 63, Subpart VVVV - National Emission Standards for Boat Manufacturing.

(74) 40 CFR Part 63, Subpart WWWW, National Emissions Standards for Hazardous Air Pollutants for Reinforced Plastic Composites Production.

(75) 40 CFR Part 63, Subpart XXXX - National Emission Standards for Tire Manufacturing.

(76) 40 CFR Part 63, Subpart YYYY, National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines.

(77) 40 CFR Part 63, Subpart ZZZZ, National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.

(78) 40 CFR Part 63, Subpart AAAAA, National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants.

(79) 40 CFR Part 63, Subpart BBBBB, National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing.

(80) 40 CFR Part 63, Subpart CCCCC, National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks.

(81) 40 CFR Part 63, Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters.

(82) 40 CFR Part 63, Subpart EEEEE, National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries.

(83) 40 CFR Part 63, Subpart FFFFF, National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing.

(84) 40 CFR Part 63, Subpart GGGGG, National Emission Standards for Hazardous Air Pollutants for Site Remediation.

(85) 40 CFR Part 63, Subpart HHHHH, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Coating Manufacturing.

(86) 40 CFR Part 63, Subpart IIIII, National Emission Standards for Hazardous Air Pollutants for Mercury Emissions from Mercury Cell Chlor-Alkali Plants.

(87) 40 CFR Part 63, Subpart JJJJJ, National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing.

(88) 40 CFR Part 63, Subpart KKKKK, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing.

(89) 40 CFR Part 63, Subpart LLLLL, National Emission Standards for Hazardous Air Pollutants for Asphalt Processing and Asphalt Roofing Manufacturing.

(90) 40 CFR Part 63, Subpart MMMMM, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Fabrication Operations.

(91) 40 CFR Part 63, Subpart NNNNN, National Emission Standards for Hazardous Air Pollutants for Hydrochloric Acid Production.

(92) 40 CFR Part 63, Subpart PTTTT, National Emission Standards for Hazardous Air Pollutants for Engine Test

Cells/Stand.

(93) 40 CFR Part 63, Subpart QQQQQ - National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities.

(94) 40 CFR Part 63, Subpart RRRRR, National Emission Standards for Hazardous Air Pollutants for Taconite Iron Ore Processing.

(95) 40 CFR Part 63, Subpart SSSSS, National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing.

(96) 40 CFR Part 63, Subpart TTTTT, National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining.

**KEY: air pollution, hazardous air pollutant, MACT
February 9, 2007 19-2-104(1)(a)
Notice of Continuation February 9, 2004**

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

R315-301-1. Authority and Purpose.

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

R315-301-2. Definitions.

Terms used in Rules R315-301 through R315-320 are defined in Sections 19-1-103, 19-6-102, and 19-6-803. In addition, for the purpose of Rules R315-301 through 320, the following definitions apply.

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

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

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

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

(5) "Asbestos waste" means friable asbestos, which is any material containing more than 1% asbestos as determined using the method specified in Appendix A, 40 CFR Part 763.1, 2001 ed., which is adopted and incorporated by reference, that when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

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

(7) "Class I Landfill" means a non-commercial landfill or a landfill that meets the definition found in Subsection 19-6-102(3)(a)(iii) and is permitted by the Executive Secretary

(a) to receive for disposal:

(i) municipal solid waste;

(ii) any other nonhazardous solid waste, not otherwise limited by rule or solid waste permit; or

(iii) in conjunction with municipal solid waste or other nonhazardous solid waste, waste from a conditionally exempt small quantity generator of hazardous waste, as defined by Section R315-2-5; and

(b) does not meet the standards of Subsection R315-303-3(3)(e)(v).

(8) "Class II Landfill" means a non-commercial landfill or a landfill that is permitted by the Executive Secretary

(a) to receive for disposal:

(i) municipal solid waste;

(ii) any other nonhazardous solid waste, not otherwise limited by rule or solid waste permit; or

(iii) in conjunction with municipal solid waste or other nonhazardous solid waste, waste from a conditionally exempt

small quantity generator of hazardous waste, as defined by Section R315-2-5.

(b) meets the standards of Subsection R315-303-3(3)(e)(v).

(9) "Class III Landfill" means a non-commercial landfill that is permitted by the Executive Secretary to receive for disposal only industrial solid waste.

(10) "Class IV Landfill" means a non-commercial landfill that is permitted by the Executive Secretary to receive for disposal only:

(a) construction/demolition waste;

(b) yard waste;

(c) inert waste;

(d) dead animals, as approved by the Executive Secretary and upon meeting the requirements of Section R315-315-6;

(e) waste tires and materials derived from waste tires, upon meeting the requirements of Section 19-6-804 and Section R315-320-3; and

(f) petroleum-contaminated soils, upon meeting the requirements of Subsection R315-315-8(3).

(11) "Class V Landfill" means a commercial nonhazardous solid waste disposal facility, as defined by Subsection 19-6-102(3), that is permitted by the Executive Secretary to receive for disposal:

(a) municipal solid waste;

(b) any other nonhazardous solid waste, not otherwise limited by rule or solid waste permit; and

(c) in conjunction with municipal solid waste or other nonhazardous solid waste, waste from a conditionally exempt small quantity generator of hazardous waste, as defined by Section R315-2-5.

(12) "Class VI Landfill" means a commercial nonhazardous solid waste landfill that is permitted by the Executive Secretary to receive for disposal only:

(a) construction/demolition waste, excluding waste from a conditionally exempt small quantity generator of hazardous waste, as defined by Section R315-2-5;

(b) yard waste;

(c) inert waste;

(d) dead animals, as approved by the Executive Secretary and upon meeting the requirements of Section R315-315-6;

(e) waste tires and materials derived from waste tires, upon meeting the requirements of Section 19-6-804 and Subsection R315-320-3(1) or (2); and

(f) petroleum-contaminated soils, upon meeting the requirements of Subsection R315-315-8(3).

(g) A Class VI Landfill may not receive for disposal:

(i) hazardous waste;

(ii) construction/demolition waste containing PCBs, except as allowed by Section R315-315-7;

(iii) garbage;

(iv) municipal solid waste; or

(v) industrial solid waste.

(h) The wastes received at a Class VI Landfill may be further limited by a solid waste permit.

(i) A Class VI Landfill may not change to a Class V Landfill except by meeting all requirements for a Class V Landfill including obtaining a new Class V Landfill permit and completing the requirements specified in Subsection R315-310-3(2).

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

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

(15) "Composite liner" means a liner system consisting of

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

(16) "Composting" means a method of solid waste management whereby the organic component of the waste stream is biologically decomposed under controlled aerobic conditions, at a temperature of 140 degrees Fahrenheit (60 degrees Celsius), or higher, for at least some part of each day of a consecutive seven day period, to a state in which the end product or compost can be handled, stored, or applied to the land without adversely affecting human health or the environment.

(17) "Construction/demolition waste" means solid waste from building materials, packaging, and rubble resulting from construction, remodeling, repair, abatement, rehabilitation, renovation, and demolition operations on pavements, houses, commercial buildings, and other structures, including waste from a conditionally exempt small quantity generator of hazardous waste, as defined by Section R315-2-5, that may be generated by these operations.

(a) Such waste may include:

- (i) concrete, bricks, and other masonry materials;
- (ii) soil and rock;
- (iii) waste asphalt;
- (iv) rebar contained in concrete; and
- (v) untreated wood, and tree stumps.

(b) Construction/demolition waste does not include:

- (i) friable asbestos;
- (ii) treated wood; or
- (iii) contaminated soils or tanks resulting from remediation or clean-up at any release or spill.

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

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

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

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

(22) "Existing facility" means any facility that has:

(a) a current valid solid waste permit or other valid approval issued under Rules R315-301 through 320 by the Executive Secretary; and

(b) received final approval to accept waste as required by Subsection R315-301-5(1).

(23) "Expansion of a solid waste disposal facility" means any lateral expansion beyond the property boundaries outlined in the permit application for the current permit under which the facility is operating.

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

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

(26) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure or as determined by EPA test method 9095 (Paint Filter Liquids Test) as provided in EPA Report SW-846 "Test Methods for Evaluating Solid Waste" as revised December (1996) which is adopted and incorporated by reference.

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

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

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

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

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

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

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

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

(35) "Industrial solid waste" means any solid waste generated at a manufacturing or other industrial facility that is not a hazardous waste or that is a hazardous waste from a conditionally exempt small quantity generator of hazardous waste, as defined by Section R315-2-5, generated by an industrial facility. Industrial solid waste includes waste from the following industries or resulting from the following manufacturing processes and associated activities: electric power generation; fertilizer or agricultural chemical industries; food and related products or by-products industries; inorganic chemical industries; iron and steel manufacturing; leather and leather product industries; nonferrous metals manufacturing or foundry industries; organic chemical industries; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic product industries; stone, glass, clay, and concrete product industries; textile manufacturing; transportation equipment manufacturing; and water treatment industries. This term does not include mining waste; oil and gas waste; or other waste excluded by Subsection 19-6-102(17)(b).

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

(37) "Inert waste" means noncombustible, nonhazardous

solid wastes that retain their physical and chemical structure under expected conditions of disposal, including wastes that exhibit resistance to biological or chemical change.

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

(39) "Land treatment, landfarming, or landspreading facility" means a facility or unit within a facility where solid waste is applied onto or incorporated into the soil surface for the purpose of biodegradation.

(40) "Lateral expansion of the solid waste disposal area" means:

(a) any horizontal expansion of the waste boundaries of an existing landfill cell, module, or unit;

(b) the construction of a new cell, module, or unit within the boundaries outlined in the permit application of the current permit under which the facility is operating; or

(c) any horizontal expansion not consistent with past normal operating practices.

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

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

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

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

(45) "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90% or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on site specific seismic risk assessment.

(46) "Municipal solid waste landfill" means a permitted nonhazardous solid waste landfill that may receive municipal solid waste for disposal.

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

(48) "New facility" means any facility that:

(a) has applied for a permit or other valid approval issued under Rules R315-301 through 320 by the Executive Secretary;

(b) did not have a permit or other valid approval issued under Rules R315-301 through 320 at the time of the application; and

(c) has not received final approval to accept waste as required by Subsection R315-301-5(1).

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

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

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

a facility.

(52) "Owner" means the person, as defined by Subsection 19-1-103(4), who has an ownership interest in a facility or part of a facility.

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

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

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

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

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

(58) "Putrescible waste" means solid waste which contains organic matter capable of being decomposed by microorganisms and of such a character and proportion as to be capable of attracting or providing food for vectors including birds and mammals.

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

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

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

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

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

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

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

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

(64) "Scavenging" means the unauthorized removal of solid waste from a facility.

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

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

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

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

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

(b) water supply treatment plant;

(c) car wash facility;

(d) air pollution control facility; or

(e) any other such waste having similar characteristics.

(69) "Solid waste disposal facility" means a landfill, incinerator, or land treatment area.

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

(71) "Special waste" means discarded solid waste that may require special handling or other solid waste that may pose a threat to public safety, human health, or the environment.

(a) Special waste may include:

(i) ash;

(ii) automobile bodies;

(iii) furniture and appliances;

(iv) infectious waste;

(v) waste tires;

(vi) dead animals;

(vii) asbestos;

(viii) waste exempt from the hazardous waste regulations under Section R315-2-4;

(ix) conditionally exempt small quantity generator hazardous waste as defined by Section R315-2-5;

(x) waste containing PCBs;

(xi) petroleum contaminated soils;

(xii) waste asphalt; and

(xiii) sludge.

(b) Special waste must be handled and disposed according to the requirements of Rule R315-315.

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

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

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

(75) "Transfer station" means a permanent, fixed, supplemental collection and transportation facility that is staffed by a minimum of one employee of the owner or operator during hours of operation and is used by persons and route collection vehicles to deposit collected solid waste from off-site into a transfer vehicle for transport to a solid waste handling or disposal facility.

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

(77) "Treated wood" means any wood item that has been

treated with the following or compounds containing the following:

(a) creosote or related compounds;

(b) Arsenic;

(c) Chromium; or

(d) Copper.

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

(79) "Unit" or "Solid Waste Management Unit" means a distinct operational storage, treatment, or disposal area at a solid waste management facility that contains all features to render it capable of performing its intended function and of being closed as a separate entity.

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

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

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

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

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

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

(a) A waste tire storage facility includes:

(i) whole waste tires used as a fence;

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

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

(b) A waste tire storage facility does not include:

(i) a site where waste tires are stored exclusively in buildings or in trailers;

(ii) if whole waste tires are stored for five or fewer days, the site of a registered tire recycler or a processor for a registered tire recycler;

(iii) a permitted solid waste disposal facility that stores whole tires in piles for not longer than one year;

(iv) a staging area where tires are temporarily placed on the ground, not stored, to accommodate activities such as sorting, assembling, or loading or unloading of trucks; or

(v) a site where waste tires or material derived from waste tires are stored for five or fewer days and are used for ballast to maintain covers on agricultural materials or to maintain covers at a construction site or are to be recycled or applied to a beneficial use.

(c) Tires attached to a vehicle are not considered waste tires until they are removed from the vehicle.

(86) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(87) "Yard waste" means vegetative matter resulting from landscaping, land maintenance, and land clearing operations including grass clippings, prunings, and other discarded material

generated from yards, gardens, parks, and similar types of facilities. Yard waste does not include garbage, paper, plastic, processed wood, sludge, septage, or manure.

R315-301-3. Owner Responsibilities for Solid Waste.

The owner, operator or occupant of any premises or business establishment shall be responsible for the management and disposal of all solid waste generated or accumulated by the owner, operator, or occupant of the property in compliance with the Utah Solid Waste Permitting and Management Rules and the Utah Solid and Hazardous Waste Act.

(2) Any contamination of the ground water, surface water, air, or soil that results from the management of solid waste which presents a threat to human health or the environment shall be remediated through appropriate corrective action.

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February 1, 2007**

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**19-6-105
19-6-108
19-6-109
40 CFR 258**

R315-301-4. Prohibition of Illegal Disposal or Incineration of Solid Waste.

(1) No person shall incinerate, burn, or otherwise dispose of any solid waste in any place except at a facility which is in compliance with the requirements of Rules R315-301 through 320 and other applicable rules.

(2) When any solid waste is disposed in a manner not in compliance with the requirements of Rules R315-301 through 320, or other applicable rules, the property owner of the disposal site or the person responsible for the illegal disposal or both:

(a) shall remove the solid waste from the illegal disposal site to a permitted solid waste disposal facility and, if necessary, shall remediate the site; or

(b) shall apply for a permit from the Executive Secretary and shall meet all of the following:

(i) submit the required permit application in the time frame specified by the Executive Secretary and respond promptly to all requests for information from the Executive Secretary related to the permit application;

(ii) shall immediately meet all of the operational monitoring and waste handling criteria of Rules R315-301 through 320; and

(iii) shall follow the requirements of Rule R315-301-4(2)(a) if a permit is not granted.

(3) Any person disposing of solid waste in a manner not in compliance with the requirements of Rules R315-301 through 320, or other applicable rules, may be subject to enforcement action in addition to meeting the requirements of Rule R315-301-4(2).

(4) When deposition or disposal of the following materials does not cause a hazard to human health or the environment or cause a public nuisance, the requirements of Rules R315-301 through 320 do not apply to:

(a) inert waste used as fill material;

(b) the disposal of mine tailings and overburden;

(c) the disposal of vegetative material generated as a result of land clearing; or

(d) the disposal of vegetative agricultural waste.

R315-301-5. Permit Required.

(1) No solid waste disposal facility shall be established, operated, maintained, or expanded until the owner or operator of such facility has obtained a permit from the Executive Secretary and has received a letter of approval from the Executive Secretary to accept waste.

(2) The owner or operator of a solid waste disposal facility shall operate the facility in accordance with the conditions of the permit and otherwise follow the permit.

(3) In areas where no public or duly licensed disposal service is available, the on-site disposal, by burial, of on-site generated nonhazardous solid waste from a single family farm or a single family ranch does not require a permit.

R315-301-6. Protection of Human Health and the Environment.

(1) The management of solid waste shall not present a threat to human health or the environment.

R315. Environmental Quality, Solid and Hazardous Waste. R315-311. Permit Approval For Solid Waste Disposal, Waste Tire Storage, Energy Recovery, And Incinerator Facilities.

R315-311-1. General Requirements.

(1) Upon submittal of the complete information required by Rule R315-310, as determined by the Executive Secretary, a draft permit or permit denial will be prepared and the owner or operator of the new or existing facility will be notified in writing by the Executive Secretary.

(a) After meeting the requirements of the public comment period and public hearing as stipulated in Section R315-311-3, the owner or operator may be issued a permit which will include appropriate conditions and limitations on operation and types of waste to be accepted at the facility.

(b) Construction shall not begin prior to the receipt of the permit.

(c) An application that has been initiated by an owner or operator but for which the Executive Secretary has not received a response to questions about the application for more than one year shall be canceled.

(2) Solid waste disposal facility plan approval and permit issuance will depend upon:

(a) the adequacy of the facility in meeting the location standards in Section R315-302-1;

(b) the hydrology and geology of the area; and

(c) the adequacy of the plan of operation, facility design, and monitoring programs in meeting the requirements of the applicable rules.

(3) A permit can be granted for up to ten years by the Executive Secretary, except as allowed in Subsection R315-311-1(5).

(4) The owner or operator, or both, when the owner and the operator are not the same person, of each solid waste facility shall:

(a) apply for a permit renewal, as required by Section R315-310-10, 180 days prior to the expiration date of the current permit if the permit holder intends to continue operations after the current permit expires; and

(b) for facilities for which financial assurance is required by R315-309-1, submit, for review and approval by the Executive Secretary on a schedule of no less than every five years, a complete update of the financial assurance required in Rule R315-309 which shall contain:

(i) a calculation of the current costs of closure as required by Subsection R315-309-2(3); and

(ii) a calculation that is not based on a closure cost which has been obtained by applying an inflation factor to past cost estimates.

(5) A permit for a facility in post-closure care:

(i) may be issued for the life of the post-closure care period; and

(ii) the holder of the post-closure care permit shall comply with Subsection R315-311-1(4)(b).

R315-311-2. Permit Modification, Renewal, or Termination.

(1) A permit may be considered for modification, renewal, or termination at the request of any interested person, including the permittee, or upon the Executive Secretary's initiative as a result of new information or changes in statutes or rules. Requests for modification, reissuance, or termination shall be submitted in writing to the Executive Secretary and shall contain facts or reasons supporting the request. Requests for permit modification, renewal, or termination shall become effective only upon approval by the Executive Secretary.

(a) Minor modifications of a permit or plan of operation shall not be subject to the 30 day public comment period as required by Section R315-311-3. A permit modification shall be considered minor if:

(i) typographical errors are corrected;

(ii) the name, address, or phone number of persons or agencies identified in the permit are changed;

(iii) administrative or informational changes are made;

(iv) procedures for maintaining the operating record are changed or the location where the operating record is kept is changed;

(v) changes are made to provide for more frequent monitoring, reporting, sampling, or maintenance;

(vi) a compliance date extension request is made for a new date not to exceed 120 days after the date specified in the approved permit;

(vii) changes are made in the expiration date of the permit to allow an earlier permit termination;

(viii) changes are made in the closure schedule for a unit, in the final closure schedule for the facility, or the closure period is extended;

(ix) the Executive Secretary determines, in the case of a permit transfer application, that no change in the permit other than the change in the name of the owner or operator is necessary;

(x) equipment is upgraded or replaced with functionally equivalent components;

(xi) changes are made in sampling or analysis methods, procedures, or schedules;

(xii) changes are made in the construction or ground water monitoring quality control/quality assurance plans which will better certify that the specifications for construction, closure, sampling, or analysis will be met;

(xiii) changes are made in the facility plan of operation which conform to guidance or rules approved by the Board or provide more efficient waste handling or more effective waste screening;

(xiv) an existing monitoring well is replaced with a new well without changing the location;

(xv) changes are made in the design or depth of a monitoring well that provides more effective monitoring;

(xvi) changes are made in the statistical method used to statistically analyze the ground water quality data; or

(xvii) Changes are made in any permit condition that are more restrictive or provide more protection to health or the environment.

(b) The Executive Secretary may subject any minor modification request to the 30-day public comment period if justified by conditions and circumstances.

(c) A permit modification that does not meet the requirements of Subsection R315-311-2(1)(a) for a minor modification shall be a major modification.

(d) If the Executive Secretary determines that major modifications to a permit or plan of operation are justified, a new operational plan incorporating the approved modifications shall be prepared. The modifications shall be subject to the public comment period as specified in Section R315-311-3.

(2) An application for permit renewal shall consist of the information required by Section R315-310-9. Upon receipt of the application, the Executive Secretary will review the application and will notify the applicant as to what information or change of operational practice is required of the applicant, if any, to receive a permit renewal. The current permit shall remain in effect until issuance or denial of a new permit. Each permit renewal shall be subject to the public comment requirements of Section R315-311-3.

(3) The Executive Secretary shall notify, in writing, the owner or operator of any facility of intent to terminate a permit. A permit may be terminated for:

(a) noncompliance with any condition of the permit;

(b) noncompliance with any applicable rule;

(c) failure in the application or during the approval or renewal process to disclose fully all relevant facts;

(d) misrepresentation by the owner or operator of any relevant facts at any time; or

(e) a determination that the solid waste activity or facility endangers human health or the environment.

(4) The owner or operator of a facility may appeal any action associated with modification, renewal, or termination in accordance with Section R315-317-3, Title 63 Chapter 46b, and Rule R315-12.

R315-311-3. Public Comment Period.

(1) The draft permit, permit renewal, or major modification of a permit, for each solid waste facility that requires a permit, shall be subject to a 30-day public comment period.

(2) A public hearing may be held if a request for public hearing is submitted to the Executive Secretary in writing:

(a) by a local government, a state agency, ten interested persons, or an interested association having not fewer than ten members; and

(b) the request is received by the Executive Secretary not more than 15 days after the publication of the public notice.

(3) After due consideration of all comments received, final determination on draft permits or major modification of permits will be made available by public notice.

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19-6-108

R315. Environmental Quality, Solid and Hazardous Waste.**R315-315. Special Waste Requirements.****R315-315-1. General Requirements.**

(1) If special wastes are accepted at the facility, proper provisions shall be made for handling and disposal. These provisions shall include, where required and approved by the Executive Secretary, a separate area for disposal of the wastes, designated by appropriate signs.

(2) The following wastes are prohibited from disposal at a solid waste disposal facility.

(a) Lead acid batteries must be recycled and otherwise managed in accordance with Sections 19-6-601 through 607.

(b) Used oil must be recycled and otherwise managed in accordance with Rule R315-15.

R315-315-2. Asbestos Waste.

(1) Asbestos waste shall be handled, transported, and disposed in a manner that will not permit the release of asbestos fibers into the air and must otherwise comply with Code of Federal Regulations, Title 40, Part 61, Section 154, 2006 ed.

(2) No transporter or disposal facility shall accept friable asbestos waste unless the waste has been adequately wetted and containerized.

(a) Asbestos waste is adequately wetted when its moisture content prevents fiber release.

(b) Asbestos waste is properly containerized when it is placed in double plastic bags of 6-mil or thicker, sealed in such a way to be leak-proof and air-tight, and the amount of void space or air in the bags is minimized. Asbestos waste slurries must be packaged in leak-proof and air-tight rigid containers if such slurries are too heavy for the plastic bag containers. The Executive Secretary may authorize other proper methods of containment which may include double bagging, plastic-lined cardboard containers, plastic-lined metal containers, or the use of vacuum trucks for the transport of slurry.

(c) All asbestos containers shall be labeled with the name of the waste generator, the location where the waste was generated, and tagged with a warning label indicating that the containers hold asbestos.

(3) Disposal of Asbestos Waste.

(a) Upon entering the disposal site, the transporter of the asbestos waste shall notify the landfill operator that the load contains asbestos by presenting the waste shipment record. The landfill operator will verify quantities received, sign off on the waste shipment record, and send a copy of the waste shipment record to the generator within 30 days.

(b) Upon the receipt of the asbestos waste, the landfill operator shall require that the vehicles that have transported asbestos waste be marked with warning signs as specified in 40 CFR Part 61.149(d)(1)(iii), 1995 ed., which is adopted and incorporated by reference. The operator shall also inspect the loads to verify that the asbestos waste is properly contained in leak-proof containers and labeled appropriately. The operator shall notify the local health department and the Executive Secretary if the operator believes that the asbestos waste is in a condition that may cause significant fiber release during disposal. If the wastes are not properly containerized, and the landfill operator accepts the load, the operator shall thoroughly soak the asbestos with a water spray prior to unloading, rinse out the truck, and immediately cover the wastes with non-waste material which prevents fiber release prior to compacting the waste in the landfill.

(c) During waste deposition and covering, the operator:

(i) may prepare a separate trench or separate area of the landfill to receive only asbestos waste, or may dispose of asbestos at the working face of the landfill;

(ii) shall place asbestos containers into the trench, separate area, or at the bottom of the landfill working face with sufficient care to avoid breaking the containers;

(iii) within 18 hours, shall completely cover the containerized waste with sufficient care to avoid breaking the containers with a minimum of six inches of material containing no asbestos. If the waste is improperly containerized, it must be completely covered immediately with six inches of material containing no asbestos; and

(iv) shall not compact asbestos containing material until completely covered with a minimum of six inches of material containing no asbestos.

(d) The operator shall provide barriers adequate to control public access. At a minimum, the operator shall:

(i) limit access to the asbestos management site to no more than two entrances by gates that can be locked when left unattended and by fencing adequate to restrict access by the general public; and

(ii) place warning signs at the entrances and at intervals no greater than 200 feet along the perimeter of the sections where asbestos waste is deposited that comply with the requirements of 40 CFR Part 61.154(b), 1995 ed., which is adopted and incorporated by reference; and

(e) close the separate trenches, if constructed, according to the requirements of Subsection R315-303-3(4) with the required signs in place.

R315-315-3. Ash.

(1) Ash Management.

(a) Ash may be recycled.

(b) If ash is disposed, the preferred method is in a permitted ash monofill, but ash may be disposed in a permitted Class I, II, III, or V landfill.

(2) Ash shall be transported in a manner to prevent leakage or the release of fugitive dust.

(3) Ash shall be handled and disposed at the landfill in a manner to prevent fugitive dust emissions.

R315-315-4. Bulky Waste.

Bulky waste such as automobile bodies, furniture, and appliances shall be crushed and then pushed onto the working face near the bottom of the cell or into a separate disposal area.

R315-315-5. Sludge Requirements.

(1) No water treatment plant sludge, digested waste water treatment plant sludge, or septage containing free liquids may be disposed in any landfill with other solid waste.

(2) Water treatment plant sludge, digested waste water treatment plant sludge, or septage containing no free liquids may be placed at or near the bottom of the landfill working face and covered with other solid waste or other suitable cover material.

(3) Disposal of sludge in a landfill must meet the requirements of Subsection R315-303-3(1).

R315-315-6. Dead Animals.

(1) Dead animals shall be managed and disposed in a manner that minimizes odors and the attraction, harborage, or propagation of insects, rodents, birds, or other animals.

(2) Dead animals may be disposed at the active working face of a permitted landfill or in a separate trench specifically prepared to receive dead animals.

(a) If dead animals are disposed at the active working face of a permitted landfill, the carcasses shall be placed at or near the bottom of the cell and immediately covered with a minimum of two feet of other waste.

(b) If dead animals are disposed in a separate trench, the carcasses shall be completely covered with a minimum of six inches of earth at the end of the working day the carcasses are received.

R315-315-7. PCB Containing Waste.

(1) Any facility that disposes of nonhazardous waste, hazardous waste, or radioactive waste containing PCBs is regulated by Rules R315-301 through 320.

(2) The following waste containing PCBs may be disposed in a permitted Class I, II, III, IV, V, or VI Landfill; permitted incinerator; energy recovery facility; or a facility permitted by rule under Rule R315-318:

(a) waste containing PCBs at concentrations less than 50 ppm as found in situ at the original remediation site as specified by 40 CFR 761.61 (2001);

(b) PCB household waste as defined by 40 CFR 761.3 (2001); and

(c) small quantities, 10 or fewer, of intact, non-leaking small PCB capacitors from fluorescent lights.

(3) Waste containing PCBs at concentrations of 50 ppm, or higher, are prohibited from disposal in a landfill, incinerator, or energy recovery facility that is regulated by Rules R315-301 through 320 except:

(a) the following facilities may receive waste containing PCBs at concentrations of 50 ppm or higher for treatment or disposal:

(i) a facility that began receiving waste prior to July 15, 1993, that is permitted under 40 CFR 761.70, .75 or .77 (2001) to accept waste containing PCBs; or

(ii) a facility that began receiving waste after July 15, 1993, that is permitted under 40 CFR 761.70, .71, .72, .75, or .77 (2001) to accept waste containing PCBs, which facility must also receive approval under Rules R315-301 through 320; or

(b) when approved by the Executive Secretary, the following wastes may be disposed at an approved unit of a permitted landfill or may be disposed at an incinerator that meets the requirements of Subsection R315-315-7(3)(a)(i) or (ii):

(i) PCB bulk products regulated by 40 CFR 761.62(b) (2001);

(ii) drained PCB contaminated equipment as defined by 40 CFR 761.3 (2001);

(iii) drained PCB articles, including drained PCB transformers, as defined by 40 CFR 761.3 (2001);

(iv) non-liquid cleaning materials remediation wastes containing PCB's regulated by 40 CFR 761.61(a)(5)(v)(A) (2001);

(v) PCB containing manufactured products regulated by 40 CFR 761.62(b)(1)(i) and (ii) (2001); or

(vi) non-liquid PCB containing waste, initially generated as a non-liquid waste, generated as a result of research and development regulated by 40 CFR 761.64(b)(2) (2001).

(c) If a unit of a permitted landfill is approved to receive PCB containing wastes under Subsection R315-315-7(3)(b), the owner or operator of the landfill:

(i) shall modify the approved Ground Water Monitoring Plan to include the testing of the ground water samples for PCB containing constituents at appropriate detection levels; and

(ii) may be required to test the leachate generated at the unit of the landfill under 40 CFR 761.62(b)(2).

R315-315-8. Petroleum Contaminated Soils.

(1) Terms used in Section R315-315-8 are defined in Section R315-301-2. In addition, for the purpose of Section R315-315-8, the following definition applies: "Petroleum contaminated soils" means soils that have been contaminated with either diesel or gasoline or both.

(2) Petroleum contaminated soils that are not a hazardous waste may be accepted for disposal at a:

- (a) Class I Landfill;
- (b) Class II Landfill;
- (c) Class III Landfill; or
- (d) Class V Landfill.

(3) Petroleum contaminated soils containing the following

constituents at or below the following levels and are otherwise not a hazardous waste, may be accepted for disposal at a Class IV or VI Landfill:

- (a) Benzene, 0.03 mg/kg;
- (b) Ethylbenzene, 13 mg/kg;
- (c) Toluene, 12 mg/kg; and
- (d) Xylenes, 200 mg/kg.

R315-315-9. Waste Asphalt.

(1) The preferred management of waste asphalt is recycling. Recycling of waste asphalt occurs when it is used:

(a) as a feedstock in the manufacture of new hot or cold mix asphalt;

(b) as underlayment in road construction;

(c) as subgrade in road construction when the asphalt is above the historical high level of ground water;

(d) under parking lots when the asphalt is above the historical high level of ground water; or

(e) as road shoulder when the use meets engineering requirements.

(2) If waste asphalt is disposed, it shall be disposed in a permitted landfill.

**KEY: solid waste management, waste disposal
October 15, 2003**

19-6-105

Notice of Continuation March 14, 2003

**R315. Environmental Quality, Solid and Hazardous Waste.
R315-320. Waste Tire Transporter and Recycler
Requirements.**

R315-320-1. Authority, Purpose, and Inspection.

(1) The waste tire transporter and recycler requirements are promulgated under the authority of the Waste Tire Recycling Act, Title 19, Chapter 6, and the Solid and Hazardous Waste Act Title 19, Chapter 6, to protect human health; to prevent land, air and water pollution; to conserve the state's natural, economic, and energy resources; and to promote recycling of waste tires.

(2) Except for Subsections R315-320-4(7) and R315-320-5(7), which apply to the application fees for the registration of a waste tire transporter and a waste tire recycler throughout the state, Rule R315-320 does not supersede any ordinance or regulation adopted by the governing body of a political subdivision or local health department if the ordinance or regulation is at least as stringent as Rule R315-320, nor does Rule R315-320 relieve a tire transporter or recycler from the requirement to meet all applicable local ordinances or regulations.

(3) The Executive Secretary or an authorized representative may enter and inspect the site of a waste tire transporter or a waste tire recycler as specified in Subsection R315-302-2(5)(b).

R315-320-2. Definitions.

Terms used in Rule R315-320 are defined in Sections R315-301-2 and 19-6-803. In addition, for the purpose of Rule R315-320, the following definitions apply:

(1) "Demonstrated market" or "market" means the legal transfer of ownership of material derived from waste tires between a willing seller and a willing buyer meeting the following conditions:

(a) total control of the material derived from waste tires is transferred from the seller to the buyer;

(b) the transfer of ownership and control is an "arms length transaction" between a seller and a buyer who have no other business relationship or responsibility to each other;

(c) the transaction is done under contract which is documented and verified by orders, invoices, and payments; and

(d) the transaction is at a price dictated by current economic conditions.

(e) the possibility or potential of sale does not constitute a demonstrated market.

(2) "Vehicle identification number" means the identifying number assigned by the manufacturer or by the Utah Motor Vehicle Division of the Utah Tax Commission for the purpose of identifying the vehicle.

(3) "Waste tire generator" means a person, an individual, or an entity that may cause waste tires to enter the waste stream. A waste tire generator may include:

(a) a tire dealer, a car dealer, a trucking company, an owner or operator of an auto salvage yard, or other person, individual, or entity that removes or replaces tires on a vehicle; or

(b) a tire dealer, a car dealer, a trucking company, an owner or operator of an auto salvage yard, a waste tire transporter, a waste tire recycler, a waste tire processor, a waste tire storage facility, or a disposal facility that receives waste tires from a person, an individual, or an entity.

R315-320-3. Landfilling of Waste Tires and Material Derived from Waste Tires.

(1) Disposal of waste tires or material derived from waste tires is prohibited except as allowed by Subsection R315-320-3(2) or (3).

(2) Landfilling of Whole Tires. A landfill may not receive whole waste tires for disposal except as follows:

(a) waste tires delivered to a landfill no more than four

whole tires at one time by an individual, including a waste tire transporter; or

(b) waste tires from devices moved exclusively by human power; or

(c) waste tires with a rim diameter greater than 24.5 inches.

(3) Landfilling of Material Derived from Waste Tires.

(a) A landfill, which has a permit issued by the Executive Secretary, may receive material derived from waste tires for disposal.

(b) Except for the beneficial use of material derived from waste tires at a landfill, material derived from waste tires shall be disposed in a separate landfill cell that is designed and constructed, as approved by the Executive Secretary, to keep the material in a clean and accessible condition so that it can reasonably be retrieved from the cell for future recycling.

(4) Reimbursement for Landfilling Shredded Tires.

(a) The owner or operator of a permitted landfill may apply for reimbursement for landfilling shredded tires as specified in Subsection R315-320-6(1).

(b) To receive the reimbursement, the owner or operator of the landfill must meet the following conditions:

(i) the waste tires shall be shredded;

(ii) the shredded tires shall be stored in a segregated cell or other landfill facility that ensures the shredded tires are in a clean and accessible condition so that they can be reasonably retrieved and recycled at a future time; and

(iii) the design and operation of the landfill cell or other landfill facility has been reviewed and approved by the Executive Secretary prior to the acceptance of shredded tires.

(5) Violation of Subsection R315-320-3(1), (2), or (3) is subject to enforcement proceedings and a civil penalty as specified in Subsection 19-6-804(4).

R315-320-4. Waste Tire Transporter Requirements.

(1) Each waste tire transporter who transports waste tires within the state of Utah must apply for, receive and maintain a current waste tire transporter registration certificate from the Executive Secretary.

(2) Each applicant for registration as a waste tire transporter shall complete a waste tire transporter application form provided by the Executive Secretary and provide the following information:

(a) business name;

(b) address to include:

(i) mailing address; and

(ii) site address if different from mailing address;

(c) telephone number;

(d) list of vehicles used including the following:

(i) description of vehicle;

(ii) license number of vehicle;

(iii) vehicle identification number; and

(iv) name of registered owner;

(e) name of business owner;

(f) name of business operator;

(g) list of sites to which waste tires are to be transported;

(h) liability insurance information as follows:

(i) name of company issuing policy;

(ii) amount of liability insurance coverage; and

(iii) term of policy.

(i) meet the requirements of R315-320-4(3)(b) and (c).

(3) A waste tire transporter shall:

(a) demonstrate financial responsibility for bodily injury and property damage, including bodily injury and property damage to third parties caused by sudden or nonsudden accidental occurrences arising from transporting waste tires. The waste tire transporter shall have and maintain liability coverage for sudden or nonsudden accidental occurrences in the amount of \$300,000;

(b) for the initial application for a waste tire transporter registration or for any subsequent application for registration at a site not previously registered, demonstrate to the Executive Secretary that all local government requirements for a waste tire transporter have been met, including obtaining all necessary permits or approvals where required; and

(c) demonstrate to the Executive Secretary that the waste tires transported by the transporter are taken to a registered waste tire recycler or that the waste tires are placed in a permitted waste tire storage facility that is in full compliance with the requirements of Rule R315-314. Filing of a complete report as required in Subsection R315-320-4(9) shall constitute compliance with this requirement.

(4) A waste tire transporter shall notify the Executive Secretary of:

(a) any change in liability insurance coverage within 5 working days of the change; and

(b) any other change in the information provided in Subsection R315-320-4(2) within 20 days of the change.

(5) A registration certificate will be issued to an applicant following the:

(a) completion of the application required by Subsection R315-320-4(2);

(b) presentation of proof of liability coverage as required by Subsection R315-320-4(3); and

(c) payment of the fee as established by the Annual Appropriations Act.

(6) A waste tire transporter registration certificate is not transferable and shall be issued for the term of one year.

(7) If a waste tire transporter is required to be registered by a local government or a local health department:

(a) the waste tire transporter may be assessed an annual registration fee by the local government or the local health department not to exceed to the following schedule:

(i) for one through five trucks, \$50; and

(ii) \$10 for each additional truck;

(b) the Executive Secretary shall issue a non-transferable registration certificate upon the applicant meeting the requirements of Subsections R315-320-4(2) and (3) and shall not require the payment of the fee specified in Subsection R315-320-4(5)(c), if the fee allowed in Subsection R315-320-4(7)(a) is paid; and

(c) the registration certificate shall be valid for one year.

(8) Waste tire transporters storing tires in piles must meet the requirements of Rule R315-314.

(9) Reporting Requirements.

(a) Each waste tire transporter shall submit a quarterly activity report to the Executive Secretary. The activity report shall be submitted on or before the 30th of the month following the end of each quarter.

(b) The activity report shall contain the following information:

(i) the number of waste tires collected at each waste tire generator, including the name, address, and telephone number of the waste tire generator;

(ii) the number of tires shall be listed by the type of tire based on the following:

(A) passenger/light truck tires or tires with a rim diameter of 19.5 inches or less;

(B) truck tires or tires ranging in size from 7.50x20 to 12R24.5; and

(C) other tires such as farm tractor, earth mover, motorcycle, golf cart, ATV, etc.

(iii) the number or tons of waste tires shipped to each waste tire recycler or processor for a waste tire recycler, including the name, address, and telephone number of each recycler or processor;

(iv) the number of tires shipped as used tires to be resold;

(v) the number of waste tires placed in a permitted waste

tire storage facility; and

(vi) the number of tires disposed in a permitted landfill, or put to other legal use.

(c) The activity report may be submitted in electronic format.

(10) Revocation of Registration.

(a) The registration of a waste tire transporter may be revoked upon the Executive Secretary finding that:

(i) the activities of the waste tire transporter that are regulated under Section R315-320-4 have been or are being conducted in a way that endangers human health or the environment;

(ii) the waste tire transporter has made a material misstatement of fact in applying for or obtaining a registration as a waste tire transporter or in the quarterly activity report required by Subsection R315-320-4(9);

(iii) the waste tire transporter has provided a recycler with a material misstatement of fact which the recycler subsequently used as documentation in a request for partial reimbursement under Section 19-6-813;

(iv) the waste tire transporter has violated any provision of the Waste Tire Recycling Act, Title 19 Chapter 6, or any order, approval, or rule issued or adopted under the Act;

(v) the waste tire transporter failed to meet or no longer meets the requirements of Section R315-320-4;

(vi) the waste tire transporter has been convicted under Subsection 19-6-822; or

(vii) the waste tire transporter has had the registration from a local government or a local health department revoked.

(b) Registration will not be revoked for submittal of incomplete information required for registration or a reimbursement request if the error was not a material misstatement.

(c) For purposes of Subsection R315-320-4(10)(a), the statements, actions, or failure to act of a waste tire transporter shall include the statements, actions, or failure to act of any officer, director, agent or employee of the waste tire transporter.

(d) The administrative procedures set forth in Rule R315-12 shall govern revocation of registration.

R315-320-5. Waste Tire Recycler Requirements.

(1) Each waste tire recycler requesting the reimbursement allowed by Subsection 19-6-809(1), must apply for, receive, and maintain a current waste tire recycler registration certificate from the Executive Secretary.

(2) Each applicant for registration as a waste tire recycler shall complete a waste tire recycler application form provided by the Executive Secretary and provide the following information:

(a) business name;

(b) address to include:

(i) mailing address; and

(ii) site address if different from mailing address;

(c) telephone number;

(d) owner name;

(e) operator name;

(f) description of the recycling process;

(g) proof that the recycling process described in Subsection R315-320-5(2)(f) :

(i) is being conducted at the site; or

(ii) for the initial application for a recycler registration, that the recycler has the equipment in place and the ability to conduct the process at the site;

(h) estimated number of tires to be recycled each year;

(i) liability insurance information as follows:

(i) name of company issuing policy;

(ii) proof of the amount of liability insurance coverage; and

(iii) term of policy; and

(j) meet the requirements of Subsection R315-320-5(3)(b).

(3) A waste tire recycler shall:

(a) demonstrate financial responsibility for bodily injury and property damage, including bodily injury and property damage to third parties caused by sudden or nonsudden accidental occurrences arising from storing and recycling waste tires. The waste tire recycler shall have and maintain liability coverage for sudden or nonsudden accidental occurrences in the amount of \$300,000; and

(b) for the initial application for a recycler registration or for any subsequent application for registration at a site not previously registered, demonstrate to the Executive Secretary that all local requirements for a waste tire recycler have been met, including obtaining all necessary permits or approvals where required.

(4) A waste tire recycler shall notify the Executive Secretary of:

(a) any change in liability insurance coverage within 5 working days of the change; and

(b) any other change in the information provided in Subsection R315-320-5(2) within 20 days of the change.

(5) A registration certificate will be issued to an applicant following the:

(a) completion of the application required by Subsection R315-320-5(2);

(b) presentation of proof of liability coverage as required by Subsection R315-320-5(3); and

(c) payment of the fee as established by the Annual Appropriations Act.

(6) A waste tire recycler registration certificate is not transferable and shall be issued for a term of one year.

(7) If a waste tire recycler is required to be registered by a local government or a local health department:

(a) the waste tire recycler may be assessed an annual registration fee by the local government or local health department according to the following schedule:

(i) if up to 200 tons of waste tires are recycled per day, the fee shall not exceed \$300;

(ii) if 201 to 700 tons of waste tires are recycled per day, the fee shall not exceed \$400; or

(iii) if over 700 tons of waste tires are recycled per day, the fee shall not exceed \$500.

(b) The Executive Secretary shall issue a non-transferable registration certificate upon the applicant meeting the requirements of Subsections R315-320-5(2) and (3) and shall not require the payment of the fee specified in Subsection R315-320-5(5)(c), if the fee allowed by Subsection R315-320-5(7)(a) is paid.

(c) The registration certificate shall be valid for one year.

(8) Waste tire recyclers must meet the requirements of Rule R315-314 for waste tires stored in piles.

(9) Revocation of Registration.

(a) The registration of a waste tire recycler may be revoked upon the Executive Secretary finding that:

(i) the activities of the waste tire recycler that are regulated under Section R315-320-5 have been or are being conducted in a way that endangers human health or the environment;

(ii) the waste tire recycler has made a material misstatement of fact in applying for or obtaining a registration as a waste tire recycler;

(iii) the waste tire recycler has made a material misstatement of fact in applying for partial reimbursement under Section 19-6-813;

(iv) the waste tire recycler has violated any provision of the Waste Tire Recycling Act, Title 19 Chapter 6, or any order, approval, or rule issued or adopted under the Act;

(v) the waste tire recycler has failed to meet or no longer meets the requirements of Subsection R315-320-5(1);

(vi) the waste tire recycler has been convicted under Subsection 19-6-822; or

(vii) the waste tire recycler has had the registration from a local government or a local health department revoked.

(b) Registration will not be revoked for submittal of incomplete information required for registration or a reimbursement request if the error was not a material misstatement.

(c) For purposes of Subsection R315-320-5(9)(a), the statements, action, or failure to act of a waste tire recycler shall include the statements, actions, or failure to act of any officer, director, agent, or employee of the waste tire recycler.

(d) The administrative procedures set forth in Rule R315-12 shall govern revocation of registration.

R315-320-6. Reimbursement for Recycling Waste Tires.

(1) No partial reimbursement request submitted by a waste tire recycler for the first time, or the first time a specific recycling process or a beneficial use activity is used, shall be approved by a local health department under Section 19-6-813 until the local health department has received from the Executive Secretary a written certification that the Executive Secretary has determined the processing of the waste tires is recycling or a beneficial use. If the reimbursement request contains sufficient information, the Executive Secretary shall make the recycling or beneficial use determination and notify the local health department in writing within 15 days of receiving the request for determination.

(2) No partial reimbursement may be requested or paid for waste tires that were generated in Utah and recycled at an out-of-state location except as allowed by Subsection 19-6-809(1)(a)(ii)(C) or (D).

(3) In addition to any other penalty imposed by law, any person who knowingly or intentionally provides false information required by Section R315-320-5 or Section R315-320-6 shall be ineligible to receive any reimbursement and shall return to the Division of Finance any reimbursement previously received that was obtained through the use of false information.

R315-320-7. Reimbursement for the Removal of an Abandoned Tire Pile or a Tire Pile at a Landfill Owned by a Governmental Entity.

(1) A county or municipality applying for payment for removal of an abandoned tire pile or a tire pile at a county or municipal owned landfill shall meet the requirements of Section 19-6-811.

(2) Determination of Reasonability of a Bid.

(a) The following items shall be submitted to the Executive Secretary when requesting a determination of reasonability of a bid as specified in Subsections 19-6-811(3) and (4):

(i) a copy of the bid;

(ii) a letter from the local health department stating that the tire pile is abandoned or that the tire pile is at a landfill owned or operated by a governmental entity; and

(iii) a written statement from the county or municipality that the bidding was conducted according to the legal requirements for competitive bidding.

(b) The Executive Secretary will review the submitted documentation in accordance with Subsection 19-6-811(4) and will inform the county or municipality if the bid is reasonable.

(c) A determination of reasonability of the bid will be made and the county or municipality notified within 30 days of receipt of the request by the Executive Secretary.

(d) A bid determined to be unreasonable shall not be deemed eligible for reimbursement.

(3) If the Executive Secretary determines that the bid to remove waste tires from an abandoned waste tire pile or from a waste tire pile at a landfill owned or operated by a governmental entity is reasonable and that there are sufficient monies in the trust fund to pay the expected reimbursements for the

transportation, recycling, or beneficial use under Section 19-6-809 during the next quarter, the Executive Secretary may authorize a maximum reimbursement of:

(a) 100% of a waste tire transporter's or recycler's costs allowed under Subsection 19-6-811(2) to remove the waste tires from the waste tire pile and deliver the waste tires to a recycler if no waste tires have been added to the waste tire pile after June 30, 2001; or

(b) 60% of a waste tire transporter's or recycler's costs allowed under Subsection 19-6-811(2) to remove the waste tires from the waste tire pile and deliver the waste tires to a recycler if waste tires have been added to the waste tire pile after June 30, 2001.

KEY: solid waste management, waste disposal

February 1, 2007

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19-6-105

19-6-819

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-10A. Transplant Services Standards.

R414-10A-1. Introduction and Authority.

(1) This rule establishes standards and criteria for tissue and organ transplantation services.

(2) Section 9507 of the federal Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), codified as section 1903(i)(1) of the Social Security Act, requires states, as part of the Medicaid program, to establish standards for coverage of transplantation services.

(3) Under the ruling issued by the Federal District Court for the District of Utah, Central Division, Civil No. 96405, the Department of Health has absolute discretion to fund transplantation services under Title XIX of the Social Security Act and if transplantation services are covered, there must be no discrimination on the basis of age.

R414-10A-2. Definitions.

For purposes of R414-10A:

(1) "Abstinence" means the documented non-use of any abusable psychoactive substance.

(2) "Active infection" means current presumptive evidence of invasion of tissue or body fluids by bacteria, viruses, fungi, rickettsiae, or parasites which is not demonstrated to be effectively controlled by the host, antibiotic or antimicrobial agents.

(3) "Age group" means patients documented in the medical literature with an age at the time of transplantation related to the current age of the client as listed below:

- (a) Birth through 12 months;
- (b) One through 12 years;
- (c) 13 through 20 years;
- (d) 21 through 30 years;
- (e) 31 through 40 years; or
- (f) 41 through 54 years.

(g) Department medical consultants may consider other age groups, documented by the medical literature and the transplant center to have conclusive relevance to the client's survival.

(4) "Active substance abuse" means the current use of any abusable psychoactive substance which is not appropriately prescribed and taken under the direction of a physician or is not medically indicated.

(5) "Allogenic" means having a different genetic constitution but belonging to the same species.

(6) "Autologous" means the products or components of the same individual person.

(7) "Client" means an individual eligible to receive covered Medicaid services from an enrolled Medicaid provider.

(8) "Department" means the Utah Department of Health.

(9) "Emergency transplantation" means any transplantation which for reasons of medical necessity requires that a transplant be performed less than five days after determination of the need for the procedure.

(10) "Increase in life expectancy" means the difference in the average number of years of life between the life expectancy of the control group of patients compared to the life expectancy of the transplantation group.

(11) "Intestine transplantation" means transplantation of both the small bowel and colon.

(12) "Life expectancy" means the average number of years of life remaining for the age group of the client at the time the Department receives the prior authorization request.

(13) "Medical literature" means articles and medical information which have been peer reviewed and accepted for publication or published.

(14) "Medically necessary" means a client's medical condition which meets all the criteria and none of the

contraindications for the type of transplantation requested.

(15) "Multiple transplantations" means, except for corneas, the transplantation of more than one tissue or organ during the same or different operative procedure.

(16) "Multivisceral transplantation" means the transplantation of liver, pancreas, omentum, stomach, small intestine and colon.

(17) "Patient" means a person who is receiving covered professional services provided or directed by a licensed practitioner of the healing arts enrolled as a Medicaid provider.

(18) "Remission" means the lack of any evidence of the leukemia on physical examination and hematological evaluation, including normocellular bone marrow with less than five percent blast cells, and peripheral blood counts within normal values, except for clients who are receiving maintenance chemotherapy.

(19) "Services" means the type of medical assistance specified in sections 1905(a)(1) through (24) of the Social Security Act and interpreted in the 42 CFR Section 440, Subpart A, October 1992 edition, which is adopted and incorporated by reference.

(20) "Substance abuse rehabilitation program" means a rehabilitation program developed and conducted by an inpatient facility that, at a minimum, meets the standards of organization and staff of a chemical dependency/substance abuse specialty hospital specified in R432-102-4,5.

(21) "Syngeneic" means possessing identical genotypes, as monozygotic or identical twins.

(22) "Transplantation" means the transfer of a human organ or tissue from one person to another or from one site to another in the same individual, except for skin, tendon, and bone.

(23) "Vital end-organs" means organs of the body essential to life, e.g., the heart, the liver, the lungs, and the brain.

R414-10A-3. Client Eligibility Requirements for Coverage for Transplantation Services.

Transplantation services are available to categorically eligible and medically needy individuals who are Title XIX eligible and meet criteria listed in R414-10A-6 through 22 at the time the transplantation service is provided.

R414-10A-4. Program Access Requirements.

(1) Transplantation services may be provided only for those eligible clients who meet the criteria listed in R414-10A-6 through 22 for services covered under the Utah Medicaid program.

(2) Transplantation services for the organ needed by the client may be provided only in a transplant center approved by the United States Department of Health and Human Services as a Medicare designated center or by the Department in accordance with criteria in R414-10A-7.

(3) Transplantation services may be provided out-of-state only when the authorized service is not available in an approved facility in the state of Utah.

(4) Criteria listed in R414-10A applicable to transplantation services and transplant centers in the state of Utah also apply to out-of-state transplant services and facilities.

(5) Post transplant authorization for transplantation services provided under unusual, emergency circumstances may be given only when:

(a) all Utah Medicaid criteria listed in R414-10A-6 through 22 are met; and

(b) both the transplant center and the board-certified or board-eligible specialist evaluation required by R414-10A-6 (3) (f), (p), (q), and (r) are submitted with the recommendation that the tissue or organ transplantation be authorized.

R414-10A-5. Service Coverage.

(1) Transplantation services are covered by the Utah Medicaid program only when criteria listed in R414-10A-6 through 22 are met.

(2) Transplantations which are experimental or investigational or which are performed on an experimental or investigational basis are not covered.

(3) Multiple transplantation services may be provided only when the criteria for the specific multiple transplantations are met.

(4) Staff shall not consider criteria for single tissue or organ transplantation in reviewing requests for multiple transplantations.

(5) Transplantation of additional tissues or organs, different from prior transplantations, may be provided only when the criteria for multiple transplantations of all provided or scheduled multiple tissue or organ transplantations are met.

(6) Repeat transplantations of the same tissues or organs may be provided only when documentation reviewed by Department staff and medical consultants shows that criteria for transplantation of the specific tissues or organs are met.

(7) Emergency transplantations may be provided only when the service is provided for a transplantation with criteria approved in R414-10A-6 through 22. Payment will not be made until Department staff has reviewed all of the information required by R414-10A-6 through 22 and determined that the patient and the transplant center met criteria for approval and provision of the service at the time of the transplantation.

R414-10A-6. Prior Authorization.

(1) Prior authorization is required for all transplantation services except for cornea and kidney transplantation.

(2) The prior authorization request for transplantation services must be initiated by the client's referring physician. Failure to submit all required information with the prior authorization request will delay processing of the request for transplantation.

(3) The initial request for prior authorization of any transplantation, except cornea or kidney, must contain all of the following:

(a) A request for Prior Authorization Form 24-06-37, completed and signed by the physician.

(b) A description of the medical condition which necessitates a transplantation.

(c) Medical literature from the transplant center documenting the client's life expectancy, with and without a transplant. The transplant center staff must complete and submit to the Department for staff review and evaluation, a medical literature review documenting a probability of successful clinical outcome for patients receiving transplantation for the specific age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. This review of the medical literature must document an increase in life expectancy between control group(s) and transplantation group(s). The Department shall use independent research by medical consultant(s) to evaluate the documentation submitted by the transplant center.

(d) Transplantation treatment alternatives utilized previous to the transplantation request.

(e) Transplantation treatment alternatives considered and discarded, including discussion of why the alternatives have been discarded.

(f) Comprehensive examination, evaluation and recommendations completed by a board-certified or board-eligible specialist in a field directly related to the client's condition which necessitates the transplantation, such as a nephrologist, gastroenterologist, cardiologist, or hematologist.

(g) Comprehensive psycho-social evaluation of the client by a board-certified or board-eligible psychiatrist. The evaluation must include a comprehensive history regarding

substance abuse and compliance with medical treatment.

(h) Psycho-social evaluation of parent(s) or guardian(s) of the client, by a board-certified or board-eligible psychiatrist if the client is less than 18 years of age. The psycho-social evaluation must include a comprehensive history regarding substance abuse, and past and present compliance with medical treatment.

(i) Comprehensive psychiatric evaluation of the client, if the client has a history of mental illness.

(j) Comprehensive psychological or developmental testing, as requested by the Department.

(k) Comprehensive infectious disease evaluation for a client with a recent or current suspected infectious episode.

(l) Documentation by the client's referring physician that a client with a history of substance abuse has successfully completed a substance abuse program or has documented abstinence for a period of at least six months before any transplantation service can be authorized.

(m) Hospital and outpatient records for at least the last two years, unless the patient is less than two years of age, in which case all records.

(n) Any other medical evidence needed to evaluate possible contraindications for the type of transplantation being considered. Contraindications are listed in this rule under each organ or transplant type.

(o) The transplant center must document, by a current medical literature review, a one-year survival rate from patients having received transplantation for the age group, specific diagnosis(es), condition and type of transplantation proposed for the client. Survival rate must be calculated by the Kaplan-Meier product-limit method or the actuarial life table method: "Kaplan, G., Meier, P. Non-Parametric estimation from incomplete observations. Journal of American Statistical Association 53:457-481, 1958. Cox, D.R., Oakes, D. Analysis of survival data. Chapman and Hill, 1984." adopted and incorporated by reference. At least ten patients in the appropriate age group must be alive at the end of the one or three year period to document adequate confidence intervals. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(p) The transplant center must document by a current medical literature review, a one year graft function rate for patients having received pancreas, kidney or small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. Graft function rate must be calculated by the Kaplan-Meier product-limit method or the actuarial life table method: "Kaplan, G., Meier, P. Non-Parametric estimation from incomplete observations. Journal of American Statistical Association 53:457-481, 1958. Cox, D.R., Oakes, D. Analysis of survival data. Chapman and Hill, 1984." adopted and incorporated by reference. The time to graft failure will be determined by the use of insulin post-pancreas transplantation, by the use of dialysis post-renal transplantation, and the use of total parenteral nutrition post-small bowel transplantation. At least ten patients in the appropriate age group must have documented graft function at the end of the one year period to document adequate confidence intervals. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(q) Bone marrow transplantation centers must document, by a current medical literature review, a one-year and a three-year survival rate from patients having received transplantation for the age group, specific diagnosis(es), condition and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(r) The transplant center must provide written recommendations for each client which support the need for the

transplant. The recommendations must reflect use of both the transplant center's own patient selection criteria and the Utah Medicaid program criteria as noted in R414-10A-8 through 22. Agreement of the transplant center to provide the required service must also be established.

(s) The physician must provide, for review by the Department, any additional medical information which could affect the outcome of the specific transplant being requested.

(t) The completed request for authorization, along with all required information and documentation, must be delivered to:

Utah Department of Health
Bureau of Coverage and Reimbursement Policy
Utilization Management Unit
Transplant Coordinator
288 North 1460 West
P.O. Box 143103
Salt Lake City, Utah 84114-3103

R414-10A-7. Criteria for Transplantation Centers or Facilities.

Transplantation services are covered only in a transplant center or facility which demonstrates the following qualifications to the Department:

(1) Compliance with criteria listed in R414-10A-6 through 22.

(2) The transplant center must document cost effectiveness and quality of service. The transplant center must complete, and submit to the Department for evaluation, documentation specific to the surgical experience of the requesting transplant center, showing applicable one and three year survival rates for all patients receiving transplantation in the last three years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) Out-of-state transplant centers must meet all of the criteria and requirements listed by the Department in R414-10A-6 through 22.

(4) Transplantation services are covered in out-of-state transplant centers only when the service is not available in an approved facility in Utah, and agreement is reached between the Department and the requesting physician that service out-of-state is essential to the individual case.

(5) Reimbursement to out-of-state transplant centers is provided only when the transplant center and the Department can agree upon arrangements which conform to the Department payment methodology.

(6) Corneal transplant facilities must document:

(a) certification or licensure by the Department as an ambulatory surgical center or an acute care general hospital; and

(b) that the surgeon is board-certified or board-eligible in ophthalmology.

(7) Heart, kidney, and liver transplant centers must document all of the following:

(a) Current approval by the U.S. Department of Health and Human Services as a Medicare-designated center for transplantation of the organ needed by the client.

(b) Current full membership in the United Network for Organ Sharing for the specific organ transplantation needed by the client.

(8) Bone marrow transplant centers must document the following:

(a) Approval to provide autologous or allogenic bone marrow transplantation from at least one of the following:

(i) Children's Cancer Study Group approval as a bone marrow transplantation center for autologous or allogenic bone marrow.

(ii) Southwest Oncology Group approval as a bone marrow transplantation center for autologous or allogenic bone marrow.

(iii) National Marrow Donor Program approval as a bone

marrow transplantation center for allogenic bone marrow.

(b) Payment will be made for autologous bone marrow transplantation services only if the transplantation center can document approval by at least one of the agencies named in R414-10A-7(1)through (7), and (8)(a)(i) or (ii) of this rule as an approved autologous bone marrow transplantation center.

(c) Payment will be made for allogenic bone marrow transplantation services only if the transplantation center can document approval by at least one of the agencies named in R414-10A-7(1)through (7), and(8)(a)(i) through (iii) of this rule as an approved allogenic bone marrow transplant center.

(9) Lung transplant centers must have a current full membership in the United Network for Organ Sharing for lung transplantation.

R414-10A-8. Criteria and Contraindications for Cornea Transplantation.

(1) Cornea transplantation services may be provided to a client of any age.

(2) The following are contraindications for cornea transplantation or penetrating keratoplasty:

(a) Active infection.

(b) The presence of an associated disease, such as macular degeneration or diabetic retinopathy severe enough to prevent visual improvement with a successful corneal transplantation.

R414-10A-9. Criteria and Contraindications for Bone Marrow Transplantation.

(1) Bone marrow transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for bone marrow transplantation must meet requirements of R414-10A-9(2)(a) or (b).

(a) Allogenic and syngeneic bone marrow transplantations may be approved for payment only when the client has an HLA-matched donor. The donor must be compatible for all or a five-out-of-six match of World Health Organization recognized HLA-A, -B, and -DR antigens as determined by appropriate serologic typing methodology.

(i) A search of related family members, for a suitable donor, is authorized for payment only after a written prior authorization request has been received by the Department.

(ii) A search of unrelated persons by HLA-type, for a suitable donor, will not be authorized for payment by the Department until the client has been documented to meet all other criteria in this rule for bone marrow transplantation except an HLA-matched donor.

(iii) The transplant center staff must complete, and submit to the Department for evaluation, a current medical literature review, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate, or by having a greater than or equal to 55 percent three-year survival rate or by meeting the one-year and three-year survival rates for patients receiving bone marrow transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) Autologous bone marrow or peripheral blood stem cell transplantation performed in conjunction with total body radiation or high dose chemotherapy, may be approved for payment only if a current medical literature review, completed by the transplant center staff and sent to the Department for staff review and evaluation, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate, or by having a greater than or equal to 55 percent three-year survival rate or by meeting the one-year and three-year survival rates for patients receiving bone marrow

transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) Clients for autologous bone marrow transplantations must have adequate marrow function and no evidence of marrow involvement by the primary malignancy at the time the marrow is harvested.

(3) In addition to meeting the requirements of R414-10A-9(2)(a) or (b), the client for bone marrow transplantation must meet the requirements of at least R414-10A-9(3)(a) or (b).

(a) The client must have irreversible, progressive bone marrow disease with a life expectancy of one year or less without transplantation or must have greater than a five year increase in life expectancy with transplantation, with no other reasonable medical or surgical alternative to transplantation available.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a medical literature review documenting that the client's condition will cause irreversible, progressive disease to vital end-organs within two years following the application for transplant and have no other reasonable medical or surgical alternative to transplantation available. The medical literature must also document that the bone marrow transplantation will prevent irreversible, progressive disease to the client's vital end-organs and must document that it will increase the life expectancy of the client by greater than five years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(4) In addition to meeting the requirements listed in R414-10A-9, (1) through (3), the client must meet all of the following requirements:

(a) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(b) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(c) Psycho-social assessment by a board-certified or board-eligible psychiatrist that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(d) The client must have a strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(e) If the client has a history of substance abuse, then the client must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(f) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original bone marrow disease will not recur and limit survival to less than 75% one-year survival rate, or to less than 55% three-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(5) Any single contraindication listed below precludes approval for Medicaid payment for bone marrow transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of

transplantation if accompanied by significant compromise of one or more vital end-organs.

(c) Active substance abuse.

(d) Presence of systemic dysfunction or malignant disease which could limit successful clinical outcome or interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(e) Human Immunodeficiency Virus (HIV) antibody positive.

(f) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(g) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).

(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent or unresolved pulmonary infarction.

(h) Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 75% one-year survival rate, or a greater than or equal to 55 percent three-year survival rate, or by meeting the one-year and three-year survival rates after transplantation for the age group, specific cancer, diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(i) Cardiovascular diseases:

(i) Intractable cardiac arrhythmias.

(ii) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(iii) Severe generalized arteriosclerosis.

(j) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(k) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(6) Prior to the approval of transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s) of a client who is under 18 years of age, to assure compliance to medication and follow-up care, if an indication of non-compliance documented by any of the behaviors listed in R414-10A-9(5)(k)(i) through (iv) is demonstrated by the parent(s) or guardian(s) of the client.

R414-10A-10. Criteria and Contraindications for Heart Transplantation.

(1) Heart transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for heart transplantation must meet requirements of at least R414-10A-10(2)(a) or (b).

(a) The client must have irreversible, progressive heart disease, with a life expectancy of one year or less without transplantation, or documented evidence of progressive pulmonary hypertension, and with no other reasonable medical or surgical alternative to transplantation available.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a medical

literature review documenting that the client's condition will cause irreversible, progressive disease to vital end-organs within two years following the application for transplant and have no other reasonable medical or surgical alternative to transplantation available. The medical literature must also document that the heart transplantation will prevent irreversible, progressive disease to the client's vital end-organs and must document that it will increase the life expectancy of the client by greater than five years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) In addition to meeting at least one of the requirements listed in R414-10A-10(2), the client must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving heart transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) Severe cardiac dysfunction.

(c) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(d) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(e) Psycho-social assessment by a board-certified or board-eligible psychiatrist that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(f) The client must have strong motivation to undergo the procedure, as documented by the medical and psycho-social assessment.

(g) If the client has a history of substance abuse, then the client must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(h) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original heart disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(4) Any single contraindication listed below precludes approval for Medicaid payment for heart transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation if accompanied by significant compromise of one or more non-cardiac vital end-organs.

(c) Active substance abuse.

(d) Presence of systemic dysfunction or malignant disease which could limit successful clinical outcome, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(e) Human Immunodeficiency Virus (HIV) antibody positive.

(f) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(g) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).

(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent or unresolved pulmonary infarction.

(h) Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 75% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(i) Cardiovascular diseases:

(i) Severe pulmonary hypertension documented in patients 18 years of age and older by a pulmonary vascular resistance greater than eight Wood units, or pulmonary vascular resistance of six or seven Wood units in which a nitroprusside infusion is unable to reduce the pulmonary vascular resistance to less than three Wood units or is unable to reduce the pulmonary artery systolic pressure to below 50 mmHg.

(ii) Severe pulmonary hypertension documented in patients less than 18 years of age and more than six months of age by a pulmonary vascular resistance greater than six pulmonary vascular resistance index units (PVRI), or in which a nitroprusside infusion is unable to reduce the pulmonary vascular resistance to less than six PVRI.

(iii) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(iv) Severe generalized arteriosclerosis.

(j) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(k) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(5) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. Non-compliance is demonstrated by documentation of any of the behaviors listed in R414-10A-10(4)(k)(i) through (iv).

R414-10A-11. Criteria and Contraindications for Intestine Transplantation.

(1) Intestine transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for intestine transplantation must meet the requirements of at least R414-10A-11(2)(a) or (b).

(a) The client must have irreversible, progressive small bowel and large bowel disease, with a life expectancy of one year or less without transplantation, or must have greater than a five year increase in life expectancy with transplantation, with no other reasonable medical or surgical alternative to transplantation available.

(b) The client must have short bowel syndrome that requires daily hyperalimentation with no other reasonable

medical or surgical alternative to transplantation available.

(3) In addition to meeting at least one of the requirements listed in R414-10A-11(2), the client must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year small bowel graft function rate for patients receiving intestine transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 85 percent one-year survival rate for patients receiving intestine transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(d) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long term follow up and the immunosuppressive program which is required.

(e) Psycho-social assessment by a board-certified or board-eligible psychiatrist that the client has sufficient mental, emotional, and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(f) The client must have a strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(g) If the client has a history of substance abuse, then he must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(h) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original intestinal disease will not recur and limit graft function survival to less than 75% one-year survival rate.

(i) The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(4) Any single contraindication listed below precludes approval for Medicaid payment for small bowel transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation, if accompanied by significant compromise of one or more vital end-organs.

(c) Active substance abuse.

(d) Presence of systemic dysfunction or malignant disease which could limit survival, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(e) Human Immunodeficiency Virus (HIV) antibody positive.

(f) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(g) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).

(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent or unresolved pulmonary infarction.

(h) Cancer, unless treated and eradicated for two or more years, or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 85% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(i) Cardiovascular diseases:

(i) Myocardial infarction within six months.

(ii) Intractable cardiac arrhythmias.

(iii) Class III or IV cardiac dysfunction by New York Heart Association criteria.

(iv) Prior congestive heart failure, unless a cardiovascular consultant determines adequate cardiac reserve.

(v) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(vi) Severe generalized arteriosclerosis.

(j) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(k) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(5) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. An indication of non-compliance by the parent(s) or guardian(s) is documented by any of the behaviors listed in R414-10A-11(4)(k)(i) through (iv).

R414-10A-12. Criteria and Contraindications for Kidney Transplantation.

(1) Kidney transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) All indications for kidney transplantation listed below must be met by each client.

(a) The client must have irreversible, progressive end-stage renal disease.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year successful renal graft function rate for patients receiving renal transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of

successful clinical outcome by having a greater than or equal to 90 percent one-year survival rate for patients receiving renal transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(e) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(f) Psycho-social assessment by a board-certified or board-eligible psychiatrist that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(g) The client must have strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(h) If the client has a history of substance abuse, then the client must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(i) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original renal disease will not recur and limit graft function to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) Any single contraindication listed below shall preclude approval for Medicaid payment for kidney transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation if accompanied by significant compromise of one or more non-renal end-organs.

(c) Active substance abuse.

(d) Presence of systemic dysfunction or malignant disease which could limit successful clinical outcome, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(e) Human Immunodeficiency Virus (HIV) antibody positive.

(f) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(g) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).

(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent pulmonary infarction.

(h) Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 90% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(i) Cardiovascular diseases:

(i) Myocardial infarction within six months.

(ii) Intractable cardiac arrhythmias.

(iii) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(iv) Severe generalized arteriosclerosis.

(j) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(k) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(4) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. An indication of non-compliance by the parent(s) or guardian(s) is documented by any of the behaviors listed in R414-10A-12(3)(k)(i) through (iv).

R414-10A-13. Criteria and Contraindications for Liver Transplantation.

(1) Liver transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) A client for liver transplantation must meet requirements of at least R414-10A-13(2)(a) or (b).

(a) The client must have irreversible, progressive liver disease with a life expectancy of one year or less without transplantation, with no other reasonable medical or surgical alternative to transplantation available.

(b) The transplant center staff must complete, and submit to the Department for review and evaluation, a medical literature review documenting that the client's condition will cause irreversible, progressive disease to vital end-organs within two years following the application for transplant and have no other reasonable medical or surgical alternative to transplantation available. The medical literature must also document that the liver transplantation will prevent the irreversible, progressive disease to the client's vital end-organs and must document that it will increase the life expectancy of the client by greater than five years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) In addition to meeting the requirements listed in R414-10A-13(2), the client must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving liver transplantation for the age group, specific diagnosis(es), condition, and type of liver transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(c) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long term follow up and

the immunosuppressive program which is required.

(d) Psycho-social assessment by a board-certified or board-eligible psychiatrist that the client has sufficient mental, emotional, and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(e) The client must have a strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(f) If the client has a history of substance abuse, then the client must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(g) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original liver disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(4) Any single contraindication listed below precludes approval for Medicaid payment for liver transplantation:

(a) Active infection outside the hepatobiliary system.

(b) Acute severe hemodynamic compromise at the time of transplantation, if accompanied by significant compromise of one or more non-hepatic vital end-organs.

(c) Hepatitis B surface antigen positive, except for cases of fulminant hepatitis B.

(d) Stage IV hepatic coma.

(e) Active substance abuse.

(f) Presence of systemic dysfunction or malignant disease which could limit successful clinical outcome, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(g) Human Immunodeficiency Virus (HIV) antibody positive.

(h) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(i) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).

(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent or unresolved pulmonary infarction.

(j) Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 75% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(k) Cardiovascular diseases:

(i) Myocardial infarction within six months.

(ii) Intractable cardiac arrhythmias.

(iii) Class III or IV cardiac dysfunction by New York Heart Association criteria: "Goldman, L. et al. Comparative reproducibility and validity of systems assessing cardiovascular functional class: Advantages of a new specific activity scale. American Heart Association Circulation 64: 1227, 1981.", adopted and incorporated by reference.

(iv) Prior congestive heart failure, unless a cardiovascular consultant determines adequate cardiac reserve.

(v) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(vi) Severe generalized arteriosclerosis.

(l) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(m) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(5) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s) of a client who is under 18 years of age, to assure compliance with medications and follow-up care, if an indication of non-compliance documented by any of the behaviors listed in R414-10A-13(4)(m)(i) through (iv) is demonstrated by the parent(s) or guardian(s) of the client.

R414-10A-14. Criteria and Contraindications for Lung Transplantation.

(1) Lung transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for lung transplantation must meet requirements of at least R414-10A-14(2)(a) or (b).

(a) The client must have end stage lung disease, with a life expectancy of one year or less without transplantation, and with no other reasonable medical or surgical alternative to transplantation available.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a medical literature review, specific to the client's diagnosis and condition, documenting that the condition will cause irreversible, progressive disease to vital end-organs within two years following the application for transplant and have no other reasonable medical or surgical alternative to transplantation available. The medical literature must also document that the lung transplantation will prevent the irreversible, progressive disease to the client's vital end-organs and must document that it will increase the life expectancy of the client by greater than five years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) In addition to meeting the requirements listed in R414-10A-14(2), the client must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving lung transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(c) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long term follow up and the immunosuppressive program which is required.

(d) Psycho-social assessment by a board-certified or

board-eligible psychiatrist that the client has sufficient mental, emotional, and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(e) The client must have a strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(f) The client with a history of substance abuse must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(g) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original lung disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(4) Any single contraindication listed below shall preclude approval for payment for lung transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation, if accompanied by significant compromise of one or more non-pulmonary vital end-organs.

(c) Active substance abuse.

(d) Presence of systemic dysfunction or malignant disease which could limit survival, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(e) Human Immunodeficiency Virus (HIV) antibody positive.

(f) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation for the patient.

(g) Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 75% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(g) Cardiovascular diseases:

(i) Myocardial infarction within six months;

(ii) Intractable cardiac arrhythmias;

(iii) Class III or IV cardiac dysfunction by New York Heart Association criteria.

(iv) Prior congestive heart failure, unless a cardiovascular consultant determines adequate cardiac reserve.

(v) Symptomatic or occlusive peripheral vascular or cerebrovascular disease;

(vi) Severe generalized arteriosclerosis.

(i) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(j) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(5) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who

is under 18 years of age. An indication of non-compliance by the parent(s) or guardian(s) is documented by any of the behaviors listed in R414-10A-14(4)(j)(i) through (iv).

R414-10A-15. Criteria and Contraindications for Pancreas Transplantation.

(1) Pancreas transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) All indications for pancreas transplantation listed below must be met by each client.

(a) The client must have type I diabetes mellitus.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a pancreas graft function rate greater than or equal to 75 percent at one-year for patients receiving pancreas transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 90 percent one-year survival rate for patients receiving pancreas transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(e) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that he and his parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required

(f) Psycho-social assessment by a Board certified psychiatrist that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(g) The client must have strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(h) If the client has a history of substance abuse, then he must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(i) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original pancreas disease will not recur and limit graft function rate to less than 75% at one-year. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) Any single contraindication listed below precludes approval for Medicaid payment for pancreas transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation if accompanied by significant compromise of one or more end-organs.

(c) Active peptic ulcer.

(d) Active substance abuse.

(e) Presence of systemic dysfunction or malignant disease

which could limit successful clinical outcome, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(f) Human Immunodeficiency Virus (HIV) antibody positive.

(g) Irreversible musculoskeletal disease resulting in progressive weakness or in confinement to bed.

(h) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(i) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predictable).

(iii) Restrictive pulmonary disease (FVC less than 50% of predictable).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent pulmonary infarction.

(j) Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 90% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(k) Cardiovascular diseases:

(i) Myocardial infarction within six months.

(ii) Intractable cardiac arrhythmias.

(iii) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(iv) Severe general arteriosclerosis.

(l) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(m) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(4) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. An indication of non-compliance by the parent(s) or guardian(s) is documented by any of the behaviors listed in R414-10A-15(3)(m)(i) through (iv).

R414-10A-16. Criteria and Contraindications for Small Bowel Transplantation.

(1) Small bowel transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for small bowel transplantation must meet requirements of at least R414-10A-16(2)(a) or (b).

(a) The client must have irreversible, progressive small bowel disease, with a life expectancy of one year or less without transplantation, or must have greater than a five year increase in life expectancy with transplantation, with no other reasonable medical or surgical alternative to transplantation available.

(b) The client must have short bowel syndrome that requires daily total parenteral nutrition with no other reasonable medical or surgical alternative to transplantation available.

(3) In addition to meeting one of the requirements listed in R414-10A-16(2), the client must meet all of the following

requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year small bowel function rate for patients receiving small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability for successful clinical outcome by having a greater than or equal to 85 percent one-year survival rate for patients receiving small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(d) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long term follow up and the immunosuppressive program which is required.

(e) Psycho-social assessment by a board-certified or board-eligible psychiatrist that the client has sufficient mental, emotional, and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(f) The client must have a strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(g) If the client has a history of substance abuse, then he must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(h) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original small bowel disease will not recur and limit small bowel function survival to less than 85% one-year survival rate.

(i) The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(4) Any single contraindication listed below shall preclude approval for Medicaid payment for small bowel transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation, if accompanied by significant compromise of one or more vital end-organs.

(c) Active substance abuse.

(d) Presence of systemic dysfunction or malignant disease which could limit survival, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(e) Human Immunodeficiency Virus (HIV) antibody positive.

(f) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(g) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50%

of predicted).

(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent or unresolved pulmonary infarction.

(h) Cancer, unless treated and eradicated for two or more years, or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 75% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(i) Cardiovascular diseases:

(i) Myocardial infarction within six months.

(ii) Intractable cardiac arrhythmias.

(iii) Class III or IV cardiac dysfunction by New York Heart Association criteria.

(iv) Prior congestive heart failure, unless a cardiovascular consultant determines adequate cardiac reserve.

(v) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(vi) Severe generalized arteriosclerosis.

(j) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(k) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(5) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. An indication of non-compliance by the parent(s) or guardian(s) is documented by any of the behaviors listed in R414-10A-16(4)(k)(i) through (iv).

R414-10A-17. Criteria and Contraindications for Heart and Lung Transplantation.

(1) Heart-lung transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for heart-lung transplantation must meet requirements of at least R414-10A-17(2)(a) or (b).

(a) The client must have irreversible, progressive heart and lung disease, with a life expectancy of one year or less without transplantation, and with no other reasonable medical or surgical alternative to transplantation available.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review, documenting that the client's condition will cause irreversible, progressive disease to vital end-organs within two years following the application for transplant and have no other reasonable medical or surgical alternative to transplantation available. The medical literature must also document that the heart-lung transplantation will prevent irreversible, progressive disease to the client's vital end-organs and must document that it will increase the life expectancy of the client by greater than five years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) In addition to meeting the requirements listed in R414-10A-17(2), the client must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving heart-lung transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) The requirements listed in:

(i) R414-10A-10(3)(b) through (h).

(ii) R414-10A-10(4)(a) through (h), and (j) through (k).

(iii) R414-10A-10(5).

R414-10A-18. Criteria and Contraindications for Intestine and Liver Transplantation.

(1) Intestine-liver transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for intestine-liver transplantation must meet requirements of at least R414-10A-18(2)(a) or (b).

(a) The client must have irreversible, progressive liver and intestinal disease, with a life expectancy of one year or less without transplantation, and with no other reasonable medical or surgical alternative to transplantation available.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting that the condition will cause irreversible, progressive disease to vital end-organs within two years following the application for transplant and have no other reasonable medical or surgical alternative to transplantation available. The medical literature must also document that the intestine-liver transplantation will prevent irreversible, progressive disease to the client's vital end-organs and must document that it will increase the life expectancy of the client by greater than five years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) In addition to meeting one of the requirements listed in R414-10A-18(2), the client must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year small bowel function rate for patients receiving small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving intestine-liver transplantation for the age group, specific diagnosis(es), and type of transplantation proposed for the client. The

Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents that the underlying original disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) The requirements listed in:

- (i) R414-10A-13(3)(b) through (g).
- (ii) R414-10A-13(4)(a) through (m).
- (iii) R414-10A-13(5).

R414-10A-19. Criteria and Contraindications for Kidney-Pancreas Transplantation.

(1) Kidney-pancreas transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for kidney-pancreas transplantation must meet requirements of at least R414-10A-19(2)(a) or (b).

(a) The client must have irreversible, progressive end-stage renal disease and type I diabetes mellitus, with a life expectancy of one year or less without transplantation, and with no other reasonable medical or surgical alternative to transplantation available.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting that the condition will cause irreversible, progressive disease to vital end-organs within two years following the application for transplant and have no other reasonable medical or surgical alternative to transplantation available. The medical literature must also document that the kidney-pancreas transplantation will prevent irreversible, progressive disease to the client's vital end-organs and must document that it will increase the life expectancy of the client by greater than five years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) In addition to meeting one of the requirements listed in R414-10A-19(2), the client must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year kidney and pancreas function rates for patients receiving kidney-pancreas transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 90 percent one-year survival rate for patients receiving kidney-pancreas transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents that the underlying original disease will not recur and limit survival to less than 90% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the

documentation submitted by the transplant center.

(d) The requirements listed in:

- (i) R414-10A-12(2)(d) through (i).
- (ii) R414-10A-12(3)(a) through (k).
- (iii) R414-10A-12(4).

R414-10A-20. Criteria and Contraindications for Combined Liver-Kidney Transplantation.

(1) Liver-kidney transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for liver-kidney transplantation must meet requirements of at least R414-10A-20(2)(a) or (b).

(a) The client must have irreversible, progressive liver-kidney disease, with a life expectancy of one year or less without transplantation, and with no other reasonable medical or surgical alternative to transplantation available.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a medical literature review, specific to the client's diagnosis and condition, documenting that the condition will cause irreversible, progressive disease to vital end-organs within the next two years following the application for transplant and have no other reasonable medical or surgical alternative to transplantation available. The medical literature review must also document that the liver-kidney transplantation will prevent the irreversible, progressive disease to the client's vital end-organs and must document that it will increase the life expectancy of the client by greater than five years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) In addition to meeting the requirements listed in R414-10A-20(2), the client must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving liver-kidney transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting a renal graft function rate greater than or equal to 75 percent at one year for patients receiving liver-kidney transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) The requirements listed in:

- (i) R414-10A-13(3)(b) through (g).
- (ii) R414-10A-13(4)(a) through (m).
- (iii) R414-10A-13(5).

R414-10A-21. Criteria and Contraindications for Multivisceral Transplantation.

(1) Multivisceral transplantation services may be provided for a Medicaid eligible client of any age who meets the

following criteria.

(2) The client for multivisceral transplantation must meet requirements of at least R414-10A-21(2)(a) or (b).

(a) The client must have irreversible, progressive liver, pancreas and small bowel disease, with a life expectancy of one year or less without transplantation, and with no other reasonable medical or surgical alternative to transplantation available.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting that the condition will cause irreversible, progressive disease to vital end-organs within two years following the application for transplant and have no other reasonable medical or surgical alternative to transplantation available. The medical literature must also document that the multivisceral transplantation will prevent irreversible, progressive disease to the client's vital end-organs and must document that it will increase the life expectancy of the client by greater than five years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) In addition to meeting one of the requirements listed in R414-10A-21(2), the client must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year pancreas and small bowel function rates for patients receiving multivisceral transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving multivisceral transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents that the underlying original disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) The requirements listed in:

- (i) R414-10A-13(3)(b) through (g).
- (ii) R414-10A-13(4)(a) through (m).
- (iii) R414-10A-13(5).

R414-10A-22. Criteria and Contraindications for Liver and Small Bowel Transplantation.

(1) Liver-small bowel transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for liver-small bowel transplantation must meet requirements of at least R414-10A-22(2)(a) or (b).

(a) The client must have irreversible, progressive liver and small bowel disease, with a life expectancy of one year or less without transplantation, and with no other reasonable medical or surgical alternative to transplantation available.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current

medical literature review documenting that the client's condition will cause irreversible, progressive disease to vital end-organs within two years following the application for transplant and have no other reasonable medical or surgical alternative to transplantation available. The medical literature must also document that the liver-small bowel transplantation will prevent irreversible, progressive disease to the client's vital end-organs and must document that it will increase the life expectancy of the client by greater than five years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) In addition to meeting one of the requirements listed in R414-10A-22(2), the client must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year small bowel function rate for patients receiving small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving liver-small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents that the underlying original disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) The requirements listed in:

- (i) R414-10A-13(3)(b) through (g).
- (ii) R414-10A-13(4)(a) through (m).
- (iii) R414-10A-13(5).

R414-10A-23. Criteria and Contraindications for Other Tissues, Organs, and Multiple Organ Transplantations for Clients Not Specifically Set Forth in This Rule.

(1) The Department acknowledges that based on the changing aspect of health care research, numerous individual, combination, multiple tissue or organ transplantations which do not have criteria and contraindications specifically set forth in R414-10A-8 through 22 could conceivably be requested. However, any attempt to set forth all possible tissue and organ transplantation combinations is impractical.

(2) The Department shall develop criteria and contraindications for such other individual or combination of nonexperimental or noninvestigational tissue or organ transplantations not specifically set forth in R414-10A-8 through 22, when a request is made on behalf of a client.

(3) Development of such new criteria and contraindications shall be based upon existing criteria and contraindication for comparable individual tissue or organ transplantations as set forth in R414-10A-8 through 22 and shall be applied to all clients requesting the new service.

(4) Criteria and contraindications for such individual, combination, multiple tissue, or organ transplantations, once established, shall be incorporated into the Utah Administrative

Code at R414-10A.

KEY: Medicaid

March 19, 1998

Notice of Continuation February 2, 2007

26-1-5

26-18-1

R444. Health, Epidemiology and Laboratory Services, Laboratory Improvement.**R444-14. Rule for the Certification of Environmental Laboratories.****R444-14-1. Introduction.**

(1) This rule is authorized by Utah Code Section 26-1-30(2)(m).

(2) This rule applies to laboratories that analyze samples for compliance with Federal Safe Drinking Water Act, Federal Clean Water Act, and the Federal Resource Conservation and Recovery Act.

(3) A laboratory that analyzes samples for compliance with rules established by the Utah Department of Environmental Quality that require that the analysis be conducted by a certified laboratory, must become certified under this rule and comply with its provisions.

(4) A laboratory that, under subcontract with another laboratory, analyzes samples for compliance with rules established by the Utah Department of Environmental Quality that require that the analysis be conducted by a certified laboratory, must become certified under this rule and comply with its provisions.

(5) A laboratory certified under this rule to analyze samples for compliance with rules established by the Utah Department of Environmental Quality that require that the analysis be conducted by a certified laboratory must also obtain approval under this rule for each analyte analyzed by a specific method.

R444-14-2. Definitions.

(1) "Analyte" means the substance or thing for which a sample is analyzed to determine its presence or quantity.

(2) "Approved" means the determination by the department that a certified laboratory may analyze for an analyte under this rule.

(3) "Clean Water Act" means U.S. Public Law 92-500, as amended, governing water pollution control programs.

(4) "Department" means the Utah Department of Health.

(5) "Revoke" means to withdraw a certified laboratory's certification or the approval for a certified laboratory to perform one or more specified methods.

(6) "Resource Conservation and Recovery Act" means U.S. Public Law 94-580, as amended, governing solid and hazardous waste programs.

(7) "Safe Drinking Water Act" means U.S. Public Law 93-523 94-580, as amended, governing drinking water programs.

R444-14-3. Laboratory Certification.

(1) A laboratory is the organization and facilities established for testing samples.

(2) A laboratory that conducts tests that are required by Department of Environmental Quality rules to be conducted by a certified laboratory must be certified under this rule.

(3) To become certified, to renew certification, or to become recertified under this rule, a laboratory must adhere to the requirements found in Chapter 4, "Accreditation Process", of the National Environmental Laboratory Accreditation Conference Standards approved June 2003, which are incorporated by reference.

R444-14-4. Analytical Methods.

(1) The department may only approve a certified laboratory to analyze an analyte by specific method. The department may approve a certified laboratory for an analyte using methods described in the July 1, 1992 through 2005, editions of 40 CFR Parts 141, 142, and 143 (Safe Drinking Water Act); 40 CFR Parts 136 and 503.8 (Clean Water Act); 40 CFR Parts 260 and 261 (Resource Conservation and Recovery Act).

(2) In analyzing a sample for compliance with the Safe Drinking Water Act, the Clean Water Act, or the Resource Conservation and Recovery Act, a certified laboratory must follow the method that it reports on its final report to have used.

R444-14-5. Proficiency Testing.

For a certified laboratory to become approved and to maintain approval for an analyte by a specific method, the certified laboratory must, at its own expense, meet the proficiency testing requirements of this rule. A certified laboratory must adhere to the requirements found in Chapter 2, "Proficiency Testing", of the National Environmental Laboratory Accreditation Conference Standards approved July 2003, which are incorporated by reference.

R444-14-6. Quality System.

(1) A certified laboratory must adhere to the requirements found in Chapter 5, Quality Systems, of the National Environmental Laboratory Accreditation Conference Standards approved June 2003, which are incorporated by reference.

R444-14-7. Recognition of NELAP Accreditation.

The department may certify a laboratory that is NELAP-accredited. A laboratory seeking certification because of its NELAP accreditation must provide evidence of its accreditation and apply for certification on that basis. A laboratory certified on the basis of NELAP accreditation must obtain approval from the department for each analyte and meet the approval requirements of this rule.

R444-14-8. Penalties.

A laboratory violates this rule and is subject to the penalties provided in Title 26, Chapter 23, including administrative and civil penalties of up to \$5,000.00 for each offense, criminal sanctions of a class B misdemeanor on the first offense and a class A misdemeanor on the second offense, and criminal penalties of up to \$5,000.00 for each offense if it:

(1) without being certified under this rule, holds itself out as one capable of testing samples for compliance with Federal Safe Drinking Water Act, Federal Clean Water Act, Federal Resource Conservation and Recovery Act; or

(2) without being approved to analyze for the analyte, analyzes samples for the analyte for compliance with rules established by the Utah Department of Environmental Quality that require that the analysis be conducted by a certified laboratory.

KEY: laboratories**July 1, 2005****Notice of Continuation February 26, 2007****26-1-30(2)(m)**

R495. Human Services, Administration.**R495-810. Government Records Access and Management Act.****R495-810-1. Request for Access to Department of Human Services Records.**

A. Authority. As required by Section 63-2-204(2), this rule specifies where and to whom a request for access of Department of Human Services (DHS) records shall be directed.

B. Definition. Words used in this rule are defined in Section 63-2-103(15) and (16).

C. Requests for Access.

1. All requests for records shall be submitted in accordance with Section 63-2-204(1).

2. A person may submit a request for a record to any DHS office. If the record requested is one originated in that office, that office will respond to the request. If the record is unknown to the office where the request is filed, the request will be sent immediately to the appropriate state or local office. If the office is unsure as to which office is the appropriate one, the request will be sent to the Department of Human Services, Records Manager.

D. News Media/Expedited Release. If a requester demonstrates that he is a member of the news media or that expedited release of the record benefits the public rather than an individual, the request shall be submitted to the Department of Human Services, Records Manager.

R495-810-2. Fee Schedule for Records Copies.

A. Authority. Pursuant to Section 63-2-203, the Department shall charge fees for copying and compiling of records, and may waive fees as specified in this rule.

B. Definition. Words used in this rule are defined in Section 63-2-103.

C. Fee Rates.

1. Fees for copies are based on the number of records to be copied and are as follows:

- a. paper: \$.25 per side of sheet;
- b. audio tape: \$5.00 per tape; and
- c. video tape: \$15.00 per tape.

2. For records which require compiling and reporting in another format, a fee of \$25.00 per hour may be charged, or \$50.00 per hour if the request requires programmer/analyst assistance.

3. Mailing. The fee for mailing is the actual cost of postage.

D. Payment Waiver.

1. The Department shall fulfill a record request without charge when it determines that:

- a. releasing the record primarily benefits the public rather than a person;
- b. the individual requesting the record is the subject of the record, or an individual specified in Subsection 63-2-202(1) or (2); or
- c. the requester's legal rights are directly implicated by the information in the record, and the requester is impecunious.

2. No fees shall be charged for reviewing a record or inspecting a record according to 63-2-203(4)(a) and (b).

3. The Department shall not require payment of future estimated fees before beginning to process a request, unless fees are expected to exceed \$50, or if the requester has not paid fees from previous requests.

4. Fees shall not be waived where records are provided to professionals providing services for a fee to individuals who would otherwise have access to records under Section 63-2-301 through 304.

R495-810-3. Appellate Requests, Research Requests and Intellectual Property Access Requests.

A. Authority. section 63-2-401(9) specifies where and to

whom appeals on records access denials may be directed. Section 63-2-201 (10) specifies where and to whom requests regarding duplication and distribution of materials for which the agency owns the intellectual property rights may be directed. Section 63-2-202(8) specifies where and to whom requests for access for research purposes may be directed.

B. Definition. Words used in this rule are defined in Section 63-2-103 (15) and (16).

C. Appeals and Special Requests.

1. All first level appeals shall be directed to the individual(s) designated by the Executive Director of the Department of Human Services.

2. Special requests including requests for access to records for research purposes, and duplication and distribution of materials for which the agency owns the intellectual property rights shall be submitted to the Individuals designated by the Executive Director for the respective Division, Office, Institution, or Bureau of the Department of Human Services.

D. Discretionary Access Authority. As specified in Section 63-2-201 (5) (b) decisions regarding discretionary access to records that are private, or protected under Section 63-2-302, and 63-2-304 where the public interest to know exceeds the right of privacy shall be determined by the Individual(s) designated by the Director for the respective Division, Office, Institution, or Bureau of the Department of Human Services.

R495-810-4. Records Modification and Clarification.

A. Authority. Section 63-2-603 Governmental Records and Access Act and Section 63-46b-4 Utah Administrative Procedures Act designate the option of either formal or informal hearings governing modification of records in dispute.

B. Definition. Words used in this rule are defined in Section 63-2-103(15) and (16).

C. Hearings. Hearings on disputed records accuracy shall be conducted informally according to R497-100-3.

KEY: government documents**December 7, 1998****Notice of Continuation February 5, 2007****63-2-204**

R495. Human Services, Administration.**R495-878. Department of Human Services Civil Rights Complaint Procedure.****R495-878-1. Authority and Purpose.**

A. This rule is promulgated pursuant to Section 63-46a-3 (2) of the State Administrative Rulemaking Act and the Federal Civil Rights statutes and regulations cited below. The Department of Human Services, (Department) adopts, defines, and publishes within this rule complaint procedures that incorporate due process standards and that provide for the prompt and equitable resolution of complaints filed in accordance with any of the following:

(1) Title VI of the Civil Rights Act of 1964, Pub.L. 88-352, 42 U.S.C.A., Section 2000d-1 et seq. (Title VI), and its implementing regulation, Title 45 Code of Federal Regulations (CFR), Part 80, Section 80.4(b)(2);

(2) Section 504 of the Rehabilitation Act of 1973, Pub.L. 93-112, Pub.L. 93-516, Pub.L. 95-602, and Pub.L. 102-569, 29 U.S.C. 794 et seq., and its implementing regulation, Title 45 CFR Part 84, Section 84.7(b); and,

(3) Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. 12131-12134 and its implementing regulation, Title 28 CFR Part 35, Section 35.107.

"Title VI prohibits discrimination on the ground of race, color, or national origin; Section 504 prohibits discrimination on the basis of handicap; and the ADA prohibits discrimination on the basis of disability."

B. The Americans with Disabilities Act mandates that no qualified individual with a disability, by reason of such 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 including discrimination in employment matters.

R495-878-2. Definitions.

A. The Civil Rights "Coordinator" (ADA, Section 504, and Title VI) for the Department of Human Services is the Director of the Office of Administrative Support. The Coordinator has responsibility for investigating and providing prompt and equitable resolution of complaints filed by persons alleging discrimination in the receipt of services due to disabilities, race, color, or national origin.

B. The "State ADA 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 such an individual; a record of such an impairment; or being regarded as having such an impairment. (Impairment is defined in 29 CFR 163A2.)

D. "Handicapped Person" under Section 504 means any individual who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

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

(2) With respect to other services and activities, an individual with a disability (a handicapped person) who with or without reasonable modification to rules, policies, or practices, the removal of architectural, communication or transportation barriers, or the provision of auxiliary aids and services, meets

the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

G. "Qualified Individual with a disability" (hereinafter individual) means a person who has a disability which limits one of his or her major life activities and who meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the Department of Human Services or who would otherwise be an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position.

R495-878-3. Filing of Complaints.

A. An individual shall file the complaint 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.

B. The complaint may be filed with any division, office or regional office of the Department or directly with the Coordinator, Civil Rights, Office of Administrative Support, who has been designated as the Coordinator for the Department. Complaints filed locally and not resolved within five (5) working days are to be forwarded to the Coordinator. The complaint shall be in writing or in another accessible format suitable to the individual and delivered or mailed to:

Coordinator, Civil Rights
Office of Administrative Support
PO Box 45500
120 North 200 West, Room 331
Salt Lake City, Utah 84145-0500

C. Each complaint shall:

- (1) include the individual's name and address;
- (2) include the nature and extent of the individual's disability; (if ADA or Section 504)
- (3) describe the Department's alleged discrimination 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 his or her legal representative.

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

E. With or without exhausting DHS procedures, complainants may also file complaints alleging discrimination in employment and in the delivery of services with:

Office For Civil Rights,
U.S. Department of Health and Human Services
Federal Office Building
1961 Stout Street
Denver, Colorado 80295-3538

R495-878-4. Investigation of Complaint.

A. The Coordinator shall conduct an investigation of each complaint received. The Office of Human Resource (OHR) shall assume lead responsibility in conducting investigations for complaints from employees alleging discrimination under Title I of the ADA. OHR investigations will be submitted to the Coordinator to issue a decision. The Office of Administrative Support shall assume lead responsibility in conducting all other civil rights investigations under the sections of the Acts referenced in Part I of this rule. Investigations shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in Section 878-3. C of this rule if it is not made available by the individual.

B. When conducting the investigation, the Coordinator may seek assistance from other divisions/offices within the

Department and the Office of the Attorney General in determining what action, if any, shall be taken on the complaint. The Coordinator shall consult with the State ADA Coordinating Committee before making any decision that would involve:

- (1) an expenditure of funds which is not absorbable within the agency or Department's budget and would require appropriation authority;
- (2) facility modification beyond the Department's capability due to the constraint in item (1) above; or
- (3) reclassification or reallocation in merit system grade.

R495-878-5. Issuance of Decision.

A. Within 15 working days after receiving the complaint, the Coordinator shall issue a decision outlining in writing or in another accessible format suitable to the individual 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, written notice (or notice in another acceptable format) will be provided to the complainant explaining the delay and the amount of additional time needed.

R495-878-6. Appeals.

A. The individual may appeal the decision of the 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 Executive Director of the Department of Human Services.

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 Executive Director or appointed 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 Division Director may also appeal a decision by the Coordinator when the decision is perceived to negatively affect Division operation.

F. The Executive Director or appointed 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 making any decision that would require:

- (1) an expenditure of funds which is not absorbable within the agency or Department's budget and would require appropriation authority;
- (2) facility modifications beyond the Department's capability due to the constraint in item (1) above; or
- (3) reclassification or reallocation in merit system grade.

G. The decision shall be issued within fifteen working days after receiving the appeal and shall be in writing or in another accessible format suitable to the individual.

H. If the Executive Director is unable to reach a decision within the fifteen day working period, he shall notify the individual in writing or in another accessible format suitable to the individual why the decision is delayed and the additional amount of time needed to reach a decision.

R495-878-7. Classification of Records.

The record of each complaint and appeal, and all written records produced or received as part of such actions, shall be classified as protected as defined under Section 63-2-304 until the Coordinator, Executive Director or their designees issue the decision at which time any portions of the record which may pertain to the individual's medical conditions shall remain classified as private as defined under Section 63-2-302 or controlled as defined in Section 63-2-303. All other information gathered as part of the complaint record shall be classified as

private information. Only the written decision of the Coordinator, Executive Director or designees shall be classified as public information.

R495-878-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under the State Anti-Discrimination Complaint Procedures Section (67-19-32); the Federal ADA Complaint Procedures (28 CFR Subpart F, beginning with Part 35.170, 1992 Edition); the Federal Rehabilitation Act procedures (29 U.S.C. Section 794); or any other Utah State or Federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: developmentally disabled, Americans with Disabilities Act 1992*, Rehabilitation Act 1973*, Civil Rights Act 1964* 1993 62A-1-111

Notice of Continuation February 5, 2007

R523. Human Services, Substance Abuse and Mental Health.**R523-1. Procedures.****R523-1-1. Board of Substance Abuse and Mental Health-Responsibilities.**

(1) The State Board of Substance Abuse and Mental Health is the program policy making body for the Division of Substance Abuse and Mental Health and for programs funded with state and federal monies. The Board has the authority and the responsibility to establish by rule procedures for developing its policies which seek input from local mental health authorities, consumers, providers, advocates, division staff and other interested parties (Section 62A-15-105). In order to ensure public input into the policy making procedure the Board will:

(a) Convene an annual meeting, inviting local mental health authorities, consumers, providers, advocates and division staff to provide them an opportunity to comment and provide input on new policy or proposed changes in existing policy.

(b) The Board shall include, as necessary, a time on the agenda at each regularly scheduled board meeting to entertain public comment on new policy or proposed changes in existing policy.

(c) Public requests to revise existing policy or consider new policy shall be made in writing to the Board in care of the Division of Substance Abuse and Mental Health.

(d) The Division shall prepare, for the Board's review, any comments they are in receipt of relative to public policy, which will be addressed at a regularly scheduled board meeting.

(e) The Board may direct the Division to follow-up on any unresolved issues raised as a result of policy review and report their findings at the next scheduled board meeting.

R523-1-2. State and Local Relationships.

(1) Local Mental Health Authorities (LMHA) are the "service designees" of the State Division of Substance Abuse and Mental Health (Division) to provide comprehensive mental health services as defined by state law pursuant to Section 17-43-302.

(2) When the Division requires other services outside the comprehensive range specified by law, it shall provide LMHA's the first opportunity to accept or reject the service contract. If the LMHA rejects the contract in writing or fails to meet the terms of the contract as determined by the Division, the Division may contract with any qualified provider, through a Request For Proposal (RFP) process. If an agency other than the LMHA receives a contract to provide a mandated service, the contracted service provider shall inform the LMHA that they have been awarded the contract and offer to coordinate the service with existing services provided by the LMHA.

(3) The Division has the responsibility and authority to monitor LMHA contracts. Each mental health catchment area shall be visited at least once annually to monitor compliance. The mental health center will be provided preliminary findings from the site review and an opportunity to comment. A written report will be sent to each LMHA describing the findings from the site visit.

(4) The Division shall oversee the continuity of care for services provided to consumers and resolve conflicts between the Utah State Hospital (USH) and LMHA, and also those between LMHA's.

(a) if negotiations between LMHA's and the USH regarding admissions, discharges or provisions of consumer services fail to be resolved at the local level, the following steps shall be taken:

(i) the director of the Division or designee shall appoint a committee to review the facts of the conflict and make recommendations;

(ii) if the recommendations of the committee do not

adequately resolve the conflict, the clinical or medical director of the local mental health center and USH clinical director shall meet and attempt to resolve the conflict;

(iii) if a resolution cannot be reached, the community mental health center director and the superintendent of the USH shall meet and attempt to resolve the conflict;

(iv) if a resolution cannot be reached, the director of the Division or designee shall make the final decision.

(b) If conflicts arise between LMHA's regarding admissions, discharges, or provisions of consumer services, the final authority for resolution shall rest with the director of the Division or designee.

R523-1-3. Program Standards.

(1) The State Board of Substance Abuse and Mental Health, in compliance with law, adopts the policy that available state funds will be distributed on a 80% State, 20% local match basis to local mental health authorities which provide the continuum of care and meet the public policy priority adopted by the Board (17-43-102, 62A-1-107(6)). The Division of Substance Abuse and Mental Health will carry out this policy. A comprehensive mental health program includes:

(a) Inpatient care and services (hospitalization)

(b) Residential care and services

(c) Day treatment and psycho-social rehabilitation

(d) Outpatient care and services

(e) Twenty-four hour crisis care and services

(f) Outreach care and services

(g) Follow-up care and services

(h) Screening for referral services

(i) Consultation, education and preventive services (case consultation, public education and information, etc.)

(j) Case management.

(2) Each local mental health authority shall be responsible for providing these services directly or contracting for these services.

(3) The primary responsibility of the Division of Substance Abuse and Mental Health will be to insure the provision of services for those citizens who enter the mental health system directly as consumers and to work cooperatively with other agencies. Other public agencies such as Education, Corrections, Health and Social Services will have primary responsibility for arranging for or providing and paying for the mental health needs of citizens served by their agency when the required service directly benefits or is tied to their agency responsibility. The Division of Substance Abuse and Mental Health will clearly define items 1-9 above so that evaluation and implementation is feasible. These definitions will be approved by the State Board of Substance Abuse and Mental Health.

R523-1-4. Private Practice.

(1) Private practice policies shall be determined by local community mental health authorities. These policies will be available in written form for State review.

R523-1-5. Fee for Service.

(1) Each local authority:

(a) Shall require all programs that receive federal and state funds from the Division of Substance Abuse and Mental Health (Division) and provide services to clients to establish a policy for the collection of fees.

(i) Each fee policy shall include:

(A) a fee reduction plan based on the client's ability to pay for services; and

(B) a provision that clients who have received an assessment and require mental health treatment or substance abuse services will not be denied services based on the lack of ability to pay.

(ii) Any adjustments to the assessed fee shall follow the

procedures approved by the local authority.

(iii) Any change to the fee policy will be made in writing to the Division within ninety days.

(b) Shall approve the fee policy; and

(c) Shall set a usual and customary rate for services rendered.

(2) All programs shall provide a written explanation of the fee policy to all clients at the time of intake except in the case of emergency services.

(3) All clients shall be assessed fees based on:

(a) the usual and customary rate established by the local authorities, or

(b) a negotiated contracted cost of services rendered to clients.

(4) All programs shall make reasonable effort to collect outstanding fee charges and may use an outside collection agency.

(5) All programs may reduce the assessed fee for services if the fee is determined to be a financial hardship for the client.

(6) The Division shall annually review each program's policy and fee schedule to ensure that the elements set for in this rule are incorporated.

R523-1-6. Priorities for Treatment.

(1) Mental health services provided through public funds (federal, state, and local match) will address current mental health priorities listed below. The State Division of Substance Abuse and Mental Health, in collaboration with the Utah Council of Mental Health Program, Inc.'s evaluation committee (SCHEDULE), will develop or approve procedures and forms for periodic needs assessments.

(2) Immediacy of need and severity of the mental illness are the two primary variables considered in developing the following priorities of treatment. It is to be understood that emphasis upon certain under-served age groups may be given as appropriately demonstrated through needs studies.

(a) Effective and responsive crisis intervention assessment, direct care, and referral program available to all citizens.

(b) Provision of the least restrictive and most appropriate treatment and settings for:

a. severely mentally ill children, youth, and adults;

b. acutely mentally ill children, youth, and adults.

(c) Provisions of services to emotionally disabled children, youth and aged citizens who are neither acutely nor severely mentally ill, but whose adjustment is critical for their future as well as for society in general.

(d) Provision of services to emotionally disabled adults who are neither acutely nor severely mentally ill, but whose adjustment is critical to their personal quality of life as well as for society in general.

(e) Provision of consultation, education and preventive mental health services targeted at high risk groups in particular.

R523-1-7. Collections Carryover.

(1) Local center programs may carry collections forward from one fiscal year to another.

(2) Centers receive two general types of revenues - appropriations and collections. These terms are defined as follows:

(a) Appropriations:

(i) State appropriated monies

(ii) Federal Block Grant dollars

(iii) County Match of at least 20%

(b) Collections:

(i) First and third party reimbursements

(ii) Any other source of income generated by the center.

R523-1-8. Consumers Rights.

(1) Each local mental health center shall have a written

statement reflecting consumers rights. General areas for consideration should be:

(a) consumer involvement in treatment planning.

(b) consumer involvement in selection of their primary therapist.

(c) consumer access to their individual treatment records.

(d) informed consent regarding medication

(e) grievance procedures

(2) This statement should also indicate the Center's commitment to always treat mental health consumers with dignity and individuality in a positive, supportive and empowering manner. This document is to be shared with the consumer at the time of intake and a signed copy made part of their individual file. The State Division of Substance Abuse and Mental Health shall periodically review this process to assure appropriate content within the rights statement and proper application of the intent of this policy.

R523-1-9. Statewide Program Evaluation, Research, and Statistics.

(1) Responsibility for Statewide program evaluation, research, and statistics belongs to the Division of Substance Abuse and Mental Health. This responsibility includes data system leadership, coordination, implementation, and monitoring.

(2) The Division of Substance Abuse and Mental Health shall develop and maintain, in collaboration with local mental health providers, a set of data system principles that address at least the following topics: standardization of data variables and definitions; variable integration across data sets; procedures for requesting data from MHOs; procedures for data review and dissemination; MHC participation in planning new statistical reports and requests; cost-effective and practical data collection procedures; confidentiality and data security; accuracy and data quality control; updating regular reports; and procedures for reviewing and updating the principles.

(3) The Division of Substance Abuse and Mental Health, in collaboration with the local Mental Health Authorities and their providers, shall assess service effectiveness (outcomes) and efficiency (productivity) and report the results to the State Board of Substance Abuse and Mental Health in an annual report. This report or reports shall contain data results on effectiveness and efficiency for the previous year, and a plan for assessing these variables for the following year. Changes in procedures for data collection and analysis for the previous year, and changes in data system principles shall also be reported to the Board.

R523-1-10. Allocation of Utah State Hospital Bed Days to Local Mental Health Authorities.

1. Pursuant to UCA 62A-15-611(2)(a), the Board herein establishes, by rule, a formula to allocate to local mental health authorities adult beds for persons who meet the requirements of UCA 62A-15-610(2)(a).

2. The formula established provides for allocation based on (1) the percentage of the state's adult population located within a mental health catchment area; and (2) a differential to compensate for the additional demand for hospital beds in mental health catchment areas that are located within urban areas.

3. The Board hereby establishes a formula to determine adult bed allocation:

a. The most recent available population estimates are obtained from the Utah Population Estimates Committee.

b. The total adult population figures for the State are identified which includes general adults and geriatric populations. Adult means age 18 through age 64. Geriatric means age 65 and older.

c. Adult and Geriatric population numbers are identified

for each county.

d. The urban counties are identified (county classifications are determined by the lieutenant governor's office pursuant to UCA 17-50-501 and 17-50-502 and the most recent classifications are used to determine which counties are defined as urban) and given a differential as follows:

i. The total number of adult beds available at the Utah State Hospital are determined, from which the total number of geriatric beds and adult beds are identified.

ii. 4.8% is subtracted from the total number of beds available for adults to be allocated as a differential.

iii. 4.8% is subtracted from the total number of beds available for geriatrics to be allocated as a differential.

e. The total number of available adult beds minus the differential is multiplied by the county's percentage of the state's total adult and geriatric populations to determine the number of allocated beds for each county.

f. Each catchments area's individual county numbers are added to determine the total number of beds allocated to a catchment area. This fractional number is rounded to the nearest whole bed.

g. The differential beds are then distributed to urban counties based on their respective percentage of urban counties as a whole.

h. At least one adult (18 - 64) bed is allocated to each community mental health center.

4. In accordance with UCA 62A-15-611(6), the Board shall periodically review and make changes in the formula as necessary to accurately reflect changes in population.

5. Applying the formula.

a. Adjustments of adult beds, as the formula is applied, shall become effective at the beginning of the next fiscal year.

b. The Division of Substance Abuse and Mental Health, as staff to the Board, is responsible to calculate adult bed allocation as directed by the Board or as required by statute.

c. Each local mental health authority will be notified of changes in adult bed allocation.

6. The number of allocated adult beds shall be reviewed and adjusted as necessary or at least every three years as required by statute.

7. A local mental health authority may sell or loan its allocation of adult beds to another local mental health authority.

R523-1-12. Program Standards.

(1) The State Board of Substance Abuse and Mental Health has the power and the duty to establish by rule, minimum standards for community mental health programs (Section 62A-15-105).

(a) Each Community Mental Health Center shall have a current license issued by the Office of Licensing, Department of Human Services.

(b) Each Center shall have a comprehensive plan of service which shall be reviewed and updated at least annually to reflect changing needs. The plan shall:

(i) Be consistent with the "Comprehensive Mental Health Plan For Services To The Seriously Mentally Ill",

(ii) Designate the projected use of state and federal contracted dollars,

(iii) Define the Center's priorities for service and the population to be served.

(c) Each Center shall provide or arrange for the provision of services within the following continuum of care.

(i) Inpatient care and services (hospitalization),

(ii) Residential care and services,

(iii) Day treatment and Psycho-social rehabilitation,

(iv) Outpatient care and services,

(v) Twenty-four hour crisis care and services,

(vi) Outreach care and services,

(vii) Follow-up care and services,

(viii) Screening for referral services,

(ix) Consultation, education and preventive services,

(x) Case management.

(d) Each Center shall participate in a yearly on-site evaluation conducted by the Division.

(e) The local mental health authority shall be responsible for monitoring and evaluating all subcontracts to ensure:

(i) Services delivered to consumers commensurate with funds provided,

(ii) Progress is made toward accomplishing contract goals and objectives.

(f) The local mental health authority shall conduct a minimum of one site visit per year with each subcontractor. There shall be a written report to document the review activities and findings, a copy of which will be made available to the Division.

R523-1-14. Designated Examiners Certification.

(1) A "Designated Examiner" is a licensed physician or other licensed mental health professional designated by the Division as specially qualified by training or experience in the diagnosis of mental or related illness (62A-15-602(3) and 62A-15-606).

(a) The Division shall certify that a designated examiner is qualified by training and experience in the diagnosis of mental or related illness. Certification will require at least five years continual experience in the treatment of mental or related illness in addition to successful completion of training provided by the Division.

(b) Application for certification will be achieved by the applicant making a written request to the Division for their consideration. Upon receipt of a written application the Director will cause to occur a review and examination of the applicants qualifications.

(c) The applicant must meet the following minimum standards in order to be certified.

(i) The applicant must be a licensed mental health professional.

(ii) The applicant must be a resident of the State of Utah.

(iii) The applicant must demonstrate a complete and thorough understanding of abnormal psychology and abnormal behavior, to be determined by training, experience and written examination.

(iv) The applicant must demonstrate a fundamental and working knowledge of the mental health law. In particular, the applicant must demonstrate a thorough understanding of the conditions which must be met to warrant involuntary commitment, to be determined by training, experience and written examination.

(v) The applicant must be able to discriminate between abnormal behavior due to mental illness which poses a substantial likelihood of serious harm to self or others from those forms of abnormal behavior which do not represent such a threat. Such knowledge will be determined by experience, training and written examination.

(vi) The applicant must be able to demonstrate a general knowledge of the court process and the conduct of commitment hearings. The applicant must demonstrate an ability to provide the court with a thorough and complete oral and written evaluation that addresses the standards and questions set forth in the law, to be determined by experience, training and written and oral examination.

(d) The Division Director will determine if experience and qualifications are satisfactory to meet the required standards. The Director will also determine if there are any training requirements that may be waived due to prior experience and training.

(e) Upon satisfactory completion of the required experience and training, the Director will certify the

qualifications of the applicant, make record of such certification and issue a certificate to the applicant reflecting his status as a designated examiner and authorize the use of privileges and responsibilities as prescribed by law.

R523-1-15. Funding Formula.

(1) The Board shall establish by rule a formula for the annual allocation of funds to local mental health authorities through contracts (Section 62A-12-105).

(2) The funding formula shall be applied annually to state and federal funds appropriated by the legislature to the Division and is intended for the annual equitable distribution of these funds to the state's local mental health authorities.

(a) Appropriated funds will be distributed annually on a per capita basis, according to the most current population data available from the Office of Planning and Budget. New funding and/or decreases in funding shall be processed and distributed through the funding formula.

(b) The funding formula shall utilize a rural differential to compensate for additional costs of providing services in a rural area which may consider: the total population of each county, the total population base served by the local mental health center and/or population density.

(c) In accordance with UCA Section 62A-12-105 the funding formula may utilize a determination of need other than population if the board establishes by valid and acceptable data, that other defined factors are relevant and reliable indicators of need.

(d) Each Local Mental Health Authorities shall provide funding equal to at least 20% of the state funds that it receives to fund services described in that local mental health authority's annual plan in accordance with, UCA Section 17A-3-602.

(e) Application of the formula for allocation of state and federal funds may be subject to a phase-in plan for FY 03 through FY 06. At the latest, appropriations for FY 06 shall be allocated in accordance with the funding formula without any phase-in provisions.

(f) The formula does not apply to:

(i) Funds that local mental health authorities receive from sources other than the Division.

(ii) Funds that local mental health authorities receive from the Division to operate a specific program within its jurisdiction that is available to all residents of the state.

(iii) Funds that local mental health authorities receive from the Division to meet a need that exists only within the jurisdiction of that local mental health authority.

(iv) Funds that local mental health authorities receive from the Division for research projects.

R523-1-16. Allocation of Utah State Hospital Pediatric Beds to Local Mental Health Authorities.

1. Pursuant to UCA 62A-15-612(2), the Board herein establishes, by rule, a formula to allocate to local mental health authorities pediatric beds for persons who meet the requirements of UCA 62A-15-610(2)(b).

2. The formula established provides for allocation based on the percentage of the state's population of persons under the age of 18 located within a mental health catchment area.

3. Each community mental health center shall be allocated at least one pediatric bed. (UCA 62A-15-612(3))

4. The board hereby establishes a formula to determine pediatric bed allocation:

a. The most recent available population estimates are obtained from the Governor's Office of Planning and Budget.

b. The total pediatric population figures for the State are identified. Pediatric means under the age of 18.

c. Pediatric population figures are identified for each county.

d. The total number of pediatric beds available is

multiplied by the county's percentage of the state's total pediatric population. This will determine the number of allocated pediatric beds for each county.

e. Each catchment area's individual county numbers are added to determine the total number of pediatric beds allocated to a catchment area. This fractional number is rounded to the nearest whole bed.

5. In accordance with UCA 62A-15-612(6), the Board shall periodically review and make changes in the formula as necessary.

6. Applying the formula.

a. Adjustments of pediatric beds, as the formula is applied, shall become effective at the beginning of the new fiscal year.

b. The Division of Substance Abuse and Mental Health, as staff to the Board, is responsible to calculate pediatric bed allocation as directed by the Board or as required by statute.

c. Each local mental health authority will be notified of changes in pediatric bed allocation.

7. The number of allocated pediatric beds shall be reviewed and adjusted as necessary or at least every three years as required by statute.

8. A local mental health authority may sell or loan its allocation of adult beds to another local mental health authority.

R523-1-17. Medication Procedures for Children, Legal Authority.

(1) The Division of Substance Abuse and Mental Health hereby establishes due process procedures for children prior to the administration of antipsychotic medication, pursuant to Section 62A-15-704(3)(a)(i).

(a) This policy applies to persons under the age of 18 who are committed to the physical custody of a local mental health authority and/or committed to the legal custody of the Division of Substance Abuse and Mental Health.

(b) Antipsychotic medication means any antipsychotic agent usually and customarily prescribed and administered in the chemical treatment of psychosis.

(c) A legal custodian is one who has been appointed by the Juvenile Court and may include the Division of Child and Family Services, the Division of Juvenile Justice Services, and the Division of Substance Abuse and Mental Health.

(d) A legal guardian is one who is appointed by a testamentary appointment or by a court of law.

(e) A person under the age of 18 may be treated with antipsychotic medication when, as provided in this section, any one or more of the following exist:

(i) The child and parent/legal guardian/legal custodian give consent.

(ii) The child or the parent/legal guardian/legal custodian does not give consent, but a Neutral and Detached Fact Finder determines that antipsychotic medication is an appropriate treatment.

(iii) The medication is necessary in order to control the child's dangerous behavior and it is administered for an exigent circumstance according to this rule.

(f) A local mental health authority has the obligation to provide a child and parent/legal guardian/legal custodian with the following information when recommending that the child be treated with antipsychotic medications:

(i) The nature of the child's mental illness.

(ii) The recommended medication treatment, its purpose, the method of administration, and dosage recommendations.

(iii) The desired beneficial effects on the child's mental illness as a result of the recommended treatment.

(iv) The possible or probable mental health consequences to the child if recommended treatment is not administered.

(v) The possible side effects, if any of the recommended treatment.

(vi) The ability of the staff to recognize any side effects

which may actually occur and the possibility of ameliorating or abating those side effects.

(vii) The possible, if any, alternative treatments available and whether those treatments are advisable.

(viii) The right to give or withhold consent for the proposed medication treatment.

(ix) When informing a child and his/her parent/legal guardian/legal custodian that they have the right to withhold consent the staff must inform them that the mental health authority has the right to initiate a medication hearing and have a designated examiner determine whether the proposed treatment is necessary.

(g) The child and parent/legal guardian/legal custodian shall then be afforded an opportunity to sign a consent form stating that they have received the information under subsection F of this section, and that they consent to the proposed medication treatment.

(h) If either the child or parent/legal guardian/legal custodian refuses to give consent, the mental health authority may initiate a medication hearing in accordance with subsection J of this rule.

(i) Antipsychotic medication may be administered under the following exigent circumstances:

(i) A qualified physician has determined and certifies that he/she believes the child is likely to cause injury to him/herself or to others if not immediately treated. That certification shall be recorded in the Physician's Orders of the child's medical record and shall contain at least the following information:

(A) A statement by the physician that he/she believes the child is likely to cause injury to himself/herself or others if not immediately restrained and provided medication treatment.

(B) The basis for that belief (including a statement of the child's behaviors).

(C) The medication administered.

(D) The date and time the medication was begun.

(j) Involuntary treatment in exigent circumstances may be continued for 48 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time period, the child shall not be involuntarily treated unless a Notice to Convene a Medication Hearing has been prepared and provided to the child pursuant to the provision of subsection K of this section.

(k) If the child and/or parent/legal guardian/legal custodian refuse to give consent the treating staff may request a medication hearing be held to determine if medication treatment is appropriate.

(i) The treating physician shall document in the child's medical record, the child's diagnosis, the recommended treatment, the possible side effects of such treatment, the desired benefit of such treatment, and the prognosis.

(ii) The treating staff shall complete a Request to Convene a Medication Hearing form and submit it to the Director/Designee of the local mental health authority who will contact a Neutral and Detached Fact Finder and set a date and time for the hearing. The child and parent/legal guardian/legal custodian shall be provided notice of the medication hearing and the hearing shall be set as soon as reasonably possible after a request has been made, but no sooner than 24 hours of notification being provided to the child and parent/legal guardian/legal custodian.

(iii) Prior to the hearing, the Neutral and Detached Fact Finder is provided documentation regarding the child's mental condition, including the child's medical records, physician's orders, diagnosis, nursing notes, and any other pertinent information.

(l) Medication hearings shall be conducted by a Neutral and Detached Fact Finder, shall be heard where the child is currently being treated, and shall be conducted in an informal, non-adversarial manner as to not have a harmful effect upon the child.

(i) The child has the right to attend the hearing, have an adult informant (parent/legal guardian/legal custodian/foster parent, etc.) present, and to ask pertinent questions. Other persons may attend the hearing if appropriate.

(ii) The Neutral and Detached Fact Finder shall begin each medication hearing by explaining the purpose and procedure of the hearing to the child, parent/legal guardian/legal custodian, and any other persons present.

(iii) The Neutral and Detached Fact Finder will review the child's current condition and recommended course of treatment.

(iv) The child, parent/legal guardian/legal custodian, and others present shall then be afforded an opportunity to comment on the issue of medication treatment.

(v) Following the review of the case and hearing of comments, the Neutral and Detached Fact Finder shall render a decision.

(vi) If needed the Neutral and Detached Fact Finder may ask everyone to leave the room to allow him/her time to deliberate.

(m) The Neutral and Detached Fact Finder may order medication treatment of a child if, after consideration of the record and deliberation, the Neutral and Detached Fact Finder finds that the following conditions exist:

(i) The child has a mental illness; and

(ii) The child is gravely disabled and in need of medication treatment for the reason that he/she suffers from a mental illness such that he/she (a) is in danger of serious physical harm resulting from a failure to provide for his essential human needs of health or safety, or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his/her actions and is not receiving such care as is essential for his/her health safety; and/or

(iii) Without medication treatment, the child poses a likelihood of serious harm to him/herself, others, or their property. Likelihood of serious harm means either (a) substantial risk that physical harm will be inflicted by an individual upon his/her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's own self, or (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which placed another person or persons in reasonable fear of sustaining such harm, or (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; and

(iv) The proposed medication treatment is in the medical best interest of the patient, taking into account the possible side effects as well as the potential benefits of the treatment; and

(v) The proposed medication treatment is in accordance with prevailing standards of accepted medical practice.

(n) The basis for the decision is supported by adequate documentation. The Neutral and Detached Fact Finder shall complete and sign a Medication Hearing form at the end of the hearing. A copy shall be provided to the child and/or parent/legal guardian/legal custodian.

(o) A child and/or parent/legal guardian/legal custodian may appeal the decision of a Neutral and Detached Fact Finder according to the following process, by submitting a written appeal to the Director/Designee of the Local Mental Health Authority providing treatment to the child, within 24 hours (excluding Saturdays, Sundays, and legal holidays) of the initial hearing.

(i) Upon receipt of the appeal, a panel consisting of two physicians and a non-physician licensed professional (RN, LCSW, PhD, etc.) shall be assigned to hear the appeal.

(ii) The panel shall review the available documentation and make a decision within 48 hours (excluding Saturdays,

Sundays, and legal holidays) of the date of the appeal.

(iii) A written decision from the panel shall be provided to the child, the child's parent/legal guardian/legal custodian, the local mental health authority providing treatment to the child, and any other appropriate party.

(p) In the event that a significant medication change is proposed, the child and/or parent/legal guardian/legal custodian shall be provided an opportunity to give consent in accordance to subsection F of this section. If the child and parent/legal guardian/legal custodian refuse to give consent, a medication hearing may be initiated in accordance with subsection K of this section.

(q) Medication treatment ordered pursuant to subsection P of this section may continue after the initial hearing according to the following process:

(i) A Neutral and Detached Fact Finder shall review the case within 180 days of the initial hearing.

(ii) The Neutral and Detached Fact Finder shall review the medical record before rendering a decision to continue medication treatment.

(iii) The Neutral and Detached Fact Finder may order continued medication treatment if he/she finds the following conditions are met:

(A) The child is still mentally ill; and

(B) Absent continued medication treatment, the child will suffer severe and abnormal mental and emotional distress as indicated by recent past history, and will experience deterioration in his/her ability to function in the least restrictive environment, thereby making him/her a substantial danger to him/herself or others, and

(C) The medication treatment is in the medical best interest of the patient, taking into account the possible side effects as well as the potential benefits of the treatment; and

(D) The medication treatment is in accordance with prevailing standards of accepted medical practice.

(iv) If the neutral and Detached Fact Finder approves continued medication treatment, he/she shall complete a Review of Continued Medication form, which shall be placed in the child's medical record. A copy shall be provided to the child and/or parent/legal guardian/legal custodian.

(v) At the end of 12 months, the case shall again be reviewed as outlined in this subsection (Q), and shall be reviewed every 6 months while the course of treatment is being administered.

R523-1-18. Psychosurgery and Electroshock Therapy Procedures for Children, Legal Authority.

(1) By this rule, the Division of Substance Abuse and Mental Health establishes the following due process procedure for children prior to their being administered psychosurgery or electroshock therapy as provided by Section 62A-15-704(3)(a)(ii).

(a) This policy applies to persons under the age of 18 who are committed to the physical custody of a local mental health authority and/or committed to the legal custody of the Division of Substance Abuse and Mental Health. The following terms are herein defined:

(b) ECT means electroconvulsive therapy.

(c) A Legal Custodian means a person who is appointed by the juvenile court. Such a person may have been selected from the Division of Child and Family Services, the Division of Juvenile Justice Services, or the Division of Substance Abuse and Mental Health.

(d) A Legal Guardian means a person who holds a testamentary appointment or is appointed by a court of law.

(e) Psychosurgery means a neurosurgical intervention to modify the brain to reduce the symptoms of a severely ill psychiatric patient.

(f) A local mental health authority has the obligation to

provide a child and parent/legal guardian/legal custodian with the following information when recommending that the child be treated with ECT or Psychosurgery:

(i) The nature of the child's mental illness;

(ii) The recommended ECT/Psychosurgery treatment, its purpose, the method of administration, and recommended length of time for treatment;

(iii) The desired beneficial effects on the child's mental illness as a result of the recommended treatment

(iv) The possible or probable mental health consequences to the child if recommended treatment is not administered

(v) The possible side effects, if any, of the recommended treatment

(vi) The ability of the staff to recognize any side effects, should any actually occur, and the possibility of ameliorating or abating those side effects

(vii) The possible, if any, alternative treatments available and whether those treatments are advisable

(viii) The right to give or withhold consent for the proposed ECT/psychosurgery.

(ix) When informing a child and his/her parent/legal guardian/legal custodian they have the right to withhold consent, the local mental health authority must inform them that regardless of whether they give or withhold consent, a due process procedure will be conducted before two designated examiners to determine the appropriateness of such treatment.

(g) The child and parent/legal guardian/legal custodian shall then be afforded an opportunity to sign a consent form stating that they have received the information listed in subsection E of this section, and that they consent or do not consent to the proposed treatment.

(h) If the parent/legal guardian/legal custodian refuses to consent to ECT/psychosurgery, the local mental health authority shall consider a treatment team dispositional review to determine whether the child is appropriate for treatment through their services.

(i) Regardless of whether the child or parent/legal guardian/legal custodian agrees or disagrees with the proposed ECT/psychosurgery, a due process procedure shall be conducted before the treatment can be administered.

(j) A physician shall request ECT or psychosurgery for a child by completing a Request to Treat With ECT or Psychosurgery form and submitting to the Director/Designee of the Local Mental Health Authority providing treatment.

(k) Upon receipt of the request, the Director/Designee shall contact two Designated Examiners, one of which must be a physician, and set a date and time for an ECT/Psychosurgery Hearing.

(l) The child and parent/legal guardian/legal custodian shall be provided notice of the hearing.

(m) Prior to the hearing, the two designated examiners shall be provided documentation regarding the child's mental condition, including the child's medical records, physician's orders, diagnosis, nursing notes, and any other pertinent information. The attending physician shall document his/her proposed course of treatment and reason(s) justifying the proposal in the medical record.

(n) ECT/psychosurgery hearings shall be conducted by two Designated Examiners, one of whom is a physician. Hearings shall be held where the child is currently being treated, and shall be conducted in an informal, non-adversarial manner as to not have a harmful effect upon the child.

(i) The child has the right to attend the hearing, have an adult informant (parent/legal guardian/legal custodian/foster parent, etc.) present, and to ask pertinent questions.

(ii) If the child or others become disruptive during the hearing, the Designated Examiners may request that those persons be removed. The hearing shall continue in that person's absence.

(iii) The hearing shall begin with the child, parent/legal guardian/legal custodian, and any others being informed of the purpose and procedure of the hearing.

(iv) The record shall be reviewed by the Designated Examiners and the proposed treatment shall be discussed.

(v) The child, parent/legal guardian/legal custodian, and others present shall be afforded an opportunity to comment on the issue of ECT or psychosurgery.

(vi) Following the review of the case and the hearing of comments, the Designated Examiners shall render a decision.

(vii) If needed the Designated Examiners may ask everyone to leave the room to allow them time to deliberate.

(o) The Designated Examiners may order ECT or psychosurgery if, after consideration of the record and deliberation, they both find that the following conditions exist:

(i) The child has a mental illness as defined in the current edition of the Diagnostic and Statistical Manual of the American Psychiatric Association (DSM); and

(ii) The child is gravely disabled and in need of ECT or Psychosurgery for the reason that he/she suffers from a mental illness such that he/she (a) is in danger of serious physical harm resulting from a failure to provide for his essential human needs of health or safety, or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his/her actions and is not receiving such care as is essential for his/her health safety; and/or

(iii) Without ECT or psychosurgery, the child poses a likelihood of serious harm to self, others, or property. Likelihood of serious harm means either

(A) a substantial risk that physical harm will be inflicted by an individual upon his/her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's own self, or

(B) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which has placed another person or persons in reasonable fear of sustaining such harm, or

(C) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; and

(iv) The proposed treatment is an appropriate and accepted method of treatment for the patient's mental condition; and

(v) The proposed medication treatment is in accordance with prevailing standards of accepted medical practice.

(p) The basis for the decision shall be supported by adequate documentation. The Designated Examiners shall complete and sign an ECT or Psychosurgery form at the end of the hearing. A copy of the decision shall be provided to the child and/or parent/legal guardian/legal custodian.

(q) The child and/or parent/legal guardian/legal custodian may request a second opinion of a decision to treat with ECT or psychosurgery by filing a Request for a Second Opinion form with the Clinical Director/designee of the Division of Substance Abuse and Mental Health within 24 hours (excluding Saturdays, Sundays, and legal holidays) of the initial hearing.

(r) ECT or psychosurgery may be commenced within 48 hours of the decision by the Designated Examiners, if no request for a second opinion is made. If a request is made, treatment may be commenced as soon as the Clinical Director/designee physician renders his/her decision if he/she agrees with the decision.

(s) Upon receipt of a Request, the Clinical Director/designee will review the record, consult with whomever he/she believes is necessary, and render a decision within 48 hours (excluding Saturdays, Sundays, and legal holidays) of receipt of the Request. The Clinical Director/designee shall sign a Second Opinion for Decision to

Treat with ECT/Psychosurgery form which is placed in the child's record. A copy shall be provided to the child and the parent/legal guardian/legal custodian prior to the commencement of treatment.

(t) If a child has been receiving ECT treatment and requires further treatment than that outlined in the original ECT plan, the procedures set forth in subsections F through S of this section shall be followed before initiating further treatment.

R523-1-19. Prohibited Items and Devices on the Grounds of Public Mental Health Facilities.

(1) Pursuant to the requirements of Subsection 62A-12-202(9), and Sections 76-10-523.5, 76-8-311.1, and 76-8-311.3, all facilities owned or operated by community mental health centers that have any contracts with local mental health authority and/or the Utah State Division of Substance Abuse and Mental Health are designated as secure areas. Accordingly all weapons, contraband, controlled substances, implements of escape, ammunition, explosives, spirituous or fermented liquors, firearms, or any other devices that are normally considered to be weapons are prohibited from entry into community mental health centers. There shall be a prominent visual notice of secure area designation. Law enforcement personnel are authorized to carry firearms while completing official duties on the grounds of those facilities.

R523-1-20. Family Involvement.

(1) Each mental health authority shall annually prepare and submit to the Division of Substance Abuse and Mental Health a plan for mental health funding and service delivery (17A-3-602(4)(b), (62A-15-109). Included in the plan shall be a method to educate families concerning mental illness and to promote family involvement when appropriate, and with patient consent, in the treatment program of a family member.

(2) The State Division of Substance Abuse and Mental Health will monitor for compliance as part of the annual quality of care site visits (62A-15-1003).

R523-1-21. Declaration for Mental Health Treatment.

(1) The State Division of Substance Abuse and Mental Health will make available information concerning the declaration for mental health treatment (62A-15-1003). Included will be information concerning available assistance in completing the document.

(2) Each local mental health center shall have information concerning declarations for mental health treatment. Information will be distributed with consumer rights information at the time of intake. (R523-1-8)

(3) Utah State Hospital will provide information concerning the declaration for mental health treatment at the time of admittance to the hospital.

(4) Consumers who choose to complete a declaration for mental health treatment may deliver a copy to their mental health therapist, to be included as part of their medical record.

R523-1-22. Rural Mental Health Scholarship and Grants.

The State Division of Substance Abuse and Mental Health hereby establish by rule an eligibility criteria and application process for the recipients of rural mental health scholarship funds, pursuant to the requirements of Section 62A-15-103.

(1) Eligibility criteria. The following criteria must be met by an applicant to qualify for this program.

(a) An applicant must be a current employee at an eligible Employment Site or have a firm commitment from an Eligible Employment Site for full time employment. Any sites that provide questionable or controversial mental health and /or substance abuse treatment methodologies will not be approved as eligible employment sites. Eligible Employment sites must be one of the following:

(i) Primary Employment Sites are community mental health centers and/or substance abuse providers that receive federal funds through a contract with the Division to provide mental health or substance treatment services.

(ii) Secondary Employment Sites are mental health or substance abuse providers that are licensed to provide mental health/substance treatment services by the Utah Division of Occupational and Professional Licensing, and serve more than 75% of Utah residents in their programs.

(b) An applicant must also agree to work in a designated eligible underserved rural area. Underserved rural areas must be classified as a Health Professional Shortage Areas (HPSA). The State Division of Substance Abuse and Mental Health can be contacted for a current list of HPSA sites.

(c) For Scholarship Grants; show registration in a course leading to a degree from a educational institution in the United States or Canada that will qualify them to receive licensure in Utah as a Mental Health Therapist s defined in Section 62A-13-102(4).

(d) For Loan Repayment Grants; show the amount of loans needing repayment, verify that the loans are all current, licensure as a Mental Health Therapist as defined in Section 62A-13-102(4).

(2) Grants. Two types of grants are available to eligible applicants.

(a) A loan Repayment Grant is to repay bona fide loans for educational expenses at an institution that provided training toward an applicant's degree, or to pay for the completion of specified additional course work that meets the educational requirements necessary for licensure as a Mental Health Therapist.

(b) A Scholarship is to pay for current educational expenses from an Educational Program that meets the educational requirements necessary for licensure as a Mental Health Therapist, at a school within the United States.

(3) Funding. Grants for applicants will be based upon the availability of funding the matching of community needs (i.e., how critical the shortage of Mental Health Therapists), the applicant's field of practice, and requested employment site. Primary employment sites are given priority over secondary employment sites.

(a) The award for each applicant may not exceed \$5,000 per person. The Division will notify the grantee of the award amount. Exceptions in the amount of the award may be made due to unique circumstances as determined by the Division.

(b) An applicant may receive multiple awards, as long as the total awards do not exceed the recommended amount of \$5,000, unless the Division approves an exception.

(4) Grantee obligation.

(a) The service obligation for applicants consists of 24 continuous months of full time (40) hours per week) employment as a Mental Health Therapist at an approved eligible employment site. The Division may change this service obligation if the Division Director determines that due to unforeseen circumstances, the completion of the obligation would be unfair to the recipient.

(b) Failure to finish the education program or complete the service obligation results in a repayment of grant funds according to Section-62A13-108.

(5) Application forms and instructions for grants or scholarships can be obtained from the Division of Substance Abuse and Mental Health, 120 North 200 West, Room 209, Salt Lake City, Utah. Only complete applications supported by all necessary documents will be considered. All applicants will be notified in writing of application disposition with in 60 days. A written appeal may be made to the Division Director within 30 days from the date of notification.

devices, fees

February 26, 2007

Notice of Continuation December 11, 2002

17-43-302

62A-12-102

62A-12-104

62A-12-209.6(2)

62A-12-283.1(3)(a)(i)

62A-12-283.1(3)(a)(ii)

62A-15-103

62A-15-105(5)

62A-15-603

62A-15-612(2)

KEY: bed allocations, due process, prohibited items and

R590. Insurance, Administration.**R590-116. Valuation of Assets.****R590-116-1. Authority.**

This rule is adopted pursuant to Subsection 31A-2-201(3), which authorizes rules to implement the Insurance Code, Subsection 31A-17-401(3)(a)(ii), which requires the commissioner to adopt a rule to determine the present value of future income derived from securities issued by an insurer's insurance subsidiaries, and Subsection 31A-17-401(4), which requires the commissioner to adopt rules for the valuation of insurer assets.

R590-116-2. Purpose and Scope.

A. The purpose of this rule is to comply with the statutory requirement of Subsection 31A-17-401(4), to adopt a rule for the valuation of insurer assets. The values established under this rule shall be used to determine compliance with other financial requirements of the Insurance Code.

B. This rule shall apply to all persons transacting insurance under the Utah Insurance Code.

R590-116-3. Definitions.

In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purposes of this rule:

A. "Valuation of Securities" shall mean the publication of the Securities Valuation Office of the National Association of Insurance Commissioners (NAIC).

B. "Amortizable" shall mean having been accorded that rating in "Valuation of Securities".

C. "In Good Standing" shall mean having been accorded that rating in "Valuation of Securities".

D. "Purchase Money Mortgages" shall mean mortgages or liens received as consideration, either in whole or part, on the disposal of real estate which secures such mortgage or liens.

E. "Burial Certificate" or "Burial Contract" if issued by an insurer shall be defined as an insurance contract and not as a security.

R590-116-4. Rule.

A. Assets of insurers transacting insurance under the Utah Insurance Code shall be valued as follows:

1. Bonds.

a. All obligations having a fixed term and rate, if not in default as to principal or interest, shall be valued

(i) At the par value, if purchased at par, or

(ii) If purchased above or below par, at the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made. For valuation purposes, the purchase price may not be higher than actual market value at the date of acquisition, including brokerage and other related fees. The bonds may not be carried at a value greater than the call price at which the entire issue may be called.

b. Obligations subject to amortization under the published findings of the NAIC shall be carried at their amortized values. Obligations which do not qualify for amortization under the published findings of the NAIC shall be carried at their market value or book value, whichever is lower.

c. Demand deposits and certificates of deposit in solvent banks and savings and loan institutions shall be valued at the account or certificate balance. Negotiable certificates of deposits with maturity terms less than three years shall be valued at face value. Negotiable certificates of deposit with maturity terms more than three years shall be valued at face value or market value whichever is less.

d. Obligations of insurance subsidiaries are to be valued in accordance with the requirements of Section 31A-17-401(3)(a), U.C.A., and Section (4)(B) of this rule.

2. Equipment Trust Certificates. Equipment trust

certificates subject to amortization under the published findings of the NAIC shall be carried at their amortized values. Equipment trust certificates which are not listed as qualified for amortization under the published findings of the NAIC shall be carried at a value not to exceed the certificate's proportionate part of the aggregate principal amount of the equipment obligations outstanding times 70% of the net depreciated value of the equipment pledged.

3. Loans Secured By Real Estate Interest. Loans, other than purchase money mortgages, which are adequately secured by real estate interests and are not in default as to principal or interest, shall be valued at the unpaid principal balance if the acquisition was at par. Further, mortgage loans acquired at a premium or at a discount are to be valued at amortized cost. Procedures relating to the amortization of premiums and accrual of discounts on mortgage loans are as follows:

a. Federal Housing Administration (FHA) and Veterans Administration (VA) Mortgages. Premiums shall be amortized and discounts accrued over a five year period from date of acquisition. Companies may adjust the asset values of these mortgages to their face amounts, but any excess of aggregate permissive amortized value, cost of mortgages less repayments of principal, adjusted for amortization of premiums and accrual of discounts on a five year basis, shall be treated as a nonadmitted asset.

b. Mortgages other than FHA and VA Mortgages. The book value of real estate mortgages acquired at a premium shall be reported at values reflecting write-offs of such premiums over a three year period from date of acquisition. Real estate mortgages purchased at a discount shall be carried at the amortized value.

c. Premium amortization or discount accretion as required in R590-116-4.A.3.a. or 3.b. above shall be on the straight-line method of computation.

d. Adequately secured purchase money mortgages shall be valued at the unpaid principal balance of the lien reduced by a reserve for unrealized gain on the sale of real estate. The reserve shall maintain the same proportionate relationship between the unpaid principal balance as the original gain on the sale bore to the original note principal balance.

e. For loans that are in default or in foreclosure proceedings the carrying values may be adjusted for additional expenses such as taxes, insurance, and legal fees that have been incurred to protect the investment or to obtain clear title to the property. To the extent that such costs are to be recoverable from the ultimate disposition of the property, these costs may be added to the carrying value of the mortgage loans. However, such costs that cannot reasonably be expected to be recovered shall be expensed when incurred.

f. Loans with any of the following provisions may be valued, at the option of the commissioner, at discounted values which approximate market values of the loans at the valuation date:

- i. Payments other than in equal installments;
- ii. Payment periods less often than annually;
- iii. Interest below conventional rates of return on the date the loan is granted.

4. Loans Secured By Pledged Securities Or Evidences Of Debt Eligible For Investment Under Section 31A-18-105 Loans which are adequately secured by pledge of securities or evidences of debt eligible for investment under Section 31A-18-105 shall be valued at par, if the acquisition was at par. Further, such loans acquired at a premium or at a discount are to be valued at the unpaid principal balance or cost, whichever is less.

5. Preferred and Guaranteed Stocks.

a. Preferred or guaranteed stocks in good standing are to be valued at cost by companies which are maintaining a mandatory securities valuation reserve. Companies not maintaining a mandatory securities valuation reserve shall value

such stocks at market value.

b. Preferred or guaranteed stocks not in good standing are to be valued at market value.

c. Market value as used for valuation of preferred or guaranteed stocks means in accordance with the values listed in "Valuation of Securities". For securities which are traded on a registered national securities exchange, but are not listed in that publication, market value may be established at the most recent published trade value. Securities not listed and not actively traded on a major stock exchange shall have a market value in an amount that the insurer can justify to the commissioner.

d. Preferred or guaranteed stocks of insurance subsidiaries are to be valued in accordance with the requirements of Subsection 31A-17-401(3)(a), and Subsection R590-116-4.B. of this rule.

6. Common Stocks.

a. Common stocks are to be valued at market value. Market value as used for valuation of common stocks means in accordance with the values listed in "Valuation of Securities". For securities which are traded on a registered national securities exchange, but are not listed in that publication, market value may be established at the most recent published trade value. Securities not listed in and not actively traded on a registered national securities exchange shall have a market value in an amount that the insurer can justify to the commissioner.

b. Common stocks of insurance subsidiaries are to be valued in accordance with the requirements of Subsection 31A-17-401(3)(a).

7. Real Estate.

a. An investment in real estate will be valued at not more than its reasonable cost plus capitalized permanent improvements less depreciation spread evenly over the life of the property or, at the option of the company, less depreciation computed on any basis permitted under the Internal Revenue Code and regulations.

b. Property acquired in satisfaction of a debt shall be valued at its fair market value or the amount of debt, including interest, taxes, and expenses incurred as cost in foreclosure, whichever is less.

8. Loans Upon the Security of the Insurer's Own Policies. Loans upon the security of the insurer's own policies shall be valued at the unpaid loan balance or the policy reserves securing such loan, whichever is less.

9. Financial Futures Contracts. Financial futures contracts, if approved by Insurance Department rule, shall be valued in the manner set forth by the commissioner.

10. Investment in Foreign Securities. Foreign securities permitted under Subsection 31A-18-105(11), shall be valued as follows:

a. Where information is available, at the value published by the NAIC. If the security is payable in a foreign currency the value shall reflect the currency exchange rate.

b. Where information is not available, the security shall have a market value that the insurer can justify to the commissioner. If the security is payable in a foreign currency the value shall reflect the currency exchange rate.

11. Separate Account Assets. Separate account assets shall have a value as required under Subsection 31A-18-102(4).

B. Value of Securities Other Than Common Stock Issued by an Insurance Subsidiary. The following provisions shall supplement Subsection 31A-17-401(3)(a), in controlling the manner in which assets of insurance subsidiaries are valued on the books of the parent insurer:

1. A parent insurer may attribute value to the security of an insurance subsidiary only if dividends or interest are being paid and payment can reasonably be anticipated to continue.

2. The value of securities other than common stock issued by an insurance subsidiary is the lesser of:

a. The present value of future income to be derived under

the securities, or

b. The amount the parent would receive following liquidation of the subsidiary with payment, in full, of all creditors and holders with senior priority.

3. The present discounted value of future income under Subsection R590-116-4.B.2.a. of this rule shall be determined as follows:

$$NPV = ((CF_1)/((1+i)^1)) + ((CF_2)/((1+i)^2)) + (CF_3)/((1+i)^3) + \dots + ((CF_n)/((1+i)^n))$$

NPV = Net present value

CF = Cash flow

i = Assumed interest rate per period

n = Number of periods

If cash flows remain constant, the following formula may be used:

$$NPV = CF(1 - (1 / (1 + i)^n) / i)$$

4. The interest rate used shall be equal to Moody's AA Bond rate given for securities of substantially equal duration, or other rate which can be justified by the insurer and is accepted by the commissioner.

R590-116-5. Separability.

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances will not be affected.

KEY: insurance companies, rules and procedures

1987

31A-17-401

Notice of Continuation February 28, 2007

R590. Insurance, Administration.**R590-117. Valuation of Liabilities.****R590-117-1. Authority.**

This rule is adopted pursuant to Subsection 31A-2-201(3), which authorizes rules to implement the Insurance Code, and Section 31A-17-402, which requires the commissioner to adopt a rule specifying which liabilities shall be reported by insurers and the methods for their evaluation.

R590-117-2. Purpose and Scope.

A. The purpose of this rule is to comply with the statutory requirement of Section 31A-17-402, to adopt a rule for the valuation of insurer liabilities. The values established under this rule shall be used to determine compliance with other financial requirements of the Insurance Code.

B. This rule shall apply to all persons transacting insurance under the Utah Insurance Code.

R590-117-3. Definitions.

In addition to the definitions of Section 31A-1-301, the following definition shall apply for the purposes of this rule:

A. "Liabilities" shall include reserves for payment of future obligations.

R590-117-4. Rule.

A. Liabilities to be reported.

1. All liabilities specifically provided for or contemplated by the annual statement blank or other reporting form prescribed by the commissioner under Section 31A-2-202.

2. Any other liabilities known to the reporting insurer, except liabilities specifically exempted or precluded by the reporting form.

B. Evaluation of liabilities. The values of reported liabilities shall be computed in accordance with the first applicable method from the following list, in ascending order:

1. in accordance with a specific provision of the Utah Insurance Code, Title 31A; or

2. in accordance with a specific Insurance Department rule, noted as superseding this general rule, or, in the absence thereof,

3. in accordance with another provision of the Utah Code; or

4. in accordance with procedures adopted or recommended by the National Association of Insurance Commissioners; or

5. in accordance with generally accepted accounting principles; or

6. in accordance with values as would be established by a prudent person and are accepted by the commissioner.

R590-117-5. Separability.

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances will not be affected.

KEY: insurance companies, rules and procedures

1987

31A-17-402

Notice of Continuation February 28, 2007

R590. Insurance, Administration.**R590-123. Additions and Deletions of Designees by Organizations.****R590-123-1. Authority.**

This rule is promulgated by the insurance commissioner under Section 31A-2-201(3) to adopt rules to implement the provisions of the Utah Insurance Code, and specifically Sections 31A-23a-302(2) authorizing the commissioner to establish by rule the form to be utilized by an organization when promptly reporting every change in the list of natural persons authorized to conduct business on behalf of the organization in this state.

R590-123-2. Purpose.

A. Organizations who conduct insurance transactions through natural persons in this state shall be licensed. The organization license shall identify the names of natural persons, also known as designees, authorized to act for the organization. Organizations are required to promptly report to the commissioner, in detail and form prescribed by rule, every change in their list of natural persons.

B. This rule is adopted for the purpose of stating the detail, form, and time by which an organization will either add or delete any natural person from their list of authorized designees who conduct business on behalf of the organization in this state.

R590-123-3. Rule.

A. Notice of addition or deletion of designees. All organizations shall file with the commissioner an Application For Amendment to Organization License which includes a section for changing the list of natural persons authorized to conduct business on behalf of the organization in this state. The forms necessary to effectuate such changes are available through the Insurance Department.

1. Procedure for amending an organization license:

a. Complete the application for amendment to organization license and include the information concerning designees to be added or deleted.

b. The date entered on the form will be the effective date of the change.

c. File the completed form with the department within five working days from the effective date. If the form is not filed within the five day period, the effective date of the amendment will be the date the form is received by the insurance department.

B. Fees. The organization shall pay the statutory filing fees for all Organization License applications and amendments submitted to the department.

R590-123-4. Penalties.

Any organization that fails to comply with this rule will be subject to the forfeiture provisions set forth in Sections 31A-2-308 and 31A-23-216.

R590-123-5. Separability.

If any provision of this rule or the application of it to any person is for any reason held to be invalid, the remainder of the rule and the application of any provision to other persons or circumstances will not be affected.

KEY: insurance law

1993

Notice of Continuation January 27, 2009

31A-23a-302

R616. Labor Commission, Boiler and Elevator Safety.**R616-2. Boiler and Pressure Vessel Rules.****R616-2-1. Authority.**

This rule is established pursuant to Title 34A, Chapter 7 for the purpose of establishing reasonable safety standards for boilers and pressure vessels to prevent exposure to risks by the public and employees.

R616-2-2. Definitions.

A. "ASME" means the American Society of Mechanical Engineers.

B. "Boiler inspector" means a person who is an employee of:

1. The Division who is authorized to inspect boilers and pressure vessels by having met nationally recognized standards of competency and having received the Commission's certificate of competency; or

2. An insurance company writing boiler and pressure vessel insurance in Utah who is deputized to inspect boilers and pressure vessels by having met nationally recognized standards of competency, receiving the Commission's certificate of competency, and having paid a certification fee.

C. "Commission" means the Labor Commission created in Section 34A-1-103.

D. "Division" means the Division of Boiler and Elevator Safety of the Labor Commission.

E. "National Board" means the National Board of Boiler and Pressure Vessel Inspectors.

F. "Nonstandard" means a boiler or pressure vessel that does not bear ASME and National Board stamping and registration.

G. "Owner/user agency" means any business organization operating pressure vessels in this state that has a valid owner/user certificate from the Commission authorizing self-inspection of unfired pressure vessels by its owner/user agents, as regulated by the Commission, and for which a fee has been paid.

H. "Owner/user agent" means an employee of an owner/user agency who is authorized to inspect unfired pressure vessels by having met nationally recognized standards of competency, receiving the Commission's certificate of competency, and having paid a certification fee.

R616-2-3. Safety Codes and Rules for Boilers and Pressure Vessels.

The following safety codes and rules shall apply to all boilers and pressure vessels in Utah, except those exempted pursuant to Section 34A-7-101, and are incorporated herein by this reference in this rule.

A. ASME Boiler and Pressure Vessel Code (2004).

1. Section I Rules for Construction of Power Boilers published July 1, 2004, the 2005 Addenda published July 1, 2005, and the 2006 Addenda published July 1, 2006.

2. Section IV Rules for Construction of Heating Boilers published July 1, 2004, the 2005 Addenda published July 1, 2005, and the 2006 Addenda published July 1, 2006.

3. Section VIII Rules for Construction of Pressure Vessels published July 1, 2004, the 2005 Addenda published July 1, 2005, and the 2006 Addenda published July 1, 2006.

B. Power Piping ASME B31.1 (2004), issued August 16, 2004.

C. Controls and Safety Devices for Automatically Fired Boilers ASME CSD-1-1998; the ASME CSD-1a-1999 addenda, issued March 10, 2000; and the ASME CSD-1b (2001) addenda, issued November 30, 2001.

D. National Board Inspection Code ANSI/NB-23 (2004) issued December 31, 2004, and the 2005 Addendum issued December 31, 2005.

E. NFPA 85 Boiler and Combustion Systems Hazard Code

2004 Edition.

F. Recommended Administrative Boiler and Pressure Vessel Safety Rules and Regulations NB-132 Rev. 4.

G. Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair and Alteration API 510 (1997); the 1998 Addenda, published December 1998, and Addendum 2, published December 2000.

R616-2-4. Quality Assurance for Boilers, Pressure Vessels and Power Piping.

A. Consistent with the requirements of the Commission and its predecessor agency since May 1, 1978, all boilers and pressure vessels installed on or after May 1, 1978 shall be registered with the National Board and the data plate must include the National Board number.

B. Pursuant to Section 34A-7-102(2), any boiler or pressure vessel of special design must be approved by the Division to ensure it provides a level of safety equivalent to that contemplated by the Boiler and Pressure Vessel Code of the ASME. Any such boiler or pressure vessel must thereafter be identified by a Utah identification number provided by the Division.

C. All steam piping, installed after May 1, 1978, which is external (from the boiler to the first stop valve for a single boiler and the second stop valve in a battery of two or more boilers having manhole openings) shall comply with Section 1 of the ASME Boiler and Pressure Vessel Code or ASME B31.1 Power Piping as applicable.

D. Nonstandard boilers or pressure vessels installed in Utah before July 1, 1999 may be allowed to continue in operation provided the owner can prove the equivalence of its design to the requirements of the ASME Boiler and Pressure Vessel Code. Nonstandard boilers or pressure vessels may not be relocated or moved.

E. Effective July 1, 1999, all boiler and pressure vessel repairs or alterations must be performed by an organization holding a valid Certificate of Authorization to use the "R" stamp from the National Board. Repairs to pressure relief valves shall be performed by an organization holding a valid Certificate of Authorization to use the "VR" stamp from the National Board.

R616-2-5. Code Applicability.

A. The safety codes which are applicable to a given boiler or pressure vessel installation are the latest versions of the codes in effect at the time the installation commenced.

B. If a boiler or pressure vessel is replaced, this is considered a new installation.

C. If a boiler or pressure vessel is relocated to another location or moved in its existing location, this is considered a new installation.

R616-2-6. Variances to Code Requirements.

A. In a case where the Division finds that the enforcement of any code would not materially increase the safety of employees or general public, and would work undue hardships on the owner or user, the Division may allow the owner or user a variance pursuant to Section 34A-7-102. Variances must be in writing to be effective, and can be revoked after reasonable notice is given in writing.

B. Persons who apply for a variance to a safety code requirement must present the Division with the rationale as to how their boiler or pressure vessel installation provides safety equivalent to the safety code.

C. No errors or omissions in these codes shall be construed as permitting any unsafe or unsanitary condition to exist.

R616-2-7. Boiler and Pressure Vessel Compliance Manual.

A. The Division shall develop and issue a safety code

compliance manual for organizations and personnel involved in the design, installation, operation and maintenance of boilers and pressure vessels in Utah.

B. This compliance manual shall be reviewed annually for accuracy and shall be re-issued on a frequency not to exceed two years.

C. If a conflict exists between the Boiler and Pressure Vessel compliance manual and a safety code adopted in R616-2-3, the code requirements will take precedence.

R616-2-8. Inspection of Boilers and Pressure Vessels.

A. It shall be the responsibility of the Division to make inspections of all boilers or pressure vessels operated within its jurisdiction, when deemed necessary or appropriate.

B. Boiler inspectors shall examine conditions in regards to the safety of the employees, public, machinery, ventilation, drainage, and into all other matters connected with the safety of persons using each boiler or pressure vessel, and when necessary give directions providing for the safety of persons in or about the same. The owner or user is required to freely permit entry, inspection, examination and inquiry, and to furnish a guide when necessary. In the event an internal inspection of a boiler or pressure vessel is required the owner or user shall, at a minimum, prepare the boiler or pressure vessel by meeting the requirements of 29 CFR Part 1910.146 "Permit Required Confined Spaces" and 29 CFR Part 1910.147 "Control of Hazardous Energy (Lockout/Tagout)".

C. If the Division finds a boiler or pressure vessel complies with the safety codes and rules, the owner or user shall be issued a Certificate of Inspection and Permit to Operate.

D. If the Division finds a boiler or pressure vessel is not being operated in accordance with safety codes and rules, the owner or user shall be notified in writing of all deficiencies and shall be directed to make specific improvements or changes as are necessary to bring the boiler or pressure vessel into compliance.

E. Pursuant to Sections 34A-1-104, 34A-2-301 and 34A-7-102, if the improvements or changes to the boiler or pressure vessel are not made within a reasonable time, the boiler or pressure vessel is being operated unlawfully.

F. If the owner or user refuses to allow an inspection to be made, the boiler or pressure vessels is being operated unlawfully.

G. If the owner or user refuses to pay the required fee, the boiler or pressure vessel is being operated unlawfully.

H. If the owner or user operates a boiler or pressure vessel unlawfully, the Commission may order the boiler or pressure vessel operation to cease pursuant to Sections 34A-1-104 and 34A-7-103.

I. If, in the judgment of a boiler inspector, the lives or safety of employees or public are or may be endangered should they remain in the danger area, the boiler inspector shall direct that they be immediately withdrawn from the danger area, and the boiler or pressure vessel be removed from service until repairs have been made and the boiler or pressure vessel has been brought into compliance.

J. An owner/user agency may conduct self inspection of its own unfired pressure vessels with its own employees who are owner/user agents under procedures and frequencies established by the Division.

R616-2-9. Fees.

Fees to be charged as required by Section 34A-7-104 shall be adopted by the Labor Commission and approved by the Legislature pursuant to Section 63-38-3(2).

R616-2-10. Notification of Installation, Revision, or Repair.

A. Before any boiler covered by this rule is installed or before major revision or repair, particularly welding, begins on

a boiler or pressure vessel, the Division must be advised at least one week in advance of such installation, revision, or repair unless emergency dictates otherwise.

B. It is recommended that a business organization review its plans for purchase and installation, or of revision or repair, of a boiler or pressure vessel well in advance with the Division to ensure meeting code requirements upon finalization.

R616-2-11. Initial Agency Action.

Issuance or denial of a Certificate of Inspection and Permit to Operate by the Division, and orders or directives to make changes or improvements by the boiler inspector are informal adjudicative actions commenced by the agency per Section 63-46b-3.

R616-2-12. Presiding Officer.

The boiler inspector is the presiding officer referred to in Section 63-46b-3. If an informal hearing is requested pursuant to R616-2-13, the Commission shall appoint the presiding officer for that hearing.

R616-2-13. Request for Informal Hearing.

Within 30 days of issuance, any aggrieved person may request an informal hearing regarding the reasonableness of a permit issuance or denial or an order to make changes or improvements. The request for hearing shall contain all information required by Sections 63-46b-3(a) and 63-46b-3(3).

R616-2-14. Classification of Proceeding for Purpose of Utah Administrative Procedures Act.

Any hearing held pursuant to R616-2-13 shall be informal and pursuant to the procedural requirements of Section 63-46b-5 and any agency review of the order issued after the hearing shall be per Section 63-46b-13. An informal hearing may be converted to a formal hearing pursuant to Section 63-46b-4(3).

KEY: boilers, certification, safety

February 8, 2007

34A-7-101 et seq.

Notice of Continuation November 30, 2006

**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 filed with the clerk of the jurisdiction. These areas shall become effective immediately thereafter."
- (t) Section 302.3 Add "and the FFSL wildfire representative" between "official" and "shall".
- (u) Section 402.3 Delete
- (v) Section 403.2 Delete Exception
- (w) Section 403.3 Replace "typically used to respond to that location" to "to protect structures and wildlands"
- (x) Section 403.7 Add "It will be up to the code official to ascertain the standard based on local fire equipment, grade not to exceed 12%"
- (y) Section 404.1 Delete "or as required . . . with Section 402.1.2"
- (z) Section 404.1 Delete Exception
- (aa) Section 404.3 Delete "The draft site shall have emergency . . . with Section 402."
- (bb) Section 404.5 Replace "as follows: determined" with "by the local jurisdiction. NFPA 1142 may be used as a reference."
- (cc) Section 404.5.1 Delete entire section including Exception
- (dd) Section 404.5.2 Delete entire section including Exception
- (ee) Section 404.6 Replace with "The water system required by this code can only be considered conforming for purposes of determining the level of ignition-resistant construction (see Table 503.1)."
- (ff) Section 404.8 Delete the words "and hydrants"
- (gg) Section 404.9 After ". . . periodic tests as required by the code official." add the sentences "Code official shall establish a periodic testing schedule. Costs are to be covered by the water provider."
- (hh) Section 404.9 After the last sentence, add "Mains and appurtenances shall be installed in accordance with NFPA 24. Water tanks for private fire protection shall be installed in accordance with NFPA 22. Costs are to be covered by the water provider."
- (ii) Section 404.10.3 After ". . . dependent on electrical power" add "supplied by power grid" and after ". . . demands shall provide . . ." add "functional"
- (jj) Section 404.10.3 Replace "Exceptions" in its entirety with "When approved by the code official, a standby power supply is not required where the primary power service to the stationary water supply facility is underground or on-site generator."
- (kk) Section 405 Before Section 405.1 Add "The purpose of the plan is to provide a basis to determine overall compliance with this code, for determination of Ignition Resistant Construction (IRC) (see Table 503.1) and for determining the need for alternative materials and methods."
- (ll) 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 engaged in 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. For purposes of this rule, "engaged in private and state wildland fires"

(a) means firefighters who are directly involved in the suppression of a wildland fire; firefighters, on scene, who have supervisory responsibility or decision-making authority over those involved in the suppression of a wildland fire; or individuals who have fire suppression responsibilities within close proximity of the fire perimeter.

(b) does not mean a person used as a courier; driver of a vehicle not used for fire suppression; or a person used in a non-tactical, support or other peripheral function not in close proximity to a wildland fire.

(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.

Component	Type 1	Type 2	Type 3
Pump Rating (gpm)	1,000+ @	250+ @	150+ @
	150 psi	150 psi	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 @	50 @	30 @
	100 psi	100 psi	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
January 3, 2007 **65A-8-6**

R657. Natural Resources, Wildlife Resources.**R657-5. Taking Big Game.****R657-5-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking deer, elk, pronghorn, moose, bison, bighorn sheep, and Rocky Mountain goat.

(2) Specific dates, areas, methods of take, requirements, and other administrative details which may change annually are published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation and the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Antlerless deer" means a deer without antlers or with antlers five inches or shorter.

(b) "Antlerless elk" means an elk without antlers or with antlers five inches or shorter.

(c) "Antlerless moose" means a moose with antlers shorter than its ears.

(d) "Arrow quiver" means a portable arrow case that completely encases all edges of the broadheads.

(e) "Buck deer" means a deer with antlers longer than five inches.

(f) "Buck pronghorn" means a pronghorn with horns longer than five inches.

(g) "Bull elk" means an elk with antlers longer than five inches.

(h) "Bull moose" means a moose with antlers longer than its ears.

(i) "Cow bison" means a female bison.

(j) "Doe pronghorn" means a pronghorn without horns or with horns five inches or shorter.

(k) "Highway" means the entire width between property lines of every way or place of any nature when any part of it is open to the use of the public as a matter of right for vehicular travel.

(l) "Hunter's choice" means either sex may be taken.

(m) "Limited entry hunt" means any hunt published in the hunt tables of the proclamation of the Wildlife Board for taking big game, which is identified as limited entry and does not include general or once-in-a-lifetime hunts.

(n) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(o) "Once-in-a-lifetime hunt" means any hunt published in the hunt tables of the proclamation of the Wildlife Board for taking big game, which is identified as once-in-a-lifetime, and does not include general or limited entry hunts.

(p) "Once-in-a-lifetime permit" means any permit obtained for a once-in-a-lifetime hunt by any means, including conservation permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(q) "Ram" means a male desert bighorn sheep or Rocky Mountain bighorn sheep.

(r)(i) "Resident" for purposes of this rule means a person who:

(A) has been domiciled in the state of Utah for six consecutive months immediately preceding the purchase of a license or permit; and

(B) does not claim residency for hunting, fishing, or trapping in any other state or country.

(ii) A Utah resident retains Utah residency if that person leaves this state:

(A) to serve in the armed forces of the United States or for

religious or educational purposes; and

(B) complies with Subsection (m)(i)(B).

(iii)(A) A member of the armed forces of the United States and dependents are residents for the purposes of this chapter as of the date the member reports for duty under assigned orders in the state if the member:

(I) is not on temporary duty in this state; and

(II) complies with Subsection (m)(i)(B).

(iv) A copy of the assignment orders must be presented to a wildlife division office to verify the member's qualification as a resident.

(v) A nonresident attending an institution of higher learning in this state as a full-time student may qualify as a resident for purposes of this chapter if the student:

(A) has been present in this state for 60 consecutive days immediately preceding the purchase of the license or permit; and

(B) complies with Subsection (m)(i)(B).

(vi) A Utah resident license or permit is invalid if a resident license for hunting, fishing, or trapping is purchased in any other state or country.

(vii) An absentee landowner paying property tax on land in Utah does not qualify as a resident.

(s) "Spike bull" means a bull elk which has at least one antler having no branching above the ears. Branched means a projection on an antler longer than one inch, measured from its base to its tip.

(t)(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 (a) may still be considered valid if the application is timely corrected through the application correction process.

R657-5-3. License, Permit, and Tag Requirements.

(1) A person may engage in hunting protected wildlife or in the sale, trade, or barter of protected wildlife or their parts in accordance with Section 23-19-1 and the rules or proclamations of the Wildlife Board.

(2) Any license, permit, or tag that is mutilated or otherwise made illegible is invalid and may not be used for taking or possessing big game.

R657-5-4. Age Requirements and Restrictions.

(1)(a) A person 14 years of age or older may purchase a permit and tag to hunt big game. A person 13 years of age may purchase a permit and tag to hunt big game if that person's 14th birthday falls within the calendar year for which the permit and tag are issued.

(2)(a) A person at least 14 years of age and under 16 years of age must be accompanied by his parent or legal guardian, or other responsible person 21 years of age or older and approved by his parent or guardian, while hunting big game with any weapon.

(b) As used in this section, "accompanied" means at a distance within which visual and verbal communication are maintained for the purposes of advising and assisting.

R657-5-5. Duplicate License 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 or online license agent, for five dollars or half of the price of the original license, permit, or certificate of registration, 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.

R657-5-6. Hunting Hours.

Big game may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

R657-5-7. Temporary Game Preserves.

(1)(a) A person who does not have a valid permit to hunt on a temporary game preserve may not carry a firearm or archery equipment on any temporary game preserve while the respective hunts are in progress.

(b) "Carry" means having a firearm on your person while hunting in the field.

(2) As used in this section, "temporary game preserve" means all bull elk, buck pronghorn, moose, bison, bighorn sheep, Rocky Mountain goat, limited entry buck deer areas and cooperative wildlife management units, excluding incorporated areas, cities, towns and municipalities.

(3) Weapon restrictions on temporary game preserves do not apply to:

(a) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Proclamation and Waterfowl Proclamation, respectively, and possessing only legal weapons to take upland game and waterfowl;

(b) livestock owners protecting their livestock;

(c) peace officers in the performance of their duties; or

(d) 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 firearm to hunt or take protected wildlife.

R657-5-8. Prohibited Weapons.

(1) A person may not use any weapon or device to take big game other than those expressly permitted in this rule.

(2) A person may not use:

(a) a firearm capable of being fired fully automatic; or

(b) any light enhancement device or aiming device that casts a beam of light.

R657-5-9. Rifles and Shotguns.

(1) The following rifles and shotguns may be used to take big game:

(a) any rifle firing centerfire cartridges and expanding bullets; and

(b) a shotgun, 20 gauge or larger, firing only 00 or larger buckshot or slug ammunition.

R657-5-10. Handguns.

(1) A handgun may be used to take deer and pronghorn, provided the handgun is a minimum of .24 caliber, fires a centerfire cartridge with an expanding bullet and develops 500 foot-pounds of energy at the muzzle.

(2) A handgun may be used to take elk, moose, bison, bighorn sheep, and Rocky Mountain goat provided the handgun is a minimum of .24 caliber, fires a centerfire cartridge with an expanding bullet and develops 500 foot-pounds of energy at 100 yards.

R657-5-11. Muzzleloaders.

(1) A muzzleloader may be used during any big game hunt, except an archery hunt, provided the muzzleloader:

(a) can be loaded only from the muzzle;

(b) has open sights, peep sights, or a fixed non-magnifying 1x scope;

(c) has a single barrel;

(d) has a minimum barrel length of 18 inches;

(e) is capable of being fired only once without reloading;

(f) powder and bullet, or powder, sabot and bullet are not bonded together as one unit for loading;

(g) is loaded with black powder or black powder substitute, which must not contain nitrocellulose based smokeless powder.

(2)(a) A lead or expanding bullet or projectile of at least 40 caliber must be used to hunt big game.

(b) A 170 grain or heavier bullet, including sabots must be used for taking deer and pronghorn.

(c) A 210 grain or heavier bullet must be used for taking elk, moose, bison, bighorn sheep, and Rocky Mountain goat, except sabot bullets used for taking these species must be a minimum of 240 grains.

(3)(a) A person who has obtained a muzzleloader permit may not possess or be in control of any firearm other than a muzzleloading rifle or have a firearm other than a muzzleloading rifle in his camp or motor vehicle during a muzzleloader hunt.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Proclamation and Waterfowl Proclamation, respectively, and possessing only legal weapons to take upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the muzzleloader hunt;

(iii) livestock owners protecting their livestock; or

(iv) 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 firearm to hunt or take protected wildlife.

R657-5-12. Archery Equipment.

(1) Archery equipment may be used during any big game hunt, except a muzzleloader hunt, provided:

(a) the minimum bow pull is 40 pounds at the draw or the peak, whichever comes first; and

(b) arrowheads used have two or more sharp cutting edges that cannot pass through a 7/8 inch ring;

(c) expanding arrowheads cannot pass through a 7/8 inch ring when expanded, and

(d) arrows must be a minimum of 20 inches in length from the tip of the arrowhead to the tip of the nock, and must weigh at least 300 grains.

(2) The following equipment or devices may not be used to take big game:

(a) a crossbow, except as provided in Rule R657-12;

(b) arrows with chemically treated or explosive arrowheads;

(c) a mechanical device for holding the bow at any increment of draw;

(d) a release aid that is not hand held or that supports the draw weight of the bow; or

(e) a bow with an attached electronic range finding device or a magnifying aiming device.

(3) Arrows carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(4)(a) A person who has obtained an archery permit may not possess or be in control of a firearm or have a firearm in his camp or motor vehicle during an archery hunt.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Proclamation and Waterfowl Proclamation, respectively, and possessing only legal weapons to take upland game or waterfowl;

(ii) a person licensed to hunt big game species during

hunts that coincide with the archery hunt;

- (iii) livestock owners protecting their livestock; or
- (iv) 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 firearm to hunt or take protected wildlife.

R657-5-13. Areas With Special Restrictions.

(1)(a) Hunting of any wildlife is prohibited within the boundaries of all park areas, except those designated by the Division of Parks and Recreation in Rule R651-603-5.

(b) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park area facilities, including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(c) Hunting with shotguns or archery equipment is prohibited within one-quarter mile of the areas provided in Subsection (b).

(2) Hunting is closed within the boundaries of all national parks and monuments unless otherwise provided by the governing agency.

(3) Hunters obtaining a Utah license, permit or tag to take big game are not authorized to hunt on tribal trust lands. Hunters must obtain tribal authorization to hunt on tribal trust lands.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

(5) In Salt Lake County, a person may not:

(a) hunt big game within one-half mile of Silver Lake in Big Cottonwood Canyon;

(b) hunt big game or discharge a shotgun or archery equipment within 600 feet of a road, house, or any other building; or

(c) discharge a rifle, handgun, shotgun firing slug ammunition, or muzzleloader within one mile of a cabin, house, or other building regularly occupied by people, except west of I-15 a muzzleloader may not be discharged within one-half mile of a cabin, house or other building regularly occupied by people.

(6) Hunting is closed within a designated portion of the town of Alta. Hunters may refer to the town of Alta for boundaries and other information.

(7) Domesticated Elk Facilities and Domesticated Elk Hunting Parks, as defined in Section 4-39-102(2) and Rules R58-18 and R58-20, are closed to big game hunting. This restriction does not apply to the lawful harvest of domesticated elk as defined and allowed pursuant to Rule R58-20.

(8) State waterfowl management areas are closed to taking big game, except as otherwise provided in the proclamation of the Wildlife Board for taking big game.

(9) Hunters are restricted to using archery equipment, muzzleloaders or shotguns on the Matheson Wetlands.

(10) A person may not discharge a firearm, except a shotgun or muzzleloader, from, upon, or across the Green River located near Jensen, Utah from the Highway 40 bridge upstream to the Dinosaur National Monument boundary.

R657-5-14. 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 headlights 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 firearm to hunt or take wildlife.

R657-5-15. Use of Vehicle or Aircraft.

(1)(a) A person may not use an airplane or any other airborne vehicle or device, or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles, except a vessel as provided in Subsection (c), to take protected wildlife.

(b) A person may not take protected wildlife being chased, harmed, harassed, rallied, herded, flushed, pursued or moved by an aircraft or any other vehicle or conveyance listed in Subsection (a).

(c) Big game may be taken from a vessel provided:

(i) the motor of a motorboat has been completely shut off;

(ii) the sails of a sailboat have been furled; and

(iii) the vessel's progress caused by the motor or sail has ceased.

(2)(a) A person may not use any type of aircraft from 48 hours before any big game hunt begins through 48 hours after any big game hunting season ends to:

(i) transport a hunter or hunting equipment into a hunting area;

(ii) transport a big game carcass; or

(iii) locate, or attempt to observe or locate any protected wildlife.

(b) Flying slowly at low altitudes, hovering, circling or repeatedly flying over a forest, marsh, field, woodland or rangeland where protected wildlife is likely to be found may be used as evidence of violations of Subsections (1) and (2).

(3) The provisions of this section do not apply to the operation of an aircraft in a usual manner, or landings and departures from improved airstrips, where there is no attempt or intent to locate protected wildlife.

R657-5-16. Party Hunting and Use of Dogs.

(1) A person may not take big game for another person, except as provided in Section 23-19-1 and Rule R657-12.

(2) A person may not use the aid of a dog to take, chase, harm or harass big game.

R657-5-17. Big Game Contests.

A person may not enter or hold a big game contest that:

(1) is based on big game or their parts; and

(2) offers cash or prizes totaling more than \$500.

R657-5-18. Tagging.

(1) The carcass of any species of big game must be tagged in accordance with Section 23-20-30.

(2) A person may not hunt or pursue big game after any of the notches have been removed from the tag or the tag has been detached from the permit.

(3) The tag must remain with the largest portion of the meat until the animal is entirely consumed.

R657-5-19. Transporting Big Game Within Utah.

(1) A person may transport big game within Utah only as follows:

(a) the head or sex organs must remain attached to the largest portion of the carcass;

(b) the antlers attached to the skull plate must be transported with the carcass of an elk taken in a spike bull unit; and

(c) the person who harvested the big game animal must accompany the carcass and must possess a valid permit corresponding to the tag attached to the carcass, except as

provided in Subsection (2).

(2) A person who did not take the big game animal may transport it only after obtaining a shipping permit or disposal receipt from the division or a donation slip as provided in Section 23-20-9.

R657-5-20. Exporting Big Game From Utah.

(1) A person may export big game or their parts from Utah only if:

(a) the person who harvested the big game animal accompanies it and possesses a valid permit corresponding to the tag which must be attached to the largest portion of the carcass; or

(b) the person exporting the big game animal or its parts, if it is not the person who harvested the animal, has obtained a shipping permit from the division.

R657-5-21. Purchasing or Selling Big Game or Their Parts.

(1) A person may only purchase, sell, offer or possess for sale, barter, exchange or trade any big game or their parts as follows:

(a) Antlers, heads and horns of legally taken big game may be purchased or sold only on the dates published in the proclamation of the Wildlife Board for taking big game;

(b) Untanned hides of legally taken big game may be purchased or sold only on the dates published in the proclamation of the Wildlife Board for taking big game;

(c) Inedible byproducts, excluding hides, antlers and horns, or legally possessed big game as provided in Subsection 23-20-3(1)(d), may be purchased or sold at any time;

(d) tanned hides of legally taken big game may be purchased or sold at any time; and

(e) shed antlers and horns may be purchased or sold at any time.

(2)(a) Protected wildlife that is obtained by the division by any means may be sold or donated at any time by the division or its agent.

(b) A person may purchase or receive protected wildlife from the division, which is sold or donated in accordance with Subsection (2)(a), at any time.

(3) A person selling or purchasing antlers, heads, horns or untanned hides shall keep transaction records stating:

(a) the name and address of the person who harvested the animal;

(b) the transaction date; and

(c) the permit number of the person who harvested the animal.

(4) Subsection (3) does not apply to scouting programs or other charitable organizations using untanned hides.

R657-5-22. Possession of Antlers and Horns.

(1) A person may possess antlers or horns or parts of antlers or horns only from:

(a) lawfully harvested big game;

(b) antlers or horns lawfully obtained as provided in Section R657-5-21; or

(c) shed antlers or shed horns.

(2)(a) A person may gather shed antlers or shed horns or parts of shed antlers or shed horns only during the shed antler and shed horn season published in the Bucks, Bulls, Once-in-a-Lifetime, Proclamation of the Wildlife Board for taking big game.

(b) No permit, license or Certificate or Registration is required to gather shed antlers and shed horns.

(3) "Shed antler" means an antler which:

(a) has been dropped naturally from a big game animal as part of its annual life cycle; and

(b) has a rounded base commonly known as the antler button or burr attached which signifies a natural life cycle

process.

(4) "Shed horn" means the sheath from the horn of a pronghorn that has been dropped naturally as part of its annual life cycle. No other big game species shed their horns naturally.

R657-5-23. Poaching-Reported Reward Permits.

(1) For purposes of this section, "successful prosecution" means the screening, filing of charges and subsequent adjudication for the poaching incident.

(2) Any person who provides information leading to another person's successful prosecution for wanton destruction of a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat, bison, bull elk, buck deer or buck pronghorn under Section 23-20-4 for any once-in-a-lifetime species or within any limited entry area may receive a permit from the division to hunt for the same species and on the same once-in-a-lifetime or limited entry area where the violation occurred, except as provided in Subsection (3).

(3)(a) In the event that issuance of a poaching-reported reward permit would exceed 5% of the total number of limited entry or once-in-a-lifetime permits issued in the following year for the respective area, a permit shall not be issued for that respective area. As an alternative, the division may issue a permit as outlined in Subsections (b) or (c).

(b) If the illegally taken animal is a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat or bison, a permit for an alternative species and an alternative once-in-a-lifetime or limited entry area that has been allocated more than 20 permits may be issued.

(c) If the illegally taken animal is a bull elk, buck deer or buck pronghorn, a permit for the same species on an alternative limited entry area that has been allocated more than 20 permits may be issued.

(4)(a) The division may issue only one poaching-reported reward permit for any one animal illegally taken.

(b) No more than one poaching-reported reward permit shall be issued to any one person per successful prosecution.

(c) No more than one poaching-reported reward permit per species shall be issued to any one person in any one calendar year.

(5)(a) Poaching-reported reward permits may only be issued to the person who provides the most pertinent information leading to a successful prosecution. Permits are not transferrable.

(b) If information is received from more than one person, the director of the division shall make a determination based on the facts of the case, as to which person provided the most pertinent information leading to the successful prosecution in the case.

(c) The person providing the most pertinent information shall qualify for the poaching-reported reward permit.

(6) Any person who receives a poaching-reported reward permit must be eligible to hunt and obtain big game permits as provided in all rules and regulations of the Wildlife Board and the Wildlife Resources Code.

R657-5-24. Application Process for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit, Once-In-A-Lifetime Permits and Management Bull Elk, and Application Process for General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Permits.

(1)(a) A person may obtain only one permit per species of big game, including premium limited entry, limited entry, cooperative wildlife management unit, once-in-a-lifetime, conservation, sportsman, landowner and general permits, except antlerless permits as provided in the Antlerless Addendum and permits as provided in Rule R657-42.

(b) Hunting with a permit where payment has not been received for that permit constitutes a violation of hunting

without a valid permit.

(c) A person who applies for, or obtains a permit must notify the division of any change in mailing address, residency, telephone number, and physical description.

(2) Applications are available from license agents, division offices, and through the division's Internet address.

(3) A resident may apply in the big game drawing for the following permits:

(a) only one of the following:

(i) buck deer - premium limited entry, limited entry and cooperative wildlife management unit;

(ii) bull elk - premium limited entry, limited entry and cooperative wildlife management unit; or

(iii) buck pronghorn - limited entry and cooperative wildlife management unit; and

(b) only one once-in-a-lifetime permit, including once-in-a-lifetime cooperative wildlife management unit permits, except as provided in Section R657-5-64(2)(b).

(4) A nonresident may apply in the big game drawing for the following permits:

(a) only one of the following:

(i) buck deer - premium limited entry and limited entry;

(ii) bull elk - premium limited entry and limited entry; or

(iii) buck pronghorn - limited entry; and

(b) only one once-in-a-lifetime permit.

(5) A resident or nonresident may apply in the big game drawing for:

(a)(i) a statewide general archery buck deer permit;

(ii) by region for general any weapon buck deer; or

(iii) by region for general muzzleloader buck deer.

(b) A youth may apply in the drawing as provided in Subsection (a) or Subsection R657-5-27(4), and for youth general any bull elk pursuant to Section R657-5-46.

(6) A person may not submit more than one application per species as provided in Subsections (3) and (4), and Subsection (5) in the big game drawing.

(7)(a) Applications must be mailed by the date prescribed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation may be rejected.

(b) If an error is found on an application, the applicant may be contacted for correction.

(8)(a) Late applications, received by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation, 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; and

(iii) re-evaluation of division or third-party errors.

(b) The nonrefundable 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 Bucks, Bulls and Once-In-A-Lifetime Proclamation shall not be processed and shall be returned to the applicant.

(9) 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.

(10) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Subsections R657-5-

27(4).

(12) To apply for a resident permit, a person must be a resident at the time of purchase.

(13) The posting date of the drawing shall be considered the purchase date of a permit.

R657-5-25. Fees for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit, Once-In-A-Lifetime and Management Bull Elk Permits, and for General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Permits.

(1) Each premium limited entry, limited entry, cooperative wildlife management unit and once-in-a-lifetime application must include:

(a) the highest permit fee of any permits applied for;

(b) a nonrefundable handling fee for one of the following permits:

(i) buck deer;

(ii) bull elk; or

(iii) buck pronghorn; and

(c) the nonrefundable handling fee for a once-in-a-lifetime permit; and

(d) the nonrefundable handling fee, if applying only for a bonus point.

(2) Each general buck deer and general muzzleloader elk application must include:

(a) the permit fee, which includes the nonrefundable handling fee; or

(b) the nonrefundable handling fee per species, if applying only for a preference point.

R657-5-26. Applying as a Group for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit, Once-In-A-Lifetime and Management Bull Elk Permits, and for General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Permits.

(1)(a) Up to four people may apply together for premium limited entry, limited entry, and resident cooperative wildlife management unit deer, elk or pronghorn permits in the big game drawing and in the antlerless drawing.

(b) People may not apply together for management bull elk permits in the big game drawing as provided in R657-5-71(2)(b).

(c) Up to two youth may apply together for youth general any bull elk permits in the big game drawing.

(d) Up to ten people may apply together for general deer permits in the big game drawing.

(e) Youth applicants who wish to participate in the youth general buck deer drawing process as provided in Subsection R657-5-27(4), or the youth antlerless drawing process as provided in Subsection R657-5-59(3), must not apply as part of a group.

(2)(a) Applicants must indicate the number of hunters in the group by filling in the appropriate box on each application form.

(b) If the appropriate box is not filled out with the number of hunters in the group, each hunter in that group shall be entered into the drawing as individual hunters, and not as a group.

(3) Group applicants must submit their applications together in the same envelope.

(4) Residents and nonresidents may apply together.

(5)(a) Group applications shall be processed as one single application.

(b) Any bonus points used for a group application, shall be averaged and rounded down.

(6) When applying as a group:

(a) if the group is successful in the drawing, then all applicants with valid applications in that group shall receive a

permit;

(b) if the group is rejected due to an error in fees and only one species is applied for, then the entire group is rejected;

(c) if the group is rejected due to an error in fees and more than one species is applied for, the group will be kept in the drawing for any species with sufficient fees, using the draw order; or

(d) if one or more members of the group are rejected due to an error other than fees, the members with valid applications will be kept in the drawing, unless the group indicates on the application that all members are to be rejected.

(i) The applicant whose application is on the top of all the applications for that group, will be designated the group leader.

(ii) If any group member has an error on their application that is not corrected during the correction process, the reject box on the group leader's application will determine whether the entire group is rejected.

R657-5-27. Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit, Once-In-A-Lifetime and Management Bull Elk Drawings, and General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Drawings.

(1)(a) Big game drawing results may be posted at the Lee Kay Center for Hunter Education, Cache Valley Hunter Education Center, division offices and on the division Internet address on the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) Applicants shall be notified by mail of draw results by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) Permits for the big game drawing shall be drawn in the following order:

(a) premium limited entry, limited entry and cooperative wildlife management unit buck deer;

(b) premium limited entry, limited entry and cooperative wildlife management unit bull elk;

(c) limited entry and cooperative wildlife management unit buck pronghorn;

(d) once-in-a-lifetime;

(e) youth general buck deer;

(f) general buck deer; and

(g) youth general any bull elk.

(3) Any person who draws one of the following permits is not eligible to draw a once-in-a-lifetime permit:

(a) a premium limited entry, limited entry or Cooperative Wildlife Management unit buck deer;

(b) a premium limited entry, limited entry, or Cooperative Wildlife Management unit elk; or

(c) a limited entry or Cooperative Wildlife Management unit buck pronghorn.

(4)(a) Fifteen percent of the general buck deer permits in each region are reserved for youth hunters.

(b) For purposes of this section, "youth" means any person 18 years of age or younger on the opening day of the general archery buck deer season.

(c) Youth hunters who wish to participate in the youth drawing must:

(i) submit an application in accordance with Section R657-5-24; and

(ii) not apply as a group.

(d) Youth applicants who apply for a general buck deer permit as provided in Subsection (c), will automatically be considered in the youth drawing based upon their birth date.

(e) Preference points shall be used when applying.

(f) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the general buck deer drawing.

(5) If any permits listed in Subsection (2)(a) through (2)(d) remain after the big game drawing after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

R657-5-28. Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit, Once-In-A-Lifetime and Management Bull Elk Application Refunds, and General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Application Refunds.

(1) Unsuccessful applicants who applied in the big game drawing with a check or money order will receive a refund in May.

(2)(a) Unsuccessful applicants who applied in the big game drawing with a credit or debit card will not be charged for a permit.

(b) Unsuccessful applicants who applied as a group will receive an equally distributed refund of money remaining after the successful applicants' permits are paid for.

(c) If group members have other financial arrangements between themselves, group members should be prepared to reallocate each group member's individual refunds among themselves.

(3) The handling fees are nonrefundable.

R657-5-29. Permits Remaining After the Drawing.

(1) Permits remaining after the big game drawing are sold only by mail or on a first-come, first-served basis beginning and ending on the dates provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-30. Waiting Periods for Deer.

(1) A person who obtained a premium limited entry buck, limited entry buck or cooperative wildlife management unit buck deer permit through the big game drawing process during the preceding two years may not apply in the big game drawing for any of these permits during the current year.

(2) A person who obtains a premium limited entry buck, limited entry buck or cooperative wildlife management unit buck deer permit through the big game drawing process, may not apply for any of these permits again for a period of two years.

(3) A waiting period does not apply to:

(a) general archery, general any weapon, general muzzleloader, antlerless deer, conservation, sportsman, poaching-reported reward and dedicated hunter limited entry deer permits; or

(b) cooperative wildlife management unit or limited entry landowner buck deer permits obtained through the landowner.

R657-5-31. Waiting Periods for Elk.

(1) A person who obtained a premium limited entry, limited entry, management bull elk or cooperative wildlife management unit bull elk permit through the big game drawing process during the preceding four years may not apply in the big game drawing for any of these permits during the current year.

(2) A person who obtains a premium limited entry, limited entry or cooperative wildlife management unit bull elk permit through the big game drawing, may not apply for any of these permits for a period of five years.

(3) A waiting period does not apply to:

(a) general archery, general any weapon, general muzzleloader, antlerless elk, cooperative wildlife management unit spike bull elk, conservation, sportsman, poaching-reported reward and dedicated hunter limited entry elk permits; or

(b) cooperative wildlife management unit or limited entry landowner bull elk permits obtained through the landowner.

(4) The waiting period imposed on a management bull elk permit will be removed if:

(a) the hunter complies with the mandatory reporting requirements in R657-5-71(6), and the animal harvested has five points or less on at least one antler.

R657-5-32. Waiting Periods for Pronghorn.

(1) A person who obtained a buck pronghorn permit through the big game drawing process in the preceding two years, may not apply in the big game drawing for a buck pronghorn permit during the current year.

(2) A person who obtains a buck pronghorn or cooperative wildlife management unit buck pronghorn permit through the big game drawing, may not apply for any of these permits for a period of two years.

(3) A waiting period does not apply to:

(a) doe pronghorn, pronghorn conservation, sportsman and poaching-reported reward permits; or

(b) cooperative wildlife management unit or limited entry landowner buck pronghorn permits obtained through the landowner.

R657-5-33. Waiting Periods for Antlerless Moose.

(1) A person who obtained an antlerless moose permit or a cooperative wildlife management unit antlerless moose permit through the antlerless drawing process during the preceding four years, may not apply for an antlerless moose permit during the current year.

(2) A person who obtains an antlerless moose permit or a cooperative wildlife management unit antlerless moose permit through the antlerless drawing process in the current year, may not apply for an antlerless moose permit for a period of five years.

(3) A waiting period does not apply to cooperative wildlife management unit antlerless moose permits obtained through the landowner.

R657-5-34. Waiting Periods for Once-In-A-Lifetime Species.

(1) Any person who has obtained a permit for any bull moose, bison, Rocky Mountain bighorn sheep, desert bighorn sheep, or Rocky Mountain goat may not apply for a once-in-a-lifetime permit for the same species in the big game drawing or sportsman permit drawing.

(2) A person who has been convicted of unlawfully taking a once-in-a-lifetime species may not apply for or obtain a permit for that species.

R657-5-35. Waiting Periods for Permits Obtained After the Drawing.

(1) Waiting periods provided in Sections R657-5-30 through R657-5-34 do not apply to the purchase of the remaining permits sold over the counter.

(2) However, waiting periods are incurred as a result of purchasing remaining permits after the drawing. Therefore, if a remaining permit is purchased in the current year, waiting periods will be in effect when applying in the drawing in following years.

R657-5-36. Waiting Periods for Cooperative Wildlife Management Unit Permits and Landowner Permits.

(1)(a) A waiting period or once-in-a-lifetime status does not apply to purchasing limited entry landowner or cooperative wildlife management unit permits obtained through a landowner, except as provided in Subsection (b).

(b) Waiting periods are incurred for the purpose of applying in the big game drawing as a result of obtaining a cooperative wildlife management unit bull moose permit through a landowner.

R657-5-37A. Bonus Point System.

(1) Bonus points are used to improve odds for drawing permits.

(2)(a) A bonus point is awarded for:

(i) each valid unsuccessful application when applying for limited entry permits in the big game or antlerless drawing; or

(ii) each valid application when applying for bonus points in the big game or antlerless drawing.

(b) Bonus points are awarded by species for:

(i) premium limited entry, limited entry and cooperative wildlife management unit buck deer;

(ii) premium limited entry, limited entry, management bull elk, and cooperative wildlife management unit bull elk;

(iii) limited entry and cooperative wildlife management unit buck pronghorn;

(iv) all once-in-a-lifetime species; and

(v) antlerless moose.

(3) A person may apply for a bonus point for:

(a) only one of the following species:

(i) buck deer - premium limited entry, limited entry and cooperative wildlife management unit;

(ii) bull elk - limited entry, management and cooperative wildlife management unit; or

(iii) buck pronghorn - limited entry and cooperative wildlife management unit;

(iv) antlerless moose, and

(b) only one once-in-a-lifetime, including once-in-a-lifetime cooperative wildlife management unit.

(4)(a) A person may not apply in the drawing for both a premium limited entry or limited entry bonus point and a premium limited entry or limited entry permit.

(b) A person may not apply in the drawing for a once-in-a-lifetime bonus point and a once-in-a-lifetime permit.

(c) A person may not apply in the drawing for an antlerless moose bonus point and an antlerless moose permit.

(d) A person may not apply for a bonus point if that person is ineligible to apply for a permit for the respective species.

(e) A person may only apply for bonus points in the big game and antlerless drawings.

(f) Group applications will not be accepted when applying for bonus points.

(5)(a) Fifty percent of the permits for each hunt unit and species will be reserved for applicants with bonus points.

(b) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points for each species.

(c) If reserved permits remain, the reserved permits will be designated by a random number to eligible applicants with the next greatest number of bonus points for each species.

(d) The procedure in Subsection (c) will continue until all reserved permits have been issued or no applications for that species remain.

(e) Any reserved permits remaining and any applicants who were not selected for reserved permits will be returned to the big game drawing.

(6)(a) Each applicant receives a random drawing number for:

(i) each species applied for; and

(ii) each bonus point for that species.

(7) Bonus points are forfeited if a person obtains a permit through the drawing for that bonus point species as provided in Subsection (2)(c), including any permit obtained after the drawing.

(8) Bonus points are not forfeited if:

(a) a person is successful in obtaining a conservation permit or sportsman permit;

(b) a person obtains a landowner or a cooperative wildlife management unit permit from a landowner; or

- (c) a person obtains a poaching-reported reward permit.
- (9) Bonus points may be reinstated if a hunter obtains a management bull elk permit and complies with R657-5-71(7).
- (10) Bonus points are not transferable.
- (11) Bonus points are averaged and rounded down when two or more applicants apply together on a group application.
- (12)(a) Bonus points are tracked using social security numbers or division-issued customer identification numbers.
- (b) The division shall retain paper copies of applications for three years prior to the current big game and antlerless drawings for the purpose of researching bonus point records.
- (c) The division shall retain electronic copies of applications from 1996 to the current big game 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.

R657-5-37B. Preference Point System.

- (1) Preference points are used in the big game and antlerless drawings to ensure that applicants who are unsuccessful in the drawing will have first preference in the next year's drawing.
- (2)(a) A preference point is awarded for:
 - (i) each valid unsuccessful application when applying for a general buck deer, antlerless deer, antlerless elk, or doe pronghorn permit; or
 - (ii) each valid application when applying only for a preference point in the big game or antlerless drawing.
- (b) Preference points are awarded by species for:
 - (i) general buck deer;
 - (ii) antlerless deer;
 - (iii) antlerless elk; and
 - (iv) doe pronghorn.
- (3)(a) A person may not apply in the drawing for both a preference point and permit for the species listed in (2)(b).
- (b) A person may not apply for a preference point if that person is ineligible to apply for a permit.
- (c) Preference points shall not be used when obtaining remaining permits after the big game or antlerless drawing.
- (4) Preference points are forfeited if a person obtains a general buck deer, antlerless deer, antlerless elk or doe pronghorn permit through the drawing.
- (5)(a) Preference points are not transferable.
- (b) Preference points shall only be applied to the big game and antlerless drawing.
- (6) Preference points are averaged and rounded down when two or more applicants apply together on a group application.
- (7)(a) Preference points are tracked using social security numbers or division-issued hunter identification numbers.
- (b) The division shall retain copies of paper applications for three years prior to the current big game and antlerless drawings for the purpose of researching preference point records.
- (c) The division shall retain copies of electronic applications from 2000 to the current big game drawing for the purpose of researching preference point records.
- (d) Any requests for researching an applicant's preference point records must be requested within the time frames provided in Subsection (b) and (c).
- (e) Any preference 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 preference points earned that are obtained by fraud or misrepresentation.

R657-5-38. General Archery Buck Deer Hunt.

- (1) The dates of the general archery buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.
 - (2) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer may use archery equipment to take:
 - (a) one buck deer statewide within a general hunt area published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game; or
 - (b) a deer of hunter's choice within the Wasatch Front or Uintah Basin extended archery area as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.
 - (c) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.
 - (d) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may not hunt within premium limited entry deer and limited entry deer areas, except Crawford Mountain.
 - (3)(a) A person who obtains a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may hunt within the Wasatch Front, Ogden or the Uintah Basin extended archery areas during the extended archery area seasons as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game and as provided in Subsection (b).
 - (b) A person must complete the Archery Ethics Course annually to hunt the Wasatch Front, Ogden or Uintah Basin extended archery areas during the extended archery season.
 - (c) A person must possess an Archery Ethics Course Certificate of Completion while hunting.
 - (4) A person who has obtained a general archery deer permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer.
 - (5)(a) Any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt the statewide general archery, or by region the general any weapon and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-8 through R657-5-12, respectively, for each respective season, provided that person obtains a general any weapon or general muzzleloader deer permit for a specified region.
 - (b) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the statewide general archery deer season and the extended archery season as provided Section R657-5-38(3).
 - (6) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Archers are cautioned to study rifle hunt tables and identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.
- #### **R657-5-39. General Any Weapon Buck Deer Hunt.**
- (1) The dates for the general any weapon buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.
 - (2)(a) A person who has obtained a general any weapon buck permit may use any legal weapon to take one buck deer within the hunt area specified on the permit as published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person who has obtained a general any weapon buck deer permit, or any other permit which allows that person to hunt general any weapon buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(c) A person who has obtained a general any weapon buck deer permit, or any other permit which allows that person to hunt general any weapon buck deer, may not hunt within premium limited entry deer and limited entry deer areas, except Crawford Mountain.

(3) A person who has obtained a general any weapon buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except:

(a) antlerless deer; and

(b) any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt the general archery, general any weapon and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-8 through R657-5-12, respectively, for each respective season.

(i) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the statewide general archery deer season and the extended archery season as provided Section R657-5-38(3).

R657-5-40. General Muzzleloader Buck Deer Hunt.

(1) The dates for the general muzzleloader buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general muzzleloader buck permit may use a muzzleloader to take one buck deer within the general hunt area specified on the permit as published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person who has obtained a general muzzleloader buck deer permit, or any other permit which allows that person to hunt general muzzleloader buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(c) A person who has obtained a general muzzleloader buck deer permit, or any other permit which allows that person to hunt general muzzleloader buck deer, may not hunt within premium limited entry deer and limited entry deer areas, except Crawford Mountain.

(3) A person who has obtained a general muzzleloader deer permit may not hunt during any other deer hunt or obtain any other deer permit, except:

(a) antlerless deer; and

(b) any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt the general archery, general any weapon and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-8 through R657-5-12, respectively, for each respective season.

(i) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the statewide general archery deer season and the extended archery season as provided Section R657-5-38(3).

(4) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Muzzleloader hunters are cautioned to study the rifle hunt tables to identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-41. Limited Entry Buck Deer Hunts.

(1) To hunt in a premium limited entry or limited entry area, hunters must obtain the respective limited entry buck permit. Limited entry areas are not open to general archery buck, general any weapon buck, or general muzzleloader buck hunting, except as specified in the Bucks, Bulls and Once-In-A-

Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A limited entry buck deer permit allows a person using the prescribed legal weapon, to take one buck deer within the area and season specified on the permit, except deer cooperative wildlife management units located within the limited entry unit.

(3)(a) A person who has obtained a premium limited entry, limited entry, or cooperative wildlife management unit buck deer permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a buck deer.

(b) Limited entry and cooperative wildlife management unit buck deer permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(4) A person who has obtained a limited entry buck permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer.

R657-5-42. Antlerless Deer Hunts.

(1) To hunt an antlerless deer, a hunter must obtain an antlerless deer permit.

(2)(a) An antlerless deer permit allows a person to take one antlerless deer, per antlerless deer tag, using any legal weapon within the area and season as specified on the permit and in the antlerless addendum.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless deer permit for a cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained an antlerless deer permit may not hunt during any other antlerless deer hunt or obtain any other antlerless deer permit.

(4)(a) A person who obtains an antlerless deer permit and any of the permits listed in Subsection (b) may use the antlerless deer permit during the established season for the antlerless deer permit and during the established season for the permits listed in Subsection (b) provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used if hunting with an archery permit;

(iii) the appropriate muzzleloader equipment is used if hunting with a muzzleloader permit.

(b)(i) General archery deer;

(ii) general muzzleloader deer;

(iii) limited entry archery deer; or

(iv) limited entry muzzleloader deer.

R657-5-43. General Archery Elk Hunt.

(1) The dates of the general archery elk hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general archery elk permit may use archery equipment to take:

(i) one elk of hunter's choice on a general any bull elk unit, except on elk cooperative wildlife management units;

(ii) an antlerless elk or spike bull elk on a general spike bull elk unit, except on elk cooperative wildlife management units and the Plateau, Fish Lake-Thousand Lakes;

(iii) only a spike bull elk on the Plateau, Fish Lake-Thousand Lakes; or

(iv) one elk of hunter's choice on the Wasatch Front or Uintah Basin extended archery areas as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3)(a) A person who obtains a general archery elk permit may hunt within the Wasatch Front, Uintah Basin, Nebo-West Desert, and Sanpete Valley extended archery areas during the extended archery area seasons as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game and as provided in Subsection (b).

(b) A person must complete the Archery Ethics Course annually to hunt the extended archery areas during the extended archery season.

(c) A person must possess an Archery Ethics Course Certificate of Completion while hunting.

(4) A person who has obtained an archery elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-48(3).

(5) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Archers are cautioned to study the rifle hunt tables to identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-44. General Season Bull Elk Hunt.

(1) The dates for the general season bull elk hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game within general season elk units, except in the following areas:

- (a) Salt Lake County south of I-80 and east of I-15; and
- (b) elk cooperative wildlife management units.

(2)(a) A person may purchase either a spike bull permit or an any bull permit.

(b) A person who has obtained a general season spike bull elk permit may take a spike bull elk on a general season spike bull elk unit. Any bull units are closed to spike bull permittees.

(c) A person who has obtained a general season any bull elk permit may take any bull elk, including a spike bull elk on a general season any bull elk unit. Spike bull units are closed to any bull permittees.

(3) A person who has obtained a general season bull elk permit may use any legal weapon to take a spike bull or any bull elk as specified on the permit.

(4) A person who has obtained a general season bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-48(3).

R657-5-45. General Muzzleloader Elk Hunt.

(1) The dates of the general muzzleloader elk hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game within the general season elk units, except in the following closed areas:

- (a) Salt Lake County south of I-80 and east of I-15; and
- (b) elk cooperative wildlife management units.

(2)(a) General muzzleloader elk hunters may purchase either a spike bull elk permit or an any bull elk permit.

(b) A person who has obtained a general muzzleloader spike bull elk permit may use a muzzleloader take a spike bull elk on an any general spike bull elk unit. Any bull units are closed to spike bull muzzleloader permittees.

(c) A person who has obtained a general muzzleloader any bull elk permit may use a muzzleloader take any bull elk on an any bull elk unit. Spike bull units are closed to any bull muzzleloader permittees.

(3) A person who has obtained a general muzzleloader elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-48(3).

R657-5-46. Youth General Any Bull Elk Hunt.

(1)(a) For purposes of this section "youth" means any person 18 years of age or younger on the opening day of the youth any bull elk season published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A youth may apply for or obtain a youth any bull elk permit.

(c) A youth may only obtain a youth any bull elk permit once during their youth.

(2) The youth any bull elk hunting season and areas are published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3)(a) A youth who has obtained a youth general any bull elk permit may take any bull elk, including a spike bull elk, on a general any bull elk unit. Spike bull elk units are closed to youth general any bull elk permittees.

(b) A youth who has obtained a youth general any bull elk permit may use any legal weapon to take any bull elk as specified on the permit.

(4) A youth who has obtained a youth general any bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Section R657-5-48(3).

(5) Preference points shall not be awarded or utilized when applying for, or in obtaining, youth general any bull elk permits.

R657-5-47. Premium Limited Entry and Limited Entry Bull Elk Hunts.

(1) To hunt in a premium limited entry or limited entry bull elk area, a hunter must obtain the respective premium limited entry or limited entry elk permit.

(2)(a) A premium limited entry bull elk permit allows a person, using the prescribed legal weapon, to take one bull elk within the area and to hunt all limited entry bull elk seasons specified in the hunt tables, published in the proclamation of the Wildlife Board for taking big game, for the area specified on the permit, except elk cooperative wildlife management units located within a premium limited entry unit. Spike bull elk restrictions do not apply to premium limited entry elk permittees.

(b) A limited entry bull elk permit allows a person, using the prescribed legal weapon, to take one bull elk within the area and season specified on the permit, except elk cooperative wildlife management units located within a limited entry unit. Spike bull elk restrictions do not apply to limited entry elk permittees.

(3)(a) A person who has obtained a premium limited entry, limited entry or cooperative wildlife management unit bull elk permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bull elk.

(b) Limited entry and cooperative wildlife management unit bull elk permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(4) A person who has obtained a premium limited entry or limited entry bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsections (4)(a) and R657-5-48(3).

R657-5-48. Antlerless Elk Hunts.

(1) To hunt an antlerless elk, a hunter must obtain an antlerless elk permit.

(2)(a) An antlerless elk permit allows a person to take one antlerless elk using any legal weapon within the area and season

as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless elk permit for a cooperative wildlife management unit as specified on the permit.

(3)(a) A person may obtain two elk permits each year, provided one or both of the elk permits is an antlerless elk permit.

(b) For the purposes of obtaining two elk permits, a hunter's choice elk permit may not be considered an antlerless elk permit.

(4)(a) A person who obtains an antlerless elk permit and any of the permits listed in Subsection (b) may use the antlerless elk permit during the established season for the antlerless elk permit and during the established season for the permits listed in Subsection (b) provided:

- (i) the permits are both valid for the same area;
 - (ii) the appropriate archery equipment is used if hunting with an archery permit;
 - (iii) the appropriate muzzleloader equipment is used if hunting with a muzzleloader permit.
- (b)(i) General archery deer;
- (ii) general archery elk;
- (iii) general muzzleloader deer;
- (iv) general muzzleloader elk;
- (v) limited entry archery deer;
- (vi) limited entry archery elk;
- (vii) limited entry muzzleloader deer; or
- (viii) limited entry muzzleloader elk.

R657-5-49. Buck Pronghorn Hunts.

(1) To hunt buck pronghorn, a hunter must obtain a buck pronghorn permit.

(2) A person who has obtained a buck pronghorn permit may not obtain any other pronghorn permit or hunt during any other pronghorn hunt.

(3)(a) A person who has obtained a limited entry or cooperative wildlife management unit buck pronghorn permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a buck pronghorn.

(b) Limited entry and cooperative wildlife management unit buck pronghorn permit holders must report hunt information by telephone, or through the Division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(4) A buck pronghorn permit allows a person using any legal weapon to take one buck pronghorn within the area and season specified on the permit, except during the buck pronghorn archery hunt when only archery equipment may be used and on buck pronghorn cooperative wildlife management unit located within a limited entry unit.

R657-5-50. Doe Pronghorn Hunts.

(1) To hunt a doe pronghorn, a hunter must obtain a doe pronghorn permit.

(2)(a) A doe pronghorn permit allows a person to take one doe pronghorn, per doe pronghorn tag, using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife

management units unless that person obtains an antlerless moose permit for a cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained a doe pronghorn permit may not hunt during any other pronghorn hunt or obtain any other pronghorn permit.

R657-5-51. Antlerless Moose Hunts.

(1) To hunt an antlerless moose, a hunter must obtain an antlerless moose permit.

(2)(a) An antlerless moose permit allows a person to take one antlerless moose using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management unit unless that person obtains an antlerless moose cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained an antlerless moose permit may not hunt during any other moose hunt or obtain any other moose permit.

R657-5-52. Bull Moose Hunts.

(1) To hunt bull moose, a hunter must obtain a bull moose permit.

(2) A person who has obtained a bull moose permit may not obtain any other moose permit or hunt during any other moose hunt.

(3) A bull moose permit allows a person using any legal weapon to take one bull moose within the area and season specified on the permit, except in bull moose cooperative wildlife management units located within a limited entry unit.

(4)(a) A person who has obtained a bull moose permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bull moose.

(b) Bull moose permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

R657-5-53. Bison Hunts.

(1) To hunt bison, a hunter must obtain a bison permit.

(2) A person who has obtained a bison permit may not obtain any other bison permit or hunt during any other bison hunt.

(3) The bison permit allows a person using any legal weapon to take a bison of either sex within the area and season as specified on the permit.

(4)(a) An orientation course is required for bison hunters who draw a an Antelope Island bison permit. Hunters shall be notified of the orientation date, time and location.

(b) The Antelope Island hunt is administered by the Division of Parks and Recreation.

(5) A Henry Mountain cow bison permit allows a person to take one cow bison using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(6) An orientation course is required for bison hunters who draw Henry Mountain cow bison permits. Hunters will be notified of the orientation date, time and location.

(7)(a) A person who has obtained a bison permit must report hunt information within 30 calendar days after the end of

the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bison.

(b) Bison permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

R657-5-54. Desert Bighorn and Rocky Mountain Bighorn Sheep Hunts.

(1) To hunt desert bighorn sheep or Rocky Mountain bighorn sheep, a hunter must obtain the respective permit.

(2) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit may not obtain any other desert bighorn sheep or Rocky Mountain bighorn sheep permit or hunt during any other desert bighorn sheep or Rocky Mountain bighorn sheep hunt.

(3) Desert bighorn sheep and Rocky Mountain big horn sheep permits are considered separate once-in-a-lifetime hunting opportunities.

(4)(a) The desert bighorn sheep permit allows a person using any legal weapon to take one desert bighorn ram within the area and season specified on the permit.

(b) The Rocky Mountain sheep permit allows a person using any legal weapon to take one Rocky Mountain bighorn ram within the area and season specified on the permit.

(5) The permittee may attend a hunter orientation course. The division provides each permittee with the time and location of the course.

(6) All bighorn sheep hunters are encouraged to have a spotting scope with a minimum of 15 power while hunting bighorn sheep. Any ram may be legally taken, however, permittees are encouraged to take a mature ram. The terrain inhabited by bighorn sheep is extremely rugged, making this hunt extremely strenuous.

(7) Successful hunters must deliver the horns of the bighorn sheep to a division office within 72 hours of leaving the hunting area. A numbered seal will be permanently affixed to the horn indicating legal harvest.

(8)(a) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a desert bighorn sheep or Rocky Mountain bighorn sheep.

(b) Desert bighorn sheep or Rocky Mountain bighorn sheep permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

R657-5-55. Rocky Mountain Goat Hunts.

(1) To hunt Rocky Mountain goat, a hunter must obtain a Rocky Mountain goat permit.

(2) A person who has obtained a Rocky Mountain goat permit may not obtain any other Rocky Mountain goat permit or hunt during any other Rocky Mountain goat hunt.

(3) A Rocky Mountain goat of either sex may be legally taken on a hunter's choice permit. Permittees are encouraged to take a mature goat. A mature goat is a goat older than two years of age, as determined by counting the annual rings on the horn.

(4) The goat permit allows a person using any legal weapon to take one goat within the area and season specified on the permit.

(5) All goat hunters are encouraged to have a spotting scope with a minimum of 15 power while hunting goats. The terrain inhabited by Rocky Mountain goat is extremely rugged making this hunt extremely strenuous. The goat's pelage may be higher quality later in the hunting season.

(6) A female-goat only permit allows a person to take one female-goat using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(7) An orientation course is required for Rocky Mountain goat hunters who draw female-goat only permits. Hunters will be notified of the orientation date, time and location.

(8)(a) A person who has obtained a Rocky Mountain goat permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a Rocky Mountain goat.

(b) Rocky Mountain goat permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

R657-5-56. Depredation Hunter Pool Permits.

When deer, elk or pronghorn are causing damage, antlerless control hunts not listed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be held as provided in Rule R657-44. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

R657-5-57. Antlerless Application - Deadlines.

(1) Applications are available from license agents, division offices, and through the division's Internet address.

(2) Residents may apply for, and draw the following permits, except as provided in Subsection (5):

- (a) antlerless deer;
- (b) antlerless elk;
- (c) doe pronghorn; and
- (d) antlerless moose.

(3) Nonresidents may apply in the drawing for, and draw the following permits, except as provided in Subsection (5):

- (a) antlerless deer;
- (b) antlerless elk;
- (c) doe pronghorn; and
- (d) antlerless moose, if permits are available during the current year.

(4) A youth may apply in the antlerless drawing as provided in Subsection (3) or Subsection R657-5-59(3).

(5) Any person who has obtained a pronghorn permit, or a moose permit may not apply for a doe pronghorn permit or antlerless moose permit, respectively, except as provided in Section R657-5-61.

(6) A person may not submit more than one application in the antlerless drawing per each species as provided in Subsections (2) and (3).

(7) 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 Subsection R657-5-59(4) and Section R657-5-61.

(8)(a) Applications must be mailed by the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the Antlerless Addendum to the Bucks,

Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be rejected.

(b) If an error is found on an application, the applicant may be contacted for correction.

(9)(a) Late applications, received by the date published in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation, will not be considered in the drawing, but will be processed for the purpose of entering data into the division's draw data base to provide:

(i) future preprinted applications;

(ii) notification by mail of late application and other draw opportunities; and

(iii) re-evaluation of division or third-party errors.

(b) The nonrefundable 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 Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation shall not be processed and shall be returned to the applicant.

(10) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get written permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.

(11) To apply for a resident permit, a person must establish residency at the time of purchase.

(12) The posting date of the drawing shall be considered the purchase date of a permit.

R657-5-58. Fees for Antlerless Applications.

Each application must include the permit fee and a nonrefundable handling fee for each species applied for, except when applying with a credit or debit card, the permit fees and handling fees must be paid pursuant to Rule R657-42-8(5).

R657-5-59. Antlerless Big Game Drawing.

(1) The antlerless drawing results may be posted at the Lee Kay Center, Cache Valley Hunter Education Center, division offices and on the division Internet address on the date published in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) Permits are drawn in the order listed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3)(a) Twenty percent of the antlerless deer, elk and doe pronghorn permits are reserved for youth hunters.

(b) For purposes of this section, "youth" means any person 18 years of age or younger on the opening day of the general archery buck deer season.

(c) Youth hunters who wish to participate in the youth drawing must:

(i) submit an application in accordance with Section R657-5-57; and

(ii) not apply as a group.

(d) Youth applicants who apply for an antlerless deer, elk, or doe pronghorn permit as provided in Subsection (c), will automatically be considered in the youth drawing based upon their birth date.

(e) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the antlerless drawing.

(4) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

R657-5-60. Antlerless Application Refunds.

(1) Unsuccessful applicants, who applied with a check or money order will receive a refund in August.

(2)(a) Unsuccessful applicants, who applied with a credit or debit card, will not be charged for a permit.

(b) Unsuccessful applicants, who applied as a group, will receive an equally distributed refund of money remaining after the successful applicants' permits are paid for in accordance with Section R657-5-26(6).

(3) The handling fees are nonrefundable.

R657-5-61. Over-the-Counter Permit Sales After the Antlerless Drawing.

Permits remaining after the drawing will be sold beginning on the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game on a first-come, first-served basis from division offices, through participating online license agents, and through the mail.

R657-5-62. Application Withdrawal or Amendment.

(1)(a) An applicant may withdraw their application for premium limited entry, limited entry, cooperative wildlife management unit, once-in-a-lifetime and management bull elk, and general buck deer and general muzzleloader elk permits from the big game drawing, or antlerless drawing provided a written request for such is received by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(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 big game.

(c) Handling fees will not be refunded.

(2)(a) An applicant may amend their application for the premium limited entry, limited entry, cooperative wildlife management unit and once-in-a-lifetime, and general buck deer and general muzzleloader elk permits from the big game drawing, or antlerless drawing provided a written request for such is received by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(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 big game.

(c) The applicant must identify in their statement the requested amendment to their application.

(d) Handling fees will not be refunded.

(e) An amendment may cause rejection if the amendment causes an error on the application.

R657-5-63. Special Hunts.

(1)(a) In the event that wildlife management objectives are not being met for once-in-a-lifetime, premium limited entry, or limited entry species, the division may recommend that the Wildlife Board authorize a special hunt for a specific species.

(b) The division will only utilize Subsection (1)(a) if the Bucks, Bulls and Once-In-A-Lifetime Proclamation and Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game has been published and the Bucks, Bulls and Once-In-A-Lifetime and Antlerless drawings have been completed.

(2) The special hunt season dates, areas, number of permits, methods of take, requirements and other administrative details shall be provided in an addendum to the Bucks, Bulls

and Once-In-A-Lifetime Proclamation or Antlerless Addendum of the Wildlife Board for taking big game.

(3) Permits will be allocated through a special drawing for the pertinent species.

R657-5-64. Special Hunt Application - Deadlines.

(1) Applications are available from license agents and division offices.

(2)(a) Residents and nonresidents may apply.

(b) Any person who was unsuccessful in the Bucks, Bulls and Once-In-A-Lifetime or Antlerless drawing may apply. However, any person who has obtained a permit may not apply, unless otherwise provided in this rule and the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3)(a) Applications must be mailed by the date prescribed in the addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum of the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be rejected. Late applications will be returned unopened.

(b) If an error is found on an application, the applicant may be contacted for correction.

(4) Bonus points will be used in the special hunt drawings to improve odds for drawing permits as provided in Section R657-5-37. However, bonus points will not be awarded for unsuccessful applications in the special hunt drawings.

(5) Any person who obtains a special hunt permit is subject to all rules and regulations provided in this rule, the Bucks, Bulls and Once-In-A-Lifetime Proclamation and Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game, unless otherwise provided in Sections R657-5-63 through R657-5-68.

R657-5-65. Fees for Special Hunt Applications.

(1) Each application must include:

(a) the permit fee for the species applied for; and

(b) a nonrefundable handling fee.

(2)(a) Personal checks, money orders, cashier's checks and credit or debit cards are accepted from residents.

(b) Money orders, cashier's checks and credit or debit cards are accepted from nonresidents. Personal checks are not accepted from nonresidents.

(3)(a) Credit or debit cards must be valid at least 30 calendar days after the drawing results are posted.

(b) If applicants are applying as a group, all fees for all applicants in that group must be charged to one credit or debit card.

(c) Handling fees are charged to the credit or debit card when the application is processed. Permit fees are charged after the drawing, if successful.

(d) Payments to correct an invalid or refused credit or debit card must be made with a cashier's check or money order for the full amount of the application fees plus any permits requested.

(4) An application is voidable if the check is returned unpaid from the bank or the credit or debit card is invalid or refused.

R657-5-66. Special Hunt Drawing.

(1) The special hunt drawing results may be posted at the Lee Kay Center, Cache Valley Hunter Education Center and division offices on the date published in the addendum to the

Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

R657-5-67. Special Hunt Application Refunds.

(1) Unsuccessful applicants, who applied on the initial drawing and who applied with a check or money order will receive a refund within six weeks after posting of the drawing results.

(2) Unsuccessful applicants, who applied with a credit or debit card, will not be charged for a permit.

(3) The handling fees are nonrefundable.

R657-5-68. Permits Remaining After the Special Hunt Drawing.

Permits remaining after the special hunt drawing may be sold by mail or on a first-come, first-served basis as provided in the addendum to the Bucks, Bulls and Once-In-A-Lifetime or Antlerless Addendum of the Wildlife Board for taking big game. These permits may be purchased by either residents or nonresidents.

R657-5-69. Carcass Importation.

(1) It is unlawful to import dead elk, mule deer, or white-tailed deer or their parts from the areas of any state, province, game management unit, equivalent wildlife management unit, or county, which has deer or elk diagnosed with Chronic Wasting Disease, except the following portions of the carcass:

(a) meat that is cut and wrapped either commercially or privately;

(b) quarters or other portion of meat with no part of the spinal column or head attached;

(c) meat that is boned out;

(d) hides with no heads attached;

(e) skull plates with antlers attached that have been cleaned of all meat and tissue;

(f) antlers with no meat or tissue attached;

(g) upper canine teeth, also known as buglers, whistlers, or ivories; or

(h) finished taxidermy heads.

(2)(a) The affected states, provinces, game management units, equivalent wildlife management units, or counties, which have deer or elk diagnosed with Chronic Wasting Disease shall be available at division offices and through the division's Internet address.

(b) Importation of harvested elk, mule deer or white-tailed deer or their parts from the affected areas are hereby restricted pursuant to Subsection (1).

(3) Nonresidents of Utah transporting harvested elk, mule deer, or white-tailed deer from the affected areas are exempt if they:

(a) do not leave any part of the harvested animal in Utah and do not stay more than 24 hours in the state of Utah;

(b) do not have their deer or elk processed in Utah; or

(c) do not leave any parts of the carcass in Utah.

R657-5-70. Chronic Wasting Disease - Infected Animals.

(1) Any person who under the authority of a permit issued by the division legally takes a deer or elk that is later confirmed to be infected with Chronic Wasting Disease may:

(a) retain the entire carcass of the animal;

(b) retain any parts of the carcass, including antlers, and surrender the remainder to the division for proper disposal; or

(c) surrender all portions of the carcass in their actual or

constructive possession, including antlers, to the division and receive a free new permit the following year for the same hunt.

(2) The new permit issued pursuant to Subsection (1)(c) shall be for the same species, sex, weapon type, unit, region, and otherwise subject to all the restrictions and conditions imposed on the original permit, except season dates for the permit shall follow the proclamation of the Wildlife Board for taking big game published in the year the new permit is valid.

(3) Notwithstanding other rules to the contrary, private landowners and landowner associations may refuse access to private property to persons possessing new permits issued under Subsection (1)(c).

R657-5-71. Management Bull Elk Hunt.

(1)(a) For the purposes of this section "management bull" means any bull elk with 5 points or less on at least one antler. A point means a projection longer than one inch, measured from its base to its tip.

(b) For purposes of this section "youth" means any person 18 years of age or younger on the opening day of the management bull elk archery season published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(c) For the purposes of this section "senior" means any person 65 years of age or older on the opening day of the management bull elk archery season published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2)(a) Management bull elk permits shall be distributed through the division's big game drawing. Thirty percent of the permits are allocated to youth, 30 percent to seniors and the remaining 40 percent to hunters of all ages.

(b) Group application shall not be accepted in the division's big game drawing for management bull elk permits.

(3) Waiting periods as provided in R657-5-31 are incurred as a result of obtaining management bull elk permits, except as provided in Subsection (7).

(4)(a) Bonus points shall be awarded when an applicant is unsuccessful in obtaining a management bull elk permit in the big game drawing.

(b) Bonus points shall be expended when an applicant is successful in obtaining a management bull elk permit in the big game drawing, except as provided in Subsection (7).

(5) Management bull elk permit holders may take one management bull elk during the season, on the area and with the weapon type specified on the permit. Management bull elk hunting seasons, areas and weapon types are published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(6)(a) A person who has obtained a management bull elk permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a management bull elk.

(b) Management bull elk permit holders must report hunt information by telephone, or through the division's Internet address.

(7)(a) Management bull elk permit holders who successfully harvest a management bull elk, as defined in Subsection (1)(a), and have their animal inspected by the division, will have their bonus points reinstated and waiting period for limited bull elk removed.

(b) Successful hunters must deliver the head and antlers of the elk they harvest to a division office for inspection within 72 hours of leaving the hunting area.

(8) Management bull elk permit holders may not retain possession of any harvested bull elk that fails to satisfy the definition requirements in Subsection (1)(a).

(9) A person who has obtained a management bull elk

permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Section R657-5-48(3).

R657-5-72. General Any Weapon Buck Deer and Bull Elk Combination Hunt.

(1) Permit numbers, season dates and unit boundary descriptions for the general any weapon buck deer and bull elk combination hunt shall be established in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A person who obtains a general any weapon buck deer and bull elk combination permit may use any legal weapon to take one buck deer and one bull elk during the season and within the unit specified on the permit.

(a) A general any weapon buck deer and bull elk combination permit does not authorize the holder to hunt deer or elk within any cooperative wildlife management unit.

(3) A person who has obtained a general any weapon buck deer and bull elk combination permit may not hunt during any other deer or elk hunt or obtain any other deer or elk permit, except:

(a) antlerless deer, as provided in Subsection R657-5-42, and

(b) antlerless elk, as provided in Subsection R657-5-48.

(4)(a) Lifetime license holders may obtain a general any weapon buck deer and bull elk combination permit.

(b) Upon obtaining a general any weapon buck deer and bull elk combination permit, the lifetime license holder foregoes any rights to receive a buck deer permit for the general archery, general any weapon or general muzzleloader deer hunts as provided in Section 23-19-17.5.

(c) A refund or credit is not issued for the general archery, general any weapon or general muzzleloader deer permit.

KEY: wildlife, game laws, big game seasons

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23-14-18

23-14-19

23-16-5

23-16-6

R657. Natural Resources, Wildlife Resources.**R657-17. Lifetime Hunting and Fishing License.****R657-17-1. Purpose and Authority.**

(1) Under authority of Section 23-19-17.5, this rule provides the requirements and procedures applicable to lifetime hunting and fishing licenses.

(2) In addition to the provisions of this rule, a lifetime licensee is subject to:

(a) the provisions set forth in Title 23, Wildlife Resources Code of Utah; and

(b) the rules and proclamations of the Wildlife Board, including all requirements for special hunting and fishing permits and tags.

(3) Unless specifically stated otherwise, lifetime licensees shall be subject to any amendment to this rule or any amendment to Section 23-19-17.5.

R657-17-2. Definitions.

Terms used in this rule are defined in Section 23-13-2 and Rule R657-5.

R657-17-3. Lifetime License Entitlement.

(1)(a) A permanent lifetime license card shall be issued to lifetime licensees in lieu of an annual small game, and fishing license.

(b) The issuance of a permanent lifetime license card does not authorize a lifetime licensee to all hunting privileges. The lifetime licensee is subject to the requirements as provided in Subsection R657-17-1(2).

(2) Each year, a lifetime licensee who is eligible to hunt big game may receive without charge, a permit and tag for the region of their choice for one of the following general deer hunts:

- (i) archery buck deer;
- (ii) any weapon buck deer; or
- (iii) muzzleloader buck deer.

(3) Sales of lifetime hunting and fishing licenses may not be refunded, except as provided in Section 23-19-38.

(4) Lifetime hunting and fishing licenses are not transferable.

(5) Lifetime hunting and fishing licenses are no longer for sale as of March 1, 1994.

(6)(a) Lifetime license holders may participate in the Dedicated Hunter Program.

(b) Upon entering the Dedicated Hunter Program, the lifetime license holder agrees to forego any rights to receive a buck deer permit for the general archery, general season or general muzzleloader deer hunts as provided in Section 23-19-17.5 during enrollment in the Dedicated Hunter Program.

(7)(a) Lifetime license holders may obtain a general any weapon buck deer and bull elk combination permit.

(b) Upon obtaining a general any weapon buck deer and bull elk combination permit, the lifetime license holder foregoes any rights to receive a buck deer permit for the general archery, general any weapon or general muzzleloader deer hunts as provided in Section 23-19-17.5 during the year the general any weapon buck deer and bull elk combination permit is valid.

R657-17-4. General Deer Permits and Tags.

(1)(a) The division shall send a reminder postcard to each lifetime licensee, who is eligible to hunt big game, prior to the beginning of the annual bucks, bulls and once-in-a-lifetime application period as prescribed in the proclamation of the Wildlife Board for taking big game.

(b) The lifetime licensee shall, prior to the end of the annual bucks, bulls and once-in-a-lifetime application period:

- (i) complete and submit an online Lifetime Questionnaire through the division's web site; or
- (ii) complete and submit a paper Lifetime Questionnaire to

the address indicated on the questionnaire.

(iii) Blank questionnaires are available online at the division's web site or from any division office.

(2)(a) Except as provided in Subsection (e) and Subsection (f), the division may not issue a permit to any lifetime licensee who was given reasonable notice of the deadline as provided in Subsection (1)(b) and fails to submit a complete and accurate Lifetime Questionnaire to the division.

(b) If an error is found on the Lifetime Questionnaire, submitted online or through the mail, the lifetime licensee may receive a correction letter. Corrections by the lifetime licensee can only be made using the personalized and numbered correction letter. Corrections must be mailed to the address on the correction letter and received no later than the date indicated on the letter. The opportunity to correct an error is not guaranteed.

(c) The division reserves the right to:

- (i) contact the lifetime licensee to correct the error; or
- (ii) correct the lifetime licensee's choice of general deer permits without sending a correction letter.

(d) If the division is unable to contact the lifetime licensee and correct the error, the lifetime licensee may not receive a permit, except as provided in Subsection (f).

(e) The director or his designee may issue a permit to a lifetime licensee who did not receive reasonable notice of the deadline as provided in Subsection (1)(a).

(f) If a lifetime licensee fails to submit a Lifetime Questionnaire by the deadline as provided in Subsection (1)(b), the lifetime licensee may obtain an available general deer permit on the date these permits are made available over-the-counter to the general public.

(3) As used in this section "reasonable notice" means that a reminder postcard was sent within a reasonable time before the deadline as provided in Subsection (1)(b) to the most recent address given to the division by the lifetime licensee.

(4) Lifetime licensees shall receive a letter from the division confirming the information received on the Lifetime Questionnaire.

(5) Lifetime licensees must notify the division of any change of mailing address, residency, address, telephone number, physical description, or driver's license number.

(6)(a) Lifetime licensees may apply for or obtain general deer preference points or permits through the big game general buck deer drawing as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game, provided the lifetime licensee waives their choice of general deer permits as provided in Subsection R657-17-3(2) and the region in which the lifetime licensee chooses to hunt.

(b) If a lifetime licensee applies for and does not obtain a general deer permit through the big game general buck deer drawing, the lifetime licensee may only obtain an available general deer permit on the date these permits are made available over-the-counter to the general public.

R657-17-5. Applying for Limited Entry Permits in the Bucks, Bulls and Once-In-A-Lifetime Drawing.

(1) A lifetime licensee may apply for a limited entry permit offered through the bucks, bulls and once-in-a-lifetime drawing using a bucks, bulls and once-in-a-lifetime application published by the division.

(2) Limited entry permit species and application procedures are provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(3)(a) If the lifetime licensee applies for and is successful in obtaining a premium limited entry, limited entry, or cooperative wildlife management unit buck deer permit in the bucks, bulls and once-in-a-lifetime drawing, a general deer permit will not be issued.

(b) If the lifetime licensee does not draw a premium

limited entry, limited entry, or cooperative wildlife management unit buck deer permit in the bucks, bulls and once-in-a-lifetime drawing, the general deer permit requested on the Lifetime Questionnaire shall be issued.

(4) Applying for or obtaining an antlerless deer, antlerless elk, or doe pronghorn permit does not affect eligibility for obtaining a general buck deer permit.

(5) All rules established by the Wildlife Board regarding the availability of big game permits in relation to obtaining general deer permits shall apply to lifetime licensees.

R657-17-6. Hunter Education Requirements -- Minimum Age for Hunting.

(1) The division shall issue a lifetime licensee only those licenses, permits, and tags for which that person qualifies according to the hunter education requirements, age restrictions specified in this Section and Title 23, Wildlife Resources Code of Utah, and suspension orders of a division hearing officer.

(2)(a) Lifetime licensees born after December 31, 1965, must be certified under Section 23-19-11 to engage in hunting.

(b) Proof of hunter education must be provided to the division by the lifetime licensee.

(3) Age requirements to engage in hunting are as follows:

(a) A lifetime licensee must be 12 years of age or older to hunt small game.

(b) A lifetime licensee must be 14 years of age or older to hunt big game. A lifetime licensee 13 years of age may hunt big game if that person's 14th birthday falls within the calendar year.

R657-17-7. Change of Residency.

(1) A lifetime hunting and fishing license shall remain valid if the licensee changes residency to another state or country.

(2)(a) A lifetime licensee who no longer qualifies as a resident under Section 23-13-2 shall notify the division within 60 days of leaving the state.

(b) The division shall issue the lifetime licensee a new lifetime hunting and fishing license with the change of address after the lifetime licensee surrenders the lifetime hunting and fishing license with the previous address.

(3) A lifetime licensee who does not qualify as a resident shall purchase the required nonresident permits or tags required for hunting, except as provided in Subsection R657-17-3(2).

R657-17-8. Lost or Stolen Lifetime Hunting and Fishing License.

(1) If a lifetime hunting and fishing license is lost or stolen, a duplicate may be obtained from any division office.

(2) The lifetime licensee shall:

(a) present a valid driver's license, identification card, birth certificate, or other form of proper identification;

(b) sign an affidavit stating the lifetime hunting and fishing license was lost or stolen; and

(c) pay a duplicate lifetime hunting and fishing license fee.

KEY: wildlife, game laws, hunting and fishing licenses

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23-19-11

R657. Natural Resources, Wildlife Resources.**R657-38. Dedicated Hunter Program.****R657-38-1. Purpose and Authority.**

(1) Under the authority of Section 23-14-18, this rule provides the standards and requirements for qualified deer hunters to participate in the Dedicated Hunter Program by obtaining a certificate of registration.

(2) The Dedicated Hunter Program provides the opportunity for participants to:

(a) increase the opportunity for recreational general deer hunting, while the division regulates harvest;

(b) increase participation in wildlife management decisions;

(c) increase participation in wildlife conservation projects that are beneficial to wildlife conservation and the division; and

(d) attend wildlife conservation courses about hunter ethics and the division's wildlife conservation philosophies and strategies.

R657-38-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Dedicated Hunter Permit" means a general buck deer permit issued to a dedicated hunter participant in the Dedicated Hunter Program, which authorizes the participant to hunt general archery, general any weapon and general muzzleloader in the region specified on the permit.

(b) "Hunt area" means an area prescribed by the Wildlife Board where general archery, general any weapon or general muzzleloader deer hunting is open to permit holders for taking deer.

(c) "Limited Entry Dedicated Hunter Permit" means a limited entry deer permit or limited entry elk permit, for use in an area selected by the Division, which shall be offered through the Dedicated Hunter Program Drawing.

(d) "Participant" means a person who has remitted the appropriate fee and has been issued a certificate of registration for the Dedicated Hunter Program.

(e) "Program" means the Dedicated Hunter Program, a program administered by the division as provided in this rule.

(f) "Program harvest" means tagging a deer with a Dedicated Hunter Permit or Limited Entry Dedicated Hunter Deer Permit, or failing to return the Dedicated Hunter Permit or Limited Entry Dedicated Hunter Deer Permit with an attached, unused tag, while enrolled in the program.

(g) "Program requirements" mean the Wildlife Conservation Course as provided in Section R657-38-7, the Wildlife Conservation Project as provided in Section R657-38-8, the Regional Advisory Council meeting as provided in Section R657-38-9, and returning an unused Dedicated Hunter Permit and attached tag as provided in Subsection R657-38-11(1).

(h) "Wildlife conservation course" means a course of instruction provided by the division on hunter ethics and wildlife conservation philosophies and strategies.

(i) "Wildlife conservation project" means a project designed by the division, or any other individual or entity and pre-approved by the division, that provides wildlife habitat protection or enhancement on public or private lands, improves hunting or fishing access, or other conservation projects or activities that benefit wildlife or directly benefits the division.

(j) "Wildlife conservation project manager" means an employee of the division, or person approved by the division, responsible for supervising a wildlife conservation project and maintaining and reporting records of service hours to the division.

R657-38-3. Certificate of Registration Required.

(1)(a) To participate in the program a person must apply

for, obtain and sign a certificate of registration issued by the division.

(b) No more than ten thousand certificates of registration for the program may be in effect at any given time.

(c) Certificates of registration are issued on a first-come, first-served basis at division offices.

(d) Each prospective participant must submit an application provided by the division and provide evidence of having completed a wildlife conservation course before the division may issue the certificate of registration for the program.

(e) A certificate of registration to participate in the program shall only be issued during the bucks, bulls and once-in-a-lifetime application period as prescribed in the proclamation of the Wildlife board for taking big game.

(2) The division may deny issuing a dedicated hunter certificate of registration to a person for any of the following reasons:

(a) The application is incomplete or contains false information;

(b) The person, at the time of application, is under a judicial or administrative order suspending any wildlife hunting or fishing privilege within Utah or elsewhere;

(c) The person, in the previous five years prior to applying for the program, has been convicted of, entered a plea in abeyance to, or entered into a diversion agreement for violating any provision of:

(i) 23-20-3 Unlawful Possession or Taking Involving Big Game;

(ii) 23-20-3.5 Unlawful Taking While Trespassing;

(iii) 23-20-4 Wanton Destruction;

(iv) 23-20-8 Wasting;

(v) 23-20-14 Trespass;

(vi) 23-20-30 Failure to Tag Violations;

(vii) 23-19-1 or 23-23-10 License Violations involving Big Game;

(viii) 23-19-5 Counterfeiting Licenses;

(ix) 23-20-23 Aiding and Assisting in any of the above violations;

(x) 76-10-505 or 76-10-508 Firearms Safety Violations;

(xi) 77-7-22 Failure to Comply With a Wildlife Citation;

(xii) R657-5-11 or R657-5-12 Unlawful Possession of a Firearm by an Archer or Muzzleloader;

(xiii) R657-5-14 Spotting With a Weapon;

(xiv) R657-5-15 Use of Aircraft to Locate Big Game;

(xv) R657-5-18 Hunting on a Detached Tag; or

(xvi) R657-5-30 through R657-5-36 Waiting Period Violations involving Big Game;

(d) The person has violated the terms of any certificate of registration issued by the division or an associated agreement.

(e) The person has ever had a dedicated hunter certificate of registration suspended by the division.

(3) Prospective participants who have been under any wildlife suspension may not apply for the program until:

(a) their suspension period has ended; and

(b) an additional length of time equivalent to the original suspension has passed.

(4) Each certificate of registration is valid for three consecutive general deer hunting seasons.

(5)(a) Any person who is 14 years of age or older may obtain a certificate of registration. A person 13 years of age may obtain a certificate of registration if the date of that person's 14th birthday is before the end of the calendar year in which the certificate of registration is issued.

(b) Any person who is 17 years of age or younger before the beginning date of the annual general archery deer hunt shall pay the youth participant fees.

(c) Any person who is 18 years of age or older on or before the beginning date of the annual general archery deer hunt shall pay the adult participant fees.

(6) A certificate of registration authorizes the participant an opportunity to receive annually a Dedicated Hunter Permit to hunt during the general archery, general any weapon and general muzzleloader deer hunts. The Dedicated Hunter Permit may be used during the dates and within the hunt area boundaries established by the Wildlife Board.

(7)(a) Except as provided in Subsections (b), R657-38-10(3)(a), and R657-38-10(6), a participant using a Dedicated Hunter Permit may take two deer within three years of enrollment, and only one deer in any one year as provided in Rule R657-5.

(b) Participants entering or re-entering the Dedicated Hunter Program shall be subject to any changes subsequently made in this rule during the three-year term of enrollment.

(c) The harvest of an antlerless deer using a Dedicated Hunter Permit, as authorized under specific hunt choice areas during the general archery deer hunt, shall be considered a program harvest.

(8) The certificate of registration must be signed by the participant. The certificate of registration is not valid without the required signature.

(9) The participant and holder of the certificate of registration must have a valid Dedicated Hunter Permit in possession while hunting. A participant is not required to have the Dedicated Hunter Certificate of Registration in possession while hunting.

(10) The division may issue a duplicate Dedicated Hunter Certificate of Registration pursuant to Section 23-19-10.

(11) Certificates of registration are not transferable and shall expire at the end of a participant's third general deer hunting season.

(12)(a) The program requirements set forth in Sections R657-38-7, R657-38-8, and R657-38-9 may be waived annually if the participant provides evidence of leaving the state for a minimum period of one year during the enrollment period for the Dedicated Hunter Certificate of Registration for religious or educational purposes.

(b) If the participant requests that the program requirements be waived in accordance with Subsection (a), and the request is granted, the participant shall not receive a Dedicated Hunter Permit for the year in which the program requirements were waived.

(13)(a) A participant who is a member of the United States Armed Forces or public health or public safety organization and who is mobilized or deployed on order in the interest of national defense or emergency may request that their enrollment in the program be suspended for the period of their mobilization or deployment.

(14)(a) A participant who is a member of the United States Armed Forces or public health or public safety organization and who is mobilized or deployed on order in the interest of national defense or emergency may request that the requirements set forth in Sections R657-38-7, R657-38-8, R657-38-9, and R657-38-11 be extended or satisfied as provided in Subsections (b) through (e).

(b) The program requirement set forth in Section R657-38-7 may be extended to the second or third year of their program enrollment.

(c) The program requirement set forth in Section R657-38-8 may be considered satisfied by a participant that is prevented from completing the requirement due to the mobilization or deployment.

(d) The program requirement set forth in Section R657-38-9 may be:

(i) extended to the third year in the program if the participant is currently in the second year of the program; and

(ii) waived in the third year of the program if the participant remains mobilized or deployed and is unable to reasonably meet the requirement.

(e) A participant must provide evidence of the mobilization or deployment.

(15) A refund for the Dedicated Hunter Certificate of Registration may not be issued, except as provided in Section 23-19-38.2. Any refund will be issued pro rata based on the number of hunting seasons actually participated in during the three-year enrollment period.

R657-38-4. Certificate of Registration Surrender.

(1)(a) A participant who has obtained a Dedicated Hunter Certificate of Registration may surrender the certificate of registration to a division office provided the participant does not have two program harvests.

(b) A participant who surrenders the Dedicated Hunter Certificate of Registration may not re-enter the program until the participant's initial certificate of registration has expired.

(2) The division may not issue a refund, except as provided in Section 23-19-38 and Section R657-38-3(15).

R657-38-5. Certificate of Registration Suspension.

(1) The division may suspend a Dedicated Hunter Certificate of Registration pursuant to Section 23-19-9 and R657-26.

(2) A certificate of registration may be suspended if the participant fraudulently:

(a) submits a time sheet for service hours; or

(b) signs the roll at the regional advisory council meetings.

(3) A certificate of registration may be suspended if the participant is convicted of, enters a plea in abeyance to, or enters into a diversion agreement for committing any offense listed in Section R657-38-3(2)(c).

(4) A certificate of registration is invalid if the participant's big game hunting privileges are suspended in any jurisdiction during the participant's enrollment in the program.

(5) A Dedicated Hunter Permit is invalid if a participant's certificate of registration is suspended.

R657-38-6. Dedicated Hunter Permits.

(1)(a) Participants may hunt during the general archery, general any weapon and general muzzleloader deer hunts within the hunt area and during the season dates prescribed in the proclamation of the Wildlife Board for taking big game.

(b) The division may exclude multiple season opportunities on specific units due to extenuating circumstances on that specific unit.

(2)(a) Participants must designate a regional hunt choice upon joining the program.

(b) The regional hunt choice shall remain in effect unless otherwise changed in writing by the participant by the application deadline for the big game drawing, which is published in the proclamation of the Wildlife Board for taking big game.

(3)(a) Participants must notify the division of any change of mailing address in order to receive a Dedicated Hunter Permit by mail.

(b) A participant who enters the program as a resident and becomes a nonresident, or claims residency outside of Utah shall be issued a nonresident at no additional charge for the remainder of the three-year enrollment period.

(c) A participant who enters the program as a nonresident and becomes a resident, or claims residency in Utah, shall be issued a resident with no reimbursement of the higher nonresident fee for the remainder of the three-year enrollment period.

(4)(a) Dedicated Hunter permits may be issued through the mail by June 1 of each year and again three weeks prior to the beginning of the general archery deer hunt, and only upon evidence that all program requirements have been completed by the participant.

(b) Participants completing program requirements after June 1 may obtain their Dedicated Hunter Permit over-the-counter from any division office.

(5) A Dedicated Hunter Permit may not be issued to any participant who:

(a) does not perform the program requirements; or

(b) violates the terms of this rule or the Dedicated Hunter Certificate of Registration.

(6)(a) The division may issue a duplicate Dedicated Hunter Permit pursuant to Section 23-19-10.

(b) If a participant's unused Dedicated Hunter Permit and tag is destroyed, lost, or stolen a participant may complete an affidavit verifying the permit was destroyed, lost, or stolen in order to obtain a duplicate.

(c) A duplicate Dedicated Hunter Permit shall not be issued after the closing date of the general any weapon buck deer hunt, however, a participant may complete an affidavit and submit a copy of the affidavit for program reporting purposes as required in Section R657-38-9(1).

(7)(a) A participant may exchange or surrender a Dedicated Hunter Permit in accordance with Rule R657-42 provided annual program requirements are completed.

(b) A participant may not exchange a Dedicated Hunter Permit for any other buck deer permit once the general archery deer hunt has begun, except:

(i) a participant may exchange a Dedicated Hunter Permit for a Dedicated Hunter Permit in any other available area prior to the opening of the general muzzleloader buck deer hunt.

(c) A participant may not surrender a Dedicated Hunter Permit for any other buck deer permit once the general archery deer hunt has begun, except:

(i) a participant may surrender a Dedicated Hunter Permit after the opening of the buck deer archery hunt, provided the Division can verify that the permit was never in the participant's possession.

(9)(a) Lifetime license holders may participate in the program.

(b) Upon signing the certificate of registration, the lifetime license holder agrees to forego any rights to receive a buck deer permit for the general archery, general any weapon or general muzzleloader deer hunts as provided in Section 23-19-17.5.

(c) A refund or credit is not issued for the general archery, general any weapon or general muzzleloader permit.

R657-38-7. Wildlife Conservation Course.

(1)(a) The division shall provide an annual wildlife conservation course.

(b) Prior to entering or re-entering the program, and obtaining a certificate of registration, a prospective participant must complete the wildlife conservation course within the current year in which the prospective participant is entering or re-entering the program.

(2) The wildlife conservation course shall explain the program to give a prospective participant a reasonable understanding of the program as well as hunter ethics, the division's Regional Advisory Council and Wildlife Board processes, and wildlife conservation philosophies and strategies.

(3) The wildlife conservation course is available through the division's Internet site, and a limited number of classroom courses may be available, as scheduled by division offices.

(4)(a) Evidence of completion of the wildlife conservation course shall be provided to the prospective participant upon completion of the wildlife conservation course.

(b) Certificates of registration shall not be issued without verification of the prospective participant having completed the wildlife conservation course.

(c) The division shall keep a record of all participants who complete the wildlife conservation course.

R657-38-8. Wildlife Conservation Projects.

(1) Each participant in the program shall provide a total of 24 hours of service as a volunteer on a wildlife conservation project as provided in Subsections (a) and (b), or pay the approved fee for each hour not completed as provided in Subsection (c).

(a) A participant must provide no fewer than eight hours of service before obtaining the first Dedicated Hunter Permit.

(b) A participant must provide the remaining balance of service hours prior to receiving the second Dedicated Hunter Permit.

(c) Residents may not purchase more than 16 of the 24 total required service hours. Nonresidents may purchase all of the 24 total required service hours.

(d) The division may, upon request, approve a person who is physically unable to provide service by working on a wildlife conservation project to provide other forms of service.

(e) Goods or services provided to the division for wildlife conservation projects by a participant may be, at the discretion of the wildlife conservation project manager, substituted for service hours based upon current market values for the goods or services, and using the approved hourly service buyout rate when applying the credit.

(2) Wildlife conservation projects shall be designed by the division, or any other individual or entity and shall be pre-approved by the division.

(3)(a) Wildlife conservation projects may occur anytime during the year as determined by the division.

(b) The division shall publicize the dates, times, locations and description of approved wildlife conservation projects and activities at division offices.

(4)(a) Service hours completed in any given year may be carried over to the following years, however excess service hours shall not be carried over to any year outside of the three-year enrollment period.

(b) Dedicated Hunter permits issued to participants who fail to make the deadline, two weeks prior to the opening date of the general archery deer hunt annually, shall be issued only as an over-the-counter transaction at division offices.

(5) A participant must request a receipt from the wildlife conservation project manager for service hours worked at the completion of the project, or upon showing evidence that the service hours worked are completed.

(6)(a) If a participant fails to fulfill the wildlife conservation project service requirement in any year of participation, as required under Subsection (4), the participant shall not be issued a Dedicated Hunter Permit for that year.

(b) The participant may obtain a Dedicated Hunter Permit for subsequent years upon completion of the wildlife conservation project program requirements due or payment of the fee in lieu thereof.

(7) The wildlife conservation project manager shall keep a record of all participants who attend the wildlife conservation project and the number of hours worked.

R657-38-9. Regional Advisory Council.

(1) Prior to obtaining a second Dedicated Hunter Permit while in the program, a participant must attend one regional advisory council meeting.

(2) A participant may request a receipt from the division for attending the regional advisory council meeting.

(3) The division shall keep a record of all participants who attend and sign the roll at the regional advisory council meetings.

R657-38-10. Obtaining Other Permits.

(1)(a) Participants may not apply for or obtain general buck deer permits issued by the division through the big game drawing, license agents, over-the-counter sales, or the Internet

during the three-year period of enrollment in the program.

(b) In the initial sign-up year for the program, if the participant previously applied for a general buck deer permit through the big game drawing, a participant must withdraw that permit application prior to the application withdrawal date as published in the proclamation of the Wildlife Board for taking big game.

(i) Upon withdrawal, the general buck deer permit fee may be refunded by the division in May, but the handling fee shall not be refunded.

(ii) If the participant fails to withdraw the general buck deer application and the permit is drawn, the general deer permit obtained through the drawing becomes invalid and must be surrendered prior to the beginning date of the general archery deer hunt. A refund may not be issued pursuant to Section 23-19-38.

(2) Participants may not apply for or obtain general landowner buck deer permits as provided under Rule R657-43.

(3)(a) Participants may apply for or obtain any other non general season buck deer permit as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(i) harvest of a deer with a permit obtained pursuant to Subsection (a) shall not be considered a program harvest.

(ii) participants are not required to complete program requirements prior to obtaining a permit pursuant to Subsection (a).

(b) Participants may apply for or obtain a Dedicated Hunter Limited Entry Permit as provided under Section R657-38-12.

(c) If the participant obtains any other buck deer permit, or Dedicated Hunter Limited Entry buck deer permit, the Dedicated Hunter Permit becomes invalid and the participant must surrender the Dedicated Hunter Permit prior to the opening day of the general archery deer hunt. A refund may not be issued pursuant to Section 23-19-38.

(d) If the participant obtains any other buck deer permit, or a Dedicated Hunter Limited Entry Permit, the participant may use the permit only in the prescribed area during the season dates listed on the permit.

(e) Participants who obtain a cooperative wildlife management unit permit may hunt only within those areas identified on the permit and only during the dates determined by the cooperative wildlife management unit landowner or operator.

(4) The permit must be on the person while hunting.

(5) Obtaining any other buck deer permit does not authorize a participant to take an additional deer.

(6)(a) Participants may apply for or obtain antlerless deer permits as provided in Rule R657-5 and the Antlerless Addendum to the proclamation of the Wildlife Board for taking big game.

(b) Antlerless permits do not count against the number of permits issued pursuant to this program.

(c) Antlerless harvest of a deer as provided in the Antlerless Addendum to the proclamation of the Wildlife Board for taking big game shall not be considered a program harvest.

R657-38-11. Reporting Requirements.

(1)(a) A participant must return the unused Dedicated Hunter Permit and attached tag, or an affidavit as provided in Section R657-38-6(6)(c), to a division office annually by the application deadline for the big game drawing, which is published in the proclamation of the Wildlife Board for taking big game.

(b) The division shall credit a program harvest to any participant who fails to return the unused Dedicated Hunter Permit and attached tag, or an affidavit as provided in Section R657-38-6(6)(c), by the application deadline for the big game drawing.

(i) An unused Dedicated Hunter Permit and attached tag, or an affidavit as provided in Subsection R657-38-6(6)(c), returned after the application deadline for the big game drawing, will be accepted and the credited program harvest removed.

(ii) A participant who returns an unused Dedicated Hunter Permit after the application deadline for the big game drawing, and who is credited with a second program harvest, is only eligible to obtain a Dedicated Hunter Permit for an available region if permits remain after the big game drawing and must obtain the Dedicated Hunter Permit over-the-counter at a division office.

(iii) If there are no permits remaining after the big game drawing, additional Dedicated Hunter permits shall not be issued.

(2)(a) The division may contact participants to gather annual harvest information and hunting activity information.

(b) Participants are expected to provide harvest information and hunting activity information if contacted by the division.

(3)(a) A participant may specify a change to their regional hunt choice for a Dedicated Hunter Permit by submitting a request in writing to the division by the application deadline for the big game drawing.

(b) If a change is not specified pursuant to Subsection (a), the regional hunt choice selected initially or in the prior year shall be assigned.

R657-38-12. Limited Entry Dedicated Hunter Program Drawing.

(1) Any unfilled Dedicated Hunter Permit with an unused attached tag, returned to the Division by the application deadline for the big game drawing, which is published in the proclamation of the Wildlife Board for taking big game, may qualify the participant to be entered into the Dedicated Hunter Program Drawing provided:

(a) the participant is currently enrolled in the program; and

(b) the participant has returned the Dedicated Hunter Permit and unused, attached tag, or an affidavit as provided in Section R657-38-6(6)(c).

(2)(a) One limited entry deer permit and one limited entry elk permit shall be offered through the drawing for each 250 permits received by the Division in accordance with Subsection (1).

(b) The eligible participants and limited entry permits shall be randomly drawn.

(c) The successful participant must meet all program requirements by June 1 for the current year in which the permit is valid before the issuance of the permit.

(d) If the successful participant fails to fulfill program requirements by June 1, the permit may be issued to the next participant on the alternate drawing list as provided in Rule R657-42.

(3) The drawing results may be posted at division offices and on the division Internet address on the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(4)(a) The successful participant shall be notified by mail.

(b) The successful participant must submit the appropriate limited entry fee within ten business days of the date on the notification letter.

(c) If the successful participant fails to submit the required limited entry permit fee, the permit may be issued to the next participant, who would have drawn the permit, in accordance with Rule R657-42.

(5)(a) The Limited Entry Dedicated Hunter Permit allows the recipient to take only the species for which the permit is issued.

(b) The species that may be taken shall be printed on the permit.

(c) The species may be taken in the area and during the season specified on the permit.

(d) The species may be taken only with the weapon specified on the permit.

(e) The recipient of a limited entry deer or elk permit is subject to all of the provisions of Title 23, Wildlife Resources Code, and the rules and proclamations of the Wildlife Board for taking and pursuing wildlife.

(f) Bonus points shall not be awarded or utilized when applying for or obtaining Limited Entry Dedicated Hunter permits.

(g) Any participant who obtains a Limited Entry Dedicated Hunter Permit is not subject to the waiting periods set forth in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

KEY: wildlife, hunting, recreation, wildlife conservation
February 7, 2007 23-14-18
Notice of Continuation November 21, 2005

R657. Natural Resources, Wildlife Resources.**R657-42. Fees, Exchanges, Surrenders, Refunds and Reallocation of Wildlife Documents.****R657-42-1. Purpose and Authority.**

(1) Under the authority of Sections 23-19-1 and 23-19-38 the division may issue wildlife documents in accordance with the rules of the Wildlife Board.

(2) This rule provides the standards and procedures for the:

- (a) exchange of permits;
- (b) surrender of wildlife documents;
- (c) refund of wildlife documents;
- (d) reallocation of permits; and
- (e) assessment of late fees.

R657-42-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and the applicable rules and proclamations of the Wildlife Board.

(2) In addition:

(a) "Alternate drawing lists" means a list of persons who have not already drawn a permit and would have been the next person in line to draw a permit.

(b) "Deployed or mobilized" means that a person provides military or emergency services in the interest of national defense or national emergency pursuant to the demand, request or order of their employer.

(c) "Landowner association operator" for purposes of this rule, means:

(i) a landowner association or any of its members eligible to receive limited entry landowner permits as provided in Rule R657-43; or

(ii) Cooperative Wildlife Management Unit (CWMU) landowner association or its designated operator as provided in Rule R657-37.

(d) "Wildlife document" means any license, permit, tag, or certificate of registration issued by the division.

R657-42-3. Exchanges.

(1)(a) Any person who has obtained a general buck deer or a general bull elk permit may exchange that permit for any other available general permit if both permits are for the same species and sex.

(b) A person must make general buck deer and general bull elk permit exchanges at any division office prior to the season opening date of the permit to be exchanged.

(2) Any person who has obtained a cougar harvest objective unit permit may exchange that permit for any other available cougar harvest objective unit permit as provided in Rule R657-10.

(3) Any person who has obtained a limited entry bear any weapon or limited entry bear archery permit may exchange that permit for a limited entry bear archery or limited entry bear any weapon permit, respectively.

(4) Any person who has obtained a Dedicated Hunter Permit may exchange that permit for any other available Dedicated Hunter Permit as provided in Rule R657-38.

(5) The division may charge a handling fee for the exchange of a permit.

R657-42-4. Surrenders.

(1) Any person who has obtained a wildlife document and decides not to use it, may surrender the wildlife document to any division office.

(2) Any person who has obtained a wildlife document may surrender the wildlife document prior to the season opening date of the wildlife document for the purpose of:

(a) waiving the waiting period normally assessed and reinstating the number of bonus points, including a bonus point

for the current year as if a permit had not been drawn, if applicable;

(b) reinstating the number of preference points, including a preference point for the current year as if a permit had not been drawn, if applicable; or

(c) purchasing a reallocated permit or any other permit available for which the person is eligible.

(3) A CWMU permit must be surrendered prior to the applicable season opening date provided by the CWMU operator, except as provided in Section R657-42-11.

(4) Dedicated hunter participants must surrender their permits prior to the general archery deer season, except as provided in Section R657-38-6.

(5) The division may not issue a refund, except as provided in Section R657-42-5.

R657-42-5. Refunds.

(1) The refund of a license, certificate of registration or permit shall be made in accordance with:

- (a) Section 23-19-38 and Rule R657-50;
- (b) Section 23-19-38.2 and Subsection (3); or
- (c) Section 23-19-38 and Subsection (4).

(2)(a) An application for a refund may be obtained from any division office.

(b) All refunds must be processed through the Salt Lake Division office.

(3) A person may receive a refund in accordance with Subsection (3) for a wildlife document if that person was deployed or mobilized on or after September 11, 2001, in the interest of national defense or national emergency and is thereby completely precluded from participating in the hunting or fishing activity authorized by the wildlife document, provided:

(a) the refund request is made to the division within one year of the end of the hunting or fishing season authorized by the wildlife document;

(b) the person surrenders the wildlife document to the division, or signs an affidavit stating the wildlife document is no longer in the person's possession; and

(c) the person verifies that the deployment or mobilization completely precluded them from participating in the activity authorized by the wildlife document, except as provided in Subsection (5); and

(d) the person provides military orders, or a letter from an employment supervisor on official public health or public safety organization letterhead stating:

(i) the branch of the United States Armed Forces, or name of the public health organization or public safety organization from which they were deployed or mobilized; and

(ii) the nature and length of their duty while deployed or mobilized.

(4) The division may issue a refund for a wildlife document if the person to whom it was issued dies prior to participating in the hunting or fishing activity authorized by the wildlife document, provided:

(a) The person legally entitled to administer the decedent's estate provides the division with:

- (i) picture identification;
- (ii) letters testamentary, letters of administration, or such other evidence establishing the person is legally entitled to administer the affairs of the decedent's estate;
- (iii) a photocopy of the decedent's certified death certificate; and
- (iv) the wildlife document for which a refund is requested.

(5) The director may determine that a person did not have the opportunity to participate in an activity authorized by the wildlife document.

(6) The division may reinstate a bonus point or preference point, whichever is applicable, and waive waiting periods, if applicable, when issuing a refund in accordance with this

Section.

R657-42-6. Reallocation of Permits.

(1)(a) The division may reallocate surrendered limited entry, once-in-a-lifetime and CWMU permits.

(b) The division shall not reallocate resident and nonresident big game general permits.

(2) Permits shall be reallocated through the Salt Lake Division office.

(3)(a) Any limited entry, once-in-a-lifetime or public CWMU permit surrendered to the division shall be reallocated through the drawing process by contacting the next person listed on the alternate drawing list or as provided in Subsection (b).

(b) A person who is denied a permit due to an error in issuing permits may be placed on the alternate drawing list to address the error, if applicable, in accordance with the Rule R657-50.

(c) The alternate drawing lists are classified as private and therefore, protected under the Government Records Access Management Act.

(d) The division shall make a reasonable effort to contact the next person on the alternate list by telephone or mail.

(e) If the next person, who would have drawn the limited entry, once-in-a-lifetime or public CWMU permit, does not accept the permit or the division is unable to contact that person, the reallocation process will continue until the division has reallocated the permit or the season closes for that permit.

(4) If the next person, who would have drawn the limited entry, once-in-a-lifetime or public CWMU permit has obtained a permit, that person may be required to surrender the previously obtained permit in accordance with Section R657-42-4(2) and any other applicable rules and proclamations of the Wildlife Board.

(5) Any private CWMU permit surrendered to the division will be reallocated by the landowner through a voucher, issued to the landowner by the division in accordance with Rule R657-37.

(6)(a) The division may allocate additional general deer permits and limited entry permits, if it is consistent with the unit's biological objectives, to address errors in accordance with Rule R657-50.

(b) The division shall not allocate additional CWMU and Once-In-A-Lifetime permits.

(c) The division may extend deadlines to address errors in accordance with Rule R657-50.

R657-42-7. Reallocated Permit Cost.

(1) Any person who accepts the offered reallocated permit must pay the applicable permit fee.

(2) The division may not issue a refund, except as provided in Section R657-42-5.

R657-42-8. Accepted Payment of Fees.

(1) Personal checks, business checks, money orders, cashier's checks, and credit or debit cards are accepted for payment of wildlife documents.

(2) Personal or business checks drawn on an out-of-state account are not accepted.

(3) Third-party checks are not accepted.

(4) All payments must be made payable to the Utah Division of Wildlife Resources.

(5)(a) Credit or debit cards must be valid at least 30 days after any drawing results are posted.

(b) Checks, and credit or debit cards will not be accepted as combined payment on single or group applications.

(c) If applicable, if applicants are applying as a group, all fees for all applicants in that group must be charged to one credit or debit card.

(d) Handling fees and donations are charged to the credit

or debit card when the application is processed.

(e) Permit fees may be charged to the credit or debit card prior to the posting date of the drawings, if successful.

(f) The division shall not be held responsible for bank charges incurred for the use of credit or debit cards.

(6)(a) An application is voidable if the check is returned unpaid from the bank or the credit or debit card is invalid or refused.

(b) The division charges a returned check collection fee for any check returned unpaid.

(7)(a) A license or permit is voidable if the check is returned unpaid from the bank or the credit or debit card is invalid or refused.

(b) The Division may make attempt to contact the successful applicant by phone or mail to collect payment prior to voiding the license or permit.

(c) The Division shall reinstate the applicant's bonus points or preference points, whichever is applicable, and waive waiting periods, if applicable, when voiding a permit in accordance with Subsection (b).

(d) A permit which is deemed void in accordance with Subsection (b) may be reissued by the Division to the next person listed on the alternate drawing list.

(8)(a) A license or permit received by a person shall be deemed invalid if payment for that license or permit is not received, or a check is returned unpaid from the bank, or the credit or debit card is invalid or refused.

(b) A person must notify the division of any change of credit or debit card numbers if the credit or debit card is invalid or refused.

(9) Hunting with a permit where payment has not been received for that permit constitutes a violation of hunting without a valid permit.

(10) The division may require a money order or cashier's check to correct payment for a license, permit, or certificate of registration.

(11) Any person who fails to pay the required fee for any wildlife document, shall be ineligible to obtain any other wildlife document until the delinquent fees and associated collection costs are paid.

R657-42-9. Assessment of Late Fees.

(1) Any wildlife application submitted under the Utah Administrative Code Rules provided in Subsection (a) through (e), within 30 days of the applicable application deadline established in such rules, in the proclamations of the Wildlife Board, or by the division may be processed only upon payment of a late fee as provided by the approved fee schedule.

(a) R657-52, Commercial Harvesting of Brine Shrimp and Brine Shrimp Eggs;

(b) R657-21, Cooperative Wildlife Management Units for Small Game;

(c) R657-22, Commercial Hunting Areas;

(d) R657-37, Cooperative Wildlife Management Units for Big Game; or

(e) R657-43, Landowner Permits.

R657-42-10. Duplicates.

(1) If an unexpired wildlife document is destroyed, lost or stolen, a person may obtain a duplicate from a division office or online license agent, for a duplicate fee as provided in the fee schedule.

(2) The division may waive the fee for a duplicate unexpired wildlife document provided the person did not receive the original wildlife document.

(3) To obtain the duplicate wildlife document, the applicant may be required to complete an affidavit testifying to such loss, destruction or theft.

R657-42-11. Surrender of Cooperative Wildlife Management Unit or Limited Entry Landowner Permits.

(1) A person who has obtained a CWMU or limited entry landowner permit may surrender the permit after the deadline provided in Subsection R657-42-4(3) for CWMU permits and after the season opening date for limited entry landowner permits for the purpose of:

(a) death in accordance with Section 23-19-38, Subsection (2) and Section R657-42-5(4);

(b) injury or illness in accordance with Section 23-19-38 and Subsection (2);

(c) deployment or mobilization in the interest of national defense or national emergency in accordance with Section 23-19-38.2 and Subsection (2); or

(d) an error occurring in issuing the permit in accordance with Subsection (2) and Rule R657-50.

(2)(a) The permittee and the landowner association operator must sign an affidavit stating that the permittee has not participated in any hunting activity.

(b) The permittee and landowner association operator signatures must be notarized.

(c) The affidavit and unused permit must be submitted to the division.

(3)(a) The division may reissue a voucher to a landowner association operator, or reallocate a surrendered permit in accordance with Section 23-19-38 and as provided in Subsections (b) and (c).

(b) The division may reallocate a surrendered permit:

(i) originally issued by the division through the big game drawing process in accordance with Section R657-42-6; or

(ii) originally issued by the division through a voucher redemption in the form of a new voucher issued to the landowner association operator.

(c) Reissuance of vouchers or reallocation of permits under this section may only occur in the year in which the surrendered permit was valid.

KEY: wildlife, permits

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23-19-1

23-19-38

23-19-38.2

R728. Public Safety, Peace Officer Standards and Training.**R728-101. Public Petitions For Declaratory Rulings.****R728-101-1. Authority.**

The authority for this rule is authorized under 63-46a-12 which describes how interested parties may petition an agency with regard to making, amending, or repealing rules.

R728-101-2. Definitions.

A. Terms used in this rule are defined in Section 63-46b-2.

B. In addition:

1. "order" means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons, not a class of persons;

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

3. "applicability" means a determination if a statute, rule or order should be applied, and if so, how the law stated should be applied to the facts.

R728-101-3. Petition Procedure.

A. Any person or agency may petition for a declaratory ruling.

B. The petition shall be addressed and delivered to the director of POST.

C. POST shall stamp the petition with the date of receipt.

R728-101-4. Petition Form.

The petition shall:

1. be clearly designated as a request for a declaratory ruling;

2. identify the statute, rule, order to be reviewed;

3. describe the situation or circumstances in which applicability is to be reviewed;

4. describe the reason or need for the applicability review;

5. include an address and telephone where the petitioner can be reached during regular work days; and

6. be signed by the petitioner.

R728-101-5. Petition Review and Disposition.

The director or designee shall:

1. review and consider the petition;

2. prepare a declaratory ruling stating:

a. the applicability or non-applicability of the statute, rule, or order at issue;

b. the reasons for the applicability or non-applicability of the statute, rule, or order; and

c. any requirements imposed on the agency, the petitioner, or any person as a result of the ruling.

3. POST may:

a. interview the petitioner;

b. hold a public hearing on the petition;

c. consult with counsel or the Attorney General; or

d. take any action POST, in its judgement, deems necessary to provide the petition adequate review and due consideration.

4. POST shall prepare the declaratory ruling without unnecessary delay and shall send the petitioner a copy of the ruling by certified mail, or shall send the petitioner notice of progress in preparing the ruling, within 30 days of receipt of the petition.

5. POST shall retain the petition and a copy of the declaratory ruling in its records.

KEY: law enforcement officers, public petitions declaratory rulings

1992

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63-46a-12

63-46b-2

**R728. Public Safety, Peace Officer Standards and Training.
R728-401. Requirements For Approval and Certification of
Peace Officer Basic Training Programs and Applicants.**

R728-401-1. Authority.

This rule is authorized by Section 53-6-105 which gives the power to the Director of Peace Officers Standards and Training to promulgate standards for the certification of peace officer training academies.

R728-401-2. Academy Approval.

Any agency wishing to conduct a basic peace officer training program may do so with the approval of the POST Council and by complying with the POST approved procedures.

R728-401-3. Procedures for Course Validation.

A. The course must conform to the content and standards established by POST and approved by the POST Council.

B. All applicants will pass the POST entrance level test. The POST entrance level test is a valid test used to demonstrate ability in the areas of reading comprehension, basic mathematic skills, basic grammar and writing skills.

C. All applicants will complete the POST application packet. POST must receive application packets at least four weeks prior to the start of training unless special circumstances exist and arrangements have been made with POST. Without exception, medical requirements will be completed and submitted to POST before training begins.

1. Sponsored applicants - The sponsoring agency will complete the background investigation and insure that the requirements in Section 53-6-203 (applicants for admission to training programs) and R728-403 (Qualifications for Admission to Certified Peace Officer Training Academies) have been met. If the sponsoring agency has any question about an applicant as he relates to Section 53-6-203, or R728-403, POST shall be consulted before any training begins.

2. Self-Sponsored applicants - POST will conduct a criminal history check on all self-sponsored applicants. Programs providing training to self-sponsored students will adhere to the following guidelines when providing POST with application packets.

a. Check applications to insure completeness. POST will return any application not complete and deny training to that individual until a complete application is received and a criminal history check has been completed.

b. Provide POST with applications at least four weeks prior to the start of training unless special circumstances exist and arrangements have been made with POST (without exception medical release forms will be completed and submitted to POST before physical training begins.)

c. Bring to POST's attention any information provided in the application that should be examined closely in light of the provisions outlined in Section 53-6-203 and R728-403.

D. Equipment required to perform training must be furnished by the sponsoring agency or program. Equipment must meet POST standards.

Note: Any applicant denied by POST may appeal the decision by following the approved POST appeal process.

E. All instructors must be POST certified, and approved to instruct in their assigned topic(s).

F. Lesson plans for each topic must be prepared in accordance with the currently approved student performance objectives. Instructors must read and sign Contractual Agreement Form indicating they are aware of and are willing to teach the POST approved performance objectives.

G. Sponsoring agencies and program coordinators must administer POST approved examinations and maintain a file of examinations used. The final certification examination, which is a comprehensive examination, requires a minimum score of 80% to pass the test. Requirements necessary to pass the

physical assessment test are set by POST and approved by the POST Council.

H. Attendance rosters are to be kept to satisfy statutory requirements and copies of these rosters will be submitted to POST. No attendee can miss more than two days of the police academy and still be certifiable. Under no circumstances will a student be certified if he misses (and fails to make-up) the following classes:

1. Ethics and Professionalism
2. Laws of Arrest
3. Laws of Search and Seizure
4. Use of Force
5. First Aid (CPR only)
6. Emergency Vehicle Operation
7. Vehicle Operation Liability
8. Vehicle Operation Practical
9. Arrest Control Techniques (practical exam)
10. Firearms Safety
11. Firearms Range/Day Shooting (qualification only)
12. Firearms Range/Night Shooting
13. Reasonable Force
14. Firearms Decision Making
15. Crimes-In-Progress (practical only)

I. Sponsoring agencies and programs must ensure that students possess a valid driver license when involved in any training that requires the operating of a motor vehicle. POST recommends that driver license checks be made through the State Division of Driver License.

J. Successful completion of the course and completion of all POST required paperwork is necessary before certification or certifiability will be granted. The paperwork must be submitted to POST within two weeks of completion of the course.

K. Anyone failing the Certification Exam once may take it again within a one year time frame. The requirement of taking the certification test after a year, for waiver purposes, will be applied by calculating the year from the date of successfully passing the test. Anyone who fails a certification re-take will not be permitted to take it again until they satisfactorily complete another approved basic training program. Anyone failing the Physical Assessment Exam will have four years to meet the requirements.

L. POST will conduct annual audits and site visits for each satellite or agency academy to verify that they are conforming to POST standards.

M. When all requirements have been met, the sponsoring agency administrator shall submit to POST a letter informing POST that all requirements have been met. Peace officer certification begins when POST receives an application for certification and confirms that the applicant has completed a basic peace officer training program and met all requirements.

N. No person may function with any authority until he has satisfactorily completed an approved training program and received POST certification.

R728-401-4. Process for Requesting Certification.

Administrators requesting certification of an employee shall submit to POST Form #61, Application for POST Certification. POST will verify the information provided and certify the applicant when completion requirements have been met.

KEY: law enforcement officers, peace officer basic course, approval

January 20, 2007

Notice of Continuation February 26, 2007

53-6-202

**R728. Public Safety, Peace Officer Standards and Training.
R728-402. Application Procedures to Attend a Basic Peace
Officer Training Program.**

R728-402-1. Policy.

A. Pursuant to Sections 53-6-203 and 53-6-204 it shall be the responsibility of each law enforcement agency, upon its hiring of an employee, to submit a complete application to POST before admission is approved to a basic peace officer training program.

B. Self-Sponsored applicants must submit a complete application to POST before they will be admitted to a basic peace officer training program.

R728-402-2. Procedure.

A. Application will be made by completing the POST approved application packet. Application packets can be obtained from POST.

B. Application must be submitted four weeks prior to the start of the academy via website or mail in order to allow POST adequate time to process applications and schedule applicants.

C. Applications must be complete when submitted to POST. POST will not accept any application that is not complete.

D. Peace Officer Standards and Training will pay the cost of board, room and supplies for sponsored students attending the Police Academy.

E. Self-Sponsored students must pay the current approved rate.

F. Attendance at the Academy will be denied for failure to meet the requirements set forth in Section 53-6-203 and Rule R728-403.

**KEY: law enforcement officers, basic application
procedures, police training
January 20, 2007 53-6-203
Notice of Continuation February 26, 2007**

**R728. Public Safety, Peace Officer Standards and Training.
R728-403. Qualifications For Admission To Certified Peace
Officer Training Academies.**

R728-403-1. Authority.

This rule is authorized by Subsection 53-6-105(k).

R728-403-2. United States Citizenship Requirement.

The applicant shall be a United States citizen.

A. The applicant shall provide the division proof of United States citizenship by providing a copy of birth certificate, or other formal government document indicating United States citizenship.

B. Naturalized citizens shall indicate their naturalization number on the application for peace officer training and certification. Naturalized citizens shall not attach a copy of their naturalization certificate, whereas copying naturalization certificates without permission is a violation of federal law.

R728-403-3. Age Requirement.

The applicant shall be at least 21 years old at the time of appointment as a peace officer. This provision shall be satisfied with a copy of the birth certificate, official driver license or state identification card.

R728-403-4. Criminal History Background Checks.

A. Criminal history background checks shall be required of every applicant for basic peace officer training and every applicant for peace officer certification or authority, or applicant for reactivation of peace officer certification or authority, as provided for in Sections 53-6-203, 53-6-205, 53-6-206, and 53-6-208.

B. The criminal history background check shall be completed in the following manner:

1. All applicants shall be required to submit, at least two acceptable POST fingerprint cards for examination by the Utah Bureau of Criminal Identification and the Federal Bureau of Investigation.

2. If the applicant is found not to have a criminal record, the supervisor or staff member making the computerized criminal history records check shall make a written note in the applicant's file indicating "no criminal record found", and the supervisor or staff member shall sign their name as the person conducting the criminal history records check.

3. If the supervisor or staff member conducting the examination of the application finds that the applicant has a criminal record, the file shall be reviewed by the certification section to determine if the applicant meets the requirements to be accepted into a peace officer training program.

4. Minor traffic violations shall not be considered a reason to have the applicant's criminal record reviewed by the certification section unless the applicant has more than three minor traffic violations within two years of making application for peace officer basic training and certification.

a. The following shall not constitute minor traffic violations, and may be considered in determining good moral character of the applicant:

- i. driving under the influence of alcohol or drugs;
- ii. automobile homicide;
- iii. reckless driving;
- iv. evading a police officer;
- v. driving on suspension;
- vi. driving on revocation;
- vii. negligent homicide;
- viii. failure to maintain automobile insurance.

R728-403-5. Felony Convictions.

"Felony" crimes for purposes of Title 53, Chapter 6, shall be defined as any criminal conduct other than those crimes defined as misdemeanors or infractions in the statutes of this

state or any similar statute of any other jurisdiction. Persons convicted of felonies will not be accepted for admission to peace officer certified training programs.

R728-403-6. Convictions or Involvement in Crimes Outlined in Section 53-6-211.

A. "Crimes involving dishonesty" for purposes of Subsection 53-6-211(1)(d)(iv) means criminal conduct as set forth in R728-409-3(F) below.

B. "Crimes involving unlawful sexual conduct" for purposes of Subsection 53-6-211(1)(d)(iv) means criminal conduct as set forth in R728-409-3(G) below.

C. "Crimes involving physical violence" for purposes of Subsection 53-6-211(1)(d)(iv) means criminal conduct as set forth in R728-409-3(H) below.

D. "Driving under the influence of alcohol or drugs" for purposes of Subsection 53-6-211(1)(d)(iv) means criminal conduct as set forth in R728-409-3(I) below.

E. "Unlawful Sale, Possession, or Use of Narcotics, Drugs, or Drug Paraphernalia" for purposes of Subsection 53-6-211(1)(d)(iii) means conviction of a drug related offense as set forth in R728-409-3(C) below.

R728-403-7. Educational Requirement.

A. All applicants for basic peace officer training and every applicant for peace officer certification or authority, as provided for in Sections 53-6-203, 53-6-205, and 53-6-206 shall have obtained a high school education.

1. High school education shall be recognized by:

- a. a copy of a high school diploma;
- b. a copy of high school transcript; or
- c. a notarized letter from the high school administration indicating that the individual has graduated from the high school.

2. Equivalency of high school education can be obtained by:

a. successful completion of a GED program, recognized by a copy of the certificate.

3. In cases where the high school education was completed in a foreign country, and where the high school diploma or document is written in a language other than English, the document shall be verified by an interpreter before accepting the document as an official high school education document.

4. In cases where an applicant is unable to provide proof of a high school diploma or equivalent but has a four year or higher college degree, proof of the college degree will satisfy the high school diploma requirement.

R728-403-8. Good Moral Character Requirement.

A. Good moral character for purposes of Title 53, Chapter 6 means possessing moral traits of honesty and truthfulness, integrity, respect among the community for lawful behavior, respect for the rights of others, and obedience to the lawful directives of public officers or officials, or persons charged with the enforcement of the law.

B. Conduct which may not meet the standard of good moral character includes, but is not limited to:

1. conduct which violates Section 53-6-211;

2. a discharge from the United States military under circumstances specifically designated as:

- a. Bad Conduct Discharge (BCD);
- b. dishonorable discharge (DD);
- c. Administrative Discharge of "Other Than Honorable" (OTH); or
- d. Administrative Discharge of "General Under Honorable Conditions" (GEN);

3. the unlawful possession, use, consumption, or distribution of a controlled substance;

4. association in an organization which advocates the

violent overthrow or has made overt attempts to violently overthrow the government of the United States or the State of Utah;

5. suspension or revocation of peace officer certification or similar provision of another jurisdiction.

R728-403-9. Physical, Emotional, or Mental Condition Requirement.

Physical, emotional, or mental conditions for purposes of Title 53, Chapter 6, includes, but is not limited to, conditions diagnosed by a medical or mental health professional, which, in the expert opinion of said professional, prohibits the employee from performing the essential functions of law enforcement.

KEY: law enforcement officers, qualifications for training*
April 15, 1997 **53-6-203**
Notice of Continuation February 26, 2007 **53-6-211**

R728. Public Safety, Peace Officer Standards and Training.**R728-404. Basic Training Basic Academy Rules.****R728-404-1. Admission Requirements.**

A. United States Citizenship.

B. Minimum age of 21 years at the time of appointment as a peace officer.

C. Fingerprinting and search of local, state and national fingerprint files to determine whether applicant has a criminal record, final certification to be withheld until this search is completed.

D. May not have been convicted of a crime for which the applicant could have been punished by imprisonment in a federal penitentiary, or for which the applicant could have been imprisoned in the penitentiary of this or another state. Conviction of any offense not serious enough to be covered under Subsection (1)(d) of 53-6-203 Utah Criminal Code, involving dishonesty, unlawful sexual conduct, physical violence, or the unlawful use, sale or possession for sale of a controlled substance is an indication that an applicant may not be of good moral character and may be grounds for denial of admission to a training program or refusal to take a certification examination. Notwithstanding the provisions of Title 77, Chapter 18, expungement of felony convictions obtained in this state and any other jurisdiction shall be considered for purposes of this subsection.

E. Shall be a high school graduate or furnish evidence of successful completion of an examination indicating an equivalent achievement.

F. Shall demonstrate good moral character as determined by a background investigation, which may include consideration of offenses expunged under Title 77, Chapter 18.

G. Free of any physical, emotional or mental conditions that might affect adversely the performance of duty as a peace officer as determined through a selection process by the employing agency.

R728-404-2. Graduation Requirements.

A. Written Examinations and Quizzes.

1. Examinations and quizzes are a necessary method of testing not only the student's substantive knowledge, but also their reading, comprehension, and reasoning abilities, all of which are essential criteria for proper performance of peace officer functions. They will be given as indicated in the curriculum schedule. Examinations are given on the honor basis. Evidence of dishonor will result in dismissal from the Academy. Students must score a minimum of 70% on all exams except the first aid, arrest control, and certification exams where a minimum of 80% must be scored.

2. All quizzes will be figured together to make one major examination. 70% must be scored in order to pass. This examination will be treated like all other examinations for retake purposes.

3. If a student fails a preliminary examination, he will be allowed to take a make-up exam. Regardless of what passing grade is earned on the make-up exam, the student will be given the minimum passing grade of 70% or 80% depending on which exam it is. If the score is less than the required score on the make-up examination, the student will be dismissed from the Academy and invited to return at a later date and attend another session. Should the student pass the make-up exam, but at a later date fail a second examination, he will not be allowed to take a second make-up exam and will be dismissed from the Academy but invited to return at a later date and attend another session.

4. A final Certification Examination will be required of each student in order to achieve peace officer/special function officer certification or become certifiable. A minimum score of 80% must be scored. If the score is less than 80%, the student will be allowed to take one make-up exam to achieve the

required 80%. Make-up exams must be taken prior to one year from the date of the initial exam. If the student fails to achieve 80% on the make-up certification examination, he will be required to go through the training again to achieve certification or become certifiable (be eligible to be certified when hired in a position requiring certification.) It will be the policy of the Academy to cover the expenses of a returning sponsored student; however, if a sponsored student is twice suspended from the Academy and that student continues in his attempt to complete the Academy, it will become the responsibility of the sponsoring agency and/or the student to pay the tuition assessed by the Academy. Returning self-sponsored students will be responsible for their expenses and tuition.

B. Participation.

Students will actively participate in physical fitness training, practical problems, classroom work, tours, graduation exercises, and any other activities unless specifically excused by the training supervisor.

C. Reports.

Students may be required to complete written reports. All reports will be graded on a pass/fail basis.

D. Firearms Qualification.

1. Requirements.

Students attending a basic peace officer training course will:

- a. participate in firearms training and demonstrate the ability to safely handle a firearm, and
- b. pass the POST approved qualification course(s) at or above the required score.

2. Retesting.

Students who fail to qualify on any qualification course will receive one opportunity to retake the course(s) and qualify. Retests will be scheduled by the POST Firearms Instructor and applicable training supervisor.

Note: The POST Staff Firearms Instructor has the discretion of deciding if mitigating circumstances should be taken into consideration when a student fails any qualification or requalification course. Mitigating circumstances include:

- a. weather,
- b. quality/quantity of instructors,
- c. equipment problems,
- d. medical problems,
- e. etc.

If the POST Staff Firearms Instructor decides there were one or more circumstances beyond the control of the student or the instructor and the student fails to qualify, the POST Staff Firearms Instructor may schedule a retest.

E. Vehicle Operation.

1. Requirements.

Students attending a basic peace officer training course will:

- a. participate in all scheduled classroom and practical vehicle operation training (any training missed must be made up before a student can graduate and be certified or become certifiable),
- b. demonstrate the ability to safely handle a vehicle in an emergency situation, and
- c. pass the POST approved qualification course(s) at or above the required score.

2. Retesting.

Students who fail to qualify on any qualification course will:

- a. have four more opportunities to qualify on the day of the test;
- b. after remedial training the student will have three more opportunities to qualify at a later date which will be scheduled by the driving instructor and the training supervisor.

Note: The POST Staff Vehicle Operation Instructor has the discretion of deciding if mitigating circumstances should be

taken into consideration when a student fails any qualification or requalification course. Mitigating circumstances include but are not limited to:

- a. weather,
- b. quality/quantity of instructors,
- c. equipment problems,
- d. medical problems,
- e. etc.

If the POST Staff Vehicle Operation Instructor decides there were one or more circumstances beyond the control of the student and the student fails to qualify, the POST Staff Vehicle Operation Instructor may schedule a retest.

F. Physical Training.

Participation in physical training is required during the basic academy program. Students will be required to take the physical assessment test at the end of the peace officer program and score at the 50th percentile in each exercise to graduate. If a student fails to pass the physical assessment test, one retest will be administered before the graduation ceremony. Should students fail to meet the physical fitness testing requirements, they will not be permitted to have their picture taken with the class or graduate with the class.

G. Arrest Control/Baton.

1. Requirements.

Students attending a basic peace officer training course will:

- a. participate in scheduled arrest control/baton training,
- b. demonstrate the ability to apply arrest control and baton techniques, and
- c. pass a POST approved practical examination.

2. Retesting.

H. Failure to Qualify in a Skill Area.

1. Students who fail to qualify in any skill area during a basic training program, will have four years to meet the approved standard before they will be required to go back through an academy program.

2. Retesting during the four year period will be at the convenience of POST and a testing fee will be imposed each time a test is administered.

3. POST may refuse to administer a test at any time if POST feels it's in the best interest of the individual and/or POST.

I. Counsel.

Individual counseling is available to any student on request to his class training supervisor.

J. Make-Up Policy.

1. All requirements must be satisfied before a student can graduate and become certifiable or certified.

2. Basic training supervisors will notify the student and his department head of any deficiencies in meeting graduation requirements.

3. The student and department head will be advised of the policy and procedures involved in the make-up of any deficiencies for graduation and certification.

4. Should a student become ill or injured to such an extent that it is impossible or unwise to participate in any part of the academy training, a doctor must be seen by the student. A written explanation must be obtained from the doctor and presented to the student's training supervisor.

K. Attendance.

1. Students will be required to attend all training unless an emergency exists or a valid excuse is given.

2. More than three unexcused absences may result in suspension from the Academy. Acceptable excuses include but are not limited to illness, court, and death of an immediate family member. Whenever possible, absences will be cleared through the student's Academy supervisor before the absence occurs. It is the student's responsibility to contact the Academy supervisor when he is absent or late. Attendance information

may be made available to department heads periodically.

3. Anyone who is tardy three times without an acceptable excuse may be subject to disciplinary action.

4. In no case will a student be certified or become certifiable who has missed more than 10% of the basic course until the necessary make-up work has been completed.

5. If a student has missed a significant part of any block of instruction, as determined by the POST staff, he will not be certified or become certifiable until the necessary make-up work is completed.

6. Under no circumstances will a student graduate if he misses any of the following classes until they are made-up:

- a. Ethics and Professionalism,
- b. Laws of Arrest,
- c. Laws of Search and Seizure,
- d. Use of Force,
- e. First Aid (CPR only),
- f. Emergency Vehicle Operation,
- g. Vehicle Operation Liability,
- h. Vehicle Operation Practical,
- i. Arrest Control Practical Examination,
- j. Firearms Safety,
- k. Firearms Range/Day Shooting (qualification only),
- l. Firearms Range/Night Shooting,
- m. Reasonable Force,
- n. Firearms Decision Making, or
- o. Crimes-In-Progress (practical only).

L. Grounds for Dismissal From Basic Training:

1. failure to meet the minimum academic standard,
2. failure to meet the physical fitness standard,
3. failure to achieve 80% on the State Certification exam,
4. evidence of any health problem that would keep the student from successfully completing the basic training program,
5. failure to comply with Academy rules,
6. failure to meet the standards as stated in Section 53-6-203, or
7. failure to satisfactorily perform in any of the skill areas required during basic training.

R728-404-3. Health Services and Emergencies.

A. Any person who becomes ill or injured while at the Academy shall notify a member of the Academy staff immediately.

B. The Academy is not authorized funds to pay for prescriptions, x-rays, casts, bandages, medications or out-patient visits to hospitals. Students or their departments will be expected to pay for the above services and supplies.

C. All personal calls are to be conducted on one of the phones located strategically throughout the building. Collect calls will not be accepted.

R728-404-4. Classrooms.

A. Students will be responsible for keeping the classrooms neat and clean. No food, drinks or smoking will be allowed in the classroom.

B. From time to time, POST will take portions of the training to locations other than the Academy. While at any of these locations, students will respect the property of others and conduct themselves accordingly. If any damage occurs, it will be reported to the training supervisor as soon as possible.

R728-404-5. Special Regulations.

A. Alcohol and Gambling.

No student will consume alcohol in any form during the course of the training day. The training day shall be interpreted to mean two hours prior to the first class of the day until the completion of the last class of the day. In circumstances where classes end at 5:00 p.m. and there is scheduled evening or night

classes, the last class of the day means the last night class.

1. No alcoholic beverages of any kind shall be brought onto or consumed on the Academy site unless it's part of the training schedule.

2. Gambling will not be permitted at any time or place on the Academy site.

3. Persons found to be in violation of Section D will be suspended or dismissed from the Academy.

B. Dress Code.

Students are required to wear their individual department uniform beginning the first day of class. Because almost all training requires the wearing of the department uniform it is recommended that students have at least two clean uniforms available at all times.

The following dress code will be mandatory for self-sponsored students.

1. Male. Light blue long or short sleeve shirt, navy blue slacks, navy blue tie, and conservative dress shoes.

2. Female. Light blue long or short sleeve blouse, navy blue tie, navy blue dress slacks or skirt, and conservative dress shoes.

The official Academy patch will be worn on both sleeves of the self-sponsored uniform.

3. Only authorized Academy gym clothing will be worn during physical fitness training and arrest control techniques. No radio/tape head sets will be allowed during physical training classes. Hard soled shoes will not be worn on the gym floor.

4. Practical Problems.

The training supervisor may allow students to wear appropriate civilian clothing for designated training.

a. Appropriate civilian clothing includes: blue jeans, slacks, t-shirts, sweaters, hats, coats, jackets and athletic shoes.

b. Inappropriate civilian clothing includes: cutoffs, shorts, halter tops, tank tops or any other item the training supervisor deems inappropriate.

The uniform requirement is intended to help encourage basic students to look and act in a more professional manner. Any staff member at any time can instruct a student to change a uniform or any apparel when in the opinion of the staff member it does not meet the intent of the dress code.

C. Grooming.

All students will be expected to maintain proper grooming habits at all times. Clothing will be clean and well cared for. Shoes will be shined. Male students will be clean shaven every day. Beards will not be allowed. Hair must be clean and neat. Male students will have hair trimmed so that it does not hang over the center portion of the shirt collar when the student is standing straight.

D. Conduct.

1. All students will be expected to conduct themselves in an adult and professional manner at all times.

2. No loud, abusive, or obscene language will be permitted unless necessary in a practical exercise.

F. All students shall realize that while at the Academy they will be directly supervised by their training supervisor and the Academy staff. Therefore, all decisions relative to their training status will be made by the training supervisor and approved, where necessary, through the chain of command.

R728-404-6. Lost, Damaged or Destroyed Items.

Students who lose or damage items beyond serviceability will be required to reimburse the Academy for the replacement value.

R728-404-7. Cost of Training.

Costs of Basic Training are born by the state for sponsored students. Self-sponsored students shall be charged the currently approved rate.

R728-404-8. Disciplinary Action.

A. Students do not have a protected property interest in their enrollment at the Academy. Any student who becomes the subject of an inquiry into an allegation of violation of Academy rules or standards will be dealt with following the procedures outlined in the Procedures for Dismissing Students from Peace Officer Training Programs for Cause found in the POST Policy and Procedure Manual.

B. A violation of any of the Academy rules can result in any one or more of the following actions:

1. verbal reprimand,
2. written reprimand,
3. probation,
4. referral to department for discipline,
5. suspension, or
6. dismissal.

C. A student may be prohibited from participating in Academy functions during the course of an inquiry into alleged misconduct.

D. In all cases, the student will be given the opportunity to speak in his behalf before any action is taken.

E. Once an action is decided upon, the student and his employing agency will be immediately notified.

F. In all cases where a student is suspended or dismissed from the Academy, his employing agency will be immediately notified.

G. Students may appeal any decision by following the procedures outlined in the POST Policy and Procedure Manual.

R728-404-9. Dormitory Facilities.

A. Academy occupants are required to keep their room clean and orderly and to make their bed daily. Random inspections will be held to insure compliance. When noncompliance is found, the person(s) in violation will be subject to disciplinary action.

B. Damage incurred through neglect or intentional abuse to Academy property will result in the student or department head being billed for all repairs and replacements.

Students shall prevent spillage or smearing of shoe polish, etc. in the rooms. Students shall also be prohibited from using Academy issued linens for the purpose of cleaning rooms or personal gear, such as guns, shoes, etc.

C. Visitors are not allowed in dormitory rooms. They are invited to visit with students in the lounges.

D. Presence in the dormitory room of a member of the opposite sex is strictly forbidden unless such person has been instructed to be there by the Academy staff. Persons found to be in violation shall be suspended from the Academy.

E. The academy will not be responsible for personal items left unsecured.

F. Housekeeping Information.

Because of the obvious importance of cleanliness in a group living environment, anyone who demonstrates an unwillingness to follow POST's housekeeping guidelines will be required to leave the dormitory facility and provide their own housing.

KEY: law enforcement officers, basic academy rules

April 10, 2002

53-6-105

Notice of Continuation February 26, 2007

53-6-106

53-6-107

R728. Public Safety, Peace Officer Standards and Training.**R728-405. Drug Testing Requirement.****R728-405-1. Authority.**

This rule is authorized by Sections 53-6-105, 53-6-203, and 53-6-211.

R728-405-2. Purpose.

A. Peace Officer Standards and Training has a compelling interest in ensuring that every student attending a basic peace officer training course, who may become certified and sworn to uphold the law, be drug free.

B. When peace officers and potential peace officers participate in illegal drug use and drug activity, the integrity of the police profession is diminished and public confidence is destroyed.

C. In order to protect the citizens of the State of Utah, to preserve public trust and confidence in a fit and drug free peace officer profession, and to maintain the credibility of peace officer training academies, Peace Officer Standards and Training shall implement a drug testing program.

R728-405-3. Procedure.

A. Applicants accepted to a POST approved basic peace officer training program will be tested some time during the POST training curriculum.

B. Testing will be done by following the POST drug testing policy. The policy outlines the specimen collection procedures, drug testing methodology, and other information and requirements pertinent to such a policy.

R728-405-4. Failure to Pass Drug Test.

A. Students attending an academy will be dismissed if drug testing indicates a positive result considered by a medical review officer to be a result of intentional ingestion of an illegal drug.

B. Students who are dismissed may appeal the denial or dismissal by following the procedures outlined in the POST policy and procedure manual. Appeal procedures may be obtained in written form at POST.

KEY: law enforcement officers, drug testing, drug testing programs**September 27, 2002****53-6-105****Notice of Continuation February 26, 2007****53-6-203**

**R728. Public Safety, Peace Officer Standards and Training.
R728-406. Requirements For Approval and Certification of
Basic Correctional, Reserve and Special Function Training
Programs and Applicants.**

R728-406-1. Authority.

This rule is authorized by Section 53-6-105 which gives the power to the Director of Peace Officers Standards and Training to promulgate standards for the certification of Correctional, Reserve and Special Function Officer Training Programs and applicants.

R728-406-2. Academy Approval.

Any agency wishing to conduct a basic peace officer training program shall do so with the approval of the POST Council and by complying with the POST approved procedures.

R728-406-3. Policy and Procedures for Course Validation.

A. The course must conform to the content and standards established by POST and approved by the POST Council.

B. All applicants shall have completed the POST application packet. Without exception, medical requirements will be completed before training begins.

1. Sponsored applicants - The sponsoring agency will complete the background investigation and insure that the requirements in 53-6-203 (applicants for admission to training programs) and R728-403 (Qualifications for Admission to Certified Peace Officer Training Academies) have been met. If the sponsoring agency has any question about an applicant as he relates to 53-6-203, or R728-403, POST shall be consulted before any training begins.

2. Self-Sponsored applicants - POST will conduct a criminal history check on all self-sponsored applicants. Programs providing training to self-sponsored students such as Weber State University or Salt Lake Community College will adhere to the following guidelines when providing POST with application packets.

a. It is the policy of POST that all applications will be checked to insure completeness. POST will return any application not complete and deny training to that individual until a complete application is received and a criminal history check has been completed.

b. It is the policy of POST that applications will be provided to POST at least two weeks prior to the start of training unless special circumstances exist and arrangements have been made with POST (without exception medical release forms will be completed and submitted to POST before physical training begins.)

c. It is the policy of POST that a class schedule and a list of instructors will be provided to POST before training begins.

C. Equipment required to perform training must be furnished by the sponsoring agency or program. Equipment must meet POST standards.

D. All instructors must be POST certified, and approved to instruct in their assigned topic(s).

E. Lesson plans for each topic must be prepared in accordance with the currently approved student performance objectives. Instructors must read and sign Form #77/1/89 (Performance Objectives Agreement) indicating they are aware of and are willing to teach the POST approved performance objectives.

F. Sponsoring agencies and program coordinators must administer POST approved examinations and maintain a file of examinations used. The final certification examination, which is a comprehensive examination, will be given by POST. A minimum score of 80% is required to pass the test.

G. Attendance rosters shall be kept to satisfy statutory requirements and copies of these rosters will be submitted to POST. No attendee can miss more than 10% of the course and still be certifiable. Under no circumstances will a student be

certified if he misses (and fails to make-up) the following classes:

1. Ethics and Professionalism
2. Laws of Arrest
3. Laws of Search and Seizure
4. Use of Force
5. First Aid (CPR only)
6. Arrest Control Techniques (practical exam)

H. Sponsoring agencies and programs must ensure that students possess a valid drivers license when involved in any training that requires the operating of a motor vehicle. Driver license checks shall be made through the State Division of Driver License.

I. Successful completion of the course and completion of all POST required paperwork is necessary before certification will be granted.

J. Upon completion of the training program, sponsoring agencies and programs will contact POST and make arrangements for the Certification Exam to be given. Anyone failing the Certification Exam once may take it again within a one year time frame. The requirement of taking the certification test after a year, for waiver purposes, will be applied by calculating the year from the date of successfully passing the test. Anyone who fails a certification re-take will not be permitted to take it again until they satisfactorily complete another approved basic training program.

K. When all requirements have been met, the sponsoring agency administrator shall submit to POST a letter informing POST that all requirements have been met. Peace officer certification begins when POST receives an application for certification and confirms that the applicant has completed a basic peace officer training program and met all requirements.

L. The Certification Exam will not be given if all the above requirements have not been met.

M. No person shall function with any authority until he has satisfactorily completed an approved training program and received POST certification.

R728-406-4. Process for Requesting Certification.

Administrators requesting certification of an employee shall submit to POST Form #61, Application for POST Certification. POST will verify the information provided, ensure annual training is up to date and check to see if the individual seeking certification is the subject of a pending investigation. POST will certify the applicant when all requirements have been met. If there is an open investigation on the subject, or a problem with annual training hours, POST will refuse to certify the applicant and make the appropriate notifications.

KEY: law enforcement officers, approval for reserve basic course*, approval for special function course*, approval for correctional basic course*

April 15, 1997

53-6-202

Notice of Continuation February 26, 2007

**R728. Public Safety, Peace Officer Standards and Training.
R728-407. Waiver/Reactivation Process.
R728-407-1. Purpose.**

To provide an avenue for individuals who have met prescribed training standards to become certified as Utah law enforcement officers.

R728-407-2. Waiver of Basic Training Program.

A. Before being allowed to waive basic peace officer training, each applicant shall meet the standards and requirements outlined in 53-6-203 and 53-6-206. Applicants will also be required to submit the appropriate POST waiver application form. The waiver application and other information about waiver eligibility can be obtained by contacting the In-Service Bureau of POST.

1. Note: Waiver applicants have only two opportunities to pass the certification examination. Applicants who fail the first examination may take a make-up examination. An applicant must take the second examination within a 90-day period of the first examination. Applicants who obtain two failing scores on the certification examination will be required to attend the basic training program before certification will be granted.

2. Applicants may be required to attend any phase of the approved basic training course or specified in-service training.

3. Waiver applicants must meet the established physical training requirement. The physical training requirements are outlined in the waiver packet available at POST.

R728-407-3. Application Procedure.

A. All applicants under Section 53-6-206 (waiver of training) shall be processed in the following manner:

1. Request from applicant for waiver packet.
2. Packet to be sent to applicant
3. Applicant returns above completed forms to POST, along with the following:
 - a. photograph (applicant)
 - b. evidence of graduation from high school or equivalent or college diploma
 - c. evidence of successful completion of a comparable basic training course (Basic Certificate Course schedule showing subject matter and hours)
4. Evaluation of application and attendant documents. The staff training supervisor will determine if applicant has filed proper forms and will accomplish the following:
 - a. verification of successful completion of certified program
 - i. check POST files to verify in-state training
 - ii. out of state programs require verification from the POST agency or equivalent within that state
 - b. criminal records search of local, state and federal files
5. Decision as to whether or not applicant qualifies
 - a. application denied
 - i. applicant advised as to reason for denial
 - b. application approved
 - i. oral interview with supervisor of waiver course
 - ii. applicant advised as to conditions for his certification as described.
 6. Certificate issued when conditions are satisfied and records are complete.

R728-407-4. Guidelines For Acceptance of Eligibility.

A. Applicants who have been certified city, county, state, federal, or military law enforcement officers and who do not exceed four years from the time of their certified status and the time they can complete the waiver process may be eligible for waiver.

1. Waiver Procedure
 - a. Completed applications form signed by applicant; and
 - b. Proof of employment and detailed job description from

police agency applicant was employed by.

B. Applicants who have successfully completed a state, federal, or military law enforcement basic training academy within the last four years may be eligible for waiver.

1. Waiver Procedure
 - a. Completed application form signed by applicant;
 - b. Applicants must furnish proof of successful completion of a training program; and
 - c. Applicants may be required to furnish POST with a copy of their training curriculum.

R728-407-5. Restoration of Peace Officer Powers.

A. Peace officer powers become inactive when a certified peace officer is not actively engaged in performing peace officer duties for more than one year but less than four continuous years. Certified peace officers may have peace officer powers reactivated by filing a new application and completing the below listed requirement as specified by the director.

1. Completion of the POST waiver process.

Applicants who fail the certification examination twice will be required to attend basic training.

B. Lapse of certification occurs when a person has not been actively engaged in performing the duties of a peace officer for more than four continuous years.

1. Unless waived by the Director, successful completion of the POST basic training course is necessary before a lapsed certification can be reissued.

KEY: law enforcement officers, waiver of basic training*, reactivation process*

April 15, 1997

Notice of Continuation February 26, 2007

53-6-105

53-6-203

53-6-206

**R728. Public Safety, Peace Officer Standards and Training.
R728-409. Refusal, Suspension, or Revocation of Peace
Officer Certification.**

R728-409-1. Purpose.

In recent decisions made in the area of civil litigation, agencies have had to address the problem of vicarious liability. It has been found that judgments have been rendered against employing agencies who have allowed individuals who do not possess peace officer authority or have not maintained the qualifications necessary for this type of work to be employed or continue employment. In some situations, liability has been partially shifted to Peace Officer Standards and Training, provided that agencies adhere to the laws and rules developed in this area. The purpose of a procedure for the refusal, suspension, or revocation of peace officer certification/authority is to further law enforcement professionalism and to provide protection to both employing agencies and law enforcement officers alike.

R728-409-2. Authority.

The authority for the refusal, suspension or revocation of peace officer certification is authorized under Section 53-6-202 203, 205, 206, and 211.

R728-409-3. Cause to Evaluate Certification for the Refusal, Suspension, or Revocation of Peace Officer Certification or Authority.

The division may initiate an investigation when it receives an allegation that grounds for refusal, suspension, or revocation of certification exist. The initial allegation may come from any responsible source, including those provisions of R728-409-5. Pursuant to the purpose and intent of 53-6-211, revocation is a permanent deprivation of peace officer certification or authority, and except as outlined in R728-409-28 does not allow for a person who has been revoked in the State of Utah to be readmitted into any peace officer training program conducted by or under the approval of the division, or to have peace officer certification or authority reinstated or restored by the division.

Any of the following provisions may constitute cause for refusal, suspension, or revocation of peace officer certification or authority:

A. Any willful falsification of any information provided to the division to obtain certified status. The information could be in the form of written application, supplementary documentation requested or required by the division, testimony or other oral communication to the division, or any other form of information which could be considered fraudulent or false for purposes of Subsection 53-6-211(1)(d)(i).

B. "Physical or mental disability" for purposes of Section 53-6-211(1)(d)(ii), shall be defined as set forth in Utah Administrative Code, Rule R728-403-9, Physical, Emotional, or Mental Condition Requirement, and division medical guidelines.

C. Conviction of any drug related offense including the provisions of Title 58 Chapter 37.

D. "Addiction to drug or narcotics" for purposes of Section 53-6-211(1)(d)(iii) means addiction to any drug or narcotic as defined in Title 58, Chapter 37.

1. Peace officers who, in the normal course of their peace officer duties and functions, possess, attempt to simulate, unintentionally use or are forced to use, narcotics, drugs, or drug paraphernalia, shall be exempt from the provisions of Section 53-6-211(1)(d)(iii) and (v), so long as their conduct:

- a. is authorized by their law enforcement employer; and
- b. does not jeopardize the public health, safety or welfare.

2. Addiction to drugs or narcotics as a direct result of the legitimate treatment of a physical, emotional or psychological disease, or injury which is currently being treated by a licensed physician or medical practitioner licensed in this state or any

other state, and which has been reported, in writing, to the law enforcement employer and P.O.S.T., shall not be considered a violation of Section 53-6-211(1)(d)(iii) so long as the addiction does not jeopardize the public health, safety or welfare.

a. Addiction to unlawfully obtained drugs or narcotics arising from circumstances not involving (a) the legitimate treatment of a physical disease; (b) circumstances involving surgery or serious injury; (c) from psychological illness; and (d) which has not been treated by a licensed physician or medical practitioner, licensed in this state or any other state, shall be considered a violation of Section 53-6-211(1)(d)(iii).

b. No applicant shall be granted peace officer certification or authority if it is demonstrated that the applicant has a drug addiction which is not under control.

c. A peace officer may have peace officer certification or authority temporarily suspended for the duration of drug rehabilitation. If the peace officer has demonstrated control of the drug addiction as determined by a division medical consultant, peace officer certification or authority shall be restored.

d. Criminal conduct by a person asserting the conduct was the result of drug addiction or dependence shall be grounds for refusal, suspension or revocation of peace officer certification or authority despite the fact that rehabilitation has not occurred prior to the peace officer certification or authority being refused, suspended or revoked.

3. Notwithstanding anything contained in this administrative rule to the contrary, a peace officer may have peace officer certification or authority revoked for conduct in violation of Section 53-6-211(1)(d)(iii), if, prior to the conduct in question, the peace officer has had a previous suspension or revocation of peace officer certification or authority under Section 53-6-211(1)(d)(iii), or similar statute of another jurisdiction.

E. Conviction of a felony.

F. "Crimes involving dishonesty" for purposes of Section 53-6-211(1)(d)(iv) means conviction for criminal conduct, under the statutes of this state or any other jurisdiction, which under the rules of evidence can be used to impeach a witness or involving, but not limited to, any of the following:

1. theft;
2. fraud;
3. tax evasion;
4. issuing bad checks;
5. financial transaction credit card offenses;
6. deceptive business practices;
7. defrauding creditors;
8. robbery;
9. aggravated robbery;
10. bribery or receiving a bribe;
11. perjury;
12. extortion;
13. falsifying government records;
14. forgery;
15. receiving stolen property;
16. burglary or aggravated burglary.

G. "Crimes involving unlawful sexual conduct" for purposes of Section 53-6-211(1)(d)(iv) means any violation described in Title 76, Chapter 5, Part 4; Chapter 5a; Chapter 7, Part 1; Chapter 10, Part 13; or Chapter 9, Part 7, Section 702 and 702.5.

H. "Crimes involving physical violence" for purposes of Section 53-6-211(1)(d)(iv) means any violation of Part 1, Assault and Related Offenses, and Part 2, Criminal Homicide, of Title 76, Chapter 5.

I. "Driving under the influence of alcohol or drugs" for purposes of Section 53-6-211(1)(d)(iv) means any violation of Section 41-6-44.

Criminal conduct by an individual asserting the conduct

was a result of drug addiction or dependence shall be grounds for refusal, suspension or revocation despite the fact that rehabilitation has not occurred prior to the refusal, suspension or revocation.

J. "Conduct or pattern of conduct" for purposes of Section 53-6-211(1)(d)(v) means an act or series of acts by a person which occur prior to or following the granting of peace officer certification or authority.

1. Conduct that shall be considered as grounds for violation of Section 53-6-211(1)(d)(v) shall include:

a. uncharged conduct which includes the conduct set forth in Rule R728-409-3, which could be considered criminal, although such conduct does not result in the filing of criminal charges against the person, but where the evidence shows that the criminal act did occur, that the person committed the act, and that the burden of proof by a preponderance of the evidence could be established by the division;

b. criminal conduct where a criminal charge is filed, a conviction is not obtained, but where the evidence shows that the criminal act did occur, that the person committed the act, and that the burden of proof by a preponderance of the evidence appears to exist;

c. criminal conduct as enumerated in Section 53-6-211(1)(d)(iv) and 53-6-203, where the filing of a criminal charge has resulted in a finding of guilt based on evidence presented to a judge or jury, a guilty plea, a plea of nolo contendere, a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation, diversion agreements, or conviction which has been expunged, dismissed, or treated in a similar manner to either of these procedures;

d. violations of Section 53-6-211(1)(d)(i) or the refusal to respond, or the failure to respond truthfully, to the questions of POST investigators asked pursuant to R728-409-5;

e. violations of Section 53-6-211(1)(d)(iii) which involve criminal conduct or jeopardize the public health, safety or welfare;

f. sexual harassment which is:

(i) conduct which rises to the level of behavior of a criminal sexual nature which includes, but is not limited to, the unwelcomed touching of the breasts of a female, buttocks or genitals of another, and or taking of indecent liberties with another;

(ii) behavior by a supervisor which creates the perception in the mind of the subordinate that the granting or withholding of tangible job benefits shall be based on the granting of sexual favors.

g. sexual conduct which is:

(i) subject to criminal punishment; or
(ii) substantially diminishes or, if known, would tend to diminish public confidence and respect for law enforcement; or
(iii) damages or, if known, would tend to damage a law enforcement department's efficiency or morale; or

(iv) impairs or, if known, would tend to impair the ability of the peace officer to objectively and diligently perform the duties and functions of a peace officer;

h. sexual activity protected by the right of privacy, that does not hamper law enforcement, shall not be grounds for refusal, suspension or revocation of peace officer certification or authority.

i. Other conduct, whether charged or uncharged, which constitutes: malfeasance in office, non-feasance in office, violates the peace officer's oath of office, or a willful and deliberate violation of Title 53, Chapter 6, or the administrative rules contained in Utah Administrative Code, Agency R728.

(i) Malfeasance for purposes of subsection (h) shall include the commission of some act which is wholly wrongful or unlawful that affects, interrupts or interferes with the performance of official duties.

(ii) Non-feasance for purposes of subsection (h) shall include the omission of an act which a peace officer by virtue of his employment as such is charged to do.

(iii) oath of office for purposes of subsection (h) shall include the swearing of a person, upon employment as a peace officer defined in Title 77, Chapter 1a, to an oath to support, obey and defend the Constitution of the United States and the Constitution of the State of Utah and discharge the duties of the office with fidelity, or, a similar oath of a county, city or town.

j. arrest for driving under the influence of alcohol or drugs, where the elements of the offense could be established by a preponderance of the evidence.

k. Addiction to alcohol:

(i) if it is demonstrated that a peace officer or applicant for peace officer certification or authority has an alcohol addiction which is not under control;

(ii) a peace officer with an alcohol addiction may have peace officer certification or authority temporarily suspended for the duration of alcohol rehabilitation. If the peace officer has demonstrated control of the alcohol addiction as determined by a division medical consultant, peace officer certification or authority may be restored;

(iii) criminal conduct by an individual asserting the conduct was a result of alcohol addiction or dependence shall be grounds for refusal, suspension or revocation despite the fact that rehabilitation has not occurred prior to the refusal, suspension or revocation.

l. Acts of gross negligence or misconduct which is "clearly outrageous" or shock the conscience of a reasonable person;

(i) violations of the Law Enforcement Code of Ethics as adopted by the Council;

(ii) lying under the Garrity warning

m. A dismissal from military service under any of the following circumstances:

(i) Bad conduct discharge (BCD)

(ii) Dishonorable discharge (DD)

(iii) Administrative discharge of "General under honorable conditions" (GEN).

R728-409-4. Conduct Not in Violation of Section 53-6-211(1).

Conduct which shall not be considered a violation of this subsection includes:

A. Traffic violations other than those enumerated in Section 53-6-211(1)(d)(iv) or R728-409-3 herein; or

B. Violations of individual department policy and procedure as enumerated in Section 53-6-211(4).

R728-409-5. Investigative Procedure.

A. All investigations initiated shall be commenced upon the reasonable belief that cause exists for the refusal, suspension or revocation of peace officer, correctional officer, reserve/auxiliary officer or special function officer certification as indicated in section 409-3 above.

B. The initiation of an investigation may occur upon any of the following circumstances:

1. A peace officer who has been charged with a criminal violation of law;

2. A peace officer who has committed conduct which is a criminal act under law, but which has not been criminally charged and/or where criminal prosecution is not anticipated;

3. A peace officer who has committed conduct in violation of section 409-3 above, where the department has conducted disciplinary action and notification of the conduct has been made to the division by the peace officer's department;

4. A department which has terminated a peace officer from employment for conduct which is in violation of section 409-3 above;

5. A department which has agreed to allow a peace officer

to resign, rather than terminate the employment, for conduct which is in violation of section 409-3 above;

6. A complaint from a citizen which, on its face, appears to be a violation of section 409-3 above;

7. Media attention, confirmed by the employing agency, reporting peace officer misconduct which appears to be in violation of section 409-3 above;

8. Information from a peace officer, concerning another peace officer or law enforcement department, alleging improper, unethical, or unlawful conduct in violation of section 409-3 above;

9. Information against a peace officer received from any law enforcement agency, criminal justice related agency, or political subdivision alleging improper, unethical, or unlawful conduct in violation of section 409-3 above;

10. Administrative procedures instituted by the division to uncover or reveal past criminal conduct or the character of an individual requesting peace officer certification, or entrance into a certified peace officer training program which upon completion would create eligibility for peace officer certification; and/or

11. The peace officer may be directed to respond to questions pursuant to a "Garrity Warning." Refusal to respond to questions after being warned, or the failure to respond truthfully, may result in a suspension up to two years depending on aggravating and mitigating circumstances.

C. All citizens complaining about peace officers will be requested to sign a written statement detailing the incident, swear to the accuracy of the statement, be advised that complaints found to be malicious in nature may be prosecuted under Section 76-8-511, Falsification of Government Record, and may require that the citizen submit to a polygraph examination concerning the truth and veracity of the complaint.

D. Non-criminal complaints or information about a peace officer initiated by another peace officer will be submitted in writing detailing the incident or offer the division a tape recorded statement detailing the incident.

E. A staff member will be assigned to investigate the complaint or information and to make a recommendation to proceed or to discontinue action in the matter.

1. If a peace officer under investigation is employed by a law enforcement agency, POST shall notify the peace officer's employing agency concerning the complaint or information.

2. POST will refer any complaints made by officers or citizens of a criminal nature to the appropriate agency having jurisdiction.

3. Criminal complaints will be handled by the agency having jurisdiction.

4. POST will wait until the case has been investigated by the responsible agency and the adjudicative process has been completed before taking action.

5. POST will use the investigation and the adjudicative findings to help determine its action with regard to an individual's certification. POST will do its own investigation whenever it feels the necessity to do so.

6. POST will take action based on the actual conduct of the individual as determined by an investigative process, not necessarily on the punishment or finding of the court.

7. POST's primary concern is conduct that disrupts, diminishes or otherwise jeopardizes public trust and fidelity in law enforcement.

8. Complaints that are not criminal will be investigated by the agency having jurisdiction. If the employing agency chooses not to investigate, a POST staff investigator may be assigned to conduct the investigation.

9. Witnesses and other evidence may be subpoenaed for the investigation pursuant to Section 53-6-210.

10. If ordinary investigative procedures cannot resolve the facts at issue, the peace officer may be requested to submit to a

polygraph examination. Refusal to do so could result in the immediate suspension of peace officer certification until such time as an administrative proceeding can be established or other factual information has been received which no longer requires the need for the polygraph examination.

11. If an officer is found to have lied under the Garrity warning, his certification may result in a suspension up to two years depending on aggravating and mitigating circumstances.

F. Subsection (E) will be the method preferred for the investigation of alleged violations of Title 53, Chapter 6, unless special investigative procedures are determined to be more beneficial to the investigative process by the director and the council as per R728-409-7.

G. If the alleged conduct constitutes a public offense for which the individual involved has not been previously convicted, the division shall immediately notify the appropriate prosecutorial authority. If the conduct would also, if proven, constitute grounds for suspension or decertification under Section 53-6-211(1), the director in his discretion may immediately suspend the certification of the individual as provided in Section 63-46b-20 and Rule R728-409-25.

H. If immediate suspension of a peace officer's certification is believed necessary to ensure the safety and welfare of the public, or for insuring the continued public trust or professionalism of law enforcement, the director shall immediately establish the procedures for investigation and adjudicative proceedings in order to fulfill the due process rights of the peace officer.

I. Whenever an investigation is initiated the officer(s) who is under investigation and his department will be notified as soon as reasonably possible, except in cases where the nature of the complaint would make such a course of action impractical. The date and time the department administrator and the officer are notified should be noted in the appropriate space on the complaint form.

J. In all cases, where possible, the investigation shall be conducted with the full knowledge and assistance of the department administrator or the administrator of the employing political subdivision.

K. If during the course of an investigation it appears that criminal action may be involved the information is to be turned over to appropriate local authorities for disposition. It is not the position of the division to be involved in investigating criminal cases against officers. If criminal charges are pending against an officer the division may wait until the case is adjudicated before deciding if any further action is warranted by the division (subject to subsection (5)(J) above).

L. Assigned investigators are to ensure that all investigative procedures are properly documented and recorded in the case file.

M. Final disposition of a case (i.e., close case, refer to department for follow-up action, refer for adjudicative proceeding, etc.) will be made by the deputy director with the approval of the director.

R728-409-6. Special Investigative Proceedings - Procedures.

A. The Director with the concurrence of the Council on Peace Officer Standards and Training, may initiate special investigative proceedings.

B. The purpose of the special investigative proceeding is to hear testimony and other evidence regarding violations of Chapter 6, Title 53.

C. Special investigative proceedings will be presided over by a panel of the Council on Peace Officer Standards and Training consisting of at least three Council members and any persons designated by the Council Chairman and Director of the division.

D. Direct examination of witnesses will be conducted by members of the panel.

E. The division and presiding officer may subpoena witnesses and other evidence for special investigative proceedings, as per Sections 53-6-210 and 63-46b-7(2).

F. The special investigative proceeding will be a proceeding of record by the use of tape recording and/or court reporter.

G. If an officer is found to have lied under the Garrity warning, his certification may result in a suspension up to two years depending on aggravating and mitigating circumstances.

R728-409-7. Purpose of Adjudicative Proceedings.

A. The purpose of adjudicative proceedings will be to establish whether or not:

1. the respondent did in fact commit the alleged conduct; and

2. such conduct falls within the grounds for administrative action enumerated in Section 53-6-211(1); or

3. to exonerate the respondent if the evidence presented fails to prove that the respondent committed the alleged conduct or that such conduct falls within grounds for administrative action enumerated in Section 53-6-211(1); or

4. to recommend, to the Council on Peace Officer Standards and Training and the Director of the Division of Peace Officer Standards and Training, any action to be taken with respect to the respondent if the evidence presented indicates that the respondent committed the alleged conduct and that such conduct falls within grounds for administrative action enumerated in Rule R728-409-2 above and in Section 53-6-211(1).

B. The Administrative Law Judge may recommend refusal, suspension or revocation of the respondent's peace officer, correctional officer, reserve/auxiliary officer or special function officer certification, as applicable.

C. Any decision reached by the Administrative Law Judge against the respondent involving a violation of Subsection 53-6-211(1), must meet the standard burden of proof which will be a preponderance of evidence.

R728-409-8. Commencement of Adjudicative Proceedings - Administrative Complaint.

A. Except as otherwise permitted by Sections 53-6-211(6) and 63-46b-20 and Rules R728-409-8(C) and R728-409-25, all adjudicative proceedings shall be commenced by notice of an Administrative Complaint accompanied by a Notice of Agency Action. The Administrative Complaint will set forth the allegations complained of by the division. A copy of the Administrative Complaint and Notice of Agency Action shall be sent to the individual named on the administrative complaint and notice of agency action or by certified mail.

B. The Administrative Complaint shall be filed and served according to the following requirements:

1. when adjudicative proceedings are commenced by the division, the Administrative Complaint shall be in writing, signed by the Council Chairman and shall include:

a. the name and mailing address of the respondent, and the name and address of the agency employee or attorney designated to represent the division;

b. the division's file number or other reference number;

c. the name of the adjudicative proceeding;

d. the date that the notice of the division's action was mailed;

e. a statement indicating that a formal hearing will be conducted according to the provisions of Sections 63-46b-6 to 63-46b-11, except as otherwise indicated by Rule R728-409 in reference to time of response, as allowed under Section 63-46b-3(2)(f);

f. a statement that the respondent shall file a responsive pleading within 30 days of the mailing date of the notice of agency action;

g. a statement of the time and place of the scheduled adjudicative proceeding, a statement indicating the purpose for which the adjudicative proceeding is to be held, and a statement indicating that a party who fails to attend or participate in the adjudicative proceeding may be held in default;

h. a statement of the legal authority and jurisdiction under which the administrative proceeding is to be maintained;

i. the name, title, mailing address, and telephone number of the presiding officer; and

j. a statement of the purpose of the adjudicative proceeding and, to the extent known by the presiding officer, the questions to be decided.

C. When the cause of action under Section 53-6-211 and Rule R728-409-3 is conviction of a felony, the following procedures shall apply:

1. The division shall send written notice to the peace officer stating that proceedings prior to revocation shall be limited to an information review of written documentation by the presiding officer, and that revocation is mandatory when the presiding officer determines that the peace officer has been convicted of a felony.

2. The notice shall state that within 15 days of the mailing date of the notice, the peace officer may request, in writing, an informal hearing before the presiding officer to present evidence that there was no felony conviction, or that the conviction has been overturned, reduced to a misdemeanor or expunged. This notice shall also state that if the peace officer does not so request, the presiding officer, and POST Council, will proceed on the documentation of conviction.

R728-409-9. Responsive Pleadings.

A. In all adjudicative proceedings, the respondent shall file and serve a written response signed by the respondent or his representative within 30 days of the mailing date of the notice of agency action, that shall include:

1. the division's file number or other reference number;

2. the name of the adjudicative proceeding;

3. a statement of the relief that the respondent seeks;

4. a statement of facts;

5. a statement summarizing the reasons that the relief requested should be granted.

B. The response shall be filed with the division.

C. The presiding officer or the division, pursuant to rule, may permit or require pleadings in addition to the notice of agency action and the response. All papers permitted or required to be filed shall be filed with the division.

R728-409-10. Consent Agreements.

A. The director may seek a consent agreement for the refusal, suspension or revocation of certification with the individual. The consent agreement will be delivered with the administrative complaint.

B. The individual will have 10 days from receiving the consent agreement to respond to the Director on the consent agreement.

C. If a consent agreement is not sought or is not reached, the procedure outlined in R728-409-9 above will proceed.

D. If a consent agreement has been signed by both parties, the adjudicative proceeding will conclude.

E. The consent agreement procedure will not extend the period of time for responsive pleading to the administrative complaint and notice of agency action.

R728-409-11. Scheduling the Adjudicative Proceeding - Hearing.

A. After the division has been served with the responsive pleading, notice of the location, date and time for the adjudicative hearing will be issued.

B. The adjudicative hearing will be held within a

reasonable time after service of the responsive pleading unless a later scheduling is ordered by the presiding officer, or mutually agreed upon by the individual and the division.

C. When the cause for action is conviction of a felony, the presiding officer will conduct an informal review of the documentation within 30 days after the notice is mailed to the peace officer. If the peace officer timely requests a hearing, the presiding officer shall, within 30 days of the request, hold an informal hearing pursuant to Section 53-6-211(6).

R728-409-12. Discovery and Subpoenas.

A. In formal adjudicative proceedings parties may conduct limited discovery. The respondent is entitled to a copy of all evidence the division intends to use in the adjudicative proceeding, and other relevant documents in the agency's possession which are necessary to support his or her claims or defenses subject, however, to the Government Records Access and Management Act, UCA 63-2-101 et seq. Discovery does not extend to interrogatories, requests for admissions or depositions.

B. Subpoenas and other orders to secure the attendance of witnesses or the production of evidence for adjudicative proceedings shall be issued by the Division of Peace Officer Standards and Training pursuant to Section 53-6-210, or the presiding officer when requested by any party, or may be issued by the presiding officer on his own motion pursuant to Section 63-46b-7.

C. Discovery is prohibited in informal proceedings.

R728-409-13. Procedures for Adjudicative Proceedings - Hearing Procedures.

A. All formal adjudicative proceedings shall be conducted as follows:

1. The presiding officer shall regulate the course of the hearing to obtain full disclosure or relevant facts and to afford all the parties reasonable opportunity to present their positions.

2. On his own motion, or upon objection by a party, the presiding officer:

a. may exclude evidence that is irrelevant, immaterial, or unduly repetitious;

b. shall exclude evidence privileged in the courts of Utah;

c. may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document;

d. may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, or the record of other proceedings before the agency, and of technical or scientific facts within the agency's specialized knowledge.

3. The presiding officer may not exclude evidence solely because it is hearsay.

4. The presiding officer shall afford to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence.

5. The presiding officer may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.

6. All testimony presented at the hearing, if offered as evidence, to be considered in reaching a decision on the merits, shall be given under oath.

7. The hearing shall be recorded at the division's expense.

8. Any party, at his own expense, may have a person approved by the division prepare a transcript of the hearing, subject to any restrictions that the division is permitted by statute to impose to protect confidential information disclosed at the hearing.

9. All hearings shall be open to all parties.

10. This rule does not preclude the presiding officer from taking appropriate measures necessary to preserve the integrity of the hearing.

11. The respondent has the right to counsel. Counsel will not be provided by the division and all costs for counsel will be the sole responsibility of the respondent.

12. Witnesses at adjudicative hearings may have counsel present. Counsel for witnesses will not have the right to cross-examine. Counsel will not be provided by the division and all costs for counsel will be the sole responsibility of the witness.

13. Witnesses before an adjudicative hearing may be excluded from adjudicative hearing while other witnesses are testifying.

14. The presiding officer may issue an order to admonish witnesses not to discuss their testimony with other witnesses appearing to testify or offer evidence to the presiding officer at the adjudicative hearing. This order shall remain in effect until all testimony and evidence has been presented at the hearing.

15. A person's failure to comply with the admonishment order may result in the refusal to consider testimony or evidence presented, if it is deemed that the testimony or evidence has been tainted through violation of the admonishment order.

B. When the cause for action is conviction of a felony and the peace officer requests an informal hearing, it shall be conducted, except as modified by these rules, pursuant to Section 63-46b-5.

C. If the presiding officer finds, by informal review or hearing, that the peace officer has been convicted of a felony, he shall recommend revocation of certification. If the presiding officer determines that there was not a conviction, he or she may recommend action other than revocation.

R728-409-14. Procedures for Adjudicative Proceedings - Intervention.

A. Any person not a party may file a signed, written petition to intervene in a formal adjudicative proceeding with the division. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:

1. the division's file number or other reference number;

2. the name of the proceeding;

3. a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceeding, or that the petitioner qualifies as an intervenor under any provision of law; and

4. a statement of the relief that the petitioner seeks from the division.

B. The presiding officer shall grant a petition for intervention if he determines that:

1. the petitioner's legal interests may be substantially affected by the adjudicative proceeding; and

2. the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

C.1. Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.

2. An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding.

3. The presiding officer may impose the conditions at any time after the intervention.

R728-409-15. Default.

A. The presiding officer may enter an order of default against a party if:

1. a party fails to attend or participate in the hearing; or

2. the respondent in the proceeding fails to file the response required under Rule R728-409-9.

B. The order shall include a statement of the grounds for default and shall be mailed to all parties.

C. The defaulted party may seek to have the presiding

officer set aside the default order in accordance with Rule 60(b) of the Utah Rules of Civil Procedure.

D. After issuing the order for default, the presiding officer shall conduct the necessary proceedings to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting party.

R728-409-16. Procedures for Adjudicative Proceedings - Recommendations.

A. In adjudicative proceedings:

1. within a reasonable time after the hearing, or after the filing of any post-hearing papers permitted by the presiding officer, the presiding officer shall sign and issue a recommendation that includes:

- a. a statement of the presiding officer's findings of fact based exclusively on the evidence of record in the adjudicative hearing or on facts officially noted;
- b. a statement of the presiding officer's conclusions of law;
- c. a statement of the reasons for the presiding officer's recommendation;
- d. a statement of recommended agency action;
- e. a notice of the right to apply for council review; and
- f. the time limits applicable to any review.

2. The presiding officer may use his experience, technical competence, and specialized knowledge to evaluate the evidence.

3. No finding of fact that was contested may be based solely on hearsay evidence.

4. This section does not preclude the presiding officer from issuing interim orders to:

- a. notify the parties of further hearings;
- b. notify the parties of provisional rulings on a portion of the issues presented; or
- c. otherwise provide for the fair and efficient conduct of the adjudicative hearing.

R728-409-17. Notice of Presiding Officer's Recommendation.

A. If the evidence against the individual does not support the conduct alleged in the administrative complaint with respect to Section 53-6-211(1), the presiding officer, hereafter referred to as Administrative Law Judge, will mail the parties a copy of the recommendation upon issuance of the recommendation.

B. If the Administrative Law Judge finds that the evidence against the individual does support the conduct alleged in the administrative complaint with respect to Section 53-6-211(1), the Administrative Law Judge will mail the parties a copy of the recommendation upon issuance of the recommendation.

C. The Administrative Law Judge may issue his recommendation to the parties by certified mail.

R728-409-18. Request for Review of Presiding Officer's Recommendation.

A. Except when revocation is recommended for conviction of a felony, the parties will have 15 days from the date of issuance of the Administrative Law Judge's recommendation to request a review of the recommendation before the council.

B. A request by any party for council review of the Administrative Law Judge's recommendation will be made in writing to the council and will contain all issues which the party wishes to raise. The request must specify whether the party is challenging the ALJ's recommended findings of fact, conclusions of law, and/or agency action. If the party is challenging the recommended findings or conclusions, the request must particularly set forth which findings and/or conclusions it wants reviewed and considered by the council. A copy of the request will be served upon all other parties.

C. The party seeking review shall provide transcripts,

documents, and briefs to the council within 45 days after the filing of the notice requesting review. If the party is challenging the recommended findings of fact or conclusions of law, it must support its request with specific references and citations to the hearing record, and copies of the evidence received by the ALJ at the hearing, and which are relevant to the challenged recommendations. If the request is based on oral testimony presented at the hearing, the party shall provide, at its expense, a transcription of that relevant testimony. No party shall be permitted oral argument before the council unless a request for oral argument is filed with the Council within this same 45 day period.

D. The other party or parties shall have 30 days from the date the transcripts, documents and briefs are filed by the party seeking review, to file any response to the request for review. Any response may include additional transcripts or documents necessary for review.

E. The council shall whenever possible within a reasonable time from the filing of the notice requesting review to provide for a review hearing before the council.

F. Any review shall be based upon the administrative hearing record and briefs or other documents submitted by the parties. If a party has submitted portions of the hearing transcript, or other evidence admitted at the hearing, the council may, in its discretion, require the division to submit all or any other portion of the hearing transcript or evidence, and may continue the review hearing for that purpose. If necessary to make a determination, the council may also require the agency to subpoena any of the witnesses who testified in the evidentiary hearing, to appear at the next regularly scheduled council meeting, to answer questions from council members.

G. If oral argument is requested by either party, at the review hearing the parties will be permitted 20 minutes each to present oral argument on their respective positions identified in their written requests and briefs. Any testimony presented during oral argument, if offered as evidence to be considered in reaching a decision on the review, shall be given under oath.

H. If no oral argument is requested, the council shall, within a reasonable time after all documents, transcripts and briefs have been filed, issue to the director a review decision.

I. If oral argument has been received, the council, within a reasonable time after the review hearing, shall issue to the Director a review decision.

J. The council has the power to make a full review of the Administrative Law Judge's recommendation. This power includes, but is not limited to, the power to accept the ALJ's recommended findings of fact, conclusions of law, and/or agency action, or to reject all or a portion thereof, and render its own findings, conclusions and proposed action on the officer's certification.

K. Any periods of time designated in this rule for the filing of documents and pleadings, or for scheduling of hearings may be extended by the council for good cause.

R728-409-19. Council Action and Finding by Director.

A. Unless a consent order has been signed by all parties as per Rule R728-409-10 or a request for review is made to the Council as per Rule R728-409-18, and following the adjudicative proceeding or following a default by the individual as outlined in Rule R728-409-15:

1. The division representative will issue to the council the recommendation of the Administrative Law Judge. The council will review the Administrative Law Judge's recommendation and make a decision to concur or reject that recommendation, and to issue any alternative recommendation it may desire.

2. The council will issue and file its decision with the director.

R728-409-20. Director's Final Order.

A. In adjudicative proceedings:

1. After a majority of the council recommends to refuse, suspend or revoke respondent's peace officer, correctional officer, reserve/auxiliary officer, or special function officer certification, or to take no action against respondent, the director shall prepare and issue a final order within 30 days outlining the council's decision.

2. The final order will include information on the appeal process as outlined in administrative rules R728-409-21, 22, 23.

3. The director shall, upon issuance, serve a copy of the final order on the respondent and the employing agency by certified mail.

R728-409-21. Division Review - Reconsideration.

A. Except when revocation is recommended for conviction of a felony within ten days after the date that the director's final order is issued, any party may file a written request for reconsideration, stating the specific grounds upon which relief is requested. The filing of the request is not a prerequisite for seeking judicial review of the order.

B. The request for reconsideration shall be filed with the division by the person making the request.

C.1. The director, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

2. If the director or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for rehearing shall be considered to be denied.

R728-409-22. Judicial Review - Exhaustion of Administrative Remedies.

A. A party aggrieved may obtain judicial review of final agency action only after exhausting all administrative remedies available, except that:

1. The court may relieve a party seeking judicial review of the requirement to exhaust any or all administrative remedies if:

- the administrative remedies are inadequate; or
- exhaustion of remedies would result in irreparable harm disproportionate to the public benefit derived from requiring exhaustion.

B.1. A party shall file a petition for judicial review of final agency action within 30 days after the date that the order constituting the final agency action is issued.

2. The petition shall name the agency and all other appropriate parties as respondents and shall meet the form requirements specified in Chapter 46b of Title 63.

R728-409-23. Judicial Review - Adjudicative Proceedings.

A. At the conclusion of formal adjudicative proceedings, the Utah Court of Appeals has jurisdiction to review the director's final order.

B. To seek judicial review of the director's final order, the petitioner shall file a petition for review of agency action in the form required by the Rules of the Utah Court of Appeals.

1. The Rules of the Utah Court of Appeals govern all additional filings and proceedings in the Utah Court of Appeals.

C. The contents, transmittal, and filing of the agency's record for judicial review of formal adjudicative proceedings are governed by the Rules of the Utah Court of Appeals, except that:

1. all parties to the review proceedings may stipulate to shorten, summarize, or organize the record;

2. the Utah Court of Appeals may tax the cost of preparing transcripts and copies for the record:

- against a party who unreasonably refuses to stipulate to shorten, summarize, or organize the record; or
- according to any other provision of law.

c. The scope of judicial review by the Utah Court of

Appeals is controlled by Section 63-46b-16(4). Relief granted by the Utah Court of Appeals is controlled by Section 63-46b-17.

D. If peace officer certification is revoked for conviction of a felony after an informal hearing, the district courts have jurisdiction to review the final order pursuant to Sections 63-46b-14 and 63-46b-15.

R728-409-24. Judicial Review - Stay and Other Temporary Remedies Pending Final Disposition.

A. The director may grant a stay of the final order or other temporary remedy during the pendency of judicial review, according to the division's rules.

B. Parties shall petition the director for a stay or other temporary remedies unless extraordinary circumstances require immediate judicial intervention.

C. If the director denies a stay or denies other temporary remedies requested by a party, the director's order of denial shall be mailed to all parties and shall specify the reasons why the stay or other temporary remedy was not granted.

D. If the director has denied a stay or other temporary remedy to protect the public health, safety, or welfare against a substantial threat, the court may not grant a stay or other temporary remedy unless it finds that:

1. the director violated the division's rules in denying the stay; or

2.a. the party seeking judicial review is likely to prevail on the merits when the court finally disposes of the matter;

b. the party seeking judicial review will suffer irreparable injury without immediate relief;

c. granting relief to the party seeking review will not substantially harm other parties to the proceedings; and

d. the threat to the public health, safety, or welfare relied upon by the agency is not sufficiently serious to justify the director's action under the circumstances.

R728-409-25. Emergency Adjudicative Proceedings.

A. The division may issue an order on an emergency basis without complying with the requirements of this chapter if:

1. the facts known by the division or presented to the division show that an immediate and significant danger to the public health, safety, or welfare exists; and

2. the threat requires immediate action by the division.

B. In issuing an emergency order, the division shall:

1. limit the order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;

2. issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the division's utilization of an emergency adjudicative proceeding; and

3. give immediate notice to the person who is required to comply with the order.

C. Upon the commencement of an emergency adjudicative proceeding, the division shall commence a formal adjudicative proceeding in accordance with the other provisions of this rule in order not to infringe upon any legal right or interest of any party.

R728-409-26. Civil Enforcement.

A.1. In addition to other remedies provided by law, an division may seek enforcement of an order by seeking civil enforcement in the district courts.

2. The action seeking civil enforcement of the division's order must name, as defendants, each alleged violator against whom the agency seeks to obtain civil enforcement.

3. Venue for an action seeking civil enforcement of the division's order shall be determined by the requirements of the Utah Rules of Civil Procedure.

4. The action may request, and the court may grant, any of the following:

- a. declaratory relief;
- b. temporary or permanent injunctive relief;
- c. any other civil remedy provided by law; or
- d. any combination of the foregoing.

B.1. Any person whose interests are directly impaired or threatened by the failure of the division to enforce the division's order may timely file a complaint seeking civil enforcement of that order, but the action may not be commenced;

a. until at least 30 days after the plaintiff has given notice of his intent to seek civil enforcement of the alleged violation to the director, the attorney general, and to each alleged violator against whom the petitioner seeks civil enforcement;

b. if the division has filed and is diligently prosecuting a complaint seeking civil enforcement of the same order against the same or a similarly situated defendant; or

c. if a petition for judicial review of the same order has been filed and is pending in court.

2. The complaint seeking civil enforcement of the division's order must name, as defendants, the division, and each alleged violator against whom the plaintiff seeks civil enforcement.

3. Except to the extent expressly authorized by statute, a complaint seeking civil enforcement of the division's order may not request, and the court may not grant, any monetary payment apart from taxable costs.

C. In a proceeding for civil enforcement of the division's order, in addition to any other defenses allowed by law, a defendant may defend on the ground that:

1. the order sought to be enforced was issued by the division without jurisdiction to issue the order;
2. the order does not apply to the defendant;
3. the defendant has not violated the order; or
4. the defendant violated the order but has subsequently complied.

D. Decisions on complaints seeking civil enforcement of the division's order are reviewable in the same manner as other civil cases.

R728-409-27. Declaratory Orders.

A. Any person may file a request for division actions, requesting that the division issue a declaratory order determining the applicability of a statute, rule, or order within the primary jurisdiction of the division to specified circumstances.

B. The division shall not issue a declaratory order if:

1. the request is one of a class of circumstances that the division has by rule defined as being exempt from declaratory orders; or

2. the person requesting the declaratory order participated in an adjudicative proceeding concerning the same issue within 12 months of the date of the present request.

a. The division may issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party, only if that person consents in writing to the determination of the matter by a declaratory proceeding.

C. Persons may intervene in declaratory proceedings if:

1. they meet the requirements of Rule R728-409-12; and
2. they file timely petitions for intervention according to division rules.

D. After receipt of a petition for a declaratory order, the division may issue a written order:

1. declaring the applicability of the statute, rule, or order in question to the specified circumstances;
2. setting the matter for adjudicative proceedings;
3. agreeing to issue a declaratory order within a specified time; or
4. declining to issue a declaratory order and stating the

reasons for its action.

E. A declaratory order shall contain:

1. the names of all parties to the proceeding on which it is based;

2. the particular facts on which it is based; and

3. the reasons for its conclusion.

F. A copy of all orders issued in response to a request for a declaratory proceeding shall be mailed promptly to the petitioner and any other parties.

G. A declaratory order has the same status and binding effect as any other order issued in an adjudicative proceeding.

H. Unless the petitioner and the division agree in writing to an extension, if the division has not issued a declaratory order within 60 days after receipt of the request for a declaratory order, the petition is denied.

R728-409-28. Reconsideration Based on Mistake, Fraud, or Newly Discovered Evidence.

A. Reconsideration of a decision by POST Council, and a new opportunity to be heard, may be granted for any of the following reasons:

1. The decision of POST Council was based on a mistake of law or fact;

2. There was fraud, misrepresentation or misconduct in the adjudicative proceeding; or

3. There is newly discovered material evidence which the party could not, with reasonable diligence, have discovered and produced during the adjudicative proceedings.

B. At any time after a final order is issued, either party may request reconsideration under this rule, by complying with the procedures set forth in R728-409-18(B) through (K).

C. Reconsideration by POST Council pursuant to this rule shall be a two-step process:

1. A written request and information outlining the reasons and justification for making the request shall be submitted to a special subcommittee consisting of the presidents of the Chiefs of Police Association and the Sheriffs Association, or their designees, and another POST Council member designated by the Chairman, which shall review the request and information provided and decide whether the party seeking consideration has, by a preponderance of the evidence, established that the prior decision was based on one or more of the grounds set forth above. The subcommittee will notify the director of its decision, who will then send out a notice of that decision to both parties.

2. If the subcommittee decides step one in the affirmative, the matter will be scheduled for consideration by POST Council at the next regularly scheduled meeting. POST shall give reasonable notice to the parties of the date, time and location of the meeting. POST Council shall reconsider the correct, clarified or new evidence, and render a decision based on the written request and information and oral argument, (if such was timely requested.) Any oral testimony presented to the council shall be under oath, and subject to the penalty of perjury.

3. POST Council's decision shall be communicated to the Director, who shall then notify the parties thereof, in writing and consistent with R728-409-20. The parties will then have the same appeal rights set forth in R728-409-22, 409-23, and 409-24.

D. The definitions set forth in Utah Rules of Civil Procedures, Rules 59 and 60, and interpretive case law thereon, shall apply to determinations under this rule.

KEY: law enforcement officers, certification, investigations, rules and procedures

June 26, 2003

Notice of Continuation February 27, 2007

53-6-211

**R728. Public Safety, Peace Officer Standards and Training.
R728-410. Guidelines Regarding Failure To Obtain Annual
Statutory Training.**

R728-410-1. Authority.

This rule is authorized by Subsection 53-6-105(k).

**R728-410-2. Suspension for Failure to Obtain Annual
Statutory Training.**

A. If an individual maintaining peace officer certification or authority under Title 77, Chapter 1a, Utah Code Annotated, fails to obtain 40 hours of approved training as provided under Subsection 53-6-202(4), Utah Code Annotated, the peace officer's powers will be suspended until such time as the peace officer has:

1. obtained the 40 hours of training required for the deficient training year; or
2. if deficient more than one year, successfully complete the certification examination as indicated:
 - a. peace officers maintaining peace officer designation shall successfully complete the peace officer designation certification examination.
 - b. peace officers maintaining correctional officer certification or authority shall successfully complete the correctional officer certification examination.
 - c. peace officers maintaining peace officer certification or authority as a reserve officer and special function officer, shall successfully complete the reserve/special function officer certification examination.
 - d. peace officers maintaining more than one peace officer designation (i.e., correctional officer and peace officer designation; or special function officer and peace officer designation) shall be required to successfully complete the peace officer certification examination.
 - e. peace officers maintaining Reserve, Level II/Special Function Officer designation and Correctional Officer designation shall be required to successfully complete the certification examination applicable to their primary law enforcement employer.
 - f. peace officers maintaining Reserve Officer, Level I authority shall successfully complete the peace officer designation certification examination.

B. Any peace officer who fails to acquire 40 hours of approved annual training shall be prohibited from exercising peace officer powers until the required training is completed and reported to the division;

1. upon notification of deficient training by the employing agency, the division shall notify the peace officer and the employing agency before peace officer powers are suspended by the division. This will allow an opportunity for the deficient peace officer to explain the training deficiency or failure to report training to the division, and shall provide due process for the peace officer.

2. upon becoming aware that a peace officer is deficient in the 40 hour training requirement, the employing agency shall comply with (B) above.

3. peace officers who fail to acquire the 40 hours of annual training shall be notified by the division that their peace officer powers have been suspended. Notification by the division may be made orally or in writing. If notification is made orally, written notification shall be completed as soon as possible.

4. if the annual training requirement is completed and reported to the division after the suspension has been issued by the division, the peace officer shall be notified, in writing, that peace officer powers have been reinstated before the peace officer is allowed to resume peace officer duties and functions.

C. Any peace officer who fails to acquire 40 hours of training for two consecutive years will have his peace officer certification or authority designated "inactive" as per Utah Code Annotated, Section 53-6-202.

D. Any peace officer found to be exercising peace officer powers after notification from the division that peace officer powers have been suspended shall be subject to the provision of Rule R728-411.

KEY: law enforcement officers, annual training*

April 15, 1997

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53-6-105

53-6-202

53-6-211

77-1a

**R728. Public Safety, Peace Officer Standards and Training.
R728-500. Utah Peace Officer Standards and Training In-Service Training Certification Procedures.**

R728-500-1. Authority.

This rule is authorized by Sections 53-6-105(k).

R728-500-2. Purpose.

The purpose of in-service training is to provide Utah law enforcement officers with the opportunity to obtain the knowledge and skills necessary to perform their duties in a professional and skillful manner. To this end, and to satisfy the requirements of 53-13-103(4)(b), Utah Peace Officer Standards and Training will provide an in-service training program that addresses the needs of the Utah law enforcement community.

R728-500-3. Statutory 40 Hour Training Requirement.

Pursuant to Subsection 53-13-103(4)(b), "law enforcement shall complete such annual certified training as the POST Director, with the advice and consent of the POST Council, shall direct; provided, however, that in no event shall such training consist of less than 40 hours per year." All law enforcement agencies seeking to have in-service credit granted shall adhere to the standards and procedures established by POST and the POST Council.

R728-500-4. Agency To Maintain Training Records.

A. The chief administrative officer of an agency employing peace officers is responsible for the recording of all training obtained by his peace officers. This record shall contain the following:

1. the subject or topic instructed
2. the number of classroom or field hours
3. the location of the training
4. the date of the training
5. the name of the instructor

B. This record shall be accurate and available in the event of an audit or subpoena of training records.

R728-500-5. Reporting Training, Agency Responsibility.

At the conclusion of each training year (July 1 - June 30), agencies employing peace officers are required to report to POST the number of training hours received by each officer employed by that agency. This report is due to POST by July 31 and must contain the following:

- A. the name of the officer
- B. the officers social security number
- C. the number of training hours for the training year.

R728-500-6. Violation of Statutory Training Requirement, Order of Suspension.

A. The Division of Peace Officer Standards and Training will suspend the peace officer powers of any officer who fails to receive 40-hours of approved training during the previous training year. The officer, and the officers employing agency, will be notified by letter of this action. This sanction will remain in effect until the deficient training is completed and reported to POST; POST will notify the officer and employing agency when the officers peace officer powers have been reinstated.

B. Training received by a suspended officer in a new training year will be credited to the previous (deficient) training year until the deficiency is made up. Training used to clear up an old deficiency cannot be credited to the new training year. (The same training cannot be counted twice.)

C. Suspended officers who continue to perform the duties and functions of a peace officer will be in violation of Section 53-6-202, and will be subject to the penalties set forth in Utah Administrative Code, Rule R728-411.

R728-500-7. Authorized Training for POST In-Service Credit.

All training offered by POST (basic training, in-service training, and regional training) is authorized for POST in-service credit. The authority and responsibility for accepting other forms of training belongs to the chief administrative officer of each law enforcement agency. If the chief administrative officer approves the training, POST will accept that training for credit to satisfy the 40-hour training requirement. However, the chief administrative officer accepts the responsibility and liability for course content and instructor qualification.

The following guidelines detail current POST rules regarding various types of in-service training.

R728-500-8. Skills Areas Limited.

The in-service training reported shall not include any identical class or instruction repeated within a 12 month period, unless the training is of an ongoing or continuing basis. Exception to this requirement includes training in certain skill areas such as Arrest Control Techniques, Firearms Training, Martial Arts, etc.

R728-500-9. Basic Training Used For In-Service Credit.

Training received during the completion of a Basic Training Session can be credited towards the in-service training requirement.

R728-500-10. Credit For College Courses.

Hour-for-hour credit will be granted for attendance in any college course that is required to earn a degree. The officer shall include a copy of the college transcript in his/her agency training file as proof of successful completion of the course.

R728-500-11. Correspondence Courses.

Correspondence courses may be approved for in-service credit. Prior approval shall be received from the officers chief administrative officer who will determine the number of credit hours the course is worth.

R728-500-12. Video Tapes/Audiovisual Presentations.

In-service credit may be granted for viewing law enforcement or position related audiovisual presentations (i.e., films, videotapes, satellite programming, etc.), as long as the training includes a structured lecture or classroom discussion regarding the viewed materials.

R728-500-13. In-Service Credit For Instructors.

Training credit may be granted to POST certified instructors on an hour-for-hour basis; an equivalent amount of credit may be claimed for preparation time. (example: a two hour class is worth four hours of in service credit: two hours of instruction plus two hours of preparation) In-service credit can be claimed by the instructor once each year for each course instructed. This is to avoid in-service credit granted for duplicate instruction.

R728-500-14. Credit For Study For Promotional Exams.

An agency chief administrative officer may grant up to five hours of in-service training credit to officers who have studied for, and passed, a promotional examination. Before awarding credit, the agency administrator shall ensure that:

A. The study material was not limited to the department's policy and procedure manual. Study aids shall consist of textbooks that deal with subjects such as Managerial Techniques, Supervisory Skills, Criminal Investigation, and other law enforcement skills.

B. The officer passed the examination. The officer need not be promoted to receive training credit.

R728-500-15. Credit for Regularly Scheduled Meetings and Conferences.

Monthly, quarterly, or other regularly scheduled meetings or conferences will not be granted in-service credit unless it can be specifically demonstrated the session is devoted to training and not for the purpose of exchanging information (i.e. detective meetings, intelligence briefings, etc.).

R728-500-16. Credit for Physical Fitness Training.

An officer can claim up to five hours of in-service training credit for participation in an agency physical training program.

R728-500-17. Requirements for Officers Employed for a Portion of the Training Year.

A full 40 hours of in-service training is required only if an officer is employed for the entire training year. Officers who are employed after the start of the reporting period, (July 1), need only to obtain a prorated number of training hours. Therefore, an officer shall obtain 3.5 hours for each month employed during the reporting year. (Example: An officer hired in January shall only be required to obtain 21 hours of in-service training for that training year.)

KEY: law enforcement officers, in-service training*

1993

53-6-105

Notice of Continuation February 27, 2007 53-13-103(4)(b)

R810. Regents (Board of), University of Utah, Parking and Transportation Services.

R810-2. Parking Meters.

R810-2-1. Parking Meters.

Payment for the use of meters is required whether or not the vehicle displays a current University permit.

Parking at a broken meter is restricted to the time shown on the meter. Violators will be ticketed. Enforcement hours for University parking meters are 8 a.m. to 6 p.m. Monday through Friday, or from 9:00 a.m. to 10:00 p.m. Monday through Friday where posted.

KEY: parking facilities

July 10, 2002

Notice of Continuation February 21, 2007

53B-3-103

53B-3-107

R810. Regents (Board of), University of Utah, Parking and Transportation Services.**R810-5. Permit Types, Eligibility and Designated Parking Areas.****R810-5-1. Parking Permits and Permit Parking Areas.**

A vehicle may be parked only in a vacant space in a parking lot for which the displayed permit shows eligibility. Possession of a parking permit does not guarantee space in a specific parking lot except for permits which provide for reserved stalls. Permit fees cover the period designated on the permit. Display of a current University parking permit allows free parking in non-reserved areas for University sponsored special events and athletic events during the permit year.

All parking areas are marked by signs indicating which permits are valid in that area. Parking is subject to change without notice.

R810-5-2. Utah Residents.

Permit classifications, eligibility and designated parking areas are as follows:

A. Car Pool Permit. Three or more faculty, staff or enrolled students can form a car pool group. To qualify for a car pool "A" permit, all members must be eligible faculty and staff. All other car pool groups will be issued "U" permit parking. Each car pool vehicle shall display a window permit, and the car pool group receives one transferable permit that must be displayed from the rear view mirror of the vehicle parked on campus. An additional member may be added to the pool at any time. No rebates or proration of charges will be given to individuals who withdraw from the pool.

B. "U" Permit. This permit is issued to students, faculty and staff. The number of "U" permits sold may be restricted by Parking Services when necessary. The holder may park in "U" or "E" lots.

C. "A" Permit. Only one permit shall be available to each qualified faculty or staff member. The "A" permit holder may park in "A," "U," or "E" lots. Persons eligible are:

1. All full-time salaried personnel, 75 percent full time equivalent.
2. Faculty approved by the academic vice president.
3. Other personnel as designated by the University administration.

D. "Temporary" Permit. This permit is issued by Parking Services for periods exceeding one day and is valid in "U" areas for students and "A" and "U" areas for qualified faculty, staff and visitors. It is not valid on vehicles displaying another current University parking permit.

E. "S" Permit. This permit is issued to residence halls residents with the hall in which they live designated on the permit.

F. "Day Pass." This pass is valid for one day only and must be clearly dated in ink. It is not valid on vehicles displaying another current University parking permit. This permit allows parking in "A" or "U" lots as designated.

Fines for displaying an altered permit, shall be the same for a fraudulent permit.

G. "M" Permit. This permit is issued for motorcycles, mopeds, motorscooters and motorbikes. The permit must be prominently displayed near the license plate.

H. "D" Permit. This permit is issued to qualified drivers with disabilities. Applicants must qualify under state statutes which govern parking for the disabled. "D" permits allow parking in designated spaces, and in adjacent areas.

Persons bringing individuals with disabilities to campus are not entitled to "D" parking privileges.

I. Reserved Permit. Reserved stall permits are issued to full time faculty and staff members who lease one specific space. Unauthorized vehicles in reserved stalls may be impounded without notification. Upon purchase of a permit, all other valid

permits must be surrendered.

J. "X" Permit. This permit is issued to members of the Board of Regents, the Board of Trustees and the Governor. The vehicle may be parked in any "A," or "U" area.

K. "E" Permit. This permit is issued to students, faculty, and staff. Holders of this permit may park in "E" lots only.

L. "Quarterly" Permit. This permit is issued for one academic quarter only and is valid in those areas for which it was issued. The price of this permit may be used toward the purchase of an annual permit if surrendered on or before the expiration date on the permit.

Other permits may be issued from time to time by University Parking Services to control parking areas.

KEY: parking facilities**1994****Notice of Continuation February 22, 2007****53B-3-103****53B-3-107**

R810. Regents (Board of), University of Utah, Parking and Transportation Services.**R810-6. Permit Prices and Refunds.****R810-6-1. Prices.**

Permit prices are subject to change upon approval of the University Administration and Board of Trustees.

R810-6-2. Prorations.

Annual permits are purchased for one academic year. The purchase price may be prorated according to the divisions of the academic year as determined by the University.

R810-6-3. Expiration.

All permits expire on the date designated on the permit.

R810-6-4. Refunds.

A partial refund may be obtained for an unused annual permit provided it is returned to Parking Services before it is six months old.

KEY: parking facilities**June 19, 1997****53B-3-103****Notice of Continuation February 21, 2007****53B-3-107**

R810. Regents (Board of), University of Utah, Parking and Transportation Services.**R810-9. Contractors and Their Employees.****R810-9-1. Contractors and Their Employees.**

Parking Services may establish temporary parking areas for contractors and their employees during construction projects. All other vehicles parked in such designated areas will be ticketed. Contractors responsible for construction and repair work on campus who wish parking privileges must first obtain the approval of the University's Campus Planning Department. Upon start of the project, the project coordinator shall arrange for parking. Contractors and their employees must register their vehicles according to the arrangements made and must park in accordance with University regulations or parking tickets will be issued.

KEY: parking facilities

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R810. Regents (Board of), University of Utah, Parking and Transportation Services.**R810-10. Enforcement System.****R810-10-1. Responsibility.**

Parking tickets are issued to registered owners of vehicles or registered permit holders. Tickets are not excused on the plea that another person was driving the vehicle.

A. To keep registration information current, any change in license plates must be immediately reported to Parking Services.

R810-10-2. Hours Of Enforcement.

Parking regulations are enforced year-round, including periods between quarters. Permit parking is enforced from 7 a.m. to 6 p.m. Monday through Friday and until 10 p.m. where posted. Parking meters are enforced from 8 a.m. until 6 p.m. Monday through Friday. Permit areas and meters are not regulated on state holidays. Fire lanes, restricted areas, designated reserved spaces and parking spaces for the disabled are enforced 24 hours every day of the year.

Multiple citations may be issued to violators who remain illegally parked for three hours or more at parking meters and loading zones.

R810-10-3. University Violation Fee Payment and Penalties.

1. Fees are charged for late payment in accordance with amounts listed on the ticket. Vehicles with three or more unpaid tickets will be impounded and towed at the owners expense. The University may also apply other remedies listed below. When applicable, additional charges associated with these actions will be assessed. Partial payment will not satisfy the debt.

A. Students.

1. Registration Holds. Students will not be allowed to register until all outstanding parking tickets have been paid. It is the student's responsibility to notify Parking and Transportation Services of any address change. Parking tickets will not be excused due to incorrect addresses.

2. Registration Cancellation. Students who register without clearing all parking tickets will have their registration canceled unless the tickets are cleared within 10 days of receiving notice of such tickets.

3. Transcripts of credits are withheld for students leaving the University with delinquent parking tickets.

4. Other actions, to include collections referrals and redress through the court system, may be used.

B. Staff and faculty. In the event an employee fails to pay assessed violation fees within 30 days, the fees will be withheld from the employee's pay. Other actions, to include collections referrals and redress through the court system, may be used.

C. Others. In the event the assessed violation fees are not paid, the University will take action necessary to collect such fees. Actions will include collections referrals and redress through the court system.

KEY: parking facilities

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R810. Regents (Board of), University of Utah, Parking and Transportation Services.**R810-11. Appeals System.****R810-11-1. Appealing Parking Tickets.**

Appeals for parking tickets must be made to the Appeals Office in person or in writing up to the time a small claims affidavit has been filed.

The decision of the hearings officer may be appealed to the Campus Parking Ticket Appeals Committee after the ticket has been paid.

The Campus Parking Ticket Appeals Committee is the final step in the appeals process.

Once a small claims affidavit has been filed, no appeals can be made to the Appeals Office or the Campus Parking Ticket Appeals Committee. All appeals must be made through the Utah court system.

KEY: parking facilities**1994****Notice of Continuation February 22, 2007****53B-3-103****53B-3-107**

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-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.

(1) 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:

(a) it is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or

(b) the date of the postmark on the envelope or cover indicates that the request was mailed on or before June 1.

(2) Except as provided in Subsection (3), a petition for redetermination must be received in the commission offices no later than 30 days from the date of a notice that creates the right to appeal. The petition is deemed to be timely if:

(a) the petition is received in the commission offices on or before the close of business of the last day of the 30-day period; or

(b) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the 30-day period.

(3) A petition for redetermination filed in accordance with Sections 59-10-532 or 59-10-533 is deemed to be timely if:

(a) the petition is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or

(b) 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.

(4) Any party adversely affected by an order of the commission may seek judicial review within the time frame provided by statute. Copies of the appeal shall be served upon the commission and upon the Office of the Attorney General.

R861-1A-22. Petitions for Commencement of Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501, and 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.

R861-1A-39. Penalty for Failure to File a Return Pursuant to Utah Code Ann. Sections 10-1-405, 59-1-401, 59-12-118, and 69-2-5.

(1)(a) Subject to Subsection (1)(b), "failure to file a tax return," for purposes of the penalty for failure to file a tax return under Subsection 59-1-401(1) includes a tax return that does not contain information necessary for the commission to make a correct distribution of tax revenues to counties, cities, and towns.

(b) Subsection (1)(a) applies to a tax return filed under:

(i) Chapter 12, Sales and Use Tax Act;

(ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; or

(iii) Title 69, Chapter 2, Emergency Telephone Service Law.

(2)(a) "Unpaid tax," for purposes of the penalty for failure to file a tax return under Subsection 59-1-401(1) includes tax remitted to the commission under Subsection (2)(b) that is:

(i) not accompanied by a tax return; or

(ii) accompanied by a tax return that is subject to the penalty for failure to file a tax return.

(b) Subsection (2)(a) applies to a tax remitted under:

(i) Chapter 12, Sales and Use Tax Act;

(ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; or

(iii) Title 69, Chapter 2, Emergency Telephone Service Law.

R861-1A-40. Waiver of Requirement to Post Security Prior to Judicial Review Pursuant to Utah Code Ann. Section 59-1-611.

(1) "Post security" is as defined in Section 59-1-611.

(2)(a) A taxpayer that seeks judicial review of a final commission determination of a deficiency may apply for a waiver of the requirement to post security with the commission by completing the financial statement provided by the commission.

(b) The financial statement described in Subsection (2)(a) shall be signed by the taxpayer under penalties of perjury.

(3) Upon review of the financial statement described in Subsection (2), the commission shall:

(a) determine whether the taxpayer qualifies for a waiver of the requirement to post security with the commission; or

(b) if unable to make the determination under Subsection (3)(a) from the financial statement, request additional information from the taxpayer as necessary to make that determination.

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41-1a-209

59-1-205

59-1-207

59-1-210

59-1-301

59-1-304

59-1-401

59-1-403

59-1-404

59-1-501

59-1-502.5

59-1-602

59-1-611

59-1-705

59-1-1004

59-10-512

59-10-532

59-10-533

59-10-535

59-12-107

59-12-118

59-13-206

59-13-210

59-13-307

59-10-544

59-14-404

59-2-212

59-2-701

59-2-705

59-2-1003

59-2-1004

59-2-1006

59-2-1007

59-2-704

59-2-924

59-7-517

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

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63-46b-11

63-46b-13

63-46b-14

63-46b-21

63-46a-3(2)

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10-1-405

R865. Tax Commission, Auditing.**R865-4D. Special Fuel Tax.****R865-4D-1. Utah Special Fuel Tax Regulation Pursuant to Utah Code Ann. Section 59-13-102.**

A. Motor vehicle means and includes every self-propelled vehicle operated or suitable for operation on the highways of the state which is designed for carrying passengers or cargo; but does not include vehicles operating on stationary rails or tracks, or implements of husbandry not operating on the highways.

B. User means any person using special fuel for the propulsion of a motor vehicle on the highways of the state, including:

1. interstate operators of trucks and buses,
2. intrastate operators of trucks and buses, and
3. contractors using special fuel in self-propelled vehicles for carrying of passengers or cargo.

R865-4D-2. Clean Special Fuel Certificate, Refund Procedures for Undyed Diesel Fuel Used Off-Highway or to Operate a Power Take-Off Unit, and Sales Tax Liability Pursuant to Utah Code Ann. Sections 59-13-301 and 59-13-304.

A. If the vehicle is registered in Utah, the fee for a clean special fuel certificate under Section 59-13-304 is due at the time the vehicle is placed in operation and annually thereafter on the date the vehicle's registration is renewed. Certificates may be obtained from any Tax Commission office or any local motor vehicle office. If a vehicle is not registered in Utah, the fee is due on the date the vehicle begins operation in Utah. The fee paid for a vehicle placed in operation may be pro-rated on a monthly basis if the certificate obtained for the vehicle is valid for a period of less than 12 months. Fees paid will not be refunded if a vehicle is sold or otherwise disposed of prior to the expiration date of the certificate.

B. Fuel used in a vehicle off-highway is calculated by taking off-highway miles divided by the average number of miles per gallon. Any other method of calculating undyed diesel fuel used off-highway must be supported by on-board computer information or other information that shows the number of gallons used off-highway with accuracy equal or comparable to on-board computers.

C. Where a power take-off unit is driven by the main engine of the vehicle and used to operate auxiliary equipment, a quantity, as enumerated below, of the total undyed diesel fuel delivered into the service tank of the vehicle shall be deemed to be used to operate the power take-off unit. The allowances for power take-off units are as follows:

1. concrete mixer trucks - 20 percent;
2. garbage trucks with trash compactor - 20 percent;
3. vehicles with powered pumps, conveyors or other loading or unloading devices may be individually negotiated but shall not exceed:
 - a) 3/4 gallon per 1000 gallons pumped; or
 - b) 3/4 gallon per 6000 pounds of commodities, such as coal, grain, and potatoes, loaded or unloaded.
4. Any other method of calculating the amount of undyed diesel fuel used to operate a power take-off unit must be supported by documentation and records, including on-board computer printouts or other logs showing daily power take-off activity, that establish the actual amount of power take-off activity and fuel consumption.

D. Allowances provided for in B. and C. above will be recognized only if adequate records are maintained to support the amount claimed.

E. In the case of users filing form TC-922, Fuel Tax Return For International Fuel Tax Agreement (IFTA) And Special Fuel User Tax, or form TC-922C, Refund of Tax Paid on Exempt Fuel for Non-Utah Based Carriers, the allowance provided for in C. will be refunded to the extent total gallons

allocated to Utah through IFTA exceed the actual taxable gallons used in Utah, except that in no case will refunds be allowed for power take-off use that does not occur in Utah.

F. Undyed diesel fuel used on-highway for the purpose of idling a vehicle does not qualify for a refund on special fuel tax paid since the fuel is used in the operation of a motor vehicle.

G. Diesel fuel that is purchased exempt from the special fuel tax or for which the special fuel tax has been refunded is subject to sales and use tax, unless specifically exempted under the sales and use tax statutes.

R865-4D-3. User-Dealer's License Pursuant to Utah Code Ann. Section 59-13-302.

A. Prior to any sale or use of special fuel in this state each user-dealer shall apply for and obtain a special fuel user-dealer's license for each bulk plant or service station from which such special fuel is to be sold or used. Application for a special user-dealer's license shall be made on a form provided by the Tax Commission. Under the law the Tax Commission may require a user-dealer to furnish a bond. Upon receipt and approval of the application, the commission will issue the license. A special fuel user-dealer's license is valid only for the user-dealer in whose name issued and for the specific bulk plant or service station named on the license. The license shall remain in force and effect unless the holder of the license ceases to act as a user-dealer, or the Tax Commission for reasonable cause terminates the license at an earlier date.

B. Upon sale or discontinuance of the sale or distribution of special fuel as defined in this rule from a bulk plant or service station for which a license has been issued, the user-dealer shall return for cancellation the license issued for the bulk plant or service station.

R865-4D-6. Invoices Pursuant to Utah Code Ann. Sections 59-13-301 and 59-13-313.

A. If requested, a retail dealer must issue to a purchaser of special fuel an invoice that indicates the fuel taxes that have been included in the price of purchased fuel. This invoice shall serve as evidence that the special fuel tax has been paid.

B. Invoices must be numbered consecutively, made in duplicate, and contain the following information:

1. name and address of seller;
2. place of sale;
3. date of sale;
4. name and address of purchaser;
5. fuel type;
6. number of gallons sold;
7. unit number or other vehicle identification if delivered into a motor vehicle;
8. type of container delivered into if not a motor vehicle;
9. invoice number; and
10. amount and type of state tax paid on the special fuel, if any.

C. A retail dealer must charge sales tax on diesel fuel that is exempt from special fuel tax unless the retail dealer has received and retains on file a properly completed sales and use tax exemption certificate indicating that the transaction is exempt from sales tax.

D. A retail dealer that sells propane exempt from special fuel tax, but subject to sales tax, must at the time of each sale and delivery keep a record of the exempt sale. This record shall be in the form of an invoice or a log, and shall serve as evidence that the sale is exempt from special fuel tax.

1. If the record is in the form of an invoice, it shall contain the information required under B.

2. If the record is in the form of a log, it shall contain the following information:

- a) name and address of the retail dealer;
- b) date of sale;

- c) amount of propane sold; and
- d) purchaser's name.

E. A retail dealer that sells propane, compressed natural gas, or electricity exempt from sales tax shall retain the following information for each exempt sale:

1. the make, year, and license number of the vehicle;
2. the name and address of the purchaser;
3. the quantity (e.g., number of gallons) sold; and
4. the clean special fuel certificate number.

F. A retail dealer is not required to obtain an exemption certificate from a purchaser of dyed diesel fuel indicating that the dyed diesel fuel will be used for purposes other than to operate a motor vehicle upon the highways of the state if the retail dealer complies with the notice requirement under 26 C.F.R. Section 48.4082-2.

G. A retail dealer may not sell dyed diesel fuel exempt from special fuel tax if the retail dealer knows that the fuel will be used to operate a motor vehicle upon the highways of the state.

R865-4D-18. Maintenance of Records Pursuant to Utah Code Ann. Sections 59-13-305(1) and 59-13-312.

A. The records and documents maintained pursuant to Section 59-13-312 must substantiate the amount of fuel purchased and the amount of fuel used in the state and claimed on the special fuel report required by Section 59-13-305(1).

B. Every user must maintain detailed mileage records and summaries for fleets traveling in Utah, detailed fuel purchase records, and bulk disbursement records. From this information, an accurate average miles per gallon (mpg) figure can be determined for use in computing fuel tax due. No fuel entering the fuel supply tank of a motor vehicle may be excluded from the mpg computation. Refer to Tax Commission rule R865-4D-2.

C. Individual vehicle mileage records (IVMRs) separating Utah miles from non-Utah miles must be maintained. Utah miles must be separated further into taxable Utah miles and nontaxable Utah miles. An adequate IVMR will contain the following information:

1. starting and ending dates of trip;
2. trip origin and destination;
3. route of travel, beginning and ending odometer or hubometer reading, or both;
4. total trip miles;
5. Utah miles;
6. fuel purchased or drawn from bulk storage for the vehicle; and
7. other appropriate information that identifies the record, such as unit number, fleet number, record number, driver's name, and name of the user or operator of the vehicle.

D. If the user fails to maintain or provide adequate records from which the user's true liability can be determined, the Tax Commission shall, upon giving written notice, estimate the amount of liability due. Such estimate shall take into consideration any or all of the following:

1. any available records maintained and provided by the user;
 2. historical filing information;
 3. industry data;
 4. a flat or standard average mpg figure.
- a) The standard average mpg normally applied is four mpg for qualified motor vehicles and six miles per gallon for nonqualified motor vehicles.

E. Section 59-13-312(2) requires that the user be able to support credits claimed for tax-paid fuel with documents showing payment of the Utah special fuel tax. If documents and records showing payment of the Utah special fuel tax are not maintained or are not provided upon request, the credits will be disallowed.

R865-4D-19. Refund of Special Fuel Taxes Paid by Government Entities Pursuant to Utah Code Ann. Section 59-13-301.

A. Governmental entities entitled to a refund for special fuel taxes paid shall submit a completed Application for Government Motor Fuel and Special Fuel Tax Refund, form TC-114, to the commission.

B. A governmental entity shall retain the following records for each purchase of special fuel for which a refund of taxes paid is claimed:

1. name of the government entity making the purchase;
2. license plate number of the government vehicle for which the special fuel is purchased;
3. invoice date;
4. invoice number;
5. vendor;
6. vendor location;
7. product description;
8. number of gallons purchased; and
9. amount of state special fuel tax paid.

C. Original records supporting the refund claim must be maintained by the government entity for three years following the year of refund.

R865-4D-20. Exemption or Refund for Exported Undyed Diesel Fuel Pursuant to Utah Code Ann. Section 59-13-301.

A. If untaxed undyed diesel fuel is sold by a supplier directly out-of-state or is sold by a supplier to a purchaser that will deliver the fuel directly out-of-state, the fuel may be sold by the supplier exempt from the special fuel tax.

B. If untaxed undyed diesel fuel is sold tax exempt under A., the supplier shall report the fuel sold tax exempt on the export schedule of its special fuel supplier return.

C. If special fuel tax has been paid on undyed diesel fuel that is exported, the exporter may apply to the Tax Commission, on a monthly basis and on the export refund request form provided by the Tax Commission, for a refund of special fuel taxes paid.

D. Original records supporting the exemption or refund claim must be maintained by the entity claiming the exemption or refund for three years following the year of exemption or refund.

R865-4D-21. Consistent Basis for Diesel Fuel Reporting Pursuant to Utah Code Ann. Sections 59-13-301 and 59-13-307.

- A. Definitions.
1. "Gross gallon" means the United States volumetric gallon with a liquid capacity of 231 cubic inches.
 2. "Net gallon" means the gross metered gallon with temperature correction in volume to 60 degrees Fahrenheit.

B. All Utah licensed special fuel suppliers shall elect to calculate the tax liability on the Utah Special Fuel Supplier Tax Return on a consistent and strict gross gallon or net gallon basis. The election must be declared in writing and must be sent to the Tax Commission. The declared basis must be the exclusive basis used for 12 consecutive months. Any supplier failing to make an election will default to the gross gallon basis and must then report and pay the excise tax on that basis. Request for changes in the reporting basis must be submitted in writing and approved by the Tax Commission prior to any change in the reporting basis. Changes in basis may occur only on January 1 and must remain in effect 12 consecutive months.

C. All invoices, bills of lading, and special fuel tax returns must include both the gross and net gallon amounts. Conversion from gross to net must conform to the ASTM-API-Petroleum Measurement Tables.

D. All transactions, such as purchases, sales, or deductions, reported on the Special Fuel Supplier Tax Return

must be reported on a consistent and exclusive basis. The taxpayer shall not alternate the two methods on any return or during any 12-month period.

E. This rule shall take effect July 1, 1997.

R865-4D-22. Reduction in Special Fuel Tax for Suppliers Subject to Navajo Nation Fuel Tax Pursuant to Utah Code Ann. Section 59-13-301.

A. The purpose of this rule is to provide procedures for administering the reduction of special fuel tax authorized under Section 59-13-301.

B. The reduction shall be in the form of a refund.

C. The refund shall be available only for special fuel:

1. delivered to a retailer or consumer on the Utah portion of the Navajo Nation; and

2. for which Utah special fuel tax has been paid.

D. The refund shall be available to a special fuel supplier that is licensed as a distributor with the Office of the Navajo Tax Commission.

E. The refund application may be filed on a monthly basis.

F. A completed copy of the Navajo Tax Commission Monthly Fuel Distributor Tax Return, form 900, along with schedules and manifests, must be included with the Utah State Tax Commission Application for Navajo Nation Fuel Tax Refund, form TC-126.

G. Original records supporting the refund claim must be maintained by the supplier for three years following the year of refund. These records include:

1. proof of payment of Utah special fuel tax;
2. proof of payment of Navajo Nation fuel tax; and
3. documentation that the special fuel was delivered to a retailer or consumer on the Utah portion of the Navajo Nation.

R865-4D-23. State Participation in the International Fuel Tax Agreement Pursuant to Utah Code Ann. Section 59-13-501.

A. Pursuant to Section 59-13-501, the commission entered into the International Fuel Tax Agreement ("IFTA") effective January 1, 1990.

B. Participation in IFTA is intended to comply with 49 U.S.C. 31705.

C. This rule incorporates by reference the 2003 edition of the IFTA:

1. Articles of Agreement;
2. Procedures Manual; and
3. Audit Manual.

R865-4D-24. Off-Highway Use of Undyed Diesel Fuel Pursuant to Utah Code Ann. Section 59-13-301.

A. 1. "Off-highway," for purposes of determining whether undyed diesel fuel is used in a vehicle off-highway, means every way or place, of whatever nature, that is not generally open to the use of the public for the purpose of vehicular travel.

2. "Off-highway" does not include:

- a) a parking lot that the public may use; or
- b) the curbside of a highway.

B. The following documentation must accompany a refund request for special fuel tax paid on undyed diesel fuel used in a vehicle off-highway:

1. evidence that clearly indicates that the undyed diesel fuel was used in a vehicle off-highway;
2. the specific address of the off-highway use with a detailed description of the off-highway nature of the location;
3. the amount of time in which the vehicle used the fuel off-highway;
4. the amount of fuel the vehicle used off-highway; and
5. the make and model, weight, and miles per gallon of the vehicle used off-highway.

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59-13-102

59-13-301

59-13-302

59-13-303

59-13-304

59-13-305

59-13-307

59-13-312

59-13-313

59-13-501

R865. Tax Commission, Auditing.**R865-6F. Franchise Tax.****R865-6F-1. Corporation Franchise Privilege - Right to Do Business - Nature of Liability and How Terminated Pursuant to Utah Code Ann. Sections 16-10a-1501 through 16-10a-1533.**

A. The Utah franchise tax is imposed upon corporations qualified or incorporated under the laws of Utah, whether or not they do business therein, and also upon corporations doing business in Utah, whether or not they are qualified or incorporated under the laws of Utah.

1. An unqualified foreign corporation doing business in this state is liable for Utah corporation franchise tax in the same amount as if it had duly applied for and received a certificate of authority to transact business in this state pursuant to Section 16-10a-1501.

2. An unqualified foreign corporation deriving income from this state, but not doing business in this state within the contemplation of the Utah corporation franchise tax law is subject to the Utah corporation income tax on income derived from this state under the provisions of Sections 59-7-201 to 59-7-207.

B. If a corporation received its corporate authority to do business in Utah prior to January 1, 1973, and is a member of an affiliated group filing a combined report under Section 59-7-402 or 59-7-403, and legally terminates its corporate authority, it must include its activity during the final year in the combined report of the group. The tax is imposed upon the income of the group rather than the income of the individual corporations.

C. A corporation that was incorporated, qualified, or that reinstated its corporate authority to do business in Utah after January 1, 1973 must file a corporation franchise tax return and pay the tax due with the return for the year in which it legally terminates its right to do business in this state. The Tax Commission shall not issue a tax clearance certificate until the final return has been filed and the amounts due for the final year are paid.

D. For Utah corporation franchise tax purposes, a foreign corporation terminates its corporate existence or the privileges for which the franchise tax is levied (unless it continues to do business) on the date on which:

1. a certificate of withdrawal is issued under the provisions of Section 16-10a-1520;

2. its corporate existence is legally terminated in its home state, provided authoritative evidence of that termination is filed;

3. a certificate of revocation of its authority to transact business in this state is issued under the provisions of Sections 16-10a-1530 and 16-10a-1531; or

4. the corporate powers, rights, and privileges are forfeited under the provisions of Section 59-7-534.

E. For Utah corporation franchise tax purposes, a corporation that is incorporated under the laws of this state terminates its corporate existence or the privilege of exercising its corporate franchise for which the franchise tax is levied on the date on which:

1. a certificate of dissolution is issued pursuant to a voluntary dissolution under the provisions of Section 16-10a-1401 or Sections 16-10a-1402 through 16-10a-1403;

2. a decree of dissolution is entered by the court pursuant to the provisions of Sections 16-10a-1430 through 16-10a-1433;

3. a certificate of merger or of consolidation (which effects the termination of the separate corporate existence of the Utah corporation) is issued pursuant to the provisions of Sections 16-10a-1101 through 16-10a-1107; or

4. the corporate rights and privileges are suspended under the provisions of Section 59-7-534.

F. If the corporation continues to do business in this state subsequent to any of the above dates, it is liable for franchise

tax, even though doing business is not authorized, or may even be prohibited, by law. A corporation cannot avoid the franchise tax by doing business without authority which, if legally done, would subject the corporation to the tax.

R865-6F-2. Establishment of Taxable Year and Filing the First Return Pursuant to Utah Code Ann. Sections 59-7-501 and 59-7-505.

A. The period for which a corporation must file its returns for corporation franchise tax purposes is the same period under which its income is computed pursuant to Section 59-7-501.

B. The first return may cover a period of less than 12-calendar months, but may not exceed 12-calendar months. The period must end on the last day of a calendar month, except that the Tax Commission will accept returns being made using the 52-53 week method of reporting under Section 441(f), Internal Revenue Code.

C. If a corporation elects for federal purposes to end its filing period on a date that does not fall on the last day of a calendar month, the filing period for the purposes of effective dates of Utah laws ends on the last day of the month nearest to the federal year end. The Utah net income is computed based on the filing period for federal purposes, notwithstanding the Utah filing period ends on the last day of the month.

D. Except as provided in Section 59-7-505(8)(a), in the case of a domestic corporation, the first return period begins with the date of incorporation. Activity prior to date of incorporation must be reported on individual income or partnership returns or of such other entity as may be appropriate.

E. Except as provided in Section 59-7-505(8)(a), in the case of a foreign corporation, the first return period begins with the date the corporation is qualified to do business in Utah under Title 16, Chapter 10a, Part 15, or the date business within the state is commenced, whichever is the earlier.

R865-6F-6. Application of Corporation Franchise or Income Tax Acts to Qualified Corporations and to Nonqualified Foreign Corporations Pursuant to Utah Code Ann. Section 59-7-104.**A. Definitions.**

1. "Ancillary activities" means those activities that serve no independent business function for the seller apart from their connection to the solicitation of orders.

2. "De minimis activities" means those activities that, when taken together, establish only a trivial connection with the taxing state. An activity conducted within Utah on a regular or systematic basis or pursuant to a company policy, whether or not in writing, shall not normally be considered trivial.

3. "In-home office" means an office or place of business located within the residence of the employee or representative of a company that satisfies the following conditions:

a) The office may not be publicly attributed to the company, or to the employee or representative of the company in an employee or representative capacity.

b) The use of the office shall be limited to soliciting and receiving orders from customers; transmitting orders outside the state for acceptance or rejection by the company; or for other activities that are protected under Public Law 86-272, 15 U.S.C. 381-384 (hereafter P.L. 86-272) and this rule.

c) Neither the company nor the employee or representative shall maintain a telephone listing or other public listing for the company within the state, nor use advertising or business literature indicating that the company or its employee or representative can be contacted at a specific address within the state. However, the normal distribution and use of business cards and stationery identifying the employee's or representative's name, address, telephone, and fax numbers and affiliation with the company shall not, by itself, be considered

as advertising or otherwise publicly attributing an office to the company or its employee or representative.

4. "Solicitation" means:

a) speech or conduct that explicitly or implicitly invites an order; and

b) activities that neither explicitly nor implicitly invite an order, but are entirely ancillary to requests for an order.

B. Every corporation doing business in Utah whether qualified or not, and every corporation incorporated or qualified in Utah whether or not doing business therein is subject to the Utah corporation franchise tax, unless exempted under the provisions of Section 59-7-102. If liability for the tax exists, the tax must be computed under the provisions of Section 59-7-104, at the rate provided by statute, but in no case shall the tax be less than the minimum tax prescribed.

C. Foreign corporations not qualified in Utah which ship goods to customers in this state from points outside this state, pursuant to orders solicited but not accepted by agents or employees in this state, and which are not doing business in Utah are not taxable under the Utah Corporation Franchise Tax Act if:

1. they maintain no office nor stocks of goods in Utah, and
2. they engage in no other activities in Utah.

D. Foreign corporations not qualified in Utah that make deliveries from stocks of goods located in this state are doing business in this state and are taxable under the Corporation Franchise Tax Act, even though they have no office or regular place of business in this state.

E. Foreign corporations not qualified in Utah are subject to the franchise tax if performing the necessary duties to fulfill contracts or subcontracts in Utah, whether through their own employees or by furnishing of supervisory personnel.

F. Corporations that own real property within this state and rent or lease such properties to others are subject to the franchise tax whether or not qualified under the laws of this state. This also applies to corporations deriving royalty, lease, or rental income from properties located within this state, whether or not such properties are owned by the corporation.

G. Foreign corporations not qualified in Utah are subject to the franchise or income tax if they derive income from revenue-producing properties located in Utah or moving through Utah or from services performed by personnel in this state. This includes, but is not limited to, freight and transportation operations, sales of real property having a Utah situs, leasing or sales of franchises, sporting or entertaining events, etc.

H. Corporations that participate in joint ventures or working and operating agreements which are performed in this state are subject to the franchise tax whether qualified or not.

I. Foreign corporations qualified in Utah are subject to the franchise tax even though engaged solely in interstate commerce.

J. P.L. 86-272 restricts a state from imposing a net income tax on income derived within its borders from interstate commerce if the only business activity of the company within the state consists of the solicitation of orders for sales of tangible personal property, which orders are sent outside the state for acceptance or rejection, and, if accepted, are filled by shipment or delivery from a point outside the state. The term "net income tax" includes a franchise tax measured by net income. If any sales of tangible personal property are made from Utah into a state which is precluded by P.L. 86-272 from taxing the income of the seller, such sales remain subject to throwback to Utah pursuant to Section 59-7-318(2). Similarly, a sale into Utah from another state would not subject a corporation to the Utah tax if the corporation's activities do not exceed those allowed under P.L. 86-272.

1. Only the solicitation to sell personal property is afforded immunity under P.L. 86-272; therefore, the leasing, renting licensing or other disposition of tangible personal property, or

transactions involving intangibles such as franchises, patents, copyrights, trade marks, service marks and the like, or any other type of property are not protected activities under P. L. 86-272. The sale or delivery and the solicitation for the sale or delivery of any type of service that is not either (1) ancillary to solicitation, or (2) otherwise set forth as a protected activity below is also not protected under P.L. 86-272 or this rule.

2. For the in-state activity to be a protected activity under P.L. 86-272, it must be limited solely to solicitation, except for de minimis activities and activities conducted by independent contractors as described below.

K. The following in-state activities, assuming they are not of a de minimis level, will constitute doing business in Utah under P.L. 86-272 and will subject the corporation to the Utah corporation franchise tax:

1. making repairs or providing maintenance or service to the property sold or to be sold;

2. collecting current or delinquent accounts, whether directly or by third parties, through assignment or otherwise;

3. investigating credit worthiness;

4. installation or supervision of installation at or after shipment or delivery;

5. conducting training courses, seminars, or lectures for personnel other than personnel involved only in solicitation;

6. providing any kind of technical assistance or service including engineering assistance or design service, when one of the purposes thereof is other than the facilitation of the solicitation of orders;

7. investigating, handling, or otherwise assisting in resolving customer complaints, other than mediating direct customer complaints when the sole purpose of such mediation is to ingratiate the sales personnel with the customer;

8. approving or accepting orders;

9. repossessing property;

10. securing deposits on sales;

11. picking up or replacing damaged or returned property;

12. hiring, training, or supervising personnel, other than personnel involved only in solicitation;

13. using agency stock checks or any other instrument or process by which sales are made within this state by sales personnel;

14. maintaining a sample or display room in excess of two weeks (14 days) at any one location within the state during the tax year;

15. carrying samples for sale, exchange or distribution in any manner for consideration or other value;

16. owning, leasing, using, or maintaining any of the following facilities or property in-state:

(a) repair shop;

(b) parts department;

(c) any kind of office other than an in-home office;

(d) warehouse;

(e) meeting place for directors, officers, or employees;

(f) stock of goods other than samples for sales personnel or that are used entirely ancillary to solicitation;

(g) telephone answering service that is publicly attributed to the company or to employees or agents of the company in their representative status;

(h) mobile stores, i.e., vehicles with drivers who are sales personnel making sales from the vehicles;

(i) real property or fixtures to real property of any kind.

17. consigning stocks of goods or other tangible personal property to any person, including an independent contractor, for sale;

18. maintaining, by either an in-state or an out-of-state resident employee, an office or place of business (in-home or otherwise) of any kind other than an in-home office;

(b) The maintenance of any office or other place of business in this state that does not strictly qualify as an in-home

office under this subsection shall, by itself cause the loss of protection under this rule.

(c) For purposes of this subsection it is not relevant whether the company pays directly, indirectly, or not at all for the cost of maintaining the in-home office.

19. entering into franchising of licensing agreements; selling or otherwise disposing of franchises and licenses; or selling or otherwise transferring tangible personal property pursuant to such franchise or license by the franchisor or licensor to its franchisee or licensee within the state;

20. shipping or delivering of goods into this state by means of private vehicle, rail, water, air or other carrier, irrespective of whether a shipment of delivery fee or other charge is imposed, directly or indirectly, upon the purchaser;

21. conducting any activity not listed as a protected activity below which is not entirely ancillary to requests for orders, even if such activity helps to increase purchases.

L. The following in-state activities will not cause the loss of protection for otherwise protected sales;

1. soliciting orders for sales by any type of advertising;

2. soliciting of orders by an in-state resident employee or representative of the company, so long as such person does not maintain or use any office or other place of business in the state other than an in-home office;

3. carrying samples and promotional materials only for display or distribution without charge or other consideration;

4. furnishing and setting up display racks and advising customers on the display of the company's products without charge or other consideration;

5. providing automobiles to sales personnel for their use in conducting protected activities;

6. passing orders, inquiries and complaints on to the home office;

7. missionary sales activities, i.e. the solicitation of indirect customers for the company's goods. For example, a manufacturer's solicitation of retailers to buy the manufacturer's goods from the manufacturer's wholesale customers would be protected if such solicitation activities are otherwise immune;

8. coordinating shipment or delivery without payment or other consideration and providing information relating thereto either prior or subsequent to the placement of an order;

9. checking of customer's inventories without a charge therefore if performed for reorder, but not for other purposes such as a quality control;

10. maintaining a sample or display room for two weeks (14 days) or less at any one location within the state during the tax year;

11. recruiting, training or evaluating sales personnel, including occasionally using homes, hotels or similar places for meetings with sales personnel;

12. mediating direct customer complaints when the purpose thereof is solely for ingratiating the sales personnel with the customer and facilitating requests for orders;

13. owning, leasing, using or maintaining personal property for use in the employee or representative's in-home office or automobile that is solely limited to the conducting of protected activities. Therefore, the use of personal property such as a cellular telephone, facsimile machine, duplicating equipment, personal computer and computer software that is limited to the carrying on of protected solicitation and activity entirely ancillary to such solicitation or permitted by the provisions of this rule shall not, by itself, remove the protection of P.L. 86-272.

M. P.L. 86-272 provides protection to certain in-state activities if conducted by an independent contractor that would not be afforded if performed by the company or its employees or other representatives.

1. Independent contractors may engage in the following limited activities in the state without the company's loss of

immunity;

a) soliciting sales;

b) making sales;

c) maintaining an office.

2. Sales representatives who represent a single principal are not considered to be independent contractors and are subject to the same limitations as those provided under P.L. 86-272 and this rule.

3. Maintenance of stock of goods in the state by the independent contractor under consignment or any other type of arrangement with the company, except for purposes of display and solicitation, shall remove the protection.

N. The Tax Commission will apply the provisions of P.L. 86-272 and of this rule to business activities conducted in foreign commerce. Therefore, whether business activities are conducted by (i) a foreign or domestic company selling tangible personal property into a county outside of the United States from a point within this state or by (ii) either company selling such property into this state from a point outside of the United States, the principles under this rule apply equally to determine whether the sales transactions are protected and the company immune from taxation in either this state or in the foreign county, as the case might be, and whether, if applicable, the throwback provisions of Section 59-7-318(2) will apply.

O. The protection afforded by P.L. 86-272 and the provisions of this rule do not apply to any corporation that is incorporated or domiciled in this state.

P. A company that registers or otherwise formally qualifies to do business within this state does not, by that fact alone, lose its protection under P.L. 86-272. Where, separate from or ancillary to such registration or qualification, the company receives and seeks to use or protect any additional benefit or protection from this state through activity not otherwise protected under P.L. 86-272 or this rule, such protection shall be removed.

Q. The protection afforded under P.L. 86-272 and the provisions of this rule shall be determined on a year by year tax basis. Therefore, if at any time during a tax year the company conducts activities that are not protected under P.L. 86-272 or this rule, no sales in this state or income earned by the company attributed to this state during any part of said tax year shall be protected from taxation for purposes of the corporate franchise tax.

§ 86-6F-8. Allocation and Apportionment of Net Income (Uniform Division of Income for Tax Purposes Act) Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Business and Nonbusiness Income Defined. Section 59-7-302 defines business income as income arising from transactions and activity in the regular course of the taxpayer's trade or business operations. In essence, all income that arises from the conduct of trade or business operations of a taxpayer is business income. For purposes of administration of the Uniform Division of Income for Tax Purposes Act (UDITPA), the income of the taxpayer is business income unless clearly classifiable as nonbusiness income.

(a) Nonbusiness income means all income other than business income and shall be narrowly construed.

(b) The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, and nonoperating income, is of no aid in determining whether income is business or nonbusiness income. Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. Accordingly, the critical element in determining whether income is business income or nonbusiness income is the identification of the transactions and activity that are the elements of a particular trade or business. In

general, all transactions and activities of the taxpayer that are dependent upon or contribute to the operation of the taxpayer's economic enterprise as a whole constitute the taxpayer's trade or business and will be transactions and activity arising in the regular course of business, and will constitute integral parts of a trade or business.

(c) Business and Nonbusiness Income. Application of Definitions. The following are rules for determining whether particular income is business or nonbusiness income:

(i) Rents from real and tangible personal property. Rental income from real and tangible property is business income if the property with respect to which the rental income was received is used in the taxpayer's trade or business or is incidental thereto and therefore is includable in the property factor under Subsection (7)(a)(i).

(ii) Gains or Losses from Sales of Assets. Gain or loss from the sale, exchange or other disposition of real or tangible or intangible personal property constitutes business income if the property while owned by the taxpayer was used in the taxpayer's trade or business. However, if the property was utilized for the production of nonbusiness income the gain or loss will constitute nonbusiness income. See Subsection (7)(a)(ii).

(iii) Interest. Interest income is business income where the intangible with respect to which the interest was received arises out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the intangible is related to or incidental to trade or business operations.

(iv) Dividends. Dividends are business income where the stock with respect to which the dividends are received arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the stock is related to or incidental to the trade or business operations. Because of the regularity with which most corporate taxpayers engage in investment activities, because the source of capital for those investments arises in the ordinary course of a taxpayer's business, because the income from those investments is utilized in the ordinary course of the taxpayer's business and because those investment assets are used for general credit purposes, income arising from the ownership or sale or other disposition of investments is presumptively business income. This presumption may be rebutted if the taxpayer can prove that the investment is unrelated to the regular trade or business activities.

(v) Proration of Deductions. In most cases an allowable deduction of a taxpayer will be applicable only to the business income arising from the trade or business or to a particular item of nonbusiness income. In some cases an allowable deduction may be applicable to the business income and to nonbusiness income. In those cases the deduction shall be prorated among the business and nonbusiness income in a manner that fairly distributes the deduction among the classes of income to which it is applicable.

(vi) A schedule must be submitted with the return showing:

(A) the gross income from each class of income being allocated;

(B) the amount of each class of applicable expenses, together with explanation or computations showing how amounts were arrived at;

(C) the total amount of the applicable expenses for each income class; and

(D) the net income of each income class. The schedules should provide appropriate columns as set forth above for items allocated to this state and for items allocated outside this state.

(vii) In filing returns with this state, if the taxpayer departs from or modifies the manner of prorating any such deduction used in returns for prior years, the taxpayer shall disclose in the

return for the current year the nature and extent of the modification.

(viii) If the returns or reports filed by a taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the application or proration of any deduction, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(2) Definitions.

(a) "Taxpayer," for purposes of this rule, is as defined in Section 59-7-101.

(b) "Apportionment" means the division of business income between states by the use of a formula containing apportionment factors.

(c) "Allocation" means the assignment of nonbusiness income to a particular state.

(d) "Business activity" refers to the transactions and activity occurring in the regular course of the trade or business of a taxpayer.

(e) "Gross receipts" are the gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital (including rents, royalties, interest and dividends) in a transaction that produces business income, in which the income or loss is recognized (or would be recognized if the transaction were in the United States) under the Internal Revenue Code. Amounts realized on the sale or exchange or property are not reduced for the cost of goods sold or the basis of property sold.

(i) Gross receipts, even if business income, do not include such items as, for example:

(A) repayment, maturity, or redemption of the principal of a loan, bond, or mutual fund or certificate of deposit or similar marketable instrument;

(B) the principal amount received under a repurchase agreement or other transaction properly characterized as a loan;

(C) proceeds from issuance of the taxpayer's own stock or from sale of treasury stock;

(D) damages and other amounts received as the result of litigation;

(E) property acquired by an agent on behalf of another;

(F) tax refunds and other tax benefit recoveries;

(G) pension reversions;

(H) contributions to capital (except for sales of securities by securities dealers);

(I) income from forgiveness of indebtedness; or

(J) amounts realized from exchanges of inventory that are not recognized by the Internal Revenue Code.

(ii) Exclusion of an item from the definition of "gross receipts" is not determinative of its character as business or nonbusiness income. Nothing in this definition shall be construed to modify, impair or supersede any provision of J.

(3) Apportionment and Allocation.

(a)(i) If the business activity with respect to the trade or business of a taxpayer occurs both within and without this state, and if by reason of that business activity the taxpayer is taxable in another state, the portion of the net income (or net loss) arising from the trade or business derived from sources within this state shall be determined by apportionment in accordance with Sections 59-7-311 to 59-7-319.

(ii) For purposes of determining the fraction by which business income shall be apportioned to this state under Section 59-7-311:

(A) Except as provided in Subsection (3)(a)(ii)(B), if a taxpayer does not make an election to double weight the sales factor under Subsection 59-7-311(3) and one or more of the factors listed in Subsection 59-7-311(2)(a) is missing, the fraction by which business income shall be apportioned to the state shall be determined by adding the factors present and dividing that sum by the number of factors present.

(B) If a taxpayer has made an election to double weight the sales factor under Section 59-7-311(3) and if the sales factor is present, the denominator of the fraction described in Subsection (3)(a)(ii)(A) shall be increased by one.

(b) Allocation. Any taxpayer subject to the taxing jurisdiction of this state shall allocate all of its nonbusiness income or loss within or without this state in accordance with Sections 59-7-306 to 59-7-310.

(4) Consistency and Uniformity in Reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner in which income has been classified as business income or nonbusiness income in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by a taxpayer for all states to which the taxpayer reports under UDITPA are not uniform in the classification of income as business or nonbusiness income, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(5) Taxable in Another State.

(a) In General. Under Section 59-7-303 the taxpayer is subject to the allocation and apportionment provisions of UDITPA if it has income from business activity that is taxable both within and without this state. A taxpayer's income from business activity is taxable without this state if the taxpayer, by reason of business activity (i.e., the transactions and activity occurring in the regular course of the trade or business), is taxable in another state within the meaning of Section 59-7-305. A taxpayer is taxable within another state if it meets either one of two tests:

(i) if by reason of business activity in another state the taxpayer is subject to one of the types of taxes specified in Section 59-7-305(1), namely: a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(ii) if by reason of business activity another state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether the state imposes that tax on the taxpayer. A taxpayer is not taxable in another state with respect to the trade or business merely because the taxpayer conducts activities in that state pertaining to the production of nonbusiness income.

(b) When a Taxpayer Is Subject to a Tax Under Section 59-7-305. A taxpayer is subject to one of the taxes specified in Section 59-7-305(1) if it carries on business activity in a state and that state imposes such a tax thereon. Any taxpayer that asserts that it is subject to one of the taxes specified in Section 59-7-305(1) in another state shall furnish to the Tax Commission, upon its request, evidence to support that assertion. The Tax Commission may request that the evidence include proof that the taxpayer has filed the requisite tax return in the other state and has paid any taxes imposed under the law of the other state. The taxpayer's failure to produce that proof may be taken into account in determining whether the taxpayer is subject to one of the taxes specified in Section 59-7-305(1) in the other state. If the taxpayer voluntarily files and pays one or more taxes when not required to do so by the laws of that state or pays a minimal fee for qualification, organization, or for the privilege of doing business in that state, but

(i) does not actually engage in business activity in that state, or

(ii) does actually engage in some business activity, not sufficient for nexus, and the minimum tax bears no relation to the taxpayer's business activity within that state, the taxpayer is not subject to one of the taxes specified within the meaning of Section 59-7-305(1).

(c) When a State Has Jurisdiction to Subject a Taxpayer to a Net Income Tax. The second test, that of Section 59-7-305(2), applies if the taxpayer's business activity is sufficient to give the state jurisdiction to impose a net income tax by reason of business activity under the Constitution and statutes of the

United States. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provisions of Public Law 86-272, 15 U. S. C. A. Sec. 381-385 (P.L. 86-272). In the case of any state as defined in Section 59-7-302(6), other than a state of the United States or political subdivision of a state, the determination of whether a state has jurisdiction to subject the taxpayer to a net income tax shall be made as though the jurisdictional standards applicable to a state of the United States applied in that state. If jurisdiction is otherwise present, the state is not considered as without jurisdiction by reason of the provisions of a treaty between that state and the United States.

(6) Apportionment Formula. All business income of the taxpayer shall be apportioned to this state by use of the apportionment formula set forth in Section 59-7-311. The elements of the apportionment formula are the property factor, see Subsection (7), the payroll factor, see Subsection (8), and the sales factor, see Subsection (9) of the trade or business of the taxpayer. For exceptions see Subsection (10).

(7) Property Factor.

(a) In General.

(i) The property factor of the apportionment formula shall include all real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular course of its trade or business. Real and tangible personal property includes land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property but does not include coin or currency.

(ii) Property used in connection with the production of nonbusiness income shall be excluded from the property factor. Property used both in the regular course of the taxpayer's trade or business and in the production of nonbusiness income shall be included in the factor only to the extent the property is used in the regular course of the taxpayer's trade or business. The method of determining the portion of the value to be included in the factor will depend upon the facts of each case.

(iii) The property factor shall reflect the average value of property includable in the factor. Refer to Subsection (7)(f).

(b) Property Used for the Production of Business Income. Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax period in the regular course of the trade or business of the taxpayer. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor. Property or equipment under construction during the tax period, except inventoriable goods in process, shall be excluded from the factor until the property is actually used in the regular course of the trade or business of the taxpayer. If the property is partially used in the regular course of the trade or business of the taxpayer while under construction, the value of the property to the extent used shall be included in the property factor.

(c) Consistency in Reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property, or of excluding or including property in the property factor, used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the valuation of property and in the exclusion or inclusion of property in the property factor, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(d) Numerator. The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period in the regular course of the trade or

business of the taxpayer. Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller that is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or movable property such as construction equipment, trucks, or leased electronic equipment that are located within and without this state during the tax period shall be determined for purposes of the numerator of the factor on the basis of total time within the state during the tax period. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

(e) Valuation of Owned Property.

(i) Property owned by the taxpayer shall be valued at its original cost. As a general rule original cost is deemed to be the basis of the property for state franchise or income tax purposes (prior to any adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reasons including sale, exchange, and abandonment. However, capitalized intangible drilling and development costs shall be included in the property factor whether or not they have been expensed for either federal or state tax purposes.

(ii) Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for state tax purposes.

(iii) Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation.

(f) Valuation of Rented Property.

(i) Property rented by the taxpayer is valued at eight times its net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for the property, less the aggregate annual subrental rates paid by subtenants of the taxpayer. See Subsection 10(b) for special rules where the use of the net annual rental rate produces a negative or clearly inaccurate value or where property is used by the taxpayer at no charge or rented at a nominal rental rate.

(ii) Subrents are not deducted when the subrents constitute business income because the property that produces the subrents is used in the regular course of the trade or business of the taxpayer when it is producing the income. Accordingly there is no reduction in its value.

(iii) Annual rental rate is the amount paid as rental for property for a 12-month period; i.e., the amount of the annual rent. Where property is rented for less than a 12-month period, the rent paid for the actual period of rental shall constitute the annual rental rate for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the rent paid for the short tax period shall be annualized. If the rental term is for less than 12 months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month to month basis.

(iv) Annual rent is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:

(A) Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

(B) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items that are required to be paid by the terms of the lease or

other arrangement, not including amounts paid as service charges, such as utilities, and janitor services. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and other items.

(v) Annual rent does not include:

(A) incidental day-to-day expenses such as hotel or motel accommodations, or daily rental of automobiles;

(B) royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property that constitutes a sharing of current or future production of natural resources from that property, irrespective of the method of payment or how that consideration may be characterized, whether as a royalty, advance royalty, rental, or otherwise.

(vi) Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the factor.

(g) Averaging Property Values. As a general rule, the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and end of the tax period. However, the Tax Commission may require or allow averaging by monthly values if that method of averaging is required to properly reflect the average value of the taxpayer's property for the tax period.

(i) Averaging by monthly values will generally be applied if substantial fluctuations in the values of the property exist during the tax period or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

(ii) Example: The monthly value of the taxpayer's property was as follows:

TABLE

January	\$ 2,000
February	2,000
March	3,000
April	3,500
May	4,500
June	10,000
July	15,000
August	17,000
September	23,000
October	25,000
November	13,000
December	2,000
Total	\$120,000

The average value of the taxpayer's property includable in the property factor for the income year is determined as follows:
 $\$120,000 / 12 = \$10,000$

(iii) Averaging with respect to rented property is achieved automatically by the method of determining the net annual rental rate of the property as set forth in Subsection (7)(f)(i).

(8) Payroll Factor.

(a) The payroll factor of the apportionment formula shall include the total amount paid by the taxpayer in the regular course of its trade or business for compensation during the tax period.

(b) The total amount paid to employees is determined upon the basis of the taxpayer's accounting method. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting, at the election of the taxpayer, compensation paid to employees may be included in the payroll factor by use of the cash method if the taxpayer is required to report compensation under that method for unemployment compensation purposes. The

compensation of any employee on account of activities that are connected with the production of nonbusiness income shall be excluded from the factor.

(c) The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services.

(i) The term "employee" means:

(A) any officer of a corporation; or

(B) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person will be considered to be an employee if he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act. However, since certain individuals are included within the term employees in the Federal Insurance Contributions Act who would not be employees under the usual common law rules, it may be established that a person who is included as an employee for purposes of the Federal Insurance Contributions Act is not an employee for purposes of this rule.

(ii)(A) In filing returns with this state, if the taxpayer departs from or modifies the treatment of compensation paid used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(B) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the treatment of compensation paid, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(d) Denominator. The denominator of the payroll factor is the total compensation paid everywhere during the tax period. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation, for example, by P.L. 86-272, are included in the denominator of the payroll factor.

(e) Numerator. The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. The tests in Section 59-7-316 to be applied in determining whether compensation is paid in this state are derived from the Model Unemployment Compensation Act. Accordingly, if compensation paid to employees is included in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report compensation under that method for unemployment compensation purposes, it shall be presumed that the total wages reported by the taxpayer to this state for unemployment compensation purposes constitute compensation paid in this state except for compensation excluded under H. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to this state for unemployment compensation purposes.

(f) Compensation Paid in this State. Compensation is paid in this state if any one of the following tests applied consecutively are met:

(i) The employee's service is performed entirely within the state.

(ii) The employee's service is performed entirely within and without the state, but the service performed without the state is incidental to the employee's service within the state. The word incidental means any service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction.

(iii) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(A) if the employee's base of operations is in this state; or

(B) if there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in this state; or

(C) if the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state.

(iv) The term "base of operations" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his trade or profession at some other point or points. The term "place from which the service is directed or controlled" means the place from which the power to direct or control is exercised by the taxpayer.

(9) Sales Factor. In General.

(a) Section 59-7-302(5) defines the term "sales" to mean all gross receipts of the taxpayer not allocated under Section 59-7-306 through 59-7-310. Thus, for purposes of the sales factor of the apportionment formula for the trade or business of the taxpayer, the term sales means all gross receipts derived by the taxpayer from transactions and activity in the regular course of the trade or business. The following are rules determining sales in various situations.

(i) In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, sales includes all gross receipts from the sales of goods or products (or other property of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales, less returns and allowances and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to sales. Federal and state excise taxes (including sales taxes) shall be included as part of receipts if taxes are passed on to the buyer or included as part of the selling price of the product.

(ii) In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, sales includes the entire reimbursed cost, plus the fee.

(iii) In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency, or the performance of equipment service contracts, or research and development contracts, sales includes the gross receipts from the performance of services including fees, commissions, and similar items.

(iv) In the case of a taxpayer engaged in renting real or tangible property, sales includes the gross receipts from the rental, lease or licensing of the use of the property.

(v) In the case of a taxpayer engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, sales includes the gross receipts therefrom.

(vi) If a taxpayer derives receipts from the sale of equipment used in its business, those receipts constitute sales. For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sales of the trucks are included in the sales factor.

(vii) In some cases certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to this state the income of the taxpayer's trade or business. See

Subsection (10)(c).

(viii) In filing returns with this state, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(ix) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the inclusion or exclusion of gross receipts, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(b) Denominator. The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under Subsection (10)(c).

(c) Numerator. The numerator of the sales factor shall include gross receipts attributable to this state and derived by the taxpayer from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

(d) Sales of Tangible Personal Property in this State.

(i) Gross receipts from the sales of tangible personal property (except sales to the United States government; see Subsection (9)(e)) are in this state:

(A) if the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of sale; or

(B) if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser.

(ii) Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

(iii) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

(iv) The term "purchaser within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.

(v) When property being shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this state, the sales are in this state.

(vi) If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state.

(vii) If a taxpayer whose salesman operates from an office located in this state makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply:

(A) If the taxpayer is taxable in the state from which the third party ships the property, then the sale is in that state.

(B) If the taxpayer is not taxable in the state from which the property is shipped, the sale is in this state.

(e)(i) Sales of Tangible Personal Property to United States Government in this state.

(ii) Gross receipts from the sales of tangible personal property to the United States government are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. For purposes of this rule, only sales for which the United States government makes direct payment to the seller pursuant to the terms of a contract constitute sales to the United States government. Thus, as a

general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States government, do not constitute sales to the United States government.

(f) Sales Other than Sales of Tangible Personal Property in this State.

(i) In general, Section 59-7-319(1) provides for the inclusion in the numerator of the sales factor of gross receipts from transactions other than sales of tangible personal property (including transactions with the United States government). Under Section 59-7-319(1), gross receipts are attributed to this state if the income producing activity that gave rise to the receipts is performed wholly within this state. Also, gross receipts are attributed to this state if, with respect to a particular item of income, the income producing activity is performed within and without this state but the greater proportion of the income producing activity is performed in this state, based on costs of performance.

(ii) The term "income producing activity" applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. Income producing activity does not include transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, the income producing activity includes the following:

(A) the rendering of personal services by employees or the utilization of tangible and intangible property by the taxpayer in performing a service;

(B) the sale, rental, leasing, or licensing or other use of real property;

(C) the rental, leasing, licensing or other use of intangible personal property; or

(D) the sale, licensing or other use of intangible personal property. The mere holding of intangible personal property is not, of itself, an income producing activity.

(iii) The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

(iv) Receipts (other than from sales of tangible personal property) in respect to a particular income producing activity are in this state if:

(A) the income producing activity is performed wholly within this state; or

(B) the income producing activity is performed both in and outside this state and a greater proportion of the income producing activity is performed in this state than in any other state, based on costs of performance.

(v) The following are special rules for determining when receipts from the income producing activities described below are in this state:

(A) Gross receipts from the sale, lease, rental or licensing of real property are in this state if the real property is located in this state.

(B) Gross receipts from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state. The rental, lease, licensing or other use of tangible personal property in this state is a separate income producing activity from the rental, lease, licensing or other use of the same property while located in another state. Consequently, if the property is within and without this state during the rental, lease or licensing period, gross receipts attributable to this state shall be measured by the ratio that the time the property was physically present or was used in this state bears to the total time or use of the property everywhere during the period.

(C) Gross receipts for the performance of personal services are attributable to this state to the extent services are performed

in this state. If services relating to a single item of income are performed partly within and partly without this state, the gross receipts for the performance of services shall be attributable to this state only if a greater portion of the services were performed in this state, based on costs of performance. Usually where services are performed partly within and partly without this state, the services performed in each state will constitute a separate income producing activity. In that case, the gross receipts for the performance of services attributable to this state shall be measured by the ratio that the time spent in performing services in this state bears to the total time spent in performing services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation that gives rise to gross receipts. Personal service not directly connected with the performance of the contract or other obligations, as for example, time expended in negotiating the contract, is excluded from the computations.

(10) Special Rules:

(a) Section 59-7-320 provides that if the allocation and apportionment provisions of UDITPA do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for, or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(i) separate accounting;
 (ii) the exclusion of any one or more of the factors;
 (iii) the inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in this state;
 or

(iv) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(b) Property Factor.

The following special rules are established in respect to the property factor of the apportionment formula:

(i) If the subrents taken into account in determining the net annual rental rate under G.6.b) produce a negative or clearly inaccurate value for any item of property, another method that will properly reflect the value of rented property may be required by the Tax Commission or requested by the taxpayer. In no case however, shall the value be less than an amount that bears the same ratio to the annual rental rate paid by the taxpayer for property as the fair market value of that portion of property used by the taxpayer bears to the total fair market value of the rented property.

(ii) If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for the property shall be determined on the basis of a reasonable market rental rate for that property.

(c) Sales Factors.

The following special rules are established in respect to the sales factor of the apportionment formula:

(i) Where substantial amounts of gross receipts arise from an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business, those gross receipts shall be excluded from the sales factor. For example, gross receipts from the sale of a factory or plant will be excluded.

(ii) Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless exclusion would materially affect the amount of income apportioned to this state. For example, the taxpayer ordinarily may include or exclude from the sales factor gross receipts from such transactions as the sale of office furniture, and business automobiles.

(iii) Where the income producing activity in respect to business income from intangible personal property can be readily identified, that income is included in the denominator of the sales factor and, if the income producing activity occurs in this state, in the numerator of the sales factor as well. For

example, usually the income producing activity can be readily identified in respect to interest income received on deferred payments on sales of tangible property, see Subsection (9)(a)(i), and income from the sale, licensing or other use of intangible personal property, see Subsection (9)(f)(ii)(D).

(A) Where business income from intangible property cannot readily be attributed to any particular income producing activity of the taxpayer, the income cannot be assigned to the numerator of the sales factor for any state and shall be excluded from the denominator of the sales factor. For example, where business income in the form of dividends received on stock, royalties received on patents or copyrights, or interest received on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, such dividends and interest shall be excluded from the denominator of the sales factor.

(B) Exclude from the denominator of the sales factor, receipts from the sales of securities unless the taxpayer is a dealer therein.

(iv) Where gains and losses on the sale of liquid assets are not excluded from the sales factor by other provisions under Subsections (10)(c)(i) through (iii), such gains or losses shall be treated as provided in this Subsection (10)(c)(iv). This Subsection (10)(c)(iv) does not provide rules relating to the treatment of other receipts produced from holding or managing such assets.

(A) If a taxpayer holds liquid assets in connection with one or more treasury functions of the taxpayer, and the liquid assets produce business income when sold, exchanged or otherwise disposed, the overall net gain from those transactions for each treasury function for the tax period is included in the sales factor. For purposes of this Subsection (10)(c)(iv), each treasury function will be considered separately.

(B) For purposes of this Subsection (10)(c)(iv), a liquid asset is an asset (other than functional currency or funds held in bank accounts) held to provide a relatively immediate source of funds to satisfy the liquidity needs of the trade or business. Liquid assets include:

(I) foreign currency (and trading positions therein) other than functional currency used in the regular course of the taxpayer's trade or business;

(II) marketable instruments (including stocks, bonds, debentures, options, warrants, futures contracts, etc.); and

(III) mutual funds which hold such liquid assets.

(C) An instrument is considered marketable if it is traded in an established stock or securities market and is regularly quoted by brokers or dealers in making a market. Stock in a corporation which is unitary with the taxpayer, or which has a substantial business relationship with the taxpayer, is not considered marketable stock.

(D) For purposes of this J.3.d), a treasury function is the pooling and management of liquid assets for the purpose of satisfying the cash flow needs of the trade or business, such as providing liquidity for a taxpayer's business cycle, providing a reserve for business contingencies, business acquisitions, etc. A taxpayer principally engaged in the trade or business of purchasing and selling instruments or other items included in the definition of liquid assets set forth herein is not performing a treasury function with respect to income so produced.

(E) Overall net gain refers to the total net gain from all transactions incurred at each treasury function for the entire tax period, not the net gain from a specific transaction.

(d) Domestic International Sales Corporation (DISC). In any case in which a corporation, subject to the income tax jurisdiction of Utah, owns 50 percent or more of the voting power of the stock of a corporation classified as a DISC under the provisions of Sec. 992 Internal Revenue Code, a combined filing with the DISC corporation is required.

(e) Partnership or Joint Venture Income. Income or loss

from partnership or joint venture interests shall be included in income and apportioned to Utah through application of the three-factor formula consisting of property, payroll and sales. For apportionment purposes, the portion of partnership or joint venture property, payroll and sales to be included in the corporation's property, payroll and sales factors shall be computed on the basis of the corporation's ownership interest in the partnership or joint venture, and otherwise in accordance with other applicable provisions of this rule.

R865-6F-14. Extent to Which Federal Income Tax Provisions Are Followed for Corporation Franchise Tax Purposes Pursuant to Utah Code Ann. Sections 59-7-106, 59-7-108, 59-7-501, and 59-7-502.

A. It is the policy of the Tax Commission, in matters involving the determination of net income for Utah corporation franchise tax purposes, to follow as closely as possible federal requirements with respect to the same matters. In some instances, of course, the federal and state statutes differ; and due to such conflict, the federal rulings, regulations, and decisions cannot be followed. Furthermore, in some instances, the Tax Commission may disagree with the federal determinations and does not consider them controlling for Utah corporation franchise tax purposes.

1. The items of major importance ordinarily allowed in conformity with federal requirements are:

- a. depreciation (see rule R865-6F-9),
- b. depletion,
- c. exploration and development expenses,
- d. intangible drilling costs,
- e. accounting methods and periods (see rule R865-6F-2),

and

- f. Subpart F income.

2. The following are the major items which require different treatment under the state and federal statutes:

- a. installment sales (see rule R865-6F-15),
- b. consolidated returns (see rule R865-6F-4),
- c. liquidating dividends,
- d. municipal bond interest,
- e. capital loss deduction,
- f. loss carry-overs and carry-backs, and
- g. gross-up on foreign dividends.

Note: The only reserves permitted in determining net income for Utah corporation franchise tax purposes are depreciation, depletion, and bad debts.

R865-6F-15. Installment Basis of Reporting Income in Year of Termination Pursuant to Utah Code Ann. Section 59-7-112.

A. The Corporation Franchise Tax Act allows a corporation, under certain conditions and under rules prescribed by the Tax Commission, to report income arising from the sale or other disposition of property on a deferred or so-called installment basis. Thus, a gain technically realized at the time the sale is made may, at the election of the taxpayer, be reported on a deferred basis in accordance with the law and the following sections of this rule. The rule allowing deferment of reporting such income is only one of postponement of the tax, and not one of exemption from a tax otherwise lawfully due. Thus, the privilege of deferment is terminated if the taxpayer ceases to be subject to tax prior to the reporting of the entire amount of installment income. When a taxpayer elects to report income arising from the sale or other disposition of property as provided in Section 59-7-112, and the entire income therefrom has not been reported prior to the year that the taxpayer ceases to be subject to the tax imposed under the Utah Corporation Income and Franchise Tax Acts, the unreported income is included in the return for the last year in which the taxpayer is subject to the tax. This rule applies to all corporations which elect to report

on the installment basis. If a corporation on this basis desires to dissolve or to withdraw, it must comply with the provisions hereof prior to issuance of the tax clearance certificate.

B. Income reported under the provisions of Section 59-7-112 and this rule shall be subject to the same treatment in the allocation of income; i.e., specific allocation or apportionment, as would have been accorded the original income from the sale under the provisions of the Uniform Division of Income for Tax Purposes Act. In case such income is subject to apportionment, the apportionment fraction for the year in which the income is reported applies rather than the year in which the sale was made.

R865-6F-16. Apportionment of Income of Long-Term Construction Contractors Pursuant to Utah Code Ann. Sections 59-7-302 through 321.

(1) When a taxpayer elects to use the percentage-of-completion method of accounting, or the completed contract method of accounting for long-term contracts, and has income from sources both within and without this state, the amount of business income derived from such long-term contracts from sources within this state is determined pursuant to this rule.

(2) Business income is apportioned to this state by a three-factor formula consisting of property, payroll, and sales--regardless of the method of accounting for long-term contracts elected by the taxpayer. The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(8), and the sales factor in accordance with R865-6F-8(9).

(a) Percentage-of-completion method. Under this method of accounting for long-term contracts, the amount included each year as business income from each contract is the amount by which the gross contract price (which corresponds to the percentage of the entire contract completed during the income years) exceeds all expenditures made during the income year in connection with the contract. Beginning and ending material and supplies inventories must be appropriately accounted for in reporting expenditures.

(b) Completed-contract method. Under this method of accounting, business income derived from long-term contracts is reported for the income year in which the contract is completed. A special computation is required to compute the amount of business income attributable to this state from each completed contract. All receipts and expenditures applicable to the contracts, whether complete or incomplete at the end of the income year, are excluded from other business income, which are apportioned by the regular three-factor formula of property, payroll, and sales.

(3) Property factor. In general, the numerator and denominator of the property factor is determined as set forth in Sections 59-7-312, 59-7-313, and 59-7-314 and the rules thereunder. However, the following special rules are also applicable:

(a) The average value of the taxpayer's cost (including materials and labor) of construction in progress, to the extent these costs exceed progress billings, are included in the denominator of the property factor. The value of those construction costs attributable to construction projects in this state are included in the numerator of the property factor. It may be necessary to use monthly averages if yearly averages do not properly reflect the average value of the taxpayer's equity.

(b) Rent paid for the use of equipment directly attributable to a particular construction project is included in the property factor at eight times the net annual rental rate, even though the rental expense may be capitalized into the cost of construction.

(c) The property factor is computed in the same manner for all long-term-contract methods of accounting and is

computed for each income year, even though under the completed-contract method of accounting business income is computed separately.

(4) Payroll factor. In general, the numerator and denominator of the payroll factor are determined as set forth in Sections 59-7-315 and 59-7-316 and the rules thereunder. However, the following special rules are also applicable.

(a) Compensation paid to employees attributable to a particular construction project is included in the payroll factor even though capitalized into the cost of construction.

(b) Compensation paid to employees who, in the aggregate, perform most of their services in a state to which their employer does not report them for unemployment tax purposes, is attributed to the state where the services are performed. For example, a taxpayer engaged in a long-term contract in State X sends several key employees to that state to supervise the project. The taxpayer, for unemployment tax purposes reports these employees to State Y where the main office is maintained and where the employees reside. For payroll factor purposes and in accordance with Section 59-7-316 and the rule thereunder, the compensation is assigned to the numerator of State X.

(c) The payroll factor is computed in the same manner for all long-term-contract methods of accounting and is computed for each income year, even though under the completed contract method of accounting, business income is computed separately.

(5) Sales Factor. In general, the numerator and denominator of the sales factor shall be determined as set forth in Sections 59-7-317, 59-7-318, and 59-7-319 and the rules thereunder. However, the following special rules are also applicable.

(a) Gross receipts derived from the performance of a contract are attributable to this state if the construction project is located in this state. If the construction project is located partly within and partly without this state, the gross receipts attributable to this state are based upon the ratio which construction costs for the project in this state incurred during the coming year bears to the total of such construction costs for the entire project during the income year. Progress billings are ordinarily used to reflect gross receipts and must be shown in both the numerator and denominator of the sales factor.

(b) If the percentage-of-completion method is used, the sales factor includes only that portion of the gross contract price which corresponds to the percentage of the entire contract which was completed during the income year. For example, a construction contractor which had elected the percentage-of-completion method of accounting entered into a \$9,000,000 long-term construction contract. At the end of its current income year (the second since starting the project) it estimated that the project was 30 percent completed. The amount of gross receipts included in the sales factor for the current income year is \$2,700,000 (30 percent of \$9,000,000), regardless of whether the taxpayer uses the accrual method or the cash method of accounting for receipts and disbursements.

(c) If the completed-contract method of accounting is used, the sales factor includes the portion of the gross receipts (progress billings) received under the cash basis or accrued, whichever is applicable, during the income year attributable to each contract. For example, a construction contractor which elected the completed-contract method of accounting entered into a long-term construction contract. At the end of its current income year (the second since starting the project) it had billed, and accrued on its books a total of \$5,000,000 of which \$2,000,000 had accrued in the first year the contract was undertaken, and \$3,000,000 in the current (second) year. The amount of gross receipts included in the sales factor for the current income year is \$3,000,000. If the taxpayer keeps its books on the cash basis, and as of the end of its current income year has received only \$2,500,000 of the \$3,000,000 billed

during the current year, the amount of gross receipts to be included in the sales factor for the current year is \$2,500,000.

(d) The sales factor, except as noted above in Subsections (5)(b) and (c), is computed in the same manner for all long-term contract methods of accounting and is computed for each income year—even though under the completed-contract method of accounting, business income is computed separately.

(6) The total of the property, payroll, and sales percentages is divided by three to determine the apportionment percentage which is then applied to business income to establish the amount apportioned to this state.

(7) The completed-contract method of accounting provides that the reporting of income (or loss) is deferred until the year the construction project is completed. In order to determine the amount of income which is attributable to sources within this state, a separate computation is made for each contract completed during the income year, regardless of whether the project is located within or without this state. The amount of income from each contract completed during the income year apportioned to this state is added to other business income apportioned to this state by the regular three-factor formula, and that total together with all nonbusiness income allocated to this state becomes the measure of tax for the income year. The amount of income (or loss) from each contract which is derived from sources within this state using the completed-contract method of accounting is computed as follows.

(a) In the income year the contract is completed, the income (or loss) therefrom is determined.

(b) The income (or loss) determined at Subsection (7)(a) is apportioned to this state by the following method:

(i) a fraction is determined for each year the contract was in progress (the numerator of which is the amount of construction costs paid or accrued each year the contract was in progress, and the denominator of which is the total of all construction costs for the project);

(ii) each fraction determined in Subsection (7)(b)(i) is multiplied by the apportionment formula percentage for that particular year;

(iii) these factors are totaled; and

(iv) the total income is multiplied by this combined percentage, and the resulting income (or loss) is the amount of contract business income assigned to this state.

(c) A corporation using the completed-contract method of accounting is required to include income derived from sources within this state from contracts within or without this state or income from incomplete contracts in progress outside this state in the year of withdrawal, dissolution, or cessation of business pursuant to Subsection (7)(d).

(d) The amount of income (or loss) from each such contract apportioned to this state is determined as if the percentage-of-completion method of accounting were used for all such contracts on the date of withdrawal, dissolution, or cessation of business. The amount of business income (or loss) for each such contract is the amount by which the gross contract price from each such contract from the commencement thereof to the date of withdrawal, dissolution, or cessation of business exceeds all expenditures made during such period in connection with each such contract. Beginning and ending material and supplies inventories must be appropriately accounted for in reporting expenditures in connection with each contract.

R865-6F-18. Exemptions from Corporate Franchise and Income Tax Pursuant to Utah Code Ann. Sections 59-7-101 and 59-7-102.

A. The following definitions apply to the exemption for corporate franchise and income tax for a farmers' cooperative.

1. "Member" means a person who shares in the profits of a cooperative association and is entitled to participate in the management of the association.

2. "Producer" means a person who, as owner or tenant, bears the risk of production and receives income based on farm production rather than fixed compensation.

B. In order to claim an exemption from corporate franchise and income tax provided for by Section 59-7-102, a corporation must submit to the Tax Commission form TC-161, Utah Registration for Exemption from Corporate Franchise or Income Tax, along with any information that form requires, for the Tax Commission's determination that the corporation satisfies the requirements of Section 59-7-102.

C. A corporation shall notify the Tax Commission of any change that affects its tax exempt status under Section 59-7-102.

D. For purposes of the Section 59-7-102 exemption for a farmers' cooperative, an association, corporation, or other organization similar to an association, corporation, or other organization of farmers or fruit growers includes establishments primarily engaged in growing crops, raising animals, harvesting timber, and harvesting fish and other animals from a farm, ranch, or their natural habitat.

R865-6F-19. Taxation of Trucking Companies Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions:

(a) "Average value" of property means the amount determined by averaging the values of real and personal property at the beginning and end of the income tax year. The Tax Commission may require the averaging of monthly values during the income year or other averaging as necessary to reflect properly the average value of the trucking company's property.

(b) "Business and nonbusiness income" are as defined in R865-6F-8(1).

(c) "Mobile property" means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property.

(d) "Mobile property mile" means the movement of a unit of mobile property a distance of one mile, whether loaded or unloaded.

(e) "Original cost" means the basis of the property for federal income tax purposes (prior to any federal income tax adjustments, except for subsequent capital additions, improvements thereto, or partial dispositions); or if the property has no such basis, or if the valuation of the property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer.

(f) "Property used during the course of the income year" means property that is available for use in the taxpayer's trade or business during the income year.

(g) "Trucking company" means a corporation engaged in or transacting the business of transporting freight, merchandise, or other property for hire.

(h) "Value of owned real and tangible personal property" means the original cost of owned real and tangible personal property.

(i) "Value of rented real and tangible personal property" means the product of eight times the net annual rental rate of rented real and tangible personal property.

(2) When a trucking company has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the trucking company's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to

this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

(3) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(8), and the sales factor in accordance with R865-6F-8(9).

(4) The denominator of the property factor shall be the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used, or available for use, within this state during the income year.

(a) In the determination of the numerator of the property factor, all property, except mobile property, shall be included in the numerator of the property factor.

(b) Mobile property located within and without this state during the income year shall be included in the numerator of the property factor in the ratio that the mobile property's miles within this state bear to the total miles of mobile property within and without this state.

(5) The denominator of the payroll factor is the compensation paid within and without this state by the taxpayer during the income year for the production of business income. The numerator of the payroll factor is the compensation paid within this state during the income year by the taxpayer for the production of business income.

(a) With respect to all personnel, except those performing services within and without this state, compensation shall be included in the numerator as provided in R865-6F-8(8).

(b) With respect to personnel performing services within and without this state, compensation shall be included in the numerator of the payroll factor in the ratio that their services performed within this state bear to their services performed within and without this state.

(6) In general, all revenue derived from transactions and activities in the regular course of the taxpayer's trade or business that produce business income shall be included in the denominator of the revenue factor. The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year.

(a) The total state revenue of the taxpayer, other than revenue from hauling freight, mail, and express, shall be attributable to this state in accordance with R865-6F-8(9).

(b) The total revenue of the taxpayer attributable to this state during the income year from hauling freight, mail, and express shall be:

(i) Intrastate: all receipts from any shipment that both originates and terminates within this state; and

(ii) Interstate: that portion of the receipts from movements or shipments passing through, into, or out of this state as determined by the ratio that the mobile property miles traveled by the movements or shipments within this state bear to the total mobile property miles traveled by the movements or shipments within and without this state.

(7) The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by mobile property. These records are subject to review by the Tax Commission or its agents.

(8) This rule requires apportionment of income to this state if during the course of the income tax year, the trucking company:

(a) owned or rented any real or personal property in this state;

(b) made any pickups or deliveries within this state;

(c) traveled more than 25,000 mobile property miles within this state, provided that the total mobile property miles

traveled within this state during the income tax year exceeded three percent of the total mobile property miles traveled in all states by the trucking company during the period; or (d) made more than 12 trips into this state.

R865-6F-22. Treatment of Loss Carrybacks and Carryforwards Spanning a Change in Reporting Methods Pursuant to Utah Code Ann. Sections 59-7-402 and 59-7-403.

A. For purposes of this rule, "worldwide year" means a year in which a corporation filed a worldwide combined report as set forth in Sections 59-7-101(34) and 59-7-403.

B. For purposes of this rule, "water's edge year" means a year in which a corporation filed a combined report as set forth in Sections 59-7-101(33) and 59-7-402.

C. A corporation that receives permission from the Tax Commission to change its filing method to the water's edge method after having elected the worldwide method will be required to forfeit any unused loss carryovers that were generated in any worldwide year as a condition precedent to making that change. Any losses generated in a subsequent water's edge year may not be carried back against income earned in any year prior to the change to the water's edge method, but must be carried to a post-change water's edge year.

D. A corporation that elects the worldwide filing method subsequent to adoption of this rule will be required to forfeit any unused loss carryovers that were generated in any water's edge year. Any losses generated in a subsequent worldwide year may not be carried back against income earned in any year prior to the change to the worldwide election method, but must be carried to a post-change worldwide year.

R865-6F-23. Utah Steam Coal Tax Credit Pursuant to Utah Code Ann. Section 59-7-604.

A. Definitions.

1. "Permitted mine" means a mine for which a permit has been issued by the Division of Oil, Gas, and Mining pursuant to Title 40, Chapter 10, Coal Mining and Reclamation.

2. "Purchaser outside of the United States" means any company that purchases coal for shipment outside of the fifty states or the District of Columbia.

B. To qualify for the steam coal tax credit for taxable years beginning on or after January 1, 1993, sales to a purchaser outside of the United States must exceed the permitted mine's sales to a purchaser outside of the United States in the taxable year beginning on or after January 1, 1992, regardless of any change in ownership of the mine.

C. To qualify for the steam coal tax credit the coal must be exported outside of the United States, within a reasonable period of time. A reasonable period of time is considered to be within 90 days after the end of the tax year.

R865-6F-24. Attribution of Sales of Tangible Property to the Sales Factor for Apportionment of Business Income Pursuant to Utah Code Ann. Section 59-7-317.

A. For purposes of 15 U.S.C. Section 381, the phrase "activities within such state by or on behalf of such person" means the activities of any member of a unitary business as that term is defined in Section 59-7-302.

B. If the activity in this state of any member of a unitary business exceeds the activity protected by 15 U.S.C. Section 381, sales of tangible property into this state, from an out-of-state location by any member of the unitary business shall be included in this state's sales factor numerator under Section 59-7-317.

C. If any member of a unitary business is taxable in another state under Section 59-7-305, sales of tangible property from a Utah location, into that state by any member of the unitary business shall not be thrown back to this state as ordinarily provided under Section 59-7-318.

D. This rule is effective for taxable years beginning after December 31, 1992.

R865-6F-26. Historic Preservation Tax Credits Pursuant to Utah Code Ann. Section 59-7-609.

A. Definitions:

1. "Qualified rehabilitation expenditures" includes architectural, engineering, and permit fees.

2. "Qualified rehabilitation expenditures" does not include movable furnishings.

3. "Residential" as used in Section 59-7-609 applies only to the use of the building after the project is completed.

B. Taxpayers shall file an application for approval of all proposed rehabilitation work with the Division of State History prior to the completion of restoration or rehabilitation work on the project. The application shall be on a form provided by the Division of State History.

C. Rehabilitation work must receive a unique certification number from the State Historic Preservation Office in order to be eligible for the tax credit.

D. In order to receive final certification and be issued a unique certification number for the project, the following conditions must be satisfied:

1. The project approved under B. must be completed.

2. Upon completion of the project, taxpayers shall notify the State Historic Preservation Office and provide that office an opportunity to review, examine, and audit the project. In order to be certified, a project shall be completed in accordance with the approved plan and the Secretary of the Interior's Standards for Rehabilitation.

3. Taxpayers restoring buildings not already listed on the National Register of Historic Places shall submit a complete National Register Nomination Form. If the nomination meets National Register criteria, the State Historic Preservation Office shall approve the nomination.

4. Projects must be completed, and the \$10,000 expenditure threshold required by Section 59-7-609 must be met, within 36 months of the approval received pursuant to B.

5. During the course of the project and for three years thereafter, all work done on the building shall comply with the Secretary of the Interior's Standards for Rehabilitation.

E. Proof of State Historic Preservation Office certification shall be made by:

1. receiving an authorization form from the State Historic Preservation Office containing the certification number;

2. attaching that authorization form to the tax return for the year in which the credit is claimed.

F. Credit amounts shall be applied against Utah corporate franchise tax due in the tax year in which the project receives final certification under D.

G. Credit amounts greater than the amount of Utah corporate franchise tax due in a tax year shall be carried forward to the extent provided by Section 59-7-609.

H. Carryforward historic preservation tax credits shall be applied against Utah franchise tax due before the application of any historic preservation credits earned in the current year and on a first-earned, first-used basis.

I. Original records supporting the credit claimed must be maintained for three years following the date the return was filed claiming the credit.

R865-6F-27. Order of Credits Applied Against Utah Corporate Franchise Tax Due Pursuant to Utah Code Ann. Sections 9-2-413, 59-6-102, 59-7-601 through 59-7-614, and 59-13-202.

A. Taxpayers shall deduct credits authorized by Sections 9-2-413, 59-6-102, 59-7-601 through 59-7-614, and 59-13-202 against Utah corporate franchise tax due in the following order:

1. nonrefundable credits;

2. nonrefundable credits with a carryforward;
3. refundable credits.

R865-6F-28. Enterprise Zone Corporate Franchise Tax Credits Pursuant to Utah Code Ann. Sections 9-2-401 through 9-2-415.

A. Definitions:

1. "Business engaged in retail trade" means a business that makes a retail sale as defined in Section 59-12-102.

2. "Construction work" does not include facility maintenance or repair work.

3. "Employee" means a person who qualifies as an employee under Internal Revenue Service Regulation 26 CFR 31.3401(c)(1).

4. "Public utilities business" means a public utility under Section 54-2-1.

5. "Qualifying investment" in the case of a business firm that is a member of a unitary group, does not include an investment made by that business firm in plant, equipment, or other depreciable property of another member of the unitary group.

6. "Transfer" pursuant to Section 9-2-411, means the relocation of assets and operations of a business, including personnel, plant, property, and equipment.

7. "Unitary group" is as defined in Section 59-7-101.

B. For purposes of the investment tax credit, an investment is a qualifying investment if:

1. The plant, equipment, or other depreciable property for which the credit is taken is located within the boundaries of the enterprise zone.

2. The plant, equipment, or other depreciable property for which the investment tax credit is taken is in a business that is operational within the enterprise zone.

C. The calculation of the number of full-time positions for purposes of the credits allowed under Section 9-2-413(1)(a) through (d) shall be based on the average number of employees reported to the Department of Workforce Services for the four quarters prior to the area's designation as an enterprise zone.

D. To determine whether at least 51 percent of the business firm's employees reside in the county in which the enterprise zone is located, the business firm shall consider every employee reported to the Department of Workforce Services for the tax year for which an enterprise zone credit is sought.

E. A business firm that conducts non-retail operations and is engaged in retail trade qualifies for the credits under Section 9-2-413 if the retail trade operations constitute a de minimis portion of the business firm's total operations.

F. An employee whose duties include both non-construction work and construction work does not perform a construction job if the construction work performed by the employee constitutes a de minimis portion of the employee's total duties.

G. Corporate franchise tax credits may not be used to offset or reduce the \$100 minimum tax per corporation.

H. Records and supporting documentation shall be maintained for three years after the date any returns are filed to support the credits taken. For example: If credits are originally taken in 1988 and unused portions are carried forward to 1992, records to support the original credits taken in 1988 must be maintained for three years after the date the 1992 return is filed.

I. If an enterprise zone designation is revoked prior to the expiration of the period for which it was designated, only tax credits earned prior to the loss of that designation will be allowed.

R865-6F-29. Taxation of Railroads Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Average value" of property means the amount

determined by averaging the values of real and personal property at the beginning and ending of the income tax year. The Tax Commission may require the averaging of monthly values during the income year or other averaging as necessary to reflect properly the average value of the railroad's property.

(b) "Business and nonbusiness income" are as defined in R865-6F-8(1).

(c) "Car-mile" means a movement of a unit of car equipment a distance of one mile.

(d) "Locomotive" means a self-propelled unit of equipment designed solely for moving other equipment.

(e) "Locomotive-mile" means the movement of a locomotive a distance of one mile under its own power.

(f) "Net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(g) "Original cost" means the basis of the property for federal income tax purposes (prior to any federal income tax adjustments except for subsequent capital additions, improvements thereto or partial dispositions). If the original cost of property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer.

(h) "Property used during the income year" means property that is available for use in the taxpayer's trade or business during the income year.

(i) "Rent" does not include the per diem and mileage charges paid by the taxpayer for the temporary use of railroad cars owned or operated by another railroad.

(j) "Value of owned real and tangible personal property" means the original cost of owned real and tangible personal property.

(k) "Value of rented real and tangible personal property" means the product of eight times the net annual rental rate of rented real and tangible personal property.

(2) When a railroad has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the railroad's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

(3) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(8), and the sales factor in accordance with R865-6F-8(9).

(4) The denominator of the property factor shall be the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used within this state during the income year.

(a) In determining the numerator of the property factor, all property except mobile or movable property such as passenger cars, freight cars, locomotives and freight containers located within and without this state during the income year shall be included in the numerator of the property factor.

(b) Mobile or movable property such as passenger cars, freight cars, locomotives and freight containers located within

and without this state during the income year shall be included in the numerator of the property factor in the ratio that locomotive-miles and car-miles in the state bear to the total of locomotive-miles and car-miles both within and without this state.

(5) The denominator of the payroll factor is the total compensation paid within and without this state by the taxpayer during the income year for the production of business income. The numerator of the payroll factor is the amount of compensation paid within this state during the income year for the production of business income.

(a) With respect to all personnel except engine men and trainmen performing services on interstate trains, compensation shall be included in the numerator as provided in R865-6F-8(8).

(b) With respect to engine men and trainmen performing services on interstate trains, compensation shall be included in the numerator of the payroll factor in the ratio that their services performed in this state bear to their services performed within and without this state.

(c) Compensation for services performed in this state shall be deemed to be the compensation reported or required to be reported by employees for determination of their income tax liability to this state.

(6) In general, all revenue derived from transactions and activities in the regular course of the taxpayer's trade or business within and without this state that produce business income, except per diem and mileage charges that are calculated by the taxpayer, shall be included in the denominator of the revenue factor. The numerator of the revenue factor is the total revenue of the taxpayer within this state during the income year.

(a) The total revenue of the taxpayer in this state during the income year, other than revenue from hauling freight, passengers, mail and express, shall be attributable to this state in accordance with R865-6F-8(9).

(b) The total revenue of the taxpayer attributable to this state during the income year for the numerator of the revenue factor from hauling freight, mail and express shall be attributable to this state as follows:

(i) Intrastate: all receipts from shipments that both originate and terminate within this state; and

(ii) Interstate: that portion of the receipts from each movement or shipment passing through, into, or out of this state is determined by the ratio that the miles traveled by the movement or shipment in this state bears to the total miles traveled by the movement or shipment from point of origin to destination.

(c) The total revenue of the taxpayer attributable to this state during the income year for the numerator of the revenue factor from hauling passengers shall be attributable to this state as follows:

(i) Intrastate: all receipts from the transportation of passengers, including mail and express handled in passenger service, that both originate and terminate within this state; and

(ii) Interstate: that portion of the receipts from the transportation of interstate passengers, including mail and express handled in passenger service, determined by the ratio that passenger miles in this state bear to the total of passenger miles within and without this state.

(7) The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by mobile property. These records are subject to review by the Tax Commission or its agents.

R865-6F-30. Higher Education Savings Incentive Program Tax Deduction Pursuant to Utah Code Ann. Sections 53B-8a-112, 59-7-105, and 59-7-106.

(1) "Trust" means the Utah Educational Savings Plan Trust created pursuant to Section 53B-8a-103.

(2) The trustee of the trust shall file a form TC-675H,

Statement of Account with the Utah Educational Savings Plan Trust, with the commission, for each trust account owner. The TC-675H shall contain the following information for the calendar year:

(a) the amount contributed to the trust by the account owner; and

(b) the amount disbursed to the account owner pursuant to Section 53B-8a-109.

(3) The trustee of the trust shall file form TC-675H with the commission on or before January 31 of the year following the calendar year on which the forms are based.

(4) The trustee of the trust shall provide each trust account owner with a copy of the form TC-675H on or before January 31 of the year following the calendar year on which the TC-675H is based.

(5) The trustee of the trust shall maintain original records supporting the amounts listed on the TC-675H for the current year filing and the three previous year filings.

R865-6F-31. Taxation of Publishing Companies Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Outer-jurisdictional property" means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of publishing, licensing, selling or otherwise distributing printed material, but that are not physically located in any particular state.

(b) "Print" or "printed material" means the physical embodiment or printed version of any thought or expression, including a play, story, article, column or other literary, commercial, educational, artistic or other written or printed work. The determination of whether an item is or consists of print or printed material shall be made without regard to its content. Printed material may take the form of a book, newspaper, magazine, periodical, trade journal, or any other form of printed matter and may be contained on any medium or property.

(c) "Purchaser" and "subscriber" mean the individual, residence, business or other outlet that is the ultimate or final recipient of the print or printed material. Neither term shall mean or include a wholesaler or other distributor of print or printed material.

(d) "Terrestrial facility" shall include any telephone line, cable, fiber optic, microwave, earth station, satellite dish, antennae, or other relay system or device that is used to receive, transmit, relay or carry any data, voice, image or other information that is transmitted from or by any outer-jurisdictional property to the ultimate recipient thereof.

(2) When a taxpayer in the business of publishing, selling, licensing or distributing books, newspapers, magazines, periodicals, trade journals, or other printed material has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the taxpayer's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

(3) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as modified by this rule, the property factor shall be determined in accordance with R865-

6F-8(7), the payroll factor in accordance with R865-6F-8(8), and the sales factor in accordance with R865-6F-8(9).

(4) All real and tangible personal property, including outer-jurisdictional property, whether owned or rented, that is used in the business shall be included in the denominator of the property factor.

(5)(a) All real and tangible personal property owned or rented by the taxpayer and used within this state during the tax period shall be included in the numerator of the property factor.

(b) Outer-jurisdictional property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor in the ratio that the value of the property attributable to its use by the taxpayer in business activities within this state bears to the value of the property attributable to its use in the taxpayer's business activities within and without this state.

(i) The value of outer-jurisdictional property attributed to the numerator of the property factor of this state shall be determined by the ratio that the number of uplinks and downlinks, or half-circuits, used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the number of uplinks and downlinks or half-circuits used for transmissions within and without this state.

(ii) If information regarding uplink and downlink or half-circuit usage is not available or if measurement of activity is not applicable to the type of outer-jurisdictional property used by the taxpayer, the value of that property attributed to the numerator of the property factor of this state shall be determined by the ratio that the amount of time, in terms of hours and minutes of use, or other measurement of use of outer-jurisdictional property that was used during the tax period to transmit from this state and to receive within this state any data, voice, image or other information bears to the total amount of time or other measurement of use that was used for transmissions within and without this state.

(iii) Outer-jurisdictional property shall be considered to have been used by the taxpayer in its business activities within this state when that property, wherever located, has been employed by the taxpayer in any manner in the publishing, sale, licensing or other distribution of books, newspapers, magazines or other printed material, and any data, voice, image or other information is transmitted to or from this state either through an earth station or terrestrial facility located within this state.

(A) One example of the use of outer-jurisdictional property is when the taxpayer owns its own communications satellite or leases the use of uplinks, downlinks or circuits or time on a communications satellite for the purpose of sending messages to its newspaper printing facilities or employees. The states in which any printing facility that receives the satellite communications are located and the state from which the communications were sent would, under this rule, apportion the cost of the owned or rented satellite to their respective property factors based upon the ratio of the in-state use of the satellite to its usage within and without the state.

(B) Assume that ABC Newspaper Co. owns a total of \$400,000,000 of property and, in addition, owns and operates a communication satellite for the purpose of sending news articles to its printing plant in this state, as well as for communicating with its printing plants and facilities or news bureaus, employees and agents located in other states and throughout the world. Also assume that the total value of its real and tangible personal property that was permanently located in this state for the entire income year was valued at \$3,000,000. Assume also that the original cost of the satellite is \$100,000,000 for the tax period and that of the 10,000 uplinks and downlinks or half-circuits of satellite transmissions used by the taxpayer during the tax period, 200 or 2% are attributable to its satellite communications received in and sent from this state. Assume

further that the company's mobile property that was used partially within this state, consisting of 40 delivery trucks, was determined to have an original cost of \$4,000,000 and was used in this state for 95 days. The total value of property attributed to this state is determined as follows:

TABLE	
Value of property permanently in state =	\$3,000,000
Value of mobile property: 95/365 or (.260274) x \$4,000,000 =	\$1,041,096
Value of leased satellite property used in-state: (.02) x \$100,000,000 =	\$2,000,000
Total value of property attributable to state =	\$6,041,096
Total property factor percentage: \$6,041,096/\$500,000,000 =	1.2082%

(6) The payroll factor shall be determined in accordance with Sections 59-7-315 and 59-7-316.

(7) The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts that may be excluded under R865-6F-8(10)(c).

(8) The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including the following:

(a) Gross receipts derived from the sale of tangible personal property, including printed materials, delivered or shipped to a purchaser or a subscriber in this state; and

(b) Except as provided in Subsection (8)(b)(ii), gross receipts derived from advertising and the sale, rental, or other use of the taxpayer's customer lists or any portion thereof shall be attributed to this state as determined by the taxpayer's circulation factor during the tax period. The circulation factor shall be determined for each publication of printed material containing advertising and shall be equal to the ratio that the taxpayer's in-state circulation to purchasers and subscribers of its printed material bears to its circulation to purchasers and subscribers within and without the state.

(i) The circulation factor for an individual publication shall be determined by reference to the rating statistics as reflected in such sources as Audit Bureau of Circulations or other comparable sources, provided that the source selected is consistently used from year to year for that purpose. If none of the foregoing sources are available, or, if available, not in form or content sufficient for these purposes, the circulation factor shall be determined from the taxpayer's books and records.

(ii) When specific items of advertisements can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area in which this state is located, the taxpayer may petition, or the Tax Commission may require, that a portion of those receipts be attributed to the sales factor numerator of this state on the basis of a regional or local geographic area circulation factor and not upon the basis of the circulation factor provided by Subsection (8)(b)(i). This attribution shall be based upon the ratio that the taxpayer's circulation to purchasers and subscribers located in this state of the printed material containing specific items of advertising bears to its total circulation of printed material to purchasers and subscribers located within the regional or local geographic area. This alternative attribution method shall be permitted only upon the condition that receipts are not double counted or otherwise included in the numerator of any other state.

(iii) If the purchaser or subscriber is the United States government or if the taxpayer is not taxable in a state, the gross receipts from all sources, including the receipts from the sale of printed material, from advertising, and from the sale, rental or

other use of the taxpayer's customer lists, or any portion thereof that would have been attributed by the circulation factor to the numerator of the sales factor for that state, shall be included in the numerator of the sales factor of this state if the printed material or other property is shipped from an office, store, warehouse, factory, or other place of storage or business in this state.

R865-6F-32. Taxation of Financial Institutions Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable year, or on the later date in the taxable year when the customer relationship began, where any notice, statement or bill relating to a customer's account is mailed.

(b) "Borrower or credit card holder located in this state" means:

(i) a borrower, other than a credit card holder, that is engaged in a trade or business that maintains its commercial domicile in this state; or

(ii) a borrower that is not engaged in a trade or business, or a credit card holder, whose billing address is in this state.

(c) "Commercial domicile" means:

(i) the place from which the trade or business is principally managed and directed; or

(ii) if a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, that taxpayer's commercial domicile shall be deemed for the purposes of this rule to be the state of the United States or the District of Columbia from which that taxpayer's trade or business in the United States is principally managed and directed. It shall be presumed, subject to rebuttal, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of those employees are performed, as of the last day of the taxable year.

(d) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services that are included in the employee's gross income under the federal Internal Revenue Code. In the case of employees not subject to the federal Internal Revenue Code, the determination of whether payments constitute gross income under the federal Internal Revenue Code shall be made as though those employees were subject to the federal Internal Revenue Code.

(e) "Credit card" means a credit, travel, or entertainment card.

(f) "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

(g) "Employee" means, with respect to a particular taxpayer, any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(h) "Financial institution" means:

(i) any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;

(ii) a national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. Sections 21 et seq.;

(iii) a savings association or federal savings bank as

defined in the Federal Deposit Insurance Act, 12 U.S.C. Section 1813(b)(1);

(iv) any bank, industrial loan corporation, or thrift institution incorporated or organized under the laws of any state;

(v) any corporation organized under the provisions of 12 U.S.C. Sections 611 through 631.

(vi) any agency or branch of a foreign depository as defined in 12 U.S.C. Section 3101;

(vii) a production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired;

(viii) any corporation whose voting stock is more than 50 percent owned, directly or indirectly, by any person or business entity described in Subsections (1)(h)(i) through (vii), other than an insurance company taxable under Title 59, Chapter 9, Taxation of Admitted Insurers;

(ix) a corporation or other business entity that derives more than 50 percent of its total gross income for financial accounting purposes from finance leases. For purposes of this subsection, a "finance lease" shall mean any lease transaction that is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. The phrase shall include any direct financing lease or leverage lease that meets the criteria of Financial Accounting Standards Board Statement No. 13, Accounting for Leases, or any other lease that is accounted for as a financing lease by a lessor under generally accepted accounting principles. For this classification to apply:

(A) the average of the gross income in the current tax year and immediately preceding two tax years must satisfy the more than 50 percent requirement; and

(B) gross income from incidental or occasional transactions shall be disregarded;

(x) any other person or business entity, other than an insurance company, a credit union exempt from the corporation franchise tax under Section 59-7-102, a real estate broker, or a securities dealer, that derives more than 50 percent of its gross income from activities that a person described in Subsections (1)(h)(ii) through (vii) and (1)(h)(ix) is authorized to transact.

(A) For purposes of this subsection, the computation of gross income shall not include income from non-recurring, extraordinary items; and

(B) The Tax Commission is authorized to exclude any person from the application of Subsection (1)(h)(x) upon receipt of proof, by clear and convincing evidence, that the income-producing activity of that person is not in substantial competition with those persons described in Subsections (1)(h)(ii) through (vii) and (1)(h)(ix).

(i) "Gross rents" means the actual sum of money or other consideration payable for the use or possession of property.

(i) Gross rents includes:

(A) any amount payable for the use or possession of real property or tangible property whether designated as a fixed sum of money or as a percentage of receipts, profits or otherwise;

(B) any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs or any other amount required to be paid by the terms of a lease or other arrangement; and

(C) a proportionate part of the cost of any improvement to real property, made by or on behalf of the taxpayer, that reverts to the owner or lessor upon termination of a lease or other arrangement. The amount included in gross rents is the amount of amortization or depreciation allowed in computing the taxable income base for the taxable year. However, where a building is erected on leased land by or on behalf of the taxpayer, the value of the land is determined by multiplying the gross rent by eight and the value of the building is determined in the same manner as if owned by the taxpayer.

(ii) Gross rents does not include:

(A) reasonable amounts payable as separate charges for water and electric service furnished by the lessor;

(B) reasonable amounts payable as service charges for janitorial services furnished by the lessor;

(C) reasonable amounts payable for storage, provided those amounts are payable for space not designated and not under the control of the taxpayer; and

(D) that portion of any rental payment applicable to the space subleased from the taxpayer and not used by the taxpayer.

(j) "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and the taxpayer's customer, or the purchase, in whole or in part, of an extension of credit from another.

(i) Loan includes participations, syndications, and leases treated as loans for federal income tax purposes.

(ii) Loan does not include properties treated as loans under Section 595 of the federal Internal Revenue Code, futures or forward contracts, options, notional principal contracts such as swaps, credit card receivables, including purchased credit card relationships, non-interest bearing balances due from depository institutions, cash items in the process of collection, federal funds sold, securities purchased under agreements to resell, assets held in a trading account, securities, interests in a real estate mortgage investment conduit as defined in Section 860D of the Internal Revenue Code, or other mortgage-backed or asset-backed security, and other similar items.

(k) "Loans secured by real property" means that fifty percent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

(l) "Merchant discount" means the fee, or negotiated discount, charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

(m) "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(n) "Person" means an individual, estate, trust, partnership, corporation, and any other business entity.

(o) "Principal base of operations" means:

(i) with respect to transportation property, the place of more or less permanent nature from which that property is regularly directed or controlled; and

(ii) with respect to an employee, the place of more or less permanent nature from which the employee regularly:

(A) starts his work and to which he customarily returns in order to receive instructions from his employer;

(B) communicates with his customers or other persons; or

(C) performs any other functions necessary to the exercise of his trade or profession at some other point or points.

(p)(i) "Real property owned" and "tangible personal property owned" mean real and tangible personal property, respectively:

(A) on which the taxpayer may claim depreciation for federal income tax purposes; or

(B) property to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes, or could claim depreciation if subject to federal income tax.

(ii) Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(q) "Regular place of business" means an office at which the taxpayer carries on business in a regular and systematic manner and is continuously maintained, occupied, and used by

employees of the taxpayer.

(r) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country.

(s) "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(t) "Taxable" means:

(i) a taxpayer is subject in another state to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax, including a bank shares tax, a single business tax, an earned surplus tax, or any tax imposed upon or measured by net income; or

(ii) another state has jurisdiction to subject the taxpayer to taxes regardless of whether that state actually imposes those taxes.

(u) "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels and motor vehicles, as well as any equipment or containers attached to that property, such as rolling stock, barges, and trailers.

(2) Apportionment and Allocation.

(a) A financial institution whose business activity is taxable both within and without this state, or a financial institution whose business activity is taxable within this state and is a member of a unitary group that includes one or more financial institutions where any member of the group is taxable without this state, shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States, whose effectively connected income, as defined under the federal Internal Revenue Code, is taxable both within this state and within another state, other than the state in which it is organized, shall allocate and apportion its net income as provided in this rule.

(b) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(8), and the sales factor in accordance with R865-6F-8(9).

(c) Each factor shall be computed according to the cash or accrual method of accounting as used by the taxpayer for the taxable year.

(d) If a unitary group of corporations filing a combined report includes one or more corporations meeting the definition of financial institution and one or more corporations that do not meet that definition, the provisions of this rule regarding the calculation of the property, payroll, and receipts factors of the apportionment fraction shall apply only to those corporations meeting the definition of financial institution. Those corporations not meeting the definition of financial institution shall compute their apportionment data based on rule R865-6F-8 or such other industry apportionment rule adopted by the Tax Commission that may be applicable. The apportionment data of all members of the unitary group shall be included in calculating a single apportionment fraction for the unitary group. The numerators and denominators of the property, payroll, and receipts factors of the financial institutions shall be added to the numerators and denominators, respectively, of the property, payroll, and sales factors of the nonfinancial institutions to determine the property, payroll, and sales factors of the unitary group.

(3) Receipts Factor.

(a) In general. The receipts factor is a fraction, the numerator of which is the receipts of the taxpayer in this state

during the taxable year and the denominator of which is the receipts of the taxpayer within and without this state during the taxable year. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator. The receipts factor shall include only those receipts that constitute business income and are included in the computation of the apportionable income base for the taxable year.

(b) Receipts from the lease of real property. The numerator of the receipts factor includes receipts from the lease or rental of real property owned by the taxpayer and receipts from the sublease of real property, if the property is located within this state.

(c) Receipts from the lease of tangible personal property.

(i) Except as described in Subsection (3)(d), the numerator of the receipts factor includes receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state when it is first placed in service by the lessee.

(ii) Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the receipts factor to the extent that the property is used in this state.

(A) The extent an aircraft will be deemed to be used in this state and the amount of receipts that shall be included in the numerator of this state's receipts factor are determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft.

(B) If the extent of the use of any transportation property within this state cannot be determined, that property will be deemed to be used wholly in the state in which the property has its principal base of operations.

(C) A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(d) Interest from loans secured by real property.

(i) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the receipts described in this subsection are included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, the receipts described in this subsection shall be included in the numerator of the receipts factor if the borrower is located in this state.

(ii) The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made, and any and all subsequent substitutions of collateral shall be disregarded.

(e) Interest from loans not secured by real property. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.

(f) Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the Internal Revenue Code.

(i) The amount of net gains, but not less than zero, from the sale of loans secured by real property included in the numerator is determined by multiplying the net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(d), and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(ii) The amount of net gains, but not less than zero, from the sale of loans not secured by real property included in the numerator is determined by multiplying the net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(e), and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(g) Receipts from credit card receivables. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

(h) Net gains from the sale of credit card receivables. The numerator of the receipts factor includes net gains, but not less than zero, from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(g), and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(i) Credit card issuer's reimbursement fees. The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(g), and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(j) Receipts from merchant discount. The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. The receipts shall be computed net of any cardholder charge backs, but shall not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

(k) Loan servicing fees.

(i) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(d), and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(ii) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(e), and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(iii) In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor shall include those fees if the borrower is located in this state.

(l) Receipts from services. The numerator of the receipts factor includes receipts from services not otherwise apportioned under this section if the service is performed in this state. If the service is performed both within and without this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this section if a greater proportion of the income-producing activity is performed in this state based on cost of performance.

(m) Receipts from investment assets and activities and trading assets and activities.

(i) Interest, dividends, net gains, but not less than zero, and other income from investment assets and activities and from trading assets and activities shall be included in the receipts factor.

(ii) Investment assets and activities and trading assets and activities include investments securities, trading account assets, federal funds, securities purchased and sold under agreements to resell or repurchase, options, futures contracts, forward contracts, notional principal contracts such as swaps, equities, and foreign currency transactions.

(iii) The receipts factor shall include the following investment and trading assets and activities:

(A) The receipts factor shall include the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(B) The receipts factor shall include the amount by which interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from those assets and activities.

(iv) The numerator of the receipts factor includes interest, dividends, net gains, but not less than zero, and other income from investment assets and activities and from trading assets and activities described in Subsection (3)(m) that are attributable to this state.

(A) The amount of interest, dividends, net gains, but not less than zero, and other income from investment assets and activities in the investment accounts attributed to this state and included in the numerator is determined by multiplying all such income from assets and activities by a fraction, the numerator of which is the average value of the assets properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those assets.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount of those funds and securities described in Subsection (3)(m)(iii)(A) by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those funds and securities.

(C) The amount of interest, dividends, gains, and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book and foreign currency transactions, but excluding amounts described in Subsections (3)(m)(iv)(A) and (3)(m)(iv)(B), attributable to this state and included in the numerator is determined by multiplying the amount described in Subsection (3)(m)(iii)(B) by a fraction, the numerator of which is the average value of those trading assets that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those assets.

(D) For purposes of this subsection, average value shall be determined using the rules for determining the average value of tangible personal property set forth in Subsections (4)(c) and (d).

(v) In lieu of using the method set forth in Subsection (3)(m)(iv), the taxpayer may elect, or the Tax Commission may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this subsection.

(A) The amount of interest, dividends, net gains, but not less than zero, and other income from investment assets and activities in the investment account attributed to this state and included in the numerator is determined by multiplying all income from those assets and activities by a fraction, the numerator of which is the gross income from those assets and activities properly assigned to a regular place of business of the

taxpayer within this state and the denominator of which is the gross income from all those assets and activities.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount of those funds and securities described in Subsection (3)(m)(iii)(A) by a fraction, the numerator of which is the gross income from those funds and securities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those funds and securities.

(C) The amount of interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book and foreign currency transactions, but excluding amounts described in Subsections (3)(m)(v)(A) or (B), attributable to this state and included in the numerator is determined by multiplying the amount described in Subsection (3)(m)(iii)(B) by a fraction, the numerator of which is the gross income from those trading assets and activities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those assets and activities.

(vi) If the taxpayer elects or is required by the Tax Commission to use the method set forth in Subsection (3)(m)(v), the taxpayer shall use this method on all subsequent returns unless the taxpayer receives prior permission from the Tax Commission to use, or the Tax Commission requires, a different method.

(vii) The taxpayer shall have the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one regular place of business is in this state and one regular place of business is outside this state, that asset or activity shall be considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, policies and guidelines shall be presumed to be established at the commercial domicile of the taxpayer.

(n) All other receipts. The numerator of the receipts factor includes all other receipts pursuant to the rules set forth in Rule R865-6F-8(9) and (10).

(o) Attribution of certain receipts to commercial domicile.

(i) Except as provided in Subsection (3)(o)(ii), all receipts that would be assigned under this section to a state in which the taxpayer is not taxable shall be included in the numerator of the receipts factor if the taxpayer's commercial domicile is in this state.

(ii)(A) If a unitary group includes one or more financial institutions, and if any member of the unitary group is subject to the taxing jurisdiction of this state, the receipts of each financial institution in the unitary group shall be included in the numerator of this state's receipts factor as provided in Subsections (3)(a) through (n) rather than being attributed to the commercial domicile of the financial institution as provided in Subsection (3)(o)(i).

(B) If a unitary group includes one or more financial institutions whose commercial domicile is in this state, and if any member of the unitary group is taxable in another state under section 59-7-305, the receipts of each financial institution in the unitary group that would be included in the numerator of the other state's receipts factor under Subsections (3)(a) through (n) may not be included in the numerator of this state's receipts

factor.

(4) Property Factor.

(a) In General.

(i) For taxpayers that do not elect to include the property described in Subsections (4)(g) through (i) within the property factor, the property factor is a fraction, the numerator of which is the average value of real property and tangible personal property owned by or rented to the taxpayer that is located or used within this state during the taxable year, and the denominator of which is the average value of all that property located or used within and without this state during the taxable year.

(ii) For taxpayers that elect to include the property described in Subsections (4)(g) through (i) within the property factor, the property factor is a fraction, the numerator of which is the average value of real property and tangible personal property owned by or rented to the taxpayer that is located or used within this state during the taxable year, and the average value of the taxpayer's loans and credit card receivables that are located within this state during the taxable year, and the denominator of which is the average value of all that property located or used within and without this state during the taxable year.

(b) Property included. The property factor shall include only property the income or expenses of which are included, or would have been included if not fully depreciated or expensed, or depreciated or expensed to a nominal amount, in the computation of the apportionable income base for the taxable year.

(c) Value of property owned by the taxpayer.

(i) For taxpayers that do not elect to include the property described in Subsections (4)(g) through (i) within the property factor, the value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of that property for federal income tax purposes without regard to depletion, depreciation or amortization.

(ii) For taxpayers that elect to include the property described in Subsections (4)(g) through (i) within the property factor:

(A) The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of that property for federal income tax purposes without regard to depletion, depreciation or amortization.

(B) Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged-off in whole or in part for federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established pursuant to regulatory or financial accounting guidelines that is treated as charged-off for federal income tax purposes shall be treated as charged-off for purposes of this rule.

(C) Credit card receivables are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged-off in whole or in part for federal income tax purposes, the portion of the receivable charged-off is not outstanding.

(d) Average value of property owned by the taxpayer. The average value of property owned by the taxpayer is computed on an annual basis by adding the value of the property on the first day of the taxable year and the value on the last day of the taxable year and dividing the sum by two.

(i) If averaging on this basis does not properly reflect average value, the Tax Commission may require averaging on a more frequent basis, or the taxpayer may elect to average on a more frequent basis.

(ii) When averaging on a more frequent basis is required by the Tax Commission or is elected by the taxpayer, the same method of valuation must be used consistently by the taxpayer with respect to property within and without this state and on all

subsequent returns unless the taxpayer receives prior permission from the Tax Commission to use a different method, or the Tax Commission requires a different method of determining average value.

(e) Average value of real property and tangible personal property rented to the taxpayer.

(i) The average value of real property and tangible personal property that the taxpayer has rented from another and are not treated as property owned by the taxpayer for federal income tax purposes, shall be determined annually by multiplying the gross rents payable during the taxable year by eight.

(ii) If the use of the general method described in this subsection results in inaccurate valuations of rented property, any other method that properly reflects the value may be adopted by the Tax Commission or by the taxpayer when approved in writing by the Tax Commission. Once approved, that other method of valuation must be used on all subsequent returns unless the taxpayer receives prior approval from the Tax Commission to use a different method, or the Tax Commission requires a different method of valuation.

(f) Location of real property and tangible personal property owned or rented to the taxpayer.

(i) Except as described in Subsection (4)(f)(ii), real property and tangible personal property owned by or rented to the taxpayer are considered located within this state if they are physically located, situated, or used within this state.

(ii) Transportation property is included in the numerator of the property factor to the extent that the property is used in this state.

(A) The extent an aircraft will be deemed to be used in this state and the amount of value that shall be included in the numerator of this state's property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft everywhere.

(B) If the extent of the use of any transportation property within this state cannot be determined, the property will be deemed to be used wholly in the state in which the property has its principal base of operations.

(C) A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(g) Location of Loans.

(i) A loan is considered located within this state if it is properly assigned to a regular place of business of the taxpayer within this state.

(ii) A loan is properly assigned to the regular place of business with which it has a preponderance of substantive contacts. A loan assigned by the taxpayer to a regular place of business without the state shall be presumed to have been properly assigned if:

(A) the taxpayer has assigned, in the regular course of its business, the loan on its records to a regular place of business consistent with federal or state regulatory requirements;

(B) the assignment on its records is based upon substantive contacts of the loan to the regular course of business; and

(C) the taxpayer uses the records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.

(iii) The presumption of proper assignment of a loan provided in Subsection (4)(g)(ii) may be rebutted upon a showing by the Tax Commission, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan did not occur at the regular place of business to which it was assigned on the taxpayer's records. When the presumption has been rebutted, the loan shall then be located within this state if:

(A) the taxpayer had a regular place of business within this state at the time the loan was made; and

(B) the taxpayer fails to show, by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan did not occur within this state.

(iv) In the case of a loan assigned by the taxpayer to a place without this state that is not a regular place of business, it shall be presumed, subject to rebuttal by the taxpayer on a showing supported by the preponderance of the evidence, that the preponderance of substantive contacts regarding the loan occurred within this state if, at the time the loan was made the taxpayer's commercial domicile, as defined in this rule, was within this state.

(v) To determine the state in which the preponderance of substantive contacts relating to a loan have occurred, the facts and circumstances regarding the loan at issue shall be reviewed on a case-by-case basis, and consideration shall be given to activities such as the solicitation, investigation, negotiation, approval, and administration of the loan.

(A) Solicitation. Solicitation is either active or passive.

(I) Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. The activity is located at the regular place of business at which the taxpayer's employee is regularly connected or working out of, regardless of where the services of the employee were actually performed.

(II) Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case.

(B) Investigation. Investigation is the procedure whereby employees of the taxpayer determine the credit-worthiness of the customer as well as the degree of risk involved in making a particular agreement. The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(C) Negotiation. Negotiation is the procedure whereby employees of the taxpayer and its customer determine the terms of the agreement, such as amount, duration, interest rate, frequency of repayment, currency denomination, and security required. The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(D) Approval. Approval is the procedure whereby employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement.

(I) The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(II) If the board of directors makes the final determination, the activity is located at the commercial domicile of the taxpayer.

(E) Administration. Administration is the process of managing the account.

(I) Administration includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement and proceeding against the borrower or the security interest if the borrower is in default.

(II) The activity is located at the regular place of business that oversees this activity.

(h) Location of credit card receivables. For purposes of determining the location of credit card receivables, credit card receivables shall be treated as loans and shall be subject to the provisions of Subsection (4)(g).

(i) Period for which properly assigned loan remains

assigned. A loan that has been properly assigned to a state shall, absent any change of material fact, remain assigned to that state for the length of the original term of the loan. Thereafter, the loan may be properly assigned to another state if the loan has a preponderance of substantive contact to a regular place of business in that state.

(j) Each taxpayer shall make an initial election on whether to include the property described in Subsections (4)(g) through (i) within the property factor. The initial election is the election made or the filing position taken on the first return filed after the effective date of this rule. This election is irrevocable for a period of three years from the time the initial election is made, except in the case where a substantial ownership change occurs and commission approval is obtained to change the election. After the initial three-year period, the election may be revocable only with the prior approval of the commission and shall require the showing of a significant change in circumstance.

(5) Payroll factor.

(a) In general. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation and the denominator of which is the total compensation paid by the taxpayer both within and without this state during the taxable year. The payroll factor shall include only that compensation included in the computation of the apportionable income tax base for the taxable year.

(b) Compensation relating to nonbusiness income and independent contractors. The compensation of any employee for services or activities connected with the production of nonbusiness income, and payments made to any independent contractor or any other person not properly classifiable as an employee, shall be excluded from both the numerator and denominator of this factor.

(c) When compensation paid in this state. Compensation is paid in this state if any one of the following tests, applied consecutively, is met:

(i) The employee's services are performed entirely within this state.

(ii) The employee's services are performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The term "incidental" means any service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction.

(iii) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(A) if the employee's principal base of operations is within this state;

(B) if there is no principal base of operations in any state in which some part of the services are performed, but the place from which the services are directed or controlled is in this state; or

(C) if the principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed but the employee's residence is in this state.

(6) This rule is effective for taxable years beginning after December 31, 1997.

R865-6F-33. Taxation of Telecommunications Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Call" means a specific telecommunications transmission as described in Subsection (1)(f).

(b) "Channel termination point" means the point at which information can enter or leave the telecommunications network.

(c) "Communications channel" means a communications path, which can be one-way or two-way, depending on the

channel, between two or more points. The path may be designed for the transmission of signals representing human speech, digital or analog data, facsimile, or images.

(d) "Outerjurisdictional property" means tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in a telecommunications business, but that are not physically located in any particular state.

(e) "Private telecommunications service" means a dedicated telephone service that entitles the subscriber to the exclusive or priority use of a communications channel or groups of communications channels from one or more channel termination points to another channel termination point.

(f) "Telecommunications" means the electronic transmission of voice, data, image, and other information through the use of any medium such as wires, cables, electromagnetic waves, light waves, or any combination of those or similar media now in existence or that might be devised, but telecommunications does not include the information content of any such transmission.

(g) "Telecommunications service" means providing telecommunications, including services provided by telecommunication service resellers, for a charge and includes telephone service, telegraph service, paging service, personal communication services and mobile or cellular telephone service, but does not include electronic information service or Internet access service.

(2) Apportionment and Allocation.

(a) A corporation engaged in the business of telecommunications that is taxable both within and without this state, shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306.

(b) All business income shall be apportioned to this state by multiplying that income by the apportionment percentage. The apportionment percentage is determined by adding the taxpayer's receipts factor, property factor and payroll factor and dividing that sum by three. If one of the factors is missing, the remaining factors are added and that sum is divided by two. If two of the factors are missing, the remaining factor is the apportionment percentage. A factor is missing if both its numerator and denominator are zero.

(c) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as otherwise provided in this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(8) and the sales factor in accordance with R865-6F-8(9).

(3)(a) Property Factor.

(b) Outerjurisdictional property that is used by a taxpayer in providing a telecommunications service shall be attributed to this state based on the ratio of property within this state used in providing that service, to property everywhere used in providing the service, exclusive of property not located in any state. The term "property" as used herein refers to property includable in the property factor of the Utah apportionment fraction as defined in Tax Commission rule R865-6F-8(7).

(4) Sales Factor Numerator.

(a) The following sales and receipts from telecommunications service other than interstate or international private telecommunications service, shall be included in the Utah sales and receipts numerator:

(i) receipts derived from charges for providing telephone "access" from a location within Utah. "Access" means that a call can be made or received from a point within this state. An example of this type of receipt is a monthly subscriber fee billed with reference to equipment located in Utah;

(ii) receipts derived from charges for unlimited calling privileges, if the charges are billed by reference to equipment

located in Utah;

(iii) receipts derived from charges for individual toll calls that originate and terminate in Utah;

(iv) receipts derived from charges for individual toll calls that either originate or terminate in Utah and are billed by reference to a customer or equipment located in Utah;

(v) receipts derived from any other charges if the charges are not includable in another state's sales factor numerator under that state's law, and the customer's billing address is in Utah.

(b) Gross receipts from providing interstate and international private telecommunications services shall be determined as follows:

(i) If the segment of the interstate or international channel between each termination point is separately billed, 100 percent of the charge imposed at each termination point in this state and for service in this state between those points is includable in the Utah sales factor. In addition, 50 percent of the charge imposed for service between a channel termination point outside this state and a point inside the state shall be included in the Utah sales factor. For purposes of this paragraph, termination points shall be measured by the nearest termination point inside the state to the first termination point outside the state.

(ii) If each segment of the interstate or international channel is not separately billed, the Utah sales shall be the same portion of the interstate or international channel charge that the number of channel termination points within this state bears to the total number of channel termination points within and without this state.

R865-6F-34. Qualified Subchapter S Subsidiaries Pursuant to Utah Code Ann. Section 59-7-701.

A. "Qualified subchapter S subsidiary" means a qualified subchapter S subsidiary as defined in Section 1361(b), Internal Revenue Code.

B. For purposes of Title 59, Chapter 7, Part 7, a qualified subchapter S subsidiary shall be treated in the same manner as it is treated for federal tax purposes under Section 1361(b), Internal Revenue Code.

C. An S corporation that owns one or more qualified subchapter S subsidiaries must take into account the activities of each qualified subchapter S subsidiary in determining whether the S corporation parent is doing business in Utah. For purposes of this determination, all of a subsidiary's activities will be attributed to the S corporation parent.

D. For purposes of Title 59, Chapter 7, Part 7:

1. the Utah property, payroll, and sales of each qualified subchapter S subsidiary shall be added, respectively, to the Utah property, payroll, and sales of the S corporation parent to determine the numerators of the property, payroll, and sales factors; and

2. the total property, payroll, and sales of each qualified subchapter S subsidiary shall be added, respectively, to the total property, payroll, and sales of the S corporation parent to determine the denominators of the property, payroll, and sales factors.

E. Except as provided in D., the apportionment fraction for an S corporation shall be calculated based on Sections 59-7-311 through 59-7-321 and as provided in Tax Commission rule R865-6F-8.

R865-6F-35. S Corporation Determination of Tax Pursuant to Utah Code Ann. Section 59-7-703.

(1) For purposes of Section 59-7-703(2)(b)(i), "items of income or loss from Schedule K of the 1120S federal form" shall be calculated by:

(a) adding back to the line on the Schedule K labeled "Income/loss reconciliation" the amount included on that schedule for:

(i) charitable contributions; and

(ii) total foreign taxes paid or accrued.
 (b) If the S corporation was not required to complete the line labeled "Income/loss reconciliation" on the Schedule K, a pro forma calculation of the amounts for charitable contributions and foreign taxes paid or accrued, and of the amount that would have been entered on the "Income/loss reconciliation" line shall be used for purposes of this rule.

(2) The amount that the S corporation shall withhold for nonresident shareholders shall be computed as follows:

(a) The deduction shall be equal to 15 percent of the Utah income attributable to nonresident shareholders.

(b) The deduction in Subsection (2)(a) shall be allowed in place of a standard deduction, itemized deductions, personal exemptions, federal tax determined for the same period, or any other deductions.

(3) The tax shall be computed using the maximum Utah individual income tax rate applied to the combined nonresident shareholders' share of the S corporation's income after deduction of the amount allowed under Subsection (2).

(4) An S corporation with nonresident shareholders shall complete Schedule N of form TC-20S, and shall provide the following information for each nonresident shareholder:

- (a) name;
- (b) social security number;
- (c) percentage of S corporation held; and
- (d) amount of Utah tax paid or withheld on behalf of that shareholder.

R865-6F-36. Taxation of Registered Securities or Commodities Broker or Dealer Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.
 (a) "Brokerage commission income" means income earned by a registered securities or commodities broker or dealer from the purchase and sale of securities or commodities by the broker or dealer:

- (i) for which the broker or dealer does not take title; and
- (ii) as an agent for a customer's account.
- (b) "Commodity" is as defined in Section 475(e)(2), Internal Revenue Code.

(c) "Principal transaction" means a transaction where the registered securities or commodities broker or dealer acts as a principal or underwriter for the broker or dealer's own account, rather than as an agent for the customer.

(d) "Registered securities or commodities broker or dealer" means a corporation registered as a broker or dealer with the Securities and Exchange Commission or the Commodities Futures Trading Commission.

(e) "Security" is as defined in Section 475(c)(2), Internal Revenue Code.

(f) "Securities or commodities used to produce income" means securities or commodities that are purchased and held by a registered securities or commodities broker or dealer as a principal or underwriter for resale to its customers.

(2) Apportionment and allocation.

(a) A registered securities or commodities broker or dealer whose business activity is taxable both within and without this state shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306.

(b) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as otherwise provided in this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(8), and the sales factor in accordance with R865-6F-8(9).

(3) Property factor.

(a) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible

personal property owned or rented and used, or available for use, within this state during the taxable year, plus the average value of securities or commodities used to produce income during the taxable year that are held for resale exclusively through a branch, office, or other place of business in this state. The denominator is the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the taxable year, plus the average value of all securities or commodities used to produce income during the taxable year.

(b) Securities or commodities used to produce income shall be valued at original cost.

(4) Sales factor.

(a) The sales factor is a fraction, the numerator of which is the total revenue that is derived from transactions and activities in the regular course of the taxpayer's trade or business within this state during the taxable year. The denominator is the total revenue that is derived from transactions and activities in the regular course of the taxpayer's trade or business within and without this state during the taxable year.

(b) Brokerage commission income shall be included in the denominator of the sales factor. Brokerage commission income shall be included in the numerator of the sales factor if the customer that is paying the commission is located in Utah. A customer is located in Utah if the mailing address of the customer as it appears in the broker or dealer's records is in Utah.

(c) Gross receipts from principal transactions shall be included in the denominator of the sales factor. Gross receipts from principal transactions shall be included in the numerator of the sales factor if the sale is made through a branch, office, or other place of business in Utah. Gross receipts from principal transactions shall be determined after the deduction of any cost incurred by the taxpayer to acquire the securities or commodities.

(d) Other gross receipts such as margin interest on brokerage accounts and account maintenance fees shall be included in the denominator of the sales factor, and, if the customer that is paying the amounts or fees is located in Utah based on the customer address as it appears in the broker or dealer's records, in the numerator of the sales factor.

KEY: taxation, franchises, historic preservation, trucking industries

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Notice of Continuation April 3, 2002	through
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59-13-202

R865. Tax Commission, Auditing.**R865-91. Income Tax.****R865-91-2. Determination of Utah Resident Individual Status Pursuant to Utah Code Ann. Section 59-10-103.****A. Domicile.**

1. Domicile is the place where an individual has a permanent home and to which he intends to return after being absent. It is the place at which an individual has voluntarily fixed his habitation, not for a special or temporary purpose, but with the intent of making a permanent home.

2. For purposes of establishing domicile, an individual's intent will not be determined by the individual's statement, or the occurrence of any one fact or circumstance, but rather on the totality of the facts and circumstances surrounding the situation.

a) Tax Commission rule R884-24P-52, Criteria for Determining Primary Residence, provides a non-exhaustive list of factors or objective evidence determinative of domicile.

b) Domicile applies equally to a permanent home within and without the United States.

3. A domicile, once established, is not lost until there is a concurrence of the following three elements:

- a) a specific intent to abandon the former domicile;
- b) the actual physical presence in a new domicile; and
- c) the intent to remain in the new domicile permanently.

4. An individual who has not severed all ties with the previous place of residence may nonetheless satisfy the requirement of abandoning the previous domicile if the facts and circumstances surrounding the situation, including the actions of the individual, demonstrate that the individual no longer intends the previous domicile to be the individual's permanent home, and place to which he intends to return after being absent.

B. Permanent place of abode does not include a dwelling place maintained only during a temporary stay for the accomplishment of a particular purpose. For purposes of this provision, temporary may mean years.

C. Determination of resident individual status for military servicepersons.

1. The status of a military serviceperson as a resident individual or a nonresident individual is determined as follows, based on the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. 574.

a) A resident individual in active military service does not lose his status as a resident individual if the resident individual's absence from the state is a result of military orders.

b) A nonresident individual in active military service who is stationed in Utah does not become a resident individual for income tax purposes if the nonresident individual's presence in Utah is due solely to military orders.

2. Subject to federal law, an individual in active military service may change from a resident individual to a nonresident individual or from a nonresident individual to a resident individual if he establishes that he satisfies the conditions of A.3.

3. A nonresident individual serviceperson is exempt from Utah income tax only on his active service pay. All other Utah source income received by the nonresident individual serviceperson is subject to Utah income tax as provided by Section 59-10-116.

4. The spouse of an individual in active military service generally is considered to have the same residency status as that individual for purposes of Utah income tax.

R865-91-3. Credit for Income Tax Paid by an Individual to Another State Pursuant to Utah Code Ann. Section 59-10-1003.

(1) A Utah resident taxpayer is required to report his entire state taxable income pursuant to Section 59-10-1003 even though part of the income may be from sources outside this state.

(2) Except to the extent allowed in Subsection (4), a resident taxpayer may claim the credit provided in Section 59-10-1003 by:

(a) filing a resident Utah return showing the computation of tax based on total income before any credit for taxes in another state;

(b) completing form TC-40A, Credit For Income Tax Paid To Another State, for each state for which a credit is claimed; and

(c) attaching any schedule completed under Subsection (2)(b) to the individual income tax return.

(3) A part-year resident taxpayer may claim credit on that portion of income subject to both Utah tax and tax in another state. The credit is claimed in the same manner as claimed by a full-year resident, but only for that portion of the year that the nonresident taxpayer was living in Utah. Form TC-40A, Credit For Income Tax Paid To Another State, must be completed and attached to the individual income tax return for each state for which a credit is claimed.

(4) For only those states in which a resident professional athlete has participated in his team's composite return or simplified withholding, a resident professional athlete may claim the credit provided in Section 59-10-1003 by:

(a) filing a resident Utah return showing the computation of tax based on total income before any credit for taxes in another state; and

(b) attaching a summary, prepared by the team or the team's authorized representative, indicating both the amount of the athlete's income allocated to all other states in which the athlete has participated in his team's composite return or simplified withholding, and the amount of income tax paid by the athlete to those states.

(5) The credit allowable on the Utah return for taxes paid to any other state shall be the smaller of the following:

(a) the amount of tax paid to the other state; or

(b) a percentage of the total Utah tax. This percentage is determined by dividing the total federal adjusted gross income into the amount of the federal adjusted gross income taxed in the other state.

(6) A taxpayer claiming a credit under Section 59-10-1003 shall retain records to support the credit claimed.

R865-91-4. Equitable Adjustments Pursuant to Utah Code Ann. Section 59-10-115.

A. Every taxpayer shall report and the Tax Commission shall make or allow such adjustments to the taxpayer's state taxable income as are necessary to prevent the inclusion or deduction for a second time on his Utah income tax return of items involved in determining his federal taxable income. Such adjustments shall be made or allowed in an equitable manner as defined in Utah Code Ann. 59-10-115 or as determined by the Tax Commission consistent with provisions of the Individual Income Tax Act.

B. In computing the Utah portion of a nonresident's federal adjusted gross income; any capital losses, net long-term capital gains, and net operating losses shall be included only to the extent that these items were not taken into account in computing the taxable income of the taxpayer for state income tax purposes for any taxable year prior to January 2, 1973.

R865-91-6. Returns by Husband and Wife When One is a Resident and the Other is a Nonresident Pursuant to Utah Code Ann. Section 59-10-119.

A. Except as provided in B., a husband and wife, one being a nonresident and the other a resident, who file a joint federal income tax return, but separate state income tax returns shall determine their separate state taxable income as follows:

1. First, the amount of the total federal adjusted gross income ("FAGI") pertaining to each spouse shall be determined.

Any adjustments that apply to both spouses shall be divided between the spouses in proportion to the respective incomes of the spouses.

2. Next, each spouse is allocated a portion of each deduction and add back item.

a) To determine this allocation, each spouse shall:

(1) divide his or her own FAGI by the combined FAGI of both spouses and round the resulting percentage to four decimal places; and

(2) multiply the resulting percentage by the deductions and add back items.

b) The deductions and add back items allowed are as follows:

(1) state income tax deducted as an itemized deduction on federal Schedule A;

(2) other items that must be added back to FAGI on the state income tax return;

(3) itemized or standard deduction;

(4) state exemption for dependents;

(5) one-half of the federal tax liability;

(6) state income tax refund included on line 10 of the federal income tax return; and

(7) other state deductions.

3. Each spouse shall claim his or her full state personal exemption.

4. Each spouse shall determine his or her separate tax using the Utah tax rate schedules applicable to a husband and wife filing separate returns.

B. A husband and wife, one being a nonresident and the other a resident, may use an alternate method of calculating their separate state taxable incomes than the method provided in A. if they can demonstrate to the satisfaction of the Tax Commission that the alternate method more accurately reflects their separate state taxable incomes.

R865-91-7. Change of Status As Resident or Nonresident Pursuant to Utah Code Ann. Section 59-10-120.

A. Definitions.

1. "Part-year resident" means an individual that changes status during the taxable year from resident to nonresident or from nonresident to resident.

2. "FAGI" means federal adjusted gross income, as defined by Section 62, Internal Revenue Code.

B. The state taxable income of a part-year resident shall be a percentage of the amount that would have been state taxable income if the taxpayer had been a full-year resident as determined under Section 59-10-112. This percentage is the Utah portion of FAGI divided by the total FAGI, not to exceed 100 percent.

C. The Utah portion of a part-year resident's FAGI shall be determined as follows:

1. Income from wages, salaries, tips and other compensation earned while in a resident status and included in the total FAGI shall be included in the Utah portion of the FAGI.

2. Dividends actually or constructively received while in resident status shall be included in the Utah portion of FAGI. Any dividend exclusion shall be deducted from the Utah portion of FAGI using the percentage of excludable dividends received while in resident status, compared to the total excludable dividends.

3. All interest actually or constructively received while in resident status shall be included in the Utah portion of the FAGI.

4. All FAGI derived from Utah sources while in a nonresident status, as determined under Section 59-10-117, shall be included in the Utah portion of FAGI.

D. Income or loss from businesses, rents, royalties, partnerships, estates or trusts, small business corporations as

defined by Internal Revenue Code Section 1371(b), and farming shall be included in the Utah portion of FAGI:

1. if the activities involved were concluded, or the taxpayer's connection with them terminated before or at the time of change from resident to nonresident status; or

2. if the activities were commenced or the taxpayer joined them at the time or after the change from nonresident to resident status.

Otherwise, such income or loss shall be included in the Utah portion of FAGI only to the extent derived from Utah sources as determined under Section 59-10-117.

E. Moving expenses deducted on the federal return may be deducted from the Utah portion of FAGI only to the extent that they are for moving into Utah and within Utah.

F. Employee business expenses may be deducted from the Utah portion of FAGI only to the extent that they pertain to the production of income included in the Utah portion of FAGI.

G. Payments by a self-employed person to a retirement plan that reduce the total FAGI may be deducted from the Utah portion of FAGI in the same proportion that the related self-employment income is included in the Utah portion of FAGI.

H. Other income, losses or adjustments applicable in determining total FAGI may be allowed or included in the Utah portion of his FAGI only when the allowance or inclusion is fair, equitable, and would be consistent with other requirements of the act or these rules as determined by the Tax Commission.

R865-91-8. Proration When Two Returns Are Required Pursuant to Utah Code Ann. Section 59-10-121.

A. Two returns are not required when an individual changes status as resident or nonresident. Ordinarily, the total of the taxable income that would be reported on two returns will be included in one return.

B. Only in unusual circumstances as determined by the Tax Commission will the preparation of two returns be allowed or required. In this event, the returns shall be prepared in a fair and equitable manner as approved or prescribed by the Tax Commission consistent with Utah Code Ann. Section 59-10-121 and other pertinent provisions.

R865-91-9. Taxable Year Pursuant to Utah Code Ann. Section 59-10-122.

A. If a taxpayer's taxable year is changed to a taxable period of less than 12 months as required by Utah Code Ann. Section 59-10-122 and if he is required to convert his income for the period to an annual basis for federal income tax purposes, the taxpayer shall convert his income for the period of less than a year to an annual basis for computing his state income tax.

B. Unless the Tax Commission determines a different method consistent with requirements of the act is necessary or appropriate, the income tax of the taxpayer for the period of less than 12 months shall be computed as follows:

1. determine the state taxable income applicable to the fractional part of the year and multiply this amount by 12;

2. divide the product by the number of months in the period to arrive at the state taxable income on an annualized basis;

3. compute the tax applicable to the state taxable income as annualized;

4. divide the tax as computed on the annualized state taxable income by 12; and

5. multiply the result by the number of months in the period involved.

R865-91-10. Adjustments Between Taxable Years After Change in Accounting Methods Pursuant to Utah Code Ann. Section 59-10-124.

A. If a taxpayer's state taxable income for any taxable year

is computed under a method of accounting different from the method under which such income was computed for the previous year, the taxpayer shall attach a statement to his return setting forth all differences. This statement shall specify the amounts duplicated or omitted in full or in part as a result of such change. The Tax Commission shall make or allow any necessary adjustments to prevent double inclusion or exclusion of an item of gross income, or double allowance or disallowance of an item of deduction or credit.

R865-91-11. Share of A Nonresident Estate or Trust, or Its Beneficiaries In State Taxable Income Pursuant to Utah Code Ann. Section 59-10-207.

A. In determining the respective shares of the beneficiaries and of the estate or trust referred to in Utah Code Ann. Section 59-10-207, consideration shall be given to the net amount of the modifications described in Utah Code Ann. Sections 59-10-114 and 59-10-115. This is particularly true for those that relate to items of income, gain, loss, and deduction and that also enter into the definition of distributable net income. Otherwise, any methods different from those prescribed in Utah Code Ann. Section 59-10-207 of the act shall be used only if approved or directed by the Tax Commission as being necessary to prevent a substantial inequity in the allocation of such shares.

R865-91-12. Fiduciary Adjustment Pursuant to Utah Code Ann. Section 59-10-210.

A. The net amount of the modifications described in Utah Code Ann. Sections 59-10-114 and 59-10-115 that relate to items of income or deduction of an estate or trust may be determined and used as the fiduciary adjustment. Otherwise, any methods different from those prescribed in Utah Code Ann. Section 59-10-210 shall be used only if approved or directed by the Tax Commission as being more appropriate and equitable in specific cases.

R865-91-13. Nonresident's Share of Partnership or Limited Liability Company Income Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, 59-10-118, and 59-10-303.

A. Nonresident partners and nonresident members shall keep adequate records to substantiate their determination or to permit a determination by the Tax Commission of the part of their adjusted gross income that was derived from or connected with sources in this state.

B. Partnerships and limited liability companies may file form TC-65, Utah Partnership/Limited Liability Company Return of Income, as a composite return on behalf of nonresident partners or nonresident members that meet all of the following conditions:

1. Nonresident partners or nonresident members included on the return may not have other income from Utah sources. Resident partners and resident members may not be included on the composite return.

2. A schedule shall be included with the return listing all nonresident partners or nonresident members included in the composite filing. The schedule shall list all of the following information for each nonresident partner or nonresident member:

- a) name;
- b) address;
- c) social security number;
- d) percentage of partnership or limited liability company income;
- e) Utah income attributable to that partner or member.

3. Nonresident partners or nonresident members that are entitled to mineral production tax withholding credits, agricultural off-highway gas tax credits, or other Utah credits, may not be included in a composite filing, but must file form TC-40NR, Nonresident or Part-year Resident Form Individual

Income Tax Return.

C. The tax due on the composite return shall be computed as follows:

1. A deduction equal to 15 percent of the Utah taxable income attributable to nonresident partners or nonresident members included in the composite filing shall be allowed in place of a standard deduction, itemized deductions, personal exemptions, federal tax determined for the same period, or any other deductions.

2. The tax shall be computed using the maximum tax rate applied to Utah taxable income attributable to Utah sources.

D. The partnership's or limited liability company's federal identification number shall be used on the form TC-65 in place of a social security number.

R865-91-14. Requirement of Withholding Pursuant to Utah Code Ann. Sections 59-10-401, 59-10-402, and 59-10-403.

A. Except as otherwise provided in statute or this rule, every employer shall withhold Utah income taxes from all wages paid:

1. to a nonresident employee for services performed within Utah,
2. to a resident employee for all services performed, even though such services may be performed partially or wholly without the state.

B. If the services performed by a resident employee are performed in another state of the United States, the District of Columbia, or a possession of the United States that requires withholding on wages earned, the withholding tax for Utah shall be the Utah tax required to be withheld less the tax required to be withheld under the laws, rules, and regulations of that other state, District of Columbia, or possession of the United States.

C. If the duties of a nonresident employee involve work both within and without the state, tax is withheld from that portion of the total wages that is properly allocable to Utah. The method of allocation is subject to review by the Tax Commission and may be subject to change if it is determined to be improper.

D. Income tax treatment of rail carrier and motor carrier employees is governed by 49 U.S.C. Section 14503.

E. Withholding required under Section 59-10-402 is required for all wages that are:

1. subject to withholding for federal income tax purposes;
2. paid to individuals who are deemed employees as determined by the Tax Commission, using Internal Revenue Service guidelines.

F. The number of exemptions claimed for federal withholding shall be the number of exemptions claimed for state withholding purposes.

G. Employers should use Utah income tax withholding schedules or tables published by the Tax Commission in computing the amount of state income tax withheld from their employees.

R865-91-15. Employees Incurring No Income Tax Liability Pursuant to Utah Code Ann. Section 59-10-403.

A. With reference to Utah Code Ann. Section 59-10-403, an employer shall not be required to deduct and withhold Utah income taxes from wages paid to an employee who has filed a Federal Withholding Certificate, Form W-4E.

R865-91-16. Collection and Payment of Withholding Pursuant to Utah Code Ann. Section 59-10-406.

A. Legible copies of the federal Form W-2 must contain the following information:

1. the name and address of the employee and employer;
2. the employer's Utah withholding tax account number;
3. the amount of compensation;
4. the amounts of federal and Utah state income tax

withheld;

5. the social security number of the employee;
6. the word "Utah" either printed or stamped thereon in such a way as to clearly indicate the tax withheld was for Utah in accordance with Utah law, as distinguished from any other state or jurisdiction; and
7. other information required by the commission.

B. Sufficient copies of the W-2 form must be furnished to each employee to enable attachment of a legible copy to the state income tax return.

C. If a tax required under Section 59-10-402 is not withheld by an employer, but is later paid by the employee:

1. the tax required to be withheld under Section 59-10-402 shall not be collected from the employer; and
2. the employer shall remain subject to penalties and interest on the total amount of taxes that the employer should have withheld under Section 59-10-402.

R865-91-17. Time for Filing Withholding Tax Returns and Payment of Withholding Taxes Pursuant to Utah Code Ann. Sections 59-10-406 and 59-10-407.

A. This rule provides exceptions to the statutory requirement that an employer shall file withholding tax returns and pay withholding taxes quarterly.

B. An employer may elect to file withholding tax returns and pay withholding taxes on an annual basis for a calendar year in which the employer:

1. files a federal Schedule H; or
2. withholds less than \$1,000.

C. The annual withholding return and payment under B. are due by January 31 of the year succeeding the year for which the payment and return apply.

D. An employer withholding an average of \$1,000 or more per month shall file withholding tax returns and pay withholding taxes on a monthly basis.

E. The monthly withholding return and payment under D. are due as prescribed in Section 59-10-407.

R865-91-18. Taxpayer Records, Statements, and Special Returns Pursuant to Utah Code Ann. Section 59-10-501.

A. Every taxpayer shall keep adequate records for income tax purposes of a type which clearly reflect income and expense, gain or loss, and all transactions necessary in the conduct of business activities.

B. Records of all transactions affecting income or expense, or gain or loss, and of all transactions for which deductions may be claimed, should be preserved by the taxpayer to enable preparation of returns correctly and to substantiate claims. All such records shall be made available to an authorized agent of the Tax Commission when requested, for review or audit.

R865-91-19. Returns By Husband and Wife Pursuant to Utah Code Ann. Section 59-10-503.

A. In the year a married person dies, the surviving spouse may file a joint Utah return if a joint federal return was filed except in cases where one spouse was a resident and the other a nonresident. In these cases, separate returns may be required (see Section 59-10-503(1)(b) and Rule R865-91-6).

R865-91-20. Returns Made By Fiduciaries and Receivers Pursuant to Utah Code Ann. Section 59-10-504.

A. Returns by fiduciaries and receivers shall be made in accordance with forms and instructions provided by the Tax Commission. The fiduciary of any resident estate or trust or of any nonresident estate or trust having income derived from Utah sources and who is required to make a return for federal income tax purposes shall make and file a corresponding return for state income tax purposes.

1. Each return shall include a listing of the beneficiaries

and their distributable shares of the state taxable income.

2. In the case of a nonresident estate or trust, the return shall include detailed information showing how the amount of income derived from or connected with Utah sources was determined.

B. The fiduciary is required to pay the taxes on the income taxable to the estate or trust. Liability for payment of the tax attaches to the executor or administrator up to his discharge. If the executor or administrator failed to file a return as required by law or failed to exercise due diligence in determining and satisfying the tax liability, the liability is not extinguished until the return is filed and paid.

C. Liability for the tax also follows the estate itself. If by reason of the distribution of the estate and the discharge of the executor or administrator, it appears that collection of tax cannot be made from the executor or administrator, each legatee or distributee must account for his proportionate share of the tax due and unpaid to the extent of the distributive share received by him.

R865-91-21. Return By Partnership Pursuant to Utah Code Ann. Sections 59-10-507 and 59-10-514.

(1) Every partnership having a nonresident partner and income derived from sources in this state shall file a return in accordance with forms and instructions provided by the Tax Commission.

(2) If the partnership has income derived from or connected with sources both inside and outside Utah and if any partner was not a resident of Utah, the portion derived from or connected with sources in this state must be determined and shown.

(a) The Utah portion must be determined and shown for each item of the partnership's, and each nonresident partner's, distributive shares of income, credits, deductions, etc., shown on Schedules K and K-1 of the federal return.

(b) The Utah portion may be shown:

(i) alongside the total for each item on the federal schedules K and K-1; or

(ii) on an attachment to the Utah return.

(3) A partnership, all of whose partners are resident individuals, shall satisfy the requirement to file a return with the commission by:

- (a) maintaining records that show each partner's share of income, losses, credits, and other distributive items; and
- (b) making those records available for audit.

R865-91-22. Signing of Returns and Other Documents Pursuant to Utah Code Ann. Section 59-10-512.

A. Any return, statement, or other document shall be signed as required by specific provisions of the act or as prescribed by forms or instructions furnished by the Tax Commission.

B. All returns filed with the Tax Commission must be signed by the taxpayer or his duly authorized agent as provided by law. Unsigned returns are not valid returns for income tax purposes and if unsigned, the benefits of proper filing may be denied the taxpayer.

C. Returns may be filed on forms prescribed and furnished by the Tax Commission, or in lieu thereof, on reproduced or facsimile copies, provided that the same information required on the printed form for the same year is provided and the paper used for such substitute return is equal in durability and weight to 20 lb. bond. Paper more brittle or lighter in weight than that specified is not acceptable as a replacement for the regular reporting forms. The use of paper of lesser quality for supporting schedules is permitted, providing the schedules are clear and legible.

R865-91-23. Extension of Time to File Returns Pursuant to

Utah Code Ann. Section 59-10-516.

A. A completed form TC-546, Prepayment of Income Tax, must accompany the prepayment amount required by Section 59-10-516, if the prepayment is not in the form of withholding, payments applied from previous year refunds, or credit carryforwards.

B. Interest shall be charged on any additional tax due shown on the return in accordance with Section 59-1-402. Interest is calculated from the original due date of the return to the date the tax is paid and applies even when an extension of time to file the return exists.

C. Utah residents in military service, stationed outside the United States, shall be granted an extension of time to file to the 15th day of the fourth month after their return to the United States, or their discharge date, whichever is earlier.

R865-91-24. Timely Mailing Treated As Timely Filing Pursuant to Utah Code Ann. Section 59-10-517.

A. With reference to Section 59-10-517(3)(b), the provisions of that statute that apply to registered mail shall also apply in ordinary circumstances to certified mail.

R865-91-30. Limitations on Assessment and Collection Pursuant to Utah Code Ann. Section 59-10-536.

A. If a taxpayer elects to defer a determination as to applicability of the presumption that the activity is being engaged in for profit as set forth in I.R.C. Section 183(d), he shall notify the Tax Commission in writing of such election. He must also consent to assessment of tax pertaining to such activity at any time within the five- or seven-year period plus a reasonable additional period.

1. In addition, the taxpayer shall immediately furnish to the Tax Commission a copy of every waiver of the running of the statute of limitations that he may give to the Internal Revenue Service, and he shall at the same time give his consent in writing that the waiver shall also apply to the time allowed for assessment of tax by the Tax Commission.

2. The taxpayer must notify the Tax Commission of any audit actions or determinations made by the Internal Revenue Service with respect to such activity.

R865-91-33. Reporting Miscellaneous Income Pursuant to Utah Code Ann. Section 59-10-501.

A. Legible copies of the federal Form 1099 or other special forms for reporting rents, royalties, interest, remuneration, etc., from Utah sources not subject to federal withholding must be open to inspection and gathering of information by authorized representatives of the Tax Commission or submitted to the Tax Commission upon request. These forms must show the name, address, social security number, and other pertinent information pertaining to each taxpayer, resident or nonresident of Utah, the amount and purpose of the distribution clearly shown.

R865-91-34. Property Tax Relief For Individuals Pursuant to Utah Code Ann. Sections 59-2-1201 through 59-2-1220.

A. "Household" is determined as follows:

1. For purposes of the homeowner's credit under Section 59-2-1208, household shall be determined as of January 1 of the year in which the claim under that section is filed.

2. For purposes of the renter's credit under Section 59-2-1209, household shall be determined as of January 1 of the year for which the claim is filed under that section.

B. "Nontaxable income" includes:

1. the amount of a federal child tax credit received under Section 24 of the Internal Revenue Code that exceeded the taxpayer's federal tax liability; and

2. the amount of a federal earned income credit received under Section 32 of the Internal Revenue Code that exceeded

the taxpayer's federal tax liability.

C. "Nontaxable income" does not include:

1. federal tax refunds;

2. the amount of a federal child tax credit received under Internal Revenue Code Section 24 that did not exceed the taxpayer's federal tax liability;

3. the amount of a federal earned income credit received under Internal Revenue Code Section 32 that did not exceed the taxpayer's federal tax liability;

4. payments received under a reverse mortgage;

5. payments or reimbursements to senior program volunteers under United States Code Title 42, Section 5058; and

6. gifts and bequests.

D. "Property taxes accrued" does not mean that taxes can be accumulated for two or more years and then claimed in one year.

E. A claimant who pays property taxes on a mobile home and pays rent on the land on which the mobile home is situated shall be eligible for a homeowner's credit for the property tax paid on the mobile home and a renter's credit for the rent paid on the land.

F. State welfare assistance is not considered as public funds for the payment of rent, and will not preclude a rebate. However, assistance payments must be included in income.

G. Where housing assistance payments are involved under the Housing and Community Development Act, Title II, Section 8:

1. only that portion of the rent paid by the tenant may be claimed under the terms of the Circuit Breaker Act; and

2. that portion of the rent paid by the federal government to the landlord will not be considered as part of the household income since it is not subject to a claim for rebate.

H. Persons claiming a property tax exemption under Title 59, Chapter 2, Part 11 are not precluded from claiming a homeowner's or renter's credit.

R865-91-37. Enterprise Zone Individual Income Tax Credits Pursuant to Utah Code Ann. Sections 63-38f-401 through 63-38f-414.

(1) Definitions:

(a) "Business engaged in retail trade" means a business that makes a retail sale as defined in Section 59-12-102.

(b) "Construction work" does not include facility maintenance or repair work.

(c) "Employee" means a person who qualifies as an employee under Internal Revenue Service Regulation 26 CFR 31.3401(c)(1).

(d) "Public utilities business" means a public utility under Section 54-2-1.

(e) "Transfer" pursuant to Section 63-38f-411, means the relocation of assets and operations of a business, including personnel, plant, property, and equipment.

(2) For purposes of the investment tax credit, an investment is a qualifying investment if:

(a) The plant, equipment, or other depreciable property for which the credit is taken is located within the boundaries of the enterprise zone.

(b) The plant, equipment, or other depreciable property for which the investment tax credit is taken is in a business that is operational within the enterprise zone.

(3) The calculation of the number of full-time positions for purposes of the credits allowed under Section 63-38f-413(1)(a) through (d) shall be based on the average number of employees reported to the Department of Workforce Services for the four quarters prior to the area's designation as an enterprise zone.

(4) To determine whether at least 51 percent of the business firm's employees reside in the county in which the enterprise zone is located, the business firm shall consider every employee reported to the Department of Workforce Services for

the tax year for which an enterprise zone credit is sought.

(5) A business firm that conducts non-retail operations and is engaged in retail trade qualifies for the credits under Section 63-38f-413 if the retail trade operations constitute a de minimis portion of the business firm's total operations.

(6) An employee whose duties include both non-construction work and construction work does not perform a construction job if the construction work performed by the employee constitutes a de minimis portion of the employee's total duties.

(7) Records and supporting documentation shall be maintained for three years after the date any returns are filed to support the credits taken. For example: If credits are originally taken in 1988 and unused portions are carried forward to 1992, records to support the original credits taken in 1988 must be maintained for three years after the date the 1992 return is filed.

(8) If an enterprise zone designation is revoked prior to the expiration of the period for which it was designated, only tax credits earned prior to the loss of that designation will be allowed.

R865-91-39. Subtraction from Federal Taxable Income for a Dependent Child With a Disability or an Adult With a Disability Pursuant to Utah Code Ann. Sections 59-10-114 and 59-10-501.

A. A taxpayer that claims the deduction from income for a dependent child with a disability or an adult with a disability allowed under Section 59-10-114 shall complete form TC-40D, Disabled Exemption Verification, as evidence that the taxpayer qualifies for the deduction.

B. The form described under A. shall be:

1. completed for each year for which the taxpayer claims the deduction; and
2. retained by the taxpayer.

R865-91-41. Historic Preservation Tax Credits Pursuant to Utah Code Ann. Section 59-10-108.5.

A. Definitions

1. "Qualified rehabilitation expenditures" includes architectural, engineering, and permit fees.

2. "Qualified rehabilitation expenditures" does not include movable furnishings.

3. "Residential" as used in Section 59-10-108.5 applies only to the use of the building after the project is completed.

B. Taxpayers shall file an application for approval of all proposed rehabilitation work with the Division of State History prior to the completion of restoration or rehabilitation work on the project. The application shall be on a form provided by the Division of State History.

C. Rehabilitation work must receive a unique certification number from the State Historic Preservation Office in order to be eligible for the tax credit.

D. In order to receive final certification and be issued a unique certification number for the project, the following conditions must be satisfied:

1. The project approved under B. must be completed.
2. Upon completion of the project, taxpayers shall notify the State Historic Preservation Office and provide that office an opportunity to review, examine, and audit the project. In order to be certified, a project shall be completed in accordance with the approved plan and the Secretary of the Interior's Standards for Rehabilitation.
3. Taxpayers restoring buildings not already listed on the National Register of Historic Places shall submit a complete National Register Nomination Form. If the nomination meets National Register criteria, the State Historic Preservation Office shall approve the nomination.
4. Projects must be completed, and the \$10,000 expenditure threshold required by Section 59-10-108.5 must be

met, within 36 months of the approval received pursuant to B.

5. During the course of the project and for three years thereafter, all work done on the building shall comply with the Secretary of the Interior's standards for Rehabilitation.

E. Upon issuing a certification number under D., the State Historic Preservation Office shall provide the taxpayer an authorization form containing that certification number.

F. Credit amounts shall be applied against Utah individual income tax due in the tax year in which the project receives final certification under D.

G. Credit amounts greater than the amount of Utah individual income tax due in a tax year shall be carried forward to the extent provided by Section 59-10-108.5.

H. Carryforward historic preservation tax credits shall be applied against Utah individual income tax due before the application of any historic preservation credits earned in the current year and on a first-earned, first-used basis.

I. Original records supporting the credit claimed must be maintained for three years following the date the return was filed claiming the credit.

R865-91-42. Order of Credits Applied Against Utah Individual Income Tax Due Pursuant to Utah Code Ann. Sections 9-2-413, 59-6-102, 59-13-202, and Title 59, Chapter 10.

A. Taxpayers shall deduct credits authorized by Sections 9-2-413, 59-6-102, 59-13-202, and Title 59, Chapter 10 against Utah individual income tax due in the following order:

1. nonrefundable credits;
2. nonrefundable credits with a carryforward;
3. refundable credits.

R865-91-44. Compensation Received by Nonresident Professional Athletes Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, and 59-10-118.

A. The Utah source income of a nonresident individual who is a member of a professional athletic team includes that portion of the individual's total compensation for services rendered as a member of a professional athletic team during the taxable year which, the number of duty days spent within the state rendering services for the team in any manner during the taxable year, bears to the total number of duty days spent both within and without the state during the taxable year.

B. Travel days that do not involve either a game, practice, team meeting, promotional caravan or other similar team event are not considered duty days spent in the state, but shall be considered duty days spent within and without the state.

C. Definitions.

1. "Professional athletic team" includes any professional baseball, basketball, football, soccer, or hockey team.

2. "Member of a professional athletic team" shall include those employees who are active players, players on the disabled list, and any other persons required to travel and who do travel with and perform services on behalf of a professional athletic team on a regular basis. This includes coaches, managers, and trainers.

3. "Duty days" means all days during the taxable year from the beginning of the professional athletic team's official preseason training period through the last game in which the team competes or is scheduled to compete.

a) Duty days shall also include days on which a member of a professional athletic team renders a service for a team on a date that does not fall within the period described in 3., for example, participation in instructional leagues, the Pro Bowl, or other promotional caravans. Rendering a service includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team.

b) Included within duty days shall be game days, practice days, days spent at team meetings, promotional caravans, and

preseason training camps, and days served with the team through all postseason games in which the team competes or is scheduled to compete.

c) Duty days for any person who joins a team during the season shall begin on the day that person joins the team, and for a person who leaves a team shall end on the day that person leaves the team. If a person switches teams during a taxable year, a separate duty day calculation shall be made for the period that person was with each team.

d) Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when the member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, shall not be treated as duty days.

e) Days for which a member of a professional athletic team is on the disabled list shall be presumed not to be duty days spent in the state. They shall, however, be included in total duty days spent within and without the state.

4. "Total compensation for services rendered as a member of a professional athletic team" means the total compensation received during the taxable year for services rendered:

a) from the beginning of the official preseason training period through the last game in which the team competes or is scheduled to compete during that taxable year; and

b) during the taxable year on a date that does not fall within the period in 4.a), for example, participation in instructional leagues, the Pro Bowl, or promotional caravans.

5. "Total compensation" includes salaries, wages, bonuses, and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year.

a) Total compensation shall not include strike benefits, severance pay, termination pay, contract or option-year buyout payments, expansion or relocation payments, or any other payments not related to services rendered to the team.

b) For purposes of this rule, "bonuses" subject to the allocation procedures described in A. are:

(1) bonuses earned as a result of play during the season, including performance bonuses, bonuses paid for championship, playoff or bowl games played by a team, or for selection to all-star league or other honorary positions; and

(2) bonuses paid for signing a contract, unless all of the following conditions are met:

(a) the payment of the signing bonus is not conditional upon the signee playing any games for the team, or performing any subsequent services for the team, or even making the team;

(b) the signing bonus is payable separately from the salary and any other compensation; and

(c) the signing bonus is nonrefundable.

D. The purpose of this rule is to apportion to the state, in a fair and equitable manner, a nonresident member of a professional athletic team's total compensation for services rendered as a member of a professional athletic team. It is presumed that application of the provisions of this rule will result in a fair and equitable apportionment of that compensation. Where it is demonstrated that the method provided under this rule does not fairly and equitably apportion that compensation, the commission may require the member of a professional athletic team to apportion that compensation under a method the commission prescribes, as long as the prescribed method results in a fair and equitable apportionment.

1. If a nonresident member of a professional athletic team demonstrates that the method provided under this rule does not fairly and equitably apportion compensation, that member may submit a proposal for an alternative method to apportion compensation. If approved, the proposed method must be fully explained in the nonresident member of a professional athletic team's nonresident personal income tax return for the state.

E. Nonresident professional athletes shall keep adequate records to substantiate their determination or to permit a determination by the Tax Commission of the part of their adjusted gross income that was derived from or connected with sources in this state.

F. Professional athletic teams shall file a composite return, on a form prescribed by the commission, on behalf of nonresident professional athletes that meet all of the following conditions.

1. Nonresident professional athletes included on the return may not have other income from Utah sources. Resident professional athletes may not be included on a composite return.

2. A schedule shall be included with the return, listing all nonresident professional athletes included in the composite filing. The schedule shall list all of the following information for each nonresident professional athlete:

a) name;

b) address;

c) social security number;

d) Utah income attributable to that nonresident professional athlete.

3. Nonresident professional athletes that are entitled to mineral production tax withholding credits, agricultural off-highway gas tax credits, or other Utah credits, may not be included in a composite filing, but must file form TC-40NR, Non or Part-year Resident Individual Income Tax Return.

4. Participating team members must acknowledge through their election that the composite return constitutes an irrevocable filing and that they may not file an individual income tax return in the taxing state for that year.

G. The tax due on the composite return shall be computed as follows.

1. A deduction equal to 15 percent of the Utah taxable income attributable to nonresident professional athletes included in the composite filing shall be allowed in place of a standard deduction, itemized deductions, personal exemptions, federal tax determined for the same period, or any other deductions.

2. The tax shall be computed using the maximum tax rate applied to Utah taxable income attributable to Utah sources.

H. The professional athletic team's federal identification number shall be used on the composite form in place of a social security number.

I. This rule has retrospective application to January 1, 1995.

R865-9I-46. Medical Savings Account Tax Deduction Pursuant to Utah Code Ann. Sections 31A-32a-106 and 59-10-114.

A. Account administrators required to withhold penalties from withdrawals pursuant to Section 31A-32a-105 shall hold those penalties in trust for the state and shall submit those withheld penalties to the commission along with form TC-97M, Utah Medical Savings Account Reconciliation.

B. In addition to the requirements of A., account administrators shall file a form TC- 675M, Statement of Withholding for Medical Savings Account, with the commission, for each account holder. The TC-675M shall contain the following information for the calendar year:

1. the beginning balance in the account;

2. the amount contributed to the account;

3. the account's earnings;

4. distributions for qualified medical expenses;

5. distributions for non-medical expenses not subject to penalty;

6. distributions for non-medical expenses subject to penalty;

7. the amount of penalty required to be withheld and remitted to the state;

8. the account administrator's administrative fee charged

to the account; and

9. the ending balance in the account.

C. The account administrator shall file forms TC-97M and TC-675M with the commission on or before January 31 of the year following the calendar year on which the forms are based.

D. The account administrator shall provide each account holder with a copy of the form TC-675M on or before January 31 of the year following the calendar year on which the TC-675M is based.

E. The account administrator shall maintain original records supporting the amounts listed on the TC-675M for the current year filing and the three previous year filings.

R865-91-47. Withholding and Payment of Income Tax for Members of the Armed Services Receiving Combat Pay Pursuant to Utah Code Ann. Sections 59-10-408 and 59-10-522.

A. Income excluded from federal adjusted gross income as combat pay shall be exempt from the withholding requirements of Sections 59-10-401 through 59-10-407.

B. Utah residents receiving combat pay qualify for an extension of time to pay income taxes for a period not to exceed the extension for filing returns provided in Tax Commission rule R865-91-23(C).

R865-91-48. Adoption Expenses Deduction Pursuant to Utah Code Ann. Section 59-10-114.

A. For purposes of the deduction for adoption expenses under Section 59-10-114, adoption expenses include:

1. medical expenses associated with prenatal care, childbirth, and neonatal care;
2. fees paid to reimburse the state under Section 35A-3-308;
3. fees paid to an attorney or placement service for arranging the adoption;
4. all actual travel costs incurred exclusively for the purpose of completing adoption arrangements; and
5. living expenses of the birth mother if paid by the adoptive parents as part of their adoption expenses and if in conformance with Section 76-7-203.

B. Adoption expenses do not include:

1. food, clothing, or other routine expenses associated with the child's care, other than necessary medical expenses, that arise before the adoption is final;
2. foster care expenses incurred prior to the application for adoption; or
3. legal expenses arising from custody actions subsequent to the finalization of the adoption.

C. Qualified adoption expenses may be deducted regardless of whether the adoption process is terminated.

D. The income tax deduction under Section 59-10-114 applies to the actual qualified adoption expenses of the birth mother, the legal guardian of the birth mother or another individual acting on behalf of the birth mother, or the adoptive parents.

E. Reimbursed adoption expenses for which a taxpayer has taken the state income tax deduction, must be added to the taxpayer's gross income in the tax year in which the expenses are reimbursed.

R865-91-49. Higher Education Savings Incentive Program Tax Deduction Pursuant to Utah Code Ann. Sections 53B-8a-112 and 59-10-114.

(1) "Trust" means the Utah Educational Savings Plan Trust created pursuant to Section 53B-8a-103.

(2) The trustee of the trust shall file a form TC-675H, Statement of Account with the Utah Educational Savings Plan Trust, with the commission, for each trust account owner. The TC-675H shall contain the following information printed for the

calendar year:

(a) the amount contributed to the trust by the account owner; and

(b) the amount disbursed to the account owner pursuant to Section 53B-8a-109.

(3) The trustee of the trust shall file form TC-675H with the commission on or before January 31 of the year following the calendar year on which the forms are based.

(4) The trustee of the trust shall provide each trust account owner with a copy of the form TC-675H on or before January 31 of the year following the calendar year on which the TC-675H is based.

(5) The trustee of the trust shall maintain original records supporting the amounts listed on the TC-675H for the current year filing and the three previous year filings.

R865-91-50. Addition to Federal Taxable Income for Interest Earned on Bonds, Notes, and Other Evidences of Indebtedness Pursuant to Utah Code Ann. Section 59-10-114.

The addition to federal taxable income required under Section 59-10-114 for interest earned on bonds, notes, and other evidences of indebtedness acquired on or after January 1, 2003 applies to:

A. interest on individual bonds, notes, or other evidences of indebtedness purchased by a resident or nonresident individual on or after January 1, 2003; and

B. for bonds, notes, and other evidences of indebtedness held in a bond fund owned by a resident or nonresident individual, the portion of interest attributable to individual bonds, notes, and other evidences of indebtedness purchased by the bond fund on or after January 1, 2003.

R865-91-51. Withholding Tax License Pursuant to Utah Code Ann. Section 59-10-405.5.

(1) The holder of a license issued under Section 59-10-405.5 shall notify the commission:

- (a) of any change of address of the business;
- (b) of a change of character of the business, or
- (c) if the license holder ceases to do business.

(2) The commission may determine that a person has ceased to do business or has changed that person's business address if:

- (a) mail is returned as undeliverable as addressed and unable to forward;
- (b) the person fails to file four consecutive monthly or quarterly withholding tax returns, or two consecutive annual withholding tax returns;
- (c) the person fails to renew its annual business license with the Department of Commerce; or
- (d) the person fails to renew its local business license.

(3) If the requirements of Subsection (2) are met, the commission shall notify the license holder that the license will be considered invalid unless the license holder provides evidence within 15 days that the license should remain valid.

(4) A person may request the commission to reopen a withholding tax license that has been determined invalid under Subsection (3).

(5) The holder of a license issued under Section 59-10-405.5 shall be responsible for any withholding tax, interest, and penalties incurred under that license whether those taxes and fees are incurred during the time the license is valid or invalid.

R865-91-52. Subtractions For Health Care Insurance and For Premiums For Long-Term Care Insurance Pursuant to Utah Code Ann. Section 59-10-114.

A subtraction from federal taxable income under Subsection 59-10-114(2) for health care insurance and for premiums for long-term care insurance shall be determined in

the manner that provides the greatest possible subtraction under Subsection 59-10-114(2).

KEY: historic preservation, income tax, tax returns, enterprise zones

February 12, 2007 31A-32A-106
Notice of Continuation April 22, 2002 53B-8a-112
59-2-1201
through
59-2-1220
59-6-102
59-7-3
59-10
59-10-103
59-10-108
through
59-10-122
59-10-108.5
59-10-114
59-10-124
59-10-127
59-10-128
59-10-129
59-10-130
59-10-207
59-10-210
59-10-303
59-10-401
through
59-10-403
59-10-405.5
59-10-406
through
59-10-408
59-10-501
59-10-503
59-10-504
59-10-507
59-10-512
58-10-514
59-10-516
59-10-517
59-10-522
59-10-533
59-10-536
59-10-602
59-10-603
59-10-1003
59-13-202
59-13-302
63-38f-401 through 63-38f-414

R865. Tax Commission, Auditing.**R865-20T. Tobacco Tax.****R865-20T-1. Assessment of Cigarette and Tobacco Products Tax Pursuant to Utah Code Ann. Sections 59-14-204 and 59-14-302.**

A. The cigarette tax is a tax on the first purchase, use, storage, or consumption of cigarettes by a manufacturer, jobber, wholesaler, distributor, retailer, user, or consumer within the state.

B. If cigarettes are purchased outside the state for use, storage, or consumption within the state, the tax must be paid by the user, storer, or consumer.

C. The tobacco products tax is a tax on the first purchase, use, storage, or consumption of tobacco products by a manufacturer, wholesaler, jobber, distributor, retailer, user, storer, or consumer within the state.

D. No tax is due from nonresidents or tourists who import cigarettes or tobacco products for their own use while in the state.

R865-20T-2. Methods of Paying Taxes on Cigarettes and Tobacco Products Pursuant to Utah Code Ann. Sections 59-14-205 and 59-14-303.

A. If the tax is due as a result of use, storage, or consumption of imported cigarettes, the tax may be paid by affixing stamps or by filing a return prescribed by the Tax Commission.

1. This return must be filed and the tax must be paid within 15 days from the date of use, storage, or consumption unless application is made to the Tax Commission for permission to file returns and pay the tax on a monthly basis.

2. Monthly returns are due, together with the payment of the tax, on or before the 15th day of the month following the calendar month during which the cigarettes were imported.

3. Monthly returns must be filed even though no tax is due.

B. Quarterly returns required under Section 59-14-303 shall include all purchases of tobacco products during the preceding quarter, with no adjustment for inventories on hand at the end of the quarter.

R865-20T-3. Licensing of Cigarette and Tobacco-Products Dealers Pursuant to Utah Code Ann. Sections 59-14-202 and 59-14-301.

A. Each cigarette vending machine shall be licensed as a separate place of business, provided that only one machine needs to be licensed at any place of business where the licensee has more than one machine in operation.

1. The license shall be posted in a conspicuous place on the vending machine.

2. If a licensee operates more than one place of business, the application shall contain the required information about each place of business.

3. The application must be accompanied by the required fee for each place of business.

B. If a licensee's place of business changes, the licensee shall forward the license to the Tax Commission with a request for notation of the change in location.

C. A license under which business has been transacted has no redeemable value when the licensee ceases to transact business.

R865-20T-5. Bonding Requirements For Tobacco-Products Dealers Pursuant to Utah Code Ann. Section 59-14-301.

A. Dealers selling tobacco products upon which the taxes imposed by this act have been paid by a previous seller are not required to post a bond.

R865-20T-6. Purchase of Cigarette Stamps Pursuant to**Utah Code Ann. Section 59-14-206.**

A. Cigarette revenue stamps are sold only to licensed and bonded dealers, except in cases where confiscated merchandise is sold to a person who does not intend to resell the merchandise but purchases it for consumption or use.

B. Stamps may be delivered to a licensee on consignment, provided that the following two conditions are met:

1. A written request is made naming the person to whom the stamps are to be delivered, and identifying that person by means of signature, and including the address to which the stamps should be delivered.

2. Only a responsible person of mature age is designated as the agent to whom the stamps are delivered.

C. In addition to satisfying the conditions of Section (B), the licensee shall also comply with Subsection (1), (2), or (3), whichever is appropriate.

a) In the case of individual ownership, the request for stamps shall be signed by the licensee in the same manner that the signature appears on the licensee's bond.

b) In the case of a partnership, the request shall be signed by a partner whose signature appears on the bond.

c) In the case of a corporation, the request shall be signed by a duly authorized officer of the corporation.

R865-20T-7. Export Sales of Cigarette and Tobacco Products Pursuant to Utah Code Ann. Sections 59-14-205 and 59-14-401.

A. Sales of cigarettes and tobacco products to jobbers dealers outside the state are not subject to the taxes imposed by this act provided that physical delivery of the goods is made outside the state.

B. All export sales for which an exemption or refund is claimed must be supported by invoices and delivery tickets or bills of lading showing all of the following:

1. date of sale;
2. name and address of customer;
3. address to which delivered;
4. quantity and type of product sold.

R865-20T-8. Records Pertaining To Cigarette and Tobacco-Product Sales Pursuant to Utah Code Ann. Section 59-14-404.

A. It is the duty of manufacturers, jobbers, distributors, wholesalers, retailers, users, or consumers of cigarettes or tobacco products to keep records necessary to determine the amount of tax due on the sale, purchase, or consumption of those products.

B. All pertinent records must be preserved for a period of three years.

C. The records shall be available for inspection by the Tax Commission or its authorized agents at all times during normal business hours or at other times determined by mutual agreement.

R865-20T-9. Cigarette-Manufacturer Inventory Requirements Pursuant to Utah Code Ann. Section 59-14-205.

A. Inventories of cigarettes held by manufacturers in warehouses located in Utah may be delivered to wholesalers or jobbers without being stamped. A record of those deliveries must be kept by the manufacturer at its place of business in this state or at the warehouse. The record shall contain all of the following:

1. date of delivery;
2. the person to whom the cigarettes were delivered;
3. place of delivery;
4. quantity delivered.

B. The record must be available for inspection by the Tax Commission or its agents at any reasonable time.

C. If the merchandise is sold to retailers, consumers or persons other than wholesalers or jobbers, the manufacturer must qualify as a licensed dealer.

R865-20T-10. Procedures for the Revocation, Renewal, and Reinstatement of Licenses Issued Pursuant to Utah Code Ann. Sections 59-14-202, 59-14-203.5, and 59-14-301.5.

A. In order to renew a license issued under Sections 59-14-202 and 59-14-301, a licensee shall file form TC-38B, Cigarette and Tobacco Products License Renewal Application, with the Tax Commission on or before the last day of the month prior to the month in which the license expires.

1. The form shall be accompanied by the statutory renewal fee.

B. A license revoked pursuant to Section 26-42-103 shall be revoked for a period of one year commencing on the date the commission receives notification to revoke by the enforcing agency.

C. In order to reinstate a license revoked or suspended, or allowed to expire, a licensee shall file form TC-69, Utah State Business and Tax Registration, with the Tax Commission.

1. The form shall be accompanied by the statutory reinstatement fee.

D. A revoked or suspended license may not be reinstated prior to the expiration of the revocation or suspension period.

R865-20T-11. Reporting of Imported Cigarettes Pursuant to Utah Code Ann. Section 59-14-212.

A. A manufacturer, distributor, wholesaler, or retail dealer required by Section 59-14-212 to provide the Tax Commission, on a quarterly basis, a copy of the importer's federal import permit and the customs form showing the tax information required by federal law:

1. is not required to enclose that information with the quarterly report;

2. shall retain that information in its records; and

3. at the request of the Tax Commission, provide copies of that information to the Tax Commission.

R865-20T-12. Definition of Counterfeit Tax Stamp Pursuant to Utah Code Ann. Section 59-14-102.

"Counterfeit tax stamp," for purposes of the definition of a counterfeit cigarette in Section 59-14-102, includes a cigarette stamp that has previously been affixed to a pack of cigarettes.

KEY: taxation, tobacco products

February 12, 2007

Notice of Continuation April 17, 2002

59-14-102
59-14-202
59-14-203.5
59-14-204
through
59-14-206
59-14-212
59-14-301
through
59-14-303
59-14-401
59-14-404

R909. Transportation, Motor Carrier.**R909-1. Safety Regulations for Motor Carriers.****R909-1-1. Adoption of Federal Regulations.**

(1) Safety Regulations for Motor Carriers, 49 CFR Parts 350 through 399 and Part 40, as contained in the October 1, 2006 Code of Federal Regulations, is incorporated by reference, except for Parts 391.11(b)(1), 391.49, 395.1(k), 395.1(l), and 395.1(m). These requirements apply to all motor carrier(s) as defined in 49 CFR Part 390.5, excluding commercial motor vehicles which are designed or used to transport more than 8 and less than 15 passengers (including the driver) for compensation and UCA 72-9-102(2) engaged in commerce.

(2) Intrastate trucking operations in which the carriers operate double trailer combinations only are not required to comply with 49 CFR Part 380.203(a)(2).

(3) Exceptions to Part 391.41, Physical Qualification may be granted under the rules of Department of Public Safety, Driver's License Division, UCA 53-3-303.5 for intrastate drivers under R708-34.

(4) Drivers involved wholly in intrastate commerce shall be at least 18 years old. However, if they are transporting placarded amounts of hazardous materials or carrying 16 or more passengers, including the driver, they must be 21 years old.

R909-1-2. Insurance for Private Intrastate/Interstate Motor Carriers.

(1) "Private Motor Carrier" means a person who provides transportation of property or passengers by commercial motor vehicle and is not a for-hire motor carrier.

(2) All intrastate private motor carriers shall have a minimum amount of \$750,000 liability.

R909-1-3. Implements of Husbandry.

"Implements of Husbandry" is defined in Utah Code Ann. Section 41-1a-102(23) and must be in compliance with all provisions of Chapter 6, Title 41, Utah Code Annotated. Vehicles meeting this definition are exempt from 49 CFR Part 393 - Parts and Accessories Necessary for Safe Operations.

KEY: trucks, transportation safety, implements of husbandry**February 8, 2007****Notice of Continuation November 29, 2006****72-9-103****72-9-104****72-9-101****72-9-301**

R909. Transportation, Motor Carrier.**R909-19. Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation and Certification.****R909-19-1. Authority.**

This rule is enacted under the authority of Sections 72-9-601, 72-9-602, 72-9-603, 72-9-604, 53-1-106, 41-6-102, Utah Code.

R909-19-2. Applicability.

All tow trucks motor carriers and employees must comply and observe all rules, regulations, traffic laws and guidelines as prescribed by State Law and 49 CFR Part 350 - 399, hereby incorporated by reference in accordance with Sections 41-6-101, 41-6-102, 41-6-104, 72-9-301, 72-9-303, 72-9-601, 72-9-602, 72-9-603, 72-9-604, 72-9-701, 72-9-702, 72-9-703, and 72-9-703, Utah Code.

R909-19-3. Definitions.

(1) "Consent Tow" means any tow truck service that is done at the vehicle, vessel, or outboard motor owner's, or it's legal operator's, knowledge and/or approved.

(2) "Department" means the Utah Department of Transportation.

(3) "Division" means the Motor Carrier Division.

(4) "Gross Combination Weight Rating (GCWR)" means the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle. In the absence of a value specified by the manufacturer, GVCR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

(5) "Gross Vehicle Weight Rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single motor vehicle.

(6) "Non-Consent Police Generated Tow" means tow truck service that was ordered by a peace officer, or a person acting on behalf of a law enforcement agency, or a highway authority, as defined in Section 72-1-102.

(7) "Non-consent Non Police Generated Tow" means towing services performed without the prior consent of the owner of the vehicle or the person authorized by the owner to operate the vehicle from private property. The tow truck service must be from private property, at the request of the property landowner or agent for the landowner.

(8) "Recovery Operation" means a towing service that may require charges in addition to the normal one-truck/one-driver towing service requirements. The additional charges may include charges for manpower, extra equipment, traffic control, and special recovery equipment and supplies.

(9) "Tow Truck" means a motor vehicle constructed, designed, altered, or equipped primarily for the purpose of towing or removing damaged, disabled, abandoned, seized, repossessed or impounded vehicles from highway or other place by means of a crane, hoist, tow bar, tow line, dolly tilt bed, or other similar means of vehicle transfer without its own power or control.

(10) "Tow Truck Certification Program" means a program to authorize and approve tow truck motor carrier owners, operators, and vehicles is the process by which the Department, acting under Section 72-9-602, Utah Code, shall verify compliance with the State and Federal Motor Carriers Safety Regulations.

(11) "Tow Truck Motor Carrier" means any company that provides for-hire, private, salvage, or repo towing services. It includes the company's agents, officers, and representatives as well as employees responsible for hiring, training, supervisory, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of equipment and/or accessories.

(12) "Tow Truck Service" means the functions and any ancillary operations associated with recovering, removing, and towing a vehicle and its load from a highway or other place by means of a tow truck.

(a) Tow Truck Service, with regards to authorized towing fees, is determined by the type and size of the towed vehicle, not the type and size of the tow truck performing the service.

(b) Tow Vehicle Classifications will be used when determining authorized fees. Information regarding the (GVWR) to determine classification category of towed vehicle can be found on the identification plate on the vehicle driver side doorframe. Towed vehicle classifications are as follows:

(1) "Light Duty" means any towed vehicle with a (GVWR) 10,000 pounds or less;

(2) "Medium Duty" means any towed vehicle with a (GVWR) between 10,001 and 26,000 pounds;

(3) "Heavy Duty" means any towed vehicle with a (GVWR) or (GCWR) 26,001 pounds and greater.

(13) "Tow Truck Motor Carrier Steering Committee" means a committee established by the Motor Carrier Division and will include enforcement personnel, industry representatives and other persons as deemed necessary.

R909-19-4. Duties - Enforcement - Compliance Audits, Inspections and Right of Entry.

The Department shall administer and in cooperation with the Department of Public Safety, Utah Highway Patrol Division as specified under Section 53-8-105, Utah Code, shall administer and enforce state and federal laws related to the operation of tow truck motor carriers within the state. In addition, a tow truck motor carrier shall submit its lands, property, buildings, equipment for inspection and examination and shall submit its accounts, books, records, or other documents for inspection and copying to verify compliance as authorized by Section 72-9-301.

R909-19-5. Insurance.

All tow trucks will be required to carry at least \$750,000 of insurance minimum liability plus the MCS-90 endorsement for environmental restoration as required in 49 CFR Part 387 - Minimum Levels of Financial Responsibility for Motor Carriers. Evidence of required insurance will be maintained at the principal place of business and made available to the Department and/or investigator upon request and prior to tow truck carrier certification. The Tax Commission requires all Tow Yards to carry insurance on stored vehicles.

R909-19-6. Penalties and Fines.

(1) Any tow truck motor carrier that fails or neglects to comply with State or Federal Motor Carrier Safety Regulations, other statutes, any part of this rule, any term or condition of the permit or any materials that it incorporates either by reference or attachment, or a Departmental order, is subject to:

(a) a civil penalty as authorized by Section 72-9-701, and 72-9-703;

(b) issuance of a cease-and-desist order as authorized by section 72-9-303; and

(c) the revocation or suspension of registration by the Utah State Tax Commission pursuant to Section 72-9-303.

(2) The fact of non-compliance will be considered sufficient cause for the Department to revoke tow truck motor carrier, driver, and/or vehicle certification(s).

R909-19-7. Towing Notice Requirements.

(1) A tow truck motor carrier after performing a tow truck service, that was not ordered by a peace officer, or a person acting on behalf of a law enforcement agency or a highway authority, as defined in R909-19-3, without the vehicle, vessel, or outboard motor owner's knowledge shall immediately upon

arriving at the place of storage or impound of the vehicle contact by radio or phone, the law enforcement agency having jurisdiction over the area where the vehicle, vessel, or outboard motor was picked up and notify the agency as per requirements set forth in 72-9-603(1).

Pursuant to the requirement to "immediately" ... "contact the law enforcement agency having jurisdiction" as required by Section 72-9-603, Utah Code, a tow-truck motor-carrier operator shall:

(a) Report the removal immediately upon arriving at the place of storage or impound of the vehicle, if removal was completed during posted office hours.

(b) Report the removal within 2 hours of the next business day if the removal occurred after normal posted office hours.

(c) For purposes of Section 72-9-603, the "contact" to the law enforcement agency shall be considered accomplished if made as authorized by 41-6-102.5.

(d) If reporting is not completed within the time frame, the Tow Truck Motor Carrier or operator will not be allowed to collect any fees or begin charging storage fees as authorized under Section 72-9-603.

R909-19-8. Requirement for Tow Truck Motor Carriers to input required information for Government and Public Notification.

All Tow Truck Motor Carriers must follow notification procedures as required by 72-9-603 and input required information in electronic form on the Department's website, at www.tow.utah.gov.

R909-19-9. Certification.

There are three (3) required certification requirements required by the Department, they are as follows:

(1) Tow Truck Driver Certification:

(a) Effective July 1, 2004 all tow truck drivers will be tested and certified in accordance with National Driver Certification Procedure (NDCP) standards. These standards of conduct and proficiency may be tested and certified through:

(i) Towing and Recovery Association of America (TRAA) Testing Program;

(ii) Wreckmaster Certification Program;

(iii) AAA Certification Program

(iv) Other driver testing certification programs may be approved by the Department to meet certification requirements however; the Tow Truck Motor Carrier must obtain prior approval in writing from the Motor Carrier Division Administrator or Division representative by calling (801) 965-4559.

(b) Information on the above mentioned certification programs may be obtained by contacting the Motor Carrier Division at (801) 965-4559.

(c) Tow Truck Motor Carriers shall ensure that all driver's are:

(i) Properly trained to operate tow truck equipment;

(ii) Licensed, as required under UCA 53-3-101, Uniform Driver License Act; and

(iii) Property certified.

(2) Tow Truck Vehicle Certification:

(a) All tow trucks shall be inspected and certified biannually;

(b) All tow trucks must be equipped with required safety equipment. Safety Equipment List can be found at <http://www.udot.utah.gov/index.php/m=c/tid=396> or by calling 801-965-3871.

(c) Upon certification of vehicle a UDOT safety sticker will be issued and shall be affixed on the driver's side rear window.

(d) Documentation of UDOT vehicles inspection certification shall be kept in the vehicle file and available upon

request by Department personnel.

(3) Tow Truck Motor Carrier Certification:

(a) Tow Truck Motor Carriers shall be certified biannually to ensure compliance as required by the Federal Motor Carrier Safety Regulations, Utah Code Annotated, and local laws where applicable.

R909-19-10. Certification Fees.

The Department may charge Tow Truck Motor Carrier's a fee biannually as authorized by Section 72-99-603(1) to cover costs associated with driver, vehicle, and carrier certifications.

R909-19-11. Certification from a Qualified Training Facility.

Charges for services provided must be clearly reflected on a company receipt and a copy shall be provided to the customer. The receipt must include the following information:

(a) company name;

(b) address;

(c) phone number;

(d) transportation and storage fees charged;

(e) name of company driver;

(f) unit number;

(g) license plate of the towed vehicle;

(h) make, model, and year of the towed unit, and;

(i) start and end time for services provided.

R909-19-12. Maximum Towing Rates. Non-Consent Tows.

(1) \$110 per hour, per unit, when towing a "Light Duty" vehicle;

(a) An additional 15% per hour may be charged if the towed vehicle is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F and the tow truck operator is hazardous material certified as outlined in the Utah Regulations for Towing Operations and Certification Manual.

(2) \$200 per hour, per unit, when towing a "Medium Duty" vehicle;

(a) An additional 15% per hour may be charged if the towed vehicle is used in the transport transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F and the tow truck operator is hazardous material certified as outlined in the Utah Regulations for Towing Operations and Certification Manual.

(3) \$250 per hour, per unit, when towing a "Heavy Duty" vehicle;

(a) An additional 15% per hour may be charged if the towed vehicle is used in the transport transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F and the tow truck operator is hazardous material certified as outlined in the Utah Regulations for Towing Operations and Certification Manual.

(4) If a tow truck apparatus is mechanically connected to a vehicle, the tow truck will therefore be in possession of the vehicle.

(a) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle, which is in question, is attempting to retrieve said vehicle before the tow truck is mechanically connected, no fee(s) will be charged to the vehicle owner.

(b) If the owner, authorized operator, or authorized agent of the owner of the vehicle, which is in question, is attempting to retrieve said vehicle before the vehicle is removed from the

property or scene, the maximum fee shall not exceed 50% of the posted rate schedule.

(5) As fuel increases .50 per gallon from the base rate of \$2.00, a surcharge shall be allowed of 10% of the base rate. Conversely, if prices drop, they will decrease by the same amount.

(a) Fuel Cost	Fuel Surcharge	Surcharge
\$2		0%
\$2.50		10%
\$3		20%
\$3.50		30%
\$4		40%
\$4.5		50%
\$5		60%
etc.		

(6) Recovery charges, as defined by R909-19-3, shall be coordinated with the towed vehicle owner prior to initiating the additional charges relating the recovery operation. Coordination with the towed vehicle owner should result in an agreement between the tow vehicle owner and Tow Truck Motor Carrier.

(7) Pursuant to Utah Code Ann. Section 72-9-603(3), it is illegal for a Tow Truck Motor Carrier to require the owner of an impounded vehicle to pay any money other than the appropriate amount listed in this rule. Any tow truck service charging more than the maximum approved rates may be assessed civil penalties determined by the Department, as authorized under Section 72-9-303.

(8) Tow Truck Motor Carriers shall obey all local city and county laws, when applicable, pertaining to placement of signs, notification, and other towing related ordinances. Tow Truck Lighting 41-6a-161. Strobe lights are not allowed on Tow Trucks. The acceptable light colors are orange and yellow.

R909-19-13. Maximum Non-Consent Impoundment Rates.

(1) The maximum rate for a "Light Duty" vehicle is \$110.
 (2) The maximum rate for a "Medium Duty" vehicles is \$200.

(3) The maximum rate for a "Heavy Duty" vehicle is \$250.
 (4) If a tow truck apparatus is mechanically connected to a vehicle, the tow truck will therefore be in possession of the vehicle.

(a) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle, which is in question, is attempting to retrieve said vehicle before the tow truck is mechanically connected, no fee(s) will be charged to the vehicle owner.

(b) If the owner, authorized operator, or authorized agent of the owner of the vehicle, which is in question, is attempting to retrieve said vehicle before the vehicle is removed from the property or scene, the maximum fee shall not exceed 50% of the posted rate schedule.

(5) Pursuant to Utah Code Ann. Section 72-9-603(3), it is illegal for a Tow Truck Motor Carrier to require the owner of an impounded vehicle to pay any money other than the appropriate amount listed in this rule. Any tow truck service charging more than the maximum approved rates may be assessed civil penalties determined by the Department, as authorized under Section 72-9-303.

(6) Tow Truck Motor Carriers shall obey all local city and county laws, when applicable, pertaining to placement of signs, notification, and other towing related ordinances.

R909-19-14. Maximum Storage Rates. Non-Consent Tows.

(1) \$15 Maximum per day, per unit, for outside storage of "Light Duty" vehicles;

(2) \$20 Maximum per day, per unit may be charged for inside storage of "Light Duty" vehicles only at the owner's request, or at the order of a law enforcement agency or highway

authority.

(3) \$35 Maximum per day, per unit for outside storage of "Medium/Heavy Duty" vehicles;

(4) \$70 Maximum per day, per unit may be charged for inside storage of "Medium/Heavy Duty" vehicles only at the owner's request, or at the order of a law enforcement agency or highway authority.

(5) \$100 Maximum per day, per unit for outside storage of vehicles used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F.

(6) \$150 Maximum per day, per unit may be charged for inside storage of vehicles used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F, only at the owner's request, or at the order of a law enforcement agency or highway authority.

(7) Pursuant to Utah Code Ann. Section 72-9-603(3), it is illegal for a Tow Truck Motor Carrier to require the owner of an impounded vehicle to pay any money other than the appropriate amount listed in this rule. Any tow truck service charging more than the maximum approved rates may be assessed civil penalties determined by the Department, as authorized under Section 72-9-303.

(8) For the purpose of calculating storage rates, if the first six (6) hours of storage for a vehicle includes more than one day, the authorized storage fee is only the charge for one day.

R909-19-15. Towing and Storage Rates. Public Consent Tows.

Towing rates for public consent tows are the responsibility of the consumer and the tow truck motor carrier as contracted for services rendered and are not regulated by the Department.

R909-19-16. Rates and Storage Posting Requirements.

Pursuant to Section 72-9-603(6), a tow truck motor carrier or impound yard shall clearly and conspicuously post and disclose all its current non-consent fees and rates for towing and storage of a vehicle.

R909-19-17. Federal Motor Carrier Safety Requirements.

All tow truck motor carriers that meet the definition of a commercial motor carrier shall comply with all State and Federal Motor Carrier Safety Regulations, in addition to any other legal requirements established in statute, rule, or permit.

R909-19-18. Consumer Protection Information.

Pursuant to Section 72-9-602, the Department shall make consumer protection information available to the public that may use a tow truck motor carrier. To obtain such information, the public can call the Motor Carrier Division at (801) 965-4261.

R909-19-19. Establishment of Tow Truck Steering Committee and Work Group.

(1) The Administrator for the Motor Carrier Division will establish a Steering Committee to provide advisory information and input.

(2) The Motor Carrier Advisory Board, established by the Governor, will serve as the steering body for regulatory guidance and the Department's certification process.

R909-19-20. Annual Review of Rates, Fees and Certification Process.

(1) During the regularly scheduled Motor Carrier Advisory

Board meeting in August of each year, the board will review rates, fees, tow truck motor carrier procedures, and the certification process. The board is not required to review each of these items every year.

(2) This meeting will provide a forum for interested parties to provide evidence in support of any rate or fee increase or issued related to procedures regarding the certification process.

(3) All interested parties must notify the Department of these issues by August 1 of each year to ensure placement on the agenda.

(4) An annual report will be issued by the Department regarding any rate, fees, tow truck motor carrier procedures and certification process changes will be made available at the Motor Carrier Division office.

R909-19-21. Ability to Petition for Review.

Any Tow Truck Carrier who believes the Division has acted wrongfully in denying or suspending certification or in imposing a cease-and-desist order may petition the Department for review of that action pursuant to Utah Admin. Code R907-1, Appeal of Departmental Actions.

R909-19-22. Record Retention.

Tow Truck Motor Carriers shall retain records relating to rates charged for services for a period of six months after the service has been provided. However, if the Division or the vehicle owner have notified the carrier that it disputes its ability to charge a particular fee, the carrier shall retain the record until six months after the dispute has concluded or a court rule or order requires a longer retention period.

R909-19-23. Information to be Included on Company's Receipt.

Charges for services provided must be listed and itemized on a receipt and provided to the customer. The information on the receipt must include company name, address, phone number, transportation and storage fees charged, name of driver, unit number of towing vehicle or license plate, description of the vehicle that was towed, and the total breakdown of time and services rendered.

KEY: safety regulations, trucks, towing, certifications

February 8, 2007	41-6-101
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	41-6-104
	53-1-106
	53-8-105
	63-38-3.2
	72-9-601
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	72-9-604
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	72-9-701
	72-9-702
	72-9-703

R909. Transportation, Motor Carrier.**R909-75. Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Hazardous Wastes.****R909-75-1. Adoption of Federal Regulations.**

Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Hazardous Wastes, 49 CFR, Sub-Chapter C, Parts 100 through 180, of the October 1, 2006 edition of the Code of Federal Regulations, are incorporated by reference. These changes apply to all private, common, and contract carriers by highway in commerce.

KEY: hazardous materials transportation, hazardous substances, hazardous waste, safety regulations

February 8, 2007 72-9-103

Notice of Continuation November 29, 2006 72-9-104

R920. Transportation, Operations, Traffic and Safety.**R920-50. Ropeway Operation Safety Rules.****R920-50-1. Utah Ropeway Rules for Passenger Ropeways.****A. Introduction**

These rules are issued pursuant to Utah Code Annotated, Section 72-11-210 to implement the Passenger Ropeway Safety Act, Utah Code Ann., Sections 72-11-201 et seq.

B. Governing Standard

1. The governing standards in Utah are the standards entitled "ANSI B-77.1, 2006" and "ANSI B77.2, 2004" as modified by rule of the Committee. The standards are published by the American National Standards Institute, 1430 Broadway, New York, New York 10018. The ANSI B77.1 was approved by ANSI on April 17, 2006, and the ANSI B77.2 was approved by ANSI on December 31, 2003. Use of these standards are authorized by Section 72-11-201.

2. The Utah Passenger Ropeway Safety Committee reserves the right to modify, add, or delete provisions included in the Governing Standard.

C. Classification of Ropeways and Applicable Standards

1. Section 1.2.4.1 of the Governing Standard is modified by the following requirements:

a. Existing installations need not comply with the new or revised requirements of the Governing Standard and these rules, except as set forth in R920-50-1.D.1.b;

b. Existing ropeways, when removed and reinstalled, shall be classified as new installations (see R920-50-1-C.2);

c. Ropeway modifications shall meet the requirements of R920-50-2.F and R920-50-8.

2. Section 1.2.4.2 of the Governing Standard is modified by the following requirement: New installations and those with design review completed by the Committee after the effective date of the Governing Standard, shall comply with the new or revised requirements of the Governing Standard and with these rules.

D. Inspections of Ropeways

1. The annual general inspection requirements stated in ANSI B77.1, 2.3.4.1, 3.3.4.1, 4.3.4.1, 5.3.4.1 and 6.3.4.1, are replaced by the following requirements:

a. An annual general or pre-operational inspection of each passenger ropeway shall be made by a Ropeway Inspector prior to approval of any application for licensure. An operational inspection of each passenger ropeway may be made by a Ropeway Inspector at least once a year during the high-use season. For each passenger ropeway inspected, items found either deficient or in noncompliance shall be noted. A report signed by the Ropeway Inspector listing items found either deficient or in noncompliance shall be filed with the owner. The owner shall correct all deficiencies and noncompliance items listed in the Ropeway Inspector's report or request an exception from the Governing Standard and applicable Utah Ropeway Operations Safety Rules. In addition to the annual general, pre-operational, and operational inspections, the Committee may order other inspections in accordance with Section 72-11-211;

b. All installations shall comply with the new or revised requirements of the Governing Standard and these rules in the following areas, on or before the effective date of each paragraph, as set forth below:

1. Requirements for auxiliary drives, as set forth in ANSI B77.1, 2.1.2.1.1, 3.1.2.1.1, 4.1.2.1.1. These requirements shall be effective November 1, 1994;

2. Requirement for one device that senses the position of the rope shall be installed on each sheave unit, as set forth in ANSI B77.1, 3.1.3.3.2, paragraph 6. This requirement shall be effective November 1, 1994;

3. Requirements for audible warning devices, as specified by ANSI B77.1, 2.1.1.12, 3.1.1.12. These requirements shall be effective November 1, 2001;

4. Section 4.1.1.12 of the Governing Standard is modified

by the following requirement: The aerial lift shall incorporate an audible warning device that signals an impending start of the ropeway. After the start button is pressed, the device shall sound an audible alarm for a minimum of two seconds before the ropeway begins to move. The audible device shall be heard inside and outside all terminals and machine rooms above the ambient noise level. These requirements shall be effective November 1, 2001;

5. "Qualified personnel" as used in X.1.1.11 means a qualified engineer approved by the Committee. A "aerial tramway specialist" as used in 2.3.4, "aerial lift specialist" as used in 3.3.4 and 4.3.4, "surface lift specialist" as used in 5.3.4, and a "tow specialist" as used in 6.3.4 means a ropeway inspector approved by the Committee.

c. Grips, clips, hangars, chairs, carriages and cabins shall be tested according to ANSI B77.1, X.3.4.3, except as modified in this subsection c.

1. Testing personnel shall be qualified in accordance with ASNT Recommended Practice No. SNT-TC-1A-1992. Testing agency shall provide certification of qualification of personnel performing testing.

2. Testing agency inspector shall certify to the owner or area operator that the passenger ropeway components tested were non-destructively tested in accordance with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer;

3. Sampling size and method of obtaining the sample shall comply with X.3.4.3 of the Governing Standard;

4. Rejection rate and retest procedures shall comply with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer;

5. Types of inspections to be performed and the procedures to be used shall comply with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer;

6. Criteria for acceptance/rejection of samples shall comply with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer.

d. Wire rope inspection shall be performed according to Annex A.4.1 of the Governing Standard and shall be performed by a competent inspector defined by the Governing Standard and who is approved by the Committee. The wire rope inspector shall certify to the owner or area operator whether the wire rope in its present condition meets requirements for continued operation.

e. All installations shall comply with the Operation and Maintenance requirements of the Governing Standard. These requirements are stated in ANSI B77.1, 2.3, 3.3, 4.3, 5.3, 6.3, and 7.3.

E. Conveyors Standards

1. Section 7 of the ANSI B77.1-2006 is modified by the following requirement:

a. Loading and unloading areas requirements of 7.1.1.9 shall also accommodate the use of adaptive devices.

b. "Qualified personnel" as used in 7.1.1.11 means a qualified engineer approved by the Committee. A "conveyor specialist" as used in 7.3.4 means a ropeway inspector approved by the Committee.

c. Power units referred to in 7.1.2.1 may not have reverse capability.

d. "Power supply cords" referred to in 7.2.1.5.6 shall be protected from snow grooming, skiers, and other equipment and shall be ground fault protected.

e. The belt transition entry stop device referred to in 7.2.3.3 shall include redundant (double) sensors. Each sensor

shall be part of an independent control circuit that can initiate an emergency shutdown of the conveyor. The device shall be so designed and maintained that no single point of failure can cause the entry stop device to malfunction. The device shall not be remotely resettable and shall require the operator to reset the device prior to restarting the conveyor.

F. Dynamic Testing

1. Section X.3.3.1 is replaced with:

Foundations and structural, mechanical and electrical components shall be inspected regularly and kept in a state of good repair. The maintenance requirements of the designer or a Qualified Engineer (see X.1.6.2) shall be followed. Maintenance and testing logs shall be kept (see X.3.5.3).

2. Section X.3.3.1.2 is replaced with:

A written schedule for systematic dynamic testing shall be developed and followed. The schedule shall establish specific frequencies and conditions for periodic testing. The owner shall provide Experienced personnel to develop and conduct the dynamic test. The testing shall simulate or duplicate inertial loadings. The test load shall be equivalent to the design live load. Dynamic testing shall be performed at intervals not exceeding 7 years. The testing requirements shall include, but not be limited to the following:

- a) braking systems;
- b) auxiliary power units;
- c) tension systems; and
- d) electrical systems.

G. Tows.

Section 6.2.3.2.b) is replaced with:

Terminal areas: Installed on the incoming side so that the distance from the stop gate to the first obstruction is more than 150% of the distance required to stop the empty tow operating at maximum speed. The stop device shall extend across the tow beneath the incoming and outgoing rope;

H. Air Space Requirements

ANSI B77.1 Section 2.1.1.3, 3.1.1.3, 4.1.1.3, 5.1.1.3, and 6.1.1.3 and ANSI B77.2 section 2.1.1.2 shall also include the following: No structure (temporary or permanent) shall be permitted to encroach into the air space of the ropeway. These requirements are effective for ropeways or structures built after November 1, 2006.

R920-50-2. Definition of Terms.

A. "Aerial lift" means a ropeway on which passengers are transported in cabins or on chairs and that circulate in one direction between terminals without reversing the travel path.

B. "Aerial tramway (reversible)" means a ropeway on which the passengers are transported in cable-supported carriers are not in contact with the ground or snow surface, and in which the carrier(s) reciprocate between terminals.

C. "Air Space" means the area bounded by vertical planes commencing at a point thirty-five (35) feet from the intersection of the vertical planes of the ropes or cables and ground surface.

D. "Annual general inspection" means an inspection of a passenger ropeway made by a Ropeway Inspector to verify preservation of original design integrity and to determine that components and systems of the passenger ropeway are in proper working order and in accordance with Committee rules.

E. "Committee" means the Passenger Ropeway Safety Committee as outlined in Section 72-11-202.

F. "Conveyor" means a device used to transport skiers uphill while standing on a flexible moving element which consists of multiple tread plates or belting.

G. "Detachable grip lift" means a ropeway system on which carriers circulate around the system alternately attaching to and detaching from a moving haul rope(s). The ropeway system may be monocable or bicable.

H. "Experienced personnel" means an individual who has acquired knowledge and skills through study, training, or

experience in ropeway maintenance, operation, or testing.

I. "Funicular" means a ropeway in which carrier(s) are supported and guided by a guideway and are propelled by means of a haul rope system and operates as a single reversible or as a double reversible.

J. "Incident inspection" means an inspection of a passenger ropeway incident made by an approved Ropeway Inspector or a qualified engineer at the request of the Committee.

K. "Modification" means any change as defined in the Governing Standard, ANSI B77.1 Standard 1.2.4.3 and the replacement of a ropeway component by one that alters the certified design or construction provided by the passenger ropeway manufacturer or designer.

L. "Operational inspection" means an inspection of a passenger ropeway made by a Ropeway Inspector to determine compliance with the operation and maintenance requirements of the Governing Standard and with Committee rules.

M. "Operating personnel" means persons employed by the operator for the purpose of supervising the operation, or engaged in servicing, checking, inspecting or maintaining the machinery or structures of a ropeway and when specifically on duty for such purpose on that ropeway.

N. "Operator" means a person, including any political subdivision or instrumentality of the political subdivision, who owns, manages, or directs the operation of a passenger ropeway.

O. "Passenger" means any person riding a ropeway, other than "operating personnel".

P. "Passenger ropeway" means all devices that carry, pull, or push passengers along a level or inclined path(excluding elevators) by means of a haul rope or other flexible element that is driven by a power unit remaining essentially at a single location. Passenger ropeways include the following:

- (1) aerial tramway (reversible);
- (2) aerial lifts (detachable lifts, chair lifts and similar equipment);
- (3) conveyor;
- (4) funicular;
- (5) rope tow (wire rope and fiber rope tows);and
- (6) surface lifts (J-bar, T-bar, or platter pull and similar equipment).

Q. "Passenger Ropeway Incident" means:

1. Any structural, mechanical, or electrical malfunction or failure of a passenger ropeway component that results in bodily injury to any person on, or inside the load or unload zone of, a passenger ropeway;

2. Any deropement regardless of whether or not the passenger ropeway is evacuated;

3. Any evacuation of the passenger ropeway other than by prime mover or auxiliary power unit, regardless of cause;

4. Any fire involving a passenger ropeway component or adjacent structure;

5. Any structural, mechanical, or electrical malfunction or failure of a passenger ropeway component that results in a loss of control of the passenger ropeway as defined in the Governing Standard, ANSI B77.1 Standard X.2.1.7.2;

6. Any wire rope damage which exceeds the requirement in the Governing Standard, ANSI B77.1 Standard 7.4.1.1; or

7. Any structural, mechanical, or electrical malfunction or failure of a passenger ropeway component or its primary connection that has the apparent potential for causing bodily injury to any person, including but not limited to, the following:

- a. Terminal Structure
- b. Bullwheel
- c. Brake System
- d. Tower Structure
- e. Sheave, Axle, or Sheave Assembly
- f. Carrier
- g. Grip.

R. "Pre-operational inspection" means an inspection made by a Ropeway Inspector prior to the operation of any new or modified passenger ropeway requiring an Acceptance Inspection and Test.

S. "Qualified engineer" means, notwithstanding any different definition in the ANSI B77.1 Standard, any engineer who is licensed to practice engineering in the state of Utah and who has been approved by the Committee.

T. "Responsible charge" means effective control and direction of projects of the type discussed in these rules.

U. "Rope tow" means a ropeway wherein passengers grasp a circulating fiber hauling rope or a towing device attached to a circulating wire rope or fiber rope and are propelled uphill. Passenger riding on recreational devices are also propelled uphill.

V. "Ropeway inspector" means an engineer licensed to practice engineering in the state of Utah, independent of the ropeway owner, and approved by the Committee to inspect passenger ropeways.

W. "Structure" means any edifice, including residential and public buildings, or any other structure or equipment that could reasonably be expected to interfere with the safe operation of a ropeway. Ropeway components required for the operation of the ropeway are not included.

X. "Surface lift" ("J bar," "T bar," or "platter pull," and similar equipment) means a ropeway wherein passengers or passengers on recreational devices are transported on the surface by means of towing devices propelled by a main overhead traveling wire rope supported by trestles or towers with one or more spans.

R920-50-3. Registration of Ropeways.

A. General

1. Purpose - In order to ensure that all passenger Ropeways conform with the requirements set forth by the Passenger Ropeway Act and these rules, all passenger Ropeways operating in the state of Utah shall be registered annually with the committee, and no passenger Ropeway shall be operated for passengers without a valid certificate of registration.

2. Term - Passenger Ropeways shall be registered annually starting November 1st of each year, and each registration expires on October 31st next following date of issue.

3. New ropeways - Any passenger ropeway which shall be opened for the first time for passenger operation shall, during its first calendar year of operation, be construed to be a new ropeway for purposes stated in these rules.

4. Existing ropeways - Any passenger ropeway which shall have been operated for passengers in excess of one calendar year, shall be construed to be an existing ropeway for purposes stated in these rules.

5. Relocated ropeways - Any passenger ropeway moved to a new location shall be construed to be a new ropeway for purposes stipulated in these rules, with the exception that ropeways expressly designed to be portable, operated without a permanent foundation, and that have a design range of maximum grade, shall not be considered new ropeways when moved to different locations but remaining under the jurisdiction of the same operator.

6. Identification number - For each ropeway, upon receipt of the first application for a certificate of registration, the committee shall assign an identification number to the ropeway, which shall remain as a permanent identification number for the life of the ropeway. All correspondence with the committee pertaining to any ropeway shall refer to the identification number assigned to that ropeway.

7. All ropeway operators shall be covered by a liability insurance of a minimum of \$300,000. The Utah Passenger Ropeway Safety Committee shall be notified of a lapse or termination of insurance coverage pursuant to the terms of the

policy.

8. Submittal of application for registration of ropeways - All applications for registration of new or existing ropeways shall be submitted in accordance with requirements of these rules and shall be made in writing and addressed to:

Utah Department of Transportation
Passenger Ropeway Safety Committee
Division of Safety
4501 South 2700 West
Salt Lake City, Utah 84119-5998

9. "As Built" drawings for each passenger ropeway shall be submitted no later than 60 days after the project is completed and the Acceptance Test and Inspection is finished.

B. Attachments

In addition to supporting documents indicated in R920-50-4 or R920-50-7, each application is to include as attachments:

1. Certificate of insurance
2. Annual registration fee.

R920-50-4. Registration of New Ropeways.

A. Application for Certification of Registration

Prior to the operation of any new passenger ropeway, the operator shall apply to the Committee for a Certificate of Registration in such form as the Committee shall designate.

B. The Application must include the name, address and telephone number of operator of the ropeway, and operator's designation of the ropeway. The application and certifications must be in accordance with R920-50-3.A and submitted as follows:

1. A Pre-Operational Inspection Report must be submitted by an approved Ropeway Inspector, and must include the name and address of the Inspector and date of his or her inspection.

2. Any Request for Exception from Standards for Passenger Ropeway shall be submitted in accordance with R920-50-10. Any known items that require a Request for Exception from Standards for Passenger Ropeways must be submitted to the Committee before work begins.

3. A Certification of Ropeway Design for New or Modified Passenger Ropeways, must be submitted. The Qualified Engineer in responsible charge of the design shall certify to the Committee on the top drawing of the design drawing packet that the design, plans and specifications conform to the Utah Passenger Ropeway Safety Act, the Governing Standard and the Utah Ropeway Operations Safety Rules. This Certification must be submitted prior to the performance of the Acceptance Inspection and Test and must state the following:

"I hereby certify that the design for this ropeway or ropeway modification is in complete compliance with the Utah Passenger Ropeway Safety Act, Governing Standard and the Utah Ropeway Operations Safety Rules." This statement shall be placed on the top drawing of the drawing packet and signed and sealed by the Qualified Engineer. Each additional sheet of this drawing packet shall be sealed by the Qualified Engineer. Any variation from the design drawings shall be noted in the drawings and approved by the Qualified Design Engineer. The drawings and specifications shall include the Quality Assurance methods used for the evaluation of the re-used components and shall be submitted for review a minimum of 30 days prior to installation. Any component on the Utah Passenger Ropeway Safety Committee Lift Data Form must be addressed.

4. A Certification of Compliance for Passenger Ropeway shall be made on the Application for Certificate of Registration for New or Modified Ropeway. This Certification shall include the following statement, signed and dated by the ropeway owner or area operator: "I certify that the reports, requests and certificates attached hereto were provided and signed by the persons required by law to provide them, and the deficiencies noted in the inspection report have been corrected with the exception of those listed in the Request for Exception from

Standards for Passenger Ropeway."

5. A Certification of Manufacture for Passenger Ropeway must be submitted by a Qualified Engineer of the manufacturing concern or concerns directly responsible for the supply of equipment for this ropeway. This Certification must be submitted prior to the performance of the Acceptance Inspection and Test. This Certification must include the following information:

a. Name, address and telephone number of operator of the ropeway, name of ropeway supervisor, operator's designation of the ropeway.

b. Name and address of manufacturing concern, and name, seal and Utah license number of the qualified engineer making certification.

c. A certifying statement signed by the Qualified Engineer, to read as follows: "I hereby certify that the newly manufactured parts used in this ropeway, or ropeway modification, conform with the Utah Passenger Ropeway Safety Act, Governing Standard, the Utah Ropeway Operations Safety Rules and the drawings and specifications issued for this ropeway or ropeway modification by the Qualified Design Engineer."

6. A Certification of Construction for Passenger Ropeways must be submitted by a Qualified Engineer directly responsible for the construction for the ropeway. This Certification must be submitted prior to the performance of the Acceptance Inspection and Test. This Certification shall include the following information:

a. Name, address and telephone number of operator of the ropeway name of ropeway supervisor, operator's designation of the ropeway identification number, as assigned by the committee for the ropeway;

b. Name, Utah license number and seal of the Qualified Engineer making the certification.

c. A certifying statement signed by the Qualified Engineer, to read as follows: "I hereby certify that the construction and installation has been completed in accordance with the drawings and specifications issued for this ropeway or ropeway modification by the Qualified Design Engineer."

7. A final Acceptance Test report must be submitted to the Committee. A copy of the acceptance test procedure proposed and submitted by the designer or manufacturer must be provided to the Committee for review at least fourteen (14) days before acceptance testing begins. Acceptance inspection and tests will be scheduled by the Committee or Committee's representative as the acceptance test procedures are received. The owner or area operator shall notify the Committee in writing before the scheduled date that the passenger ropeway has been operated in accordance with the Governing Standard, section X.1.1.11.2.

8. A Certification of "As-Built" Profile for Passenger Ropeway must be submitted by a Land Surveyor or Civil Engineer licensed in the state of Utah. This Certification must be submitted prior to the performance of the Acceptance Inspection and Test, and shall be signed by the Civil Engineer or Land Surveyor, and shall read as follows: "I hereby certify that the attached "as-built" profile of the herein-identified ropeway is as represented on the attached profile drawing and that the completed ropeway conforms to the profile as identified in the plans and specifications prepared by the Qualified Design Engineer."

9. A Utah Passenger Ropeway Safety Committee Lift Data Form must be submitted along with other requested supporting documents. This form must be submitted prior to the performance of the Acceptance Inspection and Test.

R920-50-5. Certificate of Registration.

If the application for certificate of registration and supporting documentation attest that the ropeway complies with the Governing Standard and these rules, the Committee, if satisfied with the facts stated in the application, shall issue a

certificate of registration to the operator.

R920-50-6. Registration of Existing Ropeways.

A. Before November 1st, of each year, every operator of an Existing Passenger Ropeway who intends to operate the ropeway during the ensuing 12-month period shall apply to the Committee, in such form as the Committee shall designate, for a Certificate of Registration. In the event a new operator is assigned, the operator shall notify the Committee of such action and shall apply for a Certificate of Registration.

B. The Application shall include the following:

1. An Annual General Inspection Report by an approved Ropeway Inspector, including the name and address of the Inspector and date of inspection.

2. Approved Request for Exception from Standards for Passenger Ropeways which meets the requirements of R920-50-10, if applicable.

3. A Certification of Compliance for Passenger Ropeway shall be made on the Application for Certificate of Registration for Existing Ropeway. This Certification shall include the following statement, dated and signed by the ropeway owner or area operator: "I certify that the reports, requests and certificates attached hereto were provided and signed by the persons required by law to provide them, and the deficiencies noted in the inspection report have been corrected with the exception of those listed in the Request for Exception from Standards for Passenger Ropeway."

4. The Annual Registration Fee in accordance with R920-50-11.A.

R920-50-7. Modifications.

If a modification, as defined in R920-50-2(E) has been made to an existing ropeway, the data as required by R920-50-7 shall also be accompanied by a design certification, fabrication and materials certification, and a construction certification, and also a survey profile certification if applicable, submitted by a qualified engineer to cover the modification. Depending on the nature and extent of the modification, the Committee, or the Committee's appointed representative, may require an Acceptance Inspection and Test.

R920-50-8. Certificate of Registration.

If the application for certificate of registration and documentation required by R920-50-7 and R920-50-8, if applicable, attest that the existing ropeway complies with the governing standard and these rules, the committee, if satisfied with facts stated in the application, shall issue a certificate of registration to the owner.

R920-50-9. Exception.

A. In the event that the ropeway does not conform with the requirements set forth in R920-50-1-C, the Committee may issue a certificate of registration with an exception. Two types of exceptions may be granted after a Request for Exception from Standards is submitted. The first type is an Annual Exception. It continues indefinitely, but this type of exception must be reviewed annually by the Committee. This type of exception is subject to cancellation at any time pursuant to a determination by the committee that a change is necessary. The second type of exception is a Limited Exception. This type of exception is granted only for a fixed time period to be determined by the Committee. The nature of the exception shall be stated in the Request for Exception from Standards. The Committee shall, as expeditiously as possible, and within thirty (30) days of receipt of a Request for Exception from Standards, notify the owner or area operator in writing of its action on the Request.

B. The Request for Exception from Standards shall include the following information:

1. Reasons for requesting an exception from requirements

set forth in R920-50-1-C.

2. Specification of the ways in which the ropeway does not conform to requirements set forth in R920-50-1-C.

3. Procedures, with estimated time and cost, which would be required to bring the ropeway into conformance with the requirements set forth in R920-50-1-C.

C. Except as required in R920-50-10-F, the Committee shall issue a certification of registration with an exception if the operator satisfies the requirements stated in R920-50-10-B and also supplies the following for new or existing ropeways:

New Ropeways - A design certification by a qualified engineer attesting that the ropeway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety to those that meet requirements set forth in R920-50-1-C;

Existing Ropeways - A design certification by a qualified engineer attesting that the ropeway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety to those that meet requirements set forth in R920-50-1-C and a statement of the operator certifying that the ropeway has been operated safely and without any passenger ropeway incident, as defined in R920-50-2-J-1 or -7, related to the feature for which the exception is requested, for any period of time the ropeway has been operated up to 2 years prior to the date of the Request for Exception from Standards.

D. In exceptional circumstances, the Committee may issue a certificate of registration with an exception even if the operator does not satisfy the requirements defined in R920-50-10-C if the Committee determines that the ropeway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety to those that meet requirements set forth in R920-50-1-C.

E. The issuance of a certificate of registration with an annual exception shall not bind the committee to issue such a certificate for the ropeway involved in subsequent years, nor to issue such a certificate for another ropeway of same or similar design.

F. In special cases where doubt exists as to the safety of a ropeway, the committee may require a special inspection to ascertain that the ropeway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety to those that meet requirements set forth in R920-50-1-C.

R920-50-10. Violations.

The terms in this rule are outlined in Sections 72-11-212 and 72-11-213.

R920-50-11. Operation of Ropeways.

A. Operation and maintenance

Operators shall comply with the Governing Standard.

B. Reporting of Incidents

1. Every passenger ropeway incident, as defined in R920-50-2J shall be verbally reported to the Committee, or the Committee's appointed representative, as soon as reasonably possible, but no later than twenty-four (24) hours after the time of the incident. A written report shall be delivered to the Committee within five (5) days of the incident.

2. Every passenger ropeway incident shall be reported to the Committee regardless of the time of year in which it occurs and regardless of whether or not the ropeway was open to the public at the time of the incident.

3. The reports required by this section are to be maintained for administrative enforcement, licensing and certification purposes only. The reports are "protected" records under the Government Records Management Act, Utah Code Annotated, Section 63-2-304 and are also governed by the provisions of Utah Code Annotated, Section 63-2-207.

4. When a passenger ropeway incident, as defined in

R920-50-2J(1) or (7), occurs, the owner or area operator of the ropeway shall suspend operation of the ropeway and shall notify the Committee through the Committee's appointed representative. The owner or area operator of the ropeway, with the Committee or the Committee's appointed representative, shall perform a joint incident inspection of the ropeway. The inspection shall precede any authorization to resume public operation of the passenger ropeway.

C. Revocation of certificate of registration - Section 72-11-213.

R920-50-12. Ropeway Inspector and Qualified Engineer.

A. General

1. In order to promulgate the uniformity and reliability of the inspections required by law and these rules, and of ropeway designs, any person performing inspection services must be a "ropeway inspector" as required by these rules, and any person performing design services must be a "qualified engineer", as required by these rules.

2. The committee shall maintain up-to-date lists of qualified engineers and ropeway inspectors, which lists shall be open to inspection by the public.

3. Any person desiring to be approved by the committee as a ropeway inspector or qualified engineer shall submit a written request to the committee enumerating his or her professional experience and attesting as far as possible to meeting the requirements stated in R920-50-14(B).

B. Requirements

1. Applicant shall satisfy the Ropeway committee that by his or her education, training and experience gained by participation in Ropeway inspections or designs as a principal or an assistant to a recognized Ropeway inspector or Ropeway designer, he or she is qualified to be, respectively, an approved inspector or Ropeway designer or both.

2. Applicant shall satisfy the committee that he has a working familiarity and understanding of drawings and design data such as are furnished to design, construct, test, and inspect passenger ropeways, and that he or she has an understanding and working knowledge of the governing standard and these rules.

3. The committee may approve qualifications based on experience gained by an applicant through work under direct supervision of a qualified ropeway inspector or qualified ropeway designer.

4. The committee may approve employees of the state or individuals retained by the state as qualified ropeway inspectors. Such engineers may be given certain assignments where time is of the essence or a private engineer is not available or willing to undertake the inspection or investigation. It shall be the policy of the committee to use the services and talents of qualified private engineers wherever possible.

C. Revocation or suspension of approval as ropeway inspector or qualified engineer.

The committee may revoke or suspend the approval of any qualified engineer or ropeway inspector who is found by the committee to have:

1. Practiced any fraud, misrepresentation, or deceit in applying for approval; or,
2. Caused damage to another by gross negligence in the practice of passenger ropeway designing, construction, or inspection; or
3. Been engaged in acts of unlawful or unprofessional conduct.

R920-50-13. Inspection Requirements.

1. The ropeway inspector shall verify that the intent of the design and operational requirements imposed by the Governing Standard and these rules are met.

2. Ropeway inspectors may inspect ropeways at any time

during the operation of the ropeway (spot check). All reports, logs, etc. shall be made available to them upon request.

R920-50-14. Administrative Procedures.

Appeals from orders issued pursuant to any provision of R920-50 shall be handled pursuant to R907-1.

KEY: transportation safety, tramways, ropeways, tramway permits

**February 13, 2007 72-11-201 through 72-11-216
Notice of Continuation December 13, 2002 63-46b-1 et seq.**

R926. Transportation, Program Development.**R926-6. Transportation Corridor Preservation Revolving Loan Fund.****R926-6-1. Purpose and Authority.**

(1) Utah Code Ann. Section 72-2-117.7(c) and Utah Code Ann. Section 72-2-117.10(a) authorizes the Utah Transportation Commission to establish this rule. The purpose of this rule is to establish procedures for:

- (a) the Utah Department of Transportation to apply for fund monies;
- (b) the Utah Transportation Commission to award fund monies; and
- (c) repayment conditions; and
- (d) establishing a corridor preservation advisory council committee.

R926-6-2. Definitions.

- (1) "Commission" means the Utah Transportation Commission.
- (2) "UDOT" means the Utah Department of Transportation.
- (3) "Council" means the Utah Transportation Corridor Preservation Advisory Committee Council.
- (4) "Corridor" means a strip of land between two termini within which traffic, topography, environment and other characteristics are evaluated for transportation purposes.
- (5) "Fund" means the Transportation Corridor Preservation Revolving Loan Fund.

R926-6-3. Utah Transportation Preservation Advisory Council.

(1) UDOT shall establish a council committee to provide recommendations and priorities concerning the use of fund monies to the commission, assist in prioritizing requests for funding. The council committee shall be chaired by the Director of Right-of-Way. Additional committee members shall be two Commission members selected by the Chairman of the Commission, one designated member from each of the Metropolitan Planning Organizations in the State, any additional members appointed by the Commission or designated by the Council, and representatives with relevant technical expertise or experience.

R926-6-4. Council Responsibilities.

The council shall receive and review all requests for monies from the fund; and shall prioritize such requests based upon Subsections 72-2-117.7(a) and (b). Priority shall be given to cost-effective preservation projects which maximize cost savings for future transportation right of way acquisitions.

R926-6-5. UDOT Responsibilities.

- (1) In addition to the specified statutory considerations, UDOT may also:
 - (a) review requests and determine if sufficient studies have been completed in a corridor to:
 - (i) identify environmentally sensitive areas;
 - (ii) determine feasible alignments;
 - (iii) determine cost-effectiveness of the project; and
 - (iv) allow for adequate public involvement.
 - (b) forward Council recommendations to the Commission and request approval for funding specific corridors;
 - (c) acquire real property or any interest in real property necessary for corridor preservation in corridors authorized by the Commission;
 - (d) manage monies of the fund; and
 - (e) administer repayment contracts with counties and municipalities.

R926-6-6. Procedure for the Awarding of Fund Monies.

Requests for monies shall be directed to the Council for review and prioritization based upon R926-6-4. The results of the evaluation of requests shall be forwarded to the Commission. The Commission shall review the recommendations of the Council as well as any other pertinent factors and approve, adjust, or reject the recommended expenditures in accordance with Section 72-2-117(4a).

R926-6-7. Repayment Conditions.

The Commission may determine a loan repayment schedule. All corridor preservation loans shall be paid back according to the approved loan repayment schedule or the earlier of: when the remainder of the right of way has been acquired; or when the project has been advertised for construction. If the commission determines an alignment for a transportation project is not feasible and property for the alignment was purchased under this program, the property shall be disposed of in accordance with Section 72-5-111. All loan repayments together with rents, lease proceeds, profits, and monies resulting from the sale of excess properties shall be returned to the fund.

KEY: transportation, transportation corridor preservation revolving loan fund, transportation planning, right of way February 22, 2007 72-2-117.7(c) Notice of Continuation November 29, 2006 72-2-117.10(a)