

R23. Administrative Services, Facilities Construction and Management.**R23-30. State Facility Energy Efficiency Fund.****R23-30-1. Purpose.**

This rule is for the purposes of:

(1) Conducting the responsibilities assigned to the State Building Board and the Division of Facilities Construction and Management in managing the State Facility Energy Efficiency Fund and implementing the associated revolving loan program established in Utah Code Section 63A-5-603; and

(2) Establishing requirements for eligibility for loans from the State Facility Energy Efficiency Fund, procedures for accepting, evaluating, and prioritizing applications for loans, and the terms and conditions for loans.

R23-30-2. Authority and Requirements for this Rule.

Pursuant to Utah Code Section 63A-5-603, the State Building Board shall make rules establishing criteria, procedures, priorities, conditions for the award of loans from the State Facility Energy Efficiency Fund and other requirements for the rule as specified in Section 63A-5-603.

R23-30-3. Definitions.

(1) "Board" means the State Building Board.

(2) "Energy cost payback" means the period of time, generally expressed in years, that is needed for the energy cost savings of an energy efficiency project to equal the cost of the energy efficiency project. It does not include the time-value of money and is sometimes referred to as simple payback.

(3) "Energy savings" means monies not expended by a state agency as the result of energy efficiency measures.

(4) "Fund" means the State Facility Energy Efficiency Fund under Section 63A-5-603.

(5) "Quarter" means a three month period beginning with one of the following dates: January 1, April 1, July 1, and October 1.

(6) "SBEEP" means the State Building Energy Efficiency Program, a program within the Division of Facilities Construction and Management, which is required by Section 63A-5-603 to serve as staff to the revolving loan program associated with the State Facilities Energy Efficiency Fund.

(7) "DFCM" means the Division of Facilities Construction and Management.

(8) "State Agency" means a state agency as defined in Section 63-9-67.

(9) "SBEEP Manager" means the designee of the DFCM Director that manages the SBEEP Program.

R23-30-4. Eligibility of Projects for Loans.

(1) Eligibility for loans from the Fund is limited to state agencies.

(2) Loans may be used only by state agencies to fully or partially finance energy efficiency projects within buildings owned and controlled by the state.

(3) For energy efficiency projects involving renovation, upgrade, or improvement of existing buildings, the following project measures may be eligible for loan financing from the Fund:

- (a) Building envelope improvements;
- (b) Increase or improvement in building insulation;
- (c) Lighting upgrades;
- (d) Lighting delamping;
- (e) Heating, ventilation, and air conditioning (HVAC) replacements or upgrades;
- (f) Improvements to energy control systems;
- (g) Other energy efficiency projects or programs that a state agency can demonstrate will result in a significant reduction in the consumption of energy; and
- (h) Renewable energy projects.

(4) There is no limit to the total number of loans a single state agency may receive from the Fund.

(5) An energy efficiency project is eligible for a loan only if the loan criteria is met, including an acceptable energy cost payback, all subject to approval by the Board.

R23-30-5. Eligible Costs.

(1) This Rule R23-30-5 defines the specific costs incurred by an energy efficiency project that may be eligible for financing from the Fund.

(2) The following direct costs of an energy efficiency project may be eligible for financing, subject to the remaining conditions of this section:

- (a) Building materials;
- (b) Doors and windows;
- (c) Mechanical systems and components including HVAC and hot water;
- (d) Electrical systems and components including lighting and energy management systems;
- (e) Labor necessary for the construction or installation of the energy efficiency project;
- (f) Design and planning of the energy efficiency project;
- (g) Energy audits that identify measures included in the energy efficiency project; and
- (h) Inspections or certifications necessary for implementing the energy efficiency project.

(3) The following costs are not eligible for financing from the Fund: The costs of a renovation project that are not directly related to energy efficiency measures;

(4) In cases for which the state agency receives a financial incentive or rebate from a utility or other third party for undertaking some or all of the measures in an energy efficiency project, such incentives or rebates are to be deducted from the costs that are eligible for financing from the Fund. No loans made from the Fund may exceed the final cost incurred by the state agency for the project after third party financing.

(5) For an energy efficiency project undertaken as part of the renovation of an existing building, building components or systems that are covered by the prescriptive requirements of the Utah Energy Code must exceed the minimum Utah Energy Code requirements in order for their costs to be eligible for a loan from the Fund. In addition, each project must comply with all applicable DFCM energy design requirements as well as all applicable codes, laws and regulations.

R23-30-6. Loan Application Process.

(1) The Board shall receive and evaluate applications for loans from the Fund. Notice of due dates for applications will be made available to state agencies no less than thirty (30) days in advance of the next scheduled Board meeting at which applications will be evaluated.

(2) State agencies interested in applying for a loan should first contact the SBEEP Manager. The SBEEP Manager will consult or meet with the state agency to make an initial assessment of the strength or weakness of a proposed project. The SBEEP Manager may also choose to conduct a site visit and inspection of the proposed project location prior to the submittal of an application and the state agency shall cooperate with the SBEEP Manager in making the relevant aspects of site available for such site visit and inspection. The SBEEP Manager may assist state agencies in assessing potential project measures and in preparing an application.

(3) Applications for loans will be made using forms developed by the SBEEP Manager. State agencies shall provide the following information on the forms developed by the SBEEP Manager and approved by the Board:

- (a) Name and location of the state agency;
- (b) Name and location of the building or buildings where the energy efficiency project will take place;

(c) A description of the building or buildings, including what the building is used for, seasonal variations in use, general construction of the building, and square footage;

(d) A description of the current energy usage of the building, including types and quantities of energy consumed, building systems, and the age of the building and the particular systems and condition;

(e) A description of the energy efficiency project to be undertaken, including specific measures to be undertaken, the cost or incremental cost of each measure, and the equipment or building materials to be installed;

(f) Projected or estimated energy savings that result from each measure undertaken as part of the project;

(g) Projected or estimated energy cost savings from each measure undertaken as part of the project;

(h) A description of how energy cost savings will be measured and verified as well as describing the commissioning procedures for the project;

(i) A description of any additional community or environmental benefits that may result from the project; and

(j) plans and specifications shall accompany the form which describes the proposed energy efficiency measures.

(4) Applications shall be received for the Board by the SBEEP Manager. The SBEEP Manager will conduct an initial review of each application. This initial review will be for the purpose of determining the completeness of the application, whether additional information is needed, provide advice on the likelihood that proposed projects, measures, and costs may be eligible for loan financing, and to assist the state agency in improving its application.

(5) When the SBEEP Manager has determined that an application is complete and that the proposed project complies with this rule, the application will be forwarded to the Board for its evaluation.

(6) The SBEEP Manager shall make a recommendation to the Board using the following criteria and scoring:

(a) The feasibility and practicality of the project (maximum 30 points);

(b) The projected energy cost payback period of the project (maximum 20 points);

(c) The energy cost savings attributable to eligible energy efficiency measures (maximum 30 points);

(d) The financial need of the agency for the loan including its financial condition (maximum 10 points);

(e) The environmental and other benefits to the state and local community attributable to the project (maximum 10 points);

(f) The availability of another source of funding may result in a reduction in the number of overall points in proportion to the likelihood of such other source of funding and the degree to which the source of other funding will fund the entire project. If the other source of funding is likely and funds the entire project, then the SBEEP Manager may recommend to the Board that the project is ineligible for funding and the Board may so determine;

(g) If there are matching funds from another source that is available for the project, the SBEEP Manager may add points to the overall score to the project in proportion to the likelihood that the matching funds will be available and the degree to which the matching funds applies to the entire project; and

(h) The SBEEP Manager may deduct points from the score of the entire project if the state agency has not used funds properly in the past, not performed the work properly in the past, not provided annual reports or access for inspections, any of which based on the degree of noncompliance.

Based upon the score as determined by the SBEEP Manager, the SBEEP Manager will make recommendations to the Board for the funding of energy efficiency projects. The SBEEP Manager may have the assistance of others with the

appropriate expertise assist with the review of the application. The SBEEP Manager and any others that assist the SBEEP Manager in scoring the application must disclose to the Board any conflicts of interest that exist in regard to the review of the application. For applications that receive an average score of less than 70 points, the SBEEP Manager shall recommend that the Board not provide a loan from the Fund. Applications receiving an average score over 70 will normally be recommended by the SBEEP Manager for funding. However, if the current balance of the fund does not permit for the funding of all projects with an average score over 70, the SBEEP Manager will recommend, beginning with the highest scoring application and working downward in score, those applications that may be funded given the current balance of the Fund.

(7) The SBEEP Manager provides advice and recommendations to the Board. The SBEEP Manager is not vested with the authority to make decisions regarding the public's business in connection with the Fund. The Board is the decision making authority with regard to the award of loans from the Fund.

(8) Based upon the SBEEP Manager's scoring, evaluations and recommendations, SBEEP will prepare a memorandum for the Board that will:

(a) Provide a brief description of each project reviewed by the SBEEP Manager;

(b) List the energy savings, energy cost savings, and cost payback for each project as estimated by the applicant;

(c) List the energy savings, energy cost savings, and cost payback for each project as estimated by the SBEEP technical specialist for the program;

(d) List the total score and the score for each evaluation criterion for each application;

(e) Specify projects recommended for funding and those not recommended for funding;

(f) Provide a brief explanation of the SBEEP Manager's rationale for each application that is not recommended for funding.

This memorandum is to be provided to each member of the Board no less than ten (10) calendar days prior to the next scheduled Board meeting at which applications will be evaluated.

(9) At its next scheduled meeting after the SBEEP Manager has submitted the recommendations to the Board, the Board will consider pending applications for loans from the Fund and will review the SBEEP Manager's recommendations for each project. The Board will also provide an opportunity for applicants and other interested persons to comment regarding the recommendations and information provided by the SBEEP Manager, the Board will then review and made determinations regarding the applications.

(10) When considering Loan applications, the Board may modify the dollar amount or project scope for which a loan is awarded if the Board determines that individual measures included in a project do not meet the requirements of this rule, are not cost effective, or that funds could better be used for funding of other projects.

(11) In reviewing energy efficiency measures for possible funding after receiving the report and recommendations of the SBEEP Manager and other testimony and documents provided to the Board, the Board shall:

(a) review the loan application and the plans and specifications for the energy efficiency measures;

(b) determine whether to grant the loan by applying the loan eligibility criteria; and

(c) if the loan is granted by the Board, prioritize the funding of the energy efficiency measures by applying the prioritization criteria.

(12) The Board may condition approval of a loan application and the availability of funds on assurances from the

state agency that the Board considers necessary to ensure that the state agency:

- (a) uses the proceeds to pay the cost of the energy efficiency measures; and
- (b) implements the energy efficiency measures.

R23-30-7. Loan Terms.

(1) The amount of a loan award approved by the Board represents a maximum approved project cost. The final value of any loan may vary from the Board-approved amount according to the actual incursion of costs by the state agency. In cases where costs have exceeded those presented in the initial application, a state agency may request that the Board increase its loan award, by filing a written request with the SBEEP Manager. The Board can approve or deny any such requests if good cause has been submitted by the state agency for such increase.

(2) After approval of a loan application by the Board, a state agency must complete the project in accordance with the construction schedule provided in the approved application for the energy efficiency project. If the state agency is unable to complete the project on time, prior to the deadline, the state agency may request an extension from the Board, by filing a written request with the SBEEP Manager, if good cause has been submitted by the state agency for such extension.

(3) Loan amounts from the Fund will be disbursed only upon documentation of actual costs incurred from the state agency during construction of the energy efficiency project.

(4) Once a project has been completed as determined by the SBEEP Manager, the state agency shall provide to the SBEEP Manager, documentation of actual costs incurred, such as invoices from contractors, as well as information on any third party financial incentives received. SBEEP will use this information to determine the actual cost of the project measures approved by the Board.

(5) The final loan amount will be equal to actual costs incurred for the project minus the value of any third party incentives received unless

(a) This amount exceeds the amount approved by the Board, in which case the loan amount will be set at the amount originally approved by the Board; or

(b) This amount exceeds the amount approved by the Board and the Board increases the loan award at the request of the state agency.

(6) The Board will establish repayment terms and interest rates.

(7) State Agencies that are approved by the Board for a loan award will enter into a contract with the Board that specifies all terms applying to the loan, including the terms specified in this rule and other contract terms deemed necessary by the Board to carry out the purposes of this rule. The Board may authorize the SBEEP Manager to execute the contract on its behalf. The SBEEP Manager shall thereafter provide a copy of the contract to the Board at its next available regular meeting after complete execution of the contract, in order that the Board be kept apprised of all contracts.

R23-30-8. Reporting and Site Visits.

(1) In the period between Board approval and project completion, the state agency shall complete and provide to the SBEEP Manager, a written report at the beginning of each calendar quarter. The report shall include information on the state agency's progress in completing the energy efficiency project, its most-current estimate for the time of project completion, and any notable problems or changes in the project since Board approval, such as construction delays or cost overruns.

(2) After loan funds have been disbursed, the state agency shall complete and provide to SBEEP annual reports due at the

beginning of the calendar quarter in which the anniversary of the loan disbursement occurs. This report shall include the following:

(a) A description of the performance of the building and of the performance of the measures included in the energy efficiency project;

(b) A description of any notable problems that have occurred with the building or the project;

(c) A description of any notable changes to the building or to its operations that would cause a significant change in its energy consumption;

(d) Copies of energy bills incurred for the building during the prior year such as electric and utility bills or shipping invoices for fuels such as fuel oil or propane;

(e) Documentation of energy consumed by the building in the prior year; and

(f) Other information requested by the SBEEP Manager or deemed important by the state agency.

Annual reports shall be provided for either the first four years after project completion or for each year of the repayment period, which is longer.

(3) Approximately one year after project completion, the SBEEP Manager will conduct a site visit to the location of the energy efficiency project to verify project completion and assess the success of the project. Additional site visits may also be conducted by the SBEEP Manager during the repayment period. Loan recipients will assist the SBEEP Manager with such site visits, including providing access to all components of the energy efficiency project.

**KEY: energy, efficiency, agencies, loans
November 10, 2008**

63A-5-603

R27. Administrative Services, Fleet Operations.**R27-7. Safety and Loss Prevention of State Vehicles.****R27-7-1. Authority.**

(1) This rule is established pursuant to Subsection 63A-9-401(1)(d)(iii) which requires the Division of Fleet Operations (DFO) to make rules establishing requirements for fleet safety and loss prevention programs.

R27-7-2. Accident Reporting and Liability.

(1) In the event of an accident involving a state vehicle, either the driver of the vehicle or the employing agency shall notify DFO, the Division of Risk Management, and the agency's management, within 24 hours of the occurrence of the accident.

R27-7-3. Driver Eligibility to Operate a State Vehicle.

(1) The authority to operate a state vehicle is subject to withdrawal, suspension or revocation.

(2) The authority to operate a state vehicle shall be automatically withdrawn, suspended or revoked in the event that an authorized driver's license is not in a valid status.

(a) The authority to operate a state vehicle shall, at a minimum, be withdrawn, suspended or revoked for the period of denial, cancellation, disqualification, suspension or revocation of the authorized driver's license.

(b) The authority to operate a state vehicle shall not be reinstated until such time as the individual provides proof that his or her driver license has been reinstated or DFO verifies the license has been reinstated.

(3) The authority to operate a state vehicle shall be suspended or revoked for up to three years by the Driver Eligibility Board for any of the following reasons:

(a) The authorized driver, while acting within the scope of employment, has been involved in 3 or more preventable accidents during a three (3) year period; or

(b) The authorized driver has 4 or more moving violations within a 12 month period; or

(c) The authorized driver, has been convicted of any of the following Utah "ACD" codes:

(i) A33 - Violation of controlled substance laws; or

(ii) B23 - Driving while denied; or

(iii) B25 - Driving on revocation; or

(iv) B26 - Driving while suspended; or

(v) M84 - Reckless driving; or

(vi) S95 - Speed contest(racing) on road open to traffic prior to 5/1/2006; or

(vii) S95 - Speed contest (racing)(1st 60 days-2ndw/1 3 yrs 90 days); or

(viii) U01 - Fleeing or evading police or roadblock; or

(ix) U05 - Using a motor vehicle to aid and abet a felon;

or

(x) U31 - Violation resulting in fatal accident; or

(xi) MEC - Driving under the influence of drugs metabolite (MEC); or

(xii) A35 - Possession of open alcohol container - send as A type record if amended from DUI - otherwise FTA/FTC only;

or

(xiii) B02 - Hit and run/fatal; or

(xiv) B03 - Hit and run - injury; or

(xv) B04 - Hit and run - property damage/regular operator;

or

(xvi) ARD - Alcohol Restricted Driver; or

(xvii) A08 - DUI of alcohol with BAC at or over .08; or

(xviii) A08 - Driving under the influence alcohol and drugs; or

(xix) A08 - Driving under the influence w/impaired; or

(xx) A08 - Driving under the influence w/personal injury;

or

(xxi) A08 - Driving under the influence w/minor in vehicle; or

(xxii) A08 - Driving under the influence in a CMV; or

(xxiii) A25 - Impaired Driving; or

(xxiv) A41 - Any Violation of ignition interlock device under 41-6a-518; or

(xxv) A50 - Motor vehicle used in the commission of a felony involving the manufacturing, distributing or dispensing a controlled substance; or

(xxvi) ACL - Violation alcohol conditional license; or

(xxvii) B01 - Hit and Run/failure to stop render aid/property damage/comm only; or

(xxviii) B14 - Failure to reveal identity after fatal accident - commercial only; or

(xxix) B23 - Driving while denied/CMV; or

(xxx) B24 - Driving CMV while disqualified/CMV; or

(xxxii) B25 - Driving on revocation/CMV; or

(xxxii) B26 - Driving while suspended/CMV; or

(xxxiii) IID - Ignition interlock device violation - (result in 1 yr revocation); or

(xxxiv) M8A - Alcohol related reckless driving; or

(xxxv) U03 - Felony with a vehicle (joy riding) criminal class required; or

(xxxvi) U07 - Vehicular homicide/regular or CMV; or

(xxxvii) U08 - Vehicular manslaughter/CMV; or

(xxxviii) USV - Shooting gun from a vehicle/Criminal class required(felony only); or

(xxxix) U09 - Negligent homicide while operating a CMV; or

(xl) UIV - Throwing incendiary device f/vehicle/criminal class required; or

(xli) U10 - Causing a fatality through the negligent operation of a CMV

(d) The authorized driver has 150 or more points on his or her Utah driver's license record

(e) The unauthorized use, misuse, abuse or neglect of a state vehicle as validated by the Agency; or

(f) On the basis of citizen complaints validated by the agency, the authorized driver, while acting within the scope of employment has been found, pursuant to 63A-9-501, to have misused or illegally operated a vehicle three (3) times during a three (3) year period.

(4) The withdrawal of authority to operate a state vehicle imposed by the Driver Eligibility Board shall be in addition to agency-imposed discipline, corrective or remedial action, if any.

(5) Drivers declared ineligible to operate a state vehicle by the Driver Eligibility Board may appeal to the Director of the Department of Administrative Services (DAS) or his/her designee. Any appeal to the Executive Director of DAS or his/her designee must be made in writing within 30 days from the date the Driver Eligibility Board declared a state driver ineligible to operate a vehicle.

(6) Effective Date

(a) Phase in - current state employees shall be subjected to R27-7-3(3) as of the effective date of the rules as published by the Division of Administrative Rules.

(b) State employees hired after the effective date of this administrative rule will be subject to the Driver Eligibility standards in R27-7-3(3) for three years previous to the hire date.

R27-7-4. Accident Review Committee (ARC).

(1) Each agency leasing vehicles from the Division of Fleet Operations shall establish and maintain an Accident Review Committee (ARC). Each agency ARC shall conduct at least quarterly reviews of all accidents involving state vehicles under the possession or control of their respective agencies.

(2) The purpose of the ARC is to reduce the number of accidents involving drivers of vehicles being used in the course of conducting state business.

(3) After DFO has made an initial determination regarding the status of an accident the agency ARC shall determine,

through a review process, whether an accident was either preventable or non-preventable, using standards published by the National Safety Council.

(4) Each agency ARC shall, within one (1) calendar month following the last day of the quarter (March, June, September, December), provide to DFO, in writing, its determination and recommended actions, if any, as well as all evidence used to arrive at its determination as to whether the accident was preventable or non-preventable.

(5) If an agency ARC does not send the quarterly accident reviews as specified in R27-7-4(4), the status of the accident will be reviewed by the Driver Eligibility Board on behalf of the agency ARC. The Driver Eligibility Board's decision about the status any vehicle accident will be final. The Driver Eligibility Board may recommend disciplinary actions for agency drivers to the agency when it is acting on behalf of the agency ARC.

R27-7-5. Accident Review Committee Guidelines.

(1) The ARC shall have no less than three (3) voting members. The members shall be from different areas in the agency.

(2) An accident shall be classified as preventable if any of the following factors are involved:

- (a) Driving too fast for conditions;
- (b) Failure to observe clearance;
- (c) Failure to yield;
- (d) Failure to properly lock the vehicle;
- (e) Following too closely;
- (f) Improper care of the vehicle;
- (g) Improper backing;
- (h) Improper parking;
- (i) Improper turn or lane change;
- (j) Reckless Driving as defined in Utah Code 41-6-45;
- (k) Unsafe driving practices, including but not limited to:

the use of electronic equipment or cellular phone while driving, smoking while driving, personal grooming, u-turn, driving with an animal(s) loose in the vehicle.

(3) An accident shall be classified as non-preventable when:

- (a) The state vehicle is struck while properly parked;
- (b) The state vehicle is vandalized while parked at an authorized location;
- (c) The state vehicle is an emergency vehicle, and
 - (i) At the time of the accident the operator was in the line of duty and operating the vehicle in accordance with their respective agency's applicable policies, guidelines or regulations; and
 - (ii) Damage to the vehicle occurred during the chase or apprehension of people engaged in or potentially engaged in unlawful activities; or
 - (iii) Damage to the vehicle occurred in the course of responding to an emergency in order to save or protect the lives, property, health, welfare and safety of the public.

R27-7-6. Effects of ARC Accident Classification.

(1) In the event that an accident is determined by the ARC to be preventable, the ARC shall impose and enforce the following:

- (a) The authorized driver shall be required to attend a Division of Risk Management-approved driver safety program after being involved in the first preventable accident;
- (b) The driver shall be required to attend, at their own expense, a state certified or nationally recognized defensive driving course after being involved in a second preventable accident.

R27-7-7. Driver Eligibility Board.

(1) The Driver Eligibility Board (DEB) shall have at least 4 voting members. Members of the Board shall include a

representative from the Division of Risk Management, the Division of Fleet Operations, the Department of Human Resource Management and, a representative of the employee's agency. Each member of the Board will be assigned by the Executive Director of the Department of Administrative Services.

(2) The Driver Eligibility Board shall meet at least quarterly.

(3) The employing agency supervisor and the state driver being reviewed shall be notified of the Driver Eligibility Board's meeting place, date and time. Each state employee reviewed by the Driver Eligibility Board will be given the opportunity to speak to the Board and/or answer questions during the meeting if he or she chooses to attend the Board meeting.

(4) The Driver Eligibility Board may impose an ineligible status from a single day up to three years. In no case shall the ineligible status to operate a state vehicle be less than the period imposed by the courts or the employing agency.

**KEY: accidents, incidents, tickets, ARC
November 11, 2008 63A-9-401(1)(d)(iii)
Notice of Continuation January 20, 2006**

R152. Commerce, Consumer Protection.**R152-32a. Pawnshop and Secondhand Merchandise Transaction Information Act Rules.****R152-32a-1. Authority.**

These rules are promulgated pursuant to Utah Code 13-2-5(1) and 13-32a-102.5(1) to facilitate the orderly administration of the Pawnshop and Secondhand Merchandise Transaction Information Act, Utah Code Title 13, Section 32a.

R152-32a-2. Exempt Businesses.

In accordance with Section 13-32a-102(19)(b)(ii), the definition of "Secondhand merchandise dealer" does not include:

- (1) Scrap metal processors as defined by Section 76-10-901(4);
- (2) Dealers of used appliances; and
- (3) Dealers of used furniture.

KEY: pawnshops, consumer protection, second hand merchandise dealer

November 4, 2008

**13-2-5
13-32a-102(19)**

R156. Commerce, Occupational and Professional Licensing.**R156-5a. Podiatric Physician Licensing Act Rule.****R156-5a-101. Title.**

This rule is known as the "Podiatric Physician Licensing Act Rule".

R156-5a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 5a, as used in Title 58, Chapters 1 and 5a or this rule:

(1) "Recognized residency program" as used in Subsection 58-5a-302(5) means a residency program that is accredited by the Council on Podiatric Medical Education.

(2) "Recognized school" as used in Subsection 58-5a-306(2) means a school that is accredited by the Council on Podiatric Medical Education.

R156-5a-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 5a.

R156-5a-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.

R156-5a-302a. Qualifications for Licensure - Education Requirements.

In accordance with Subsections 58-1-203(1) and 58-1-301(3), the postgraduate training requirements for licensure in Section 58-5a-302 is defined, clarified, or established as requiring each applicant to have successfully completed at least 12 months of postgraduate training in a residency program that was accredited by the Council on Podiatric Medical Education of the American Podiatric Medical Association at the time the applicant received that training.

R156-5a-302b. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-1-203(1) and 58-1-301(3), the examination requirements for licensure in Section 58-5a-302 are established as follows:

(a) the National Board of Podiatric Medical Examiners examination;

(b) the Podiatric Medicine Licensing examination (PMLexis); and

(c) the Utah Podiatric law examination.

(2) To be eligible to sit for the PMLexis, an applicant must submit the following to the Division:

(a) an application for licensure as a podiatric physician;

(b) licensing application fee;

(c) a transcript indicating completion of an approved podiatric program; and

(d) a copy of the test application submitted to PMLexis.

R156-5a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1)(a), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 5a is established by rule in Section R156-1-308.

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

R156-5a-304. Continuing Education.

(1) There is hereby established a continuing professional education requirement for all individuals licensed under Title 58, Chapter 5a.

(2) During each two year period commencing on September 30 of each even numbered year, a licensee shall be required to complete not less than 40 hours of qualified

professional education directly related to the licensee's professional clinical practice.

(3) The required number of hours of professional education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period year preceding the date on which that individual first became licensed.

(4) Qualified professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a podiatric physician;

(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; or

(f) be sponsored or approved by the following:

(i) one of the organizations listed in Subsection 58-5a-304(3); or

(ii) the American Podiatric Medical Association.

(5) Credit for professional education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for professional education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences;

(b) a maximum of 40 hours per two year period may be recognized for teaching in a college or university or teaching qualified professional education courses in the field of podiatry;

(c) a maximum of ten hours per two year period may be recognized for clinical readings directly related to practice as a podiatric physician.

(6) A licensee shall be responsible for maintaining competent records of completed qualified professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified professional education to demonstrate it meets the requirements under this section.

(7) A licensee who documents 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.

R156-5a-305. Radiology Course for Unlicensed Podiatric Assistants.

In accordance with Subsection 58-54-4.3(3), radiology courses for an unlicensed person performing services under the supervision of a podiatric physician shall include radiology theory consisting of the following:

(1) orientation of radiation technology;

(2) terminology;

(3) radiographic podiatric anatomy and pathology (cursory);

(4) radiation physics (basic);

(5) radiation protection to patient and operator;

(6) radiation biology including interaction of ionizing radiation on cells and tissues and matter;

(7) factor influencing biological response to cells and tissues to ionizing radiation and cumulative effects of x-

R156. Commerce, Occupational and Professional Licensing.**R156-17b. Pharmacy Practice Act Rule.****R156-17b-101. Title.**

This rule is known as the "Pharmacy Practice Act Rule".

R156-17b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 17b, as used in Title 58, Chapters 1 and 17b or this rule:

(1) "ACPE" means the American Council on Pharmaceutical Education or Accreditation Council for Pharmacy Education.

(2) "Analytical laboratory":

(a) means a facility in possession of prescription drugs for the purpose of analysis; and

(b) does not include a laboratory possessing prescription drugs used as standards and controls in performing drug monitoring or drug screening analysis if the prescription drugs are pre-diluted in a human or animal body fluid, human or animal body fluid components, organic solvents, or inorganic buffers at a concentration not exceeding one milligram per milliliter when labeled or otherwise designated as being for in-vitro diagnostic use.

(3) "Authorized distributor of record" means a pharmaceutical wholesaler with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drugs. An ongoing relationship is deemed to exist between such pharmaceutical wholesaler and a manufacturer, as defined in Section 1504 of the Internal Revenue Code, when the pharmaceutical wholesaler has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship, and the pharmaceutical wholesaler is listed on the manufacturer's current list of authorized distributors of record.

(4) "Authorized personnel" means any person who is a part of the pharmacy staff who participates in the operational processes of the pharmacy and contributes to the natural flow of pharmaceutical care.

(5) "Central Order Entry" means a pharmacy where functions are performed at the request of another pharmacy to perform processing functions such as dispensing, drug review, refill authorizations, and therapeutic interventions.

(6) "Chain pharmacy warehouse" means a physical location for prescription drugs that acts as a central warehouse and performs intracompany sales or transfers of the prescription drugs to a group of chain pharmacies that have the same common ownership and control.

(7) "Co-licensed partner or product" means an instance where two or more parties have the right to engage in the manufacturing and/or marketing of a prescription drug, consistent with FDA's implementation of the Prescription Drug Marketing Act.

(8) "Cooperative pharmacy warehouse" means a physical location for drugs that acts as a central warehouse and is owned, operated or affiliated with a group purchasing organization (GPO) or pharmacy buying cooperative and distributes those drugs exclusively to its members.

(9) "Counterfeit prescription drug" has the meaning given that term in 21 USC 321(g)(2), including any amendments thereto.

(10) "Counterfeiting" means engaging in activities that create a counterfeit prescription drug.

(11) "Dispense", as defined in Subsection 58-17b-102(23), does not include transferring medications for a patient from a legally dispensed prescription for that particular patient into a daily or weekly drug container to facilitate the patient taking the correct medication.

(12) "Drop shipment" means the sale of a prescription drug to a pharmaceutical wholesaler by the manufacturer of the drug; by the manufacturer's co-licensed product partner, third party

logistics provider, or exclusive distributor; or by an authorized distributor of record that purchased the product directly from the manufacturer or from one of these entities; whereby:

(a) the pharmaceutical wholesale distributor takes title to but not physical possession of such prescription drug;

(b) the pharmaceutical wholesale distributor invoices the pharmacy, pharmacy warehouse, or other person authorized by law to dispense to administer such drug; and

(c) the pharmacy, pharmacy warehouse, or other person authorized by law to dispense or administer such drug receives delivery of the prescription drug directly from the manufacturer; from the co-licensed product partner, third party logistics provider, or exclusive distributor; or from an authorized distributor of record that purchases the product directly from the manufacturer or from one of these entities.

(13) "Drug therapy management" means the review of a drug therapy regimen of a patient by one or more pharmacists for the purpose of evaluating and rendering advice to one or more practitioners regarding adjustment of the regimen.

(14) "Drugs", as used in this rule, means drugs or devices.

(15) "FDA" means the United States Food and Drug Administration and any successor agency.

(16) "High-risk, medium-risk, and low-risk drugs" refers to the risk to a patient's health from compounding sterile preparations, as referred to in USP-NF Chapter 797, for details of determining risk level.

(17) "Hospice facility pharmacy" means a pharmacy that supplies drugs to patients in a licensed healthcare facility for terminal patients.

(18) "Hospital clinic pharmacy" means a pharmacy that is located in an outpatient treatment area where a pharmacist or pharmacy intern is compounding, admixing, or dispensing prescription drugs, and where:

(a) prescription drugs or devices are under the control of the pharmacist, or the facility for administration to patients of that facility;

(b) prescription drugs or devices are dispensed by the pharmacist or pharmacy intern; or

(c) prescription drugs are administered in accordance with the order of a practitioner by an employee or agent of the facility.

(19) "Legend drug" or "prescription drug" means any drug or device that has been determined to be unsafe for self-medication or any drug or device that bears or is required to bear the legend:

(a) "Caution: federal law prohibits dispensing without prescription";

(b) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(c) "Rx only".

(20) "Maintenance medications" means medications the patient takes on an ongoing basis.

(21) "Manufacturer's exclusive distributor" means an entity that contracts with a manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the drug's sale or disposition. Such manufacturer's exclusive distributor must be licensed as a pharmaceutical wholesaler under this chapter and be an "authorized distributor of record" to be considered part of the "normal distribution channel".

(22) "MPJE" means the Multistate Jurisprudence Examination.

(23) "NABP" means the National Association of Boards of Pharmacy.

(24) "NAPLEX" means North American Pharmacy Licensing Examination.

(25) "Normal distribution channel" means a chain of

custody for a prescription drug that goes directly, by drop shipment as defined in Subsection (12), or via intracompany transfer from a manufacturer; or from the manufacturer's co-licensed partner, third-party logistics provider, or the exclusive distributor to:

(a) a pharmacy or other designated persons authorized under this chapter to dispense or administer prescription drugs to a patient;

(b) a chain pharmacy warehouse that performs intracompany sales or transfers of such drugs to a group of pharmacies under common ownership and control;

(c) a cooperative pharmacy warehouse to a pharmacy that is a member of the pharmacy buying cooperative or GPO to a patient;

(d) an authorized distributor of record, and then to either a pharmacy or other designated persons authorized under this chapter to dispense or administer such drug for use by a patient;

(e) an authorized distributor of record, and then to a chain pharmacy warehouse that performs intracompany sales or transfers of such drugs to a group of pharmacies under common ownership and control; or

(f) an authorized distributor of record to another authorized distributor of record to a licensed pharmaceutical facility or a licensed healthcare practitioner authorized under this chapter to dispense or administer such drug for use by a patient.

(26) "Parenteral" means a method of drug delivery injected into body tissues but not via the gastrointestinal tract.

(27) "Pedigree" means a document or electronic file containing information that records each distribution of any given prescription drug.

(28) "Prescription files" means all hard-copy and electronic prescriptions that includes pharmacist notes or technician notes, clarifications or information written or attached that is pertinent to the prescription.

(29) "PTCB" means the Pharmacy Technician Certification Board.

(30) "Qualified continuing education", as used in this rule, means continuing education that meets the standards set forth in Section R156-17b-309.

(31) "Refill" means to fill again.

(32) "Repackage" means repackaging or otherwise changing the container, wrapper, or labeling to further the distribution of a prescription drug, excluding that completed by the pharmacist responsible for dispensing the product to a patient.

(33) "Reverse distributor" means a person or company that retrieves unusable or outdated drugs from a pharmacy or pharmacist for the purpose of removing those drugs from stock and destroying them.

(34) "Sterile products preparation facility" means any facility, or portion of the facility, that compounds sterile products using aseptic technique.

(35) "Third party logistics provider" means anyone who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution, or other similar services on behalf of a manufacturer, but does not take title to the prescription drug or have any authoritative control over the prescription drug's sale. Such third party logistics provider must be licensed as a pharmaceutical wholesaler under this chapter and be an "authorized distributor of record" to be considered part of the "normal distribution channel".

(36) "Unauthorized personnel" means any person who is not participating in the operational processes of the pharmacy who in some way would interrupt the natural flow of pharmaceutical care.

(37) "Unit dose" means the ordered amount of a drug in a dosage form prepared for a one-time administration to an individual and indicates the name, strength, lot number and

expiration date for the drug.

(38) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 17b, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-17b-502.

(39) "USP-NF" means the United States Pharmacopeia-National Formulary (USP 31-NF 26), 2008 edition, which is official from May 1, 2008 through Supplement 2, dated December 1, 2007, which is hereby adopted and incorporated by reference.

(40) "Wholesaler" means a wholesale distributor who supplies or distributes drugs or medical devices that are restricted by federal law to sales based on the order of a physician to a person other than the consumer or patient.

(41) "Wholesale distribution" means the distribution of drugs to persons other than consumers or patients, but does not include:

(a) intracompany sales or transfers;

(b) the sale, purchase, distribution, trade, or other transfer of a prescription drug for emergency medical reasons, as defined under 21 CFR 203.3(m), including any amendments thereto;

(c) the sale, purchase, or trade of a drug pursuant to a prescription;

(d) the distribution of drug samples;

(e) the return or transfer of prescription drugs to the original manufacturer, original wholesale distributor, reverse distributor, or a third party returns processor;

(f) the sale, purchase, distribution, trade, or transfer of a prescription drug from one authorized distributor of record to one additional authorized distributor of record during a time period for which there is documentation from the manufacturer that the manufacturer is able to supply a prescription drug and the supplying authorized distributor of record states in writing that the prescription drug being supplied had until that time been exclusively in the normal distribution channel;

(g) the sale, purchase or exchange of blood or blood components for transfusions;

(h) the sale, transfer, merger or consolidation of all or part of the business of a pharmacy;

(i) delivery of a prescription drug by a common carrier; or

(j) other transactions excluded from the definition of "wholesale distribution" under 21 CFR 203.3 (cc), including any amendments thereto.

R156-17b-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 17b.

R156-17b-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.

R156-17b-105. Licensure - Administrative Inspection.

In accordance with Subsection 58-17b-103(3)(e), the procedure for disposing of any drugs or devices seized by the Division during an administrative inspection will be handled as follows:

(1) Any legal drugs or devices found and temporarily seized by the Division and are found to be in compliance with this chapter will be returned to the pharmacist-in-charge of the pharmacy involved at the conclusion of any investigative or adjudicative proceedings and appeals.

(2) Any drugs or devices that are temporarily seized by the Division and are found to be unlawfully possessed, adulterated, misbranded, outdated, or otherwise in violation of this rule shall be destroyed by Division personnel at the conclusion of any investigative or adjudicative proceedings and appeals. The destruction of any seized controlled substance drugs will be witnessed by two Division individuals. A controlled substance

destruction form will be completed and retained by the Division.

(3) An investigator may, upon determination that the violations observed are of a nature that pose an imminent peril to the public health, safety and welfare, recommend to the Division Director to issue an emergency licensure action, such as cease and desist.

R156-17b-301. Pharmacist Licensure Classifications - Pharmacist-in-Charge Requirements.

In accordance with Subsection 58-17b-302(4), the classification of pharmacies holding licenses are clarified as:

(1) Class A pharmacy includes all retail operations located in Utah and requires a pharmacist-in-charge.

(2) Class B pharmacy includes an institutional pharmacy that provides services to a target population unique to the needs of the healthcare services required by the patient. All Class B pharmacies require a pharmacist-in-charge except for pharmaceutical administration facilities and methadone clinics. Examples of Class B pharmacies include:

- (a) closed door;
- (b) hospital clinic pharmacy;
- (c) methadone clinics;
- (d) nuclear;
- (e) branch;
- (f) hospice facility pharmacy;
- (g) veterinarian pharmaceutical facility;
- (h) pharmaceutical administration facility; and
- (i) sterile product preparation facility.

(j) A retail pharmacy that prepares sterile products does not require a separate license as a Class B pharmacy.

(3) Class C pharmacy includes pharmacies located in Utah that are involved in:

- (a) manufacturing;
- (b) producing;
- (c) wholesaling;
- (d) distributing; and
- (e) reverse distributing.

(4) Class D pharmacy includes pharmacies located outside the state of Utah. Class D pharmacies require a pharmacist-in-charge licensed in the state where the pharmacy is located and include Out-of-state mail order pharmacies. Facilities that have multiple locations must have licenses for each facility and every component part of a facility.

(5) Class E pharmacy includes those pharmacies that do not require a pharmacist-in-charge and include:

- (a) medical gases providers;
- (b) analytical laboratories
- (c) durable medical equipment providers; and
- (d) central order entry pharmacies.

(6) All pharmacy licenses will be converted to the appropriate classification by the Division as identified in Section 58-17b-302.

(7) Each Class A and each Class B pharmacy required to have a pharmacist-in-charge shall have one pharmacist-in-charge who is employed on a full-time basis as defined by the employer, who acts as a pharmacist-in-charge for one pharmacy. However, the pharmacist-in-charge may be the pharmacist-in-charge of more than one Class A pharmacy, if the additional Class A pharmacies are not open to provide pharmacy services simultaneously.

(8) The pharmacist-in-charge shall comply with the provisions of Section R156-17b-603.

R156-17b-302. Licensure - Examinations.

(1) In accordance with Subsection 58-17b-303(1)(h), the examinations that must be successfully passed by an applicant for licensure as a pharmacist are:

(a) the NAPLEX with a passing score as established by NABP; and

(b) the Multistate Pharmacy Jurisprudence Examination(MPJE) with a minimum passing score as established by NABP.

(2) In accordance with Subsection 58-17b-303(3)(j), an applicant applying by endorsement is required to pass the MPJE.

(3) In accordance with Subsection 58-17b-305(1)(g), the examinations which must be passed by an applicant applying for licensure as a pharmacy technician are:

(a) the Utah Pharmacy Technician Law and Rule Examination with a passing score of at least 75 and taken within six months prior to making application for licensure; and

(b) the National Pharmacy Technician Certification Board Examination, or equivalent certifying body, with a passing score as established by the certifying body. The certificate must exhibit a valid date and that the certification is active.

R156-17b-303. Licensure - Pharmacist by Endorsement.

(1) In accordance with Subsections 58-17b-303(3) and 58-1-301(3), an applicant for licensure as a pharmacist by endorsement shall apply through the "Licensure Transfer Program" administered by NABP.

(2) An applicant for licensure as a pharmacist by endorsement does not need to provide evidence of intern hours if that applicant has:

(a) lawfully practiced as a licensed pharmacist a minimum of 2000 hours in the four years immediately preceding application in Utah;

(b) obtained sufficient continuing education credits required to maintain a license to practice pharmacy in the state of practice; and

(c) not had a pharmacist license suspended, revoked, canceled, surrendered, or otherwise restricted for any reason in any state for ten years prior to application in Utah, unless otherwise approved by the Division in collaboration with the Board.

R156-17b-304. Licensure - Education Requirements.

(1) In accordance with Subsections 58-17b-303(2) and 58-17b-304(7)(c), the credentialing agency recognized to provide certification and evaluate equivalency of a foreign educated pharmacy graduate is the Foreign Pharmacy Graduate Examination Committee of the National Association of Boards of Pharmacy Foundation, or an equivalent credentialing agency as approved by the Division.

(2) In accordance with Subsection 58-17b-304(6), an applicant for a pharmacy intern license shall demonstrate that he meets one of the following education criteria:

(a) current admission in a College of Pharmacy accredited by the ACPE by written verification from the Dean of the College; or

(b) a graduate degree from a school or college of pharmacy which is accredited by the ACPE; or

(c) a graduate degree from a foreign pharmacy school as established by a certificate of equivalency from an approved credentialing agency defined in Subsection (1).

(3) In accordance with Subsection 58-17b-305(1)(f), a pharmacy technician must complete an approved program of education and training that meets the following standards:

(a) The didactic training program must be approved by the Division in collaboration with the Board and must address, at a minimum, the following topics:

- (i) legal aspects of pharmacy practice including federal and state laws and rules governing practice;
- (ii) hygiene and aseptic techniques;
- (iii) terminology, abbreviations and symbols;
- (iv) pharmaceutical calculations;
- (v) identification of drugs by trade and generic names, and therapeutic classifications;

(vi) filling of orders and prescriptions including packaging and labeling;

(vii) ordering, restocking, and maintaining drug inventory;

(viii) computer applications in the pharmacy; and

(ix) non-prescription products including cough and cold, nutritional, analgesics, allergy, diabetic testing supplies, first aid, ophthalmic, family planning, foot, feminine hygiene, gastrointestinal preparations, and pharmacy care over-the-counter drugs, except those over-the-counter drugs that are prescribed by a practitioner.

(b) This training program's curriculum and a copy of the final examination shall be submitted to the Division for approval by the Board prior to starting any training session with a pharmacy technician in training. The final examination must include questions covering each of the topics listed in Subsection (3)(a) above.

(c) Approval must be granted by the Division in collaboration with the Board before a student may start a program of study. An individual who completes a non-approved program is not eligible for licensure.

(d) The training program must require at least 180 hours of practical training supervised by a licensed pharmacist in good standing with the Division and must include written protocols and guidelines for the teaching pharmacist outlining the utilization and supervision of pharmacy technicians in training that includes:

(i) the specific manner in which supervision will be completed; and

(ii) an evaluative procedure to verify the accuracy and completeness of all acts, tasks and functions performed by the pharmacy technician in training.

(e) An individual must complete an approved training program and successfully pass the required examinations as listed in Subsection R156-17b-302(3) within one year from the date of the first day of the training program, unless otherwise approved by the Division in collaboration with the Board.

(i) An individual who has completed an approved program, but did not seek licensure within the one year time frame must complete a minimum of 180 hours of refresher practice in a pharmacy approved by the board if it has been more than six months since having exposure to pharmacy practice.

(ii) An individual who has been licensed as a pharmacy technician but allowed that license to expire for more than two years and wishes to renew that license must complete a minimum of 180 hours of refresher hours in an approved pharmacy under the direct supervision of a pharmacist.

(iii) An individual who has completed an approved program, but is awaiting the results of the required examinations may practice as a technician-in-training under the direct supervision of the pharmacist for a period not to exceed three months. If the individual fails the examinations, that individual can no longer work as a technician-in-training while waiting to retake the examinations. The individual shall work in the pharmacy only as supportive personnel.

(4) An applicant for licensure as a pharmacy technician is deemed to have met the qualification for licensure in Subsection 58-17b-305(f) if the applicant:

(a) is currently licensed and in good standing in another state and has not had any adverse action taken on that license;

(b) has engaged in the practice as a pharmacy technician for a minimum of 1,000 hours in that state within the past two years or equivalent experience as approved by the Division in collaboration with the Board; and

(c) has passed and maintained current the PTCB certification or a Board approved equivalent and passed the Utah law exam.

R156-17b-306. Licensure - Pharmacist - Pharmacy Internship Standards.

(1) In accordance with Subsection 58-17b-303(1)(g), the standards for the pharmacy internship required for licensure as a pharmacist include the following:

(a) At least 1500 hours of practice supervised by a pharmacy preceptor shall be obtained in Utah or another state or territory of the United States, or a combination of both.

(i) Internship hours completed in Utah shall include at least 360 hours but not more than 900 hours in a college coordinated practical experience program as an integral part of the curriculum which shall include a minimum of 120 hours in each of the following practices:

(A) community pharmacy;

(B) institutional pharmacy; and

(C) any clinical setting.

(ii) Internship hours completed in another state or territory of the United States shall be accepted based on the approval of the hours by the pharmacy board in the jurisdiction where the hours were obtained.

(b) Evidence of completed internship hours shall be documented to the Division by the pharmacy intern at the time application is made for a Utah pharmacist license.

(c) Pharmacy interns participating in internships may be credited no more than 50 hours per week of internship experience.

(d) No credit will be awarded for didactic experience.

(2) If a pharmacy intern is suspended or dismissed from an approved College of Pharmacy, the intern must notify the Division within 15 days of the suspension or dismissal.

(3) If a pharmacy intern ceases to meet all requirements for intern licensure, he shall surrender his pharmacy intern license to the Division within 60 days unless an extension is required and granted by the Division in collaboration with the Board.

(4) In accordance with Subsections 58-17b-102(50), to be an approved preceptor, a pharmacist must meet the following criteria:

(a) hold a Utah pharmacist license that is active and in good standing;

(b) have been engaged in active practice as a licensed pharmacist for not less than two years in any jurisdiction;

(c) is not currently under any sanction nor has been under any sanction at any time which when considered by the Division and the Board would be of such a nature that the best interests of the intern and the public would not be served.

(d) shall provide direct, on-site supervision to only one pharmacy intern during a working shift; and

(e) refer to the intern training guidelines as outlined in the Pharmacy Coordinating Council of Utah Internship Competencies, October 12, 2004, as information about a range of best practices for training interns.

R156-17b-307. Licensure - Meet with the Board.

In accordance with Subsections 58-1-202(1)(d) and 58-1-301(3), an applicant for licensure under Title 58, Chapter 17b may be required to meet with the State Board of Pharmacy for the purpose of evaluating the applicant's qualifications for licensure.

R156-17b-308. 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 17b is established by rule in Section R156-1-308a.

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

(3) An intern license may be extended upon the request of the licensee and approval by the Division under the following conditions:

(a) the intern applied to the Division for a pharmacist license and to sit for the NAPLEX and MJPE examinations

within three calendar months after obtaining full certification from the Foreign Pharmacy Graduate Equivalency Commission; or

(b) the intern lacks the required number of internship hours for licensure.

(c) An individual must pass the NAPLEX and MJPE examinations and seek licensure as a pharmacist within six months of graduation and receipt of a degree from a school or college of pharmacy which is accredited by the ACPE. An internship license will not be extended beyond the six month time frame from graduation and receipt of a degree.

(4) The extended internship hours shall be under the direct supervision of a preceptor who meets the criteria established in R156-17b-306(4).

R156-17b-309. Continuing Education.

(1) In accordance with Section 58-17b-310 and Subsections 58-1-203(1)(g) and 58-1-308(3)(b), there is created a requirement for continuing education as a condition for renewal or reinstatement of a pharmacist or pharmacy technician license issued under Title 58, Chapter 17b.

(2) Requirements shall consist of the following number of qualified continuing education hours in each preceding renewal period:

- (a) 30 hours for a pharmacist; and
- (b) 20 hours for a pharmacy technician.

(3) The required number of hours of qualified continuing professional education for an individual who first becomes licensed during the two year renewal cycle shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(4) Qualified continuing professional education hours shall consist of the following:

(a) for pharmacists:

(i) institutes, seminars, lectures, conferences, workshops, various forms of mediated instruction, and programmed learning courses, presented by an institution, individual, organization, association, corporation or agency that has been approved by ACPE;

(ii) programs approved by health-related continuing education approval organizations provided the continuing education is nationally recognized by a healthcare accrediting agency and the education is related to the practice of pharmacy; and

(iii) programs of certification by qualified individuals, such as certified diabetes educator credentials, board certification in advanced therapeutic disease management or other certification as approved by the Division in consultation with the Board.

(b) for pharmacy technicians:

(i) institutes, seminars, lectures, conferences, workshops, various forms of mediated instruction, and programmed learning courses, presented by an institution, individual, organization, association, corporation or agency that has been approved by ACPE;

(ii) programs approved by health-related continuing education approval organizations provided the continuing education is nationally recognized by a healthcare accrediting agency and the education is related to the practice of pharmacy; and

(iii) educational meetings that meet ACPE continuing education criteria sponsored by the Utah Pharmaceutical Association, the Utah Society of Health-System Pharmacists or a pharmacy technician training program approved in accordance with Subsection R156-17b-304(3)(b).

(5) Credit for qualified continuing professional education shall be recognized in accordance with the following:

(a) Pharmacists:

(i) a minimum of 12 hours shall be obtained through attendance at live or technology enabled participation lectures, seminars or workshops;

(ii) a minimum of 15 hours shall be in drug therapy or patient management; and

(iii) a minimum of one hour shall be in pharmacy law or ethics.

(b) Pharmacy Technicians:

(i) a minimum of eight hours shall be obtained through attendance at live or technology enabled participation at lectures, seminars or workshops; and

(ii) a minimum of one hour shall be in pharmacy law or ethics.

(iii) documentation of current Pharmacy Technician Certification Board certification will count as meeting the requirement for continuing education.

(6) A licensee shall be responsible for maintaining competent records of completed qualified continuing professional education for a period of four years after the close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified continuing professional education to demonstrate it meets the requirements under this section.

R156-17b-401. Disciplinary Proceedings.

(1) An individual licensed as a pharmacy intern who is currently under disciplinary action and qualifies for licensure as a pharmacist may be issued a pharmacist license under the same restrictions as the pharmacy intern license.

(2) A pharmacist, pharmacy intern or pharmacy technician whose license or registration is suspended under Subsection 58-17b-701(6) may petition the Division at any time that he can demonstrate the ability to resume competent practice.

R156-17b-402. Administrative Penalties.

In accordance with Subsection 58-17b-401(6) and Sections 58-17b-501 and 58-17b-502, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply.

(1) Preventing or refusing to permit any authorized agent of the Division to conduct an inspection:

initial offense: \$500 - \$2,000

subsequent offense(s): \$5,000

(2) Failing to deliver the license or permit or certificate to the Division upon demand:

initial offense: \$100 - \$1,000

subsequent offense(s): \$500 - \$2,000

(3) Using the title pharmacist, druggist, pharmacy intern, pharmacy technician or any other term having a similar meaning or any term having similar meaning when not licensed to do so:

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(4) Conducting or transacting business under a name which contains as part of that name the words drugstore, pharmacy, drugs, medicine store, medicines, drug shop, apothecary, prescriptions or any other term having a similar meaning or in any manner advertising otherwise describing or referring to the place of the conducted business or profession when not licensed to do so:

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(5) Buying, selling, causing to be sold, or offering for sale any drug or device which bears the inscription sample, not for resale, investigational purposes, or experimental use only or other similar words:

initial offense: \$1,000 - \$5,000

subsequent offense(s): \$10,000

(6) Using to the licensee's own advantage or revealing to anyone other than the Division, Board or its authorized

representatives, any information acquired under the authority of this chapter concerning any method or process which is a trade secret:

initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(7) Illegally procuring or attempting to procure any drug for the licensee or to have someone else procure or attempt to procure a drug:

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000

(8) Filling, refilling or advertising the filling or refilling of prescription drugs when not licensed do to so:

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000

(9) Requiring any employed pharmacist, pharmacy intern, pharmacy technician or authorized supportive personnel to engage in any conduct in violation of this chapter:

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(10) Being in possession of a drug for an unlawful purpose:

initial offense: \$500 - \$1,000
subsequent offense(s): \$1,500 - \$5,000

(11) Dispensing a prescription drug to anyone who does not have a prescription from a practitioner or to anyone who is known or should be known as attempting to obtain drugs by fraud or misrepresentation:

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(12) Selling, dispensing or otherwise trafficking in prescription drugs when not licensed to do so or when not exempted from licensure:

initial offense: \$1,000 - \$5,000
subsequent offense(s): \$10,000

(13) Using a prescription drug or controlled substance for the licensee that was not lawfully prescribed for the licensee by a practitioner:

initial offense: \$100 - \$500
subsequent offense(s): \$1,000 - \$2,500

(14) Willfully deceiving or attempting to deceive the Division, the Board or its authorized agents as to any relevant matter regarding compliance under this chapter:

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(15) Paying rebates to practitioners or any other health care provider, or entering into any agreement with a medical practitioner or any other person for the payment or acceptance of compensation for recommending the professional services of either party:

initial offense: \$2,500 - \$5,000
subsequent offense(s): \$5,500 - \$10,000

(16) Misbranding or adulteration of any drug or device or the sale, distribution or dispensing of any outdated, misbranded, or adulterated drugs or devices:

initial offense: \$1,000 - \$5,000
subsequent offense(s): \$10,000

(17) Accepting back and redistributing any unused drugs, with the exception as provided in Section 58-17b-503:

initial offense: \$1,000 - \$5,000
subsequent offense(s): \$10,000

(18) Violating Federal Title II, PL 91, Controlled Substances Act or Title 58, Chapter 37, Utah Controlled Substances Act, or rules and regulations adopted under either act:

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(19) Failure to follow USP-NF Chapter 797 guidelines:

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000

(20) Failure to follow USP-NF Chapter 795 guidelines:
initial offense: \$250 - \$500
subsequent offense(s): \$500 - \$750

(21) Administering without appropriate guidelines or lawful order:

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000

(22) Disclosing confidential patient information in violation of the provision of the Health Insurance Portability and Accountability Act of 1996 or other applicable law:

initial offense: \$100 - \$500
subsequent offense(s): \$500 - \$1,000

(23) Engaging in the practice of pharmacy without a licensed pharmacist designated as the pharmacist in charge:

initial offense: \$100 - \$500
subsequent offense(s): \$2,000 - \$10,000

(24) Failing to report to the Division any adverse action taken by another licensing jurisdiction, government agency, law enforcement agency or court:

initial offense: \$100 - \$500
subsequent offense(s): \$500 - \$1,000

(25) Compounding a prescription drug for sale to another pharmaceutical facility:

initial offense: \$100 - \$500
subsequent offense(s): \$500 - \$1,000

(26) Preparing a prescription drug in a dosage form which is regularly and commonly available from a manufacturer in quantities and strengths prescribed by a practitioner:

initial offense: \$500 - \$1,000
subsequent offense(s): \$2,500 - \$5,000

(27) Violating any ethical code provision of the American Pharmaceutical Association Code of Ethics for Pharmacists, October 27, 1994:

initial offense: \$250 - \$500
subsequent offense(s): \$2,000 - \$10,000

(28) Failing to comply with the continuing education requirements set forth in this rule:

initial offense: \$100 - \$500
subsequent offense(s): \$500 - \$1,000

(29) Failing to provide the Division with a current mailing address within 10 days following any change of address:

initial offense: \$50 - \$100
subsequent offense(s): \$200 - \$300

(30) Defaulting on a student loan:

initial offense: \$100 - \$200
subsequent offense(s): \$200 - \$500

(31) Failing to abide by all applicable federal and state law regarding the practice of pharmacy:

initial offense: \$500 - \$1,000
subsequent offense(s): \$2,000 - \$10,000

(32) Failing to comply with administrative inspections:

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000

(33) Abandoning a pharmacy and/or leaving drugs accessible to the public:

initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000

(34) Failure to return or providing false information on a self-inspection report:

initial offense: \$100 - \$250
subsequent offense(s): \$300 - \$500

(35) Failure to pay an administrative fine:
Double the original penalty amount up to \$10,000

(36) Any other conduct which constitutes unprofessional or unlawful conduct:

initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000

(37) Failure to maintain an appropriate ratio of personnel:
Pharmacist initial offense: \$100 - \$250

Pharmacist subsequent offense(s): \$500 - \$2,500
 Pharmacy initial offense: \$250 - \$1,000
 Pharmacy subsequent offense(s): \$500 - \$5,000
 (38) Unauthorized people in the pharmacy:
 Pharmacist initial offense: \$50 - \$100
 Pharmacist subsequent offense(s): \$250 - \$500
 Pharmacy initial offense: \$250 - \$500
 Pharmacy subsequent offense(s): \$1,000 - \$2,000
 (39) Failure to offer to counsel:
 Pharmacy personnel initial offense: \$500 - \$2,500
 Pharmacy personnel subsequent offense(s): \$5,000 - \$10,000
 Pharmacy: \$2,000 per occurrence
 (40) Violations of the laws and rules regulating operating standards in a pharmacy discovered upon inspection by the Division:
 initial violation: \$50 - \$100
 failure to comply within determined time: \$250 - \$500
 subsequent violations: \$250 - \$500
 failure to comply within established time: \$750 - \$1,000
 (41) Practicing or attempting to practice as a pharmacist, pharmacist intern, or pharmacy technician or operating a pharmacy without a license:
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
 (42) Impersonating a licensee or practicing under a false name:
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
 (43) Knowingly employing an unlicensed person:
 initial offense: \$500 - \$1,000
 subsequent offense(s): \$1,000 - \$5,000
 (44) Knowingly permitting the use of a license by another person:
 initial offense: \$500 - \$1,000
 subsequent offense(s): \$1,000 - \$5,000
 (45) Obtaining a passing score, applying for or obtaining a license or otherwise dealing with the Division or Board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission:
 initial offense: \$100 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
 (46) Violating or aiding or abetting any other person to violate any statute, rule or order regulating pharmacy:
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
 (47) Violating or aiding or abetting any other person to violate any generally accepted professional or ethical standard:
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
 (48) Engaging in conduct that results in conviction of, or a plea of nolo contendere, or a plea of guilty or nolo contendere held in abeyance to a crime:
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
 (49) Engaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority:
 initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000
 (50) Engaging in conduct, including the use of intoxicants or drugs, to the extent that the conduct does or may impair the ability to safely engage in practice as a pharmacist, pharmacy intern or pharmacy technician:
 initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000
 (51) Practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician when physically or mentally unfit to do so:
 initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000
 (52) Practicing or attempting to practice as a pharmacist, pharmacy intern, or pharmacy technician through gross incompetence, gross negligence or a pattern of incompetency or negligence:
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
 (53) Practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician by any form of action or communication which is false, misleading, deceptive or fraudulent:
 initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000
 (54) Practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician beyond the individual's scope of competency, abilities or education:
 initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000
 (55) Practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician beyond the scope of licensure:
 initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000
 (56) Verbally, physically or mentally abusing or exploiting any person through conduct connected with the licensee's practice:
 initial offense: \$100 - \$1,000
 subsequent offense(s): \$500 - \$2,000
 (57) Failure to comply with the pharmacist-in-charge standards:
 initial offense: \$500 - \$2,000
 subsequent offense(s) \$2,000 - \$10,000
 (58) Failure to resolve identified drug therapy management problems:
 initial offense: \$500 - \$2,500
 subsequent offense: \$5,000 - \$10,000

R156-17b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:
 (1) violating any provision of the American Pharmaceutical Association (APhA) Code of Ethics for Pharmacists, October 27, 1994, which is hereby incorporated by reference;
 (2) failing to comply with the USP-NF Chapters 795 and 797;
 (3) failing to comply with the continuing education requirements set forth in these rules;
 (4) failing to provide the Division with a current mailing address within a 10 business day period of time following any change of address;
 (5) defaulting on a student loan;
 (6) failing to abide by all applicable federal and state law regarding the practice of pharmacy;
 (7) failing to comply with administrative inspections;
 (8) abandoning a pharmacy or leaving prescription drugs accessible to the public;
 (9) failing to identify licensure classification when communicating by any means;
 (10) the practice of pharmacy with an inappropriate pharmacist to pharmacy intern ratio established by Subsection R156-17b-306(4)(d) or pharmacist to pharmacy technician ratio as established by Subsection R156-17b-601(3);
 (11) allowing any unauthorized persons in the pharmacy;
 (12) failing to offer to counsel any person receiving a prescription medication;
 (13) failing to pay an administrative fine that has been assessed in the time designated by the Division;
 (14) failing to comply with the pharmacist-in-charge standards as established in Section R156-17b-603; and

(15) failing to take appropriate steps to avoid or resolve identified drug therapy management problems as referenced in Subsection R156-17b-611(3).

R156-17b-601. Operating Standards - Pharmacy Technician - Scope of Practice.

In accordance with Subsection 58-17b-102(56), the scope of practice of a pharmacy technician is defined as follows:

(1) The pharmacy technician may perform any task associated with the physical preparation and processing of prescription and medication orders including:

- (a) receiving written prescriptions;
- (b) taking refill orders;
- (c) entering and retrieving information into and from a database or patient profile;
- (d) preparing labels;
- (e) retrieving medications from inventory;
- (f) counting and pouring into containers;
- (g) placing medications into patient storage containers;
- (h) affixing labels;
- (i) compounding;
- (j) counseling for over-the-counter drugs and dietary supplements under the direction of the supervising pharmacist as referenced in Subsection R156-17b-304(3)(ix);
- (k) accepting new prescription drug orders telephonically or electronically submitted to a pharmacist to review; and
- (l) additional tasks not requiring the judgment of a pharmacist.

(2) The pharmacy technician shall not receive new verbal prescriptions or medication orders, clarify prescriptions or medication orders nor perform drug utilization reviews.

(3) The licensed pharmacist on duty can, at his discretion, provide on-site supervision for up to three pharmacy technicians, who are actually on duty at any one time, and only one of the three technicians can be unlicensed.

R156-17b-602. Operating Standards - Pharmacy Intern - Scope of Practice.

A pharmacy intern may provide services including the practice of pharmacy under the supervision of an approved preceptor, as defined in Subsection 58-17b-102(51), provided the pharmacy intern met the criteria as established in Subsection R156-17b-304(2).

R156-17b-603. Operating Standards - Pharmacist-in-charge.

The pharmacist-in-charge shall have the responsibility to oversee the implementation and adherence to pharmacy policies that address the following:

(1) assuring that pharmacists and pharmacy interns dispense drugs or devices, including:

- (a) packaging, preparation, compounding and labeling; and
- (b) ensuring that drugs are dispensed safely and accurately as prescribed;

(2) assuring that pharmacy personnel deliver drugs to the patient or the patient's agent, including ensuring that drugs are delivered safely and accurately as prescribed;

(3) assuring that a pharmacist, pharmacy intern or pharmacy technician communicates to the patient or the patient's agent information about the prescription drug or device or non-prescription products;

(4) assuring that a pharmacist or pharmacy intern communicates to the patient or the patient's agent, at their request, information concerning any prescription drugs dispensed to the patient by the pharmacist or pharmacy intern;

(5) assuring that a reasonable effort is made to obtain, record and maintain patient medication records;

(6) education and training of pharmacy technicians;

(7) establishment of policies for procurement of prescription drugs and devices and other products dispensed

from the pharmacy;

- (8) disposal and distribution of drugs from the pharmacy;
- (9) bulk compounding of drugs;
- (10) storage of all materials, including drugs, chemicals and biologicals;

(11) maintenance of records of all transactions of the pharmacy necessary to maintain accurate control over and accountability for all pharmaceutical materials required by applicable state and federal laws and regulations;

(12) establishment and maintenance of effective controls against theft or diversion of prescription drugs and records for such drugs;

(13) if records are kept on a data processing system, the maintenance of records stored in that system shall be in compliance with pharmacy requirements;

(14) legal operation of the pharmacy including meeting all inspection and other requirements of all state and federal laws, rules and regulations governing the practice of pharmacy;

(15) assuring that any automated pharmacy system is in good working order and accurately dispenses the correct strength, dosage form and quantity of the drug prescribed while maintaining appropriate record keeping and security safeguards;

(16) implementation of an ongoing quality assurance program that monitors performance of the automated pharmacy system, which is evidenced by written policies and procedures developed for pharmaceutical care;

(17) assuring that all relevant information is submitted to the Controlled Substance Database in the appropriate format and in a timely manner; and

(18) assuring that all personnel working in the pharmacy have the appropriate licensure.

R156-17b-604. Operating Standards - Closing a Pharmacy.

At least 14 days prior to the closing of a pharmacy, the pharmacist-in-charge shall comply with the following:

(1) If the pharmacy is registered to possess controlled substances, send a written notification to the appropriate regional office of the Drug Enforcement Administration (DEA) containing the following information:

- (a) the name, address and DEA registration number of the pharmacy;
- (b) the anticipated date of closing;
- (c) the name, address and DEA registration number of the pharmacy acquiring the controlled substances; and
- (d) the date on which the transfer of controlled substances will occur.

(2) If the pharmacy dispenses prescription drug orders, post a closing notice sign in a conspicuous place in the front of the prescription department and at all public entrance doors to the pharmacy. Such closing notice shall contain the following information:

- (a) the date of closing; and
- (b) the name, address and telephone number of the pharmacy acquiring the prescription drug orders, including refill information and patient medication records of the pharmacy.

(3) On the date of closing, the pharmacist-in-charge shall remove all prescription drugs from the pharmacy by one or a combination of the following methods:

- (a) return prescription drugs to manufacturer or supplier for credit or disposal; or
- (b) transfer, sell or give away prescription drugs to a person who is legally entitled to possess drugs, such as a hospital or another pharmacy.

(4) If the pharmacy dispenses prescription drug orders:

- (a) transfer the prescription drug order files, including refill information and patient medication records, to a licensed pharmacy within a reasonable distance of the closing pharmacy; and

- (b) move all signs or notify the landlord or owner of the

property that it is unlawful to use the word "pharmacy", or any other word or combination of words of the same or similar meaning, or any graphic representation that would mislead or tend to mislead the public that a pharmacy is located at this address.

(5) Within 10 days of the closing of the pharmacy, the pharmacist-in-charge shall forward to the Division a written notice of the closing that includes the following information:

- (a) the actual date of closing;
- (b) the license issued to the pharmacy;
- (c) a statement attesting:

(i) that an inventory as specified in Subsection R156-17b-605(6) has been conducted; and

(ii) the manner in which the legend drugs and controlled substances possessed by the pharmacy were transferred or disposed;

(d) if the pharmacy dispenses prescription drug orders, the name and address of the pharmacy to which the prescription drug orders, including refill information and patient medication records, were transferred.

(6) If the pharmacy is registered to possess controlled substances, a letter must be sent to the appropriate DEA regional office explaining that the pharmacy has closed. The letter shall include the following items:

- (a) DEA registration certificate;
- (b) all unused DEA order forms (Form 222) with the word "VOID" written on the face of each order form; and
- (c) copy #2 of any DEA order forms (Form 222) used to transfer Schedule II controlled substances from the closed pharmacy.

(7) If the pharmacy is closed suddenly due to fire, destruction, natural disaster, death, property seizure, eviction, bankruptcy or other emergency circumstances and the pharmacist-in-charge cannot provide notification 14 days prior to the closing, the pharmacist-in-charge shall comply with the provisions of Subsection (1) as far in advance of the closing as allowed by the circumstances.

(8) If the pharmacist-in-charge is not available to comply with the requirements of this section, the owner or legal representative shall be responsible for compliance with the provisions of this section.

R156-17b-605. Operating Standards - Inventory Requirements.

(1) General requirements for inventory of a pharmacy shall include the following:

(a) the pharmacist-in-charge shall be responsible for taking all required inventories, but may delegate the performance of the inventory to another person or persons;

(b) the inventory records must be maintained for a period of five years and be readily available for inspection;

(c) the inventory records shall be filed separately from all other records;

(d) the inventory records shall be in a typewritten or printed form and include all stocks of controlled substances on hand on the date of the inventory including any that are out of date drugs and drugs in automated pharmacy systems. An inventory taken by use of a verbal recording device must be promptly transcribed;

(e) the inventory may be taken either as of the opening of the business or the close of business on the inventory date;

(f) the person taking the inventory and the pharmacist-in-charge shall indicate the time the inventory was taken and shall sign and date the inventory with the date the inventory was taken. The signature of the pharmacist-in-charge and the date of the inventory shall be documented within 72 hours or three working days of the completed initial, annual, change of ownership and closing inventory;

(g) the person taking the inventory shall make an exact

count or measure all controlled substances listed in Schedule I or II;

(h) the person taking the inventory shall make an estimated count or measure all Schedule III, IV or V controlled substances, unless the container holds more than 1,000 tablets or capsules in which case an exact count of the contents must be made;

(i) the inventory of Schedule I and II controlled substances shall be listed separately from the inventory of Schedule III, IV and V controlled substances; and

(j) if the pharmacy maintains a perpetual inventory of any of the drugs required to be inventoried, the perpetual inventory shall be reconciled on the date of the inventory.

(2) Requirement for taking the initial inventory shall include the following:

(a) all pharmacies having any stock of controlled substances shall take an inventory on the opening day of business. Such inventory shall include all controlled substances including any out-of-date drugs and drugs in automated pharmacy systems;

(b) in the event a pharmacy commences business with none of the drugs specified in paragraph (2)(a) of this section on hand, the pharmacy shall record this fact as the initial inventory; and

(c) the initial inventory shall serve as the pharmacy's inventory until the next completed inventory as specified in Subsection (3) of this section.

(3) Requirement for annual inventory shall be within 12 months following the inventory date of each year and may be taken within four days of the specified inventory date and shall include all stocks including out-of-date drugs and drugs in automated pharmacy systems.

(4) Requirements for change of ownership shall include the following:

(a) a pharmacy that changes ownership shall take an inventory of all legend drugs and controlled substances including out-of-date drugs and drugs in automated pharmacy systems on the date of the change of ownership;

(b) such inventory shall constitute, for the purpose of this section, the closing inventory for the seller and the initial inventory for the buyer; and

(c) transfer of Schedule I and II controlled substances shall require the use of official DEA order forms (Form 222).

(5) Requirement for taking inventory when closing a pharmacy includes the pharmacist-in-charge, owner, or the legal representative of a pharmacy that ceases to operate as a pharmacy shall forward to the Division, within ten days of cessation of operation, a statement attesting that an inventory has been conducted, the date of closing and a statement attesting the manner by which legend drugs and controlled substances possessed by the pharmacy were transferred or disposed.

(6) Requirements specific to taking inventory in a Class B pharmacy shall include the following:

(a) all Class B pharmacies shall maintain a perpetual inventory of all Schedule II controlled substances which shall be reconciled according to facility policy; and

(b) the inventory of the institution shall be maintained in the pharmacy; if an inventory is conducted in other departments within the institution, the inventory shall be listed separately as follows:

(i) the inventory of drugs on hand in the pharmacy shall be listed separately from the inventory of drugs on hand in the other areas of the institution; and

(ii) the inventory of the drugs on hand in all other departments shall be identified by department.

(7) All out of date legend drugs and controlled substances shall be removed from the inventory at regular intervals and in correlation to the date of expiration imprinted on the label.

R156-17b-606. Operating Standards - Approved Preceptor.

In accordance with Subsection 58-17b-601(1), the operating standard for a pharmacist acting as a preceptor includes:

- (1) supervising more than one intern; however, a preceptor may supervise only one intern actually on duty who is working for compensation in the practice of pharmacy at any one time. Interns who are doing educational, observational rotations can be supervised at two interns to one pharmacist ratio;
- (2) maintaining adequate records to document the number of internship hours completed by the intern and evaluating the quality of the intern's performance during the internship;
- (3) completing the preceptor section of a Utah Pharmacy Intern Experience Affidavit found in the application packet at the conclusion of the preceptor/intern relationship regardless of the time or circumstances under which that relationship is concluded; and
- (4) being responsible for the intern's actions related to the practice of pharmacy while practicing as a pharmacy intern under supervision.

R156-17b-607. Operating Standards - Supportive Personnel.

- (1) In accordance with Subsection 58-17b-102(66)(a), supportive personnel may assist in any tasks not related to drug preparation or processing including:
 - (a) stock ordering and restocking;
 - (b) cashiering;
 - (c) billing;
 - (d) filing;
 - (e) receiving a written prescription and delivering it to the pharmacist, pharmacy intern or pharmacy technician;
 - (f) housekeeping; and
 - (g) delivering a pre-filled prescription to a patient.
- (2) Supportive personnel shall not enter information into a patient profile or accept verbal refill information.
- (3) In accordance with Subsection 58-17b-102(66)(b), the supervision of supportive personnel is defined as follows:
 - (a) all supportive personnel shall be under the supervision of a licensed pharmacist; and
 - (b) the licensed pharmacist shall be present in the area where the person being supervised is performing services and shall be immediately available to assist the person being supervised in the services being performed except for the delivery of prefilled prescriptions as provided in Subsection 1)(g) above.
- (4) In accordance with Subsection 58-17b-601(1), a pharmacist, pharmacy intern or pharmacy technician whose license has been revoked or is suspended shall not be allowed to provide any support services in a pharmacy.

R156-17b-608. Reserved.

Reserved.

R156-17b-609. Operating Standards - Medication Profile System.

In accordance with Subsections 58-17b-601(1) and 58-17b-604(1), the following operating standards shall apply with respect to medication profile systems:

- (1) Patient profiles, once established, shall be maintained by a pharmacist in a pharmacy dispensing to patients on a recurring basis for a minimum of one year from the date of the most recent prescription filled or refilled; except that a hospital pharmacy may delete the patient profile for an inpatient upon discharge if a record of prescriptions is maintained as a part of the hospital record.
- (2) Information to be included in the profile shall be determined by a responsible pharmacist at the pharmaceutical facility but shall include as a minimum:
 - (a) full name of the patient, address, telephone number,

date of birth or age and gender;

- (b) patient history where significant, including known allergies and drug reactions, and a list of prescription drugs obtained by the patient at the pharmacy including:
 - (i) name of prescription drug;
 - (ii) strength of prescription drug;
 - (iii) quantity dispensed;
 - (iv) date of filling or refilling;
 - (v) charge for the prescription drug as dispensed to the patient; and
- (c) any additional comments relevant to the patient's drug use.
- (3) Patient medication profile information shall be recorded by a pharmacist, pharmacy intern or pharmacy technician.

R156-17b-610. Operating Standards - Patient Counseling.

In accordance with Subsection 58-17b-601(1), guidelines for providing patient counseling established in Section 58-17b-613 include the following:

- (1) Based upon the pharmacist's or pharmacy intern's professional judgment, patient counseling may be discussed to include the following elements:
 - (a) the name and description of the prescription drug;
 - (b) the dosage form, dose, route of administration and duration of drug therapy;
 - (c) intended use of the drug, when known, and expected action;
 - (d) special directions and precautions for preparation, administration and use by the patient;
 - (e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;
 - (f) techniques for self-monitoring drug therapy;
 - (g) proper storage;
 - (h) prescription refill information;
 - (i) action to be taken in the event of a missed dose;
 - (j) pharmacist comments relevant to the individual's drug therapy, including any other information specific to the patient or drug; and
 - (k) the date after which the prescription should not be taken or used, or the beyond use date.
- (2) Patient counseling shall not be required for inpatients of a hospital or institution where other licensed health care professionals are authorized to administer the drugs.
- (3) A pharmacist shall not be required to counsel a patient or patient's agent when the patient or patient's agent refuses such consultation.
- (4) The offer to counsel shall be documented and said documentation shall be available to the Division. These records must be maintained for a period of five years and be available for inspection within 7-10 business days.
- (5) Counseling shall be:
 - (a) provided with each new prescription drug order, once yearly on maintenance medications, and if the pharmacist deems appropriate with prescription drug refills;
 - (b) provided for any prescription drug order dispensed by the pharmacy on the request of the patient or patient's agent; and
 - (c) communicated verbally in person unless the patient or the patient's agent is not at the pharmacy or a specific communication barrier prohibits such verbal communication.
- (6) Only a pharmacist or pharmacy intern may verbally provide drug information to a patient or patient's agent and answer questions concerning prescription drugs.
- (7) In addition to the requirements of Subsections (1) through (6) of this section, if a prescription drug order is delivered to the patient at the pharmacy, a filled prescription may not be delivered to a patient unless a pharmacist is in the pharmacy. However, an agent of the pharmacist may deliver a

prescription drug order to the patient or the patient's agent if the pharmacist is absent for ten minutes or less and provided a record of the delivery is maintained and contains the following information:

- (a) date of the delivery;
 - (b) unique identification number of the prescription drug order;
 - (c) patient's name;
 - (d) patient's phone number or the phone number of the person picking up the prescription; and
 - (e) signature of the person picking up the prescription.
- (8) If a prescription drug order is delivered to the patient or the patient's agent at the patient's or other designated location, the following is applicable:

- (a) the information specified in Subsection (1) of this section shall be delivered with the dispensed prescription in writing;
- (b) if prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container, the telephone number of the pharmacy and the statement "Written information about this prescription has been provided for you. Please read this information before you take this medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions."; and
- (c) written information provided in Subsection (8)(b) of this section shall be in the form of patient information leaflets similar to USP-NF patient information monographs or equivalent information.

R156-17b-611. Operating Standards - Drug Therapy Management.

(1) In accordance with Subsections 58-17b-102(17) and 58-17b-601(1), decisions involving drug therapy management shall be made in the best interest of the patient. Drug therapy management may include:

- (a) implementing, modifying and managing drug therapy according to the terms of the Collaborative Pharmacy Practice Agreement;
- (b) collecting and reviewing patient histories;
- (c) obtaining and checking vital signs, including pulse, temperature, blood pressure and respiration;
- (d) ordering and evaluating the results of laboratory tests directly applicable to the drug therapy, when performed in accordance with approved protocols applicable to the practice setting; and
- (e) such other patient care services as may be allowed by rule.

(2) For the purpose of promoting therapeutic appropriateness, a pharmacist shall at the time of dispensing a prescription, or a prescription drug order, review the patient's medication record. Such review shall at a minimum identify clinically significant conditions, situations or items, such as:

- (a) inappropriate drug utilization;
- (b) therapeutic duplication;
- (c) drug-disease contraindications;
- (d) drug-drug interactions;
- (e) incorrect drug dosage or duration of drug treatment;
- (f) drug-allergy interactions; and
- (g) clinical abuse or misuse.

(3) Upon identifying any clinically significant conditions, situations or items listed in Subsection (2) above, the pharmacist shall take appropriate steps to avoid or resolve the problem including consultation with the prescribing practitioner.

R156-17b-612. Operating Standards - Prescriptions.

In accordance with Subsection 58-17b-601(1), the

following shall apply to prescriptions:

(1) Prescription orders for controlled substances (including prescription transfers) shall be handled according to the rules of the Federal Drug Enforcement Administration.

(2) A prescription issued by an authorized licensed practitioner, if verbally communicated by an agent of that practitioner upon that practitioner's specific instruction and authorization, may be accepted by a pharmacist or pharmacy intern.

(3) A prescription issued by a licensed prescribing practitioner, if electronically communicated by an agent of that practitioner, upon that practitioner's specific instruction and authorization, may be accepted by a pharmacist, pharmacy intern and pharmacy technician.

(4) In accordance with Section 58-17b-609, prescription files, including refill information, shall be maintained for a minimum of five years and shall be immediately retrievable in written or electronic format.

(5) Prescriptions for legend drugs having a remaining authorization for refill may be transferred by the pharmacist or pharmacy intern at the pharmacy holding the prescription to a pharmacist or pharmacy intern at another pharmacy upon the authorization of the patient to whom the prescription was issued or electronically as authorized under Subsection R156-17b-613(9). The transferring pharmacist or pharmacy intern and receiving pharmacist or pharmacy intern shall act diligently to ensure that the total number of authorized refills is not exceeded. The following additional terms apply to such a transfer:

(a) the transfer shall be communicated directly between pharmacists or pharmacy interns or as authorized under Subsection R156-17b-613(9);

(b) both the original and the transferred prescription drug orders shall be maintained for a period of five years from the date of the last refill;

(c) the pharmacist or pharmacy intern transferring the prescription drug order shall void the prescription electronically or write void/transfer on the face of the invalidated prescription manually;

(d) the pharmacist or pharmacy intern receiving the transferred prescription drug order shall:

(i) indicate on the prescription record that the prescription was transferred electronically or manually; and

(ii) record on the transferred prescription drug order the following information:

(A) original date of issuance and date of dispensing or receipt, if different from date of issuance;

(B) original prescription number and the number of refills authorized on the original prescription drug order;

(C) number of valid refills remaining and the date of last refill, if applicable;

(D) the name and address of the pharmacy and the name of the pharmacist or pharmacy intern to which such prescription is transferred; and

(E) the name of the pharmacist or pharmacy intern transferring the prescription drug order information;

(e) the data processing system shall have a mechanism to prohibit the transfer or refilling of legend drugs or controlled substance prescription drug orders which have been previously transferred; and

(f) a pharmacist or pharmacy intern may not refuse to transfer original prescription information to another pharmacist or pharmacy intern who is acting on behalf of a patient and who is making a request for this information as specified in Subsection (12) of this section.

(6) Prescriptions for terminal patients in licensed hospices, home health agencies or nursing homes may be partially filled if the patient has a medical diagnosis documenting a terminal illness and may not need the full prescription amount.

(7) Refills may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order;

(8) If there are no refill instructions on the original prescription drug order, or if all refills authorized on the original prescription drug order have been dispensed, authorization from the prescribing practitioner must be obtained prior to dispensing any refills.

(9) Refills of prescription drug orders for legend drugs may not be refilled after one year from the date of issuance of the original prescription drug order without obtaining authorization from the prescribing practitioner prior to dispensing any additional quantities of the drug.

(10) Refills of prescription drug orders for controlled substances shall be done in accordance with Subsection 58-37-6(7)(f).

(11) A pharmacist may exercise his professional judgment in refilling a prescription drug order for a drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner, provided:

(a) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(b) either:

(i) a natural or manmade disaster has occurred which prohibits the pharmacist from being able to contact the practitioner; or

(ii) the pharmacist is unable to contact the practitioner after a reasonable effort, the effort should be documented and said documentation should be available to the Division;

(c) the quantity of prescription drug dispensed does not exceed a 72-hour supply, unless the packaging is in a greater quantity;

(d) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(e) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(f) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection; and

(g) the pharmacist affixes a label to the dispensing container as specified in Section 58-17b-602.

(12) If the prescription was originally filled at another pharmacy, the pharmacist may exercise his professional judgment in refilling the prescription provided:

(a) the patient has the prescription container label, receipt or other documentation from the other pharmacy which contains the essential information;

(b) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(c) the pharmacist, in his professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of (a) and (b) of this subsection; and

(d) the pharmacist complies with the requirements of Subsections (11)(c) through (g) of this section.

R156-17b-613. Operating Standards - Issuing Prescription Orders by Electronic Means.

In accordance with Subsections 58-17b-102(3) and 58-17b-601(1), prescription orders may be issued by electronic means of communication according to the following:

(1) Prescription orders for Schedule II - V controlled substances received by electronic means of communication shall be handled according to Title 58, Chapter 37, Utah Controlled Substances Act and R156-37, Utah Controlled Substances Act

Rules.

(2) Prescription orders for non-controlled substances received by electronic means of communication may be dispensed by a pharmacist or pharmacy intern only if all of the following conditions are satisfied:

(a) all electronically transmitted prescription orders shall include the following:

(i) all information that is required to be contained in a prescription order pursuant to Section 58-17b-602;

(ii) the time and date of the transmission, and if a facsimile transmission, the electronically encoded date, time and fax number of the sender; and

(iii) the name of the pharmacy intended to receive the transmission;

(b) the prescription order shall be transmitted under the direct supervision of the prescribing practitioner or his designated agent;

(c) the pharmacist shall exercise professional judgment regarding the accuracy and authenticity of the transmitted prescription. Practitioners or their agents transmitting medication orders using electronic equipment are to provide voice verification when requested by the pharmacist receiving the medication order. The pharmacist is responsible for assuring that each electronically transferred prescription order is valid and shall authenticate a prescription order issued by a prescribing practitioner which has been transmitted to the dispensing pharmacy before filling it, whenever there is a question;

(d) a practitioner may authorize an agent to electronically transmit a prescription provided that the identifying information of the transmitting agent is included on the transmission. The practitioner's electronic signature, or other secure method of validation, shall be provided with the electronic prescription; and

(e) an electronically transmitted prescription order that meets the requirements above shall be deemed to be the original prescription.

(3) This section does not apply to the use of electronic equipment to transmit prescription orders within inpatient medical facilities.

(4) No agreement between a prescribing practitioner and a pharmacy shall require that prescription orders be transmitted by electronic means from the prescribing practitioner to that pharmacy only.

(5) The pharmacist shall retain a printed copy of an electronic prescription, or a record of an electronic prescription that is readily retrievable and printable, for a minimum of five years. The printed copy shall be of non-fading legibility.

(6) Wholesalers, distributors, manufacturers, pharmacists and pharmacies shall not supply electronic equipment to any prescriber for transmitting prescription orders.

(7) An electronically transmitted prescription order shall be transmitted to the pharmacy of the patient's choice.

(8) Prescription orders electronically transmitted to the pharmacy by the patient shall not be filled or dispensed.

(9) A prescription order for a legend drug or controlled substance in Schedule III through V may be transferred up to the maximum refills permitted by law or by the prescriber by electronic transmission providing the pharmacies share a real-time, on-line database provided that:

(a) the information required to be on the transferred prescription has the same information as described in Subsection R156-17b-612(5)(a) through (f); and

(b) pharmacists, pharmacy interns or pharmacy technicians electronically accessing the same prescription drug order records may electronically transfer prescription information if the data processing system has a mechanism to send a message to the transferring pharmacy containing the following information:

- (i) the fact that the prescription drug order was transferred;
- (ii) the unique identification number of the prescription drug order transferred;
- (iii) the name of the pharmacy to which it was transferred; and
- (iv) the date and time of the transfer.

R156-17b-614. Operating Standards - Operating Standards, Class A and B Pharmacy.

(1) In accordance with Subsection 58-17b-601(1), standards for the operations for a Class A and Class B pharmacy include:

- (a) shall be well lighted, well ventilated, clean and sanitary;
- (b) the dispensing area, if any, shall have a sink with hot and cold culinary water separate and apart from any restroom facilities. This does not apply to clean rooms where sterile products are prepared. Clean rooms should not have sinks or floor drains that expose the area to an open sewer. All required equipment shall be clean and in good operating condition;
- (c) be equipped to permit the orderly storage of prescription drugs and devices in a manner to permit clear identification, separation and easy retrieval of products and an environment necessary to maintain the integrity of the product inventory;
- (d) be equipped to permit practice within the standards and ethics of the profession as dictated by the usual and ordinary scope of practice to be conducted within that facility;
- (e) be stocked with the quality and quantity of product necessary for the facility to meet its scope of practice in a manner consistent with the public health, safety and welfare; and
- (f) be equipped with a security system to permit detection of entry at all times when the facility is closed.

(2) The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of drugs. The temperature of the refrigerator and freezer shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration or freezing.

(3) Facilities engaged in extensive compounding activities shall be required to maintain proper records and procedure manuals and establish quality control measures to ensure stability, equivalency where applicable and sterility. The following requirements shall be met:

- (a) must follow USP-NF Chapter 795, compounding of non-sterile preparations;
- (b) may compound in anticipation of receiving prescriptions in limited amounts;
- (c) bulk active ingredients must be component of FDA approved drugs listed in the approved drug products prepared by the Center for Drug Evaluation and Research of the FDA;
- (d) compounding using drugs that are not part of a FDA approved drug listed in the approved drug products prepared by the Center for Drug Evaluation and Research of the FDA requires an investigational new drug application (IND). The IND approval shall be kept in the pharmacy for five years for inspection;
- (e) a master worksheet sheet shall be developed and approved by a pharmacist for each batch of sterile or non-sterile pharmaceuticals to be prepared. Once approved, a duplicate of the master worksheet sheet shall be used as the preparation worksheet sheet from which each batch is prepared and on which all documentation for that batch occurs. The master worksheet sheet shall contain at a minimum:

- (i) the formula;
- (ii) the components;
- (iii) the compounding directions;
- (iv) a sample label;
- (v) evaluation and testing requirements;
- (vi) sterilization methods, if applicable;

- (vii) specific equipment used during preparation such as specific compounding device; and
- (viii) storage requirements;
- (f) a preparation worksheet sheet for each batch of sterile or non-sterile pharmaceuticals shall document the following:
 - (i) identity of all solutions and ingredients and their corresponding amounts, concentrations, or volumes;
 - (ii) manufacturer lot number for each component;
 - (iii) component manufacturer or suitable identifying number;
 - (iv) container specifications (e.g. syringe, pump cassette);
 - (v) unique lot or control number assigned to batch;
 - (vi) expiration date of batch prepared products;
 - (vii) date of preparation;
 - (viii) name, initials or electronic signature of the person or persons involved in the preparation;
 - (ix) names, initials or electronic signature of the responsible pharmacist;
 - (x) end-product evaluation and testing specifications, if applicable; and
 - (xi) comparison of actual yield to anticipated yield, when appropriate;
 - (g) the label of each batch prepared of sterile or non-sterile pharmaceuticals shall bear at a minimum:
 - (i) the unique lot number assigned to the batch;
 - (ii) all solution and ingredient names, amounts, strengths and concentrations, when applicable;
 - (iii) quantity;
 - (iv) expiration date and time, when applicable;
 - (v) appropriate ancillary instructions, such as storage instructions or cautionary statements, including cytotoxic warning labels where appropriate; and
 - (vi) device-specific instructions, where appropriate;
 - (h) the expiration date assigned shall be based on currently available drug stability information and sterility considerations or appropriate in-house or contract service stability testing;
 - (i) sources of drug stability information shall include the following:
 - (A) references can be found in Trissel's "Handbook on Injectable Drugs", 13th Edition, 2004;
 - (B) manufacturer recommendations; and
 - (C) reliable, published research;
 - (ii) when interpreting published drug stability information, the pharmacist shall consider all aspects of the final sterile product being prepared such as drug reservoir, drug concentration and storage conditions; and
 - (iii) methods for establishing expiration dates shall be documented; and
 - (i) there shall be a documented, ongoing quality control program that monitors and evaluates personnel performance, equipment and facilities that follows the USP-NF Chapters 795 and 797 standards.
 - (4) The facility shall have current and retrievable editions of the following reference publications in print or electronic format and readily available and retrievable to facility personnel:
 - (a) Title 58, Chapter 1, Division of Occupational and Professional Licensing Act
 - (b) R156-1, General Rules of the Division of Occupational and Professional Licensing;
 - (c) Title 58, Chapter 17b, Pharmacy Practice Act;
 - (d) R156-17b, Utah Pharmacy Practice Act Rule;
 - (e) Title 58, Chapter 37, Utah Controlled Substances Act;
 - (f) R156-37, Utah Controlled Substances Act Rules;
 - (g) Code of Federal Regulations (CFR) 21, Food and Drugs, Part 1300 to end or equivalent such as the USP DI Drug Reference Guides;
 - (h) current FDA Approved Drug Products (orange book); and

(i) any other general drug references necessary to permit practice dictated by the usual and ordinary scope of practice to be conducted within that facility.

(5) The facility shall post the license of the facility and the license or a copy of the license of each pharmacist, pharmacy intern and pharmacy technician who is employed in the facility, but may not post the license of any pharmacist, pharmacy intern or pharmacy technician not actually employed in the facility.

(6) Facilities shall have a counseling area to allow for confidential patient counseling, where applicable.

(7) If the pharmacy is located within a larger facility such as a grocery or department store, and a licensed Utah pharmacist is not immediately available in the facility, the pharmacy shall not remain open to pharmacy patients and shall be locked in such a way as to bar entry to the public or any non-pharmacy personnel. All pharmacies located within a larger facility shall be locked and enclosed in such a way as to bar entry by the public or any non-pharmacy personnel when the pharmacy is closed.

(8) Only a licensed Utah pharmacist or authorized pharmacy personnel shall have access to the pharmacy when the pharmacy is closed.

(9) The facility shall maintain a permanent log of the initials or identification codes which identify each dispensing pharmacist by name. The initials or identification code shall be unique to ensure that each pharmacist can be identified; therefore identical initials or identification codes shall not be used.

(10) The pharmacy facility must maintain copy 3 of DEA order form (Form 222) which has been properly dated, initialed and filed and all copies of each unaccepted or defective order form and any attached statements or other documents.

(11) If applicable, a hard copy of the power of attorney authorizing a pharmacist to sign DEA order forms (Form 222) must be available to the Division whenever necessary.

(12) Pharmacists or other responsible individuals shall verify that the suppliers' invoices of legend drugs, including controlled substances, are listed on the invoices and were actually received by clearly recording their initials and the actual date of receipt of the controlled substances.

(13) The pharmacy facility must maintain a record of suppliers' credit memos for controlled substances and legend drugs.

(14) A copy of inventories required under Section R156-17b-605 must be made available to the Division when requested.

(15) The pharmacy facility must maintain hard copy reports of surrender or destruction of controlled substances and legend drugs submitted to appropriate state or federal agencies.

R156-17b-614a. Operating Standards - Class B pharmacy designated as a Branch Pharmacy.

In accordance with Subsections 58-17b-102(7) and 58-1-301(3), the qualifications for designation as a branch pharmacy include the following:

(1) The Division, in collaboration with the Board, shall approve the location of each branch pharmacy. The following shall be considered in granting such designation:

(a) the distance between or from nearby alternative pharmacies and all other factors affecting access of persons in the area to alternative pharmacy resources;

(b) the availability at the location of qualified persons to staff the pharmacy, including the physician, physician assistant or advanced practice registered nurse;

(c) the availability and willingness of a parent pharmacy and supervising pharmacist to assume responsibility for the branch pharmacy;

(d) the availability of satisfactory physical facilities in which the branch pharmacy may operate; and

(e) the totality of conditions and circumstances which

surround the request for designation.

(2) A branch pharmacy shall be licensed as a pharmacy branch of an existing Class A or B pharmacy licensed by the Division.

(3) The application for designation of a branch pharmacy shall be submitted by the licensed parent pharmacy seeking such designation. In the event that more than one licensed pharmacy makes application for designation of a branch pharmacy location at a previously undesignated location, the Division in collaboration with the Board shall review all applications for designation of the branch pharmacy and, if the location is approved, shall approve for licensure the applicant determined best able to serve the public interest as identified in Subsection (1).

(4) The application shall include the following:

(a) complete identifying information concerning the applying parent pharmacy;

(b) complete identifying information concerning the designated supervising pharmacist employed at the parent pharmacy;

(c) address and description of the facility in which the branch pharmacy is to be located;

(d) specific formulary to be stocked indicating with respect to each prescription drug, the name, the dosage strength and dosage units in which the drug will be prepackaged;

(e) complete identifying information concerning each person located at the branch pharmacy who will dispense prescription drugs in accordance with the approved protocol; and

(f) protocols under which the branch pharmacy will operate and its relationship with the parent pharmacy to include the following:

(i) the conditions under which prescription drugs will be stored, used and accounted for;

(ii) the method by which the drugs will be transported from parent pharmacy to the branch pharmacy and accounted for by the branch pharmacy; and

(iii) a description of how records will be kept with respect to:

(A) formulary;

(B) changes in formulary;

(C) record of drugs sent by the parent pharmacy;

(D) record of drugs received by the branch pharmacy;

(E) record of drugs dispensed;

(F) periodic inventories; and

(G) any other record contributing to an effective audit trail with respect to prescription drugs provided to the branch pharmacy.

R156-17b-614b. Operating Standards - Class B - Sterile Pharmaceuticals.

In accordance with Subsection 58-17b-601(1), the USP-NF Chapter 797, Compounding for Sterile Preparations, shall apply to all pharmacies preparing sterile pharmaceuticals.

R156-17b-614c. Operating Standards - Class B - Pharmaceutical Administration Facility.

In accordance with Subsections 58-17b-102(44) and 58-17b-601(1), the following applies with respect to prescription drugs which are held, stored or otherwise under the control of a pharmaceutical administration facility for administration to patients:

(1) The licensed pharmacist shall provide consultation on all aspects of pharmacy services in the facility; establish a system of records of receipt and disposition of all controlled substances in sufficient detail to enable an accurate reconciliation; and determine that drug records are in order and that an account of all controlled substances is maintained and periodically reconciled.

(2) Authorized destruction of all prescription drugs shall be witnessed by the medical or nursing director or a designated physician, registered nurse or other licensed person employed in the facility and the consulting pharmacist or licensed pharmacy technician and must be in compliance with DEA regulations.

(3) Prescriptions for patients in the facility can be verbally requested by a licensed prescribing practitioner and may be entered as the prescribing practitioner's order; but the practitioner must personally sign the order in the facility record within 72 hours if a Schedule II controlled substance and within 30 days if any other prescription drug. The prescribing practitioner's verbal order may be copied and forwarded to a pharmacy for dispensing and may serve as the pharmacy's record of the prescription order.

(4) Prescriptions for controlled substances for patients in Class B pharmaceutical administration facilities shall be dispensed according to Title 58, Chapter 37, Utah Controlled Substances Act, and R156-37, Utah Controlled Substances Act Rules.

(5) Requirements for emergency drug kits shall include:

(a) an emergency drug kit may be used by pharmaceutical administration facilities. The emergency drug kit shall be considered to be a physical extension of the pharmacy supplying the emergency drug kit and shall at all times remain under the ownership of that pharmacy;

(b) the contents and quantity of drugs and supplies in the emergency drug kit shall be determined by the Medical Director or Director of Nursing of the pharmaceutical administration facility and the consulting pharmacist of the supplying pharmacy;

(c) a copy of the approved list of contents shall be conspicuously posted on or near the kit;

(d) the emergency kit shall be used only for bona fide emergencies and only when medications cannot be obtained from a pharmacy in a timely manner;

(e) records documenting the receipt and removal of drugs in the emergency kit shall be maintained by the facility and the pharmacy;

(f) the pharmacy shall be responsible for ensuring proper storage, security and accountability of the emergency kit and shall ensure that:

(i) the emergency kit is stored in a locked area and is locked itself; and

(ii) emergency kit drugs are accessible only to licensed physicians, physician assistants and nurses employed by the facility;

(g) the contents of the emergency kit, the approved list of contents and all related records shall be made freely available and open for inspection to appropriate representatives of the Division and the Utah Department of Health.

R156-17b-614d. Operating Standards - Class B - Nuclear Pharmacy.

In accordance with Subsection 58-17b-601(1), the operating standards for a Class B pharmacy designated as a nuclear pharmacy shall have the following:

(1) A nuclear pharmacy shall have the following:

(a) have applied for or possess a current Utah Radioactive Materials License; and

(b) adequate space and equipment commensurate with the scope of services required and provided.

(2) Nuclear pharmacies shall only dispense radiopharmaceuticals that comply with acceptable standards of quality assurance.

(3) Nuclear pharmacies shall maintain a library commensurate with the level of radiopharmaceutical service to be provided.

(4) A licensed Utah pharmacist shall be immediately available on the premises at all times when the facility is open

or available to engage in the practice of pharmacy.

(5) In addition to Utah licensure, the pharmacist shall have classroom and laboratory training and experience as required by the Utah Radiation Control Rules.

(6) This rule does not prohibit:

(a) a licensed pharmacy intern or technician from acting under the direct supervision of an approved preceptor who meets the requirements to supervise a nuclear pharmacy; or

(b) a Utah Radioactive Materials license from possessing and using radiopharmaceuticals for medical use.

(7) A hospital nuclear medicine department or an office of a physician/surgeon, osteopathic physician/surgeon, veterinarian, pediatric physician or dentist that has a current Utah Radioactive Materials License does not require licensure as a Class B pharmacy.

R156-17b-615. Operating Standards - Class C Pharmacy - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer in Utah.

In accordance with Subsections 58-17b-102(48) and 58-17b-601(1), the operating standards for Class C pharmacies designated as pharmaceutical wholesaler/distributor and pharmaceutical manufacturer licensees includes the following:

(1) Every pharmaceutical wholesaler or manufacturer that engages in the wholesale distribution and manufacturing of drugs or medical devices located in this state shall be licensed by the Division. A separate license shall be obtained for each separate location engaged in the distribution or manufacturing of prescription drugs. Business names cannot be identical to the name used by another unrelated wholesaler licensed to purchase drugs and devices in Utah.

(2) Manufacturers distributing only their own FDA-approved prescription drugs or co-licensed product shall satisfy this requirement by registering their establishment with the Federal Food and Drug Administration pursuant to 21 CFR Part 207 and submitting the information required by 21 CFR Part 205, including any amendments thereto, to the Division.

(3) An applicant for licensure as a pharmaceutical wholesale distributor must provide the following minimum information:

(a) All trade or business names used by the licensee (including "doing business as" and "formerly known as");

(b) Name of the owner and operator of the license as follows:

(i) if a person, the name, business address, social security number and date of birth;

(ii) if a partnership, the name, business address, and social security number and date of birth of each partner, and the partnership's federal employer identification number;

(iii) if a corporation, the name, business address, social security number and date of birth, and title of each corporate officer and director, the corporate names, the name of the state of incorporation, federal employer identification number, and the name of the parent company, if any, but if a publically traded corporation, the social security number and date of birth for each corporate officer shall not be required;

(iv) if a sole proprietorship, the full name, business address, social security number and date of birth of the sole proprietor and the name and federal employer identification number of the business entity;

(v) if a limited liability company, the name of each member, social security number of each member, the name of each manager, the name of the limited liability company and federal employer identification number, and the name of the state in which the limited liability company was organized; and

(c) any other relevant information required by the Division.

(4) The licensed facility need not be under the supervision of a licensed pharmacist, but shall be under the supervision of

a designated representative who meets the following criteria:

- (a) is at least 21 years of age;
- (b) has been employed full time for at least three years in a pharmacy or with a pharmaceutical wholesaler in a capacity related to the dispensing and distribution of, and recordkeeping related to prescription drugs;
- (c) is employed by the applicant full time in a managerial level position;
- (d) is actively involved in and aware of the actual daily operation of the pharmaceutical wholesale distribution;
- (e) is physically present at the facility during regular business hours, except when the absence of the designated representative is authorized, including but not limited to, sick leave and vacation leave; and
- (f) is serving in the capacity of a designated representative for only one licensee at a time.

(5) The licensee shall provide the name, business address, and telephone number of a person to serve as the designated representative for each facility of the pharmaceutical wholesaler that engages in the distribution of drugs or devices.

(6) Each facility that engages in pharmaceutical wholesale distribution and manufacturing facilities must undergo an inspection by the Division for the purposes of inspecting the pharmaceutical wholesale distribution or manufacturing operation prior to initial licensure and periodically thereafter with a schedule to be determined by the Division.

(7) All pharmaceutical wholesalers and manufacturer must publicly display or have readily available all licenses and the most recent inspection report administered by the Division.

(8) In accordance with Section 58-17b-307, the Division shall require a criminal background check of the applicant, including but not limited to all key personnel involved in the operation of the pharmaceutical wholesaler or manufacturer, including the most senior person responsible for facility operation, purchasing, and inventory control and the person they report to in order to determine if an applicant or others associated with the ownership, management, or operations of the pharmaceutical wholesaler or manufacturer have committed criminal acts that would constitute grounds for denial of licensure.

(9) All Class C pharmacies shall:

- (a) be of suitable size and construction to facilitate cleaning, maintenance and proper operations;
- (b) have storage areas designed to provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;

(c) have the ability to control temperature and humidity within tolerances required by all prescription drugs and prescription drug precursors handled or used in the distribution or manufacturing activities of the applicant or licensee;

(d) provide for a quarantine area for storage of prescription drugs and prescription drug precursors that are outdated, damaged, deteriorated, misbranded, adulterated, opened or unsealed containers that have once been appropriately sealed or closed or in any other way unsuitable for use or entry into distribution or manufacturing;

(e) be maintained in a clean and orderly condition; and

(f) be free from infestation by insects, rodents, birds or vermin of any kind.

(10) Each facility used for wholesale drug distribution or manufacturing of prescription drugs shall:

(a) be secure from unauthorized entry;

(b) limit access from the outside to a minimum in conformance with local building codes, life and safety codes and control access to persons to ensure unauthorized entry is not made;

(c) limit entry into areas where prescription drugs, prescription drug precursors, or prescription drug devices are held to authorized persons who have a need to be in those areas;

(d) be well lighted on the outside perimeter;

(e) be equipped with an alarm system to permit detection of entry and notification of appropriate authorities at all times when the facility is not occupied for the purpose of engaging in distribution or manufacturing of prescription drugs; and

(f) be equipped with security measures, systems and procedures necessary to provide reasonable security against theft and diversion of prescription drugs or alteration or tampering with computers and records pertaining to prescription drugs or prescription drug precursors.

(11) Each facility shall provide the storage of prescription drugs, prescription drug precursors, and prescription drug devices in accordance with the following:

(a) all prescription drugs and prescription drug precursors shall be stored at appropriate temperature, humidity and other conditions in accordance with labeling of such prescription drugs or prescription drug precursors or with requirements in the USP-NF;

(b) if no storage requirements are established for a specific prescription drug, prescription drug precursor, or prescription drug devices, the products shall be held in a condition of controlled temperature and humidity as defined in the USP-NF to ensure that its identity, strength, quality and purity are not adversely affected; and

(c) there shall be established a system of manual, electromechanical or electronic recording of temperature and humidity in the areas in which prescription drugs, prescription drug precursors, and prescription drug devices are held to permit review of the record and ensure that the products have not been subjected to conditions which are outside of established limits.

(12) Each person who is engaged in pharmaceutical wholesale distribution of prescription drugs for human use that leave, or have ever left, the normal distribution channel shall, before each pharmaceutical wholesale distribution of such drug, provide a pedigree to the person who receives such drug. A retail pharmacy or pharmacy warehouse shall comply with the requirements of this section only if the pharmacy engages in pharmaceutical wholesale distribution of prescription drugs. The pedigree shall:

(a) include all necessary identifying information concerning each sale in the chain of distribution of the product from the manufacturer, through acquisition and sale by any pharmaceutical wholesaler, until sale to a pharmacy or other person dispensing or administering the prescription drug. At a minimum, the necessary chain of distribution information shall include:

(i) name, address, telephone number, and if available, the email address of each owner of the prescription drug, and each pharmaceutical wholesaler of the prescription drug;

(ii) name and address of each location from which the product was shipped, if different from the owner's;

(iii) transaction dates;

(iv) name of the prescription drug;

(v) dosage form and strength of the prescription drug;

(vi) size of the container;

(vii) number of containers;

(viii) lot number of the prescription drug;

(ix) name of the manufacturer of the finished dose form;

and

(x) National Drug Code (NDC) number.

(b) be maintained by the purchaser and the pharmaceutical wholesaler for five years from the date of sale or transfer and be available for inspection or use upon a request of an authorized officer of the law.

(13) Each facility shall comply with the following requirements:

(a) in general, each person who is engaged in pharmaceutical wholesale distribution of prescription drugs

shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of the prescription drugs. These records shall include pedigrees for all prescription drugs that leave the normal distribution channel;

(b) upon receipt, each outside shipping container containing prescription drugs, prescription drug precursors, or prescription drug devices shall be visibly examined for identity and to prevent the acceptance of prescription drugs, prescription drug precursors, or prescription drug devices that are contaminated, reveal damage to the containers or are otherwise unfit for distribution:

(i) prescription drugs, prescription drug precursors, or prescription drug devices that are outdated, damaged, deteriorated, misbranded, adulterated or in any other way unfit for distribution or use in manufacturing shall be quarantined and physically separated from other prescription drugs, prescription drug precursors or prescription drug devices until they are appropriately destroyed or returned to their supplier; and

(ii) any prescription drug or prescription drug precursor whose immediate sealed or outer secondary sealed container has been opened or in any other way breached shall be identified as such and shall be quarantined and physically separated from other prescription drugs and prescription drug precursors until they are appropriately destroyed or returned to their supplier;

(c) each outgoing shipment shall be carefully inspected for identity of the prescription drug products or devices and to ensure that there is no delivery of prescription drugs or devices that have been damaged in storage or held under improper conditions:

(i) if the conditions or circumstances surrounding the return of any prescription drug or prescription drug precursor cast any doubt on the product's safety, identity, strength, quality or purity, then the drug shall be appropriately destroyed or returned to the supplier, unless examination, testing or other investigation proves that the product meets appropriate and applicable standards related to the product's safety, identity, strength, quality and purity;

(ii) returns of expired, damaged, recalled, or otherwise non-saleable prescription drugs shall be distributed by the receiving pharmaceutical wholesale distributor only to the original manufacturer or a third party returns processor that is licensed as a pharmaceutical wholesale distributor under this chapter;

(iii) returns or exchanges of prescription drugs (saleable or otherwise), including any redistribution by a receiving pharmaceutical wholesaler, shall not be subject to the pedigree requirements, so long as they are exempt from the pedigree requirement under the FDA's Prescription Drug Marketing Act guidance or regulations; and

(d) licensee under this Act and pharmacies or other persons authorized by law to dispense or administer prescription drugs for use by a patient shall be accountable for administering their returns process and ensuring that all aspects of their operation are secure and do not permit the entry of adulterated and counterfeit prescription drugs.

(14) A manufacturer or pharmaceutical wholesaler shall furnish prescription drugs only to a person licensed by the Division or to another appropriate state licensing authority to possess, dispense or administer such drugs for use by a patient.

(15) Prescription drugs furnished by a manufacturer or pharmaceutical wholesaler shall be delivered only to the business address of a person described in Subsection R156-17b-615(14), or to the premises listed on the license, or to an authorized person or agent of the licensee at the premises of the manufacturer or pharmaceutical wholesaler if the identity and authority of the authorized agent is properly established.

(16) Each facility shall establish and maintain records of all transactions regarding the receipt and distribution or other

disposition of prescription drugs and prescription drug precursors and shall make inventories of prescription drugs and prescription drug precursors and required records available for inspection by authorized representatives of the federal, state and local law enforcement agencies in accordance with the following:

(a) there shall be a record of the source of the prescription drugs or prescription drug precursors to include the name and principal address of the seller or transferor and the address of the location from which the drugs were shipped;

(b) there shall be a record of the identity and quantity of the prescription drug or prescription drug precursor received, manufactured, distributed or shipped or otherwise disposed of by specific product and strength;

(c) there shall be a record of the dates of receipt and distribution or other disposal of any product;

(d) there shall be a record of the identity of persons to whom distribution is made to include name and principal address of the receiver and the address of the location to which the products were shipped;

(e) inventories of prescription drugs and prescription drug precursors shall be made available during regular business hours to authorized representatives of federal, state and local law enforcement authorities;

(f) required records shall be made available for inspection during regular business hours to authorized representatives of federal, state and local law enforcement authorities and such records shall be maintained for a period of two years following disposition of the products; and

(g) records that are maintained on site or immediately retrievable from computer or other electronic means shall be made readily available for authorized inspection during the retention period; or if records are stored at another location, they shall be made available within two working days after request by an authorized law enforcement authority during the two year period of retention.

(17) Each facility shall establish, maintain and adhere to written policies and procedures which shall be followed for the receipt, security, storage, inventory, manufacturing, distribution or other disposal of prescription drugs or prescription drug precursors, including policies and procedures for identifying, recording and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories. In addition, the policies shall include the following:

(a) a procedure whereby the oldest approved stock of a prescription drug or precursor product is distributed or used first with a provision for deviation from the requirement if such deviation is temporary and appropriate;

(b) a procedure to be followed for handling recalls and withdrawals of prescription drugs adequate to deal with recalls and withdrawals due to:

(i) any action initiated at the request of the FDA or other federal, state or local law enforcement or other authorized administrative or regulatory agency;

(ii) any voluntary action to remove defective or potentially defective drugs from the market; or

(iii) any action undertaken to promote public health, safety or welfare by replacement of existing product with an improved product or new package design;

(c) a procedure to prepare for, protect against or handle any crisis that affects security or operation of any facility in the event of strike, fire, flood or other natural disaster or other situations of local, state or national emergency;

(d) a procedure to ensure that any outdated prescription drugs or prescription drug precursors shall be segregated from other drugs or precursors and either returned to the manufacturer, other appropriate party or appropriately destroyed;

(e) a procedure for providing for documentation of the

disposition of outdated, adulterated or otherwise unsafe prescription drugs or prescription drug precursors and the maintenance of that documentation available for inspection by authorized federal, state or local authorities for a period of five years after disposition of the product;

(f) a procedure for identifying, investigating and reporting significant drug inventory discrepancies (involving counterfeit drugs suspected of being counterfeit, contraband, or suspect of being contraband) and reporting of such discrepancies within three (3) business days to the Division and/or appropriate federal or state agency upon discovery of such discrepancies; and

(g) a procedure for reporting criminal or suspected criminal activities involving the inventory of drugs and devices to the Division, FDA and if applicable, Drug Enforcement Administration (DEA), within three (3) business days.

(18) Each facility shall establish, maintain and make available for inspection by authorized federal, state and local law enforcement authorities, lists of all officers, directors, managers and other persons in charge which lists shall include a description of their duties and a summary of their background and qualifications.

(19) Each facility shall comply with laws including:

(a) operating within applicable federal, state and local laws and regulations;

(b) permitting the state licensing authority and authorized federal, state and local law enforcement officials, upon presentation of proper credentials, to enter and inspect their premises and delivery vehicles and to audit their records and written operating policies and procedures, at reasonable times and in a reasonable manner, to the extent authorized by law; and

(c) obtaining a controlled substance license from the Division and registering with the Drug Enforcement Administration (DEA) if they engage in distribution or manufacturing of controlled substances and shall comply with all federal, state and local regulations applicable to the distribution or manufacturing of controlled substances.

(20) Each facility shall be subject to and shall abide by applicable federal, state and local laws that relate to the salvaging or reprocessing of prescription drug products.

(21) A person who is engaged in the wholesale distribution or manufacturing of prescription drugs but does not have a facility located within Utah in which prescription drugs are located, stored, distributed or manufactured is exempt from Utah licensure as a Class C pharmacy, if said person is currently licensed and in good standing in each state of the United States in which that person has a facility engaged in distribution or manufacturing of prescription drugs entered into interstate commerce.

R156-17b-616. Operating Standards - Class D Pharmacy - Out of State Mail Order Pharmacies.

(1) In accordance with Subsections 58-1-301(3) and 58-17b-306(2), an application for licensure as a Class D pharmacy shall include:

(a) a pharmacy care protocol that includes the operating standards established in Subsections R156-17b-610(1) and (8) and R156-17b-614(1) through (4);

(b) a copy of the pharmacist's license for the pharmacist-in-charge; and

(c) a copy of the most recent state inspection showing the status of compliance with the laws and regulations for physical facility, records and operations.

R156-17b-617. Operating Standards - Class E pharmacy.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), the operating standards for a Class E pharmacy shall include a written pharmacy care protocol which includes:

(a) the identity of the supervisor or director;

(b) a detailed plan of care;

(c) identity of the drugs that will be purchased, stored, used and accounted for; and

(d) identity of any licensed healthcare provider associated with operation.

R156-17b-618. Change in Ownership or Location.

(1) In accordance with Section 58-17b-614, except for changes in ownership caused by a change in the stockholders in corporations which are publicly listed and whose stock is publicly traded, a licensed pharmaceutical facility that proposes to change its name, location, or ownership shall make application for a new license and receive approval from the division prior to the proposed change. The application shall be on application forms provided by the division and shall include:

(a) the name and current address of the licensee;

(b) the pharmacy license number and the controlled substance license number of the facility;

(c) the DEA registration number of the facility; and

(d) other information required by the division in collaboration with the board.

(2) A new license shall be issued upon a change of ownership, name or a change in location only after an application for change has been submitted and approved.

(3) Upon completion of the change in ownership, name or location, the original licenses shall be surrendered to the division.

R156-17b-619. Operating Standards - Third Party Payors. Reserved.

R156-17b-620. Operating Standards - Automated Pharmacy System.

In accordance with Section 58-17b-621, automated pharmacy systems can be utilized in licensed pharmacies, remote locations under the jurisdiction of the Division and licensed health care facilities where legally permissible and shall comply with the following provisions:

(1) Documentation as to type of equipment, serial numbers, content, policies and procedures and location shall be maintained on site in the pharmacy for review upon request of the Division. Such documentation shall include:

(a) name and address of the pharmacy or licensed health care facility where the automated pharmacy system is being used;

(b) manufacturer's name and model;

(c) description of how the device is used;

(d) quality assurance procedures to determine continued appropriate use of the automated device; and

(e) policies and procedures for system operation, safety, security, accuracy, patient confidentiality, access and malfunction.

(2) Automated pharmacy systems should be used only in settings where there is an established program of pharmaceutical care that ensures that before dispensing, or removal from an automated storage and distribution device, a pharmacist reviews all prescription or medication orders unless a licensed independent practitioner controls the ordering, preparation and administration of the medication; or in urgent situations when the resulting delay would harm the patient including situations in which the patient experiences a sudden change in clinical status.

(3) All policies and procedures must be maintained in the pharmacy responsible for the system and, if the system is not located within the facility where the pharmacy is located, at the location where the system is being used.

(4) Automated pharmacy systems shall have:

(a) adequate security systems and procedures to:

(i) prevent unauthorized access;

(ii) comply with federal and state regulations; and
 (iii) prevent the illegal use or disclosure of protected health information;

(b) written policies and procedures in place prior to installation to ensure safety, accuracy, security, training of personnel, and patient confidentiality and to define access and limits to access to equipment and medications.

(5) Records and electronic data kept by automated pharmacy systems shall meet the following requirements:

(a) all events involving the contents of the automated pharmacy system must be recorded electronically;

(b) records must be maintained by the pharmacy for a period of five years and must be readily available to the Division. Such records shall include:

(i) identity of system accessed;
 (ii) identify of the individual accessing the system;
 (iii) type of transaction;
 (iv) name, strength, dosage form and quantity of the drug accessed;

(v) name of the patient for whom the drug was ordered; and

(vi) such additional information as the pharmacist-in-charge may deem necessary.

(6) Access to and limits on access to the automated pharmacy system must be defined by policy and procedures and must comply with state and federal regulations.

(7) The pharmacist-in-charge or pharmacist designee shall have the sole responsibility to:

(a) assign, discontinue or change access to the system;
 (b) ensure that access to the medications comply with state and federal regulations; and

(c) ensure that the automated pharmacy system is filled and stocked accurately and in accordance with established written policies and procedures.

(8) The filling and stocking of all medications in the automated pharmacy system shall be accomplished by qualified licensed healthcare personnel under the supervision of a licensed pharmacist.

(9) A record of medications filled and stocked into an automated pharmacy system shall be maintained for a period of five years and shall include the identification of the persons filling, stocking and checking for accuracy.

(10) All containers of medications stored in the automated pharmacy system shall be packaged and labeled in accordance with federal and state laws and regulations.

(11) All aspects of handling controlled substances shall meet the requirements of all state and federal laws and regulations.

(12) The automated pharmacy system shall provide a mechanism for securing and accounting for medications removed from and subsequently returned to the automated pharmacy system, all in accordance with existing state and federal law. Written policies and procedures shall address situations in which medications removed from the system remain unused and must be secured and accounted for.

(13) The automated pharmacy system shall provide a mechanism for securing and accounting for wasted medications or discarded medications in accordance with existing state and federal law. Written policies and procedures shall address situations in which medications removed from the system are wasted or discarded and must be secured.

R156-17b-621. Operating Standards - Pharmacist Administration - Training.

(1) In accordance with Subsection 58-17b-502(9), appropriate training for the administration of a prescription drug includes:

(a) current Basic Life Support (BLS) certification; and
 (b) successful completion of a training program which

includes at a minimum:

(i) didactic and practical training for administering injectable drugs;

(ii) the current Advisory Committee on Immunization Practices (ACIP) of the United States Center for Disease Control and Prevention guidelines for the administration of immunizations; and

(iii) the management of an anaphylactic reaction.

(2) Sources for the appropriate training include:

(a) ACPE approved programs; and

(b) curriculum-based programs from an ACPE accredited college of pharmacy, state or local health department programs and other board recognized providers.

(3) Training is to be supplemented by documentation of two hours of continuing education related to the area of practice in each preceding renewal period.

**KEY: pharmacists, licensing, pharmacies
 November 24, 2008**

58-17b-101

58-17b-601(1)

58-37-1

58-1-106(1)(a)

58-1-202(1)(a)

**R156. Commerce, Occupational and Professional Licensing.
R156-37c. Utah Controlled Substance Precursor Act Rule.
R156-37c-101. Title.**

This rule is known as the "Utah Controlled Substance Precursor Act Rule."

R156-37c-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 37c, as used in Title 58, Chapters 1 and 37c or this rule:

(1) "Involved officer, director, partner, proprietor, employee or manager" means an individual who has direct responsibility for the purchasing, storage, handling, disbursement, sale, shipping or disposal of controlled substance precursors.

(2) "Unusual and extraordinary regulated transaction" means:

- (a) a cash transaction;
- (b) a transaction of a magnitude outside of standard business conduct; or
- (c) a transaction in which the distributor does not have good knowledge of the legitimate use by the purchaser of the controlled substance precursors being purchased.

R156-37c-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 37c.

R156-37c-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.

R156-37c-302a. Qualifications for Licensure - Application Requirements.

In accordance with Subsection 58-37c-8(2), an applicant shall submit a complete application on a form provided by the division which includes the following:

- (1) identifying information including business legal name, physical location and mailing address, contact person for licensing purposes, organization type and identifying information, trade or business names;
- (2) disclosure of nature of business;
- (3) all facilities where business will be conducted;
- (4) identification of all controlled substance precursors for which licensure is requested; and
- (5) qualifying information concerning involved officers, directors, partners, proprietors, employees, and managers.

R156-37c-601. Routine Transactions.

In accordance with Subsection 58-37c-10(4)(a), the following are the recordkeeping and reporting requirements which shall be met by a regulated controlled substance precursor distributor and purchaser transaction.

(1) Each distributor shall submit to the division the following:

- (a) all records of purchase 15 days following the end of the calendar quarter;
- (b) all records of sale or transfer 15 days following the end of each calendar month; and
- (c) all inventory reconciliations 15 days following the end of the calendar quarter.

(2) Each purchaser shall submit to the division the following:

- (a) all records of purchase 15 days following the end of each calendar month;
- (b) all records of disposition 15 days following the end of the calendar quarter; and
- (c) all inventory reconciliations 15 days following the end of the calendar quarter.

R156-37c-602. Extraordinary or Unusual Regulated Transactions.

In accordance with Subsection 58-37c-10(4)(b), the following are the recordkeeping and reporting requirements which shall be met by a regulated controlled substance precursor distributor and purchaser with respect to each extraordinary or unusual regulated transaction.

(1) Each distributor shall cause records of sale or transfer to be received by the division within 72 hours after the sale or transfer.

(2) Each purchaser shall cause records of purchase to be received by the division within 72 hours after purchase.

R156-37c-603. Identification.

In accordance with Subsection 58-37c-10(4)(c), the following is the identification which shall be presented by a purchaser to a distributor and the requirements for recording that identification by the distributor prior to the sale or transfer or any controlled substance precursor in a regulated transaction.

(1) A purchaser shall present a copy of the controlled substance precursor license and a photo identification, if the purchase is to be shipped by other than a common carrier.

(2) A distributor shall record the controlled substance precursor license number and organization name along with the date of sale and material and quantity sold. This identification can be kept on file for a customer for the duration of a license period. A notarized photocopy of the license is acceptable proof of licensure. For transactions involving purchasers outside the state, no license number is required, but all other reporting is required.

R156-37c-604. Theft, Loss, or Shortage of Controlled Substance Precursor.

In accordance with Subsection 58-37c-10(4)(e), purchasers and distributors shall file a report with respect to a theft, loss, or shortage of a controlled substance precursor with the division within 72 hours of discovery of the loss or shortage using the format required for unusual transactions except in the case of minor shortages discovered during inventory which would be consistent with expected handling losses which will not be reported except in the inventory reconciliation.

KEY: licensing, controlled substances, precursor

1994 **58-1-106(1)(a)**
Notice of Continuation October 9, 2008 **58-1-202(1)(a)**
58-37c-1

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

This rule shall be known as the "Utah Construction Trades Licensing Act Rule".

R156-55a-102. Definitions.

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

(1) "Construction trades instructor", as used in Subsection 58-55-301(2)(o) is clarified to mean the education facility which is issued the license as a construction trades instructor. It does not mean individuals employed by the facility who may teach classes.

(2) "Construction trades instruction facility" means the facility which is granted the license as a construction trades instructor as specified in Subsection 58-55-301(2)(o) and as clarified in R156-55a-102(1).

(3) "Employee", as used in Subsections 58-55-102(12)(a) and 58-55-102(14), means a person providing labor services in the construction trades who works for a licensed contractor, or the substantial equivalent of a licensed contractor as determined by the Division, for compensation who has federal and state taxes withheld and workers' compensation and unemployment insurance provided by the person's employer.

(4) "Incidental", as used in Subsection 58-55-102(36), means work which:

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

(b) arises from and is directly related to work performed in the licensed specialty classification and does not exceed 10 percent of the overall contract and does not include performance of any electrical or plumbing work unless specifically included in the specialty classification description under Subsection R156-55a-301(2).

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

(6) "Mechanical", as used in Subsections 58-55-102(18) and 58-55-102(29), means the work which may be performed by a S350 HVAC Contractor under Section R156-55a-301.

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

(8) "Qualifier", as used in Title 58, Chapter 55 and this rule, means the individual who demonstrates competence for a contractor or construction trades instruction facility license by passing the examinations, completing the experience requirements or holding the individual licenses that are prerequisite requirements to obtain the contractor or construction trades instruction facility license.

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

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

R156-55a-103. Authority.

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 55.

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

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

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

(1) In accordance with Subsection 58-55-301(2), the classifications of licensure are listed and described in this section. The construction trades or specialty contractor classifications listed are those determined to significantly impact the public health, safety, and welfare. A person who is engaged in work which is included in the items listed in Subsections R156-55a-301(4) and (5) is exempt from licensure in accordance with Subsection 58-55-305(1)(i).

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

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

B100 - General Building Contractor. A General Building contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(18) and pursuant to Subsection 58-55-102(18)(b) is clarified as follows: the General Building Contractor scope of practice does not include activities described in this Subsection under specialty classification S202 - Solar Photovoltaic Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the North American Board of Certified Energy Practitioners.

B200 - Modular Unit Installation Contractor. Set up or installation of modular units as defined in Subsection 58-56-3(11) and constructed in accordance with Section 58-56-13. The scope of the work permitted under this classification includes construction of the permanent or temporary foundations, placement of the modular unit on a permanent or temporary foundation, securing the units together if required and securing the modular units to the foundations. Work excluded from this classification includes installation of factory built housing and connection of required utilities.

R100 - Residential and Small Commercial Contractor. A Residential and Small Commercial contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(29) and pursuant to Subsection 58-55-102(29) is clarified as follows: the Residential and Small Commercial Contractor scope of practice does not include activities described in this Subsection under specialty classification S202 - Solar Photovoltaic Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the North American Board of Certified Energy Practitioners.

R101 - Residential and Small Commercial Non Structural Remodeling and Repair. Remodeling and repair to any existing structure built for support, shelter and enclosure of persons, animals, chattels or movable property of any kind with the restriction that no change is made to the bearing portions of the existing structure, including footings, foundation and weight bearing walls; and the entire project is less than \$50,000 in total cost.

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

unit.

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

I102 - General Building Trades Instruction Facility. A General Building Trades Instruction Facility is a construction trades instruction facility authorized to teach the construction trades and is subject to the scope of practice defined in Subsections 58-55-102(18) or 58-55-102(29).

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

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

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

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

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

S202 - Solar Photovoltaic Contractor. Fabrication, construction, installation, and repair of photovoltaic cell panels and related components including battery storage systems, distribution panels, switch gear, electrical wires, inverters, and other electrical apparatus for solar photovoltaic systems. Work excluded from this classification includes work on any alternating current system or system component.

S210 - General Plumbing Contractor. Fabrication and/or installation of material and fixtures to create and maintain sanitary conditions in buildings, by providing a permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and provision of a safe and adequate supply of gases for lighting, heating, and industrial purposes. Work permitted under this classification shall include the furnishing of materials, fixtures and labor to extend service from a building out to the main water, sewer or gas pipeline.

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

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

S213 - Industrial Piping Contractor. Fabrication and/or installation of pipes and piping for the conveyance or

transmission of steam, gases, chemicals, and other substances including excavating, trenching, and back-filling related to such work.

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

S215 - Solar Thermal Systems Contractor. Construction, repair and/or installation of solar thermal systems up to the system shut off valve or where the system interfaces with any other plumbing system.

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

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

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

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

S222 - Overhead and Garage Door Contractor. The installation of overhead and garage doors and door openers.

S230 - Siding Contractor. Fabrication, construction, and/or installation of siding.

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

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

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

S260 - General Concrete Contractor. Fabrication, construction, mixing, batching, and/or installation of concrete and related concrete products along with the placing and setting of screeds for pavement for flatwork, the construction of forms, placing and erection of steel bars for reinforcing and application of plaster and other cement-related products.

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

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

under pressure.

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

S270 - General Drywall and Plastering Contractor. Fabrication, construction, and installation of drywall, gypsum, wallboard panels and assemblies. Preparation of drywall or plaster surfaces for suitable painting or finishing. Application to surfaces of coatings made of plaster, including the preparation of the surface and the provision of a base. This does not include applying stucco to lathe, plaster and other surfaces. Exempted is the plastering of foundations.

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

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

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

S290 - General Masonry Contractor. Construction by cutting, and/or laying of all of the following brick, block, or forms: architectural, industrial, and refractory brick, all brick substitutes, clay and concrete blocks, terra-cotta, thin set or structural quarry tile, glazed structural tile, gypsum tile, glass block, clay tile, copings, natural stone, plastic refractories, and castables and any incidental works, including the installation of shower pans, as required in construction of the masonry work.

S291 - Stone Masonry Contractor. Construction using natural or artificial stone, either rough or cut and dressed, laid at random, with or without mortar. Incidental work includes the installation of shower pans.

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

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

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

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

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

S320 - Steel Erection Contractor. Construction by fabrication, placing, and tying or welding of steel reinforcing bars or erecting structural steel shapes, plates of any profile,

perimeter or cross-section that are used to reinforce concrete or as structural members, including riveting, welding, and rigging.

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

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

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

S330 - Landscaping Contractor.

(a) grading and preparing land for architectural, horticultural, or decorative treatment;

(b) arrangement, and planting of gardens, lawns, shrubs, vines, bushes, trees, or other decorative vegetation;

(c) construction of small decorative pools, tanks, fountains, hothouses, greenhouses, fences, walks, garden lighting of 50 volts or less, or sprinkler systems;

(d) construction of retaining walls except retaining walls which are intended to hold vehicles, structures, equipment or other non natural fill materials within the area located within a 45 degree angle from the base of the retaining wall to the level of where the additional weight bearing vehicles, structures, equipment or other non natural fill materials are located; or

(e) patio areas except that:

(i) no decking designed to support humans or structures shall be included; and

(ii) no concrete work designed to support structures to be placed upon the patio shall be included.

(f) This classification does not include running electrical or gas lines to any appliance.

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

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

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

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

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

S360 - Refrigeration Contractor. Construction and/or installation of refrigeration equipment including, but not limited to, built-in refrigerators, refrigerated rooms, insulated refrigerated spaces and equipment related thereto; but, the scope of permitted work does not include the installation of gas fuel or electric power services other than connection of electrical devices to a junction box provided for that device and electrical control circuitry not exceeding 50 volts.

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

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

S390 - Sewer and Waste Water Pipeline Contractor.

Construction of sewer lines, sewage disposal and sewage drain facilities including excavation and grading with respect thereto, and the construction of sewage disposal plants and appurtenances thereto.

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

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

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

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

S430 - Metal Firebox and Fuel Burning Stove Installer. Fabrication, construction, and installation of metal fireboxes, fireplaces, and wood or coal-burning stoves, including the installation of venting and exhaust systems, provided the individual performing the installation is RMGA certified.

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

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

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

S460 - Wrecking and Demolition Contractor. The raising, cribbing, underpinning, moving, and removal of building and structures.

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

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

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

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

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

S600 - General Stucco Contractor. Applying stucco to lathe, plaster and other surfaces.

S700 - Specialty License Contractor.

(a) A specialty license is a license that confines the scope of the allowable contracting work to a specialized area of construction which the Division grants on a case-by-case basis.

(b) When applying for a specialty license, an applicant, if requested, shall submit to the Division the following:

(i) a detailed statement of the type and scope of contracting work that the applicant proposes to perform; and

(ii) any brochures, catalogs, photographs, diagrams, or other material to further clarify the scope of the work that the applicant proposes to perform.

(c) A contractor issued a specialty license shall confine the contractor's activities to the field and scope of operations as outlined by the Division.

(3)(a) Any person holding a S215 Solar Systems Contractor license before the effective date of this rule may obtain a S202 Solar Photovoltaic Contractor license by submitting an affidavit demonstrating two years of experience that meets the requirements of R156-55a-302b no later than March 31, 2010.

(b) Any person holding a S271 Plastering and Stucco Contractor license before the effective date of this rule shall be issued a S270 General Drywall and Plastering Contractor license.

(c) Any person holding a S274 Drywall Contractor license before the effective date of this rule shall be issued a S270 General Drywall and Plastering Contractor license.

(d) Any person holding a S271 Plastering and Stucco Contractor license or an S270 General Drywall, Stucco and Plastering Contractor license before the effective date of this rule may obtain a S600 General Stucco Contractor license by submitting an affidavit demonstrating two years of experience that meets the requirements of R156-55a-302b no later than March 31, 2010.

(e) Any person holding any of the following licenses before the effective date of this rule shall be issued a S280 General Roofing Contractor license:

(i) S281 Single Ply and Specialty Coating Contractor;

(ii) S282 Build-up Roofing Contractor;

(iii) S283 Shingle and Shake Roofing Contractor;

(iv) S284 Tile Roofing Contractor; and

(v) S285 Metal Roofing Contractor.

(4) The following activities are determined to not significantly impact the public health, safety and welfare and therefore do not require a contractors license:

(a) sandblasting;

(b) pumping services;

(c) tree stump or tree removal;

(d) installation within a building of communication cables

including phone and cable television;

(e) installation of low voltage electrical as described in R156-55b-102(1);

(f) construction of utility sheds, gazebos or other similar items which are personal property and not attached;

(g) building and window washing, including power washing;

(h) central vacuum systems installation;

(i) concrete cutting;

(j) interior decorating;

(k) wall paper hanging;

(l) drapery and blind installation;

(m) welding on personal property which is not attached;

(n) chimney sweepers other than repairing masonry;

(o) carpet and vinyl floor installation; and

(p) artificial turf installation.

(5) The following activities are those determined to not significantly impact the public health, safety and welfare beyond the regulations by other agencies and therefore do not require a contractors license:

(a) lead removal regulated by the Department of Environmental Quality;

(b) asbestos removal regulated by the Department of Environmental Quality;

(c) elevator installation and maintenance regulated by the Labor Commission; and

(d) fire alarm installation regulated by the Fire Marshal.

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

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

(a) the Utah Contractor Business - Law Examination; and

(b) an approved trade classification specific examination, where required in Subsection (2).

(2) An approved trade classification specific examination is required for the following contractor license classifications:

E100 - General Engineering Contractor

B100 - General Building Contractor

B200 - Modular Unit Installation Contractor

R100 - Residential and Small Commercial Contractor

R101 - Residential and Small Commercial Non Structural

Remodeling and Repair Contractor

I101 - General Engineering Trades Instruction Facility

I102 - General Building Trades Instruction Facility

I105 - Mechanical Trades Instruction Facility

S212 - Irrigation Sprinkling Contractor

S213 - Industrial Piping Contractor

S215 - Solar Thermal Systems Contractor

S216 - Residential Sewer Connection and Septic Tank

Contractor

S220 - Carpentry Contractor

S222 - Overhead and Garage Door Contractor

S230 - Siding Contractor

S240 - Glass and Glazing Contractor

S250 - Insulation Contractor

S260 - General Concrete Contractor

S270 - General Drywall and Plastering Contractor

S280 - General Roofing Contractor

S290 - General Masonry Contractor

S293 - Marble, Tile and Ceramic Contractor

S300 - General Painting Contractor

S310 - Excavation and Grading Contractor

S320 - Steel Erection Contractor

S321 - Steel Reinforcing Contractor

S330 - Landscaping Contractor

S340 - Sheet Metal Contractor

S350 - HVAC Contractor

S351 - Refrigerated Air Conditioning Contractor

S353 - Warm Air Heating Contractor

S360 - Refrigeration Contractor

S370 - Fire Suppression Systems Contractor

S380 - Swimming Pool and Spa Contractor

S390 - Sewer and Waste Water Pipeline Contractor

S410 - Pipeline and Conduit Contractor

S440 - Sign Installation Contractor

S450 - Mechanical Insulation Contractor

S490 - Wood Flooring Contractor

S600 - General Stucco Contractor

(3) The passing score for each examination is 70%.

(4) Qualifications to sit for examination.

(a) An applicant applying to take any examination specified in this Section must sign an affidavit verifying that an applicant has completed the experience required under Subsection R156-55a-302b.

(5) "Approved trade classification specific examination" means a trade classification specific examination:

(a) given, currently or in the past, by the Division's contractor examination provider; or

(b) given by another state if the Division has determined the examination to be substantially equivalent.

(6) An applicant for licensure who fails an examination may retake the failed examination as follows:

(a) no sooner than 30 days following any failure up to three failures; and

(b) no sooner than six months following any failure thereafter.

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

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

(1) Requirements for all license classifications:

(a) All experience shall be directly supervised by the applicant's employer.

(b) All experience shall be directly related to the scope of practice set forth in Section R156-55a-301 of the classification the applicant is applying for, as determined by the Division.

(c) One year of work experience means 2000 hours.

(d) No more than 2000 hours of experience during any 12 month period may be claimed.

(e) Except as described in paragraph (2)(c), experience obtained under the supervision of a construction trades instructor as a part of an educational program is not qualifying experience for a contractors license.

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

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

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

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

(d) A person holding a Utah professional engineer license may be credited with satisfying one year toward the supervisory or managerial experience required for E100 contractor license.

(3) Requirements for S220 Carpentry, S280 General Roofing, S290 General Masonry, S320 Steel Erection, S350 Heating Ventilating and Air Conditioning, S360 Refrigeration

and S370 Fire Suppression Systems license classifications:

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

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

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

(5) Requirements for other license classifications:

Except as set forth in paragraph (6), in addition to the requirements of paragraph (1), an applicant for contractor license classification not listed above shall have within the past 10 years a minimum of two years of experience as an employee of a contractor licensed in the license classification applied for, or the substantial equivalent of a contractor licensed in that license classification as determined by the Division.

(6) Requirements for S202 Solar Photovoltaic Contractor. In addition to the requirements of paragraphs (1) and (5), an applicant shall hold a current certificate by the North American Board of Certified Energy Practitioners.

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

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

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

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

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

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

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

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

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

(a) Before being licensed in a construction trades instruction facility classification, the school shall submit the name of an individual person who acts as the qualifier in each of the construction trades instructor classifications in accordance with Section R156-55a-304. The applicant for licensure as a construction trades instructor shall:

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

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

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

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

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

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

(3) In accordance with Subsections 58-55-501(21) and 58-1-308(3)(b)(i), there is established a continuing education requirement for license renewal. Each licensee, or the licensee's qualifier, or an officer, director or supervising individual, as designated by the licensee, shall comply with the continuing education requirements set forth in Section R156-55a-303b.

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

(1) Required Hours. Pursuant to Subsection 58-55-501(21), each licensee shall complete a total of six hours of continuing education during each two year license term except that for the renewal term ending November 30, 2009, the continuing education must be completed between July 1, 2007 and November 30, 2009. A minimum of three hours shall be core education. The remaining three hours are to be professional education. Additional core education hours beyond the required amount may be substituted for professional education hours.

(a) "Core continuing education" is defined as construction codes, construction laws, OSHA 10 or OSHA 30 safety training, governmental regulations pertaining to the construction trades and employee verification and payment practices.

(b) "Professional continuing education" is defined as substantive subjects dealing with the practice of the construction trades, including land development, land use, planning and zoning, energy conservation, professional development, arbitration practices, estimating, finance and bookkeeping, marketing techniques, servicing clients, personal and property protection for the licensee and the licensee's clients and similar topics.

(c) The following course subject matter is not acceptable as core education or professional education hours: mechanical office and business skills, such as typing, speed reading, memory improvement and report writing; physical well-being or personal development, such as personal motivation, stress management, time management, dress for success, or similar subjects; presentations by a supplier or a supplier representative to promote a particular product or line of products; and meetings held in conjunction with the general business of the licensee or employer.

(d) The Division may defer or waive the continuing education requirements as provided in Section R156-1-308d.

(2) A continuing education course shall meet the following standards:

(a) Time. Each hour of continuing education course credit shall consist of 50 minutes of education in the form of seminars, lectures, conferences, training sessions or distance learning modules. The remaining ten minutes is to allow for breaks.

(b) Provider. The course provider shall meet the requirements of this Section and shall be one of the following:

(i) a recognized accredited college or university;

(ii) a state or federal agency;

(iii) a professional association or organization involved in the construction trades; or

(iv) a commercial continuing education provider providing a program related to the construction trades.

(c) Content. The content of the course shall be relevant to the practice of the construction trades and consistent with the laws and rules of this state.

(d) Objectives. The learning objectives of the course shall be reasonably and clearly stated.

(e) Teaching Methods. The course shall be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program.

(f) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training and experience.

(g) Distance learning. A course 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.

(h) Documentation. The course provider shall have a competent method of registration of individuals who actually completed the course, shall maintain records of attendance that are available for review by the Division and shall provide individuals completing the course a certificate which contains the following information:

(i) the date of the course;

(ii) the name of the course provider;

(iii) the name of the instructor;

(iv) the course title;

(v) the hours of continuing education credit and type of credit (core or professional);

(vi) the attendee's name; and

(v) the signature of the course provider.

(3) On a random basis, the Division may assign monitors at no charge to attend a course for the purpose of evaluating the course and the instructor.

(4) Each licensee shall maintain adequate documentation as proof of compliance with this section, such as certificates of completion, course handouts and materials. The licensee shall retain this proof for a period of three years from the end of the renewal period for which the continuing education is due.

(5) Licensees who lecture in continuing education courses meeting these requirements shall receive two hours of continuing education for each hour spent lecturing. However, no lecturing or teaching credit is available for participation in a panel discussion.

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

(7) Licensees who obtain an initial license after March 31st of the renewal year shall not be required to meet the continuing education requirement for that renewal cycle.

(8) A continuing education registry qualified under Subsection R156-55a-303b(9) may approve continuing education programs sponsored by or submitted to the continuing education registry for approval under this rule.

(9) Continuing Education Registry. To obtain approval as a continuing education registry, an organization shall:

(a) be a professional association whose membership primarily consists of licensed contractors;

(b) be organized and in good standing according to the laws of the state;

(c) enter into a written agreement with the Division under which the organization agrees to:

(i) review and approve only those programs which meet

the standards set forth under this Section;

(ii) publish and disseminate to their members or other contractors on request, listings of continuing education programs which they have approved which meet the standards for continuing education credit under this rule;

(iii) maintain accurate records of qualified continuing education approved and provide a list of such continuing education programs to the Division; and

(iv) make records of approved continuing education programs available for audit by representatives of the Division.

(d) Fees. A continuing education registry may charge a reasonable fee to continuing education providers for services provided for review and approval of continuing education programs.

R156-55a-304. Construction Trades Instruction Facility License Qualifiers.

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

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

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

R156-55a-305a. Exempt Contractors Filing Affirmation of Liability and Workers Compensation Insurance.

(1) Initial affirmation. In accordance with Subsection 58-55-305(1)(h)(ii)(F), any person claiming exemption under Subsection 58-55-305(1)(h) for projects with a value greater than \$1,000 but less than \$3,000 shall file a registration of exemption with the Division which includes:

(a) the identity and address of the person claiming the exemption; and

(b) a statement signed by the registrant verifying:

(i) that the person has public liability insurance in force which includes the Division being named as a certificate holder, the policy number, the expiration date of the policy, the insurance company name and contact information, and coverage amounts of at least \$100,000 for each incident and \$300,000 in total; and

(ii) that the person has workers compensation insurance in force which names the Division as a certificate holder, includes the policy number, the expiration date of the policy, the insurance company name and contact information; or

(iii) that the person does not hire employees and is therefore exempt from the requirement to have workers compensation insurance.

(2) Periodic reaffirmations required. The affirmation required under Subsection (1) shall be reaffirmed on or before November 30 of each odd numbered year.

R156-55a-306. Contractor Financial Responsibility - Division Audit.

In accordance with Subsections 58-55-306(2) and 58-55-102(16), the Division may consider various relevant factors in conducting an audit of the demonstration of financial responsibility including:

(1)(a) judgments, tax liens, collection actions, bankruptcy schedules and a history of late payments to creditors, including documentation showing the resolution of each of the above

actions;

(b) the applicant's or licensee's financial statements and tax returns, including the ability to prepare or have prepared competent and current financial statements and tax returns;

(c) an acceptable current credit report of the applicant or licensee which meets the following requirements:

(i) for individuals:

(A) a credit report from each of the three national reporting agencies, Trans Union, Experian, and Equifax; or

(B) a merged credit report of the agencies identified in Subsection (A) prepared by the National Association of Credit Managers (NACM); or

(ii) for entities, a business credit report such as an Experian Business Credit Report or a Dun and Bradstreet Report;

(d) the applicant's or licensee's explanation of the reasons for any financial difficulties and how the financial difficulties were resolved; and

(e) any of the factors listed in Subsection R156-1-302 which may relate to failure to maintain financial responsibility.

(2) If the applicant or licensee has an inadequate financial history, the Division may also consider the following factors:

(a) each of the factors listed in Subsection (1) regarding the financial history of the owners of the applicant or licensee;

(b) any guaranty agreements provided for the applicant or licensee; and

(c) any history of prior entities owned or operated by the owners of the applicant or licensee which have failed to maintain financial responsibility.

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

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

(2) Each employee that works as a teacher for a school licensed as a construction trades instruction facility shall:

(a) have on their person a school photo ID card with the trade they are authorized to teach printed on the card; and

(b) if instructing in the plumbing or electrical trades, they shall also carry on their person their Utah journeyman or residential journeyman plumber license or Utah journeyman, residential journeyman, master, or residential master electrician license.

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

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

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

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

(a) general gas appliance installation codes;

(b) venting requirements;

(c) combustion air requirements;

(d) gas line sizing codes;

(e) gas line approved materials requirements;

(f) gas line installation codes; and

(g) methods of derating gas appliances for elevation.

(3) In accordance with Subsection 58-55-308(2)(c)(i), the

following programs are approved to provide natural gas technician training, and to issue certificates or documentation of exemption from certification:

(a) Federal Bureau of Apprenticeship Training;

(b) Utah college apprenticeship program; and

(c) Trade union apprenticeship program.

(4) In accordance with Subsection 58-55-308(3), the approved programs set forth in paragraphs (2)(b) and (2)(c) herein shall require program participants to pass the Rocky Mountain Gas Association Gas Appliance Installers Certification Exam or approved equivalent exams established or adopted by a training program, with a minimum passing score of 80%.

(5) In accordance with Subsection 58-55-308(3), a person who has not completed an approved training program, but has passed the Rocky Mountain Gas Association Gas Exam or approved equivalent exam established or adopted by an approved training program, with a minimum passing score of 80%, or the Utah licensed Journeyman or Residential Journeyman Plumber Exam, with a minimum passing score of 70%, shall be exempt from the certification requirement set forth in Subsection 58-55-308(2)(c)(i).

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

(a) name of the program provider;

(b) name of the approved program;

(c) name of the certificate holder;

(d) the date the certification was completed; and

(e) signature of an authorized representative of the program provider.

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

(a) certification of completion of training issued by the Federal Bureau of Apprenticeship Training;

(b) current Utah licensed Journeyman or Residential Journeyman plumber license; or

(c) certification from the Rocky Mountain Gas Association or approved equivalent exam which shall include the following:

(i) name of the association, school, union, or other organization who administered the exam;

(ii) name of the person who passed the exam;

(iii) name of the exam;

(iv) the date the exam was passed; and

(v) signature of an authorized representative of the test administrator.

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

R156-55a-309. Reinstatement Application Fee.

The application fee for a contractor applicant who is applying for reinstatement more than two years after the expiration of licensure, who has been engaged in unauthorized practice of contracting following the expiration of the applicant's license, shall be the current license application fee normally required for a new application rather than the reinstatement fee provided under R156-1-308g(3)(d).

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

A reorganization of the business organization or entity under which a licensed contractor is licensed shall require application for a new license under the new form of organization or business structure. The creation of a new legal entity constitutes a reorganization and includes a change to a

new entity under the same form of business entity or a change of the form of business entity between proprietorship, partnership, whether limited or general, joint venture, corporation or any other business form.

Exception: A conversion from one form of entity to another form where "Articles of Conversion" are filed with the Utah Division of Corporations and Commercial Code shall not require a new contractor application.

R156-55a-312. Inactive License.

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

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

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

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

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

(i) No license shall be in an inactive status for more than six years.

(ii) Prior to a license being activated, a licensee shall meet the requirements of renewal.

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

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

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

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

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

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

(e) Nothing in this section shall be construed to restrict a presiding officer from imposing more than the minimum penalty for a violation of Subsection R156-55a-501(2) and (3). However, absent extraordinary cause, the presiding officer may not impose less than the minimum penalty.

R156-55a-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to notify the Division with respect to any matter for which notification is required under this rule or Title 58,

Chapter 55, the Construction Trades Licensing Act, including a change in qualifier. Such failure shall be considered by the Division and the Commission as grounds for immediate suspension of the contractors license;

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

(3) failing, upon request by the Division, to provide proof of insurance coverage within 30 days.

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

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

R156-55a-503. Administrative Penalties.

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

TABLE FINE SCHEDULE FIRST OFFENSE		
Violation	All Licenses Except Electrical or Plumbing	Electrical or Plumbing
58-55-308(2)	\$ 500.00	N/A
58-55-501(1)	\$ 500.00	\$ 500.00
58-55-501(2)	\$ 500.00	\$ 800.00
58-55-501(3)	\$ 800.00	\$1,000.00
58-55-501(9)	\$ 500.00	\$ 500.00
58-55-501(10)	\$ 800.00	\$1,000.00
58-55-501(12)	N/A	\$ 500.00
58-55-501(14)	\$ 500.00	N/A
58-55-501(19)	\$ 500.00	N/A
58-55-501(21)	\$ 500.00	\$ 500.00
58-55-504(2)	\$ 500.00	N/A
SECOND OFFENSE		
58-55-308(2)	\$1,000.00	N/A
58-55-501(1)	\$1,000.00	\$1,500.00
58-55-501(2)	\$1,000.00	\$1,500.00
58-55-501(3)	\$1,600.00	\$2,000.00
58-55-501(9)	\$1,000.00	\$1,000.00
58-55-501(10)	\$1,600.00	\$2,000.00
58-55-501(12)	N/A	\$1,000.00
58-55-501(14)	\$1,000.00	N/A
58-55-501(19)	\$1,000.00	N/A
58-55-501(21)	\$1,000.00	\$1,000.00
58-55-504(2)	\$1,000.00	N/A
THIRD OFFENSE		

Double the amount for a second offense with a maximum amount not to exceed the maximum fine allowed under Subsection 58-55-503(4)(h).

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

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

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

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

R156-55a-504. Crane Operator Certifications.

In accordance with Subsection 58-55-504(2)(a) one of the following certifications is required to operate a crane on commercial construction projects:

(1) a certification issued by the National Commission for

the Certification of Crane Operators; or

(2) a certification issued by the Operating Engineers Certification Program formerly known as the Southern California Crane and Hoisting Certification Program.

KEY: contractors, occupational licensing, licensing

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58-55-101

58-55-308(1)

58-55-102(35)

58-55-501(21)

R156. Commerce, Occupational and Professional Licensing.
R156-55c. Construction Trades Licensing Act Plumber Licensing Rule.

R156-55c-101. Title.

This rule is known as the "Construction Trades Licensing Act Plumber Licensing Rule".

R156-55c-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapters 1 and 55 or this rule:

- (1) "Board" means the Plumbers Licensing Board.
- (2) "Plumber" means apprentice plumber, residential apprentice plumber, journeyman plumber, and residential journeyman plumber.
- (3) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 55, is further defined in accordance with Subsection 58-1-203(1)(e), in Subsection R156-55c-501.

R156-55c-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 55.

R156-55c-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.

R156-55c-302a. Qualifications for Licensure - Application Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the application requirements for licensure in Section 58-55-302 are defined, clarified, or established as follows:

- (1) an applicant for licensure shall submit an application for license only after having met all requirements for licensure set forth in Section 58-55-302 and this rule; and
- (2) the application must be accompanied by all documents or other evidence required demonstrating the applicant is qualified for licensure.

R156-55c-302b. Qualification for Licensure - Training and Instruction Requirement.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the training and instruction requirements for licensure in Subsection 58-55-302(3)(c) and (d) are defined, clarified, or established as follows:

- (1) An applicant for a journeyman plumber's license shall demonstrate successful completion of the requirements of either paragraph (a) or (b):
 - (a)(i) 8,000 hours of training and instruction in not less than four years that meets the requirements of Subsections R156-55c-302b(4) and (6).
 - (ii) the 8,000 hours shall include 576 clock hours of related classroom instruction that meets the requirements of Subsection R156-55c-302b(5);
 - (iii) the apprenticeship shall be obtained while licensed as an apprentice plumber or residential apprentice plumber;
 - (iv) the apprenticeship shall include on the job training and instruction in seven of the nine work process areas listed in Table I; and
 - (v) the hours obtained in any work process area shall be at least the number of hours listed in Table I.
- (b)(i) 16,000 hours of on the job training and instruction in not less than eight years;
 - (ii) the apprenticeship shall be obtained while licensed as an apprentice plumber;
 - (iii) the hours shall include on the job training and instruction in seven of the nine work process areas listed in Table I; and
 - (iv) the hours obtained in any work process shall be at

least the number of hours listed in Table I.

TABLE I
Training and Instruction

Work Process	Minimum Hours
A. Use of hand tools, equipment and pipe machinery	200
B. Installation of piping for waste, soil, sewer and vent lines	2,000
C. Installation of hot and cold water for domestic purposes	1,400
D. Installation and setting of plumbing appliances and fixtures	1,400
E. Maintenance and repair of plumbing	600
F. General pipe work including process and industrial hours	600
G. Gas piping or service piping	400
H. Welding, soldering and brazing as it applies to the trade	100
I. Service and maintenance of gas controls and equipment	100

(2) An applicant for a residential journeyman plumber's license shall demonstrate successful completion of the requirements of paragraph (a) or (b):

- (a)(i) 6,000 hours of training and instruction in not less than three years that meets the requirements of Subsections R156-55c-302b(4) and (6).
 - (ii) the 6,000 hours shall include 432 clock hours of related classroom instruction that meets the requirements of Subsection R156-55c-302b(5);
 - (iii) the 6,000 hours shall be obtained while licensed as an apprentice plumber or residential apprentice plumber;
 - (iv) the apprenticeship shall include on the job training and instruction in six of the eight work process areas listed in Table II; and
 - (v) the hours obtained in any work process area shall include at least the number of hours listed in Table II.
- (b)(i) 12,000 hours of experience in not less than six years which has been documented using a form provided by the division;
- (ii) the experience shall be obtained while licensed as an apprentice plumber or residential apprentice plumber;
 - (iii) at least 9,000 hours of experience shall be directly involved in the plumbing trade;
 - (iv) the hours shall be in six of the eight work process areas listed in Table II; and
 - (v) the hours obtained in any work process area shall include at least the number of hours listed in Table II.

TABLE II
Training and Instruction

Work Process	Minimum Hours
A. Use of hand tools, equipment and pipe machinery	100
B. Installation of piping for waste, soil, sewer and vent lines	1,600
C. Installation of hot and cold water for domestic purposes	1,200
D. Installation and setting of plumbing appliances and fixtures	1,000
E. Maintenance and repair of plumbing	600
F. Gas piping or service piping	400

G. Service and maintenance of gas controls and equipment	100
H. Welding, soldering and brazing as it applies to the trade	100

(3) A licensed residential journeyman plumber applying for a journeyman plumber's license shall complete 2,000 hours of on the job training in industrial or commercial plumbing while licensed as an apprentice plumber or residential apprentice plumber, which shall include successful completion of an approved fourth year course of classroom instruction.

(4) On the job training and instruction required in this section shall include measurements of an apprentice's performance in the plumbing trade.

(5) Formal classroom instruction required by this section shall meet the following requirements:

(a) instruction shall be conducted by an entity approved by the Board of Regents or by another entity that demonstrates to the division and board that it conducts equivalent classroom instruction; and

(b) instruction shall be conducted by competent qualified staff and shall include measures of competency and achievement level of each apprentice.

(6) Apprentice plumbers and residential apprentice plumbers shall engage in the plumbing trades only in accordance with the following:

(a) except as provided in Subsection 58-55-302(3)(e)(ii) for fourth through tenth year apprentices, while engaging in the plumbing trade, an apprentice plumber or residential apprentice plumber shall be under the immediate supervision of a journeyman plumber for commercial or industrial work, and by a residential journeyman or journeyman plumber for residential work;

(b) the apprentice shall engage in the plumbing trade in accordance with the instruction of the supervising plumber; and

(c) the apprentice shall work in a ratio of not to exceed two apprentice plumbers to one supervising plumber.

R156-55c-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the examination requirements for licensure in Subsection 58-55-302(1)(c)(i) are defined, clarified, or established as follows:

(1) The applicant shall obtain a score of 70% on the Utah Plumbers Licensing Examination which shall consist of a written section and practical section.

(2) Admission to the examinations is permitted after the applicant has completed all requirements for licensure set forth in Sections R156-55c-302a, R156-55c-302b and R156-55c-302c.

(3) An examinee who passes one section of the Utah Plumbers Licensing Examination and fails the other section shall be required to retake and pass only the section failed.

(4) If an applicant fails one or more sections of the examination, the applicant shall retake the section of the examination failed no more than two additional times with at least 25 days between tests.

(5) If an applicant does not pass the failed section of the examination upon the second retake or within six months of initially being approved to test, whichever occurs first, as provided in Subsection (4), the application shall be denied.

R156-55c-302d. Qualifications for Licensure - Master Supervisory Experience and Education Requirements.

In accordance with Subsections 58-55-302(3)(a)(i)(A) and 58-55-302(3)(b)(i), the minimum supervisory experience qualifications for licensure as a master plumber and residential master plumber are established as follows:

(1) An applicant shall demonstrate successful completion of 4000 hours of supervisory experience that includes each of the following categories and minimum number of hours:

(a) supervising employees: 700 hours;

(b) supervising construction projects: 700 hours;

(c) cost/price management: 300 hours; and

(d) miscellaneous construction experience: 300 hours in any one or more of the following: accounting/financial principles, contract negotiations, conflict resolutions, marketing, human resources and government regulation pertaining to business and the construction trades.

(2) The following, or the substantial equivalent thereof, as determined by the Board in collaboration with the Commission, shall apply to the minimum supervisory experience qualifications established in Subsection (1):

(a) supervisory experience shall be obtained while licensed in the proper license classification as either a journeyman plumber or a residential journeyman plumber;

(b) supervisory experience shall be obtained as an employee of a licensed plumbing contractor, whose employer covers the applicant with workers compensation and unemployment insurances and deducts federal and state taxes from the applicant's compensation;

(c) all supervisory experience shall be under the immediate supervision of the applicant's employer as defined in Subsection 58-55-102(20); and

(d) no more than 2000 hours of experience may be earned during any 12-month period.

(3) An associate of applied science or similar or higher educational degree, in accordance with Subsection 58-55-302(3)(a)(i)(B), shall fulfill 2000 hours of the 4000 hour supervisory experience requirement. Such an applicant shall complete the remaining minimum 2000 hour supervisory experience listed above in Subsection R156-55c-302d(1).

(a) The degree shall be accredited by one of the following:

(i) Middle States Association of Colleges and Schools;

(ii) New England Association of Colleges and Schools;

(iii) North Central Association of Colleges and Schools;

(iv) Northwest Commission on Colleges and Universities;

(v) Southern Association of Colleges and Schools; or

(vi) Western Association of Schools and Colleges.

(b) The degree shall be in one of the following courses of study:

(i) accounting;

(ii) apprenticeship;

(iii) business management;

(iv) communications;

(v) computer systems and computer information systems;

(vi) construction management;

(vii) engineering;

(viii) environmental technology;

(ix) finance;

(x) human resources; or

(xi) marketing.

R156-55c-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 55, is established by rule in Section R156-1-308a.

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

R156-55c-304. Licensure by Endorsement.

In accordance with the provisions of Section 58-1-302, the division may issue an individual a license as an apprentice plumber, residential apprentice plumber, journeyman plumber, or residential journeyman plumber by endorsement, in accordance with the following:

(1) An applicant for licensure by endorsement as a journeyman plumber or residential journeyman plumber has the burden to demonstrate that the apprenticeship instruction and training, or experience requirements in lieu of an apprenticeship, and the examination requirements of the state or jurisdiction in which the applicant holds licensure are equal to the requirement of this state or were equal to the requirements of this state at the time the applicant received licensure in the other state.

(2) An applicant for licensure as an apprentice or apprentice residential plumber who has completed part of apprenticeship training and instruction in another jurisdiction has the burden to demonstrate that the apprenticeship program in the other state is equivalent to an approved apprenticeship program in this state as a condition of the applicant being given credit for completion of an apprenticeship program in another state.

R156-55c-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) engaging in the plumbing trade as an apprentice plumber or residential apprentice plumber on a commercial or industrial project when not under the immediate supervision of a journeyman plumber;

(2) engaging in the plumbing trade as an apprentice plumber or as a residential apprentice plumber on a residential project when not under the immediate supervision of a residential journeyman or journeyman plumber, except as provided in Subsection 58-55-302(3)(e)(ii);

(3) engaging in the plumbing trade as an apprentice plumber except in accordance with instructions of the supervising plumber;

(4) acting as a journeyman plumber or residential journeyman plumber while supervising more than two apprentice plumbers;

(5) failure as a licensed plumber to carry a copy of his current plumber's license on his person or in close proximity to his person when performing plumbing work or to display that license upon request of a representative of the division or any law enforcement officer; and

(6) failure as a plumbing contractor to certify work experience and supervisory hours when requested by a plumber who is or has been an employee of the plumbing contractor.

R156-55c-601. Proof of Licensure.

Each apprentice, residential apprentice, residential journeyman and journeyman plumber shall:

(1) carry on his person or in close proximity to his person his current license when he is engaged in the plumbing trade; and

(2) display his license to a representative of the division or any law enforcement officer upon request.

**KEY: occupational licensing, licensing, plumbers, plumbing
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58-55-101**

**R156. Commerce, Occupational and Professional Licensing.
R156-55d. Utah Construction Trades Licensing Act Burglar Alarm Licensing Rule.**

R156-55d-101. Title.

This rule is known as the "Utah Construction Trades Licensing Act Burglar Alarm Licensing Rule".

R156-55d-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapters 1 and 55, or this rule:

(1) "Individual employed", as used in Subsection 58-55-102(2), means an individual who is an employee of a licensed burglar alarm company and who has or could have access to knowledge of specific applications.

(2) "Employee", as used in Subsections 58-55-102(14) and R156-55d-102(1), means an individual providing labor services for compensation who has federal and state taxes withheld and worker's compensation and unemployment insurance provided by the individual's employer.

(3) "Knowledge of specific applications", as used in Subsection R156-55d-102(1), means obtaining specific information about any premises which is protected or is to be protected by an alarm system. This knowledge is gained through access to records, on-site visits or otherwise gathered through working for an alarm business or company.

(4) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 55, is further defined, in accordance with Subsection 58-1-203(1), in Section R156-55d-502.

R156-55d-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 55.

R156-55d-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.

R156-55d-302a. Qualifications for Licensure - Application Requirements.

(1) An application for licensure as an alarm company shall include:

(a) a record of criminal history or certification of no record of criminal history with respect to the applicant's qualifying agent, issued by the Bureau of Criminal Identification, Utah Department of Public Safety;

(b) two fingerprint cards containing:

(i) the fingerprints of the applicant's qualifying agent;

(ii) the fingerprints of each of the applicant's officers, directors, shareholders owning more than 5% of the stock of the company, partners, and proprietors; and

(iii) the fingerprints of each of the applicant's management personnel who will have responsibility for any of the company's operations as an alarm company within the state;

(c) a fee established in accordance with Section 63J-1-303 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and the Bureau of Criminal Identification, Utah Department of Public Safety, for each individual for whom fingerprints are required under Subsection (1)(b); and

(d) a copy of a current photo identification for each individual for whom fingerprints are required under Subsection (1)(b). Acceptable photo identification shall include:

(i) a driver license issued by a state of the United States of America or Washington, District of Columbia; or

(ii) an identification card issued by the state of Utah.

(2) An application for license as an alarm company agent shall include:

(a) a record of criminal history or certification of no record

of criminal history with respect to the applicant, issued by the Bureau of Criminal Identification, Utah Department of Public Safety;

(b) two fingerprint cards containing the fingerprints of the applicant;

(c) a fee established in accordance with Section 63J-1-303 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and the Bureau of Criminal Identification, Utah Department of Public Safety, regarding the applicant; and

(d) a copy of a current photo identification for the applicant. Acceptable identification shall include:

(i) a driver license issued by a state of the United States of America or Washington, District of Columbia; or

(ii) an identification card issued by the state of Utah.

R156-55d-302c. Qualifications for Licensure - Experience Requirements.

In accordance with Subsections 58-1-203(1) and 58-1-301(3) the experience requirements for an alarm company applicant's qualifying agent in Subsection 58-55-302(3)(k)(i) are established as follows:

(1) an applicant shall have within the past ten years:

(a) not less than 6,000 hours of experience in a lawfully operated alarm company business of which not less than 2,000 hours shall have been in a managerial, supervisory, or administrative position; or

(b) not less than 6,000 hours of experience in a lawfully operated alarm company business combined with not less than 2,000 hours of managerial, supervisory, or administrative experience in a lawfully operated construction company;

(2) all experience under Subsection (1) shall be under the immediate supervision of the applicant's employer as defined in Subsection 58-55-102(20);

(3) all experience must be obtained while lawfully engaged as an alarm company agent and working for a lawfully operated burglar alarm company;

(4) 2,000 hours of work experience constitutes one year (12 months) of work experience;

(5) an applicant may claim no more than 2,000 hours of work experience in any 12 month period; and

(6) no credit shall be given for experience obtained illegally.

R156-55d-302d. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(1) and 58-1-301(3), the examination requirements for an alarm company applicant's qualifying agent in Subsection 58-55-302(3)(k)(i)(C) are defined, clarified, or established in that an individual to be approved as a qualifying agent of an alarm company shall:

(1) pass the Utah Burglar Alarm Law and Rule Examination with a score of not less than 75%;

(2) pass the Burglar Alarm Qualifier Examination with a score of not less than 75%; and

(3) an applicant for licensure who fails an examination may retake the failed examination as follows:

(a) no sooner than 30 days following any failure, up to three failures; and

(b) no sooner than six months following any failure thereafter.

R156-55d-302e. Qualifications for Licensure - Insurance Requirements.

In accordance with Subsections 58-1-203(1) and 58-1-301(3), the insurance requirements for licensure as an alarm company in Section 58-55-302(3)(k)(ix)(A) are defined, clarified, or established as follows:

(1) an applicant for an alarm company license shall file

with the Division a "certificate of insurance" issued by an insurance company or agent licensed in the state demonstrating the applicant is covered by comprehensive public liability coverage in an amount of not less than \$300,000 for each incident, and not less than \$1,000,000 in total;

(2) the terms and conditions of the policy of insurance coverage shall provide that the Division shall be notified if the insurance coverage terminates for any reason; and

(3) all licensed alarm companies shall have available on file and shall present to the Division upon demand, evidence of insurance coverage meeting the requirements of this section for all periods of time in which the alarm company is licensed in this state as an alarm company.

R156-55d-302f. Qualifications for Licensure - Good Moral Character - Disqualifying Convictions.

(1) In addition to those criminal convictions prohibiting licensure as set forth in Subsections 58-55-302(3)(k)(vi) and (3)(l)(iii), the following is a list of criminal convictions which may disqualify a person from obtaining or holding a burglar alarm company or a burglar alarm company agent's license:

(a) crimes against a person as defined in Title 76, Chapter 5, Parts 1 and 2;

(b) theft/larceny, including retail theft, as defined in Title 76, Chapter 6;

(c) sex offenses as defined in Title 76, Chapter 5, Part 4;

(d) any offense involving controlled substances;

(e) fraud;

(f) forgery;

(g) perjury, obstructing justice and tampering with evidence;

(h) conspiracy to commit any of the offenses listed herein;

(i) burglary

(j) escape from jail, prison or custody;

(k) false or bogus checks;

(l) pornography;

(m) any attempt to commit any of the above offenses; or

(n) two or more convictions for driving under the influence of alcohol within the last three years.

(2) Applications for licensure or renewal of licensure shall be considered on a case by case basis taking into consideration the following:

(a) the conduct involved;

(b) the potential or actual injury caused by the applicant's conduct; and

(c) the existence of aggravating or mitigating factors.

R156-55d-303. Renewal Cycle - Procedure.

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

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

R156-55d-304. Renewal Requirement - Demonstration of Clear Criminal History.

(1) In accordance with Subsections 58-1-203(1), 58-1-308(3)(b), and 58-55-302(4), there is created as a requirement for renewal or reinstatement of any license of an alarm company or alarm company agent a demonstration of clear criminal history for each alarm company qualifying agent and for each alarm company agent.

(2) The criminal history background check shall be performed by the Division and is not required to be submitted by the applicant.

(3) If the criminal background check discloses the applicant has a criminal history, the Division shall evaluate the criminal history in accordance with Sections 58-55-302 and

R156-5d-302f to determine appropriate licensure action.

R156-55d-306. Change of Qualifying Agent.

In accordance with Subsection 58-55-304(6), an alarm company whose qualifier has ceased association or employment shall file with the Division an application for change of qualifier on forms provided by the Division accompanied by a record of criminal history or certification of no record of criminal history, fee, fingerprint cards, and copy of an identification as required under Subsection R156-55d-302a(1).

R156-55d-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing as an alarm company to notify the Division of the cessation of performance of its qualifying agent or failing to replace its qualifying agent as required under Section R156-55d-306;

(2) failing as an alarm company agent to carry or display a copy of the licensee's license as required under Section R156-55d-601;

(3) failing as an alarm agent to carry or display a copy of his National Burglar and Fire Alarm Association (NBFAA) level one certification or equivalent training as required under Section R156-55d-603;

(4) employing as an alarm company a qualifying agent or alarm company agent knowing that individual has engaged in conduct inconsistent with the duties and responsibilities of an alarm company agent.

(5) failing to comply with operating standards established by rule;

(6) a judgment on, or a judicial or prosecutorial agreement concerning a felony, or a misdemeanor involving moral turpitude, entered against an individual by a federal, state or local court, regardless of whether the court has made a finding of guilt, accepted a plea of guilty or nolo contendere by an individual, or a settlement or agreement whereby an individual has entered into participation as a first offender, or an action of deferred adjudication, or other program or arrangement where judgment or conviction is withheld;

(7) making false, misleading, deceptive, fraudulent, or exaggerated claims with respect to the need for an alarm system, the benefits of the alarm system, the installation of the alarm system or the response to the alarm system by law enforcement agencies; and

(8) an alarm business or company having a residential or commercial false alarm rate 100% above the average of the residential or commercial false alarm rate of the municipality or county jurisdiction in which the alarm business or company's alarm systems are located.

R156-55d-503. Administrative Penalties.

The administrative penalties defined in Section R156-55a-503 of the Utah Construction Trades Licensing Act Rule are hereby adopted and incorporated by reference.

R156-55d-601. Display of License.

An alarm company agent shall carry on his person at all times while acting as an alarm company agent a copy of his license and shall display that license upon the request of any person to whom the agent is representing himself as an alarm company agent, and upon the request of any law enforcement officer or representative of the Division.

R156-55d-602. Operating Standards - Alarm Equipment.

In accordance with Subsection 58-55-308(1), the following standards shall apply with respect to equipment and devices assembled as an alarm system:

(1) An alarm system installed in a business or public building shall utilize equipment equivalent to or exceeding

minimum Underwriters Laboratories, or the National Electrical Code standards for alarm system equipment.

(2) An alarm system installed in a residence shall utilize equipment equivalent to or exceeding minimum Underwriters Laboratories, or the National Electrical Code standards for residence alarm systems.

R156-55d-603. Operating Standards - Alarm Installer.

In accordance with Subsection 58-55-308(1), the operating standards for the installer of an alarm system include the following:

(1) An alarm agent must be fully trained in the installation of an alarm system in accordance with the National Burglar and Fire Alarm Association (NBFAA) level one certification or equivalent training requirements prior to the alarm agent installing any alarm system in any residence, business, or public building within the state.

(2) An alarm agent upon receiving initial licensure may work under the direct supervision of an alarm agent who has level one certification for a period of six months from the time of initial licensure without being required to hold a level one certificate.

(3) An alarm agent shall carry evidence of the NBFAA level one certification or equivalent training with him at all times.

R156-55d-604. Operating Standards - Alarm System User Training.

In accordance with Subsection 58-55-308(1), the operating standards for the installation of an alarm system including the following:

(1) Upon completion of the installation of an alarm system by an alarm business or company, the installing alarm agent shall review with the alarm user, or in the case of a company, its employees, the operation of the alarm system to ensure that the user understands the function of the alarm system.

(2) The alarm business or company shall maintain training records, including installer and user false alarm prevention checklists, the dates of the training and the location of the training on each alarm system installed. These records shall be maintained in the files of the alarm business or company for at least three years from the date of the training.

KEY: licensing, alarm company, burglar alarms

November 24, 2008

Notice of Continuation June 28, 2005

58-55-101

58-1-106(1)(a)

58-1-202(1)(a)

58-55-302(3)(k)

58-55-302(3)(l)

58-55-302(4)

58-55-308

R156. Commerce, Occupational and Professional Licensing.
R156-63a. Security Personnel Licensing Act Contract Security Rule.

R156-63a-101. Title.

This rule is known as the "Security Personnel Licensing Act Contract Security Rule."

R156-63a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 63, as used in Title 58, Chapters 1 and 63 or this rule:

(1) "Approved basic education and training programs" means basic education and training that meets the standards set forth in Sections R156-63a-602 and R156-63a-603 that is approved by the Division.

(2) "Approved basic firearms education and training program" means basic firearms education and training that meets the standards set forth in Section R156-63a-604 that is approved by the Division.

(3) "Authorized emergency vehicle" is as defined in Subsection 41-6a-102(3).

(4) "Contract security company" includes a peace officer who engages in providing security or guard services when acting in a capacity other than as an employee of the law enforcement agency by whom he is employed.

(5) "Contract security company" does not include a company which hires as employees, individuals to provide security or guard services for the purpose of protecting tangible personal property, real property, or the life and well being of personnel employed by, or animals owned by or under the responsibility of that company, as long as the security or guard services provided by the company do not benefit any person other than the employing company.

(6) "Conviction" means criminal conduct where the filing of a criminal charge has resulted in:

(a) a finding of guilt based on evidence presented to a judge or jury;

(b) a guilty plea;

(c) a plea of nolo contendere;

(d) a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation;

(e) a pending diversion agreement; or

(f) a conviction which has been reduced pursuant to Section 76-3-402.

(7) "Employee" means an individual providing services in the security guard industry for compensation when the amount of compensation is based directly upon the security guard services provided and upon which the employer is required under law to withhold federal and state taxes, and for whom the employer is required under law to provide worker's compensation insurance coverage and pay unemployment insurance.

(8) "Officer" as used in Subsections 58-63-201(1)(a) and R156-63a-302a(1)(b) means a manager, director, or administrator of a contract security company.

(9) "Qualified continuing education" means continuing education that meets the standards set forth in Subsection R156-63a-304.

(10) "Qualifying agent" means an individual who is an officer, director, partner, proprietor or manager of a contract security company who exercises material authority in the conduct of the contract security company's business by making substantive technical and administrative decisions relating to the work performed for which a license is required under this chapter and who is not involved in any other employment or activity which conflicts with his duties and responsibilities to ensure the licensee's performance of work regulated under this chapter does not jeopardize the public health, safety, and welfare.

(11) "Soft uniform" means a business suit or a polo-type

shirt with appropriate slacks. The coat or shirt has an embroidered badge or contract security company logo that clips on to or is placed over the front pocket.

(12) "Supervised on-the-job training" means training of an armed or unarmed private security officer under the supervision of a licensed private security officer who has been assigned to train and develop the on-the-job trainee.

(13) "Supervision" means general supervision as defined in Section R156-1-102a(4)(c).

(13) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 63, is further defined, in accordance with Subsection 58-1-203(1)(c), in Section R156-63a-502.

R156-63a-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 63.

R156-63a-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.

R156-63a-201. Advisory Peer Committee created - Membership - Duties.

(1) There is created in accordance with Subsection 58-1-203(1)(f), the Education Advisory Committee to the Security Services Licensing Board consisting of:

(a) one member who is an officer, director, manager or trainer of a contract security company;

(b) one member who is an officer, director, manager or trainer of an armored car company;

(c) one member who is an armored car security officer or a contract security officer;

(d) one member representing the general public; and

(e) one member who is a trainer with the Department of Public Safety, Peace Officer Standards and Training Division.

(2) The Education Advisory Committee shall be appointed and serve in accordance with Section R156-1-205. The duties and responsibilities of the Education Advisory Committee shall include assisting the Division in collaboration with the Board in their duties, functions, and responsibilities regarding the acceptability of educational programs requesting approval from the Division and periodically reviewing all approved basic education and training programs and firearm training programs regarding current curriculum requirements.

(3) The Education Advisory Committee shall consider, when advising the Board of the acceptability of an educational program, the following:

(a) whether the educational program meets the basic education and training requirements of Sections R156-63a-603 and R156-63b-603; and

(b) whether the educational program meet meets the basic firearm training program requirements of Sections R156-63a-604 and R156-63b-604.

R156-63a-302a. Qualifications for Licensure - Application Requirements.

(1) An application for licensure as a contract security company shall be accompanied by:

(a) a certification of criminal record history for the applicant's qualifying agent issued by the Bureau of Criminal Identification, Utah Department of Public Safety, in accordance with the provisions of Subsection 53-10-108(1)(f)(ii);

(b) two fingerprint cards for the applicant's qualifying agent, and all of the applicant's officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel;

(c) a fee established in accordance with Section 63J-1-303 equal to the cost of conducting a check of records of the Federal

Bureau of Investigation, and Bureau of Criminal Identification, Utah Department of Public Safety, for each of the applicant's qualifying agent, officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel; and

(d) a copy of the driver license or Utah identification card issued to the applicant's qualifying agent, officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel.

(2) An application for licensure as an armed or unarmed private security officer shall be accompanied by:

(a) a certification of criminal record history for the applicant issued by the Bureau of Criminal Identification, Utah Department of Public Safety, in accordance with the provisions of Subsection 53-10-108(1)(f)(ii);

(b) two fingerprint cards for the applicant;

(c) a fee established in accordance with Section 63J-1-303 equal to the cost of conducting a check of records of:

(i) the Federal Bureau of Investigation for the applicant; and

(ii) the Bureau of Criminal Identification of the Utah Department of Public Safety; and

(d) a copy of the driver license or Utah identification card issued to the applicant.

(3) Applications for change in licensure classification from unarmed to armed private security officer shall only require the following additional documentation:

(a) the required firearms training pursuant to Section 58-63-604; and

(b) an additional criminal history background check pursuant to Section 58-63-302 and Subsections R156-63a-302a(2).

R156-63a-302b. Qualifications for Licensure - Basic Education and Training Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the basic education and training requirements for licensure in Section 58-63-302 are defined, clarified, or established herein.

(1) An applicant for licensure as an armed private security officer shall successfully complete a basic education and training program and a firearms training program approved by the Division, the content of which is set forth in Sections R156-63a-603 and R156-63a-604.

(2) An applicant for licensure as an unarmed private security officer shall successfully complete a basic education and training program approved by the Division, the content of which is set forth in Section R156-63a-603.

R156-63a-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the examination requirements for licensure in Section 58-63-302 are defined, clarified, or established herein.

(1) The qualifying agent for an applicant who is a contract security company shall obtain a passing score of at least 75% on the Utah Security Personnel Qualifying Agent's Examination.

(2) An applicant for licensure as an armed private security officer or an unarmed private security officer shall obtain a score of at least 80% on the basic education and training final examination approved by the Division and administered by each provider of basic education and training.

R156-63a-302d. Qualification for Licensure - Liability Insurance for a Contract Security Company.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the insurance requirements for licensure as a contract security company in Subsection 58-63-302(1)(j)(i) are defined, clarified, or established herein.

(1) An applicant shall file with the Division a "Certificate of Insurance" providing liability insurance for the following exposures:

(a) general liability;

(b) assault and battery;

(c) personal injury;

(d) false arrest;

(e) libel and slander;

(f) invasion of privacy;

(g) broad form property damage;

(h) damage to property in the care, custody or control of the contract security company; and

(i) errors and omissions.

(2) The required insurance shall provide liability limits in amounts not less than \$300,000 for each incident and not less than \$1,000,000 total aggregate for each annual term.

(3) The insurance carrier must be an insurer which has a certificate of authority to do business in Utah, or is an authorized surplus lines insurer in Utah, or is authorized to do business under the laws of the state in which the corporate offices of foreign corporations are located.

(4) All contract security companies shall have a current insurance certificate of coverage as defined in Subsection (1) on file at all times and available for immediate inspection by the Division during normal working hours.

(5) All contract security companies shall notify the Division immediately upon cancellation of the insurance policy, whether such cancellation was initiated by the insurance company or the insured agency.

R156-63a-302e. Qualifications for Licensure - Age Requirement for Armed Private Security Officer.

An armed private security officer must be 18 years of age or older at the time of submitting an application for licensure in accordance with Subsections 76-10-509(1) and 76-10-509.4.

R156-63a-302f. Qualifications for Licensure - Good Moral Character - Disqualifying Convictions.

(1) In addition to those criminal convictions prohibiting licensure as set forth in Subsections 58-63-302(1)(h), (2)(c) and (3)(c), the following is a list of criminal convictions which may disqualify a person from obtaining or holding an unarmed private security officer license, an armed private security officer license, or a contract security company license:

(a) crimes against a person as defined in Title 76, Chapter 5, Part 1;

(b) theft, including retail theft, as defined in Title 76;

(c) larceny;

(d) sex offenses as defined in Title 76, Part 4;

(e) any offense involving controlled dangerous substances;

(f) fraud;

(g) extortion;

(h) treason;

(i) forgery;

(j) arson;

(k) kidnapping;

(l) perjury;

(m) conspiracy to commit any of the offenses listed herein;

(n) hijacking;

(o) burglary;

(p) escape from jail, prison, or custody;

(q) false or bogus checks;

(r) terrorist activities;

(s) desertion;

(t) pornography;

(u) two or more convictions for driving under the influence of alcohol within the last three years; and

(v) any attempt to commit any of the above offenses.

(2) Where not automatically disqualified pursuant to

Subsections 58-63-302(1)(a), (2)(c) and (3)(c), applications for licensure or renewal of licensure in which the applicant, or in the case of a contract security company, the officers, directors, and shareholders with 5% or more of the stock of the company, has a criminal background shall be considered on a case by case basis as defined in Section R156-1-302.

R156-63a-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 63 is established by rule in Section R156-1-308a.

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

R156-63a-304. Continuing Education for Armed and Unarmed Private Security Officers as a Condition of Renewal.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b), there is created a continuing education requirement as a condition of renewal or reinstatement of licenses issued under Title 58, Chapter 63 in the classifications of armed private security officer and unarmed private security officer.

(2) Armed and unarmed private security officers shall complete 16 hours of continuing education every two years consisting of formal classroom education. Such education shall include:

- (a) company operational procedures manual;
- (b) applicable state laws and rules;
- (c) legal powers and limitations of private security officers;
- (d) observation and reporting techniques;
- (e) ethics; and
- (f) emergency techniques.

(3) In addition to the required 16 hours of continuing education, armed private security officers shall complete not less than 16 additional hours of continuing firearms education and training every two years. The continuing firearms education and training shall be completed in four-hour blocks every six months and shall not include any hours for the continuing education requirement in Subsection R156-63a-304(2). The continuing firearms education and training shall include as a minimum:

(a) live classroom instruction concerning the restrictions in the use of deadly force and firearms safety on duty, at home and on the range; and

(b) a recognized practical pistol recertification course on which the licensee achieves a minimum score of 80% using regular or low light conditions.

(4) An individual holding a current armed private security officer license in Utah who fails to complete the required four hours of continuing firearms education within the appropriate six month period will be required to complete one and one half times the number of continuing firearms education hours the licensee was deficient for the reporting period (this requirement is hereafter referred to as penalty hours). The penalty hours shall not be considered to satisfy in whole or in part any of the continuing firearms education hours required for subsequent renewal of the license.

(5) If a renewal period is shortened or lengthened to effect a change of renewal cycle, the continuing education hours required for that renewal period shall be increased or decreased accordingly as a pro rata amount of the requirements of a two-year period.

R156-63a-305. Criminal History Renewal and Reinstatement Requirement.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b) and R156-1-302, a criminal history background check is required for all applications for renewal and reinstatement.

(2) The criminal history background check shall be performed by the Division and is not required to be submitted by the applicant.

(3) If the criminal background check discloses a criminal background, the Division shall evaluate the criminal history in accordance with Sections 58-63-302 and R156-63a-302f to determine appropriate licensure action.

R156-63a-306. Change of Qualifying Agent.

Within 60 days after a qualifying agent for a licensed contract security company ceases employment with the licensee, or for any other reason is not qualified to be the licensee's qualifier, the contract security company shall file with the Division an application for change of qualifier on forms provided by the Division, accompanied by a fee established in accordance with Section 63J-1-303.

R156-63a-307. Exemptions from Licensure.

(1) In accordance with Subsection 58-1-307(1)(c), an applicant who has applied for licensure as an unarmed or armed private security officer is exempt from licensure and may engage in practice as an unarmed or armed private security officer in a supervised on-the-job training capacity, for a period of time not to exceed the earlier of 30 days or action by the Division upon the application.

(2) Upon receipt of an application for licensure as an unarmed private security officer or as an armed private security officer, the Division may issue an on-the-job training letter to the applicant, if the applicant meets the following criteria:

(a) the applicant has not been licensed as an unarmed or as an armed private security officer in the state of Utah at least two years prior to applying for licensure;

(b) the applicant submits with his application an official criminal history report from the Bureau of Criminal Identification showing "No Criminal Record Found";

(c) the applicant has not answered "yes" to any question on the qualifying questionnaire section of the application;

(d) the applicant has not had a license to practice an occupation or profession denied, revoked, suspended, restricted or placed on probation; and

(e) the applicant has submitted all information required with the exception of the 16 hours of classroom or on-the-job education and training in accordance with Subsection R156-63a-603(2).

R156-63a-502. Unprofessional Conduct.

"Unprofessional conduct" includes the following:

(1) making any statement that would reasonably cause another person to believe that a private security officer functions as a law enforcement officer or other official of this state or any of its political subdivisions or any agency of the federal government;

(2) employing an unarmed or armed private security officer, as an on-the-job trainee exempted from licensure pursuant to Section R156-63a-307, who has been convicted of:

- (a) a felony;
- (b) a misdemeanor crime of moral turpitude; or

(c) a crime that when considered with the duties and functions of an unarmed or armed private security officer by the Division and Board indicates that the best interests of the public are not served;

(3) employing an unarmed or armed private security officer who fails to meet the requirements of Section R156-63a-307;

(4) utilizing a vehicle whose markings, lighting, and/or signal devices imply or suggest that the vehicle is an authorized emergency vehicle as defined in Subsection 41-6a-102(3) and Section 41-6a-310 and in Title R722, Chapter 340;

(5) utilizing a vehicle with an emergency lighting system

which violates the requirements of Section 41-6a-1616 of the Utah Motor Vehicle Code;

(6) wearing a uniform, insignia, or badge that would lead a reasonable person to believe that the unarmed or armed private security officer is connected with a federal, state, or municipal law enforcement agency;

(7) being incompetent or negligent as an unarmed private security officer, an armed private security officer or by a contract security company that results in injury to a person or that creates an unreasonable risk that a person may be harmed;

(8) failing as a contract security company or its officers, directors, partners, proprietors or responsible management personnel to adequately supervise employees to the extent that the public health and safety are at risk;

(9) failing to immediately notify the Division of the cancellation of the contract security company's insurance policy;

(10) failing as a contract security company or an armed or unarmed private security officer to report a criminal offense pursuant to Section R156-63a-613; and

(11) wearing an uniform, insignia, badge or displaying a license that would lead a reasonable person to believe that an individual is connected with a contract security company, when not employed as an armed or unarmed private security officer by a contract security company.

R156-63a-503. Administrative Penalties.

(1) In accordance with Subsection 58-63-503, the following citation fine schedule shall apply to citations issued under Title 58, Chapter 63:

TABLE FINE SCHEDULE		
FIRST OFFENSE		
Violation	Contract Security Company	Armed or Unarmed Security Officer
58-63-501(1)	\$ 800.00	N/A
58-63-501(3)	\$ 800.00	\$ 500.00
SECOND OFFENSE		
58-63-501(1)	\$1,600.00	\$1,000.00
58-63-501(3)	\$1,600.00	\$1,000.00

(2) 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 58-63-503(3)(h)(iii).

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

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

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

R156-63a-601. Operating Standards - Firearms.

(1) An armed private security officer shall carry only that firearm with which he has passed a firearms qualification course as defined in Section R156-63a-604.

(2) Shotguns and rifles, owned and issued by the contract security company, may be used in situations where they would constitute an appropriate defense for the armed private security officer and where the officer has completed an appropriate qualification course in their use.

(3) An armed private security officer shall not carry a firearm except when acting on official duty as an employee of a

contract security company, unless the licensee is otherwise qualified under the laws of the state to carry a firearm.

R156-63a-602. Operating Standards - Approved Basic Education and Training Program for Armed and Unarmed Private Security Officers.

To be designated by the Division as an approved basic education and training program for armed private security officers and unarmed private security officers, the following standards shall be met.

(1) The applicant for program approval shall pay a fee for the approval of the education program.

(2) There shall be a written education and training manual which includes performance objectives.

(3) The program for armed private security officers shall provide content as established in Sections R156-63a-603 and R156-63a-604.

(4) The program for unarmed private security officers shall provide content as established in Section R156-63a-603.

(5) An instructor is a person who directly facilitates learning through means of live in-class lecture, group participation, practical exercise, or other means, where there is a direct student-teacher relationship. All instructors providing the basic classroom instruction shall have at least three years of training and experience reasonably related to providing of security guard services.

(6) All instructors providing firearms training shall have the following qualifications:

(a) current Peace Officers Standards and Training firearms instructors certification; or

(b) current certification as a firearms instructor by the National Rifle Association, a Utah law enforcement agency, a Federal law enforcement agency, a branch of the United States military, or other qualification or certification found by the Division, in collaboration with the Board, to be equivalent.

(7) All approved basic education and training programs shall maintain training records on each individual trained including the dates of attendance at training, a copy of the instruction given, and the location of the training. These records shall be maintained in the files of the education and training program for at least three years.

(8) In the event an approved provider of basic education and training ceases to engage in business, the provider shall establish a method approved by the Division by which the records of the education and training shall continue to be available for a period of at least three years after the education and training is provided.

(9) Instructors, who present continuing education hours and are licensed armed or unarmed private security officers, shall receive credit for actual preparation time for up to two times the number of hours to which participants would be entitled. For example, for learning activities in which participants receive four continuing education hours, instructors may receive up to eight continuing education hours (four hours for preparation plus four hours for presentation).

R156-63a-603. Operating Standards - Content of Approved Basic Education and Training Program for Armed and Unarmed Private Security Officers.

An approved basic education and training program for armed and unarmed private security officers shall have the following components:

(1) at least eight hours of basic classroom instruction to include the following:

(a) the nature and role of private security, including the limits of, scope of authority and the civil liability of a private security officer and the private security officer's role in today's society;

(b) state laws and rules applicable to private security;

(c) legal responsibilities of private security, including constitutional law, search and seizure and other such topics;

(d) situational response evaluations, including protecting and securing crime or accident scenes, notification of internal and external agencies, and controlling information;

(e) ethics;

(f) use of force, emphasizing the de-escalation of force and alternatives to using force;

(g) report writing, including taking witness statements, log maintenance, the control of information, taking field notes, report preparation and basic writing skills;

(h) patrol techniques, including mobile vs. fixed post, accident prevention, responding to calls and alarms, security breaches, and monitoring potential safety hazards;

(i) police and community relations, including fundamental duties and personal appearance of security officers;

(j) sexual harassment in the work place; and

(k) a final examination which competently examines the student on the subjects included in the eight hours of basic classroom instruction in the approved program of education and training and which the student passes with a minimum score of 80%; and

(2) an additional 16 hours of basic education and training in the classroom, on-the-job or a combination thereof to include the following:

(a) two hours concerning the legal responsibilities of private security, including constitutional law, search and seizure and other such topics;

(b) two hours of situational response evaluations, including protecting and securing crime or accident scenes, notification of internal and external agencies, and controlling information;

(c) three hours covering the use of force, emphasizing the de-escalation of force and alternatives to using force;

(d) two hours of report writing, including taking witness statements, log maintenance, the control of information, taking field notes, report preparation and basic writing skills;

(e) four hours of patrol techniques, including mobile vs. fixed post, accident prevention, responding to calls and alarms, security breaches, homeland security and monitoring potential safety hazards;

(f) two hours of police and community relations, including fundamental duties and personal appearance of security officers;

(g) one hour regarding sexual harassment in the work place; and

(h) a final examination approved by the Division, which competently examines the applicant on the subjects included in the additional 16 hour program of basic education and training and which the student passes with a minimum score of 80%.

R156-63a-604. Operating Standards - Content of Approved Basic Firearms Training Program for Armed Private Security Officers.

An approved basic firearms training program for armed private security officers shall have the following components:

(1) at least six hours of classroom firearms instruction to include the following:

(a) the firearm and its ammunition;

(b) the care and cleaning of the weapon;

(c) the prohibition against alterations of firing mechanism;

(d) firearm inspection review procedures;

(e) firearm safety on duty;

(f) firearm safety at home;

(g) firearm safety on the range;

(h) legal and ethical restraints on firearms use;

(i) explanation and discussion of target environment;

(j) stop failure drills;

(k) explanation and discussion of stance, draw stroke, cover and concealment and other firearm fundamentals;

(l) armed patrol techniques;

(m) use of deadly force under Utah law and the provisions of Title 76, Chapter 2, Part 4 and a discussion of 18 USC 44 Section 922; and

(n) the instruction that armed private security officers shall not fire their weapon unless there is an eminent threat to life and at no time shall the weapon be drawn as a threat or means to force compliance with any verbal directive not involving eminent threat to life; and

(2) at least six hours of firearms range instruction to include the following:

(a) basic firearms fundamentals and marksmanship;

(b) demonstration and explanation of the difference between sight picture, sight alignment and trigger control; and

(c) a recognized practical pistol course on which the applicant achieves a minimum score of 80% using regular and low light conditions.

R156-63a-605. Operating Standards - Uniform Requirements.

(1) All unarmed and armed private security officers while on duty shall wear the uniform of their contract security company employer unless assigned to work undercover.

(2) Each armed and unarmed private security officer wearing a soft uniform unless assigned to an undercover status shall at a minimum display on the outermost garment of the uniform the name of the contract security company under whom the armed and unarmed private security officer is employed, and the word "Security", "Contract Security", or "Security Officer".

(3) The name of the contract security company and the word "Security" shall be of a size, style, shape, design and type which is clearly visible by a reasonable person under normal conditions.

(4) Each armed and unarmed private security officer wearing a regular uniform shall display on the outermost garment of the uniform in a style, shape, design and type which is clearly visible by a reasonable person under normal conditions identification which contains:

(a) the name or logo of the contract security company under whom the armed or unarmed private security officer is employed; and

(b) the word "Security", "Contract Security", or "Security Officer".

R156-63a-606. Operating Standards - Badges.

(1) At the contract security company's request, an unarmed or armed private security officer may, while in uniform and while on duty, wear a shield inscribed with the words "Security," or "Security Officer". The shield shall not contain the words "State of Utah" or the seal of the state of Utah.

(2) The use of a star badge with any number of points on a uniform, in writing, advertising, letterhead, or other written communication is prohibited.

R156-63a-607. Operating Standards - Criminal Status of Officer, Qualifying Agent, Director, Partner, Proprietor, Private Security Officer or Manager of Contract Security Companies.

In the event an officer, qualifying agent, director, partner, proprietor, private security officer, or any management personnel having direct responsibility for managing operations of the contract security company has a conviction entered regarding:

(a) a felony;

(b) a misdemeanor crime of moral turpitude; or

(c) a crime that when considered with the functions and duties of an unarmed or armed private security officer by the Division and Board indicates that the best interests of the public are not served, the company shall within ten days of the

conviction or notice reorganize and exclude said individual from participating at any level or capacity in the management, operations, sales, ownership, or employment of that company.

R156-63a-608. Operating Standards - Implying an Association with Public Law Enforcement Prohibited.

(1) No contract security company shall use any name which implies intentionally or otherwise that the company is connected or associated with any public law enforcement agency.

(2) No contract security company shall permit the use of the words "special police", "special officer", "cop", or any other words of a similar nature whether used orally or appearing in writing or on any uniform, badge, or cap.

(3) No person licensed under this chapter shall use words or designations which would cause a reasonable person to believe he is associated with a public law enforcement agency.

R156-63a-609. Operating Standards - Proper Identification of Private Security Officers.

All armed and unarmed private security officers shall carry a valid security license together with a Utah identification card issued by the Division of Driver License or a current Utah driver's license whenever performing the duties of an armed or unarmed private security officer and shall exhibit said license and identification upon request.

R156-63a-610. Operating Standards - Vehicles.

(1) No contract security company or its personnel shall utilize a vehicle whose markings, lighting, or signal devices imply that the vehicle is an authorized emergency vehicle pursuant to Subsection 41-6a-102(3).

(2) The word "Security", either alone or in conjunction with the company name, shall appear on each side and the rear of the company vehicle in letters no less than four inches in height and in a color contrasting with the color of the contract security company vehicle.

R156-63a-611. Operating Standards - Operational Procedures Manual.

(1) Each contract security company shall develop and maintain an operational procedures manual which includes the following topics:

- (a) detaining or arresting;
- (b) restraining, detaining, and search and seizure;
- (c) felony and misdemeanor definitions;
- (d) observing and reporting;
- (e) ingress and egress control;
- (f) natural disaster preparation;
- (g) alarm systems, locks, and keys;
- (h) radio and telephone communications;
- (i) crowd control;
- (j) public relations;
- (k) personal appearance and demeanor;
- (l) bomb threats;
- (m) fire prevention;
- (n) mental illness;
- (o) supervision;
- (p) criminal justice system;
- (q) code of ethics for private security officers; and
- (r) sexual harassment in the workplace.

(2) The operations and procedures manual shall be immediately available to the Division upon request.

R156-63a-612. Operating Standards - Display of License.

The license issued to a contract security company shall be prominently displayed in the company's principal place of business and a copy of the license shall be displayed prominently in all branch offices.

R156-63a-613. Operating Standards - Standards of Conduct.

(1) Licensee employed by a contract security company:

(a) pursuant to Title 58, Chapter 63, a licensed armed or unarmed private security officer arrested, charged, or indicted for a criminal offense above the level of a Class C misdemeanor shall notify the licensee's employing contract security company within 72 hours of the arrest, charge, or indictment;

(b) within 72 hours after such notification by the employee, the employing contract security company shall notify the Division of the arrest, charge or indictment in writing; and

(c) the written notification shall include the employee's name, the name of the arresting agency, the agency case number, the date and the nature of the criminal offense.

(2) Licensee not employed by a contract security company:

(a) pursuant to Title 58, Chapter 63, a licensed armed or unarmed private security officer who is not employed by a contract security company shall directly notify the Division in writing within 72 hours of any arrest, charge or indictment above the level of a Class C misdemeanor; and

(b) the written notification shall meet the requirements of Subsection (1)(c).

KEY: licensing, security guards, private security officers

November 13, 2008

58-1-106(1)(a)

58-1-202(1)(a)

58-63-101

R156. Commerce, Occupational and Professional Licensing.
R156-63b. Security Personnel Licensing Act Armored Car Rule.

R156-63b-101. Title.

This rule is known as the "Security Personnel Licensing Act Armored Car Rule."

R156-63b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 63, as used in Title 58, Chapters 1 and 63 or this rule:

(1) "Approved basic education and training program" means basic education and training that meets the standards set forth in Sections R156-63b-602 and R156-63b-603 that is approved by the Division.

(2) "Approved basic firearms education and training program" means basic firearms education and training that meets the standards set forth in Section R156-63b-604 that is approved by the Division.

(3) "Armored car company" includes a peace officer who engages in providing security or guard services when acting in a capacity other than as an employee of the law enforcement agency by whom he is employed.

(4) "Armored car company" does not include a company which hires as employees, individuals to provide security or guard services for the purpose of protecting tangible property, currency, valuables, jewelry, food stamps, or other high value items that require secured delivery from one place to another and are owned by or under the responsibility of that company, as long as the security or guard services provided by the company do not benefit any person other than the employing company.

(5) "Authorized emergency vehicle" is as defined in Subsection 41-6a-102(3).

(6) "Conviction" means criminal conduct where the filing of a criminal charge has resulted in:

(a) a finding of guilt based on evidence presented to a judge or jury;

(b) a guilty plea;

(c) a plea of nolo contendere;

(d) a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation;

(e) a pending diversion agreement; or

(f) a conviction which has been reduced pursuant to Section 76-3-402.

(7) "Employee" means an individual providing services in the armored car industry for compensation when the amount of compensation is based directly upon the armored car services provided and upon which the employer is required under law to withhold federal and state taxes, and for whom the employer is required under law to provide worker's compensation insurance coverage and pay unemployment insurance.

(8) "Officer" as used in Subsection 58-63-201(1)(a) means a manager, director, or administrator of an armored car company.

(9) "Qualified continuing education" means continuing education that meets the standards set forth in Subsection R156-63b-304.

(10) "Qualifying agent" means an individual who is an officer, director, partner, proprietor or manager of an armored car company who exercises material authority in the conduct of the armored car company's business by making substantive technical and administrative decisions relating to the work performed for which a license is required under this chapter and who is not involved in any other employment or activity which conflicts with his duties and responsibilities to ensure the licensee's performance of work regulated under this chapter does not jeopardize the public health, safety, and welfare.

(11) "Soft uniform" means a business suit or a polo-type shirt with appropriate slacks. The coat or shirt has an

embroidered badge or armored car company logo that clips onto or is placed over the front pocket.

(12) "Supervised on-the-job training" means training of an armored car security officer under the supervision of a licensed armored car security officer who has been assigned to train and develop the on-the-job trainee.

(13) "Supervision" means general supervision as defined in Section R156-1-102a(4)(c).

(13) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 63, is further defined, in accordance with Subsection 58-1-203(1)(c), in Section R156-63b-502.

R156-63b-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 63.

R156-63b-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.

R156-63b-302a. Qualifications for Licensure - Application Requirements.

(1) An application for licensure as an armored car company shall be accompanied by:

(a) two fingerprint cards for the applicant's qualifying agent, and all of the applicant's officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel;

(b) a fee established in accordance with Section 63J-1-303 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and Bureau of Criminal Identification, Utah Department of Public Safety, for each of the applicant's qualifying agent, officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel; and

(c) a copy of the driver license or Utah identification card issued to the applicant's qualifying agent, officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel.

(2) An application for licensure as an armored car security officer shall be accompanied by:

(a) two fingerprint cards for the applicant;

(b) a fee established in accordance with Section 63J-1-303 equal to the cost of conducting a check of records of:

(i) the Federal Bureau of Investigation for the applicant; and

(ii) the Bureau of Criminal Identification of the Utah Department of Public Safety; and

(c) a copy of the driver license or Utah identification card issued to the applicant.

R156-63b-302b. Qualifications for Licensure - Basic Education and Training Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the basic education and training requirements for licensure in Section 58-63-302 are defined, clarified, or established herein. An applicant for licensure as an armored car security officer shall successfully complete a basic education and training program and a firearms training program approved by the Division, the content of which is set forth in Section R156-63b-603.

R156-63b-302c. Qualifications for Licensure - Firearm Training Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the firearm training requirements for licensure in Subsection 58-63-302(4)(g) are defined, clarified, or established herein. An applicant for licensure as an armored car security

officer shall successfully complete a firearms training program approved by the Division, the content of which is set forth in Section R156-63b-604.

R156-63b-302d. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the examination requirements for licensure in Section 58-63-302 are defined, clarified, or established herein.

(1) The qualifying agent for an applicant who is an armored car company shall obtain a passing score of at least 75% on the Utah Security Personnel Armored Car Qualifying Agent's Examination.

(2) An applicant for licensure as an armored car security officer shall obtain a score of at least 80% on the basic education and training final examination approved by the Division and administered by the provider of basic education and training.

R156-63b-302e. Qualification for Licensure - Liability Insurance for an Armored Car Company.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the insurance requirements for licensure as an armored car company in Subsection 58-63-302(1)(j)(i) are defined, clarified, or established herein.

(1) An applicant shall file with the Division a "Certificate of Insurance" providing liability insurance for the following exposures:

- (a) general liability;
- (b) assault and battery;
- (c) personal injury;
- (d) libel and slander;
- (e) broad form property damage;
- (f) damage to property in the care, custody or control of the armored car company; and
- (g) errors and omissions.

(2) Said insurance shall provide liability limits in amounts not less than \$500,000 for each incident and not less than \$2,000,000 total aggregate for each annual term.

(3) The insurance carrier must be an insurer which has a certificate of authority to do business in Utah, or is an authorized surplus lines insurer in Utah, or is authorized to do business under the laws of the state in which the corporate offices of foreign corporations are located.

(4) All armored car companies shall have a current insurance certificate of coverage as defined in Subsection (1) on file at all times and available for immediate inspection by the Division during normal working hours.

(5) All armored car companies shall notify the Division immediately upon cancellation of the insurance policy, whether such cancellation was initiated by the insurance company or the insured agency.

R156-63b-302f. Qualifications for Licensure - Age Requirement for Armored Car Security Officer.

An armored car security officer must be 21 years of age or older at the time of submitting an application for licensure.

R156-63b-302g. Qualifications for Licensure - Good Moral Character - Disqualifying Convictions.

(1) In addition to those criminal convictions prohibiting licensure as set forth in Subsections 58-63-302(1)(h) and (4)(c), the following is a list of criminal convictions which may disqualify a person from obtaining or holding an armored car security officer license, or an armored car company license:

- (a) crimes against a person as defined in Title 76, Chapter 5, Part 1;
- (b) theft, including retail theft, as defined in Title 76;
- (c) larceny;

- (d) sex offenses as defined in Title 76, Part 4;
- (e) any offense involving controlled dangerous substances;
- (f) fraud;
- (g) extortion;
- (h) treason;
- (i) forgery;
- (j) arson;
- (k) kidnapping;
- (l) perjury;
- (m) conspiracy to commit any of the offenses listed herein;
- (n) hijacking;
- (o) burglary;
- (p) escape from jail, prison, or custody;
- (q) false or bogus checks;
- (r) terrorist activities;
- (s) desertion;
- (t) pornography;
- (u) two or more convictions for driving under the influence of alcohol within the last three years; and
- (v) any attempt to commit any of the above offenses.

(2) Where not automatically disqualified pursuant to Subsections 58-63-302(1)(h) and (4)(c), applications for licensure or renewal of licensure in which the applicant, or in the case of an armored car company, the officers, directors, and shareholders with 5% or more of the stock of the company, has a criminal background shall be considered on a case by case basis as defined in Section R156-1-302.

R156-63b-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 63 is established by rule in Section R156-1-308a.

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

R156-63b-304. Continuing Education for Armored Car Security Officers as a Condition of Renewal.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b), there is created a continuing education requirement as a condition of renewal or reinstatement of licenses issued under Title 58, Chapter 63 in the classifications of armored car security officer.

(2) Armored car security officers shall complete 16 hours of continuing education every two years consisting of formal classroom education. Such education shall include:

- (a) company operational procedures manual;
- (b) applicable state laws and rules;
- (c) ethics; and
- (d) emergency techniques.

(3) In addition to the required 16 hours of continuing education, armored car security officers shall complete not less than 16 additional hours of continuing firearms education and training every two years. The continuing firearms education and training shall be completed in four-hour blocks every six months and shall not include any hours for the continuing education requirement in Subsection R156-63b-304(2). The continuing firearms education and training shall include as a minimum:

- (a) live classroom instruction concerning the restrictions in the use of deadly force and firearms safety on duty, at home and on the range; and
- (b) a recognized practical pistol recertification course on which the licensee achieves a minimum score of 80% using regular or low light conditions.

(4) Firearms education and training shall comply with the provisions of Title 15, USC Chapter 85, the Armored Car Industry Reciprocity Act.

(5) An individual holding a current armored car security

officer license in Utah who fails to complete the required four hours of continuing firearms education within the appropriate six month period will be required to complete one and one half times the number of continuing firearms education hours the licensee was deficient for the reporting period (this requirement is hereafter referred to as penalty hours). The penalty hours shall not be considered to satisfy in whole or in part any of the continuing firearms education hours required for subsequent renewal of the license.

(6) If a renewal period is shortened or lengthened to effect a change of renewal cycle, the continuing education hours required for that renewal period shall be increased or decreased accordingly as a pro rata amount of the requirements of a two-year period.

R156-63b-305. Criminal History Renewal and Reinstatement Requirement.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b) and R156-1-302, a criminal history background check is required for all applications for renewal and reinstatement.

(2) The criminal history background check shall be performed by the Division and is not required to be submitted by the applicant.

(3) If the criminal background check discloses a criminal background, the Division shall evaluate the criminal history in accordance with Sections 58-63-302 and R156-63b-302g to determine appropriate licensure action.

R156-63b-306. Change of Qualifying Agent.

Within 60 days after a qualifying agent for a licensed armored car company ceases employment with the licensee, or for any other reason is not qualified to be the licensee's qualifier, the armored car company shall file with the Division an application for change of qualifier on forms provided by the Division, accompanied by a fee established in accordance with Section 63J-1-303.

R156-63b-307. Exemptions from Licensure.

(1) In accordance with Subsection 58-1-307(1)(c), an applicant who has applied for licensure as an armored car security officer is exempt from licensure and may engage in practice as an armored car security officer in a supervised on-the-job training capacity, for a period of time not to exceed the earlier of 30 days or action by the Division upon the application.

(2) The Division may issue upon receipt of an application for licensure as an armored car security officer, an on-the-job training letter to the applicant, if the applicant meets the following criteria:

(a) the applicant has not been licensed as an armored car security officer, armed private security officer or unarmed private security officer in the state of Utah at least two years prior to applying for licensure;

(b) the applicant submits with his application an official criminal history report from the Bureau of Criminal Identification showing "No Criminal Record Found";

(c) the applicant has not answered "yes" to any question on the qualifying questionnaire section of the application; and

(d) the applicant has not had a license to practice an occupation or profession denied, revoked, suspended, restricted or placed on probation.

R156-63b-502. Unprofessional Conduct.

"Unprofessional conduct" includes the following:

(1) making any statement that would reasonably cause another person to believe that an armored car security officer functions as a law enforcement officer or other official of this state or any of its political subdivisions or any agency of the federal government;

(2) employing an armored car security officer by an armored car company, as an on-the-job trainee pursuant to Section R156-63b-307, who has been convicted of:

(a) a felony;

(b) a misdemeanor crime of moral turpitude; or

(c) a crime that when considered with the duties and functions of an armored car security officer by the Division and the Board indicates that the best interests of the public are not served;

(3) employing an armored car security officer by an armored car company who fails to meet the requirements of Section R156-63b-307;

(4) utilizing a vehicle whose markings, lighting, and/or signal devices imply or suggest that the vehicle is an authorized emergency vehicle as defined in Subsection 41-6a-102(3) and Section 41-6a-310 and in Title R722, Chapter 340;

(5) utilizing a vehicle with an emergency lighting system which violates the requirements of Section 41-6a-1616 of the Utah Motor Vehicle Code;

(6) wearing a uniform, insignia, or badge that would lead a reasonable person to believe that the armored car security officer is connected with a federal, state, or municipal law enforcement agency;

(7) being incompetent or negligent as an armored car security officer or by an armored car company that results in injury to a person or that creates an unreasonable risk that a person may be harmed;

(8) failing as an armored car company or its officers, directors, partners, proprietors or responsible management personnel to adequately supervise employees to the extent that the public health and safety are at risk;

(9) failing to immediately notify the Division of the cancellation of the armored car company's insurance policy;

(10) failing as an armored car company or an armored car security officer to report a criminal offense pursuant to Section R156-63b-612; and

(11) wearing an uniform, insignia, badge or displaying a license that would lead a reasonable person to believe that an individual is connected with an armored car company, when not employed as an armored car security officer by an armored car company.

R156-63b-503. Administrative Penalties.

(1) In accordance with Subsection 58-63-503, the following citation fine schedule shall apply to citations issued under Title 58, Chapter 63:

TABLE FINE SCHEDULE		
Violation	FIRST OFFENSE	
	Armored Car Company	Armed or Unarmed Armored Car Security Officer
58-63-501(1)	\$ 800.00	N/A
58-63-501(3)	\$ 800.00	\$ 500.00
Violation	SECOND OFFENSE	
	Armored Car Company	Armed or Unarmed Armored Car Security Officer
58-63-501(1)	\$1,600.00	\$1,000.00
58-63-501(3)	\$1,600.00	\$1,000.00

(2) 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 58-63-503(3)(h)(iii).

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

(4) An investigative supervisor may authorize a deviation

from the fine schedule based upon the aggravating or mitigating circumstances.

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

R156-63b-601. Operating Standards - Firearms.

(1) An armored car security officer shall carry only that firearm with which he has passed a firearms qualification course as defined in Section R156-63b-604.

(2) Shotguns and rifles, owned and issued by the armored car company, may be used in situations where they would constitute an appropriate defense for the armored car security officer and where the officer has completed an appropriate qualification course in their use.

(3) An armored car security officer shall not carry a firearm except when acting on official duty as an employee of an armored car company, unless the licensee is otherwise qualified under the laws of the state to carry a firearm.

R156-63b-602. Operating Standards - Approved Basic Education and Training Program for Armored Car Security Officers.

To be designated by the Division as an approved basic education and training program for armored car officers, the following standards shall be met.

(1) The applicant for program approval shall pay a fee for the approval of the education program.

(2) There shall be a written education and training manual which includes performance objectives.

(3) The program for armored car security officers shall provide content as established in Sections R156-63b-603 and R156-63b-604.

(4) An instructor is a person who directly facilitates learning through means of live in-class lecture, group participation, practical exercise, or other means, where there is a direct student-teacher relationship. All instructors providing the basic classroom instruction shall have at least three years of training and experience reasonably related to providing of security guard services.

(5) All instructors providing firearms training shall have the following qualifications:

(a) current Peace Officers Standards and Training firearms instructors certification; or

(b) current certification as a firearms instructor by the National Rifle Association, a Utah law enforcement agency, a Federal law enforcement agency, a branch of the United States military, or other qualification or certification found by the director to be equivalent.

(6) All approved basic education and training programs shall maintain training records on each individual trained including the dates of attendance at training, a copy of the instruction given, and the location of the training. These records shall be maintained in the files of the education and training program for at least three years.

(7) In the event an approved provider of basic education and training ceases to engage in business, the provider shall establish a method approved by the Division by which the records of the education and training shall continue to be available for a period of at least three years after the education and training is provided.

(8) Instructors, who present continuing education hours and are licensed armored car security officers, shall receive credit for actual preparation time for up to two times the number of hours to which participants would be entitled. For example, for learning activities in which participants receive four continuing education hours, instructors may receive up to eight continuing education hours (four hours for preparation plus four

hours for presentation).

R156-63b-603. Operating Standards - Content of Approved Basic Education and Training Program for Armored Car Security Officers.

An approved basic education and training program for armored car security officers shall have the following components:

(1) at least 24 hours of basic classroom instruction to include the following:

(a) the nature and role of private security, including the limits of, scope of authority and the civil liability of an armored car security officer and the armored car security officer's role in today's society;

(b) state laws and rules applicable to armored car security;

(c) legal responsibilities of armored car security, including constitutional law, search and seizure and other such topics;

(d) ethics;

(e) use of force, emphasizing the de-escalation of force and alternatives to using force;

(f) police and community relations, including fundamental duties and the personal appearance of an armored car officer;

(g) sexual harassment in the work place;

(h) driving policies and procedures, driver training and vehicle orientation;

(i) emergency situation response including terminal security, traffic accidents, robbery situations, homeland security and reducing risk potential through street procedures and tactics, securing robbery scenes, and dealing with the media;

(j) armored operations, including proper paperwork, street control procedures, vehicle transfers, vault procedures, and other proper branch procedures; and

(k) a final examination which competently examines the student on the subjects included in the 24 hours of basic classroom instruction in the approved program of education and training and which the student passes with a minimum score of 80%.

R156-63b-604. Operating Standards - Content of Approved Basic Firearms Training Program for Armored Car Security Officers.

An approved basic firearms training program for armored car security officers shall have the following components:

(1) at least six hours of classroom firearms instruction to include the following:

(a) the firearm and its ammunition;

(b) the care and cleaning of the weapon;

(c) the prohibition against alterations of firing mechanism;

(d) firearm inspection review procedures;

(e) firearm safety on duty;

(f) firearm safety at home;

(g) firearm safety on the range;

(h) legal and ethical restraints on firearms use;

(i) explanation and discussion of target environment;

(j) stop failure drills;

(k) explanation and discussion of stance, draw stroke, cover and concealment and other firearm fundamentals;

(l) armed patrol techniques;

(m) use of deadly force under Utah law and the provisions of Title 76, Chapter 2, Part 4 and a discussion of 18 USC 44 Section 922; and

(n) the instruction that armored car security officers shall not fire their weapon unless there is an eminent threat to life and at no time shall the weapon be drawn as a threat or means to force compliance with any verbal directive not involving eminent threat to life; and

(2) at least six hours of firearms range instruction to include the following:

(a) basic firearms fundamentals and marksmanship;

(b) demonstration and explanation of the difference between sight picture, sight alignment and trigger control; and

(c) a recognized practical pistol course on which the applicant achieves a minimum score of 80% using regular and low light conditions.

R156-63b-605. Operating Standards - Uniform Requirements.

(1) All armored car security officers while on duty shall wear the uniform of their armored car company employer unless assigned to work undercover.

(2) The name of the armored car company shall be of a size, style, shape, design and type which is clearly visible by a reasonable person under normal conditions.

(3) Each armored car company officer wearing a regular uniform shall display on the outermost garment of the uniform in a style, shape, design and type which is clearly visible by a reasonable person under normal conditions identification which contains the name or logo of the armored car company under whom the armored car security officer is employed.

R156-63b-606. Operating Standards - Badges.

(1) At the armored car company's request, an armored car security officer may, while in uniform and while on duty, wear a shield inscribed with the words "Security," or "Security Officer". The shield shall not contain the words "State of Utah" or the seal of the state of Utah.

(2) The use of a star badge with any number of points on a uniform, in writing, advertising, letterhead, or other written communication is prohibited.

R156-63b-607. Operating Standards - Criminal Status of Officer, Qualifying Agent, Director, Partner, Proprietor, Armored Car Security Officer or Manager of Armored Car Companies.

In the event an officer, qualifying agent, director, partner, proprietor, armored car security officer, or any management personnel having direct responsibility for managing operations of the armored car company has a conviction entered regarding:

- (a) a felony;
- (b) a misdemeanor crime of moral turpitude; or
- (c) a crime that when considered with the duties and functions of an armored car security company officer by the Division and the Board indicates that the best interests of the public are not served, the company shall within ten days of the conviction or notice reorganize and exclude said individual from participating at any level or capacity in the management, operations, sales, ownership, or employment of that company.

R156-63b-608. Operating Standards - Implying an Association with Public Law Enforcement Prohibited.

(1) No armored car company shall use any name which implies intentionally or otherwise that the company is connected or associated with any public law enforcement agency.

(2) No armored car company shall permit the use of the words "special police", "special officer", "cop", or any other words of a similar nature whether used orally or appearing in writing or on any uniform, badge, or cap.

(3) No person licensed under this chapter shall use words or designations which would cause a reasonable person to believe he is associated with a public law enforcement agency.

R156-63b-609. Operating Standards - Proper Identification of Armored Car Security Officers.

All armored car security officers shall carry a valid security license together with a Utah identification card issued by the Division of Driver License or a current Utah driver's license whenever performing the duties of an armored car security officer and shall exhibit said license and identification upon

request.

R156-63b-610. Operating Standards - Operational Procedures Manual.

(1) Each armored car company shall develop and maintain an operational procedures manual which includes the following topics:

- (a) felony and misdemeanor definitions;
- (b) observing and reporting;
- (c) natural disaster preparation;
- (d) alarm systems, locks, and keys;
- (e) radio and telephone communications;
- (f) public relations;
- (g) personal appearance and demeanor;
- (h) bomb threats;
- (i) fire prevention;
- (j) mental illness;
- (k) supervision;
- (l) criminal justice system;
- (m) accident scene control;
- (n) code of ethics for armored car security officers; and
- (o) sexual harassment in the workplace.

(2) The operations and procedures manual shall be immediately available to the Division upon request.

R156-63b-611. Operating Standards - Display of License.

The license issued to an armored car company shall be prominently displayed in the company's principal place of business and a copy of the license shall be displayed prominently in all branch offices.

R156-63b-612. Operating Standards - Notification of Criminal Offense.

(1) Licensee employed by an armored car company:

(a) pursuant to Title 58, Chapter 63, a licensed armored car security officer arrested, charged, or indicted for a criminal offense above the level of a Class C misdemeanor shall notify the licensee's employing armored car company within 72 hours of the arrest, charge, or indictment;

(b) within 72 hours after such notification by the employee, the employing armored car company shall notify the Division of the arrest, charge or indictment in writing; and

(c) the written notification shall include the employee's name, the name of the arresting agency, the agency case number, the date and the nature of the criminal offense.

(2) Licensee not employed by an armored car company:

(a) pursuant to Title 58, Chapter 63, a licensed armored car security officer who is not employed by an armored car company shall directly notify the Division in writing within 72 hours of any arrest, charge or indictment above the level of a Class C misdemeanor; and

(b) the written notification shall meet the requirements of Subsection (1)(c).

**KEY: licensing, security guards, armored car security officers, armored car company
November 13, 2008**

58-1-106(1)(a)

58-1-202(1)(a)

58-63-101

R156. Commerce, Occupational and Professional Licensing.
R156-64. Deception Detection Examiners Licensing Act Rule.

R156-64-101. Title.

This rule is known as the "Deception Detection Examiners Licensing Act Rule".

R156-64-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 64, as used in Title 58, Chapters 1 and 64 or this rule:

(1) "Clinical testing" means a deception detection examination which is not intended to supplement and assist in a criminal investigation.

(2) "Comparison question" means a nonrelevant test question used for comparison against a relevant test question in a deception detection examination.

(3) "Deception detection case file" means written records of a polygraph exam including:

- (a) case information;
- (b) examinee information;
- (c) a list of all questions used during the examination;
- (d) copies of all charts recorded during the examination;

and

(e) either the audio or video recording of the examination.

(4) "Experienced deception detection examiner" means a deception detection examiner who has completed over 250 deception detection examinations and has been licensed or certified by the United States Government for three years or more.

(5) "Irrelevant and relevant testing" means a deception detection examination which consists of relevant questions, interspersed with irrelevant questions, and does not include any type of comparison questions.

(6) "Irrelevant question" means a question of neutral impact, which does not relate to a matter under inquiry, in a deception detection examination.

(7) "Post conviction sex offender testing" means testing of sex offenders and includes:

(a) sexual history testing to determine if the examinee is accurately reporting all sexual offenses prior to a conviction;

(b) maintenance testing to determine if the examinee is complying with the conditions of probation or parole; and

(c) specific issue examinations.

(8) "Pre-employment exam" means a deception detection screening examination administered as part of a pre-employment background investigation.

(9) "Qualified continuing professional education" means continuing education that meets the standards set forth in Section R156-64-304.

(10) "Relevant question" means a question which relates directly to a matter under inquiry in a deception detection examination.

(11) "Screening exam" means a multiple issue deception detection examination administered to determine the examinee's truthfulness concerning more than one narrowly defined issue.

(12) "Specific issue/single issue examination" means a deception detection examination administered to determine the examinee's truthfulness concerning one narrowly defined issue.

(13) "Supervision" means general supervision as established in Subsection R156-1-102a(4)(c).

(14) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 64, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-64-502.

R156-64-103. 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 64.

R156-64-104. 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.

R156-64-201. Education Peer Committee created - Membership - Duties.

(1) In accordance with Subsection 58-1-203(1)(f), there is created the Deception Detection Education Peer Committee.

(a) The duties and responsibilities of the Deception Detection Education Peer Committee are to conduct an oral interview on behalf of the Board to evaluate the deception detection intern's performance and make a recommendation to the Board to:

- (i) approve the application; or
- (ii) deny the application but extend the intern period.

(b) The composition of the Deception Detection Education Peer Committee shall be three deception detection examiners licensed in Utah who are not members of the Deception Detection Examiners Licensing Board.

R156-64-302a. Qualifications for Licensure - Application Requirements.

(1) Pursuant to Section 58-64-302, an application for licensure as a deception detection examiner shall be accompanied by:

- (a) two fingerprint cards for the applicant; and
- (b) a fee established in accordance with Section 63J-1-303 equal to the cost of conducting a check of records of:

- (i) the Federal Bureau of Investigation; and
- (ii) the Bureau of Criminal Identification of the Utah Department of Public Safety.

(2) Pursuant to Section 58-64-302, an application for licensure as a deception detection intern shall be accompanied by:

- (a) two fingerprint cards for the applicant; and
- (b) a fee established in accordance with Section 63J-1-303 equal to the cost of conducting a check of records of:

- (i) the Federal Bureau of Investigation; and
- (ii) the Bureau of Criminal Identification of the Utah Department of Public Safety.

R156-64-302b. Qualifications for Licensure - Education Requirements.

(1) In accordance with Subsections 58-64-302(1)(f)(i) and 58-64-302(2)(f)(i) the bachelor's degree shall have been earned from a university or college program, that at the time the applicant graduated, was accredited through the U.S. Department of Education or one of the regional accrediting association of schools and colleges.

(2) In accordance with Subsections 58-64-302(1)(f)(ii) and 58-64-302(2)(f)(ii), the 8,000 hours of investigation experience shall have been as a criminal or civil investigator with a federal, state, county or municipal law enforcement agency, or other equivalent investigation experience approved by the Division in collaboration with the Board.

(3) In accordance with Subsections 58-64-302(1)(f)(iii) and 58-64-302(2)(f)(iii), the college education and investigation experience may be combined in the ratio of 2000 hours of investigation experience for one year as a matriculated student in an accredited bachelor's degree program.

(4) In accordance with Subsections 58-64-302(1)(g) and 58-64-302(2)(g), the deception detection training program shall consist of:

(a) graduation from a course of instruction in deception detection in a school accredited by the American Polygraph Association; and

(b) passing the Utah Deception Detection Theory Exam with a score of at least 75%.

R156-64-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Section 58-1-309, applicants shall pass the Utah Deception Detection Examiners Law and Rule Examination with a score of at least 75%.

R156-64-302d. Qualifications for Licensure - Supervision Requirements.

In accordance with Subsection 58-64-302(2)(h), each deception detection intern supervision agreement shall be in a form that requires a deception detection intern to serve an internship under the direct supervision of an experienced deception detection examiner as follows:

- (1) the supervising deception detection examiner shall observe either directly or by video recording a minimum of five complete examinations;
- (2) if the deception detection intern is performing post conviction sex offender testing, the supervision deception detection examiner shall hold a certification for post conviction sex offender testing by the American Polygraph Association; and
- (3) the "Internship Supervision Agreement", as required in Subsection 58-64-302(2)(h), shall be approved by the Division in collaboration with the Board.

R156-64-303. 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 64 is established by rule in Section R156-1-308.
- (2) Renewal procedures shall be in accordance with Section R156-1-308.

R156-64-304. Continuing Education.

- (1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b), there is created a continuing education requirement as a condition for renewal or reinstatement of a license in the classification of deception detection examiner.
- (2) Continuing education shall consist of 60 hours of qualified continuing professional education in each preceding two year period of licensure or expiration of licensure.
- (3) If a renewal period is shortened or extended to effect a change of renewal cycle, the continuing education hours required for that renewal period shall be increased or decreased accordingly as a pro rata amount of the requirements of a two-year period.
- (4) Qualified continuing professional education shall consist of the following:
 - (a) A minimum of 30 hours shall be from institutes, seminars, lectures, conferences, workshops, various forms of mediated instruction directly relating to deception detection; and
 - (b) 30 hours may be in the following college courses with one college credit being equal to 15 hours;
 - (i) psychology;
 - (ii) physiology;
 - (iii) anatomy; and
 - (iv) interview and interrogation techniques.
- (5) A deception detection examiner who instructs an approved course shall be given double credit for the first presentation.
- (6) A licensee shall be responsible for maintaining competent 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.

R156-64-305. Demonstration of Clear Criminal History for Licensees as Renewal Requirement.

- (1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b), an applicant shall demonstrate a clear criminal

history as a condition of renewal or reinstatement of license issued under Title 58, Chapter 64 in the classification of deception detection examiner.

- (2) A criminal history background check shall be performed by the Division and is not required to be submitted by the applicant.
- (3) If the criminal background check discloses a criminal background, the Division shall evaluate the criminal history in accordance with Section R156-1-302 to determine appropriate licensure action.

R156-64-502. Unprofessional Conduct.

- "Unprofessional conduct" includes:
- (1) not immediately terminating the examination upon the request of the examinee;
 - (2) not conducting a pre-examination review with the examinee reviewing each question word for word prior to conducting the examination;
 - (3) attempting to determine truth or deception on matters or issues not discussed with the examinee during the pre-examination review;
 - (4) basing decisions concerning truthfulness or deception upon less than:
 - (a) two charts for a pre-employment exam;
 - (b) two charts for a screening exam that is to be followed by a specific issue exam; or
 - (c) three charts for all other exams;
 - (5) conducting an examination if the examinee is not physically present and aware that an examination is being conducted;
 - (6) using irrelevant and relevant testing techniques in other than pre-employment and periodic testing, without prior approval of the division in collaboration with the board;
 - (7) using a polygraph instrument that does not record as a minimum:
 - (a) respiration patterns recorded by two pneumograph components recording thoracic and abdominal patterns;
 - (b) electro dermal activity reflecting relative changes in the conductance or resistance of current by the epidermal tissue;
 - (c) relative changes in pulse rate, pulse amplitude and relative blood volume by use of a cardiograph;
 - (d) continuous physiological recording of sufficient amplitude to be easily readable by the examiner; and
 - (e) pneumograph and cardiograph tracings no less than one-half inch in amplitude when using an analog polygraph instrument;
 - (8) conducting more than five deception detection examinations in a 24 hour period;
 - (9) conducting an examination of less than a 90 minute duration;
 - (10) conducting a pre-employment examination of less than a 60 minute duration;
 - (11) not audibly recording all criminal/specific examinations and informing the examinee of such recording prior to the examination;
 - (12) during a pre-employment pre-test interview or actual examination, asking any questions concerning the subject's sexual attitudes, political beliefs, union sympathies or religious beliefs unless there is demonstratable overriding reason;
 - (13) publishing, directly or indirectly, or circulating any fraudulent or false statements as to the skill or method of practice of any examiner;
 - (14) dividing fees or agreeing to split or divide the fees received for deception detection services with any person for referring a client;
 - (15) refusing to render deception detection services to or for any person on account of race, color, creed, national origin, sex or age of such person;
 - (16) conducting an examination:

(a) on a person who is under the influence of alcohol or drugs; or

(b) on a person who is under the age of 14 without written permission from the person's parent or guardian;

(17) not providing at least 20 seconds between the beginning of one question and the beginning of the next;

(18) failing during a pretest interview to specifically inquire whether the individual to be examined is currently receiving or has in the past received medical or psychiatric treatment or consultation;

(19) failing to obtain a release from the individual being examined or a physician's statement if there is any reasonable doubt concerning the individual's ability to safely undergo an examination;

(20) not using a numerical scoring system in all specific examinations;

(21) not creating and maintaining a record for every examination administered;

(22) creating records not containing at a minimum the following:

(a) all charts on each subject properly identified by name and date and if the exam was performed on an analog polygraph instrument, signed by the examinee;

(b) an index, either chronological or alphabetical, listing:

(i) the names of all persons examined;

(ii) the type of exam conducted;

(iii) the date of the exam;

(iv) the name of the examiner;

(v) the file number in which the records are maintained;

(vi) the examiner's written opinion of the test results; and

(vii) the time the examination began and ended;

(c) all written reports or memoranda of verbal reports;

(d) a list of all questions asked while the instrument was recording;

(e) background information elicited during the pre-test interviews;

(f) a form signed by the examinee agreeing to take the examination after being informed of his or her right to refuse;

(g) the following statement, dated and signed by the examinee: "If I have any reason to believe that the examination was not completely impartial, fair and conducted professionally, I am aware that I can report it to the Division of Occupational and Professional Licensing";

(h) any recordings made of the examination; and

(i) documentation of an instrument functionality check on a quarterly basis including a calibration chart

(23) expressing a bias in any manner regarding the truthfulness of the examinee prior to the completion of any testing;

(24) conducting a clinical polygraph examination of a sex offender without holding a current certification from the American Polygraph Association for post conviction sex offender testing;

(25) not maintaining records of all deception detection examinations for a minimum of three years; and

(26) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established by the American Polygraph Association Code of Ethics, dated January 10, 1999, and Standards of Practice, dated January 20, 2007, which are hereby incorporated by reference.

KEY: licensing, deception detection examiner, deception detection intern

November 24, 2008

Notice of Continuation April 9, 2007

58-64-101

58-1-106(1)(a)

58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.**R156-71. Naturopathic Physician Practice Act Rule.****R156-71-101. Title.**

This rule is known as the "Naturopathic Physician Practice Act Rule."

R156-71-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 71, as used in Title 58, Chapters 1 and 71, or this rule:

(1) "Approved clinical experience program" or "residency program" as used in Subsections 58-71-302(1)(e) and 58-71-304.2(1)(b), means a minimum 12 month program associated with a naturopathic medical school or college accredited by the Council of Naturopathic Medical Education.

(2) "Direct supervision" as used in Subsection 58-71-304.2(1)(b), means the supervising naturopathic physician, physician and surgeon, or osteopathic physician is responsible for the naturopathic activities and services performed by the naturopathic physician intern and is normally present in the facility and when not present in the facility is available by voice communication to direct and control the naturopathic activities and services performed by the naturopathic physician intern.

(3) "Direct and immediate supervision" of a medical naturopathic assistant ("assistant") as used in Subsections 58-71-102(6) and 58-71-305(7), means that the licensed naturopathic physician is responsible for the activities and services performed by the assistant and will be in the facility and immediately available for advice, direction and consultation.

(4) "Distance learning" means the acquisition of knowledge and skills through information and instruction encompassing all technologies and other forms of learning at a distance, including internet, audio/visual recordings, mail or other correspondence.

(5) "Naturopathic physician intern" or "intern" means an individual who qualifies for a temporary license under Section 58-71-304.2 to engage in a naturopathic physician residency program recognized by the division under the direct supervision of an approved naturopathic physician, physician and surgeon, or osteopathic physician.

(6) "NPLEX" means the Naturopathic Physicians Licensing Examinations.

(7) "Primary health care", as referenced in Subsection 58-71-102(12), means basic or general health care provided at the patient's first contact with the naturopathic physician.

(8) "Qualified continuing education," as used in this rule, means continuing education that meets the standards set forth in Subsection R156-71-304.

(9) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 71, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-71-502.

R156-71-103. 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 71.

R156-71-104. 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.

R156-71-202. Naturopathic Physician Formulary.

(1) In accordance with Subsections 58-71-102(8), 58-71-102(12)(a) and 58-71-202, the naturopathic physician formulary which consists of noncontrolled substance legend medications deemed appropriate for the primary health care of patients within the scope of practice of naturopathic physicians, the prescription of which is approved by the Division in collaboration with the Naturopathic Formulary Advisory Peer Committee, consists of the following legend drugs, listed by

category, with reference numbers identified in the American Hospital Formulary Service (AHFS), published by the American Society of Health System Pharmacists, 2006 edition:

4:00 Antihistamines
 8:08 Anthelmintics
 8:12 Antibacterials, oral forms only
 8:14 Antifungals, oral and topical forms
 8:18 Antivirals limited to oral and topical dosage forms,
 excluding:
 8:18:08 Antiretrovirals
 8:18:20 Interferons
 8:18:24 Monoclonal Antibodies
 8:18:32 Nucleosides and Nucleotides
 8:30:04 Amebicides
 8:30:92 Miscellaneous Antiprotozoals excluding those
 whose primary indication is the treatment of infection in
 immunosuppressed patients (i.e. Pentamidine and Trimetrexate)
 8:36 Urinary anti-infectives
 12:12:08:12 Selective Beta 2 Adrenergic Agonists
 12:12:12 Alpha and Beta Adrenergic Agonists
 12:16 Sympatholytic (Adrenergic Blocking) Agents,
 limited to ergot derivatives
 12:20 Skeletal Muscle Relaxants, excluding scheduled
 medications
 20:24 Hemorrhologic Agents
 24:04:08 Cardiotonic agents - limited to Digoxin
 24:06 Antilipemic Agents
 24:08 Hypotensive Agents - limited to oral dosage forms
 24:20 Alpha Adrenergic Blocking Agents
 24:24 Beta Adrenergic Blocking Agents - limited to oral
 dosage forms
 24:28 Calcium Channel Blocking Agents - limited to oral
 dosage forms
 24:32 Renin-Angiotensive-Aldosterone System Inhibitors -
 limited to oral dosage forms
 28:08 Analgesics and Antipyretics, excluding scheduled
 medications
 28:16.04.20 Selective-Serotonin Reuptake Inhibitors
 28:16.04.24 Serotonin Modulators
 28:16.04.28 Tricyclics and Other Norepinephrine-
 Reuptake Inhibitors
 40:00 Electrolytic, caloric, and water balance
 40:28 Diuretics
 44:00 Enzymes, limited to digestive and proteolytic
 52:08 Corticosteroids (oral, topical, and injectable), Anti-
 Inflammatory Agents except Ophthalmologic Preparations, and
 DMARDS
 52:16 Local Anesthetics
 56:22 Antiemetics
 56:28 H₂ Blockers, Anti-ulcer agents and Acid
 Suppressants
 68:12 Contraceptives, except implants and injections
 68:16.04 Estrogen
 68:20.02 Alpha-Glucosidase Inhibitors
 68:20.08 Insulins and Biguanides
 68:20.20 Sulfonyleureas
 68:24 Parathyroid
 68:32 Progesterin
 68:36.04 Thyroid agents, including thyroid of glandular
 extract
 80:12 Vaccines
 88:28 Multivitamin preparations
 92:00 Antigout, and Bone-Resorption Inhibitors, limited to
 Raloxifene, and botulinum toxin type A, limited to superficial
 injections

(2) In addition, amino acids, minerals, oxygen and silver nitrate, although not listed in Subsection (1), are approved for primary health care.

(3) New categories or classes of drugs will need to be

approved as part of the formulary prior to prescribing/administering.

(4) The licensed naturopathic physician has the responsibility to be knowledgeable about the medication being prescribed or administered.

R156-71-302. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-71-302(1)(f) and 58-71-302(2)(c), the licensing examination sequence required for licensure is as follows:

(1) NPLEX Basic Science Series, the State of Washington Basic Science Series or the State of Oregon Basic Science Series;

(2) NPLEX Clinical Series; and

(3) NPLEX Minor Surgery.

R156-71-302a. Qualifications for Licensure - Education Requirements for Graduates of Naturopathic Physician Programs or Schools Located Outside the United States.

The satisfactory documentation of compliance with the licensure requirement set forth in Subsection 58-71-302(2)(b) shall be a report submitted to the Division by the International Credentialing Associates, Inc. (ICA) confirming that the applicant's naturopathic physician program or school has met the accreditation standards.

R156-71-303. 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 71 is established by rule in Section R156-1-308.

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

R156-71-304. Qualified Continuing Education.

(1) To be qualified continuing education, a continuing education course shall meet the following standards:

(a) the course shall consist of clinically oriented seminars, lectures, conferences, workshops, mediated instruction, or programmed learning provided by one of the following:

(i) a professional health care licensing agency, hospital, or institution accredited by the Accreditation Council of Continuing Medical Education (ACCME);

(ii) a program sponsored by the American Council of Pharmaceutical Education (ACPE);

(iii) an accredited college or university;

(iv) a professional association or organization representing a licensed profession whose program objectives are related to naturopathic training; or

(v) any other provider providing a program related to naturopathic education, if the provider has submitted an application to and received approval from the Utah Naturopathic Physicians Licensing Board;

(b) the learning objectives of the course shall be reasonably and clearly stated;

(c) the teaching methods shall be clearly stated and appropriate;

(d) the faculty shall be qualified both in experience and in teaching expertise;

(e) there shall be a written post course or program evaluation;

(f) the documentation of attendance shall be provided; and

(g) the content of the course shall be relevant to naturopathic practice and consistent with the laws and rules of this state.

(2) In accordance with Section 58-71-304, qualified continuing education shall consist of 48 hours of qualified continuing professional education in each preceding two year

period of licensure, 20 hours of which shall be specific to pharmacy or pharmacology as it pertains to the Naturopathic Physician Formulary, Section R156-71-202. No more than 20 hours of continuing education in each two-year period of licensure may be through distance learning.

(3) If a licensee allows his license to expire and the application for reinstatement is received by the division within two years after the expiration date the applicant shall:

(a) submit documentation of having completed 48 hours of qualified continuing professional education required for the previous renewal period. The required hours shall meet the criteria set forth in Subsection (2); and

(b) submit documentation of having completed a pro rata amount of qualified continuing professional education based upon one hour of qualified continuing professional education for each month the license was expired for the current renewal period.

(4) If the application for reinstatement is received by the division more than two years after the date the license expired, the applicant shall complete a minimum of 48 hours of qualified continuing professional education and additional hours as determined by the board to clearly demonstrate the applicant is currently competent to engage in naturopathic medicine. The required hours shall meet the criteria set forth in Subsection (2).

(5) Audits of a licensee's continuing education hours may be done on a random basis by the division in collaboration with the board.

(6) A licensee shall be responsible for maintaining competent records of completed qualified professional education for a period of two years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain this information with respect to qualified professional education to demonstrate it meets the requirements under this section.

(7) The division in collaboration with the board may grant a waiver of continuing education requirements to a waiver applicant who documents he is engaged in full time activities or is subjected to circumstances which prevent the licensee from meeting the continuing professional education requirements established under this section. A waiver may be granted for a period of up to four years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

R156-71-502. Unprofessional Conduct.

"Unprofessional conduct" includes failure to comply with the approved formulary.

KEY: licensing, naturopaths, naturopathic physician

November 24, 2008 **58-71-101**

Notice of Continuation January 8, 2007 **58-1-106(1)(a)**

58-1-202(1)(a)

R162. Commerce, Real Estate.**R162-105. Scope of Authority.****R162-105-1. Scope of Authority.**

105.1 Transaction value. "Transaction value" means:

105.1.1 For loans or other extensions of credit, the amount of the loan or extension of credit;

105.1.2 For sales, leases, purchases, and investments in or exchanges of real property, the market value of the real property interest involved; and

105.1.3 For the pooling of loans or interests in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

105.2 State-Licensed Appraisers. In federally-related transactions, the Utah Real Estate Appraiser Licensing Act and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and related federal regulations allow State-Licensed Appraisers to perform the appraisal of non-complex one to four residential units having a transaction value of less than \$1,000,000 and complex one to four residential units having a transaction value of less than \$250,000.

105.2.1 Subject to the transaction value limits in Section 105.2, State-Licensed Appraisers may also perform appraisals in federally-related transactions of vacant or unimproved land that is utilized for one to four family purposes, or for which the highest and best use is 1-4 family purposes, so long as net income capitalization analysis is not required by the terms of the assignment.

105.2.2 State-Licensed Appraisers may not perform appraisals of subdivisions in federally-related transactions for which a development analysis/appraisal is necessary or for which discounted cash flow analysis is required by the terms of the assignment.

105.3 Trainees.

105.3.1 For the purposes of these rules, "trainee" means a person who is working under the direct supervision of a State-Licensed or State-Certified Appraiser to earn points for licensure.

105.3.2 Appraisal-related duties by unlicensed persons. Unlicensed persons who have not qualified as trainees as provided in Subsection 105.3.3 may perform only clerical duties in connection with an appraisal. For the purposes of this rule, appraisal-related clerical duties include typing an appraiser's research notes or an appraiser's report, taking photographs of properties, and obtaining copies of public records. Only those persons who have properly qualified as trainees as provided in Subsection 105.3.3 may perform the following appraisal-related duties: participating in property inspections, measuring or assisting in the measurement of properties, performing appraisal-related calculations, participating in the selection of comparables for an appraisal assignment, making adjustments to comparables, and drafting or assisting in the drafting of an appraisal report. The supervising appraiser shall be responsible to determine the point at which a trainee is competent to participate in each of these activities.

105.3.2.1 A trainee may not solicit an assignment or accept an assignment on behalf of anyone other than the trainee's supervisor or the supervisor's appraisal firm. All engagement letters shall be addressed to the supervisor or the supervisor's appraisal firm, not to the trainee. In all appraisal assignments, the supervisor shall delegate only such duties as are appropriate to the trainee and shall directly supervise the trainee in the performance of those duties.

105.3.3 In order to become a trainee, the person must have successfully completed 75 classroom hours of State-approved education in subjects related to real estate appraisal, including the Uniform Standards of Professional Appraisal Practice (USPAP), must have passed the final examination in the USPAP course, and must file a notification with the Division as

provided in Subsection 105.3.3.1. The education required by this Subsection must have been completed within the 5 years preceding the filing of the notification required by Subsection 105.3.3.1.

105.3.3.1 Trainee Notification. Prior to performing any of the appraisal-related activities for which points will be claimed toward licensure, a trainee must file with the Division a notification in the form required by the Division. In addition to any identifying information about the trainee required by the Division, the notification shall contain the name and business address of the appraiser(s) who will supervise the trainee in the performance of the appraisal-related duties, and shall be signed by the supervisor. The notification shall also contain the course names, course provider names, and course completion dates for the 75 hours of education required by Subsection 105.3.3. The original course completion certificates shall be submitted to the Division with the notification.

105.3.3.2 Except as provided in Subsection 105.3.3.3, no experience points will be granted toward licensure for trainee experience that is claimed to have been earned prior to the date the notification was filed with the Division.

105.3.3.3 Until five years after the effective date of this rule, points that were earned prior to the effective date of this rule may be claimed and will be awarded to applicants who are able to document those points on the forms required by the Division, notwithstanding the fact that the points were earned prior to the date a trainee notification was filed with the Division.

105.3.4 Supervising Appraisers. A trainee may have more than one supervising appraiser. Effective January 1, 2008, a supervising appraiser may supervise a maximum of three trainees at one time.

105.3.5 Residential Property Inspections. A trainee, including a trainee who was previously a state-registered appraiser, must be accompanied by a supervising State-Licensed Appraiser, State-Certified Residential Appraiser, or State-Certified General Appraiser on all inspections of residential property until the trainee has performed 100 inspections of residential properties in which both the interior and the exterior of the properties are inspected. All reports in appraisals in which a trainee participated in the inspection of the subject property shall comply with the requirements of Section 106.9.

105.3.6 Non-Residential Property Inspections. A trainee, including a trainee who was previously a state-registered appraiser, must be accompanied by a supervising State-Certified General Appraiser on all inspections of non-residential property until the trainee has performed 20 inspections of non-residential properties in which both the interior and the exterior of the properties are inspected. All reports in appraisals in which a trainee participated in the inspection of the subject property shall comply with the requirements of Section 106.9.

105.3.7 Points for Licensure. A trainee may accumulate experience points for each duty listed below at the rate of 33.3% of the total points awarded from the Appraisal Experience Points Schedule under Section 104-18.1 or 104-18.2, not to exceed the maximum number of points awarded for each property. Trainee experience must be earned in at least three of the following categories. No more than one-third of the experience points submitted toward licensure may come from any one of the following categories:

(a) participation in selecting comparables for an appraisal assignment - 33.3% of total points

(b) participation in making adjustments to comparables - 33.3% of total points

(c) drafting appraisal reports - 33.3% of total points

(d) as provided in Sections 105.3.5 and 105.3.6, inspecting a property that is the subject of an appraisal or that may be used as a comparable in an appraisal, and measuring the property - 33.3% of total points as long as both an interior and

exterior inspection of the property is performed. No points will be granted for inspections that do not include both an interior and an exterior inspection.

105.3.8 Credit will be given for appraisal experience earned only within five years immediately preceding the licensure or certification application. Applicants who believe the Experience Points Schedules do not adequately reflect their experience may refer to Section 104-17.

105.3.9 All trainees are prohibited from signing an appraisal report or discussing an appraisal assignment with anyone other than the appraiser responsible for the assignment, state enforcement agencies and such third parties as may be authorized by due process of law, or a duly authorized professional peer review committee.

105.3.10 A state-licensed or state-certified appraiser who supervises a trainee shall be responsible for the training and direct supervision of the trainee.

105.3.10.1 Direct supervision shall consist of critical observation and direction of all aspects of the appraisal process and accepting full responsibility for the appraisal and the contents of the appraisal report. The supervising appraiser shall be responsible to personally inspect each residential property that is appraised with a trainee until the trainee has performed 100 residential inspections as provided in Subsection 105.3.5 and 20 non-residential inspections as provided in Subsection 105.3.6. The supervising appraiser must actively supervise those inspections and the resulting appraisals.

105.3.11 A supervising appraiser shall require the trainee to maintain a log in a form satisfactory to the Board which shall contain, at a minimum, the following information for each appraisal.

- (a) Type of property;
- (b) Address of appraised property;
- (c) Description of work performed;
- (d) Number of work hours;
- (e) Signature and state license/certification number of the supervising appraiser; and
- (f) Client name and address.

105.3.12 The trainee shall maintain a separate appraisal log for each supervising appraiser.

105.4. Trainee Status after Revocation, Surrender, Denial, or Suspension of License or Certification.

105.4.1 Trainee Status after Revocation, Surrender, or Denial of License or Certification. Unless otherwise ordered by the Board, an appraiser whose appraiser certification or license has been revoked by the Board, whose application for renewal of a certification or license has been denied by the Board, or who has surrendered a certification or license as a result of an investigation by the Division, may not serve as a trainee for a period of four years after the date of the revocation, denial, or surrender, nor may a licensed or certified appraiser employ or supervise the former appraiser in the performance of the activities permitted trainees for that same period of time.

105.4.2 Trainee Status while License or Certification is Suspended. Unless otherwise ordered by the Board, any appraiser whose appraiser license or certificate has been suspended by the Board as a result of an investigation by the Division may not serve as a trainee during the period of suspension. While an appraiser is suspended, a licensed or certified appraiser may not employ or supervise the suspended appraiser in the performance of the activities permitted trainees.

KEY: real estate appraisals

October 25, 2006

Notice of Continuation November 10, 2008

61-2b-6(1)(l)

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

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

R162-207-2. Renewal Process.

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

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

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

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

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

(d) The current home street address and home telephone number of any individual applicant and the current physical street address of any entity applicant;

(e) A current mailing address for the applicant;

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

(g) If, at the time of application for renewal, an individual applicant, or the principal lending manager, director, executive officer, manager, or a managing partner of an entity applicant, or anyone who occupies a position or performs functions similar to a director, executive officer, manager or managing partner of an entity that has applied for a license, is charged with, or since the last renewal has been convicted of or entered a plea to, any felony or misdemeanor, the following information must be provided on each conviction, plea, or charge: the charging document, the case docket, and the judgment and sentencing document, if applicable; and

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

207.2.3 Continuing Education Requirement. All active licensees are required to have completed their continuing education requirement prior to applying to renew and by the 15th day of the month of expiration.

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

207.2.3.2 Out of State Courses. Continuing education

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

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

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

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

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

R162-207-3. Current Entity Name Registration.

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

R162-207-4. Incomplete Application.

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

R162-207-5. Nonrefundable Fees.

207.5 All fees required in conjunction with an application for renewal are nonrefundable if the applicant fails to complete an application or if a completed application is denied for failure to meet the renewal criteria.

R162-207-6. Determining Fitness for Renewal.

207.6 Qualifications for Renewal. In order to qualify for renewal, all mortgage officer and principal lending manager applicants, and all directors, executive officers, and managing partners of any entity applicant, and anyone who occupies a position or performs functions similar to a director, executive officer, manager, or managing partner of any entity applicant, shall meet the following qualifications. None of these persons may have:

(a) been convicted of, or entered a plea in abeyance to, a felony; or during the term of the last license or during the period between license expiration and application to reinstate an expired license;

(b) a finding of fraud, misrepresentation or deceit entered against the applicant, related to activities requiring a mortgage license, by any court of competent jurisdiction or any government agency, unless the finding was explicitly considered by the Division in approving the applicant's initial license or previous license renewals.

207.6.1 Determining fitness for renewal. In determining whether an applicant who has not been disqualified by Subsection 207.6 meets the requirements of good moral character, honesty, integrity, and truthfulness, the commission and the division shall determine fitness for renewal in accordance with Section 202.5.2 above.

R162-207-7. Applications Filed by Mail.

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

R162-207-8. Misrepresentation on an Application.

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

R162-207-9. Exemption from Continuing Education Requirement.

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

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

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

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

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

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

KEY: residential mortgage loan origination
July 30, 2008 61-2c-103(3)
Notice of Continuation November 10, 2008 61-2c-202(4)(a)(ii)

R162. Commerce, Real Estate.**R162-208. Continuing Education.****R162-208-1. Required Hours of Continuing Education.**

208.1 An applicant for license renewal shall complete fourteen hours of continuing education approved by the Division to qualify for license renewal.

R162-208-2. Proof of Continuing Education Hours.

208.2 Proof of continuing education hours must be in the form required by the Division.

R162-208-3. Credit Hours.

208.3 For the purpose of this rule, a credit hour is defined as 50 minutes of education within a 60 minute time period. A 10 minute break may be taken for every 50 minutes of education. Education credit will be limited to a maximum of 8 credit hours per day.

R162-208-4. Subject Matter.

208.4 The following subject matter is acceptable for continuing education credit:

208.4.1 Each time the licensee renews, the required 14 credit hours must include a minimum of 2 credit hours of ethics and a minimum of 3 credit hours related to compliance with Federal and State laws governing mortgage lending.

208.4.2 The balance of the credit hours required for renewal may consist of any courses related to residential mortgage principles and practices that would enhance the competency and professionalism of licensees.

208.4.3 The Division may maintain and may make available to any person upon request a list of course topics that have been approved by the Division and the Commission as acceptable for continuing education purposes. The Division may also post the list of course topics on its website.

R162-208-5. Unacceptable Subject Matter.

208.5 The following topics are not acceptable for continuing education purposes:

208.5.1 Offerings in mechanical office and business skills such as typing, speed reading, memory improvement, report writing, advertising or similar offerings;

208.5.2 Offerings concerning physical well-being or personal development, such as personal motivation, stress management, time management, dress-for-success, or similar offerings; and

208.5.3 Meetings held in conjunction with the general business of the licensee and the entity for which the licensee conducts residential mortgage business, such as sales meetings, or in-house staff meetings unless the in-house staff meetings consist of training on the subjects set forth in Section 61-2c-104(7)(d)(ii).

R162-208-6. Education Committee.

208.6 The Commission may appoint an Education Committee, the purpose of which will be to assist the Division and the Commission in approving continuing education course topics. The Education Committee will make recommendations to the Division and the Commission about whether any particular course topic is sufficiently related to residential mortgage principles and practices, and whether the topic would tend to enhance the competency and professionalism of licensees, to justify placing the topic on the list of course topics that are acceptable for continuing education purposes. The Division and the Commission may accept or reject the Committee's recommendation on any course topic.

208.6.1 If an Education Committee has been appointed by the Commission, any licensee or any course provider may request that the Education Committee recommend to the Division and the Commission that a specific topic be approved

as an acceptable topic for continuing education purposes. The request must be made in writing, addressed to the Education Committee in care of the Division, and must state specific reasons why the requester believes the topic qualifies for continuing education purposes.

208.6.2 If the Education Committee turns down a request to approve a certain topic for continuing education purposes, the party who requested that the topic be approved may petition the Division and the Commission on an individual basis for evaluation and approval of the topic as being acceptable for continuing education purposes. The Petition must be made in writing, addressed to the Division and the Commission in care of the Division, and must state specific reasons why the requester believes that the topic qualifies for continuing education purposes. If the Division and the Commission find that the topic is acceptable for continuing education purposes, the Division shall add the topic to the list maintained by the Division of approved continuing education topics.

R162-208-7. Course Completion Certificate and Continuing Education Banking.

208.7.1 The course provider shall issue a course completion certificate in the form required by the Division to all licensees who successfully complete a course in a topic that is approved for continuing education purposes. The course completion certificate shall indicate the number of credit hours successfully completed by the student and must be signed by the student and the instructor who taught the course. The course completion certificate must include the course title, date of the course, course certificate number, and course certificate expiration date.

208.7.2 For the purposes of this rule, "continuing education banking" is defined as the upload by a course provider of such information as specified by the Division to the Division's data base concerning the students who have successfully completed a continuing education course, including the name of the course, the certificate number assigned to the course by the Division, the date the course was taught, and the names and license numbers of all students who successfully completed the course.

208.7.3 In addition to complying with the requirements of Subsection 208.7.1 and except as provided in Subsection 208.7.5, all course providers shall bank continuing education for all students who successfully completed a course within ten days after the course was taught.

208.7.4 A student must provide an accurate license number and the full name the student has registered with the Division to the course provider within 7 days after course attendance.

208.7.5 If a course provider is unable to bank a student's continuing education credit because the student has failed to properly and accurately comply with the requirements of Subsection 208.7.4, the course provider shall not be disciplined by the Division for failure to bank the student's continuing education credit.

R162-208-8. Online Courses.

208.8 Online courses may be accepted by the Division for continuing education purposes if they comply with all of the other provisions of this rule and if: a) the student who successfully completes a course is able to print from the course provider's web site a continuing education certificate to submit to the Division that meets the requirements of Section 208.7 above; and b) the course provider has methods in place to determine whether a student has successfully completed a course and to insure that only those students who have successfully completed a course are able to print a course completion certificate.

R162-208-9. Continuing Education Instructor Certification.

208.9 All instructors of courses to be taught for continuing education purposes must apply for certification from the Division not less than 30 days prior to the anticipated date of the first class that they intend to teach.

208.9.1 Continuing education course instructor applicants shall meet the requirements set forth in Section 210.5 and Section 210.7 of these rules, and shall demonstrate knowledge of the subject matter of the course they intend to teach by submitting proof of the following:

(a) at least three years of experience in a profession, trade, or technical occupation in a field directly related to the course which the applicant intends to instruct;

(b) a bachelors or postgraduate degree in the field of real estate, business, law, finance, or other academic area directly related to the course which applicant intends to instruct; or

(c) any combination of at least three years of full-time experience and college-level education in a field directly related to the course which the applicant intends to instruct.

208.9.2 Instructor applicants shall demonstrate evidence of the ability to communicate the subject matter by the submission of proof of the following:

(a) a state teaching certificate or showing successful completion of appropriate college courses in the field of education;

(b) a professional teaching designation from the National Association of Mortgage Brokers, the Real Estate Educators Association, the Mortgage Bankers Association of America, or a similar association; or

(c) evidence, such as instructor evaluation forms or letters of reference, of the ability to teach in schools, seminars, or in an equivalent setting.

208.9.3 Upon approval by the Division, an instructor shall be issued a certification to act as a continuing education instructor. A continuing education instructor certification shall expire twenty-four months after its issuance. An instructor shall apply for renewal of a continuing education instructor certification prior to the expiration of the instructor's current certification, using the form required by the Division.

208.9.3.1 To qualify for renewal of instructor certification, an instructor must provide proof of having taught a minimum of one class in each course for which renewal is sought in the year preceding application for renewal. The term of a renewed instructor certification shall be twenty-four months.

208.9.3.1.1 If the instructor has not taught during the year preceding renewal and wishes to renew certification, written explanation shall be submitted outlining the reason for not instructing the course, including documentation satisfactory to the Division as to the instructor's present level of expertise in the subject matter of the course.

208.9.4 Reinstatement of Expired Instructor Certification. If the instructor does not submit a properly completed renewal form, the renewal fee, and any required documentation prior to the expiration date of the instructor's current certification, the certification shall expire. When an instructor certification expires, the certification may be reinstated for a period of thirty days after the expiration date upon payment of a non-refundable late fee in addition to completing all of the requirements for a timely renewal. After the thirty day period, and until six 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 six month period, an instructor will be required to apply by following the procedure for obtaining original certification.

R162-208-10. Continuing Education Course Certification.

208.10 Continuing education course providers who

provide education courses specifically tailored for, or marketed to, Utah real estate, appraiser, or mortgage licensees are required to apply to the Division for certification of any course for which continuing education credit is promised at least 30 days prior to the anticipated date of the first class. Except as may be provided in Subsection 208.10.5, the Division will not grant continuing education credit to students who have taken courses that have not been certified by the Division in advance of the courses being taught to students.

208.10.1 Approved continuing education providers may include accredited colleges and universities, public or private vocational schools, national and state mortgage related professional societies and organizations, and proprietary schools and instructors.

208.10.2 Application Procedure. Except as provided in Subsection 208.10.3, education providers shall make application to the Division following the procedures set forth in Subsection 208.10.4.

208.10.3. A continuing education provider who provides proof to the Division that a course offering has been certified for continuing education credit in a minimum of three other states and that the provider has specific standards in place for development of courses and approval of instructors may be granted certification of a course by filling out the form required by the Division and including the following with the application:

(a) a copy of the provider's standards used for developing curricula and for approving instructors;

(b) evidence that the course is certified in at least three states;

(c) a sample of the course completion certificate bearing all information required by Subsection 208.10.4(l) and

(d) all required fees, which shall be non-refundable.

208.10.4 Submission of Course for Certification. The application shall include the non-refundable instructor certification fee and the non-refundable course certification fee per course per instructor. The application shall be made on the form required by the Division, and shall include all information required by the Division concerning the course and the course sponsor.

208.10.5 Individual licensees may apply to the Division for continuing education credit for a non-certified mortgage course that was not required by these rules to be certified in advance by submitting the form required by the Division and providing all information concerning the course required by the Division. If the licensee is able to demonstrate to the satisfaction of the Division that the course will likely improve the licensee's ability to better protect or serve the public and improve the licensee's professional licensing status, the Division may grant the individual licensee continuing education for the course.

208.10.5.1 Provided the subject matter of the course is applicable to residential mortgage loan business in Utah, a course approved for continuing education purposes in another state or jurisdiction may be granted Utah continuing education credit on a case by case basis.

208.10.6 Distance Education. Continuing education courses 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, may be certified by the Division if the particular distance education method has been approved by the Commission and the Division. Application must be made to the Division on the form required by the Division for certification of courses that do not take place in a traditional classroom setting.

R162-208-11. Conditions of Certification.

208.11.1 Minimum class time for live courses. Course

completion certificates may be given only to those students who have attended a minimum of 90% of the required class time of a live lecture course.

208.11.2 Registration Records. A course provider shall maintain for three years a record of registration of each individual completing a course and any other information required by the Division regarding the individual's attendance at the course, including exam results, if any.

208.11.3 Course providers shall require that a student registered for a distance education course completes the course within one year of the date the student originally registered for the course.

208.11.4 Material Changes in Courses Certified for Continuing Education Purposes. Whenever there is a material change in a certified continuing education course, including a change in curriculum, course length, instructor, or refund policy, the provider shall promptly notify the Division in writing.

208.11.5 Course Evaluation Forms. At the end of each course, course providers shall require that each student complete a standard evaluation form provided by the Division. The forms shall be collected at the end of the class, sealed in an envelope, and mailed by the course provider to the Division within 10 days of the last class.

R162-208-12. Continuing Education Course Certification and Renewal.

208.12 All course certifications shall expire two years after their issuance.

208.12.1 Application for renewal of a continuing education course certification shall be made on the form required by the Division and shall include the non-refundable renewal fee.

208.12.1.1 If the certification of a continuing education course is not renewed within six months after its expiration date, the course provider will be required to apply for a new certification for the course.

208.12.2 After a course has been renewed three times, the course provider will be required to apply for a new certification.

R162-208-13. Division Evaluation and Monitoring of Courses and Instructors.

208.13.1 The Division shall cause certified continuing education courses to be evaluated for adherence to course content and other prescribed criteria, and for the effectiveness of the instructor.

208.13.2 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.

R162-208-14. Limitation on Multiple Use of Credit Hours.

208.14 A mortgage licensee who is also licensed by the Division as a real estate broker, real estate sales agent, or real estate appraiser may not receive credit toward renewal of a mortgage license for continuing education hours that have already been used toward renewal of a real estate broker, real estate sales agent, or real estate appraiser license.

R162-208-15. Marketing of Continuing Education Courses.

208.15.1 A course provider may not advertise or market a continuing education course where Division continuing education course credit will be offered or provided to a licensed attendee unless the course:

(a) is approved and has been issued a current continuing education course certification number by the Division; and

(b) is advertised with the continuing education course certification number issued by the Division displayed in all advertising materials.

208.15.2 A course provider may not advertise, market, or promote a continuing education course with language which indicates Division continuing education course approval is "pending" or otherwise forthcoming.

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R199. Community and Culture, Housing and Community Development.

R199-8. Permanent Community Impact Fund Board Review and Approval of Applications for Funding Assistance.

R199-8-1. Purpose.

The Permanent Community Impact Fund Board (the Board) provides loans and/or grants to State agencies and subdivisions of the State which are or may be socially or economically impacted, directly or indirectly, by mineral resource development. Authorization for the Board is contained in Section 9-4-301 et seq.

R199-8-2. Eligibility.

Only those applications for funding assistance which are submitted by an eligible applicant for an eligible project shall be funded by the Board.

Eligible projects include: a) planning; b) the construction and maintenance of public facilities; and c) the provision of public services. "Public Facilities and Services" means public infrastructure or services traditionally provided by local governmental entities.

Eligible applicants include state agencies and subdivisions of the state and Interlocal agencies as defined in Subsection 9-4-302, which are or may be socially or economically impacted, directly or indirectly, by mineral resource development.

R199-8-3. Application Requirements.

A. Applicants shall submit their funding requests on the Board's most current application form, furnished by the Department of Community and Culture (DCC). Applicants submitting incomplete applications will be notified of deficiencies and their request for funding assistance will be held by the Board's staff pending submission of the required information by the applicant.

Complete applications which have been accepted for processing will be placed one of the Trimester's upcoming "Application Review Meeting" agendas.

B. Additional general information not specifically covered by the application form should also be furnished to the Board and its staff when such information would be helpful to the Board in appraising the merits of the project.

C. For proposed drinking water and sewer projects, sufficient technical information must be provided to the Utah Department of Environmental Quality (DEQ) to permit their review. The Board will not act on any drinking water or sewer project unless they receive such review from DEQ.

D. Planning grants and studies normally require a fifty percent cash contribution by the applicant.

E. The Board requires all applicants to have a vigorous public participation effort. All applicants shall hold at least one formal public hearing to solicit comment concerning the size, scope and nature of any funding request prior to its submission to the Board. In that public hearing, the public shall be advised the financing may be in the form of a loan, even if the application requests a grant.

Complete and detailed information shall be given to the public regarding the proposed project and its financing. The information shall include the expected financial impact including potential repayment terms and the costs to the public as user fees, special assessments, or property taxes if the financing is in the form of a loan. The Board may require additional public hearings if determines the applicant did not adequately disclose to the public the impact of the financial assistance during the initial public hearing.

When the Board offers the applicant a financial package that is substantially different in the amounts, terms or conditions initially requested by an applicant, the Board may require additional public hearings to solicit public comment on the modified funding package.

A copy of the public notice and transcript or minutes of the hearing shall be attached to the funding request. Public opinion polls may be submitted in addition to the transcript or minutes.

F. Letters of comment outlining specific benefits (or problems) to the community and State may be submitted with the application.

G. All applicants are required to notify in writing the applicable Association of Governments of their intention to submit a funding request to the Board. A copy of any comments made by the Association of Governments shall be attached to the funding request. It is the intent of the Board to encourage regional review and prioritization of funding requests to help ensure the timely consideration of all worthwhile projects.

H. Section 9-8-404 requires all state agencies before they expend any state funds or approves any undertaking to take into account the effect of the undertaking on any district, site, building structure or specimen that is included in or eligible for inclusion in the National Register of Historic Places or the State Register and to allow the state historic preservation officer (SHPO) a reasonable opportunity to comment on the undertaking or expenditure. In order to comply with that duty, the Board requires all applicants provide the Board's staff with a detailed description of the proposed project attached to the application. The Board's staff will provide SHPO with descriptions of applications which may have potential historic preservation concerns for SHPO's review and comment in compliance with the CIB/SHPO Programmatic Agreement. SHPO comments on individual applications will be provided to the Board as part of the review process outline in R199-8-4. Additionally the Board requires that if during the construction of the project the applicant discovers any cultural/paleontological resources, the applicant shall cease project activities which may affect or impact the cultural/paleontological resource, notify the Board and SHPO of the discovery, allow the Board to take into account the effects of the project on cultural/paleontological resources, and not proceed until further approval is given by the Board.

I. All applicants must provide evidence and arguments to the Board as to how the proposed funding assistance provides for planning, the construction and maintenance of public facilities or the provision of public services.

J. All applicants must demonstrate that the facilities or services provided will be available and open to the general public and that the proposed funding assistance is not merely a device to pass along low interest government financing to the private sector.

K. All applicants must demonstrate that any arrangement with a lessee of the proposed project will constitute a true lease, and not a disguised financing arrangement. The lessee must be required to pay a reasonable market rental for the use of the facility. In addition, the applicant shall have no arrangement with the lessee to sell the facility to the lessee, unless fair market value is received.

L. Each applicant must submit evidence and legal opinion that it has the authority to construct, own and lease the proposed project. In the case of a request for an interest bearing loan, the applicant must provide an opinion of nationally-recognized bond counsel that the interest will not be subject to federal income taxes.

M. All applicants shall certify to the Board that they will comply with the provisions of Titles VI and VII of the Civil Rights Act of 1964 (42 USC 2000e), as amended, which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agree to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90, as amended, which prohibits discrimination on the basis of age; Section 504 of the Rehabilitation Act of 1973, the Americans

with Disabilities Act of 1990 and 28 CFR 35, as amended, which prohibit discrimination on the basis of disabilities; Utah Anti-Discrimination Act, Section 34A-5-101 et seq., which prohibits discrimination against any employee or applicant for employment because of race, color, sex, age, religion, national origin, or handicap, and to certify compliance with the ADA to the Board on an annual basis and upon completion of the project.

R199-8-4. Board Review Procedures.

A. The Board will review applications and authorize funding assistance on a "Trimester" basis. The initial meetings of each "Trimester" are "Project Review Meetings". The final meeting of each "Trimester" is the "Project Funding Meeting". Board meetings shall be held monthly on the 1st Thursday of each month, unless rescheduled or cancelled by formal motion of the board. The Trimesters shall be as follows:

1. 1st Trimester: application deadline, June 1st; Project Review Meetings, July, August, September; Project Funding Meeting October.
2. 2nd Trimester: application deadline, October 1st; Project Review Meetings, November, December, January; Project Funding Meeting, February.
3. 3rd Trimester: application deadline, February 1st; Project Review Meetings, March April, May; Project Funding Meeting, June.

B. The process for review of new applications for funding assistance shall be as follows:

1. Submission of an application, on or before the applicable deadline to the Board's staff for technical review and analysis.
2. Incomplete applications will be held by the Board's staff pending submission of required information.
3. Complete applications accepted for processing will be placed on one of the Trimester's upcoming "Project Review Meeting" agendas.
4. At the "Project Review Meeting" the Board may either:
 - a. deny the application;
 - b. place the application on the "Pending List" for consideration at a future "Project Review Meeting" after additional review, options analysis and funding coordination by the applicant and the Board's staff;
 - c. place the application on the "Priority List" for consideration at the next "Project Funding Meeting".

C. Applicants and their representatives shall be informed of any "Project Review Meeting" at which their applications will be considered. Applicants shall make formal presentations to the Board and respond to the Board's questions during the "Project Review Meetings". If an applicant or its representatives are not present to make a presentation, the board may either:

1. deny the application;
2. place the application on the "Pending List" for consideration at a future "Project Review Meeting".

D. No funds shall be committed by the Board at the "Project Review Meetings", with the exception of circumstances described in Subsection F.

E. Applications for funding assistance which have been placed on the "Priority List" will be considered at the "Project Funding Meeting" for that Trimester. At the "Project Funding Meeting" the Board may either:

1. deny the application;
2. place the application on the "Pending List" for consideration at a future "Project Review Meeting".
3. authorize funding the application in the amount and terms as determined by the Board.

F. In instances of bona fide public safety or health emergencies or for other compelling reasons, the Board may suspend the provisions of this section and accept, process, review and authorize funding of an application on an expedited

basis.

R199-8-5. Local Capital Improvement Lists.

A. A consolidated list of the anticipated capital needs for eligible entities shall be submitted from each county area, or in the case of state agencies, from DCC. This list shall be produced as a cooperative venture of all the eligible entities within each county area.

B. The list shall contain a short term (one year) and a medium term (five year) component.

C. The list shall contain the following items: jurisdiction, summary description, project time frame, anticipated time of submission to the Board, projected overall cost of project, anticipated funding sources, the individual applicant's priority for their own projects, and the county area priority for each project. The county area priority for each project shall be developed as a cooperative venture of all eligible entities within a county area.

D. Projects not identified in a county area's or DCC's list, will not be funded by the Board, unless they address a bona fide public safety or health emergency or for other compelling reasons.

E. An up-dated list shall be submitted to the Board no later than December 1st of each year. The up-dated list shall be submitted in the uniform format required by the Board.

F. If the consolidated list from a county area does not contain the information required in R199-8-5-C, or is not in the uniform format required in R199-8-5-E, all applications from the affected county area will be held by the Board's staff until a future Trimester pending submission of the required information in the uniform format.

G. The Board has authorized its staff to hold any application that does not appear on the applicable local capital improvement list. Such applications will be held until a future Trimester to allow the applicant time to pursue amending the local capital improvement list.

H. The amendment to include an additional project must follow the process used for the original list, and it must contain the required information and be submitted in the uniform format, particularly the applicant and county area prioritization.

I. The regional Association of Governments are the compilers of the capital improvement lists. The AOG cannot simply add additional applications to any given list without the applicant meeting the process requirements outlined in Subsection C.

J. Notwithstanding Subsection I, allowing an applicant to add a project to the capital improvement list just prior to the application deadline subverts the intent of the capital improvement list process. Such applications will be held by the Board's staff until the next Trimester.

R199-8-6. Modification or Alteration of Approved Projects.

A recipient of PCIFB grant funds may not, for a period of ten years from the approval of funding by the Board, change or alter the use, intended use, ownership or scope of a project without the prior approval of the Board. A recipient of PCIFB loan funds may not, for the term of the loan, change or alter the use, intended use, ownership or scope of a project without the prior approval of the Board. The recipient shall submit a written request for such approval and provide such information as requested by the Board or its staff, including at a minimum a description of the modified project sufficient for the Board to determine whether the modified project is an eligible use of PCIFB funds.

The Board may place such conditions on the proposed modifications or modified project as it deems appropriate, including but not limited to modifying or changing the financial terms, requiring additional project actions or participants, or requiring purchase or other satisfaction of all or a portion of the

Board's interests in the approved project. Approval shall only be granted if the modified project, use or ownership is also an eligible use of PCIFB funds, unless the recipient purchases or otherwise satisfies in full the Board's interest in the previously approved or the proposed project.

R199-8-7. Procedures for Electronic Meetings.

A. These provisions govern any meeting at which one or more members of the Board or one or more applicant agencies appear telephonically or electronically pursuant to Section 52-4-7.8.

B. If one or more members of the Board or one or more applicant agencies may participate electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the CIB not participating electronically or telephonically will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

C. Notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be provided to at least one newspaper of general circulation within the state and to a local media correspondent. These notices shall be provided at least 24 hours before the meetings.

D. Notice of the possibility of an electronic meeting shall be given to the members of the Board and applicant agencies at least 24 hours before the meeting. In addition, the notice shall describe how the members of the Board and applicant agencies may participate in the meeting electronically or telephonically.

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

F. The anchor location shall be designated in the notice. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. In addition, the anchor location has space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

KEY: grants

November 18, 2008

Notice of Continuation September 13, 2007

9-4-305

R251. Corrections, Administration.**R251-103. Undercover Roles of Offenders.****R251-103-1. Authority and Purpose.**

(1) This rule is authorized by Sections 63-46a-3, 64-13-6(1)f, 64-13-10, and 64-13-14.

(2) The purpose of this rule is to provide the Department's policy and requirements governing the use of offenders in undercover roles.

R251-103-2. Definitions.

(1) "Department" means Utah Department of Corrections.

(2) "entity" means agency, department, the Board of Pardons and Parole or other criminal justice organization.

(3) "offenders" means any person under the supervision of the Department including inmates, parolees, probationers and persons in halfway houses or other non-secure facilities.

R251-103-3. General Requirements.

(1) Requests to use offenders in undercover roles originating within or outside the Department must be made in writing to the Deputy Director.

(2) Decisions relating to requests from criminal investigators from the Department or other criminal justice agencies to use offenders under the supervision of the Department in undercover roles shall be made on a case-by-case basis. Factors to be considered include:

(a) risk or danger to the offender;

(b) impact of these activities on implementation and realization of correctional goals for offender;

(c) the nature of the assignment;

(d) the controls which shall exist; and

(e) the importance of the assignment to maintaining public safety.

(3) The Department shall not unlawfully coerce nor knowingly permit unlawful coercion of offenders to participate in undercover roles.

(4) Neither the Department nor any other entity shall be bound by any promises, inducements or other arrangements agreed to by the offender unless the Department or any other involved entities has agreed in writing to the promises.

(5) Final authority within the Department concerning requests shall reside with the Executive Director.

(6) Nothing in this section shall prohibit members of this Department or other criminal justice agencies from requesting or receiving information from offenders.

(7) Functions of this program shall be carried out by policies internal to the Department.

**KEY: corrections, probationers, parolees
1989**

Notice of Continuation October 2, 2008

**64-13-6(1)f
64-13-10**

R277. Education, Administration.**R277-438. Dual Enrollment.****R277-438-1. Definitions.**

A. "Accredited" means evaluated and approved under the standards of the Northwest Accrediting Association or the accreditation standards of the Board, available from the USOE Accreditation Specialist.

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

C. "Charter school" means a school acknowledged as a charter school by a local board of education under Section 53A-1a-515 and by R277-470, or by the Board under Section 53A-1a-505.

D. "Dual enrollment student" means a student who is enrolled simultaneously in public school and in a home school, a Utah charter school, a Utah online school, or a regularly established private school.

E. "Eligibility" means a student's fitness and availability to participate in school activities governed by this rule. Eligibility is determined by a number of factors including residency (of student and legal guardian), scholarship, age, and number of semesters of participation in a particular activity.

F. "Full-time student" means a student earning the school district designated number(s) and type(s) of credits required for participation in extracurricular or interscholastic activities in the school district in which the student's parent or legal guardian resides.

G. "Home school" means a school comprised of one or more students officially excused from compulsory public school attendance under Section 53A-11-102.

H. "Online school" means a school:

- (1) that provides the same number of classes consistent with the requirement of similar resident schools;
- (2) that delivers course work via the internet;
- (3) that has designated a readily accessible contact person; and
- (4) that provides the range of services to public education students required by state and federal law.

I. "Previous academic grading period" means the most recent period as defined by the school district for which a student received a recorded grade.

J. "Private school" means a school satisfying the following criteria:

- (1) maintained by private individuals or corporations;
- (2) maintained and operated not at public expense;
- (3) generally supported, in part at least, by tuition fees or charges;
- (4) operated as a substitute for, and giving the equivalent of, instruction required in public schools;
- (5) employing teachers able to provide the same quality of education as public school teachers;
- (6) established to operate indefinitely and independently, not dependent upon age of the students available or upon individual family situations; and
- (7) licensed as a business by the Utah Department of Business Regulations.

K. "School participation fee" means the fee paid by the charter/online school to the traditional school consistent with the fee schedule of R277-494-4 for student participation in extracurricular or co-curricular school activities.

L. "Student participation fee" means the fee charged to all participating charter/online and traditional school students by the resident school for designated extracurricular or co-curricular school activities consistent with R277-407.

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

R277-438-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public school system under the board, by 53A-1-402(1)(b)

which directs the Board to establish rules and minimum standards for access to programs and by Section 53A-11-102.5 directing the Board to make rules to permit home school, charter and online students and private school students to participate in public school extracurricular or co-curricular school activities.

B. The purpose of this rule is to provide consistent statewide procedures and criteria for home school and private school students' participation in public school activities. A further purpose is to provide procedures and criteria for charter school and online school students to participate in traditional public school activities consistent with R277-494.

R277-438-3. Private and Home School Student Participation in Public School Extracurricular or Co-curricular School Activities.

A. Students exempted from compulsory public school education by the local board for instruction in private or home schools may be eligible for participation in extracurricular or co-curricular public school activities provided they are taking courses comparable to traditional school courses or earning credit under options outlined in R277-700-6 in at least as many of the designated courses as required by the local board of students for participation in that activity.

B. The private or home school student may only participate in extracurricular or co-curricular school day activities at the school within whose boundaries the student's custodial parent(s) or legal guardian resides.

C. Dual enrollment students shall be eligible for extracurricular or co-curricular school activities consistent with eligibility standards for fully enrolled traditional public school students, including providing report cards and citizenship information to activity sponsors and coaches upon request.

R277-438-4. Fees for Private and Home School Students.

A. Private and home school students are responsible for student participation fees in the same manner as full-time public school students.

B. Student participation fees for private, charter, online or home school students shall be waived by the school or school district if students are eligible and parents provide required documentation under Section 53A-12-103 and R277-407, School Fees. The charter or online schools shall be responsible for payment of waived fees to the resident school district.

R277-438-5. Utah Charter and Utah Online School Student Participation in Extracurricular or Co-curricular School Activities.

A. Utah charter school and Utah online school students shall be eligible to participate in extracurricular and co-curricular school activities at their public schools of residence consistent with Section 53A-1a-519, Section 53A-2-214, and R277-494.

B. Charter schools and online schools may determine if the schools shall allow students to participate in extracurricular or co-curricular school activities at the students' resident schools understanding:

(1) That the charter/online school is responsible for the school participation fees associated with the designated activity consistent with Section R277-494-4;

(2) If the charter/online school allows one student to participate in a given activity, the charter/online school shall allow all interested students to participate;

(3) That the charter/online school is responsible for the school participation fee;

(4) That the student shall be allowed to participate only upon payment of the school participation fee by the school;

(5) That the charter/online school shall cooperate fully with all resident schools regarding students' participation in try-outs, practices, pep rallies, team fund raising efforts, scheduled

games and required travel and provision of complete and prompt reports of student academic and citizenship progress or grades, upon request; and

(6) That charter/online students' parents are responsible for the students' transportation to the school with which the student participates; and

(7) That the charter/online school is responsible for any student participation fees required of all student participants in the activity if the participating student is eligible for fee waivers under R277-407.

R277-438-6. Miscellaneous Issues.

A. A student attending activities or a portion of the school day under the provisions of Section 53A-11-102.5 shall be subject to the same behavior and discipline rights and requirements of a full-time resident school student.

B. A student who attends an activity or a portion of the school day shall be subject to administrative scheduling and teacher discretion of the traditional school.

C. A student with disabilities may participate as a dual enrollment student consistent with Utah law, this rule and Code of Federal Regulations (CFR) Vol. 64, No. 48, Section 300.450 through 300.455.

(1) If a student with disabilities who attends a charter or online school desires to participate in dual enrollment, the charter/online school is responsible for accommodations or extra costs to the student's resident school for the student's participation.

(2) The student shall have a services plan in place prior to participation in dual enrollment using comparable procedures to those required for identifying and evaluating public school students;

(3) Students with disabilities seeking dual enrollment shall be entitled to services only in the same proportional amount that the number of private school students residing in the district is to the total number of students with disabilities in the district.

(4) Decisions about the scheduling and manner of services provided shall be the responsibility of school and district personnel.

(5) Schools and districts are not prohibited from providing services to students who are not enrolled full time in excess of those required by R277-438-6.

**KEY: public education, dual enrollment
November 10, 2008**

Notice of Continuation June 1, 2004

**Art X Sec 3
53A-1-402(1)(b)
53A-11-102.5**

R277. Education, Administration.**R277-459. Classroom Supplies Appropriation.****R277-459-1. Definitions.**

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

B. "Classroom teacher" definition criteria:

(1) Eligible teachers shall be in a permanent teacher position filled by one teacher or two or more job-sharing teachers employed by a school district, the Utah Schools for the Deaf and the Blind, or charter schools.

(2) Eligible teachers are licensed personnel, and paid on a school district's salary schedule or a charter school's salary schedule.

(3) Teachers shall be employed for an entire contract period.

(4) The teacher's primary responsibility shall be to provide instructional or a combination of instructional and counseling services to students in public schools.

C. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes such as:

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

All information contained in an individual's CACTUS file is available to the individual, but is classified private or protected under Section 63G-2-302 or 305 and is accessible only to specific designated individuals.

D. "Field trip" means a district, or school authorized excursion for educational purposes.

E. "First year classroom teacher/intern" means any teacher who has no experience posted in the teacher's CACTUS file in the school/school district in which the teacher is currently assigned as of the November 15 CACTUS update.

F. "Intern" means a teacher education student, who, in an advanced stage of preparation, usually as a culminating experience, may be employed in a school setting for a period of up to one year and receive salary proportionate to the service rendered. An intern is supervised primarily by the school system but with a continuing relationship with college personnel and following a planned program designed to produce a demonstrably competent professional. An intern is licensed under a letter of authorization consistent with R277-503, Licensing Routes.

G. "Second year through fifth year classroom teacher" means any teacher who has one to four years of experience in the teacher's CACTUS file as of the November 15 CACTUS file.

H. "Teaching supplies and materials" means both expendable and nonexpendable items that are used for educational purposes by teachers in classroom activities and may include such items as:

- (1) paper, pencils, workbooks, notebooks, supplementary books and resources;
- (2) laboratory supplies, e.g. photography materials, chemicals, paints, bulbs (both light and flower), thread, needles, bobbins, wood, glue, sandpaper, nails and automobile parts;
- (3) laminating supplies, chart paper, art supplies, and mounting or framing materials;
- (4) This definition should be broadly construed in so far as the materials are used by the teacher for instructional purposes in classrooms, lab settings, or in conjunction with field trips.

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

R277-459-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article

X, Section 3 which gives general control and supervision of the public school system to the Board, by Section 53A-1-402(1)(b) which directs the Board to establish rules and minimum standards for school programs, and by state legislation which provides a designated appropriation for teacher classroom supplies and materials.

B. The purpose of this rule is to distribute money through school districts, the Utah Schools for the Deaf and the Blind, or charter schools to classroom teachers for school materials and supplies and field trips.

R277-459-3. Distribution of Funds.

A. The USOE shall generate from the CACTUS database a teacher count of the full-time classroom teachers consistent with S.B. 2, Section 30, 2008 Legislative Session, for each school district, the Utah Schools for the Deaf and the Blind, or charter schools as of November 15 of each year.

B. For the \$7,500,000 portion of the classroom supplies appropriation for 2008, the Board shall distribute funds to school districts, charter schools and the Utah Schools for the Deaf and the Blind based on data submitted to the CACTUS database consistent with S.B. 2, Section 30, 2008 Legislative Session.

C. School districts, charter schools and the Utah Schools for the Deaf and the Blind shall distribute funds for classroom supplies consistent with the amounts for salary schedule steps and teaching assignments designated in S.B. 2, Section 30, 2008 Legislative Session.

D. Following the distribution of the \$7,500,000 portion of the classroom supplies appropriation, the Board shall distribute the \$2,500,000 portion of the classroom supplies appropriation for 2008, consistent with the following:

(1) First year teachers shall receive a \$500 classroom stipend.

(2) The remaining funds shall be distributed only to teachers in their second through fifth years of teaching consistent with the following:

(a) Second year teacher shall receive up to 80 percent of the first year teacher amount.

(b) third year teacher shall receive up to 60 percent of the first year teacher amount.

(c) fourth year teacher shall receive up to 40 percent of the first year teacher amount.

(d) fifth year teacher shall receive up to 20 percent of the first year teacher amount.

E. Individual teachers shall designate the uses for their allocations consistent with the criteria of this rule. School districts/charter schools and other eligible schools shall develop procedures and timelines to facilitate the intent of the appropriation.

F. Each school district/charter school shall ensure that each eligible individual has the opportunity to receive the proportionate share of the appropriation.

G. If a teacher has not spent or committed to spend the individual allocation by April 1, the school or district may make the excess funds available to other teachers or may reserve the money for use by eligible teachers the following year.

H. These funds shall supplement, not supplant, existing funds for identified purposes.

I. These funds shall be accounted for by the school district/charter school or eligible school using state and school district procurement and accounting policies.

J. The funds and supplies purchased with the funds are the property of the school district, the Utah Schools for the Deaf and the Blind, or charter schools. Employees do not personally own materials purchased with designated public funds.

R277-459-4. Other Provisions.

A. Districts, the Utah Schools for the Deaf and the Blind,

or charter schools shall allow, but not require, teachers to jointly use their allocations.

B. School districts, the Utah Schools for the Deaf and the Blind, and charter schools may carry over these funds, if necessary.

KEY: teachers, supplies

November 10, 2008

Notice of Continuation July 6, 2005

Art X Sec 3

53A-1-402(1)(b)

R277. Education, Administration.**R277-491. School Community Councils.****R277-491-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Candidate" means a parent or school employee who has filed for election to the school community council.
- C. "Contested race" means the election of members to a school community council when there are more candidates than open positions.
- D. "Days" means calendar days unless otherwise specifically designated.
- E. "Develop school improvement plan and school trust program and other programs" means to participate actively in the creation of plans, including analysis of school assessment data, development of budgets, review of expenditures; this may include establishing subcommittees where needed or assigning work to individuals.
- F. "Most critical academic needs" for purposes of this rule means a school's weakness(es) in the areas of reading, writing, mathematics, science, social studies, technology, fine arts, foreign language, and career education in high schools.
- G. "Parent" means the parent or legal guardian of a student attending the non-charter public school or of a student who will be enrolled at the school in the next school year.
- H. "Parent member" means a parent or guardian of a student who is attending the school or of a student who will be enrolled at the school in the next school year if the election is held in the spring. A parent member of a school community council may not include a person who meets the definition of a school employee member unless the person's employment at the school does not exceed an average of six hours per week, consistent with Section 53A-1a-108(1)(a)(ii).
- I. "School administrator" means a school principal, school assistant principal or designee as specifically assigned by the school administrator.
- J. "School community" means the geographic area designated by the school district as the attendance area with reasonable inclusion of the parents or legal guardians of additional students who are attending the school.
- K. "School employee member" means a person employed at the school for more than an average of six hours per week by the school or school district; the principal is one school employee member.
- L. "Secure ballot box" means a closed container prepared by the school for the deposit of secret ballots for the school community council elections.
- M. "Student" means a child in public school grades kindergarten through twelve counted on the audited October 1 Fall Enrollment Report.
- N. "Students attending the school" for purposes of this rule means students currently attending the school and those officially enrolled to attend the school in the next school year.
- O. "USDB" means the Utah Schools for the Deaf and the Blind.
- P. "USOE" means the Utah State Office of Education.

R277-491-2. Authority and Purpose.

- A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board and by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.
- B. The purpose of this rule is to:
- (1) provide procedures and clarifying information to school community councils to assist them in fulfilling school community council responsibilities consistent with Section 53A-1a-108(3);
 - (2) provide direction to school districts and schools in establishing and maintaining school community councils whose

primary focus is improving educational excellence through team decision making by the principal and elected representatives of parents and staff;

(3) provide a framework and support for improved academic achievement of students that is locally driven from within individual schools, through critical review of testing results and other indicators of student success, by establishing meaningful, measurable goals and implementing research-based programs and processes to reach the goals;

(4) encourage increased participation of the parents, school employees and others that support the purposes of the school community councils; and

(5) encourage compliance with the law in the election of school community councils, in meeting reporting requirements, in complying with open and public meetings requirements.

R277-491-3. School Community Council Member Election Provisions.

A. Parents may stand for election as parent members of a school community council at a school if their child(ren) are attending the school or will be enrolled at the school in the next school year if the community council election is held in the spring.

B. Parents may vote for the school community council parent members if their child(ren) are enrolled or will be attending the school in the next school year, consistent with the intent to encourage the greatest participation possible of all available parents.

C. School community councils may establish procedures that allow for ballots to be clearly marked and mailed to the school in the case of geography or school distances that would otherwise discourage parent participation. Hand-delivered or mailed ballots shall meet the same timelines for voters voting in person.

D. Entire school districts or schools may allow parents to vote by electronic ballot. If school districts/schools allow voting by electronic means, the opportunity shall be clearly explained on the school district/school website including:

- (1) directions for electronic voting;
- (2) security provisions for electronic voting;
- (3) statement to parents and community members that violations of a school district's/school's voting procedures may disqualify a parent's vote or invalidate a specific school election, or both.

E. Ballots and voting are required only in the event of a school community council contested race.

F. School community councils are encouraged to establish clear and written:

- (1) procedures that are consistent with state law, Board rules, and local board policies;
- (2) procedures for the selection of school community council chairs and vice chairs;
- (3) timelines and procedures for school community council elections that may include receiving information from applicants in a timely manner; and
- (4) additional clarification and procedures to assist in the efficient operation of school community councils consistent with the law.

R277-491-4. School Community Council School/School Administrator Responsibilities.

A. A school administrator or designee shall assist a school community council chair with providing the following information to the school community:

- (1) Notice of dates and times of school community council elections at least 14 days before the elections are held;
- (2) Timely notice of school community council positions that are up for election;
- (3) Instructions for applying to become a school

community council member together with timelines for submitting information and applications;

(4) Notice of the school community council meeting schedule, provided in the first 14 days of the school year;

(5) A summary of the school community council's actions and activities for the first half of the school year, provided mid-way through the school year;

(6) A summary of the annual report on how the school's School LAND Trust Program funds were used consistent with approved uses of the funds, provided to the school community in the fall of the school year following the school year that the school plan was implemented; and

(7) Posting the school community council meeting information (time, place and date of meeting; meeting agenda and previous meeting minutes) on the school's website at least one week prior to each meeting.

B. A school administrator shall assist a school community council to provide information on the school website and in at least one other direct delivery method ensuring that all parents are notified as provided in Section 53A-1a-108(7)(a).

C. A school administrator shall assist a school community council to act in compliance with the Utah Open and Public Meetings Act, Section 52-4-101 et seq. including providing timely written minutes of the meeting, recording the meeting, and other required or appropriate activities. School community council responsibilities do not allow for closed meetings, consistent with the purposes of Section 52-4-205.

D. School community councils shall become familiar with and consider the following:

(1) Satisfying the meeting recording process with sensitivity for parents and community members whose primary language is not English; and

(2) The limitations of open and public meetings in secure or locked school settings and facilities.

R277-491-5. Parent Rights and Responsibilities.

A. Parents of students attending a school and to the extent possible, parents whose children will attend the school in the next school year (for spring community council elections) shall receive notice of open school community council positions and of elections consistent with Section 53A-1a-108.

B. Parents of students attending a school shall have access to schedules, agendas, minutes and decisions consistent with Sections 53A-1a-108(7) and (8).

C. School community council parent members shall participate fully in the development of various school plans described in Section 53A-1a-108(3).

D. Parents shall receive timely notice of school community council timelines and procedures that affect parent member elections, school community council meeting information and other parent rights or opportunities, consistent with state law, Board rules, and local board policy.

R277-491-6. Additional School Community Council Information and Provisions.

A. School community councils shall set the beginning terms for school community council members consistent with Section 53A-1a-108(5)(g).

B. School community councils shall report on projects and programs to local boards of education and cooperate with the USOE, training, legislative and USOE monitoring, and audits.

C. School community councils may establish procedures and requirements for parent notification and election timelines that are not inconsistent with Sections 53A-1a-108, 53A-16-101.5, 52-4-101 et. seq., this rule, or local board policy.

D. Public schools that are secure facilities, juvenile detention facilities, hospital program schools, and other small special programs may receive all funds available to schools with school community councils if the schools demonstrate and

document a good faith effort to recruit members, have meetings and publicize results.

E. School community councils may designate districts, areas or grade levels in order to recruit school community council members from all areas of the school community. If parents from designated areas do not apply for the school community council positions, positions shall be filled with interested parents who do apply.

F. Local school boards may ask school community councils to address local issues at the school community council level for discussion before bringing the issues to local school boards. School community councils may be asked for information to inform local board decisions.

G. Local boards of education have final and absolute authority in many school governance issues including school district employment, curriculum, calendaring and planning decisions. School community councils are encouraged to discuss these and similar issues in order to advise and inform local elected board members; local board members make final decision in governing school districts.

**KEY: school community councils
November 10, 2008**

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

R277. Education, Administration.**R277-502. Educator Licensing and Data Retention.****R277-502-1. Definitions.**

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

B. "Accredited school" for purposes of this rule, means public or private school that meets standards essential for the operation of a quality school program and has received formal approval through a regional accrediting association.

C. "Authorized staff" for purposes of this rule means an individual designated by the USOE or an LEA and approved by the USOE and who has completed CACTUS training.

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

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

F. "Letter of Authorization" means a designation given to an individual for one year, such as an out-of-state candidate or individual pursuing an alternative license, who has not completed the requirements for a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements and who is employed by an LEA.

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

H. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license as well as any additional requirements established by law or rule relating to professional preparation or experience.

I. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received, in the educator's field of practice, National Board certification or a doctorate from an accredited institution.

J. "License areas of concentration" means designations to licenses obtained by completing an approved preparation program or an alternative preparation program in a specific area of educational studies to include the following: Early Childhood (K-3), Elementary (K-6), Elementary (1-8), Middle (still valid, but not issued after 1988, 5-9), Secondary (6-12), Administrative, Career and Technical Education, School Counselor, School Psychologist, School Social Worker, Special Education (K-12), Preschool Special Education (Birth-Age 5), Communication Disorders, Speech-Language Pathologist, Speech-Language Technician. License areas of concentration may also bear endorsements relating to subjects or specific assignments.

K. "License endorsement (endorsement)" means a specialty field or area earned through course work equivalent to at least an academic minor (with pedagogy) or through demonstrated competency; the endorsement shall be listed on the Professional Educator License indicating the specific qualification(s) of the holder.

L. "Professional development plan" means a plan developed by an educator and approved by the educator's supervisor that includes locally or Board-approved education-related training or activities that enhance an educator's background. Professional development points are required for periodic educator license renewal.

M. "Renewal" means reissuing or extending the length of a license consistent with R277-501.

N. "State Approved Endorsement Program (SAEP)" means a professional development plan on which an educator is working to obtain an endorsement.

R277-502-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public school system under the Board, by Section 53A-6-104 which gives the Board power to issue licenses, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. This rule specifies the types of license levels and license areas of concentration available and procedures for obtaining a license, required for employment as a licensed educator in the public schools of Utah. The rule provides a process of criteria for educators whose licenses have lapsed and return to the teaching profession. All licensed educators employed in the Utah public schools shall be licensed consistent with this rule in order for the district to receive full funding under Section 53A-17a-107(2).

R277-502-3. Program Approval.

A. The Board shall accept educator license recommendations from NCATE accredited, TEAC accredited or competency-based regionally accredited organizations.

B. The Board, or its designee, shall establish deadlines and uniform forms and procedures for all aspects of licensing.

R277-502-4. License Levels, Procedures, and Periods of Validity.

A. An initial license, the Level 1 license, is issued to an individual who is recommended by a Board-approved educator preparation program or approved alternative preparation program, or an educator with a professional educator license from another state.

(1) LEAs and educator preparation institutions shall cooperate in preparing candidates for the educator Level 1 license. The resources of both may be used to assist candidates in preparation for licensing.

(2) The recommendation indicates that the individual has satisfactorily completed the programs of study required for the preparation of educators and has met licensing standards in the license areas of concentration for which the individual is recommended.

(3) The Level 1 license is issued for three years.

(4) An educator shall satisfy all requirements of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers.

(5) An educator shall satisfy all federal requirements for an educator license prior to moving from Level 1 to Level 2.

(6) A license applicant who has received or completed license preparation activities or coursework inconsistent with this rule may present compelling information and documentation for review and approval by the USOE to satisfy the licensing requirements.

B. A Level 2 license may be issued by the Board to a Level 1 license holder upon satisfaction of all USOE requirements for the Level 2 license and upon the recommendation of the employing LEA.

(1) The recommendation shall be made following the completion of three years of successful, professional growth and educator experience, satisfaction of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers, any additional requirements imposed by the employing LEA, and before the Level 1 license expires.

(2) A Level 2 license shall be issued for five years and shall be valid unless suspended or revoked for cause by the Board.

(3) The Level 2 license may be renewed for successive five year periods consistent with R277-501, Educator Licensing Renewal.

(4) A Level 2 license holder shall satisfy all federal requirements for an educator license holder prior to renewal

after June 30, 2006 to remain highly qualified.

C. A Level 3 license may be issued by the Board to a Level 2 license holder who has achieved National Board Professional Teaching Standards Certification, who holds a current Certificate of Clinical Competence from the American Speech-Language-Hearing Association (ASHA), or who holds a doctorate in the educator's field of practice.

(1) A Level 3 license is valid for seven years unless suspended or revoked for cause by the Board.

(2) The Level 3 license may be renewed for successive seven year periods consistent with R277-501.

D. Licenses expire on June 30 of the year of expiration recorded on CACTUS and may be renewed any time after January of that year. Responsibility for securing renewal of the license rests solely with the holder.

R277-502-5. Professional Educator License Areas of Concentration, and Endorsements and Under-Qualified Employees.

A. Unless excepted under rules of the Board, to be employed in the public schools in a capacity covered by the following license areas of concentration, a person shall hold a valid license issued by the Board in the respective license areas of concentration:

- (1) Early Childhood (K-3);
- (2) Elementary (1-8);
- (3) Elementary (K-6);
- (4) Middle (still valid, but not issued after 1988, 5-9);
- (5) Secondary (6-12);
- (6) Administrative;
- (7) Career and Technical Education;
- (8) School Counselor;
- (9) School Psychologist;
- (10) School Social Worker;
- (11) Special Education (K-12);
- (12) Preschool Special Education (Birth-Age 5);
- (13) Communication Disorders;
- (14) Speech-Language Pathologist;
- (15) Speech-Language Technician.

B. Under-qualified educators:

(1) Educators who are licensed but working out of their endorsement area(s) shall request and prepare an SAEP to complete the requirements of an endorsement with a USOE education specialist; or

(2) Letters of Authorization

(a) Local boards may request from the Board a Letter of Authorization for educators employed by the local board who have not completed requirements for areas of concentration or endorsements.

(b) An approved Letter of Authorization is valid for one year and may be renewed for a total of three years.

(c) Educators working under letters of authorization shall not be considered highly qualified.

(d) Following the expiration of the Letter of Authorization, the educator who has still not been completely approved for licensing shall be considered under qualified.

C. Licenses may be endorsed to indicate qualification in a subject or content area. An endorsement is not valid for employment purposes without a current license.

R277-502-6. Returning Educator Relicensure.

A. A previously licensed educator with an expired license may renew an expired license upon satisfaction of the following:

(1) Completion of criminal background check including review of any criminal offenses and approval by the Utah Professional Practices Advisory Commission;

(2) Employment by a school district/charter school;

(3) A professional development plan developed jointly by the school principal or charter school director and the returning

educator that considers the following:

(a) previous successful public school teaching experience;

(b) formal educational preparation;

(c) period of time between last public teaching experience and the present;

(d) school goals for student achievement within the employing school and the educator's role in accomplishing those goals;

(e) returning educator's professional abilities, as determined by a formal discussion and observation process completed within the first 30 days of employment; and

(f) completion of additional necessary professional development for the educator, as determined jointly by the principal/school district and educator.

(4) The plan filed with the USOE;

(5) Successful completion of required Board-approved exams for licensure;

(6) Satisfactory experience as determined by the school district with a trained mentor; and

(7) Work with a trained mentor.

B. Returning educators who previously held a Level 2 or Level 3 license shall be issued a Level 1 license during the first year of employment. Upon completion of the requirements listed in R277-502-6A and a satisfactory school district evaluation, if available, the employing LEA may recommend reinstatement of licensure at a Level 2 or 3. This license shall be valid for five years.

C. Returning educators who taught less than three consecutive years in a public or accredited private school shall complete the Early Years Enhancement requirements before moving from Level 1 to Level 2 licensure.

R277-502-7. Professional Educator License Reciprocity.

A. Utah is a member of the Compact for Interstate Qualification of Educational Personnel under Section 53A-6-201.

B. A Level 1 license may be issued to a graduate of an educator preparation program from an accredited institution of higher education in another state.

(1) If the applicant has three or more continuous years of previous educator experience in a public or accredited private school, a Level 2 license may be issued upon the recommendation of the employing Utah LEA after at least one year.

(2) If the applicant has less than three years of previous educator experience in a public or accredited private school, a Level 2 license may be issued following satisfaction of the requirements of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers.

R277-502-8. Computer Aided Credentials of Teachers in Utah Schools (CACTUS).

A. CACTUS maintains public, protected and private information on licensed Utah educators. Private or protected information includes such items as home address, date of birth, social security number, and any disciplinary action taken against an individual's license.

B. A CACTUS file shall be opened on a licensed Utah educator when:

(1) the individual initiates a USOE background check, or

(2) the USOE receives an application for a license from an individual seeking licensing in Utah.

C. The data in CACTUS may only be changed as follows:

(1) Authorized USOE staff or authorized LEA staff may change demographic data.

(2) Authorized USOE staff may change licensing data such as endorsements, degrees, license areas of concentration and licensed work experience.

(3) Authorized employing LEA staff may update data on

R277. Education, Administration.**R277-503. Licensing Routes.****R277-503-1. Definitions.**

A. "Alternative Routes to Licensure (ARL) advisors" mean a USOE specialist with specific professional development and educator licensing expertise, and a USOE-designated curriculum specialist.

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

C. "Competency-based" means a teacher training approach structured for an individual to master and demonstrate content and teaching skills and knowledge at the individual's own pace and sometimes in alternative settings.

D. "Educational Testing Service (ETS)" is a worldwide educational testing and measurement organization.

E. "Endorsement" means a qualification based on content area mastery obtained through a higher education major or minor or through a state-approved endorsement program.

F. "Letter of authorization" means a formal approval given to an individual such as an out-of-state candidate or a first year ARL candidate who is employed by a school district/charter school in a position requiring a professional educator license who has not completed the requirements for an ARL license or a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements. A teacher working under a letter of authorization cannot be designated highly qualified under R277-520-1G.

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

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

- (1) requirements established by law or rule;
- (2) three years of successful education experience within a five-year period; and
- (3) satisfaction of requirements under R277-522 for teachers employed after January 1, 2003.

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

J. "National Association of State Directors of Teacher Education and Certification (NASDTEC)" is an educator information clearinghouse that maintains an interstate reciprocity agreement and database for its members regarding educators whose licenses have been suspended or revoked.

K. "National Council for Accreditation of Teacher Education (NCATE)" is a nationally recognized organization which accredits the education units providing baccalaureate and graduate degree programs for the preparation of teachers and other professional personnel for elementary and secondary schools.

L. "NCLB core academic subject" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

M. "Pedagogical knowledge" means practices and strategies of teaching, classroom management, preparation and planning that go beyond an educator's content knowledge of an academic discipline.

N. "Praxis II - Principles of Learning and Teaching" is a standards-based test provided by ETS and designed to assess a beginning teacher's pedagogical knowledge. This test is used by many states as part of their teacher licensing process. Colleges and universities may use this test as an exit exam from teacher

education programs. All Utah Level 1 license holders employed or reemployed after January 1, 2003 shall pass this test prior to the issuance of a Level 2 professional educator license consistent with R277-522-1H(3).

O. "Regional accreditation" means formal approval of a school that has met standards considered to be essential for the operation of a quality school program by the following organizations:

- (1) Middle States Commission on Higher Education;
- (2) New England Association of Schools and Colleges;
- (3) North Central Association Commission on Accreditation and School Improvement;
- (4) Northwest Commission on Colleges and Universities;
- (5) Southern Association of Colleges and Schools; and
- (6) Western Association of Schools and colleges: Senior College Commission.

P. "Restricted endorsement" means a qualification based on content area knowledge obtained through a USOE-approved program of study or test and shall be available only to teachers in necessarily existent small school settings and teachers in youth in custody programs.

Q. "State-approved Endorsement Plan (SAEP)" means a plan in place developed between the USOE and a licensed educator to direct the completion of endorsement requirements by the educator.

R. "Teacher Education Accreditation Council (TEAC)" is a nationally recognized organization which provides accreditation of professional teacher education programs in institutions offering baccalaureate and graduate degrees for the preparation of K-12 teachers.

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

R277-503-2. 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)(a) which directs the Board to establish rules and minimum standards for the qualification and licensing of educators and ancillary personnel who provide direct student services, 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 minimum eligibility requirements for applicants for teacher licenses and to provide explanation and criteria of various teacher licensing routes. The rule also provides criteria and procedures for licensed teachers to earn endorsements and the requirement for all applicants for licenses to have and pass criminal background checks.

R277-503-3. USOE Licensing Eligibility.

A. Traditional college/university license - A license applicant shall have completed an approved college/university teacher preparation program, been recommended for licensing, and shall have satisfied all other requirements for educator licensing required by law; or

B. Alternative Licensing Route

(1) A license applicant shall have a bachelors degree or higher from an accredited higher education institution in an area related to the position he seeks; and

(2) A license applicant shall have skills, talents or abilities, as evaluated by the employing entity, making the applicant appropriate for a licensed teaching position and eligible to participate in an ARL program.

(3) While beginning an alternative licensing program, an applicant shall be approved for employment under a letter of authorization for a maximum of one school year and may be employed under an ARL license for an additional two years. An ARL program may not exceed three school years. ARL candidates who receive ARL licensure status may be designated

highly qualified under R277-520-1G.

C. All license applicants seeking a Level 1 Utah educator license or an area of concentration or an endorsement in an NCLB core academic subject area after March 3, 2007 shall submit passing score(s) on a rigorous Board-designated content test, where tests are available, prior to the issuance of a renewable license or endorsement.

(1) Early childhood (K-3) and elementary majors (1-8) are required to submit a passing score from a rigorous Board-designated content test.

(2) Secondary teachers are required to submit passing scores on a rigorous Board-designated content test(s), where test(s) are available, for each endorsement NCLB core academic area to be posted on the license.

(3) An applicant shall submit electronic or original documentation of USOE-designated passing score(s).

D. Any educator seeking a Utah Level 1 license who submits a score below the final Utah state passing score on the test designated in R277-503-3C shall be issued a nonrenewable conditional Level 1 license. If the educator fails to submit a passing score on a rigorous Board-designated content test during the three-year duration of the conditional Level 1 license, the educator's license or endorsement shall lapse on the educator's renewal date.

E. The credentials and documentation of experience of applicants for Level 2 and 3 professional educator licenses shall be evaluated by the USOE to determine the appropriate license level.

R277-503-4. Licensing Routes.

Applicants who seek Utah licenses shall successfully complete accredited programs or legislatively mandated programs consistent with this rule.

A. Institution of higher education teacher preparation programs shall be:

(1) Nationally accredited by:

(a) NCATE; or

(b) TEAC; or

(2) Regionally accredited competency-based teacher preparation programs as provided under R277-503-1N.

B. USOE Alternative Routes to Licensure (ARL)

(1) To be eligible to begin the ARL program, an applicant for an elementary or early childhood school position shall have a bachelors degree and at least 27 semester hours of applicable content courses distributed among elementary curriculum areas. Elementary curriculum areas are provided under R277-700-4. To proceed from temporary license status, an ARL applicant shall submit a score on the ETS Praxis II Elementary Education Content Knowledge Examination (0014) to be used as a diagnostic tool and as part of the development of a professional plan and the issuance of the ARL license.

(2) To be eligible to begin the ARL program, applicants for secondary school positions shall hold a degree major or major equivalent directly related to the assignment. To proceed from temporary license status an ARL license applicant shall submit a score on identified ETS Praxis II Applicable Content Knowledge test(s) where available to be used as a diagnostic tool and as part of the development of a professional plan and the issuance of the ARL license.

(3) Licensing by Agreement

(a) An individual employed by a school district shall satisfy the minimum requirements of R277-503-3 as a teacher with appropriate skills, training or ability for an identified licensed teaching position in the district.

(b) An applicant shall obtain an ARL application for licensing from the USOE or USOE web site.

(c) After evaluation of candidate transcript(s), and rigorous Board-designated content test score, the USOE ARL advisors and the candidate shall determine the specific content

knowledge and pedagogical knowledge required of the license applicant to satisfy the requirements for licensing.

(d) The USOE ARL advisors may identify institution of higher education courses, district inservice classes, Board-approved training, or Board-approved competency tests to prepare or indicate content, content-specific, and developmentally-appropriate pedagogical knowledge required for licensing.

(e) The employing school district shall assign a trained mentor to work with the applicant for licensing by agreement.

(f) The school district shall supervise and assess the license applicant's classroom performance during a minimum one school year full-time employment experience. The district may request assistance from a institution of higher education or the USOE in the monitoring and assessment.

(g) The school district shall assess the license applicant's disposition as a teacher following a minimum one school year full-time teaching experience. The district may request assistance in this assessment; and

(h) The USOE ARL advisors shall annually review and evaluate the license applicant following training, assessments or course work, and the full-time teaching experience and evaluation by the school district.

(i) Consistent with evidence and documentation received, the USOE ARL advisor may recommend the license applicant to the Board for a Level 1 educator license.

(4) USOE Licensing by Competency

(a) A school district employs an individual as a teacher with appropriate skills, training or ability for an identified licensed teaching position in the district who satisfies the minimum requirements of R277-503-3.

(b) An employing school district, in consultation with the applicant and the USOE, shall identify Board-approved content knowledge and pedagogical knowledge examinations. The applicant shall pass designated examinations demonstrating the applicant's adequate preparation and readiness for licensing.

(c) The employing school district shall assign a trained mentor to work with the applicant for licensing by competency.

(d) The school district shall monitor and assess the license applicant's classroom performance during a minimum one-year full-time teaching experience.

(e) The school district shall assess the license applicant's disposition for teaching following a minimum one-year full-time teaching experience.

(f) The school district may request assistance in the monitoring or assessment of a license applicant's classroom performance or disposition for teaching.

(g) Following the one-year training period, the school district and USOE shall verify all aspects of preparation (content knowledge, pedagogical knowledge, classroom performance skills, and disposition for teaching) to the USOE.

(h) If all evidence/documentation is complete, the USOE shall recommend the applicant for a Level 1 educator license.

(5) USOE ARL candidates under R277-503-4B(3) and (4) may teach under a letter of authorization for a maximum of one year. The letter of authorization shall expire after the first year on June 30 when the ARL candidate submits documentation of progress in the program, and the candidate shall be issued an ARL license.

(6) The ARL license may be extended annually for two subsequent school years with documentation of progress in the ARL program.

(7) Documentation shall include, specifically, a copy of the supervisor's successful end-of-year evaluation, copies of transcripts and test results or both showing completion of required coursework, verification of working with a trained mentor, and satisfaction of the full-time full year experience.

C. School district/charter school specific competency-based licenses:

(1) A local board/charter school board may apply to the Board for a letter of authorization to fill a position in the district.

(2) The employing school district/charter school shall request a letter of authorization no later than 60 days after the date of the individual's first day of employment.

(3) The application for the letter of authorization from the local board/charter school board for an individual to teach one or more core academic subjects shall provide documentation of:

(a) the individual's bachelors degree; and

(b) for a K-6 grade teacher, the satisfactory results of the rigorous state test including subject knowledge and teaching skills in the required core academic subjects under Section 53A-6-104.5(3)(ii) as approved by the Board; or

(c) for the teacher in grades 7-12, demonstration of a high level of competency in each of the core academic subjects in which the teacher teaches by completion of an academic major, a graduate degree, course work equivalent to an undergraduate academic major, advanced certification or credentialing, or results or scores of a rigorous state core academic subject test, similar to the test required under R277-503-3E, in each of the core academic subjects in which the teacher teaches.

(4) The application for the letter of authorization from the local board/charter school board for non-core teachers in grades K-12 shall provide documentation of:

(a) a bachelors degree, associates degree or skill certification; and

(b) skills, talents or abilities specific to the teaching assignment, as determined by the local board/charter school board.

(5) Following receipt of documentation and consistent with Section 53A-6-104.5(2), the USOE shall approve a district/charter school specific competency-based license.

(6) If an individual with a district/charter school specific competency-based license leaves the district before the end of the employment period, the district shall notify the USOE Licensing Section regarding the end-of-employment date.

(7) The individual's district/charter school specific competency-based license shall be valid only in the district/charter school that originally requested the letter of authorization and for the individual originally employed under the letter of authorization or district/charter school specific competency-based license.

(8) The written copy of the district/charter school specific competency-based license shall prominently state the name of the school district/charter school followed by DISTRICT/CHARTER SCHOOL SPECIFIC COMPETENCY-BASED LICENSE.

(9) A school district/charter school may change the assignment of a school district/charter school specific competency-based license holder but notice to USOE shall be required and additional competency-based documentation may be required for the teacher to remain qualified or highly qualified.

(10) School district/charter school specific competency-based license holders are at-will employees consistent with Section 53A-8-106(5).

R277-503-5. Endorsement Routes.

A. An applicant shall successfully complete one of the following for endorsement:

(1) a USOE-approved institution of higher education educator preparation program with endorsement(s); or

(2) assessment, approval and recommendation by a designated and subject-appropriate USOE specialist under a SAEP. The USOE shall be responsible for final recommendation and approval; or

(3) a USOE-approved Utah institution of higher education or Utah school district-sponsored endorsement program which includes content knowledge and content-specific pedagogical

knowledge approved by the USOE. The university or school district shall be responsible for final review and recommendation. The USOE shall be responsible for final approval.

B. A restricted endorsement shall be available and limited to teachers in necessarily existent small schools as determined under R277-445, and teachers in youth in custody programs. Teacher qualifications shall include at least nine semester hours of USOE-approved university-level courses in each course taught by the teacher holding a restricted endorsement.

C. All provisions that directly affect the health and safety of students required for endorsements, such as prerequisites for drivers education teachers or coaches, shall apply to applicants seeking endorsements through all routes under this rule.

D. Prior to an individual taking courses, exams or seeking a recommendation in the ARL licensing program, the individual shall have school district/charter school and USOE authorization.

R277-503-6. Additional Provisions.

A. All programs or assessments used in applicant preparation shall meet national professional educator standards such as those developed by NCATE, TEAC or competency-based regional accreditation.

B. All educators licensed under this rule shall also:

(1) complete the background check required under Section 53A-6-401;

(2) satisfy the professional development requirements of R277-502; and

(3) be subject to all Utah licensing requirements and professional standards.

C. An applicant may satisfy the student teaching/clinical experience requirement for licensing through successful completion of either the licensing by agreement or by competency route.

KEY: teachers, alternative licensing

May 9, 2007

Notice of Continuation March 29, 2007

Art X Sec 3

53A-1-402(1)(a)

53A-1-401(3)

R277. Education, Administration.**R277-609. Standards for School District, School and Charter School Discipline Plans.****R277-609-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Bullying" means behavior that:
- (1) is intended to cause harm or distress;
 - (2) exists in a relationship in which there is an imbalance of power;
 - (3) may be repeated over time, and
 - (4) may also include definitions provided in Section 53A-11a-101.
- C. "Discipline" means:
- (1) Imposed discipline: Code of conduct prescribed for the highest welfare of the individual and of the society in which the individual lives; and
 - (2) Self-Discipline: A personal system of organized behavior designed to promote self-interest while contributing to the welfare of others.
- D. "Disruptive student behavior" includes:
- (1) the grounds for suspension or expulsion described in Section 53A-11-904; and
 - (2) the conduct described in Section 53A-11-908(2)(b).
- E. "Plan" means a school district-wide and school-wide written model for prevention and intervention for student behavior management and discipline procedures for students who habitually disrupt school environments and processes.
- F. "Qualifying minor" means a school-age minor who:
- (1) is at least nine years old; or
 - (2) turns nine years old at any time during the school year.
- G. "USOE" means the Utah State Office of Education.

R277-609-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, Section 53A-1-402(1)(b) which requires the Board to establish rules concerning discipline and control, and Section 53A-11-901 which directs local school boards and charter school governing boards to adopt conduct and discipline policies and directs the Board to develop model policies to assist local school boards and charter school governing boards.

B. The purpose of this rule is to define bullying and outline requirements for school discipline plans and policies which school districts and charter schools shall meet to qualify for funding.

R277-609-3. School District, School and Charter School Responsibility to Develop Plans.

A. Each school district, or school and each charter school shall develop and implement a board approved comprehensive school district, school or charter school plan or policy for student and classroom management, and school discipline. The plan shall include:

- (1) the definitions of Section 53A-11-910;
- (2) written standards for student behavior expectations, including school and classroom management;
- (3) effective instructional practices for teaching student expectations, including self-discipline, citizenship, civic skills, and social skills;
- (4) systematic methods for reinforcement of expected behaviors and uniform methods for correction of student behavior;
- (5) uniform methods for at least annual school level data-based evaluations of efficiency and effectiveness;
- (6) an ongoing staff development program related to development of student behavior expectations, effective instructional practices for teaching and reinforcing behavior

expectations, effective intervention strategies, and effective strategies for evaluation of the efficiency and effectiveness of interventions;

(7) policies and procedures relating to the use and abuse of alcohol and controlled substances by students;

(8) policies to define, prohibit, and intervene in bullying, including the requirement of awareness and intervention strategies, including training for social skills, for students, parents, and school staff. The policies shall:

(a) provide for training specific to overt aggression that may include physical fighting such as punching, shoving, kicking, and verbal threatening behavior, such as name calling, or both physical and verbal aggression or threatening behavior;

(b) provide for training specific to relational aggression or indirect, covert, or social aggression, including rumor spreading, intimidation, enlisting a friend to assault a child, and social isolation;

(c) provide training and education specific to bullying based upon students':

(i) actual or perceived identities;

(ii) conformance or failure to conform with stereotypes.

(d) provide for training specific to cyber bullying, including use of email, web pages, text messaging, instant messaging, three-way calling or messaging or any other electronic means for aggression inside or outside of school;

(e) provide for student assessment of the prevalence of bullying in school districts, schools and charter schools, specifically locations where students are unsafe and additional adult supervision may be required, such as playgrounds, hallways, and lunch areas;

(f) complement existing safe and drug free school policies and school harassment and hazing policies; and

(g) include strategies for providing students and staff, including aides, custodians, kitchen and lunchroom workers, secretaries, paraprofessionals, and coaches, with awareness and intervention skills such as social skills training.

B. The plan shall also provide direction to school districts for dealing with disruptive students. This part of the plan shall:

(1) direct schools to determine the range of behaviors and establish the continuum of administrative procedures that may be used by school personnel to address the behavior of habitually disruptive students;

(2) provide for identification, by position(s), of individual(s) designated to issue notices of disruptive student behavior; and

(3) provide for documentation of disruptive student behavior prior to referral of disruptive students to juvenile court.

C. School district or school plans or sections of plans, including directives about bullying and disruptive students, shall also:

(1) include strategies to provide for necessary adult supervision;

(2) be clearly written and consistently enforced; and

(3) include administration, instruction and support staff, students, parents, community council and other community members in policy development, training and prevention implementation so as to create a community sense of participation, ownership, support and responsibility.

R277-609-4. Implementation.

A. School districts, schools and charter schools shall implement strategies and policies consistent with their plans.

B. School districts, schools and charter schools shall develop, use and monitor a continuum of intervention strategies to assist students whose behavior in school falls repeatedly short of reasonable expectations, including teaching student behavior expectations, reinforcing student behavior expectations, re-teaching behavior expectations, followed by effective, evidence-based interventions matched to student needs prior to

administrative referral.

C. As part of any suspension or expulsion process that results in court involvement, once a school district, school or charter school receives information from the courts that disruptive student behavior will result in court action, the school district, school or charter school shall provide a formal written assessment of habitually disruptive students. Assessment information shall be used to connect parents and students with supportive school and community resources.

D. Nothing in state law or this rule restricts local districts/charter schools from implementing policies to allow for suspension of students of any age consistent with due process and with all requirements of Individuals with Disabilities Education Act 2004.

R277-609-5. Parent/Guardian Notification and Court Referral.

A. Through school administrative and juvenile court referral consequences, school district, and school and charter school policies shall provide procedures for qualifying minors and their parents to participate in decisions regarding consequences for disruptive student behavior.

B. Policies shall provide for notice to parents and information about resources available to assist parents in resolving school-age minors' disruptive behavior.

C. Policies shall provide for notices of disruptive behavior to be issued by schools to qualifying minor(s) and parent(s) consistent with:

(1) numbers of disruptions and timelines in accordance with Section 53A-11-910;

(2) school resources available; and

(3) cooperation from the appropriate juvenile court in accessing student school records, including attendance, grades, behavioral reports and other available student school data.

D. Policies shall provide due process procedures for minors and parents to contest allegations and citations of disruptive student behavior.

R277-609-6. USOE Model Policies.

The USOE shall develop, review regularly, and provide to local school boards and charter school governing boards model policies to address disruptive student behavior and appropriate consequences.

KEY: disciplinary actions, disruptive students

November 10, 2008

Notice of Continuation August 10, 2004

Art X Sec 3

53A-1-401(3)

53A-1-402(1)

53A-11-901

R277. Education, Administration.**R277-704. Financial and Economic Literacy: Integration into Core Curriculum and Financial and Economic Literacy Student Passports.****R277-704-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Financial and economic literacy project" means a program or series of activities developed locally to encourage the understanding of financial and economic literacy among students and their families and to assist public school educators in making financial and economic literacy an integrated and permanent part of the public school curriculum.
- C. "Financial and economic literacy student passport" means a collection of approved activities, assessments, or achievements completed during a given time period which indicate advancement in financial and economic understanding.
- D. "Professional development" for public school educators means the act of engaging in professional learning in order to improve student learning.
- E. "SEOP" means student education occupation plan. An SEOP shall include:
- (1) a student's education occupation plans (grades 7-12) including job placement when appropriate;
 - (2) all Board and local board graduation requirements;
 - (3) evidence of parent, student, and school representative involvement annually;
 - (4) attainment of approved workplace skill competencies; and
 - (5) identification of post secondary goals and approved sequence of courses.
- F. "USOE" means the Utah State Office of Education.

R277-704-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which gives general control and supervision of the public school system to the Board, by Section 53A-13-110 which directs the Board to work with financial and economic experts and private and non-profit entities to develop and integrate financial and economic literacy and skills into the public school curriculum at all appropriate levels and to develop a financial and economic literacy student passport which is optional for students and tracks student mastery of financial and economic literacy concepts, and by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is:

- (1) to provide funds appropriated by the Legislature to develop and integrate financial and economic literacy concepts effectively into the core curriculum in various programs and at various grade levels;
- (2) to begin the development of a financial and economic literacy student passport;
- (3) to provide for educator professional development using business and community expertise, allowing for maximum creativity and flexibility;
- (4) to provide curriculum resources and assessments for financial and economic literacy;
- (5) to provide passport criteria and tracking capabilities for the financial and economic literacy passport for students grades K-12; and
- (6) to provide simple and consistent messaging to students that becomes part of the core curriculum that reinforces the importance of financial and economic literacy and helps students and their parents to locate and use school and community resources to improve financial and economic literacy among students and families.

R277-704-3. Financial and Economic Literacy Student Passport.

A. The Board and the USOE shall develop and promote a financial and economic literacy student passport model, which would include tracking of student progress toward a passport.

B. Early efforts will focus on students in grades nine through 12.

C. Development efforts will include parent and community participation.

D. A major goal of the development and promotion of a financial and economic literacy student passport will be to inform and educate students and their parents throughout the public school experience of the importance of financial and economic literacy and its applicability to all areas of the public school curriculum.

E. Students and parents shall receive information and encouragement toward the financial and economic literacy student passport opportunity upon development as part of the SEOP process.

R277-704-4. Financial and Economic Literacy Professional Development Opportunities.

A. The USOE shall provide professional development on all areas of financial and economic literacy utilizing the expertise of community and business groups.

B. Professional development activities shall inform public school educators about financial and economic literacy, encourage greater understanding of personal financial and economic responsibility, provide information and resources for teaching about financial and economic literacy without promoting specific products or businesses, and work with the USOE to develop messaging or advertising to promote financial and economic literacy.

**KEY: financial, economic, literacy
November 10, 2008**

**Art X Sec 3
53A-13-110
53A-1-401(3)**

R277. Education, Administration.**R277-715. English Language Learner Family Literacy Centers Program.****R277-715-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. An "English Language Learner (ELL)" means a student who has difficulty speaking, reading, writing, or understanding the English language.
- C. "English Language Learner Family Literacy Centers (Centers)" means centers created by public schools to increase parent involvement; communicate with parents who are not proficient in English concerning required and optional activities at the school, in the parents' preferred language to the extent practicable; increase academic achievement, literacy skills, and language gains in all ethnic groups of students and their families; coordinate with school administrators, educators, families, and students; support and coordinate with other language acquisition instructional services and language proficiency program in the public schools.
- D. "Language acquisition" means the process of learning a language.
- E. "Language minority population" means a language other than the one spoken by the majority of people in a given regional or national context.
- F. "Language proficiency" means the level of competence at which an individual is able to use language for both basic communication tasks and academic purposes as determined by local evaluation.
- G. "USOE" means the Utah State Office of Education.

R277-715-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-161(2) which directs the Board to adopt a formula that allocates the money appropriated by the Legislature for the English Language Learner Family Literacy Centers Program to school districts and charter schools.

B. The purpose of this rule is to adopt a formula to allocate funds appropriated by the Legislature under Section 53A-17a-161 in a fair and equitable manner.

R277-715-3. Proposals from School Districts and Charter Schools.

A. Participation in this program by school districts and charter schools is optional; submitted proposals for developing centers shall be consistent with:

- (1) the purposes of Section 53A-17a-161 and this rule; and
- (2) available and successful center models.

B. Proposals shall identify:

- (1) center development timelines;
- (2) timelines that explain annual progress between July 2008 and July 2010;
- (3) an annual total and budget;
- (4) an assessment component, including participation by local community councils, school employees, students, and others as appropriate.

C. Proposals shall be submitted to the USOE by June 30.

R277-715-4. USOE Response, Timelines and Formula.

A. The USOE may appoint an expert review panel to review, prioritize and recommend proposals for funding by the Board.

B. After the USOE receives proposals, it will determine a funding formula based on the number and quality of proposals.

C. The formula shall:

- (1) distribute 45 percent of the funds as a base for all school districts and charter schools that submit viable proposals

for developing family literacy centers;

(2) distribute 50 percent of the funds directly to participating school districts and charter schools based on the ELL student count in the school districts/charter schools;

(3) retain five percent of appropriated funding for:

(a) an annual third party assessment of school district/charter school family literacy center projects; the assessment shall be a third-party assessment; and

(b) continuing professional development for participating school districts and charter schools that allows the USOE to provide current information and materials over a three year period to assist participating school districts/charter schools.

D. The Board shall approve recommendations for funding by July 30.

E. School districts and charter schools that receive funding shall be notified of funding and the distribution of funds shall begin as soon as possible after Board approval.

**KEY: English Language Learners
October 8, 2008**

**Art X Sec 3
53A-1-402(1)(c)
53A-17a-161(2)**

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 January 3, 2007, 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, Transportation Conformity Consultation.

The Utah State Implementation Plan, Section XII, Transportation Conformity Consultation, as most recently amended by the Utah Air Quality Board on May 2, 2007, 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 September 3, 2008, 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
November 10, 2008**

19-2-104(3)(e)

Notice of Continuation March 15, 2007

R307. Environmental Quality, Air Quality.**R307-250. Western Backstop Sulfur Dioxide Trading Program.****R307-250-1. Purpose.**

This rule implements the Western Backstop (WEB) Sulfur Dioxide Trading Program provisions in accordance with the federal Regional Haze Rule, 40 CFR 51.309, and Section XX.E of the State Implementation Plan for Regional Haze, titled "Sulfur Dioxide Milestones and Backstop Trading Program," incorporated under R307-110-28.

R307-250-2. Definitions.

The following additional definitions apply to R307-250:

"Account Certificate of Representation" or "Certificate" means the completed and signed submission required to designate an Account Representative for a WEB source or an Account Representative for a general account. "Account Representative" means the individual who is authorized through an Account Certificate of Representation to represent owners and operators of the WEB source with regard to matters under the WEB Trading Program or, for a general account, who is authorized through an Account Certificate of Representation to represent the persons having an ownership interest in allowances in the general account with regard to matters concerning the general account.

"Actual Emissions" means total annual sulfur dioxide emissions determined in accordance with R307-250-9 or determined in accordance with the Sulfur Dioxide Milestone Inventory requirements of R307-150 for sources that are not subject to R307-250-9.

"Allocate" means to assign allowances to a WEB source in accordance with SIP Section XX.E.3.a through c.

"Allowance" means the limited authorization under the WEB Trading Program to emit one ton of sulfur dioxide during a specified control period or any control period thereafter subject to the terms and conditions for use of unused allowances as established by R307-250.

"Allowance Limitation" means the tonnage of sulfur dioxide emissions authorized by the allowances available for compliance deduction for a WEB source under R307-250-12 on the allowance transfer deadline for each control period.

"Allowance Transfer Deadline" means the deadline established in R307-250-10(2) when allowance transfers must be submitted for recording in a WEB source's compliance account in order to demonstrate compliance for that control period.

"Compliance Account" means an account established in the WEB EATS under R307-250-8(1) for the purpose of recording allowances that a WEB source might hold to demonstrate compliance with its allowance limitation.

"Compliance Certification" means a submission to the executive secretary by the Account Representative as required under R307-250-12(2) to report a WEB source's compliance or noncompliance with R307-250.

"Control Period" means the period beginning January 1 of each year and ending on December 31 of the same year, inclusive.

"Existing Source" means a stationary source that commenced operation before the Program Trigger Date.

"General Account" means an account established in the WEB EATS under R307-250-8 for the purpose of recording allowances held by a person that are not to be used to show compliance with an allowance limitation.

"Milestone" means the maximum level of stationary source regional sulfur dioxide emissions for each year from 2003 to 2018, established according to the procedures in SIP Section XX.E.1.

"New WEB Source" means a WEB source that commenced operation on or after the program trigger date.

"New Source Set-aside" means a pool of allowances that are available for allocation to new sources in accordance with the provisions of SIP Section XX.E.3.c.

"Program trigger date" means the date that the executive secretary determines that the WEB Trading Program has been triggered in accordance with the provisions of SIP Section XX.E.1.c.

"Program trigger years" means the years shown in SIP Section XX.E.1.a, Table 3, column 3 for the applicable milestone if the WEB Trading Program is triggered as described in SIP Section XX.E.1.

"Retired source" means a WEB source that has received a retired source exemption as provided in R307-250-4(4).

"Serial number" means, when referring to allowances, the unique identification number assigned to each allowance by the Tracking Systems Administrator, in accordance with R307-250-7(2).

"SIP Section XX.E" means Section XX, Part E of the State Implementation Plan, titled "Sulfur Dioxide Milestones and Backstop Trading Program." SIP Section XX, Regional Haze, is incorporated by reference under R307-110-28.

"Special Reserve Compliance Account" means an account established in the WEB EATS under R307-250-8(1) for the purpose of recording allowances that a WEB source might hold to demonstrate compliance with its allowance limitation for emission units that are monitored for sulfur dioxide in accordance with R307-250-9(1)(b).

"Sulfur Dioxide emitting unit" means any equipment that is located at a WEB source and that emits sulfur dioxide.

"Submit" means sent to the executive secretary or the Tracking System Administrator under the signature of the Account Representative. For purposes of determining when something is submitted, an official U.S. Postal Service postmark, or equivalent electronic time stamp, shall establish the date of submittal.

"Ton" means 2000 pounds and any fraction of a ton equaling 1000 pounds or more shall be treated as one ton and any fraction of a ton equaling less than 1000 pounds shall be treated as zero tons.

"Tracking System Administrator" or "TSA" means the person designated by the executive secretary as the administrator of the WEB EATS.

"WEB Source" means a stationary source that meets the applicability requirements of R307-250-4.

"WEB Trading Program" means R307-250, the Western Backstop Trading Program, triggered as a backstop in accordance with the provisions in SIP Section XX.E, if necessary, to ensure that regional sulfur dioxide emissions are reduced.

"WEB Emissions and Allowance Tracking System (WEB EATS)" means the central database where sulfur dioxide emissions for WEB sources as recorded and reported in accordance with R307-250 are tracked to determine compliance with allowance limitations, and the system where allowances under the WEB Trading Program are recorded, held, transferred and deducted.

"WEB EATS account" means an account in the WEB EATS established for purposes of recording, holding, transferring, and deducting allowances.

R307-250-3. WEB Trading Program Trigger.

(1) Except as provided in (2) below, R307-250 shall apply on the program trigger date that is established in accordance with the procedures in SIP Section XX.E.1.c.

(2) Special Penalty Provisions for the 2018 Milestone, R307-250-13, shall apply on January 1, 2018, and shall remain effective until the requirements of R307-250-13 have been met.

R307-250-4. WEB Trading Program Applicability.

(1) General Applicability. R307-250 applies to any stationary source or group of stationary sources that are located on one or more contiguous or adjacent properties and that are under the control of the same person or persons under common control, belonging to the same industrial grouping, and that are described in paragraphs (a) and (b) of this subsection. A stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

(a) All BART-eligible sources as defined in 40 CFR 51.301 that are BART-eligible due to sulfur dioxide emissions.

(b) All stationary sources that have actual sulfur dioxide emissions of 100 tons or more per year in the program trigger years or any subsequent year. The fugitive emissions of a stationary source shall not be considered in determining whether it is subject to R307-250 unless the source belongs to one of the following categories of stationary source:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
- (xxvii) Any other stationary source category, which as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act.

(b) A new source that begins operation after the program trigger date and has the potential to emit 100 tons or more of sulfur dioxide per year.

(2) The executive secretary may determine on a case-by-case basis, with concurrence from the EPA Administrator, that a stationary source defined in (1)(b) above that has not previously met the applicability requirements of (1) is not subject to R307-250 if the stationary source had actual sulfur dioxide emissions of 100 tons or more in a single year and in each of the previous five years had actual sulfur dioxide emissions of less than 100 tons per year, and:

- (a)(i) the emissions increase was due to a temporary emission increase that was caused by a sudden, infrequent failure of air pollution control equipment, or process equipment, or a failure to operate in a normal or usual manner, and
- (ii) the stationary source has corrected the failure of air

pollution equipment, process equipment, or process by the time of the executive secretary's determination; or

(b) the stationary source had to switch fuels or feedstocks on a temporary basis and as a result of an emergency situation or unique and unusual circumstances besides the cost of such fuels or feedstocks.

(3) Duration of Applicability. Except as provided for in (4) below, once a stationary source is subject to R307-250, it will remain subject to the rule every year thereafter.

(4) Retired Source Exemption.

(a) Application. Any WEB source that is permanently retired shall apply for a retired source exemption. The WEB source may be considered permanently retired only if all sulfur dioxide emitting units at the source are permanently retired. The application shall contain the following information:

(i) identification of the WEB source, including the plant name and an appropriate identification code in a format specified by the executive secretary;

(ii) name of account representative;

(iii) description of the status of the WEB source, including the date that the WEB source was permanently retired;

(iv) signed certification that the WEB source is permanently retired and will comply with the requirements of R307-250-4(4); and

(v) verification that the WEB source has a general account where any unused allowances or future allocations will be recorded.

(b) Notice. The retired source exemption becomes effective when the executive secretary notifies the WEB source that the retired source exemption has been granted.

(c) Responsibilities of Retired Sources.

(i) A retired source shall be exempt from R307-250-9 and R307-250-12, except as provided below.

(ii) A retired source shall not emit any sulfur dioxide after the date the retired source exemption is issued.

(iii) A WEB source shall submit sulfur dioxide emissions reports, as required by R307-250-9, for any time period the source was operating prior to the effective date of the retired source exemption. The retired source shall be subject to the compliance provisions of R307-250-12, including the requirement to hold allowances in the source's compliance account to cover all sulfur dioxide emissions prior to the date the source was permanently retired.

(iv) A retired source that is still in existence but no longer emitting sulfur dioxide shall, for a period of five years from the date the records are created, retain records demonstrating that the source is permanently retired for purposes of this rule.

(d) Resumption of Operations.

(i) Before resuming operation, the retired source must submit registration materials as follows:

(A) If the source is required to obtain an approval order under R307-401 or an operating permit under R307-415 prior to resuming operation, then registration information as described in R307-250-6(1) and a copy of the retired source exemption must be submitted with the notice of intent under R307-401 or the operating permit application required under R307-415;

(B) If the source does not meet the criteria of (A), then registration information as described in R307-250-6(1) and a copy of the retired source exemption must be submitted to the executive secretary at least ninety days prior to resumption of operation.

(ii) The retired source exemption shall automatically expire on the day the retired source resumes operation.

(e) Loss of Future Allowances. A WEB source that is permanently retired and that does not apply to the executive secretary for a retired source exemption within ninety days of the date that the source is permanently retired shall forfeit any unused and future allowances. The abandoned allowances shall

be retired by the TSA.

R307-250-5. Account Representative for WEB Sources.

(1) Each WEB source must identify one account representative and may also identify an alternate account representative who may act on behalf of the account representative. Any representation, action, inaction or submission by the alternate account representative will be deemed to be a representation, action, inaction or submission by the account representative.

(2) Identification and Certification of an account representative.

(a) The account representative and any alternate account representative shall be appointed by an agreement that makes the representations, actions, inactions or submissions of the account representative and any alternate binding on the owners and operators of the WEB source.

(b) The account representative shall submit to the executive secretary and the TSA a signed and dated certificate that contains the following elements:

(i) identification of the WEB source by plant name and an appropriate identification code in a format specified by the executive secretary;

(ii) the name, address, e-mail (if available), telephone and facsimile number of the account representative and any alternate;

(iii) a list of owners and operators of the WEB source;

(iv) information to be part of the emission tracking system database that is established in accordance with SIP Section XX.E.3.i. The specific data elements shall be as specified by the executive secretary to be consistent with the data system structure, and may include basic facility information that may appear in other reports and notices submitted by the WEB source, such as county location, industrial classification codes, and similar general facility information.

(v) The following certification statement: "I certify that I was selected as the account representative or alternate account representative, as applicable, by an agreement binding on the owners and operators of the WEB source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the WEB Trading Program on behalf of the owners and operators of the WEB source and that the owner and operator each shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the executive secretary regarding the WEB Trading Program."

(c) Upon receipt by the executive secretary of the complete certificate, the account representative and any alternate account representative represents and, by his or her representations, actions, inactions, or submissions, legally binds each owner and operator of the WEB source in all matters pertaining to the WEB Trading Program. Each owner and operator shall be bound by any decision or order issued by the executive secretary regarding the WEB Trading Program.

(d) No WEB EATS account shall be established for the WEB source until the TSA has received a complete Certificate. Once the account is established, all submissions concerning the account, including the deduction or transfer of allowances, shall be made by the account representative.

(3) Responsibilities.

(a) The responsibilities of the account representative include, but are not limited to, the transferring of allowances and the submission of monitoring plans, registrations, certification applications, sulfur dioxide emissions data and compliance reports as required by R307-250, and representing the source in all matters pertaining to the WEB Trading Program.

(b) Each submission under this program shall be signed and certified by the account representative for the WEB source. Each submission shall include the following truth and accuracy

certification statement by the account representative: "I am authorized to make this submission on behalf of the owners and operators of the WEB source for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(4) Changing the Account Representative or Owners and Operators.

(a) Changing the Account Representative or the alternate Account Representative. The account representative or alternate account representative may be changed at any time by sending a complete superseding certificate to the executive secretary and the TSA under R307-250-5(2). The change will be effective upon receipt of such certificate by the TSA. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous account representative or alternate prior to the time and date when the TSA receives the superseding certificate shall be binding on the new account representative and the owners and operators of the WEB source.

(b) Changes in Owner and Operator.

(i) Within thirty days of any change in the owners and operators of the WEB source, including the addition of a new owner or operator, the account representative shall submit a revised certificate amending the list of owners and operators to include such change.

(ii) In the event a new owner or operator of a WEB source is not included in the list of owners and operators submitted in the certificate, such new owner or operator shall be deemed to be subject to and bound by the certificate, the representations, actions, inactions, and submissions of the account representative of the WEB source, and the decisions, orders, actions, and inactions of the executive secretary as if the new owner or operator were included in the list.

R307-250-6. Registration.

(1) Deadlines.

(a) Each source that is a WEB source on or before the program trigger date shall register by submitting the initial certificate required in R307-250-5(2) to the executive secretary no later than 180 days after the program trigger date.

(b) Any existing source that becomes a WEB source after the program trigger date shall register by submitting the initial certificate required in R307-250-5(2) to the executive secretary no later than September 30 of the year following the inventory year in which the source exceeded the 100 tons sulfur dioxide emission threshold in R307-250-4(b).

(c) Any new WEB source shall register by submitting the initial certificate required in R307-250-5(2) to the executive secretary prior to commencing operation.

(2) Any allocation, transfer or deduction of allowances to or from the source's compliance account shall not require a revision of the WEB source's operating permit under R307-415.

R307-250-7. Allowance Allocations.

(1) The TSA will record the allowances for each WEB source in the source's compliance account once the allowances are allocated by the executive secretary under SIP Section XX.E.3.a through c. If applicable, the TSA will record a portion of the sulfur dioxide allowances for a WEB source in a special reserve compliance account to account for any allowances to be held by the source that conducts monitoring in accordance with R307-250-9(1)(b).

(2) The TSA will assign a serial number to each allowance in accordance with SIP Section XX.E.3.f.

(3) All allowances shall be allocated, recorded, transferred, or used as whole allowances. To determine the number of whole allowances, the number of allowances shall be rounded down for decimals less than 0.50 and rounded up for decimals of 0.50 or greater.

(4) An allowance is not a property right, and is a limited authorization to emit one ton of sulfur dioxide valid only for the purpose of meeting the requirements of R307-250. No provision of the WEB Trading Program or other law should be construed to limit the authority of the executive secretary to terminate or limit such authorization.

(5) Early Reduction Bonus Allocation. Any non-utility WEB source that installs new control technology and that reduces its permitted annual sulfur dioxide emissions to a level that is below the floor level allocation established for that source in SIP Section XX.E.3.a(1)(b)(i) or any utility that reduces its permitted annual sulfur dioxide emissions to a level that is below best available control technology may apply to the executive secretary for an early reduction bonus allocation. The bonus allocation shall be available for reductions that occur between 2003 and the program trigger year. The application must be submitted no later than 90 days after the program trigger date. Any WEB source that applies and receives early reduction bonus allocations must retain the records referenced in this section for a minimum of five years after the early reduction bonus allowance is certified in accordance with SIP Section XX.E.3.a(1)(c). The application for an early reduction bonus allocation must contain the following information:

(a) copies of all approval orders, operating permits or other enforceable documents that include annual sulfur dioxide emissions limits for the WEB source during the period the WEB source qualifies for an early reduction credit. Approval orders, permits, or enforceable documents must contain monitoring requirements for sulfur dioxide emissions that meet the specifications in R307-250-9(1)(a).

(b) demonstration that the floor level established for the source in SIP Section XX.E.3.a(1)(b)(i) for non-utilities or best available control technology for utilities was calculated using data that are consistent with monitoring methods specified in R307-250-9(1)(a). If needed, the demonstration shall include a new floor level calculation that is consistent with the monitoring methodology in R307-250-9.

(6) Request for Allowances for New WEB Sources or Modified WEB Sources.

(a) A new WEB source may apply to the executive secretary for an allocation from the new source set-aside, as outlined in SIP Section XX.E.3.c. A new WEB source is eligible for an annual floor allocation equal to the lower of the permitted annual sulfur dioxide emission limit for that source, or sulfur dioxide annual emissions calculated based on a level of control equivalent to best available control technology (BACT) and assuming 100 percent utilization of the WEB source, beginning with the first full calendar year of operation.

(b) An existing WEB source that has increased production capacity through a new approval order issued under R307-401 may apply to the executive secretary for an allocation from the new source set-aside, as outlined in SIP Section XX.E.3.c. An existing WEB source is eligible for an annual allocation equal to:

(i) the permitted annual sulfur dioxide emission limit for a new unit; or

(ii) the permitted annual sulfur dioxide emission increase for the WEB source due to the replacement of an existing unit with a new unit or the modification of an existing unit that increased production capacity of the WEB source.

(c) A source that has received a retired source exemption under R307-250-4(4) is not eligible for an allocation from the

new source set-aside.

(d) The application for an allocation from the new source set-aside must contain the following:

(i) for a new WEB source or a new unit under R307-250-7(6)(b)(i), documentation of the actual date of the commencement of operation and a copy of the approval order issued under R307-401;

(ii) for an existing WEB source under R307-250-7(6)(b)(ii), documentation of the production capacity of the source before and after the new permit.

R307-250-8. Establishment of Accounts.

(1) WEB EATS. All WEB sources are required to open a compliance account. Any person may open a general account for the purpose of holding and transferring allowances. In addition, if a WEB source conducts monitoring under R307-250-9(1)(b), the WEB source shall open a special reserve compliance account for allowances associated with units monitored under those provisions. To open any type of account, an application that contains the following information must be submitted to the TSA:

(a) the name, mailing address, e-mail address, telephone number, and facsimile number of the account representative. For a compliance account, the application shall include a copy of the certificate for the account representative and any alternate as required in R307-250-5(2)(b). For a general account, the application shall include the certificate for the account representative and any alternate as required in (3)(b) below.

(b) the WEB source or organization name;

(c) the type of account to be opened;

(d) identification of the specific units that are being monitored under R307-250-9(1)(b) and that must demonstrate compliance with the allowance limitation in the special reserve compliance account; and

(e) a signed certification of truth and accuracy by the account representative according to R307-250-5(3)(b) for compliance accounts and for general accounts, certification of truth and accuracy by the account representative according to (4) below.

(2) Account Representative for General Accounts. For a general account, one account representative must be identified and an alternate account representative may be identified and may act on behalf of the account representative. Any representation, action, inaction or submission by the alternate account representative will be deemed to be a representation, action, inaction or submission by the account representative.

(3) Identification and Certification of an Account Representative for General Accounts.

(a) The account representative shall be appointed by an agreement that makes the representations, actions, inactions or submissions of the account representative binding on all persons who have an ownership interest with respect to allowances held in the general account.

(b) The account representative shall submit to the TSA a signed and dated certificate that contains the following elements:

(i) the name, address, e-mail (if available), telephone and facsimile number of the account representative and any alternate;

(ii) the organization name, if applicable;

(iii) the following certification statement: "I certify that I was selected as the account representative or alternate account representative, as applicable, by an agreement binding on all persons who have an ownership interest in allowances in the general account with regard to matters concerning the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the WEB Trading Program on behalf of said persons and that each such person shall be fully bound by my representations, actions, inactions,

or submissions."

(c) Upon receipt by the TSA of the complete certificate, the account representative represents and, by his or her representations, actions, inactions, or submissions, legally binds each person who has an ownership interest in allowances held in the general account with regard to all matters concerning the general account. Such persons shall be bound by any decision or order issued by the executive secretary.

(d) A WEB EATS general account shall not be established until the TSA has received a complete certificate. Once the account is established, the account representative shall make all submissions concerning the account, including the deduction or transfer of allowances.

(4) Requirements and Responsibilities for General Accounts. Each submission for the general account shall be signed and certified by the account representative for the general account. Each submission shall include the following truth and accuracy certification statement by the account representative: "I am authorized to make this submission on behalf of all person who have an ownership interest in allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(5) Changing the Account Representative for General Accounts. The account representative or alternate account representative may be changed at any time by sending a complete superseding certificate to the executive secretary and the TSA under (3)(b) above. The change will take effect upon the receipt of the certificate by the TSA. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous account representative or alternate prior to the time and date when the TSA receives the superseding certificate shall be binding on the new account representative and all persons having ownership interest with respect to allowances held in the general account.

(6) Changes to the Account. Any change to the information required in the application for an existing account under (1) above shall require a revision of the application.

R307-250-9. Monitoring, Recordkeeping and Reporting.

(1) General Requirements on Monitoring Methods.

(a) For each sulfur dioxide emitting unit at a WEB source the WEB source shall comply with the following, as applicable, to monitor and record sulfur dioxide mass emissions.

(i) If a unit is subject to 40 CFR Part 75 under a requirement separate from the WEB Trading Program, the unit shall meet the requirements contained in Part 75 with respect to monitoring, recording and reporting sulfur dioxide mass emissions.

(ii) If a unit is not subject to 40 CFR Part 75 under a requirement separate from the WEB Trading Program, a unit shall use one of the following monitoring methods, as applicable:

(A) a continuous emission monitoring system (CEMS) for sulfur dioxide and flow that complies with all applicable monitoring provisions in 40 CFR Part 75;

(B) if the unit is a gas- or oil-fired combustion device, the accepted monitoring methodology in Appendix D to 40 CFR Part 75, or, if applicable, the low mass emissions (LME) provisions (with respect to sulfur dioxide mass emissions only) of 40 CFR 75.19;

(C) one of the optional WEB protocols, if applicable, in

Appendix B of State Implementation Plan Section XX, Regional Haze; or

(D) a petition for site-specific monitoring that the source submits for approval by the executive secretary and approval by the U.S. Environmental Protection Agency in accordance with R307-250-9(9).

(iii) A permanently retired unit shall not be required to monitor under this section if such unit was permanently retired and had no emissions for the entire control period and the account representative certifies in accordance with R307-250-12(2) that these conditions were met.

(b) Notwithstanding (a) above, a WEB source with a unit that meets one of the conditions of (i) below may submit a request to the executive secretary to have the provisions of this subsection (b) apply to that unit.

(i) Any of the following units may implement this subsection (b):

(A) any smelting operation where all of the emissions from the operation are not ducted to a stack; or

(B) any flare, except to the extent such flares are used as a fuel gas combustion device at a petroleum refinery; or

(C) any other type of unit without add-on sulfur dioxide control equipment, if the unit belongs to one of the following source categories: cement kilns, pulp and paper recovery furnaces, lime kilns, or glass manufacturing.

(ii) For each unit covered by this subsection (b), the account representative shall submit a notice to request that this subsection (b) apply to one or more sulfur dioxide emitting units at a WEB source. The notice shall be submitted in accordance with the deadlines specified in R307-250-9(6)(a), and shall include the following information (in a format specified by the executive secretary with such additional, related information as may be requested):

(A) a list of all units at the WEB source that identifies the units that are to be covered by this subsection (b);

(B) an identification of any such units that are permanently retired.

(iii) For each new unit at an existing WEB source for which the WEB source seeks to comply with this subsection (b) and for which the account representative applies for an allocation under the new source set-aside provisions of R307-250-7(6), the account representative shall submit a modified notice under (ii) above that includes such new sulfur dioxide emitting units. The modified request shall be submitted in accordance with the deadlines in R307-250-9(6)(a), but no later than the date on which a request is submitted under R307-250-7(6) for allocations from the set-aside.

(iv) The account representative for a WEB source shall submit an annual emissions statement for each unit under this subsection (b) pursuant to R307-250-9(8). The WEB source shall maintain operating records sufficient to estimate annual sulfur dioxide emissions in a manner consistent with the emission inventory submitted by the source for calendar year 2006. In addition, if the estimated emissions from all such units at the WEB source are greater than the allowances for the current control year held in the special reserve compliance account for the WEB source, the account representative shall report the extra amount as part of the annual report for the WEB source under R307-250-12 and shall obtain and transfer allowances into the special reserve compliance account to account for such emissions.

(v) R307-250-9(2) - (10) shall not apply to units covered by this paragraph except where otherwise noted.

(vi) A WEB source may opt to modify the monitoring for a sulfur dioxide emitting unit to use monitoring under (a) above, but any such monitoring change must take effect on January 1 of the next compliance year. In addition, the account representative must submit an initial monitoring plan at least 180 days prior to the date on which the new monitoring will

take effect and a detailed monitoring plan in accordance with (2) below. The account representative shall also submit a revised notice under R307-250-9(1)(b)(ii) at the same time that the initial monitoring plan is submitted.

(c) For any monitoring method that the WEB source uses under R307-250-9 including (b) above, the WEB source shall install, certify, and operate the equipment in accordance with this section, and record and report the data from the method as required in this section. In addition, the WEB source may not:

(i) except for an alternative approved by the EPA Administrator for a WEB source that implements monitoring under (a) above, use an alternative monitoring system, alternative reference method or another alternative for the required monitoring method without having obtained prior written approval in accordance with (9) below;

(ii) operate a sulfur dioxide emitting unit so as to discharge, or allow to be discharged, sulfur dioxide emissions to the atmosphere without accounting for these emissions in accordance with the applicable provisions of this section;

(iii) disrupt the approved monitoring method or any portion thereof, and thereby avoid monitoring and recording sulfur dioxide mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing or maintenance is performed in accordance with the applicable provisions of this section; or

(iv) retire or permanently discontinue use of an approved monitoring method, except under one of the following circumstances:

(A) during a period when the unit is exempt from the requirements of this Section, including retirement of a unit as addressed in (a)(iii) above;

(B) the WEB source is monitoring emissions from the unit with another certified monitoring method approved under this Section for use at the unit that provides data for the same parameter as the retired or discontinued monitoring method; or

(C) the account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with this Section, and the WEB source recertifies thereafter a replacement monitoring system in accordance with the applicable provisions of this Section.

(2) Monitoring Plan.

(a) General Provisions. A WEB source with a sulfur dioxide emitting unit that uses a monitoring method under (1)(a)(ii) above shall meet the following requirements.

(i) Prepare and submit to the executive secretary an initial monitoring plan for each monitoring method that the WEB source uses to comply with this Section. In accordance with (c) below, the plan shall contain sufficient information on the units involved, the applicable method, and the use of data derived from that method to demonstrate that all unit sulfur dioxide emissions are monitored and reported. The plan shall be submitted in accordance with the deadlines specified in (6) below.

(ii) Prepare, maintain and submit to the executive secretary a detailed monitoring plan in accordance with the deadlines specified in (6) below. The plan will contain the applicable information required by (d) below. The executive secretary may require that the monitoring plan or portions of it be submitted electronically. The executive secretary may also require that the plan be submitted on an ongoing basis in electronic format as part of the quarterly report submitted under (8)(a) below or resubmitted separately within 30 days after any change is made to the plan in accordance with (iii) below.

(iii) Whenever a WEB source makes a replacement, modification, or change in one of the systems or methodologies provided for in (1)(a)(ii) above, including a change in the automated data acquisition and handling system or in the flue gas handling system, that affects information reported in the monitoring plan, such as a change to serial number for a

component of a monitoring system, then the WEB source shall update the monitoring plan.

(b) A WEB source with a sulfur dioxide emitting unit that uses a method under (1)(a)(i) above shall meet the requirements of this subsection (2) by preparing, maintaining and submitting a monitoring plan in accordance with the requirements of 40 CFR Part 75. If requested, the WEB source also shall submit the entire monitoring plan to the executive secretary.

(c) Initial Monitoring Plan. The account representative shall submit an initial monitoring plan for each sulfur dioxide emitting unit or group of units sharing a common methodology that, except as otherwise specified in an applicable provision in Appendix B of State Implementation Plan Section XX, contains the following information:

(i) For all sulfur dioxide emitting units:

(A) plant name and location;

(B) plant and unit identification numbers assigned by the executive secretary;

(C) type of unit, or units for a group of units using a common monitoring methodology;

(D) identification of all stacks or pipes associated with the monitoring plan;

(E) types of fuels fired or sulfur containing process materials used in the sulfur dioxide emitting unit, and the fuel classification of the unit if combusting more than one type of fuel and using a 40 CFR Part 75 methodology;

(F) types of emissions controls for sulfur dioxide installed or to be installed, including specifications of whether such controls are pre-combustion, post-combustion, or integral to the combustion process;

(G) maximum hourly heat input capacity, or process throughput capacity, if applicable;

(H) identification of all units using a common stack; and

(I) indicator of whether any stack identified in the plan is a bypass stack.

(ii) For each unit and parameter required to be monitored, identification of monitoring methodology information, consisting of monitoring methodology, monitor locations, substitute data approach for the methodology, and general identification of quality assurance procedures. If the proposed methodology is a specific methodology submitted pursuant to (1)(a)(ii)(D) above, the description under this paragraph shall describe fully all aspects of the monitoring equipment, installation locations, operating characteristics, certification testing, ongoing quality assurance and maintenance procedures, and substitute data procedures.

(iii) If a WEB source intends to petition for a change to any specific monitoring requirement otherwise required under this Section, such petition may be submitted as part of the initial monitoring plan.

(iv) The executive secretary may issue a notice of approval or disapproval of the initial monitoring plan based on the compliance of the proposed methodology with the requirements for monitoring in this Section.

(d) Detailed Monitoring Plan. The account representative shall submit a detailed monitoring plan that, except as otherwise specified in an applicable provision in Appendix C of State Implementation Plan Section XX, the Regional Haze SIP, shall contain the following information:

(i) Identification and description of each monitoring component (including each monitor and its identifiable components, such as analyzer or probe) in a continuous emissions monitoring system (e.g., sulfur dioxide pollutant concentration monitor, flow monitor, moisture monitor), a 40 CFR Part 75, Appendix D monitoring system (e.g., fuel flowmeter, data acquisition and handling system), or a protocol in Appendix B of SIP Section XX, including:

(A) manufacturer, model number and serial number;

(B) component and system identification code assigned by

the facility to each identifiable monitoring component, such as the analyzer and/or probe;

(C) designation of the component type and method of sample acquisition or operation such as in situ pollutant concentration monitor or thermal flow monitor;

(D) designation of the system as a primary or backup system;

(E) first and last dates the system reported data;

(F) status of the monitoring component; and

(G) parameter monitored.

(ii) Identification and description of all major hardware and software components of the automated data acquisition and handling system, including:

(A) hardware components that perform emission calculations or store data for quarterly reporting purposes, including the manufacturer and model number; and

(B) identification of the provider and model or version number of the software components.

(iii) Explicit formulas for each measured emissions parameter, using component or system identification codes for the monitoring system used to measure the parameter that links the system observations with the reported concentrations and mass emissions. The formulas must contain all constants and factors required to derive mass emissions from component or system code observations and an indication of whether the formula is being added, corrected, deleted, or is unchanged. The WEB source with a low mass emissions unit for which the WEB source is using the optional low mass emissions excepted methodology in 40 CFR Part 75.19(c) is not required to report such formulas.

(iv) For units with flow monitors only, the inside cross-sectional area in square feet at the flow monitoring location.

(v) If using CEMS for sulfur dioxide and flow, for each parameter monitored, include the scale, maximum potential concentration and method of calculation, maximum expected concentration, if applicable, and method of calculation, maximum potential flow rate and method of calculations, span value, full-scale range, daily calibration units of measure, span effective date and hour, span inactivation date and hour, indication of whether dual spans are required, default high range value, flow rate span, and flow rate span value and full scale value in standard cubic feet per hour for each unit or stack using sulfur dioxide or flow component monitors.

(vi) If the monitoring system or excepted methodology provides for use of a constant, assumed, or default value for a parameter under specific circumstances, then include the following information for each value of such parameter:

(A) identification of the parameter;

(B) default, maximum, minimum, or constant value, and units of measure for the value;

(C) purpose of the value;

(D) indicator of use during controlled and uncontrolled hours;

(E) types of fuel;

(F) source of the value;

(G) value effective date and hour;

(H) date and hour value is no longer effective, if applicable; and

(I) for units using the excepted methodology under 40 CFR 75.19, the applicable sulfur dioxide emission factor.

(vii) Unless otherwise specified in subsection 6.5.2.1 of Appendix A to 40 CFR Part 75, for each unit or common stack on which continuous emissions monitoring system hardware are installed:

(A) the upper and lower boundaries of the range of operation as defined in subsection 6.5.2.1 of Appendix A to 40 CFR Part 75, or thousands of pounds per hour (lb/hr) of steam, or feet per second (ft/sec), as applicable;

(B) the load or operating level(s) designated as normal in

subsection 6.5.2.1 of Appendix A to 40 CFR Part 75, or thousands of lb/hr of steam, or ft/sec, as applicable;

(C) the two load or operating levels (i.e., low, mid, or high) identified in subsection 6.5.2.1 of Appendix A to 40 CFR Part 75 as the most frequently used;

(D) the date of the data analysis used to determine the normal load (or operating) level(s) and the two most frequently-used load or operating levels; and

(E) activation and deactivation dates when the normal load or operating levels change and are updated.

(viii) For each unit that is complying with 40 CFR Part 75 for which the optional fuel flow-to-load test in subsection 2.1.7 of Appendix D to 40 CFR Part 75 is used:

(A) the upper and lower boundaries of the range of operation as defined in subsection 6.5.2.1 of Appendix A to 40 CFR Part 75, expressed in thousands of lb/hr of steam;

(B) the load level designated as normal, pursuant to subsection 6.5.2.1 of Appendix A to 40 CFR Part 75, expressed in thousands of lb/hr of steam; and

(C) the date of the load analysis used to determine the normal load level.

(ix) Information related to quality assurance testing, including, as applicable: identification of the test strategy; protocol for the relative accuracy test audit; other relevant test information; calibration gas levels expressed as percent of span for the calibration error test and linearity check; and calculations for determining maximum potential concentration, maximum expected concentration if applicable, maximum potential flow rate, and span.

(x) If applicable, apportionment strategies under sections 75.10 through 75.18 of 40 CFR Part 75.

(xi) Description of site locations for each monitoring component in a monitoring system, including schematic diagrams and engineering drawings and any other documentation that demonstrates each monitor location meets the appropriate siting criteria. For units monitored by a continuous emission monitoring system, diagrams shall include:

(A) a schematic diagram identifying entire gas handling system from unit to stack for all units, using identification numbers for units, monitor components, and stacks corresponding to the identification numbers provided in the initial monitoring plan and (i) and (iii) above. The schematic diagram must depict the height of any monitor locations. Comprehensive and/or separate schematic diagrams shall be used to describe groups of units using a common stack; and

(B) stack and duct engineering diagrams showing the dimensions and locations of fans, turning vanes, air preheaters, monitor components, probes, reference method sampling ports, and other equipment that affects the monitoring system location, performance, or quality control checks.

(xii) A data flow diagram denoting the complete information handling path from output signals of CEMS components to final reports.

(e) In addition to supplying the information in (c) and (d) above, the WEB source with a sulfur dioxide emitting unit using either of the methodologies in (1)(a)(ii)(B) above shall include the following information in its monitoring plan for the specific situations described:

(i) For each gas-fired or oil-fired sulfur dioxide emitting unit for which the WEB source uses the optional protocol in Appendix D to 40 CFR Part 75 for sulfur dioxide mass emissions, the Account Representative shall include the following information in the monitoring plan:

(A) parameter monitored;

(B) type of fuel measured, maximum fuel flow rate, units of measure, and basis of maximum fuel flow rate expressed as the upper range value or unit maximum for each fuel flowmeter;

(C) test method used to check the accuracy of each fuel flowmeter;

(D) submission status of the data;
 (E) monitoring system identification code;
 (F) the method used to demonstrate that the unit qualifies for monthly gross calorific value (GCV) sampling or for daily or annual fuel sampling for sulfur content, as applicable;

(G) a schematic diagram identifying the relationship between the unit, all fuel supply lines, the fuel flowmeters, and the stacks. The schematic diagram must depict the installation location of each fuel flowmeter and the fuel sampling locations. Comprehensive or separate schematic diagrams shall be used to describe groups of units using a common pipe;

(H) for units using the optional default sulfur dioxide emission rate for "pipeline natural gas" or "natural gas" in appendix D to 40 CFR Part 75, the information on the sulfur content of the gaseous fuel used to demonstrate compliance with either subsection 2.3.1.4 or 2.3.2.4 of Appendix D to 40 CFR Part 75;

(I) for units using the 720 hour test under subsection 2.3.6 of Appendix D to 40 CFR Part 75 to determine the required sulfur sampling requirements, report the procedures and results of the test; and

(J) for units using the 720 hour test under subsection 2.3.5 of Appendix D to 40 CFR Part 75 to determine the appropriate fuel GCV sampling frequency, report the procedures used and the results of the test.

(ii) For each sulfur dioxide emitting unit for which the WEB source uses the low mass emission excepted methodology of 40 CFR 75.19, the WEB source shall include the information in (A) through (F) in the monitoring plan that accompanies the initial certification application.

(A) The results of the analysis performed to qualify as a low mass emissions unit under 40 CFR 75.19(c). This report will include either the previous three years' actual or projected emissions. The report will include the current calendar year of application; the type of qualification; years one, two, and three; annual measured, estimated or projected sulfur dioxide mass emissions for years one, two, and three; and annual operating hours for years one, two, and three.

(B) A schematic diagram identifying the relationship between the unit, all fuel supply lines and tanks, any fuel flowmeters, and the stacks. Comprehensive or separate schematic diagrams shall be used to describe groups of units using a common pipe.

(C) For units which use the long term fuel flow methodology under 40 CFR 75.19(c)(3), a diagram of the fuel flow to each unit or group of units and a detailed description of the procedures used to determine the long term fuel flow for a unit or group of units for each fuel combusted by the unit or group of units.

(D) A statement that the unit burns only gaseous fuels or fuel oil and a list of the fuels that are burned or a statement that the unit is projected to burn only gaseous fuels or fuel oil and a list of the fuels that are projected to be burned.

(E) A statement that the unit meets the applicability requirements in 40 CFR 75.19(a) and (b) with respect to sulfur dioxide emissions.

(F) Any unit historical actual, estimated and projected sulfur dioxide emissions data and calculated sulfur dioxide emissions data demonstrating that the unit qualifies as a low mass emissions unit under 40 CFR 75.19(a) and (b).

(iii) For each gas-fired unit, the account representative shall include the following in the monitoring plan: current calendar year, fuel usage data as specified in the definition of gas-fired in 40 CFR 72.2, and an indication of whether the data are actual or projected data.

(f) The specific elements of a monitoring plan under this section shall not be part of a WEB source's operating permit issued under R307-415, and modifications to the elements of the plan shall not require a permit modification.

(3) Certification and Recertification.

(a) All monitoring systems are subject to initial certification and recertification testing as specified in 40 CFR Part 75 or Appendix B of State Implementation Plan Section XX, as applicable. Certification or recertification of a monitoring system by the U.S. EPA for a WEB source that is subject to 40 CFR Part 75 under a requirement separate from this Rule shall constitute certification under the WEB Trading Program.

(b) The WEB source with a sulfur dioxide emitting unit not otherwise subject to 40 CFR Part 75 that monitors sulfur dioxide mass emissions in accordance with 40 CFR Part 75 to satisfy the requirements of this section shall perform all of the tests required by that regulation and shall submit the following to the executive secretary:

(i) a test notice, not later than 21 days before the certification testing of the monitoring system, provided that the executive secretary may establish additional requirements for adjusting test dates after this notice as part of the approval of the initial monitoring plan under (2)(c) above; and

(ii) an initial certification application within 45 days after testing is complete.

(c) A monitoring system will be considered provisionally certified while the application is pending.

(d) Upon receipt of a disapproval of the certification of a monitoring system or component, the certification is revoked. The data measured and recorded shall not be considered valid quality-assured data from the date of issuance of the notification of revocation until the WEB source completes a subsequently-approved certification or re-certification test in accordance with the procedures in this rule. The WEB source shall apply the substitute data procedures in this rule to replace all of the invalid data for each disapproved system or component.

(4) Ongoing Quality Assurance and Quality Control. The WEB source shall satisfy the applicable quality assurance and quality control requirements of 40 CFR Part 75 or, if the WEB source is subject to a WEB protocol in Appendix B of State Implementation Plan Section XX, the applicable quality assurance and quality control requirements in Appendix B of State Implementation Plan Section XX on and after the date that certification testing commences.

(5) Substitute Data Procedures.

(a) For any period after certification testing is complete in which quality assured, valid data are not being recorded by a monitoring system certified and operating in accordance with R307-250, missing or invalid data shall be replaced with substitute data in accordance with 40 CFR Part 75 or, if the WEB source is subject to a WEB protocol in Appendix B of State Implementation Plan Section XX, with substitute data in accordance with that Appendix.

(b) For a sulfur dioxide emitting unit that does not have a certified or provisionally certified monitoring system in place as of the beginning of the first control period for which the unit is subject to the WEB Trading Program, the WEB source shall use one of the following procedures.

(i) If the WEB source will use a continuous emissions monitoring system to comply with this Section, substitute the maximum potential concentration of sulfur dioxide for the unit and the maximum potential flow rate, as determined in accordance with 40 CFR Part 75. The procedures for conditional data validation under section 75.20(b)(3) may be used for any monitoring system under this Rule that uses these 40 CFR Part 75 procedures, as applicable.

(ii) If the WEB source will use the 40 CFR Part 75 Appendix D methodology, substitute the maximum potential sulfur content, density or gross calorific value for the fuel and the maximum potential fuel flow rate, in accordance with section 2.4 of Appendix D to 40 CFR Part 75.

(iii) If the WEB source will use the 40 CFR Part 75

methodology for low mass emissions units, substitute the sulfur dioxide emission factor required for the unit as specified in 40 CFR 75.19 and the maximum rated hourly heat input, as defined in 40 CFR 72.2.

(iv) If using a protocol in Appendix B of State Implementation Plan Section XX, follow the procedures in the applicable protocol.

(6) Deadlines.

(a) The initial monitoring plan required under R307-250-9(2)(a)(i) shall be submitted by the following dates:

(i) for each source that is a WEB source on or before the program trigger date, the monitoring plan shall be submitted 180 days after such program trigger date.

(ii) for any existing source that becomes a WEB source after the program trigger date, the monitoring plan shall be submitted by September 30 of the year following the inventory year in which the source exceeded the 100 tons per year sulfur dioxide emissions threshold in R307-250-4(b).

(iii) for any new WEB source, the monitoring plan shall be included with the notice of intent required by R307-401.

(b) The detailed monitoring plan required under R307-250-9(2)(a)(ii) shall be submitted no later than 45 days prior to commencing certification testing in accordance with (c) below. Modifications to the monitoring plan shall be submitted within 90 days of implementing revised monitoring plans.

(c) Emission monitoring systems shall be installed, operational and shall have met all of the certification testing requirements of R307-250-9(3), including any referenced in Appendix B of State Implementation Plan Section XX, by the following dates:

(i) for each source that is a WEB source on or before the program trigger date, two years prior to the start of the first control period as described in R307-250-12.

(ii) for any existing source that becomes a WEB source after the program trigger date, one year after the due date for the monitoring plan under (6)(a)(ii) above.

(iii) for any new WEB source or any new unit at a WEB source, the earlier of 90 unit operating days or 180 calendar days after the date the new source commences operation.

(d) The WEB source shall submit test notices and certification applications in accordance with the deadlines set forth in R307-250-9(3)(b).

(e) For each control period, the WEB source shall submit each quarterly report no later than 30 days after the end of each calendar quarter, and shall submit each annual report no later than 60 days after the end of each calendar year.

(7) Recordkeeping.

(a) The WEB source shall keep copies of all reports, registration materials, compliance certifications, sulfur dioxide emissions data, quality assurance data, and other submissions under this Rule for a period of five years. In addition, the WEB source shall keep a copy of all certificates for the duration of the WEB Trading Program. Unless otherwise requested by the WEB source and approved by the executive secretary, the copies shall be kept on site.

(b) The WEB source shall keep records of all operating hours, quality assurance activities, fuel sampling measurements, hourly averages for sulfur dioxide, stack flow, fuel flow, or other continuous measurements, as applicable, and any other applicable data elements specified in this section or in Appendix B of State Implementation Plan Section XX. The WEB source shall maintain the applicable records specified in 40 CFR Part 75 for any sulfur dioxide emitting unit that uses a Part 75 monitoring method to meet the requirements of this Section.

(8) Reporting.

(a) Quarterly Reports. For each sulfur dioxide emitting unit, the account representative shall submit a quarterly report within thirty days after the end of each calendar quarter. The report shall be in a format specified by the executive secretary,

including hourly and quality assurance activity information, and shall be submitted in a manner compatible with the WEB EATS. If the WEB source submits a quarterly report under 40 CFR Part 75 to the U.S. EPA Administrator, no additional report under this paragraph (a) shall be required. The executive secretary may require that a copy of that report or a separate statement of quarterly and cumulative annual sulfur dioxide mass emissions be submitted separately.

(b) Annual Report. Based on the quarterly reports, each WEB source shall submit an annual statement of total annual sulfur dioxide emissions for all sulfur dioxide emitting units at the source. The annual report shall identify total emissions for all units monitored in accordance with (1)(a) above and the total emissions for all units with emissions estimated in accordance with (1)(b) above. The annual report shall be submitted within 60 days after the end of a control period.

(c) If directed by the executive secretary, monitoring plans, reports, certifications or recertifications, or emissions data required to be submitted under this section also shall be submitted to the TSA.

(d) If the executive secretary rejects any report submitted under this subsection that contains errors or fails to satisfy the requirements of this section, the account representative shall resubmit the report to correct any deficiencies.

(9) Petitions. A WEB source may petition for an alternative to any requirement specified in (1)(a)(ii) above. The petition shall require approval of the executive secretary and the Administrator. Any petition submitted under this paragraph shall include sufficient information for the evaluation of the petition, including, at a minimum, the following information:

(a) identification of the WEB source and applicable sulfur dioxide emitting unit(s);

(b) a detailed explanation of why the proposed alternative is being suggested in lieu of the requirement;

(c) a description and diagram of any equipment and procedures used in the proposed alternative, if applicable; and

(d) a demonstration that the proposed alternative is consistent with the purposes of the requirement for which the alternative is proposed, is consistent with the purposes of R307-250, and that any adverse effect of approving such alternative will be de minimis; and

(e) any other relevant information that the executive secretary may require.

(10) For any monitoring plans, reports, or other information submitted under this Rule, the account representative shall ensure that, where applicable, identifying information is consistent with the identifying information provided in the most recent certificate for the WEB source submitted under R307-250-5.

R307-250-10. Allowance Transfers.

(1) Procedure. To transfer allowances, the account representative shall submit the following information to the TSA:

(a) the number or numbers identifying the transferor account;

(b) the number or numbers identifying the transferee account;

(c) the serial number of each allowance to be transferred; and

(d) the transferor's account representative's name, signature, and the date of submission.

(2) Allowance Transfer Deadline. The allowance transfer deadline is midnight Pacific Standard Time on March 1 of each year, or, if this date is not a business day, midnight of the first business day thereafter, following the end of the control period. By this time, the transfer of the allowances into the WEB source's compliance account must be correctly submitted to the TSA in order to demonstrate compliance under R307-250-12 for

that control period.

(3) Retirement of Allowances. To permanently retire allowances, the transferor's account representative shall submit the following information to the TSA:

(a) the transfer account number identifying the transferor account;

(b) the serial number of each allowance to be retired; and

(c) the transferor's account representative's name, signature, and the date of submission accompanied by a signed statement acknowledging that each retired allowance is no longer available for future transfers from or to any account.

(4) Special Reserve Compliance Accounts. Allowances shall not be transferred out of special reserve compliance accounts. Allowances may be transferred into special reserve compliance accounts in accordance with the procedures in paragraph (1) above.

R307-250-11. Use of Allowances from a Previous Year.

(1) Any allowance that is held in a compliance account or general account will remain in the account until the allowance is either deducted in conjunction with the compliance process, or transferred to another account.

(2) In order to demonstrate compliance under R307-250-12(1) for a control period, WEB sources shall only use allowances allocated for that control period or any previous year.

(3) If flow control procedures for the current control period have been triggered as outlined in SIP Section XX.E.3.h(2), then the use of allowances that were allocated for any previous year will be limited in the following ways.

(a) The number of allowances that are held in each compliance account and general account as of the allowance transfer deadline for the immediately previous year and that were allocated for any previous year will be determined.

(b) The number determined in (a) above will be multiplied by the flow control ratio established in accordance with SIP Section XX.E.3.h to determine the number of allowances that were allocated for a previous year that can be used without restriction for the current control period.

(c) Allowances that were allocated for a previous year in excess of the number determined in (b) above may also be used for the current control period. If such allowances are used to make a deduction, two allowances must be deducted for each deduction of one allowance required under R307-250-12.

(4) Special provisions for the year 2018. After compliance with the 2017 allowance limitation has been determined in accordance with R307-250-12(1), allowances allocated for any year prior to 2018 shall not be used for determining compliance with the 2018 allowance limitation or any future allowance limitation.

(5) Special Reserve Compliance Accounts. Unused allowances in any special reserve compliance account will be retired after the compliance deductions under R307-250-12 have been completed for each control period, and shall not be available for use in any future control period.

R307-250-12. Compliance.

(1) Compliance with Allowance Limitations.

(a) The WEB source must hold allowances, in accordance with (b) and (c) below and R307-250-11, as of the allowance transfer deadline in the WEB source's compliance account, together with any current control year allowances held in the WEB source's special reserve compliance account under R307-250-9(1)(b), in an amount not less than the total sulfur dioxide emissions for the control period from the WEB source, as determined under the monitoring and reporting requirements of R307-250-9.

(i) For each source that is a WEB source on or before the program trigger date, the first control period is the calendar year

that is six years following the calendar year for which sulfur dioxide emissions exceeded the milestone as determined in accordance with SIP Section XX.E.1.

(ii) For any existing source that becomes a WEB source after the program trigger date, the first control period is the calendar year that is four years following the inventory year in which the source became a WEB source.

(iii) For any new WEB source after the program trigger date, the first control period is the first full calendar year that the source is in operation.

(iv) If the WEB Trading Program is triggered in accordance with the 2013 review procedures in SIP Section XX.E.1.d, the first control period for each source that is a WEB source on or before the program trigger date is the year 2018.

(b) Allowance transfer deadline. An allowance may only be deducted from the WEB source's compliance account if:

(i) the allowance was allocated for the current control period or meets the requirements in R307-250-11 for use of allowances from a previous control period, and

(ii) the allowance was held in the WEB source's compliance account as of the allowance transfer deadline for the current control period, or was transferred into the compliance account by an allowance transfer correctly submitted for recording by the allowance transfer deadline for the current control period.

(c) Compliance with allowance limitations shall be determined as follows.

(i) The total annual sulfur dioxide emissions for all sulfur dioxide emitting units at the source that are monitored under R307-250-9(1)(b), as reported by the source to the executive secretary, in accordance with R307-250-9, and recorded in the WEB EATS shall be compared to the allowances held in the source's special reserve compliance account as of the allowance transfer deadline for the current control period, adjusted in accordance with R307-250-11. If the emissions are equal to or less than the allowances in such account, all such allowances shall be retired to satisfy the obligation to hold allowances for such emissions. If the total emissions from such units exceed the allowances in such special reserve compliance account, the WEB source shall account for such excess emissions in the following paragraph (ii).

(ii) The total annual sulfur dioxide emissions for all sulfur dioxide emitting units at the source that are monitored under R307-250-9(1)(a), as reported by the source to the executive secretary in accordance with R307-250-9 and recorded in the WEB EATS, together with any excess emissions as calculated in the preceding paragraph (i), shall be compared to the allowances held in the source's compliance account as of the allowance transfer deadline for the current control period, adjusted in accordance with R307-250-11.

(iii) If the comparison in paragraph (ii) above results in emissions that exceed the allowances held in the source's compliance account, the source has exceeded its allowance limitation and the excess emissions are subject to the allowance deduction penalty in R307-250-12(3)(a).

(d) Other than allowances in a special reserve compliance account for units monitored under R307-250-9(1)(b), to the extent consistent with R307-250-11, allowances shall be deducted for a WEB source for compliance with the allowance limitation as directed by the WEB source's account representative. Deduction of any other allowances as necessary for compliance with the allowance limitation shall be on a first-in, first-out accounting basis in the order of the date and time of their recording in the WEB source's compliance account, beginning with the allowances allocated to the WEB source and continuing with the allowances transferred to the WEB source's compliance account from another compliance account or general account. The allowances held in a special reserve compliance account pursuant to R307-250-9(1)(b) shall be deducted as

specified in paragraph (c)(i) above.

(2) Certification of Compliance.

(a) For each control period in which a WEB source is subject to the allowance limitation, the account representative of the source shall submit to the executive secretary a compliance certification report for the source.

(b) The compliance certification report shall be submitted no later than the allowance transfer deadline of each control period, and shall contain the following:

(i) identification of each WEB source;

(ii) at the account representative's option, the serial numbers of the allowances that are to be deducted from a source's compliance account or special reserve compliance account for compliance with the allowance limitation; and

(iii) the compliance certification report according to (c) below.

(c) In the compliance certification report, the account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the WEB source in compliance with the WEB Trading Program, whether the WEB source for which the compliance certification is submitted was operated in compliance with the requirements of the WEB Trading Program applicable to the source during the control period covered by the report, including:

(i) whether the WEB source operated in compliance with the sulfur dioxide allowance limitation;

(ii) whether sulfur dioxide emissions data was submitted to the executive secretary in accordance with R307-250-9(8) and other applicable requirements for review, revision as necessary, and finalization;

(iii) whether the monitoring plan for the WEB source has been maintained to reflect the actual operation and monitoring of the source, and contains all information necessary to attribute sulfur dioxide emissions to the source, in accordance with R307-250-9(2);

(iv) whether all the sulfur dioxide emissions from the WEB source if applicable, were monitored or accounted for either through the applicable monitoring or through application of the appropriate missing data procedures;

(v) if applicable, whether any sulfur dioxide emitting unit for which the WEB source is not required to monitor in accordance with R307-250-9(1)(a)(iii) of this rule remained permanently retired and had no emissions for the entire applicable period; and

(vi) whether there were any changes in the method of operating or monitoring the WEB source that required monitor recertification. If there were any such changes, the report must specify the nature, reason, and date of the change, the method to determine compliance status subsequent to the change, and specifically, the method to determine sulfur dioxide emissions.

(3) Penalties for Any WEB Source Exceeding Its Allowance Limitations.

(a) Allowance Deduction Penalty.

(i) An allowance deduction penalty will be assessed equal to three times the number of the WEB source's tons of sulfur dioxide emissions in excess of its allowance limitation for a control period, determined in accordance with R307-250-12(1). Allowances allocated for the following control period in the amount of the allowance deduction penalty will be deducted from the source's compliance account. If the compliance account does not have sufficient allowances allocated for that control period, the required number of allowances will be deducted from the WEB source's compliance account regardless of the control period for which they were allocated, once allowances are recorded in the account.

(ii) Any allowance deduction required under R307-250-12(1)(c) shall not affect the liability of the owners and operators of the WEB source for any fine, penalty or assessment or their obligation to comply with any other remedy, for the same

violation, as ordered under the Clean Air Act, implementing regulations or Utah Code 19-2. Accordingly, a violation can be assessed each day of the control period for each ton of sulfur dioxide emissions in excess of its allowance limitation, or for each other violation of R307-250.

(4) Liability.

(a) WEB Source liability for non-compliance. Separate and regardless of any allowance deduction penalty, a WEB source that violates any requirement of this Rule is subject to civil and criminal penalties under Utah Code 19-2. Each day of the control period is a separate violation, and each ton of sulfur dioxide emissions in excess of a source's allowance limitation is a separate violation.

(b) General Liability.

(i) Any provision of the WEB Trading Program that applies to a source or an account representative shall apply also to the owners and operators of such source.

(ii) Any person who violates any requirement or prohibition of the WEB Trading Program will be subject to enforcement pursuant to Utah Code 19-2.

(iii) Any person who knowingly makes a false material statement in any record, submission, or report under this WEB Trading Program shall be subject to criminal enforcement pursuant to the Utah Code.

R307-250-13. Special Penalty Provisions for the 2018 Milestone.

(1) If the WEB Trading Program is triggered as outlined in SIP Section XX.E.1, and the first control period will not occur until after the year 2018, the following provisions shall apply for the 2018 emissions year.

(a) All WEB sources shall register, and shall open a compliance account within 180 days after the program trigger date, in accordance with R307-250-6(1) and R307-250-8.

(b) The TSA will record the allowances for the 2018 control period for each WEB source in the source's compliance account once the executive secretary allocates the 2018 allowances under SIP Section XX.E.3.a and XX.E.4.

(c) The allowance transfer deadline is midnight Pacific Standard Time on May 31, 2021 (or if this date is not a business day, midnight of the first business day thereafter). WEB sources may transfer allowances as provided in R307-250-10(1) until the allowance transfer deadline.

(d) A WEB source must hold allowances allocated for 2018, including those transferred into the compliance account or a special reserve account by an allowance transfer correctly submitted by the allowance transfer deadline, in an amount not less than the WEB source's total sulfur dioxide emissions for 2018. Emissions will be determined using the pre-trigger monitoring provisions in SIP Section XX.E.2, and R307-150

(e) In accordance with R307-250-11(4) and (d) above, the executive secretary will seek a minimum financial penalty of \$5,000 per ton of sulfur dioxide emissions in excess of the WEB source's allowance limitation.

(i) Any source may resolve its excess emissions violation by agreeing to a streamline settlement approach where the source pays a penalty of \$5,000 per ton or partial ton of excess emissions, and payment is received within 90 calendar days after the issuance of a notice of violation.

(ii) Any source that does not resolve its excess emissions violation in accordance with the streamlined settlement approach in (i) above will be subject to enforcement action in which the executive secretary will seek a financial penalty for the excess emissions based on the statutory maximum civil penalties.

(f) Each ton of sulfur dioxide emissions in excess of a source's allowance limitation is a separate violation and each day of a control period is a separate violation.

(2) The provisions in R307-250-13 shall continue to apply

for each year after the 2018 emission year until:

(a) the first control period under the WEB trading program; or

(b) the executive secretary determines, in accordance with SIP Section XX.E.1.c(10), that the 2018 sulfur dioxide milestone has been met.

(3) If the special penalty provisions continue after the year 2018 as outlined in (2) above, the deadlines listed in (1)(b) through (e) above will be adjusted as follows:

(i) for the 2019 control period the dates will be adjusted forward by one year, except that the allowance transfer deadline shall be midnight Pacific Standard Time on May 31, 2021 (or if this date is not a business day, midnight of the first business day thereafter); and

(ii) for each control period after 2018 that the special penalty provisions are assessed, the dates in (i) above for the 2019 control period will be adjusted forward by one year.

(4) The TSA will record the same number of allowances for each WEB source as were recorded for the 2018 control period for each subsequent control period.

R307-250-14. Integration into Permits.

(1) Initial Permitting. Each source that is a WEB source on or before the program trigger date shall follow the procedures outlined in R307-415 to incorporate all of the applicable requirements of this rule into the permit issued to it under R307-415.

(2) Post Trigger Permitting.

(a) New WEB Source. Any existing source that becomes a WEB source after the program trigger date shall submit a Notice of Intent pursuant to R307-401 to incorporate all of the requirements of this rule into an approval order issued under R307-401 within 90 days of the date the source became a WEB source, and shall follow the procedures of R307-415 to obtain an operating permit.

(b) WEB Sources No Longer Subject to Permitting Under R307-415. If a WEB source's permit issued under R307-415 ceases to be effective or required, the WEB source must submit a Notice of Intent pursuant to R307-401 to incorporate all of the requirements of this rule into an approval order issued under R307-401 within 90 days of the date the permit issued under R307-415 ceased to be effective or required.

**KEY: air pollution, sulfur dioxide, market trading program
November 10, 2008 19-2-104(1)(a)
Notice of Continuation February 8, 2008 19-2-104(3)(e)**

R307. Environmental Quality, Air Quality.**R307-328. Gasoline Transfer and Storage.****R307-328-1. Purpose.**

The purpose of R307-328 is to establish Reasonably Available Control Technology (RACT) for control of gasoline vapors during the filling of gasoline transport vehicles and storage tanks in Utah. The rule is based on federal control technique guidance documents. This requirement is commonly referred to as stage I vapor recovery.

R307-328-2. Applicability.

(1) Transport Vehicles. R307-328 applies to the owner or operator of any gasoline tank truck, railroad tank car, or other gasoline transport vehicle that loads or unloads gasoline in Utah.

(2) Gasoline Dispensing. R307-328 applies to the owner or operator of any bulk terminal, bulk plant, stationary storage container, or service station located in Utah that dispenses 10,000 gallons or more in any one calendar month.

(3) This rule applies to all transport vehicles and dispensing facilities that operate within Utah according to the compliance schedule defined in section 328-9 of this rule.

R307-328-3. Definitions.

The following additional definitions apply to R307-328.

"Bottom Filling" means the filling of a tank through an inlet at or near the bottom of the tank designed to have the opening covered by the liquid after the pipe normally used to withdraw liquid can no longer withdraw any liquid.

"Qualified contractor" means a contractor who has been qualified by the executive secretary in accordance with R307-342 to perform vapor tightness tests on gasoline transport vehicles.

"Submerged Fill Pipe" means any fill pipe with a discharge opening which is entirely submerged when the liquid level is 6 inches above the bottom of the tank and the pipe normally used to withdraw liquid from the tank can no longer withdraw any liquid.

R307-328-4. Loading of Tank Trucks, Trailers, Railroad Tank Cars, and Other Transport Vehicles.

(1) No person shall load or permit the loading of gasoline into any tank truck, trailer, railroad tank car, or other transport vehicle unless the emissions from such vehicle are controlled by use of a vapor collection and control system and submerged or bottom filling. RACT shall be required and in no case shall vapor emissions to the atmosphere exceed 0.640 pounds per 1,000 gallons transferred.

(2) Such vapor collection and control system shall be properly installed and maintained.

(3) The loading device shall not leak.

(4) The loading device shall utilize the dry-break loading design couplings and shall be maintained and operated to allow no more than an average of 15 cc drainage per disconnect for 5 consecutive disconnects.

(5) All loading and vapor lines shall be equipped with fittings which make a vapor tight connection and shall automatically close upon disconnection to prevent release of the organic material.

(6) A gasoline storage and transfer installation that receives inbound loads and dispatches outbound loads ("bulk plant") need not comply with R307-328-4 if it does not have a daily average throughput of more than 3,900 gallons (15,000 or more liters) of gasoline based upon a 30-day rolling average. Such installations shall on-load and off-load gasoline by use of bottom or submerged filling or alternate equivalent methods. The emission limitation is based on operating procedures and equipment specifications using Reasonably Available Control Technology as defined in EPA documents EPA 450/2-77-026 October 1977, "Control of Hydrocarbons from Tank Truck

Gasoline Loading Terminals," and EPA-450/2-77-035 December 1977, "Control of Volatile Organic Emissions from Bulk Gasoline Plants." The design effectiveness of such equipment and the operating procedures must be documented and submitted to and approved by the executive secretary.

(7) Hatches of transport vehicles shall not be opened at any time during loading operations except to avoid emergency situations or during emergency situations. Pressure relief valves on storage tanks and transport vehicles shall be set to release at the highest possible pressure, in accordance with State or local fire codes and National Fire Prevention Association guidelines. Pressure in the vapor collection system shall not exceed the transport vehicle pressure relief setting.

(8) Each owner or operator of a gasoline storage or dispensing installation shall conduct testing of vapor collection systems used at such installation and shall maintain records of all tests for no less than two years. Testing procedures of vapor collection systems shall be approved by the executive secretary and shall be consistent with the procedures described in the EPA document, "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems," EPA-450/2-78-051.

(9) Semi-annual testing shall be conducted and records maintained of such test. The frequency of tests may be altered by the executive secretary upon submittal of documentation which would justify a change.

(10) The vapor collection and vapor processing equipment shall be designed and operated to prevent gauge pressure in the delivery vessel from exceeding 18 inches of water and prevent vacuum from exceeding 6 inches of water. During testing and monitoring, there shall be no reading greater than or equal to 100 percent of the lower explosive limit measured at 1.04 inches around the perimeter of a potential leak source as detected by a combustible gas detector. Potential leak sources include, but are not limited to, piping, seals, hoses, connections, pressure or vacuum vents, and vapor hoods. In addition, no visible liquid leaks are permitted during testing or monitoring.

R307-328-5. Stationary Source Container Loading.

(1) No person shall transfer or permit the transfer of gasoline from any delivery vessel (i.e. tank truck or trailer) into any stationary storage container with a capacity of 250 gallons or greater unless such container is equipped with a submerged fill pipe that extends to no more than twelve inches from the bottom of the storage tank for fill pipes installed on or before November 9, 2006, and no more than six inches from the bottom of the storage tank for fill pipes installed after November 9, 2006, and at least 90 percent of the gasoline vapor, by weight, displaced during the filling of the stationary storage container is prevented from being released to the atmosphere. This requirement shall not apply to:

(a) the transfer of gasoline into any stationary storage container of less than 550 gallons used primarily for the fueling of implements of husbandry if such container is equipped with a permanent submerged fill pipe;

(b) the transfer of gasoline into any stationary storage container having a capacity of less than 2,000 gallons which was installed prior to January 1, 1979, if such container is equipped with a permanent submerged fill pipe;

(c) the transfer of gasoline to storage tanks equipped with floating roofs or their equivalent which have been approved by the executive secretary.

(2) The 90 percent performance standard of the vapor control system shall be based on operating procedures and equipment specifications. The design effectiveness of such equipment and the operating procedure must be documented and submitted to and approved by the executive secretary.

(3) Each owner or operator of a gasoline storage tank or the owner or operator of the gasoline delivery vessel subject to

(1) above shall install vapor control equipment, which includes, but is not limited to:

(a) vapor return lines and connections sufficiently free of restrictions to allow transfer of vapor to the delivery vessel or to the vapor control system, and to achieve the required recovery;

(b) a means of assuring that the vapor return lines are connected to the delivery vessel, or vapor control system, and storage tank during tank filling;

(c) restrictions in the storage tank vent line designed and operated to prevent:

(i) the release of gasoline vapors to the atmosphere during normal operation; and

(ii) gauge pressure in the delivery vessel from exceeding 18 inches of water and vacuum from exceeding 6 inches of water.

R307-328-6. Transport Vehicles.

(1) Gasoline transport vehicles must be designed and maintained to be vapor tight during loading and unloading operations as well as during transport, except for normal pressure venting required under United States Department of Transportation Regulations.

(2) The design of the vapor recovery system shall be such that when the delivery tank is connected to an approved storage tank vapor recovery system or loading terminal, 90% vapor recovery efficiencies are realized. The connectors of the delivery tanks shall be compatible with the fittings on the fill pipes and vapor vents at the storage containers and gasoline loading terminals where the delivery tank will service or be serviced. Adapters may be used to achieve compatibility.

(3) No person shall knowingly allow the introduction of gasoline into, dispensing of gasoline from, or transportation of gasoline in a gasoline transport vehicle without a current Utah Vapor Tightness Certificate.

(4) A vapor-laden transport vehicle may be refilled only at installations equipped to recover, process or dispose of vapors. Transport vehicles that only service locations with storage containers specifically exempted from the requirements of R307-328-5 need not be retrofitted to comply with R307-328-6(1)-(3) above, provided such transport vehicles are loaded through a submerged fill pipe or equivalent equipment provided the design and effectiveness of such equipment are documented and submitted to and approved by the executive secretary.

R307-328-7. Leak Tight Testing.

(1) Gasoline tank trucks and their vapor collection systems shall be tested for leakage by a qualified contractor using procedures approved by the executive secretary and consistent with the procedures described in R307-342.

(2) Gasoline tank trucks and their vapor collection systems shall be tested for leakage annually between December 1 and May 1.

(3) The tank shall not sustain a pressure change of more than 750 pascals (3 inches of H₂O) in five minutes when pressurized (by air or inert gas) to 4500 pascals (18 inches of H₂O) or evacuated to 1500 pascals (6 inches of H₂O).

(4) No visible liquid leaks are permitted during testing.

(5) Gasoline tank trucks shall be certified leak tight at least annually by a qualified contractor approved by the executive secretary.

(6) Each owner or operator of a gasoline tank truck shall have in his possession a valid vapor tightness certification, which:

(a) shows the date that the gasoline tank truck last passed the Utah vapor tightness certification test; and

(b) shows the identification number of the gasoline tank truck.

(7) Records of certification inspections, as well as any maintenance performed, shall be retained by the owner or

operator of the tank truck for a two year period and be available for review by the executive secretary or the executive secretary's representative.

R307-328-8. Alternate Methods of Control.

(1) Any person may apply to the executive secretary for approval of an alternate test method, an alternate method of control, an alternate compliance period, an alternate emission limit, or an alternate monitoring schedule. The application must include a demonstration that the proposed alternate produces an equal or greater air quality benefit than that required by R307-328, or that the alternate test method is equivalent to that required by these rules. The executive secretary shall obtain concurrence from EPA when approving an alternate test method, an alternate method of control, an alternate compliance period, an alternate emission limit, or an alternate monitoring schedule.

(2) Manufacturer's operational specifications, records, and testings of any control system shall use the applicable EPA Reference Methods of 40 CFR Part 60, the most recent EPA test methods, or EPA-approved state methods, to determine the efficiency of the control device. In addition, the owner or operator must meet the applicable requirements of record keeping for any control device. A record of all tests, monitoring, and inspections required by R307-328 shall be maintained by the owner or operator for a minimum of 2 years and shall be made available to the executive secretary or the executive secretary's representative upon request. Any malfunctioning control device shall be repaired within 15 calendar days after it is found by the owner or operator to be malfunctioning, unless otherwise approved by the executive secretary.

(3) For purposes of determining compliance with emission limits, volatile organic compounds and nitrogen oxides will be measured by the test methods identified in federal regulation or approved by the executive secretary. Where such a method also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

R307-328-9. Compliance Schedule.

(1) Effective May 1, 2000, all Facilities located in Davis, Salt Lake, Utah, and Weber Counties shall be in compliance with this rule.

(2) All other facilities located in Utah, shall be in compliance with this rule according to the following phase-in schedule:

(a) Facilities located in Box Elder, Cache, Tooele and Washington Counties shall be in compliance with this rule by April 30, 2009.

(b) Facilities located in Emery, Iron, Juab, Millard, Sevier, Summit and Uintah Counties shall be in compliance with this rule by April 30, 2010.

(c) All facilities located in Utah shall be in compliance with this rule by April 30, 2011.

(3) If this implementation schedule results in a scheduling and/or financial hardship for an individual facility, that facility may request a six-month extension from the Executive Secretary of the Utah Air Quality Board. A maximum of two six-month extensions may be granted. Regardless of extension requests submitted, all facilities must be in compliance with this rule not later than April 30, 2011.

(4) A request for an extension must be documented and contain valid reasons why a facility will not be able to meet the phase-in schedule indicated in (2)(a) or (b) above. A late start on preparation or planning is not a valid reason to grant an extension. The request for extension must also contain a proposed implementation schedule that shows compliance to

this rule at the earliest possible date, but no later than April 30, 2011.

R307-328-10. Authorized Contractors.

(1) All modifications performed on underground storage tanks regulated by Title 19, Chapter 6, Part 4, the Utah Underground Storage Tank Act, to bring them into compliance with R307-328, shall be performed by contractors certified under R311-201.

KEY: air pollution, gasoline transport, ozone

November 10, 2008

19-2-101

Notice of Continuation March 15, 2007

19-2-104(1)(a)

R307. Environmental Quality, Air Quality.**R307-342. Qualification of Contractors and Test Procedures for Vapor Recovery Systems for Gasoline Delivery Tanks.**
R307-342-1. Purpose.

The purpose of R307-342 is to establish the requirements for the qualification of contractors to perform vapor tightness tests on gasoline transport vehicles equipped with vapor recovery equipment.

R307-342-2. Applicability.

R307-342 is applicable to anyone who wishes to become qualified by the executive secretary to perform vapor tightness tests on gasoline transport vehicles that are required to be equipped with gasoline vapor recovery equipment and to be tested in accordance with R307-328-7.

R307-342-3. Contractor Qualification Requirements.

(1) Any person may become qualified to perform delivery tank vapor tightness tests by:

(a) preparing a written, detailed and approvable procedure by which the person proposes to conduct the pressure/vacuum test. The minimum test performance requirements are described in R307-342-5 and R307-342-6;

(b) submitting the procedure with a letter requesting approval of the procedure and qualification of the person as a qualified testing contractor;

(c) having the necessary facilities, equipment and expertise to perform a satisfactory test; and

(d) performing an acceptable demonstration test with a representative of the executive secretary in attendance.

(2) The person determined qualified to perform the tests will be issued a letter of qualification by the executive secretary valid for one year.

(3) Re-qualification will be accomplished by:

(a) requesting by letter to be requalified by the executive secretary; and

(b) performing an acceptable demonstration test with a representative of the executive secretary in attendance after which a letter of requalification will be sent.

R307-342-4. Equipment Requirements.

(1) Pressure Source. An air pump, shop compressed air, compressed gas tanks of air or inert gas, or other approved air pressure producing source or procedure sufficient to pressurize the tank to 18 inches of water above atmospheric pressure is required. Some models of reversible tank-type shop vacuum cleaners will perform adequately.

(2) Vacuum Source. A vacuum pump or other approved vacuum producing procedure capable of evacuating the tank to 6 inches of water is required. For example, some models of shop vacuum cleaners can accomplish this function.

(3) Pressure. A vacuum supply hose must be of sufficient length and wall strength to reach from the tank to the pressure vacuum source.

(4) Manometer. A liquid manometer or equivalent instrument must be capable of measuring up to 25 inches of water with scale division of 0.1 inches of water. A 1/4-inch hose to connect the manometer to the adapter tap is recommended.

(5) Stopwatch. A stopwatch with scale division to one second is required.

(6) Adapter. An adapter to connect the pressure vacuum hose to the tank with a shutoff valve to isolate the tank from the required pressure vacuum equipment is required. The adapter requires a shutoff valve, a tap to attach the manometer, and a bleed valve for adjusting pressure/vacuum to specified levels prior to start of timed period. However, each contractor must use an adapter compatible with his equipment.

(7) Caps. Dust caps with good gaskets are required on all

outlets during the test.

(8) Pressure/Vacuum Relief Valves. The test apparatus should be equipped with an in line pressure/vacuum relief valve set to activate at 25 inches of water above atmospheric and 12 inches of water below if the pressure/vacuum equipment has greater capacity than the set points to prevent possible tank damage.

R307-342-5. Test Procedures and Preparations.

(1) Location. The delivery tank must be tested in a location where it will not be subject to direct sunlight. Shop heaters/air conditioners must be turned off during the test as they will affect the tank stability.

(2) Purging the Tank. A good purge is necessary.

(a) The tank must be emptied of gasoline and vapors before testing to minimize "vapor growth" problems. Hauling a load of diesel fuel is recommended.

(b) A steam purge to degas the tank is acceptable.

(c) An alternate method is to purge with a high volume of air. For this purge, the hatches are to be opened and purge air or inert gas should be blown through the tank for 30 minutes or more to degas the tank. This method is not as effective and often requires a much longer time for stabilization during the test.

(3) Visual Inspection. While the tank is being purged, or prior to the test, the entire tank should be visually inspected for evidence of wear, damage or misadjustments that could be a source of potential leaks. Areas to check are domes, dome vents, cargo tank piping, hose connections, hoses and delivery elbows. Any part found defective should be adjusted, repaired or replaced as necessary before the pressure test is started.

(4) Vents, Valves, and Outlets.

(a) The emergency valves in the bottom of the tank must be opened during the purge and then closed to test.

(b) Open the top vents. If the top vents are the pneumatic type, then a shop air line connection must be provided as the vents must be in the open position during the purge and then closed to test.

(c) In order to complete the test, some types of dome vents may have to be replaced.

(d) During the test, all compartments must be interconnected so that the tank may be tested as a single unit. If this cannot be done, each compartment must be tested as a separate tank.

(e) Dust caps with good gaskets must be installed on all outlets.

(5) Pretest Preparation and Procedure.

(a) Open and close each dome cover.

(b) Connect the static electric ground connections to tank, attach the liquid delivery and vapor return hoses, remove liquid delivery elbows and seal the liquid delivery hose fitting, install dust caps on all outlets except the vapor return hose.

(c) Attach the test adapter to the vapor return hose of the tank under test with the shutoff valve closed.

(d) Connect the pressure supply hose to the adapter.

(e) Connect the 1/4-inch hose to the adapter tap and the manometer if applicable and position of the manometer or gauge at eye level.

(f) Open all internal vents and valves if possible. If not possible, each compartment must be tested as if each compartment was a separate tank.

(6) The Pressure Test.

(a) With all preparations complete, turn on the pressure source and open the shutoff valve in the adapter to apply air pressure slowly. Pressurize the tank to 18 inches of water.

(b) Close the shutoff valve and allow the pressure in the tank to stabilize. When the pressure has stabilized, read and record the time and initial pressure on the manometer.

(c) Allow five minutes to elapse, then read and record the

final time and pressure.

(d) Disconnect the pressure source from the adapter and slowly open the shutoff valve to bring the tank to atmospheric pressure.

(e) Subtract the final pressures from the initial pressures.

(f) If the sustained pressure drop is greater than 3.0 inches of water, repair the leaks and then repeat the steps in (a) through (e).

(g) Repeat the steps in (a) through (f) until the change in pressure for two consecutive runs agrees within 1/2 inch of water. Calculate the arithmetic average of the two results.

(7) The Vacuum Test.

(a) Connect the vacuum source to the adapter. Start the vacuum source and slowly open the shutoff valve to evacuate the tank to six inches of water and close the shutoff valve.

(b) Allow the pressure in the tank to stabilize, adjust as necessary to maintain six inches of water vacuum until the pressure stabilizes.

(c) Read and record the time and the initial vacuum reading on the manometer. Allow five minutes to elapse, then read and record the final manometer reading.

(d) Disconnect the vacuum source from the adapter, and slowly open the shutoff valve to bring the tank to atmospheric pressure.

(e) Subtract the final reading from the initial reading.

(f) If the sustained vacuum loss is greater than three inches of water, the leakage source must be located and repaired. The steps in (a) through (e) must be repeated.

(g) Repeat the steps in (a) through (f) until the change in vacuum for two consecutive runs agree within 1/2 inches of water. Calculate the arithmetic average of the two results.

(8) When the calculated average pressure change in five minutes for both the pressure test and the vacuum test are three inches of water or less, the requirements of the test are satisfied and the tested tank may be certified leak tight.

R307-342-6. Certification of a Delivery Tank.

(1) The approved contractor will upon satisfactory completion of the vapor tightness test complete the documentation of certification in two copies. If desired, each contractor may prepare his own certificate as long as the following items are included:

- (a) Gasoline delivery tank pressure test.
- (b) Tank owner and address.
- (c) Tank ID number.
- (d) Testing location.
- (e) Date of test.
- (f) Tester name and signature.
- (g) Company or affiliation of testers.
- (h) Test data results.
- (i) Date of next required test.

(2) The contractor will keep one copy that will be made available for inspection by the executive secretary for two years. The tank owner or operator will keep the other copy of the certification with the delivery tank for two years for inspection by the executive secretary.

(3) The approved contractor will mark the certified tank below the DOT test marking with "V.R. TESTED" followed by the month and year of the current certified test. The vapor recovery test marking shall be at least 1-1/4" high black permanent letters on a white background. The letters and numbers must be of a type that will remain legible from a distance of 20 feet for at least one year (painted or printed sticker is acceptable).

R307-342-7. Alternate Methods of Control.

(1) Any person may apply to the executive secretary for approval of an alternate test method, an alternate method of control, an alternate compliance period, an alternate emission

limit, or an alternate monitoring schedule. The application must include a demonstration that the proposed alternate produces an equal or greater air quality benefit than that required by R307-342, or that the alternate test method is equivalent to that required by these rules. The executive secretary shall obtain concurrence from EPA when approving an alternate test method, an alternate method of control, an alternate compliance period, an alternate emission limit, or an alternate monitoring schedule.

(2) Manufacturer's operational specifications, records, and testings of any control system shall use the applicable EPA Reference Methods of 40 CFR Part 60, the most recent EPA test methods, or EPA-approved state methods, to determine the efficiency of the control device. In addition, the owner or operator must meet the applicable requirements of record keeping for any control device. A record of all tests, monitoring, and inspections required by R307-342 shall be maintained by the owner or operator for a minimum of 2 years and shall be made available to the executive secretary or the executive secretary's representative upon request. Any malfunctioning control device shall be repaired within 15 calendar days after it is found by the owner or operator to be malfunctioning, unless otherwise approved by the executive secretary.

(3) For purposes of determining compliance with emission limits, volatile organic compounds and nitrogen oxides will be measured by the test methods identified in federal regulation or approved by the executive secretary. Where such a method also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

**KEY: air pollution, ozone, gasoline transport
January 16, 2007 19-2-104(1)(a)
Notice of Continuation March 15, 2007**

R357. Governor, Economic Development.**R357-4. Government Procurement Private Proposal Program.****R357-4-1. Purpose.**

The purpose of the administrative rule is to describe the required procedures for submission, review and processing of an initial proposal, fee, and a detailed proposal, and the preparation of a project agreement.

R357-4-2. Authority.

(1) These administrative rules are made pursuant to authority granted under 63M-1-2603(2)(c), 63M-1-2605(5), 63M-1-2606(1)(b), 63M-1-2608(1)(h)(i), 63M-1-2609(3)(f), and 63M-1-2610(3)(i).

R357-4-3. Definitions.

(1) Terms in these rules are used as defined in UCA 63M-1-2602.

R357-4-4. Initial and Detailed Proposal -- Protected and Public Portions.

(1) An initial proposal submitted to the Committee in accordance with UCA 63M-1-2605 is a protected record under UCA 63G-2-305, and shall be protected from all public disclosure during initial review by the Committee, the Governor's Office of Planning and Budget, the affected department and any directly affected state entity or school district.

(2) If the Committee determines to move forward with a project beyond the initial review, the following portions of an initial proposal shall be made public once the chief procurement officer initiates a procurement process in accordance with UCA 63G-6-408.5:

- (a) conceptual description of the project;
- (b) description of the economic benefit of the project to the state and the affected department;
- (c) information concerning the products, services, and supplies currently being provided by the state, that are similar to the project;
- (d) Notwithstanding the portions of an initial proposal that may be made public under this subsection, all proprietary information provided in an initial and detailed proposal shall remain a protected record under UCA 63G-2-305.

(3) Portions of an initial proposal not excepted in subsection (2) shall remain a protected record under UCA 63G-2-305. Protected portions include but are not limited to:

- (a) Trade secrets as defined in UCA 13-24-2;
- (b) Commercial information or non-individual financial information satisfying the requirements of UCA 63G-2-305; and
- (c) Other information submitted by a private entity and not excepted in subsection (2) that, if disclosed prior to the execution of a project agreement, would adversely affect the financial interest or bargaining position of the public entity in accordance with UCA 13-24-2.

(4) A private entity requesting protection from public disclosure under this rule must satisfy the requirements of Title 63G, Chapter 2, Government Records Access and Management Act upon submission of the initial proposal or the detailed proposal, including the statement of business confidentiality required by UCA 63G-2-309.

R357-4-5. Initial Proposal - Fee.

(1) A private entity submitting an initial proposal shall pay a fee when the initial proposal is submitted.

(2) The amount of the fee shall be based on one percent of the project cost estimate submitted with an initial proposal. The minimum fee shall be \$5,000 and the maximum fee shall be \$50,000.

(3) Forty percent of the fee shall be allocated to reviewing

the private entity's initial proposal and shall be non-refundable.

(4) Thirty percent of the fee shall be allocated to reviewing a detailed proposal and shall be refunded if for any reason the Committee does not review the private entity's detailed proposal.

(5) Thirty percent of the fee shall be allocated to preparing a project agreement and shall be refunded if for any reason the director does not prepare a project agreement for the private entity.

R357-4-6. Process and Time Requirements.

(1) A private entity may submit an initial proposal for a project to the Committee at any time. Within 30 days after receipt, the Committee shall review the initial proposal and determine, in its sole discretion, whether to move forward with a project in accordance with UCA 63M-1-2606. If the Committee determines to move forward with the project, the Committee shall immediately submit a copy of the initial proposal to any affected department, directly affected state entity, school district and the Governor's Office of Planning and Budget.

(2) Within 30 days from receipt of the initial proposal, an affected department shall provide the Committee with any comment, suggestion or modification to the initial proposal or the project. The affected department shall include any comment, suggestion or modification from any directly affected state entity or school district that receives a copy of the proposal in accordance with Section 63M-1-2606(4).

(3) Within 30 days from receipt of the initial proposal, the Governor's Office of Planning and Budget shall prepare an economic feasibility report containing the information required by Section 63M-1-2606(3)(b).

(4) Within 30 days from the receipt of the comments, suggestions or modification from the affected department and the economic feasibility report, the Committee shall determine, in its sole discretion, whether to move forward with a project to the detailed proposal stage. If the Committee determines to move forward with the project, the Committee shall immediately submit a copy of the initial proposal, including any comment, suggestion or modification adopted by the Committee and incorporated into the initial proposal, to the chief procurement officer and the Executive Appropriations Committee, in accordance with Section 63M-1-2606(5), with any protected portions of the initial proposal clearly identified.

(5) The chief procurement officer shall take action under 63G-6-408.5 to initiate and complete a procurement process within 60 days from the receipt of the initial proposal, in compliance with Title 63G, Chapter 56, Utah Procurement Code.

(6) The chief procurement officer shall review each detailed proposal submitted pursuant to such procurement process and submit each detailed proposal that complies with UCA 63M-1-2608(1) to the Committee for review and to the Governor's Office of Planning and Budget for the purpose of updating the economic feasibility report.

(7) Within 30 days from receipt of the updated economic feasibility report, the Committee shall determine, in its sole discretion, whether to approve the detailed proposal. If approved by the Committee, the board shall determine whether to approve the detailed proposal as soon as reasonably practicable.

(8) The affected department, directly affected state entity or school district may dispute the detailed proposal and submit any comment, suggestion or modification to the Committee and the Governor's Office of Planning and Budget within 15 days following the board's final decision. Within 15 days, the Governor's Office of Planning and Budget shall determine whether to proceed with a project agreement.

(9) If an appropriation or alternative funding is necessary for a project that is the subject of a detailed proposal, the

Committee shall work with the office to submit, within 30 days following the board's final decision, a report requesting funding to the Governor's Office of Planning and Budget and the Executive Appropriations Committee detailing the position of the board, the affected department, directly affected state entity and the school district, as applicable. The filing of such report shall not interfere with the execution of the project agreement.

(10) Within 30 days from board and, if applicable, Governor's Office of Planning and Budget, approval of a detailed proposal, the director and the private entity shall, in good faith and in consultation with the affected department and a directly affected state entity or school district, prepare, negotiate and enter into a project agreement in accordance with Section 63M-1-2610.

(11) The review, processing and, if applicable, procurement of an initial proposal, a detailed proposal or a project agreement under this rule shall be subject to such time modification as the Committee may deem to be necessary to accommodate the specific needs of each project or to be in the best interests of the state.

**KEY: procurement, purchasing, Private Proposal Program
November 21, 2008**

63M-1-2603(2)(c)
63M-1-2605(5)
63M-1-2606(1)(b)
63M-1-2608(1)(h)(i)
63M-1-2609(3)(f)
63M-1-2610(3)(I)

R547. Human Services, Juvenile Justice Services.**R547-3. Juvenile Jail Standards.****R547-3-1. Authority.**

Section 62A-1-111 authorizes the Department of Human Services to adopt administrative rules.

R547-3-2. Definitions and References.

(1) Definitions.

(a) "Low density population" means ten or less people per square mile.

(b) "Nonoffenders" means abused, neglected, or dependent youth.

(c) "Sight and sound separation" means that juvenile detainees must be located or arranged as to be completely separated from incarcerated adults by sight and sound barriers such that the adult inmates cannot see juvenile detainees and vice versa. Also, conversation is not possible between juvenile detainees and adult inmates.

(d) "Status offense" means a violation of the law that would not be a violation but for the age of the offender.

(2) References.

(a) Standards from the Manual of Standards for Juvenile Detention Facilities and Services, also referred to as American Correctional Association (ACA) Standards, revision date of February 1979, were researched as background for the rules.

R547-3-3. Standards for Six Hour Juvenile Detention in Jail.

(1) Juveniles under the age of 18 shall not be confined in a county operated jail used for accused or convicted adult offenders except:

(a) when the juvenile is 16 years of age or older and district court has exclusive original jurisdiction, Section 78A-6-701;

(b) when the juvenile is 16 years of age or older and has been bound over to district court for criminal proceedings, in accordance with serious youth offender procedures, Subsection 78A-6-702(3);

(c) when the juvenile is 14 years of age or older and has been certified to be held for criminal proceedings in district court, Section 78A-6-703 and Subsection 78A-6-602(3);

(d) in areas characterized by low density population. The state Juvenile Justice Services agency may promulgate regulations providing for specific approved juvenile holding accommodations within adult facilities which have acceptable sight and sound separation to be utilized for short-term holding purposes with a maximum confinement of six hours to allow adequate time for identification or interrogation and to evaluate needs and circumstances regarding transportation, detention, or release of the juvenile in custody, Section 62A-7-201.

(2) The Division of Juvenile Justice Services may certify a jail to hold juveniles who are alleged to have committed a non-status offense or are accused of juvenile handgun possession for up to six hours if the following criteria are met:

(a) in areas characterized by low density population;

(b) no existing acceptable alternative placement exists which will protect the juvenile and the community;

(c) the county is not served by a local juvenile detention facility;

(d) no juvenile under ten years of age will be held by holding authorities, as set forth in the following standards, for any length of time.

(3) Any jail or adult holding facility intended for use for juveniles must be certified by the State Division of Juvenile Justice Services.

(4) There shall be acceptable sight and sound separation from adult inmates. Written policy and procedure shall exist to assure supervision is maintained so that both visual contact and verbal communication between juvenile detainees and adult inmates is prohibited.

(5) The jail's juvenile detention room(s) shall conform to all applicable zoning laws.

(6) The jail's juvenile detention room(s) shall conform to all applicable local and state safety, fire, and building codes.

(7) The jail's juvenile detention room(s) shall conform to all applicable local and state health codes.

(8) The juvenile population shall not exceed the jail's certified capacity for juveniles.

(9) All juvenile housing and activity areas provide for, at a minimum:

(a) toilet and wash basin accessibility;

(b) hot and cold running water in wash basin and drinking water;

(c) adequate shelter, heat, light, and ventilation that does not compromise security or enable escape;

(10) Whenever juveniles are detained, there shall be at a minimum:

(a) Removal of all property from the juvenile that could compromise the juvenile's safety, such as belts, shoelaces and suspenders, prior to placing a juvenile in a holding room;

(b) constant on-site supervision through visual or TV monitoring and audio two way communication;

(c) frequent personal checks to maintain communication with the juvenile and prevent panic and feelings of isolation;

(d) a written record of significant incidents and activities of the juvenile.

(11) The written policies and procedures providing for specific rules governing the supervision of inmates by jail staff of the opposite sex shall specifically provide for the following when the inmates are juveniles:

(a) An adult staff member of the same sex as the juvenile shall be present when a juvenile is securely held.

(b) Except in an emergency the staff member entering a juvenile's sleeping room shall be of the same sex. If there are two staff members entering the sleeping room, there may be one male and one female. When an emergency prevents the same sex staff member from entering the juvenile's room, then at least two opposite sex staff members must be present and a written report must be completed and kept on file justifying the necessity for the deviation from same sex supervision.

(c) When procedures require physical contact or examination, such as strip searches, these shall be done by a staff member of the same sex in private without TV monitoring. Procedures for body cavity searches shall conform to jail standards.

(d) A staff member of the same sex shall supervise the personal hygiene activities and care such as showers, toilet, and related activities.

(e) The use of restraints or physical force are restricted to instances of justifiable self-defense, protection of juveniles and others, protection of property and prevention of escapes, and only when it is necessary to control juveniles and in accordance with the principle of least restrictive action. In no event is physical force justifiable as punishment. A written report is prepared following all uses of force and is submitted to the facility administrator.

(12) Male and female residents shall not occupy the same sleeping room at the same time.

(13) There shall be no viewing devices, such as peep holes, mirrors, of which the juvenile is not aware.

(14) No inmate, juvenile or adult, shall be allowed to have authority or disciplinary control over, be permitted to supervise, or provide direct services of any nature to other detained juveniles.

(15) The juvenile's health and safety while jailed shall be safeguarded. The jail administration shall:

(a) have services available to provide 24 hours a day emergency medical care;

(b) provide for immediate examination and treatment, if

necessary, of juveniles injured on the jail premises;

(c) not accept juveniles who are unconscious, obviously seriously injured, obviously a suicide risk, obviously emotionally disturbed, or obviously under the influence of alcohol or drugs and are unable to care for themselves, until they have been examined by a qualified medical practitioner or have been taken to a medical facility for appropriate diagnosis and treatment and released back to the jail;

(d) train all jail staff members to recognize symptoms of mental illness;

(e) provide for the detoxification of a juvenile in the jail only when there is no community health facility to transfer the juvenile to for detoxification;

(f) require that any medical services provided while the juvenile is held be recorded.

(16) As long as classification standards are met, juvenile detainees may be housed together if age, compatibility, dangerousness, and other relevant factors are considered.

(17) Adult jails that are certified to hold juveniles for up to six hours must have written procedures which govern the acceptance of such juveniles. These procedures must include the following:

(a) When an officer or other person takes a juvenile into custody, the officer shall without unnecessary delay notify the parents, guardian, or custodian.

(b) The jail staff shall verify with the officer or other person taking the juvenile into custody that the juvenile's parents, guardian, or custodian have been notified of the juvenile's detention in jail. If notification did not occur, jail staff will contact the juvenile's parents, guardian, or custodian.

(c) The officer shall also promptly file with the detention or shelter facility a brief written report stating the facts which appear to bring the juvenile within the jurisdiction of the Juvenile Court and give the reason why the juvenile was not released.

(18) There must be written policy and procedures that require that the decision to detain the juvenile for up to six hours or to release the juvenile from jail be in accordance with the following principles:

(a) A juvenile shall not be detained by policy any longer than is reasonably necessary to obtain the juvenile's name, age, residence, and any other necessary information, and to contact the juvenile's parents, guardian, or custodian.

(b) The juvenile shall then be released to the care of the parent or other responsible adult unless the immediate welfare or the protection of the community requires that the juvenile be detained or that it is unsafe for the juvenile or the public to leave the juvenile in the care of the parents, guardian, or custodian. On release from jail, the parent or other person to whom the juvenile is released may be required to sign a written promise on forms supplied by the court to bring the juvenile to court at a time set, or to be set, by the court, Subsection 78A-6-112(3).

(19) The written procedures for admitting juvenile detainees will include completion of an admission form on all juveniles that includes, as a minimum, the following information:

- (a) date and time of admission and release;
- (b) name, nicknames, and aliases;
- (c) last known address;
- (d) law enforcement jurisdiction, name, and title, of delivering officer;
- (e) specific charge(s);
- (f) sex;
- (g) date of birth and place of birth;
- (h) race or nationality;
- (i) medical problems, if any;
- (j) parents, guardian, or responsible person to notify in case of emergency, including addresses and telephone numbers;
- (k) space for remarks, to include notation of any open

wounds or sores requiring treatment, evidence of disease or body vermin, or tattoos;

(l) probation officer or caseworker assigned, if any;

(20) Juvenile processing procedures shall include written safeguards to prohibit nonoffenders from being detained in the facility and to ensure youth are held in accordance with R547-3-3.

(21) There must be a written procedure governing the transfer of a juvenile to an appropriate juvenile facility which includes the following:

(a) If the juvenile is to be transferred to a juvenile facility, the juvenile must be transported there without unnecessary delay, but in no case more than six hours after being taken into custody. A copy of the report stating the facts which appear to bring the juvenile within the jurisdiction of the court and giving the reason for not releasing the juvenile shall be transmitted with the juvenile when transported.

(b) A written record shall be retained on file of all juveniles released, stating as a minimum to whom they were released, the release date, time, and authority.

(c) Procedures for releasing juvenile detainees shall include at a minimum:

- (i) verification of identity;
- (ii) verification of release papers;
- (iii) completion of release arrangements;
- (iv) return of juvenile detainee's personal effects and funds;
- (v) verification that no jail property or other resident property leaves the jail with the juvenile.

(22) The written procedures governing the stay of a juvenile shall include:

(a) A juvenile, while held in a certified jail, shall have the same legal and civil rights as an adult inmate.

(b) A juvenile, while held in a certified jail, shall have the right to the same number of telephone calls as an adult inmate held the same amount of time.

(c) Unless the juvenile is to be transferred to an approved detention facility, visits should be limited to the juvenile's attorney, clergyman, and officers of the court. If the juvenile is to be transferred, an effort shall be made to provide for visitation by the juvenile's parents, guardian, or custodian prior to the transfer.

(d) If a juvenile is held during daylight hours the juvenile should be allowed access to reading materials. Where feasible the juvenile should be provided access to physical exercise and recreation, such as radio and TV.

(23) A case record shall be maintained on each juvenile admitted to a certified jail. Policies and procedures concerning the case records and the information in them shall be established which meet the following as a minimum:

(a) The contents of case records shall be identified and separated according to an established format.

(b) Case records shall be safeguarded from unauthorized and improper disclosure, in accordance with written policies and in compliance with Section 78A-6-209 and Section 78A-6-1104.

(c) The facility shall assure that no information shall be entered into a case record that is incomplete, inaccurate, or unsubstantiated. At any point that it becomes apparent that this has occurred, the facility shall immediately make the necessary correction.

(24) A case record shall be maintained on each juvenile, as appropriate, and kept in a secure place. It shall contain as a minimum the following information and documents:

- (a) initial intake information form;
- (b) documented legal authority to accept, detain, and release juveniles;
- (c) current detention medical/health care record;
- (d) consent for necessary medical or surgical care, signed

by parent, person acting in loco parentis, Juvenile Court judge, or facility official;

- (e) record of medication administered;
- (f) record of incident reports;
- (g) a record of cash and valuables held;
- (h) visitors' names, if any, personal and professional, and dates of visits;
- (i) final discharge or transfer report.

(25) The jail facility director shall submit to the state Division of Juvenile Justice Services agency a monthly accurate report of the numbers of juveniles confined during the preceding month and provide information on each juvenile in the categories indicated on the report form as provided by the State.

KEY: juvenile corrections

November 12, 2008

Notice of Continuation May 30, 2007

62A-7-201

R547. Human Services, Juvenile Justice Services.**R547-6. Youth Parole Authority Policies and Procedures.****R547-6-1. Authority.**

(1) Section 62A-1-111 authorizes the Department of Human Services to adopt administrative rules.

R547-6-2. Definitions.

(1) Detainer is an order to hold a youth for another governmental agency.

R547-6-3. Administration and Organization.

Section 62A-7-501 establishes a Youth Parole Authority within the Division of Juvenile Justice Services which has responsibility for parole release, rescission, revocation, and termination of parole for youth offenders committed to the Division for secure confinement.

(1) The Authority is established as an autonomous organizational entity reporting directly to the Board of Juvenile Justice Services.

(2) The following criteria shall be utilized by the Board of Juvenile Justice Services in the selection and appointment of the Authority members:

(a) A member shall have training or experience in social work, law, juvenile or criminal justice, or related behavioral sciences.

(b) A member shall not be an employee of the Department of Human Services, other than in the capacity as a member of the Authority, and may not hold any public office during the tenure of the appointment. A member shall not hold a position in the State's juvenile justice system or be an employee, officer, advisor, policy board member, or subcontractor of any juvenile justice agency or its contractor during the tenure of the appointment.

(c) The membership shall represent, to the extent possible, a diversity of the population under the jurisdiction of the Division.

(d) The membership shall be composed of individuals with the capacity to conduct hearings in a professional manner, develop appropriate policies and procedures, be sensitive to both legal and treatment oriented issues and promote credibility in the parole release process.

(3) Youth Parole Authority members shall be appointed for terms of three years by the Board of Juvenile Justice Services.

(4)(a) The Board of Juvenile Justice Services shall elect the chairperson and vice-chairperson of the Authority by majority vote for terms of one year. A second vice-chairperson shall be designated by the Authority members present at hearings in which the chairperson and vice-chairperson are absent.

(b) The duties of the chairperson are as follows:

(i) to preside at meetings and hearings and in the chairperson's absence the first vice-chairperson shall act. In the absence of the chairperson and first vice-chairperson, the second vice-chairperson shall preside at the meeting or hearing.

(ii) to act as official spokesperson for the Authority with the concurrence of the Authority;

(iii) to work closely with the Administrative Officer in the administration of the Authority and in coordinating with the Division.

(5) Any member of the Authority may be removed from office by the Board of Juvenile Justice Services for cause.

(6) The Authority shall seek parity with salaries of other state officers performing similar and responsible duties.

(7) The Division Director shall ensure that time is available for Division members to participate in training and administrative meetings related to Authority and Division matters.

(8) The Authority has the power to require that general and

specific conditions of parole be followed in the supervision of parolees.

(9) The Authority has the statutory power, Section 62A-7-501(2), to secure prompt and full information relating to youth offenders committed to the Division from the staffs of the secure facilities, regional offices, community placements, and the juvenile court.

(10) The Authority has statutory power, Section 62A-7-504, to cause the arrest of parolees and the power to revoke parole.

(11) The Authority has the designated power to terminate youthful offenders from parole.

(12) The Authority shall establish policies and procedures for its governance, meeting, hearings, the conduct of proceedings before it, the parole of youth offenders, and the general conditions under which parole may be granted, rescinded, revoked, modified, and terminated. The Authority's policies and procedures are subject to the approval of the Board of Juvenile Justice Services.

(13) The policy and procedures manual of the Authority will be readily available to youth in secure facilities, parolees, staff and the public.

(14) The Authority shall request any needed legal assistance from the Attorney General's Office.

(15) The position of an Administrative Officer shall be established to carry out day to day functions and to implement the policies and procedures of the Authority.

(16) Required staff shall be appointed to the Authority.

R547-6-4. Hearings.

A case file shall be maintained on each youth that comes before the Authority. Materials in the case files are clearly identified as to source, verification and confidentiality.

(1) For the proper operation of the Authority and protection of those furnishing information and for the best interests of youth offenders and society, all written documents, evaluations or medical reports, opinions, investigative reports which contain or are based upon information that is, either privileged by statute or court rule or order of the Authority, or of such confidential nature that the Authority concludes the rights and reputations of particular person or persons pending the order, decision, opinions or submitting the documents would be jeopardized or threatened, or the public interest would not be served, shall be classified as controlled and not be made available to the youth offender or his representative or for public inspection. Requests and reasons for any exceptions shall be submitted in a petition to the Authority, which may upon good cause grant the request.

(2) The Authority may order, when necessary, examinations and opinions by certified psychiatrists or psychologists. Certified members of the appropriate professions shall be available for such examinations and opinions.

(3) In order to have adequate time for case preparation, the Authority will be provided, in advance of hearings, with the necessary case materials and information to make appropriate decisions.

(4) A calendar shall be prepared in advance of all parole hearings.

(5) The number of full hearings scheduled for an Authority panel in a single day should be limited to 12 cases.

(6) Youth offenders shall be notified in writing at least 14 calendar days in advance of initial and parole review hearings and shall be specifically advised as to the purpose of the hearing.

(7) The Authority hearings are not open to the public; however, the Authority has the discretion to admit to the hearings any persons who may serve in the best interest of the youth.

(8) Hearings by the Authority shall be conducted in a

secure environment and in private rooms appropriately furnished and of adequate size and comfort.

(9) Youth offenders may have assistance from qualified persons for an effective case presentation.

(10) Youth offenders shall have legal representation at parole revocation hearings. Legal representation shall not be permitted at initial, parole review, progress review, and rescission hearings. Legal representation shall be at the discretion of the hearing officer at preliminary hearings. Legal representation shall be at the discretion of the Authority at special hearings.

(11) It is the policy of the Authority that all youth offenders shall have a personal appearance before the Authority, which provides for ample opportunity for the expression of the youth's views, particularly in the situation where parole may be denied.

(12) A record shall be made of all proceedings and findings made by the Authority.

(13) The youth offender will be notified verbally of the Authority's decisions at the conclusion of each hearing. All decisions shall be supported in writing and forwarded to the youth within 14 days of the hearing date.

(14) The youth offender, parent, or legal guardian of the youth offender may appeal any decision of the Authority regarding parole release or revocation to the Executive Director of the Department of Human Services or designee.

(15)(a) The criteria employed by the Authority in its decision making process are available in written form in the administrative office of the Division of Juvenile Justice Services and are specific enough to permit consistent application to individual cases.

(b) Youth offenders committed to the Division for secure confinement may be released by the Authority earlier than their recommended guideline, when the Division's secure facilities are at maximum capacity.

(16) It is the policy of the Authority that all youth offenders shall be automatically scheduled for an initial hearing before the Authority within 90 days of commitment to a secure facility.

(17) It is the policy of the Authority that a youth offender shall have a progress review hearing held 180 days from the date of the initial hearing, when a parole review hearing has not been scheduled due to lengthy guideline considerations.

(18) All youth offenders shall have a parole review hearing before the Authority prior to release. The parole review hearing shall be scheduled within 180 days of either the initial hearing or the progress review hearing. A date for parole release shall be established at the parole review hearing when appropriate.

(19) The parole release date established by the Authority shall remain in effect except upon findings by the Authority that cause exists for the rescission of said date.

(20) The youth can petition the Authority for reconsideration of an earlier decision, including release prior to the original parole date.

(21) Each parolee shall receive and sign a written copy of the parole agreement.

(22) The parole agreement can be amended upon approval by the Authority.

(23) The Authority does not accept the presence of a detainer as an automatic bar to release; rather, the Authority pursues the basis of any such detainer, and releases the youth per detainer where appropriate.

(24) The Authority has power to terminate youth offenders from parole supervision. Youth are not continued on active parole after one year without cause.

parole officer is responsible to keep the Authority informed regarding all parole violations.

(2) Revocation proceedings will be initiated by the region office when there is probable cause that a parole violation(s) has occurred and that such proceedings are in the best interest of the youth or the community.

(3) A pre-revocation hearing may be held by the Administrative Officer or designee to determine whether there is probable cause to return a youth to a secure facility for a parole violation hearing.

(4) The Administrative Officer in behalf of the Authority may issue warrants of arrest.

(5) An alleged parole violator will have a revocation hearing within 21 days of the pre-revocation hearing. Legal representation is required at revocation hearings.

KEY: juvenile corrections, parole

November 12, 2008

Notice of Continuation June 4, 2007

**62A-7
63G-2-304**

R547-6-5. Arrest and Revocation.

(1) An Incident Report Form will be used to convey information to the Authority regarding parolees. The assigned

R547. Human Services, Juvenile Justice Services.**R547-7. Juvenile Holding Room Standards.****R547-7-1. Authority.**

Section 62A-1-111 authorizes the Department of Human Services to adopt administrative rules.

R547-7-2. Definitions.

(1) "Nonoffenders" means abused, neglected, or dependent youth.

(2) "Sight and sound separation" means that juvenile detainees must be located or arranged as to be completely separated from incarcerated adults by sight and sound barriers such that the adult inmates cannot see juvenile detainees and vice versa. Also, conversation is not possible between juvenile detainees and adult inmates.

(3) "Status offense" means a violation of the law that would not be a violation but for the age of the offender.

R547-7-3. Standards for Two Hour Juvenile Detention in Local Law Enforcement Facilities.

(1) Criteria by which juveniles may be held:

(a) The maximum holding period will be two hours as provided for by Subsection 62A-7-201(4).

(b) Extensive efforts will be made by holding authorities during these two hours to contact the juvenile's parents, guardian, or other responsible adult and arrange for the juvenile's release.

(c) No juvenile under ten years of age will be held by holding authorities, as set forth in the following standards, for any length of time.

(d) Only juveniles who are alleged to have committed a non-status offense or are accused of juvenile handgun possession may be detained for identification or interrogation or while awaiting release to a parent or other responsible adult.

(e) Despite the authorization to hold a juvenile in a certified holding room for up to two hours, no juvenile shall be held in such a room unless there is no other alternative which will protect the juvenile and the community.

(2) Any holding facility intended for use for juveniles must be certified by the state Division of Juvenile Justice Services, Subsection 62A-7-201(4).

(3) There shall be acceptable sight and sound separation from adult inmates, as found in Subsection 62A-7-201(4). Written policy and procedure shall exist to assure supervision is maintained so that both visual contact and verbal communication between juvenile detainees and adult inmates is prohibited.

(4) The juvenile holding rooms and the building in which they are located shall conform to all applicable:

- (a) zoning laws;
- (b) local and state safety, fire, and building codes;
- (c) local and state health codes.

(5) All two hour holding room areas provide for, at a minimum:

- (a) access to a toilet and wash basin;
- (b) adequate shelter, heat, light, and ventilation that does not compromise security or enable escape;
- (c) access to a drinking fountain;
- (d) adequate utilitarian furnishings, including suitable chairs or benches.

(6) Whenever juveniles are detained, there shall be at a minimum:

(a) Removal of all property from the juvenile that could compromise the juvenile's safety, such as belts, shoelaces, and suspenders, prior to placing a juvenile in a holding room;

(b) constant on-site supervision, through visual monitoring and audio two way communication, Subsection 62A-7-201(4);

(c) a P.O.S.T. certified or qualified staff must be available to intervene within 60 seconds should a problem or medical

emergency arise with a juvenile;

(d) frequent personal checks must occur with the juvenile to maintain communication and prevent panic and feelings of isolation;

(e) a written record of significant incidents and activities of the juvenile.

(7) A staff member of the same sex shall supervise the personal hygiene activities and care such as toilet related activities.

(8) When procedures require physical contact or examination, such as strip searches, these shall be done by a staff member of the same sex in private without TV monitoring. Body cavity searches shall be performed only when there is probable cause to believe that weapons or contraband will be found. With the exception of the mouth, all body cavity searches performed visually will be done by two personnel of the same sex as the youth. Manually performed body cavity searches will be performed by medically trained personnel, at least one of which will be the same sex as the youth being examined.

(9) There shall be no viewing devices, such as peep holes or mirrors, of which the juvenile is not aware.

(10) No detainee, juvenile or adult, shall be allowed to have authority or disciplinary control over, be permitted to supervise, or provide services of any nature to other detained juveniles.

(11) The juvenile's health and safety while in the holding room shall be safeguarded by following standard elements on medical and health service. In order to assure this, the holding room administration shall:

(a) have services available to provide 24 hours a day emergency medical care;

(b) provide for immediate examination and treatment, if necessary, of juveniles injured on the holding room premises;

(c) not accept juveniles who are unconscious, obviously seriously injured, obviously a suicide risk, obviously emotionally disturbed, or obviously under the influence of alcohol or drugs and are unable to care for themselves, until they have been examined by a qualified medical practitioner or have been taken to a medical facility for appropriate diagnosis and treatment and released back to the holding room;

(d) train all holding room staff members to recognize symptoms of mental illness;

(e) require that any medical services provided while the juvenile is held be recorded.

(12) As long as classification standards are met, juveniles may be detained together if age, compatibility, dangerousness, and other relevant factors are considered. Juveniles of opposite genders may not be detained together.

(13) There must be written procedures in holding rooms governing the acceptance of juveniles, which include the following:

(a) When an officer or other person takes a juvenile into custody, they shall without unnecessary delay notify the parents, guardian, or custodian.

(b) The holding room staff shall verify with the officer or other person taking the juvenile into custody that the juvenile's parents, guardian, or custodian have been notified of the juvenile's detention. If notification did not occur, agency staff will contact the juvenile's parents, guardian, or custodian.

(14) There must be written policy and procedure that require that the decision to detain the juvenile for up to two hours or release the juvenile be in accordance with the following principles: Sections 78A-6-112, 78A-6-113, and 62A-7-201.

(a) A juvenile shall not be detained any longer than is reasonably necessary to obtain their name, age, residence and any other necessary information, and to contact the juvenile's parents, guardian, or custodian.

(b) The juvenile shall then be released to the care of the

parent or other responsible adult unless the immediate welfare or the protection of the community requires that the juvenile be detained or that it is unsafe for the juvenile or the public to leave the juvenile in the care of the parents, guardian or custodian. If after interrogation it is found that the juvenile should be detained, transfer to an appropriate juvenile facility shall occur without unnecessary delay.

(c) A release record must be maintained which includes:

(i) information regarding physical and emotional condition of juvenile;

(ii) relationship of adult assuming release responsibility to juvenile;

(iii) means of proof of adult identification;

(iv) signature of said adult assuming responsibility regarding juvenile's physical and emotional condition and understanding of reason for holding the juvenile in custody.

(15) An admission or referral form must be completed on each juvenile detained which includes, as a minimum, the following information:

(a) date and time of admission and release;

(b) name, nicknames, and aliases;

(c) last known address;

(d) law enforcement jurisdiction, name, and title, of delivering officer;

(e) specific charges;

(f) sex;

(g) date of birth and place of birth;

(h) race or nationality;

(i) medical problems, if any;

(j) parents, guardian, or responsible person to notify in case of emergency, including addresses and telephone numbers;

(k) space for remarks, to include notation of any open wounds or sores requiring treatment, evidence of disease or body vermin, or tattoos;

(l) probation officer or caseworker assigned, if any.

(16) The written procedures governing the stay of a juvenile shall include:

(a) A juvenile, while held in a certified holding room, shall have the same legal and civil rights as an adult detainee.

(b) A juvenile, while held in a certified holding room, shall have the right to the same number of telephone calls as an adult detainee held the same amount of time.

(17) A case record shall be maintained on each juvenile and shall be kept in a secure place. It shall contain, as a minimum, the following information and documents:

(a) initial intake information form;

(b) documented legal authority to accept, detain, and release youth;

(c) record of incident reports;

(d) a record of cash and valuables held;

(e) visitors' names, if any, personal and professional, and dates of visits;

(f) final release or transfer report.

(18) The holding room facility director shall submit to the state Division of Juvenile Justice Services a monthly accurate report of the numbers of juveniles confined during the preceding month and provide information on each juvenile in the categories indicated on the report form as provided by the state.

(19) Written policy and procedure provide that when a juvenile is in need of hospitalization, a staff member accompanies and stays with the juvenile until admission, if permitted by medical personnel, or until an adult family member or legal guardian arrives to remain with the juvenile.

(20) All informed consent standards in the jurisdiction are observed and documented for medical care. The informed consent of parent, guardian, or legal custodian applies when required by law. When health care is rendered against the patient's will, it is ordered by a standing magistrate or deemed an emergency as defined by Section 26-8a-601.

(21) Written policy and procedure provide that juveniles are not subjected to corporal or unusual punishment, humiliation, or mental abuse.

(22) Written policy and procedure restrict the use of restraints or physical force to instances of justifiable self-defense, protection of juveniles and others, protection of property and prevention of escapes, and only when it is necessary to control juveniles and in accordance with the principle of least restrictive action. In no event is physical force justifiable as punishment. A written report is prepared following all uses of force and is submitted to the facility administrator.

(23) At intake, each juvenile detained is informed of the steps in the detention process.

(24) Juvenile processing procedures shall include written safeguards to prohibit nonoffenders from being detained in the facility and to ensure youth are held in accordance with R547-7-3(1)(c) and (d).

**KEY: juvenile corrections, licensing
November 12, 2008
Notice of Continuation May 30, 2007**

62A-7-201

R547. Human Services, Juvenile Justice Services.**R547-10. Ex-Offender Policy.****R547-10-1. Authority.**

Section 62A-1-111 authorizes the Department of Human Services to adopt administrative rules.

R547-10-2. Ex-Offender Policy.

The Division and its contracted providers shall not employ any ex-offender convicted of a felony or under the supervision of the criminal justice system, or any misdemeanor convictions for crimes against children under the age of 18. Potential employees with a documented history of drug or alcohol abuse, domestic violence, or sexual offense may also be excluded from employment with the Division.

KEY: ex-convicts, juvenile corrections

November 12, 2008

Notice of Continuation September 28, 2007

62A-7-104

R547. Human Services, Juvenile Justice Services.**R547-12. Division of Juvenile Justice Services Classification of Records.****R547-12-1. Authority.**

Section 62A-1-111 authorizes the Department of Human Services to adopt administrative rules.

R547-12-2. Division of Juvenile Justice Services Classification of Records.

(1) The following classification scheme applies to the youth records of the Division of Juvenile Justice Services:

(a) Medical, psychological, and psychiatric reports are classified as controlled information. Other records produced by the Division of Juvenile Justice Services or its contractors are controlled if the agency reasonably believes that releasing the information in the record would be detrimental to the subject's mental health or to the safety of any individual.

(b) Progress reports, quarterly reports, reports to the Court, Parole Board reports, and correspondence are classified as private information, as are all other records in the case file that originate with the Division.

(c) Police reports, juvenile court legal and social information, school reports, and all other documents generated by agencies other than Juvenile Justice Services shall retain the classification assigned to them by the agency from which they were received.

KEY: juvenile corrections

November 12, 2008

Notice of Continuation May 30, 2007

62A-7

63G-2-101

R547. Human Services, Juvenile Justice Services.**R547-13. Guidelines for Admission to Secure Youth Detention Facilities.****R547-13-1. Authority.**

Section 62A-1-111 authorizes the Department of Human Services to adopt administrative rules.

R547-13-2. Purpose and Scope.

(1) This rule establishes guidelines for admission to secure detention to meet the requirements of Section 62A-7-202.

(2) This rule shall be applied to youth candidates for placement in all secure detention facilities operated by the Division of Juvenile Justice Services.

R547-13-3. Definitions.

(1) Terms used in this rule are defined in Sections 62A-7-101 and 78A-6-105.

(2) "Status offense" means a violation of the law that would not be a violation but for the age of the offender.

(3) "Youth" means a person age 10 or over and under the age of 21.

R547-13-4. General Rules.

(1) A youth may be detained in a secure detention facility if:

(a) A youth is charged with any of the following State or Federal offenses:

(i) Any felony offense

(ii) Any attempt, conspiracy, or solicitation to commit a felony offense

(iii) A class A misdemeanor of Section 58-37-8 (1) (b), distribution of a controlled substance violation

(iv) Domestic violence 77-66-1 (Cohabitant)

(v) Section 76-5-104(1)(C) Assault, only when the assault is against an individual with whom the youth lives if efforts by law enforcement, in conjunction with the youth's parent or guardian, to safely place the youth with a family member living outside the youth's home are unsuccessful

(vi) Section 76-5-102 (3), assault causing substantial bodily injury

(vii) Section 76-5-104.4, assault on a police officer

(viii) Section 76-6-104 (a), reckless burning which endangers human life

(ix) A class A misdemeanor violation of Section 76-6-105, causing a catastrophe

(x) Section 76-6-106 (2) (b) (i) (a), criminal mischief involving tampering with property that endangers human life

(xi) A class A misdemeanor violation of Section 76-6-406, theft by extortion

(xii) A class A or B misdemeanor violation of Section 76-10-504, carrying a concealed dangerous weapon

(xiii) Section 76-10-505, carrying a loaded firearm

(xiv) Section 76-10-506, threatening with or using a dangerous weapon in a fight or quarrel

(xv) Section 76-10-507, possession of deadly weapon with intent to assault

(xvi) Section 76-10-509, possession of a dangerous weapon by minor

(xvii) Section Violation of Section 76-10-509.4, prohibition of possession of certain weapons by minors

(xviii) A class A or B misdemeanor violation of Section 76-10-509.5, providing certain weapons to a minor

(xix) Section 76-10-1302, prostitution.

(b) None of the alleged offenses are listed in paragraphs R547-13-4 (1) (a), but three or more non-status criminal offenses are currently alleged in a single criminal episode;

(c) The youth is an escapee or absconder from a Juvenile Justice Services secure institution, observation and assessment unit or community placement or state supervision placement.

(d) The youth has been verified as a fugitive (absconder from probation or parole) or a runaway from another state and a formal request has been received (such as a TWX/National Crime Information Center (NCIC) or a telephone call/FAX from a law enforcement officer or a verified call/FAX from the institution) to hold pending return to the other jurisdiction, whether or not an offense is currently charged.

(e) The youth has failed to appear at a court hearing on a criminal offense within the past twelve months

(f) A youth is not detainable under any of the above criteria, but a non-status law violation has been alleged and one of the following documented conditions exist:

(i) The youth's record discloses two or more prior adjudicated offenses listed in paragraphs R547-13-4(1)(a) in which the offenses were found to be true in the past twelve months.

(ii) The youth, under continuing court jurisdiction excluding those whose ONLY involvement is as a victim of abuse, neglect, abandonment, or dependency, has run from court-ordered placement, including his own home.

(iii) The youth has failed to appear at a court hearing within the past twelve months after receiving legal notice and officials have reason to believe that the youth is likely to abscond unless held.

(2) A youth not otherwise qualified for detention in a secure detention facility shall not be detained for any of the following:

(a) ungovernable or runaway behavior;

(b) neglect, abuse, abandonment, dependency, or other status requiring protection for any other reason;

(c) status offenses such as curfew, possession/consumption of alcohol, tobacco, minor-in-a-tavern, truancy;

(d) Attempted suicide.

(3) No youth under the age of ten years may be detained in a secure detention facility.

R547-13-5. Juvenile Justice Services' Cases.

A youth who is on parole or involved in a trial placement from a secure facility, and who is detained solely on a warrant from the Division of Juvenile Justice Services may be held in a secure detention facility up to 48 hours excluding weekends and legal holidays.

R547-13-6. DCFS Cases.

A youth in the custody or under the supervision of the Division of Child and Family Services (DCFS) cannot be held in a secure detention facility unless he qualifies for detention under some section of this rule.

R547-13-7. Traffic Cases.

A youth brought to detention for traffic violation(s) cannot be held in a secure detention facility unless he qualifies for detention under some section of this rule.

R547-13-8. Transient Cases.

(1) Intrastate:

(a) A youth may be admitted to a secure detention facility when a court pickup order for detention has been issued.

(b) A youth may be admitted to a secure detention facility only if he is detainable under some section of this rule.

(2) Interstate:

(a) Youth who are escapees, absconders, and runaways shall be detained in accordance with the provisions of Subsection R547-13-4(1)(d).

(b) Youth who are out-of-state runaways who commit any non-status criminal offense(s) may be admitted to a secure detention facility.

(c) Non-runaways, when brought to a secure detention facility with an alleged criminal offense, may be detained or

released based on the same criteria which applies to resident youth.

R547-13-9. Immigration Cases.

(1) A youth shall be detained at a secure detention facility when admission is requested by Citizenship and Immigration Services (formerly known as Immigration and Naturalization Services (INS)) officials.

(2) An unaccompanied, undocumented youth with an alleged criminal offense may be detained at a secure detention facility when admission is requested by any other law enforcement officer.

(3) Any unaccompanied, undocumented youth having no alleged criminal offense shall be referred to Youth Services when admission to a secure detention facility is requested by a law enforcement officer.

R547-13-10. AWOL Military Personnel.

Absent without leave (AWOL) military personnel shall be admitted to a secure detention facility.

R547-13-11. Home Detention Cases.

(1) If a home detention violation is alleged, the home detention counselor may cause the alleged violator to be brought to a secure detention facility. If the case involves a violator who is a runaway where a pickup order (Warrant for Custody) has not yet been issued, a law enforcement officer may bring the violator to a secure detention facility. The home detention counselor may then transfer the minor back to the status of home detention, if appropriate, or may authorize the youth to be held in secure detention for a re-hearing.

(2) A youth placed on home detention who is arrested by a law enforcement officer for an alleged criminal code violation(s) shall be admitted to a secure detention facility.

R547-13-12. Juvenile Court Warrants for Custody or Pickup Orders.

A youth shall be admitted to a secure detention facility when a juvenile court judge or commissioner has issued a warrant for custody.

R547-13-13. Probation Violation - Contempt of Court - Stayed Order for Detention.

A youth may be admitted to a secure detention facility for conditions such as: an alleged probation violation, contempt of court, or a stayed order for detention when it has been ordered by a judge. When it is not possible to get a written order, verbal authorization from a judge to detention is sufficient to hold a youth in a secure detention facility.

R547-13-14. Other Court Orders for Detention.

A youth brought to a secure detention facility pursuant to either federal or out-of-state court orders shall be admitted unless otherwise directed by a juvenile court judge.

KEY: juvenile corrections, juvenile detention, admission guidelines

November 12, 2008

Notice of Continuation June 4, 2007

62A-7-202

78A-6-112

78A-6-113

R590. Insurance, Administration.**R590-157. Surplus Lines Insurance Premium Tax and Stamping Fee.****R590-157-1. Authority.**

This rule is promulgated by the commissioner pursuant to Subsections:

- (1) 31A-3-303(2) which requires the commissioner by rule to prescribe accounting and reporting forms and procedures to be used in calculating and paying the surplus lines premium tax; and
- (2) 31A-15-103(11)(d) which requires the commissioner by rule to specify the stamping fee amount and how it is to be collected.

R590-157-2. Purpose and Scope.

A. The purposes of this rule are to prescribe:

- (1) the amount of the stamping fee and;
- (2) the accounting and reporting forms and procedures to be used in calculating surplus lines premium taxes and stamping fees; and.
- (3) the authorized entities to examine the transaction and collect and receive the tax and fee.

B. This rule applies to:

- (1) insurers, surplus lines producers, and policyholders who are jointly and severally liable for the payment of the premium taxes and stamping fee;
- (2) the advisory organization authorized to examine surplus transactions; and
- (3) the commissioner's authorized agent to collect the stamping fee and premium tax and remit the premium tax to the commissioner.

R590-157-3. Definitions.

For the purpose of this rule the commissioner adopts the definitions set forth in Section 31A-1-301, and the following:

A. "Courtesy filing" means a surplus lines policy filing done by a resident surplus lines producer on behalf of a resident or non-resident producer whose licensure does not include a surplus lines line of authority.

B. "Courtesy filing fee" means a fee charged by the resident surplus lines producer for doing a courtesy filing for a resident or non-resident producer whose licensure does not include a surplus lines line of authority.

C. "Stamping fee" means a percentage of policy premium payable for the examination of a surplus lines transaction as required in Subsection 31A-15-103(11).

D. "Surplus Line Association" or "Association" means the Surplus Lines Association of Utah.

E. "Surplus lines producer" means a person licensed under Subsection 31A-23a-106(1)(i) to place insurance with eligible unauthorized insurers in accordance with Section 31A-15-103.

F. "Surplus lines insurer" means an unauthorized foreign or alien insurer subject to the limitations and requirements of Section 31A-15-103, doing business in this state through surplus lines producers, and included on the commissioner's "recognized" list.

G. "Surplus lines premium" means the monetary consideration for an insurance policy procured from an unauthorized insurer, and includes policy fees, membership fees, required contributions, or monetary consideration, however designated.

H. "Surplus lines premium tax" means, as prescribed by Section 31A-3-301, a tax of 4-1/4% of gross surplus lines premiums, less 4-1/4% of return premiums paid to insureds by reason of policy cancellations or premium reductions.

I. "Surplus lines transaction" means the placement with a surplus lines insurer of an insurance policy or certificate of insurance. It also means any cancellation, endorsement, audit, or other adjustment to the insurance policy that affects the

premium.

R590-157-4. Stamping Fee Amounts.

A. The surplus lines stamping fee is .15 of 1% of the policy premium payable for the examination of a surplus lines transaction as required in Subsection 31A-15-103(11)(d).

B. Late surplus lines stamping fee payments may be subject to late fees of 25% of the stamping fee due plus 1 1/2% per month from the time of default until full payment of the fee.

C. A courtesy filing fee is not included as surplus lines premium for the purpose of computing taxes and stamping fees.

R590-157-5. Authorized Agency.

A. The commissioner hereby authorizes the Surplus Line Association of Utah to act as his agent for:

(1) collecting and remitting the premium tax imposed by Section 31A-3-301 on insurance transactions described in Sections 31A-15-103, 31A-15-104, and 31A-15-106;

(2) examining surplus lines transactions under Section 31A-15-111; and

(3) collecting the stamping fee authorized under Section 31A-15-103(11).

B. The Surplus Line Association shall remit all premium taxes it collects in accordance with the procedures of Section 6.

R590-157-6. Accounting Procedures.

A. Within 60 days of the effective date of a surplus lines transaction, the surplus lines producer must file with the Surplus Line Association a copy of the policy, binder, certificate, endorsement, or other documentation sufficient to identify the subject of the insurance; the coverage, conditions, and term of insurance; the type of transaction; the effective date; the premium charged; the premium taxes payable; the name and address of the policyholder and the insurer.

B. The Surplus Line Association may prescribe the forms and procedures to be used by surplus lines producers in fulfilling Section R590-157-5.

C. The Surplus Line Association shall prepare a monthly statement of surplus lines transactions reported during the preceding 30 days for each surplus lines producer. This statement shall list the transactions and premium amounts reported, the surplus lines premium taxes due under 31A-3-301, and the stamping fee due under Subsection 31A-15-103(11)(d).

D. The monthly statement shall be mailed to the surplus lines producers by the 5th day of each month.

E. By the 25th day of each month the surplus lines producer shall remit payment in full to the Surplus Line Association amounts due shown on the monthly statement. Premium taxes and stamping fees shall be held in trust by the surplus lines producer until remitted to the Surplus Lines Association.

F. Within three days of the date received, the Surplus Line Association shall deposit in a qualified depository approved by the Office of the State Treasurer, for the credit of the Utah Insurance Department, all funds received as payment of the surplus lines premium tax.

G. For tax credits for return premiums, which are not offset by charges in the monthly statement, the Surplus Line Association shall submit a request for payment to the Insurance Department. A reimbursement will be issued to the designated person by the Insurance Department pursuant to the Division of Finance's policies and procedures.

H. The Surplus Line Association shall prepare the following reports for the benefit of the commissioner.

(1) A monthly report shall be prepared listing the surplus lines producers reporting premiums written during the month and the amount of the premiums, taxes and fees reported. The report shall also list the names of surplus lines insurers and the amount of written premium attributed to them for the month.

This report shall be submitted by the 15th of the subsequent month.

(2) An annual report shall be prepared on the basis of both surplus lines producers and surplus lines insurers and shall list all premiums reported and taxes paid during the previous calendar year. This report shall be submitted to the commissioner by January 31 of each year.

(3) An annual financial report including income and expense and balance sheet for the Surplus Lines Association shall be submitted to the commissioner within 30 days of the end of the Association's fiscal year.

R590-157-7. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under 31A-2-308.

R590-157-8. Enforcement Date.

The commissioner will begin enforcing the revised provision of this rule effective January 1, 2009.

R590-157-9. Severability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.

KEY: insurance fee, taxes

November 18, 2008

Notice of Continuation January 10, 2008

31A-2-201

31A-3-303

31A-15-103

R590. Insurance, Administration.**R590-176. Health Benefit Plan Enrollment.****R590-176-1. Authority.**

The commissioner's authority to promulgate this rule is provided in Sections 31A-2-201(3) and 31A-2-202(2).

R590-176-2. Purpose and Scope.

The purpose and scope of this rule is to provide enrollment requirements under Section 31A-30-108 for carriers who provide health benefit plan coverage to individuals and small employers as stated in Section 31A-30-104.

R590-176-3. Definitions.

(1) The definitions in Sections 31A-1-301 and 31A-30-103 apply to this rule.

(2) "Carrier" means a covered carrier as defined in Section 31A-30-103.

(3) "Time period" means the period such as daily, weekly or monthly, as determined by the carrier, in which applications are grouped.

R590-176-4. General Provisions.

(1) Any attempt to selectively or unfairly delay, obstruct or otherwise hinder any person from obtaining coverage under Chapter 30 is a violation of Section 31A-30-108.

(2) Enrollment shall be equally available through all distribution systems, classes of business, and rating criteria categorizations.

(3) Enrollment is available to small employers without respect to whether any eligible employee or dependent is classified as uninsurable.

(4) The enrollment residency requirements do not supersede other dependent and child requirements of the Insurance Code.

(5) A carrier must offer a basic health care plan in compliance with Sections 31A-22-613.5 and 31A-30-109.

(6) A carrier may not market or encourage producers to market individual or small employer health benefit plans in such a way that there is a lessened incentive to insure business with greater health risks.

(7) Commission schedules shall be structured in compliance with R590-207, Health Agent Commissions for Small Employer Groups.

(8) The carrier shall retain a signed statement from each covered small employer that the carrier offered to accept all eligible employees and their dependents at the same level of benefits under the health benefit plan provided to the employer.

(9) An individual or small employer is considered uninsured if the individual or small employer:

(a) does not have a health benefit plan; or

(b) health benefit plan is with a carrier that has made an election under Subsections 31A-8-402.3(3)(e), 31A-8-402.5(3)(e), 31A-22-721(3)(e), 31A-30-107(3)(e), or 31A-30-107.1(3)(e).

(10) All records regarding enrollment applications and underwriting determinations shall:

(a) be retrievable for examination by the time period the application was received;

(b) include all documents, indicating the applicable date, pertaining to the application and its underwriting; and

(c) be retained for the current year plus three years.

(11) The documents indicated in subsection (10)(b) would include:

(a) application and date received,

(b) notifications to the applicant and the date of notification;

(c) records used in underwriting and date received; and

(d) underwriting decision and date of decision.

R590-176-5. Application and Enrollment.

(1) An individual carrier shall establish a procedure to determine the order of applications. The procedure shall group the applications into consistent time periods. The enrollment cap may not be applied until the end of the time period in which it is met. The individual carrier shall keep a record of all applications for coverage that includes the time period an application is received by the carrier.

(2) All applications shall be treated consistently.

(3)(a) A complete application shall be processed and a written notice of the decision communicated to the applicant within 30 days of the decision. If an application is denied, the decision must include specific details explaining the denial.

(b) The carrier may not require that an application be complete in order to qualify as an application for coverage.

(c) If an application is incomplete, within 15 days from receipt of the application, a carrier shall notify the applicant of the areas that are incomplete and the information required to complete the application.

(d) Before an application can be filed as incomplete, applicants shall have at least 30 days, after being notified additional information is required.

(e) A date earlier than the postmarked date of the notice in Subsection (3)(c), may not be used as the date of notification.

(4) The acceptance of an application may not be delayed pending the receipt of medical records. This does not apply to other required statements from applicants as provided in Subsection (3).

R590-176-6. Small Employer Enrollment.

A small employer carrier shall:

(1) permit an eligible employee, or a dependent of such employee, to enroll for coverage under the terms of the plan, if the eligible employee requests enrollment not later than 30 days after the eligibility date; and

(2) enroll a new eligible employee and a dependent of such employee making timely application for coverage in a small employer group with existing coverage.

R590-176-7. Individual Underwriting Criteria.

(1) Each carrier shall determine the number of individuals classified as uninsurable at initial enrollment. This determination shall be made in accordance with this rule.

(2) An individual insured by the Utah Comprehensive Health Insurance Pool is classified as uninsurable.

(3) (a) An individual may be classified as uninsurable if the individual has:

(i) one or more medical conditions; or

(ii) one or more prescriptions; and

(iii) the conditions, prescriptions, or both, are determined to have a total number of debit points equal to or greater than 99 debit points in the aggregate consistent with the Milliman Health Cost Guidelines - Small Group Medical Underwriting, June 2008, taking into account;

(A) elapsed time;

(B) additional criteria; and

(C) exception criteria.

(b) A carrier may not take into account conditions for which coverage is not provided. This includes conditions excluded as a pre-existing condition for which treatment is expected during the exclusion period if the applicant would not be considered uninsurable after the treatment.

(4) Determinations made by an insurer under Subsection (3)(iii) will be audited by an experienced independent underwriter retained by the board of the Utah Comprehensive Health Insurance Pool who will rely on the Milliman Health Cost Guidelines - Small Group Medical Underwriting, June 2008, to evaluate whether the debit points of the medical conditions, prescriptions, or both are equal to or greater than 99

debit points in the aggregate.

(5) A carrier may appeal a determination by the auditor under Section 3 that an individual has a combination of conditions, prescriptions, or both, that cause that individual to have debit points less than the number of debit points determined under Section (3) to the commissioner. The commissioner may appoint a designee to review these appeals.

(6) Only individuals enrolling under Subsection 31A-30-108(3) may be counted as uninsurable.

R590-176-8. Individual Carrier Enrollment Cap Calculation and Certification.

(1) Pursuant to Section 31A-30-110, an individual carrier may not decline enrollment until the carrier has:

- (a) met its enrollment cap; and
- (b) submitted a certification to the department in compliance with this section.

(2) An individual carrier may limit enrollment after submitting its certification.

(3) The commissioner may require additional enrollment after reviewing the certification.

(4) An officer of the individual carrier shall submit a certification that:

(a) lists the UC and CI as defined in Section 31A-30-103(28);

(b) lists the number of individual natural covered lives at the time of the certification;

(c) categorizes the UC into new applicants added to existing policies and newly issued policies;

(d) identifies the number of Comprehensive Health Insurance Pool participants; and

(e) identifies the qualifying conditions, prescriptions, or both that cause the persons making up the carrier's UC to be considered uninsurable under Section 31A-30-106(1)(j) and Rule R590-176.

(5) Carriers, whose coverage count exceeds 200% of the coverage count as of the end of the prior year, shall determine the uninsurable percentage using counts as of the end of the most recent calendar quarter.

R590-176-9. Solvency Waiver.

A carrier that expects the requirements of Chapter 30 to place the carrier in supervision, insolvency or liquidation shall, within 15 days of such determination, submit a report to the commissioner. The report shall detail the financial consequences of Chapter 30 and request the specific waivers or modifications required to prevent supervision, insolvency or liquidation.

R590-176-10. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 45 days from the rule's effective date.

R590-176-11. Severability.

If a provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provisions to other persons or circumstances shall not be affected thereby.

KEY: health insurance

November 18, 2008

Notice of Continuation January 11, 2007

31A-2-201

31A-2-202

R590. Insurance, Administration.**R590-245. Self-Service Storage Insurance.****R590-245-1. Authority.**

This rule is promulgated pursuant to Subsection 31A-2-201(3) in which the commissioner is empowered to adopt rules to implement the provisions of the Utah Insurance Code and specifically Subsections:

(1) 31A-23a-106(3)(a), that authorizes the Commissioner to recognize by rule other limited line producer lines of authority as to kinds of insurance not listed under Subsections 31A-23a-106(2)(a) through (f);

(2) 31A-23a-104(2), and 31A-23a-110(1), that authorizes the Commissioner to prescribe the form in which licenses covered under Chapter 23a are to be issued or renewed; and

(3) 31A-23a-111(10), that authorizes the Commissioner to prescribe by rule, license renewal and reinstatement procedures.

R590-245-2. Purpose and Scope.

(1) The purpose of this rule is to:

(a) recognize self-service storage as a limited line producer line of authority; and

(b) establish standards of licensing for those in the self-service storage related insurance business in Utah.

(2) This rule applies to all persons selling, soliciting, or negotiating self-service storage related insurance business in Utah.

R590-245-3. Definitions.

For the purposes of this rule, the commissioner adopts the definitions in Sections 31A-1-301 and 31A-23a-102, and the following:

(1) "Self-service storage insurance" means any contract of insurance issued to a renter as a part of an agreement of self-service storage with respect to:

(a) hazard insurance coverage provided to a renter for loss or damage to tangible personal property in storage or in transit during the rental period; or

(b) tenant liability insurance coverage.

(2) "Self-service storage facility" means a person or agency engaged in the business of providing leased or rented storage space to the public.

(3) "Storage space" means a room, unit, locker, or open space offered for rental to the public for temporary storage of personal belongings or light commercial goods.

(4) "Renter" means any person who obtains the use of storage space from a self-service storage facility under the terms of a rental agreement.

(5) "Rental agreement" means any written agreement setting forth the terms and conditions governing the use of storage space provided by a self-service storage facility.

(6) "Self-service storage insurance license" means a limited line producer license with a self-service storage insurance limited line producer line of authority that authorizes a person, licensed pursuant to this rule, to offer self-service storage insurance in connection with, and incidental to rental agreements on behalf of an insurer authorized to write the types of insurance specified in this state.

R590-245-4. Licensing and Renewal.

(1) All persons and entities involved in the sale, solicitation, or negotiation of self-service storage insurance must be licensed in accordance with Chapter 31A-23a, applicable department rules regarding individual and agency licensing, and this rule.

(2) A self-service storage insurance license is issued for a two-year license period and requires no examination or continuing education.

(3) A self-service storage insurance license must be renewed at the end of the two-year licensing period in

accordance with Chapter 31A-23a and any applicable department rules regarding license renewal.

(4) A self-service storage insurance license may be held by an individual or by an agency, such as a self-service storage facility or franchisee of a self-service storage facility.

(5) An individual licensed under this rule must either be appointed by an insurance company underwriting the insurance policy the individual sells, or be designated to act by an agency licensed under this rule.

(6) An agency licensed under this rule must:

(a) be appointed by an insurance company underwriting the insurance policies the agency sells;

(b) designate a licensed individual to be responsible for the regulatory compliance of the agency in Utah.

(7) An agency licensed under this rule may employ non-licensed personnel employed as self-service storage counter sales representatives to sell, solicit, or negotiate self-service storage insurance. Such non-licensed employees must:

(a) be trained and supervised in the sale of self-service storage insurance products; and

(b) be responsible to a licensed individual designated by the agency.

(8) No self-service storage facility, or franchisee of a self-service storage facility, may offer or sell self-service storage insurance unless it has complied with the requirements of this rule and has been issued a license by the commissioner.

R590-245-5. Penalties.

A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-245-6. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R590-245-7. Severability.

If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remaining provisions to other persons or circumstances shall not be affected.

**KEY: self-service storage, insurance
November 12, 2008**

**31A-2-201
31A-23a-104
31A-23a-106
31A-23a-110
31A-23a-111
31A-1-301
31A-23a-102**

R592. Insurance, Title and Escrow Commission.**R592-6. Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business.****R592-6-1. Authority.**

This rule is promulgated pursuant to Section 31A-2-404(2), which authorizes the Title and Escrow Commission (Commission) to make rules for the administration of the Insurance Code related to title insurance, including rule related to standards of conduct for a title insurer, agency or producer.

R592-6-2. Purpose and Scope.

(1) The purpose of this rule is to identify certain practices, which the Commission finds creates unfair inducements for the placement of title insurance business and as such constitute unfair methods of competition. These practices include the payment of expenses that are considered normal, customary, reasonable and recurring in the operation of a client of a title insurer, agency or producer.

(2) This rule applies to all title insurers, title insurance agencies, title insurance producers and all employees, representatives and any other party working for or on behalf of said entities whether as a full time or part time employee or as an independent contractor.

R592-6-3. Definitions.

For the purpose of this rule the Commission adopts the definitions as set forth in Section 31A-1-301 and 31A-2-402, and the following:

(1) "Bona fide real estate transaction" means:

(a) a preliminary title report is issued to a seller or listing agent in conjunction with the listing of a property; or

(b) a commitment for title insurance is ordered, issued, or distributed in a purchase and sale transaction showing the name of the proposed buyer and the sales price, or in a loan transaction showing the proposed lender and loan amount.

(2) "Business Activities" shall include sporting events, sporting activities, musical and art events. In no case shall such business activities rise to the level of ceremonies, for example, award banquets, recognition events or similar activities sponsored by or for clients, or include travel by air, or other commercial transportation.

(3) "Business meals" shall include breakfast, brunch, lunch, dinner, cocktails and tips. In no case shall such business meals raise to the level of ceremonies, for example, awards banquets, recognition events or similar activities sponsored by or for clients.

(4)(a) "Client" means any person, or group, who influences, or who may influence, the placement of title insurance business or who is engaged in a business, profession or occupation of:

(i) buying or selling interests in real property; and

(ii) making loans secured by interests in real property.

(b) "Client" includes real estate agents, real estate brokers, mortgage brokers, lending or financial institutions, builders, developers, subdividers, attorneys, consumers, escrow companies and the employees, agents, representatives, solicitors and groups or associations of any of the foregoing.

(5) "Discount" means the furnishing or offering to furnish title insurance, services constituting the business of title insurance or escrow services for a total charge less than the amounts set forth in the applicable rate schedules filed pursuant to Section 31A-19a-203 or 31A-19a-209.

(6) "Official trade association publication" means:

(a) a membership directory, provided its exclusive purpose is that of providing the distribution of an annual roster of the association's members to the membership and other interested parties; or

(b) an annual, semiannual, quarterly or monthly publication containing information and topical material for the

benefit of the members of the association.

(7) "Title insurance business" means the business of title insurance and the conducting of escrow.

(8) "Trade Association" means a recognized association of persons, a majority of whom are clients or persons whose primary activity involves real property.

R592-6-4. Unfair Methods of Competition, Acts and Practices.

In addition to the acts prohibited under Section 31A-23a-402, the Commission finds that providing or offering to provide any of the following benefits by parties identified in Section R592-6-2 to any client, either directly or indirectly, except as specifically allowed in Section R592-6-5 below, is a material and unfair inducement to obtaining title insurance business and constitutes an unfair method of competition.

(1) The furnishing of a title insurance commitment without one of the following:

(a) sufficient evidence in the file of the title insurer, agency or producer that a bona fide real estate transaction exists; or

(b) payment in full at the time the title insurance commitment is provided.

(2) The paying of any charges for the cancellation of an existing title insurance commitment issued by a competing organization, unless that commitment discloses a defect which gives rise to a claim on an existing policy.

(3) Furnishing escrow services pursuant to Section 31A-23a-406:

(a) for a charge less than the charge filed pursuant to Section 31A-19a-209(5); or

(b) the filing of charges for escrow services with the Utah Insurance Commissioner (commissioner), which are less than the actual cost of providing the services.

(4) Waiving all or any part of established fees or charges for services which are not the subject of rates or escrow charges filed with the commissioner.

(5) Deferring or waiving any payment for insurance or services otherwise due and payable, including a series of real estate transactions for the same parcel of property.

(6) Furnishing services not reasonably related to a bona fide title insurance, escrow, settlement, or closing transaction, including non-related delivery services, accounting assistance, or legal counseling.

(7) The paying for, furnishing, or waiving all or any part of the rental or lease charge for space which is occupied by any client.

(8) Renting or leasing space from any client, regardless of the purpose, at a rate which is excessive or inadequate when compared with rental or lease charges for comparable space in the same geographic area, or paying rental or lease charges based in whole or in part on the volume of business generated by any client.

(9) Furnishing any part of a title insurer's, title agency's, or title producer's facilities, for example, conference rooms or meeting rooms, to a client or its trade association without receiving a fair rental or lease charge comparable to other rental or lease charges for facilities in the same geographic area.

(10) The co-habitation or sharing of office space with a client of a title insurer, title agency, or title producer.

(11) Furnishing all or any part of the time or productive effort of any employee of the title insurer, agency or producer, for example, secretary, clerk, messenger or escrow officer, to any client.

(12) Paying for all or any part of the salary of a client or an employee of any client.

(13) Paying, or offering to pay, either directly or indirectly, salary, commissions or any other consideration to any employee who is at the same time licensed as a real estate agent

or real estate broker or as a mortgage lender or mortgage company subject to 31A-2-405 and R592-5.

(14) Paying for the fees and charges of a professional, for example, an appraiser, surveyor, engineer or attorney, whose services are required by any client to structure or complete a particular transaction.

(15) Sponsoring, cosponsoring, subsidizing, contributing fees, prizes, gifts, food or otherwise providing anything of value for an activity of a client, except as allowed under Subsection R592-6-5(6). Activities include open houses at homes or property for sale, meetings, breakfasts, luncheons, dinners, conventions, installation ceremonies, celebrations, outings, cocktail parties, hospitality room functions, open house celebrations, dances, fishing trips, gambling trips, sporting events of all kinds, hunting trips or outings, golf or ski tournaments, artistic performances and outings in recreation areas or entertainment areas.

(16) Sponsoring, cosponsoring, subsidizing, supplying prizes or labor, except as allowed under Subsection R592-6-5(2) or otherwise providing things of value for promotional activities of a client. Title insurers, agencies or producers may attend activities of a client if there is no additional cost to the title insurer, agency or producer other than their own entry fees, registration fees, meals, and provided that these fees are no greater than those charged to clients or others attending the function.

(17) Providing gifts or anything of value to a client in connection with social events such as birthdays or job promotions. A letter or card in these instances will not be interpreted as providing a thing of value.

(18) Furnishing or providing access to the following, even for a cost:

- (a) building plans;
- (b) construction critical path timelines;
- (c) "For Sale by Owner" lists;
- (d) surveys;
- (e) appraisals;
- (f) credit reports;
- (g) mortgage leads for loans;
- (h) rental or apartment lists; or
- (i) printed labels.

(19) Newsletters cannot be property specific or cannot highlight specific customers.

(20) A title insurer, agency or producer cannot provide a client access to any software accounts that are utilized to access real property information that the insurer, agency or producer pays for, develops, or pays to maintain. Closing software is exempt as long as it is used for a specific closing.

(21) A person, as defined in 31A-1-301, or individual affiliated with a title insurer, agency or producer cannot provide a loan or any type of financing to a client of title insurance.

(22) Paying for any advertising on behalf of a client.

(23) Advertising jointly with a client on subdivision or condominium project signs, or signs for the sale of a lot or lots in a subdivision or units in a condominium project. A title insurer, agency or producer may advertise independently that it has provided title insurance for a particular subdivision or condominium project but may not indicate that all future title insurance will be written by that title insurer, agency or producer.

(24) Advertisements may not be placed in a publication, including an internet web page and its links, that is hosted, published, produced for, distributed by or on behalf of a client.

(25) A donation may not be made to a charitable organization created, controlled or managed by a client.

(26) A direct or indirect benefit, provided to a client which is not specified in Section R592-6-5 below, will be investigated by the department for the purpose of determining whether it should be defined by the Commission as an unfair inducement

under Section 31A-23a-402(8).

(27) Title insurers, agencies and producers who have ownership in, or control of, other business entities, including I.R.C. Section 1031 qualified intermediaries and escrow companies, may not use those other business entities to enter into any agreement, arrangement, or understanding or to pursue any course of conduct, designed to avoid the provisions of this rule.

R592-6-5. Permitted Advertising, Business Entertainment, and Methods of Competition.

Except as specifically prohibited in Section R592-6-4 above, the following are permitted:

(1) In addition to complying with the provisions of 31A-23a-402 and R590-130, Rules Governing Advertisements of Insurance, advertisement by title insurers, agencies or producers must comply with the following:

- (a) the advertisement must be purely self-promotional; and
- (b) advertisement in official trade association publications are permissible as long as any title insurer, agency or producer has an equal opportunity to advertise in the publication and at the standard rates other advertisers in the publication are charged.

(2) A title insurer, agency or producer may donate time to serve on a trade association committee and may also serve as an officer for the trade association.

(3) A title insurer, agency or producer may have two self-promotional open houses per calendar year for each of its owned or occupied facilities, including branch offices. The title insurer, agency or producer may not expend more than \$15 per guest per open house. The open house may take place on or off the title insurer's, agency's or producer's premises but may not take place on a client's premises.

- (4) A donation to a charitable organization must:
 - (a) not be paid in cash;
 - (b) if paid by a negotiable instrument, be made payable only to the charitable organization;
 - (c) be distributed directly to the charitable organization; and
 - (d) not provide any benefit to a client.

(5) A title insurer, agency or producer may distribute self-promotional items having a value of \$5 or less to clients, consumers and members of the general public. These self-promotional items shall be novelty gifts which are non-edible and may not be personalized or bear the name of the donee. Self-promotional items may only be distributed in the regular course of business. Self-promotional items may not be given to clients or trade associations for redistribution by these entities.

(6) A title insurer, agency or producer may make expenditures for business meals or business activities on behalf of any person, whether a client or not, as a method of advertising, if the expenditure meets all the following criteria:

- (a) the person representing the title insurer, agency or producer must be present during the business meal or business activity;
- (b) there is a substantial title insurance business discussion directly before, during or after the business meal or business activity;
- (c) the total cost of the business meal, the business activity, or both is not more than \$100 per person, per day;
- (d) no more than three individuals from an office of a client may be provided a business meal or business activity by a title insurer, agency or producer in a single day; and
- (e) the entire business meal or business activity may take place on or off the title insurer's, agency's or producer's premises, but may not take place on a client's premises.

(7) A title insurer, agency or producer may conduct continuing education programs that are approved by the appropriate regulatory agency, under the following conditions:

(a) the continuing education program shall address only title insurance, escrow or other topics directly related thereto;

(b) the continuing education program must be of at least one hour in duration;

(c) for each hour of continuing education, \$15 or less per person may be expended, including the cost of meals and refreshments; and

(d) no more than one such continuing education program may be conducted at the office of a client per calendar quarter.

(8) A title insurer, agency or producer may acknowledge a wedding, birth or adoption of a child, or funeral of a client or members of the client's immediate family with flowers or gifts not to exceed \$75.

(9) Any other advertising, business entertainment, or method of competition must be requested in writing and approved in advance and in writing by the Commission.

R592-6-6. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule 45 days from the effective date of the rule.

R592-6-7. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: title insurance

November 10, 2008

Notice of Continuation November 9, 2007

31A-2-201

31A-23a-402

R602. Labor Commission, Adjudication.**R602-1. General Provisions.****R602-1-1. Time.**

A. An Order is deemed issued on the date on the face of the Order which is the date the presiding officer signs the Order.

B. In computing any period of time prescribed or allowed by these rules or by applicable statute:

1. The day of the act, event, finding, or default, or the date an Order is issued, shall not be included;

2. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state legal holiday, in which event the period runs until the end of the next working day;

3. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded in the computation;

4. No additional time for mailing will be allowed.

R602-1-2. Witness Fees.

Each witness who shall appear before the Commission by its order shall receive from the Commission for his/her attendance fees and mileage as provided for witnesses by the Utah Rules of Civil Procedure. Otherwise, each party is required to subpoena witnesses at their own expense.

R602-1-3. Representatives at Adjudicative Proceedings.

1. Representatives who are not duly admitted and licensed to practice law in Utah shall not be allowed to appear on behalf of a party before the Adjudication Division.

2. Individuals who are parties to an adjudicative proceeding before the Adjudication Division may appear pro se.

3. Corporations who are parties to an adjudicative proceeding before the Adjudication Division shall be represented by legal counsel who are duly admitted to practice law in Utah.

R602-1-4. Filing of Documents.

1. All documents filed with the administrative law judge shall be filed with all other parties to the adjudicative proceeding and shall provide verification of mailing to, or service on, all parties to whom copies of the documents are mailed or personally delivered.

2. Parties shall not file courtesy copies with the Division.

R602-1-5. Official Record.

As contemplated by Section 34A-1-302(3) the only official record of any formal or informal hearing conducted by the Division is the audio recording kept by the administrative law judge during the hearing. Any recording or record kept of a formal or informal hearing other than that kept by the administrative law judge shall not be used for any purpose requiring an official record of the proceedings as contemplate by Section 34A-1-302(3).

KEY: witness fees, time, administrative procedures, filing deadlines

November 25, 2008

34A-1-302

Notice of Continuation August 15, 2007 63G-4-102 et seq.

R602. Labor Commission, Adjudication.**R602-4. Procedures for Termination of Temporary Total Disability Compensation Pursuant to Reemployment Under Section 34A-2-410.5.****R602-4-1. Purpose, Authority and Scope.**

Section 34A-2-410.5 allows an employer or its insurance carrier ("employer" hereafter) to request Labor Commission permission to reduce or terminate an employee's temporary disability compensation. Under authority of section 34A-2-410.5(7), the Commission establishes these rules to govern the adjudication of such requests. This rule supersedes the provisions of R602-2, R602-3, and R602-5 as to any actions brought pursuant to section 34A-2-410.5.

R602-4-2. Commission Permission Required.

An employer shall not terminate or reduce an employee's temporary disability compensation pursuant to section 34A-2-410.5 prior to issuance of a final order by the Commission ordering the reduction or termination.

R602-4-3. Mediation.

Prior to filing a request to terminate or reduce temporary disability compensation pursuant to section 34A-2-410.5, the parties are encouraged to request assistance from the Mediation Unit of the Commission's Industrial Accidents Division.

R602-4-4. Pleadings and Discovery.**A. Definitions.**

1. "Application" means an Application for Hearing for Termination or Reduction of Compensation (Adjudication Form 402), all supporting documents, proof of service and Notice of Request for Termination or Reduction of Compensation (Adjudication Form 404) which together constitute the request for agency action regarding termination or reduction of benefits pursuant to Section 34A-2-410.5.

2. "Supporting medical documentation" means any medical provider's report or treatment note that addresses the employee's medical condition or functional restrictions.

3. "Supporting documents" means supporting medical documentation. Persons with Knowledge List (Adjudication Form 403), any documents related to reasons for the requested termination or reduction, and any documents describing the employee's work duties.

4. "Proof of Service" means any of the following: 1) the employee's signed and dated acceptance of service of the Application and all supporting documents; 2) a certificate of service of the Application and all supporting documents signed by the employer or insurer's counsel and accompanied by a return receipt signed by the employee; or 3) a return of service showing personal service of the Application and all supporting documents on the employee according to Utah Rule of Civil Procedure 4(d)(1).

5. "persons with Knowledge List" (Adjudication Form 403) means a party's list of all persons who have material knowledge regarding the reasons for the request to terminate or reduce compensation. The list must specify the full name of the person, a summary of the knowledge possessed by the person, and a statement whether the party will produce the person as a witness at hearing.

6. "Notice of Request for Termination or Reduction of Compensation" means Adjudication Form 404.

7. "Petitioner" means the employer who has filed an Application for Hearing.

8. "Respondent" means the employee against whom the Application for Hearing was filed.

B. Application for Hearing.

1. An employer may request Commission approval to terminate or reduce an employee's temporary disability compensation under section 34A-2-410.5 by filing an

Application with the Commission' Adjudication Division.

2. An Application is not deemed filed with the Division until the employer submits a completed Application with all required documentation.

C. Discovery.

1. At least 15 days prior to a hearing on an Application, each party shall mail or otherwise serve on the opposing party a list of all witnesses that party will produce at the hearing. Because it is presumed that the employee will appear at the hearing, the employee is not required to list himself or herself on the list. The employer will also mail to or otherwise serve on the employee a copy of all exhibits the employer intends to submit at the hearing.

2. Testimony of witnesses and exhibits not disclosed as required by this Rule shall not be admitted into evidence at the hearing. A party's failure to subpoena or otherwise produce an individual previously identified by that party as an intended witness may give rise to an inference that the individual's testimony would have been adverse to the party failing to produce the witness.

3. Other than disclosures required by this rule and voluntary exchanges of information, the parties may not engage in any other discovery procedures.

4. Subpoenas may be used only to compel attendance of witnesses at hearing, and not for obtaining documents or compelling attendance at depositions. All subpoenas shall be signed by an administrative law judge.

D. Defaults and Motions.

1. Defaults in proceedings under Section 34A-2-410.5 shall only be issued at the time of hearing based on nonattendance of a party at the hearing.

2. Motions will only be considered at the time of hearing.

E. Hearings.**1. Scheduling and Notice.**

A hearing will be held within 30 days after an Application is filed with the Commission's Adjudication Division. The Division will send notice of hearings by regular mail to the addresses of the employer and employee set forth on the Application. A party must immediately notify the Division of any change or correction to the addresses listed on the Application. The Division will also mail notice to the address of any party's attorney as disclosed on the Application or by an Appearance of counsel filed with the Division. Notice by the Division to a party's attorney is considered notice to the party itself.

2. Hearings.

Each hearing pursuant to section 34A-2-410.5 shall be conducted by an administrative law judge as a formal evidentiary hearing. The evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted thereafter. After hearing, the administrative law judge shall issue a decision within 45 days from the date the Application was filed.

F. Motions for Review.

Commission review of an administrative law judge's decision is subject to the provisions of section 63G-4-301, section 34A-1-1-303, and R602-2-1(M).

KEY: workers' compensation, administrative procedures, hearings, settlements
November 25, 2008

34A-1-104(1) et seq.
34A-2-410.5

R651. Natural Resources, Parks and Recreation.**R651-206. Carrying Passengers for Hire.****R651-206-1. Definitions.**

(1) "Agent" means a person(s) designated by an outfitting company to act in behalf of that company in certifying:

(a) The verification of a license or permit applicant's vessel operation experience, appropriate first aid and CPR certificates and identifying information.

(b) The verification of an annual dockside or a five-year dry dock inspection of a vessel.

(2) "Certificate of maintenance and inspection" means a document produced by the Division and signed by a marine or vessel inspector and an agent of the outfitting company that a vessel has met the requirements of a required inspection. For float trip vessels, the certificate of maintenance and inspection will be issued to the outfitting company and not an individual vessel.

(3) "Certificate of outfitting company registration" means a document produced by the Division annually, indicating that an outfitting company is registered and in good standing with the Division.

(4) "Certifying experience" means vessel operation or river running experience obtained within ten years of the date of application for the license or permit.

(5) "CFR" means U.S. Code of Federal Regulations.

(6) "Deck rail" means a guard structure at the outer edge of a vessel deck consisting of vertical solid or tubular posts and horizontal courses made of metal tubing, wood, cable, rope or suitable material.

(7) "Dockside inspection" means an annual examination of a vessel when the vessel is afloat in the water so that all of the exterior of the vessel above the waterline and the interior of the vessel may be examined. For float trip vessels, the annual dockside inspection may be performed at the company's place of business.

(8) "Dry dock inspection" means an examination of a vessel, conducted once every five years, when the vessel is out of the water and supported so all the exterior and interior of the vessel may be examined. For float trip vessels, the five-year dry dock inspection may be performed at the company's place of business.

(9) "Good marine practices and standards" means those methods and ways of maintaining, operating, equipping, repairing and restructuring a vessel according to commonly accepted standards, including 46 CFR, the American Boat and Yacht Council, the American Bureau of Shipping, the National Marine Manufacturers Association, and other appropriate generally accepted standards as sources of reference.

(10) "License" means a Utah Captain's/Guide's License or a U.S. Coast Guard Master's License.

(11) "Low capacity vessel" means a vessel with a carrying capacity of three or fewer occupants (e.g. canoe, kayak, inflatable kayak, or similar vessel).

(12) "Marine inspector" means a person who has been trained to perform a dry dock inspection and is registered with the Division as a person who is eligible to perform a dry dock inspection of a vessel.

(13) "Other rivers" means all rivers or river sections in Utah not defined in Subsection (18) of this rule as a whitewater river.

(14) "Permit" means a Utah Boat Crew Permit.

(15) "Sole state waters," means all waters of this state, except for the waters of Bear Lake, Flaming Gorge and Lake Powell.

(16) "Towing for hire" means the activity of towing vessels or providing on-the-water assistance to vessels for consideration.

(a) Towing for hire is considered carrying passengers for hire

(b) Towing for hire does not include a person or entity performing salvage or abandoned vessel retrieval operations.

(17) "Vessel inspector" means a person who has been trained to perform a dockside inspection and is registered with the Division as a person who is eligible to perform a dockside inspection on a vessel.

(18) "Whitewater river" means the following river sections: the Green and Yampa Rivers within Dinosaur National Monument, the Green River in Desolation-Gray Canyon (Mile 96 to Mile 20), the Colorado River in Westwater Canyon, the Colorado River in Cataract Canyon, or other Division recognized whitewater rivers in other states.

(19) "Float trip vessel" means a vessel, or the components and equipment used to configure such a vessel that is designed to be operated on a whitewater river or section of river. A float trip vessel may be a raft with inflatable chambers or a configuration of metal and/or wood frames, straps or chains, and inflatable pontoon tubes that are integral in maintaining the flotation, structural integrity and general seaworthiness of the vessel.

R651-206-2. Outfitting Company Responsibilities.

(1) Each outfitting company carrying passengers for hire on waters of this state shall register with the Division annually, prior to commencement of operation.

(a) Outfitting company registration with the Division requires the completion of the prescribed application form and providing the following:

(i) Evidence of a current and valid business license;

(ii) Evidence of a current and valid river trip authorization(s), Special Use Permit(s), or performance contract(s) issued by an appropriate federal or state land managing agency;

(iii) Evidence of general liability insurance coverage; and

(iv) Payment of a \$150 fee for an outfitting company whose place of business is physically located within the State of Utah, or

(v) Payment of a \$200 fee for an outfitting company whose place of business is physically located outside of the State of Utah.

(2) Upon successful registration with the Division, the Division shall issue a certificate of outfitting company registration in the name of the outfitting company. An outfitting company shall display its certificate of outfitting company registration at its place of business in a prominent location, visible to persons and passengers who enter the place of business.

(3) An agent of an outfitting company shall certify that each license or permit applicant sponsored by the outfitting company has:

(a) Obtained the minimum levels of required vessel operation experience corresponding to the type of license or permit applied for;

(b) Obtained the appropriate first aid and CPR certificates; and

(c) Completed the prescribed application form with true and correct identifying information.

(4) An outfitting company's annual registration with the Division may be suspended, denied, or revoked for a length of time determined by the Division director, or an individual designated by the Division director, if one of the following occurs:

(a) The outfitting company's, or agent's negligence caused personal injury or death as determined by due process of law;

(b) The outfitting company or agent is convicted of three violations of Title 73, Chapter 18, or rules promulgated thereunder during a calendar year period;

(c) False or fictitious statements were certified or false qualifications were used to qualify a person to obtain a license

or permit for an employee or others;

(d) The Division determines that the outfitting company intentionally provided false or fictitious statements or qualifications when registering with the Division;

(e) The outfitting company has utilized a private trip permit for carrying passengers for hire and has been prosecuted by the issuing agency and found guilty of the violation;

(f) The outfitting company used a vessel operator without a valid license or permit or without the appropriate license or permit while engaging in carrying passengers for hire; or

(g) The outfitting company is convicted of violating a resource protection regulation or public safety regulation in effect by the respective land managing and/or access permitting agency.

(5) An outfitting company shall have a written policy describing a program for a drug free workplace.

(6) An outfitting company shall maintain a training log for each of its vessel operators.

(7) An outfitting company shall maintain a voyage plan and a passenger manifest, on shore, for each trip or excursion the company conducts.

(8) An outfitting company shall maintain a daily or trip operations log for each of its vessels.

(9) An outfitting company shall ensure that each of its vessel operators conducts a check of the vessel he or she will be operating. The vessel check shall include:

(a) Passenger count;

(b) A discussion of safety protocols and emergency operations with passengers on board the vessel.

(c) A check of the vessel's required carriage of safety equipment.

(d) A check of the vessel's communication systems;

(e) A check of the operation and control of the vessel's steering controls and propulsion system; and

(f) A check of the vessel's navigation lights, if the vessel will be operating between sunset and sunrise.

(10) An outfitting company shall ensure that each vessel in its fleet is equipped with the required safety equipment.

(11) An outfitting company shall maintain each vessel in its fleet according to good marine practices and standards.

(a) The outfitting company shall ensure that each vessel used in the service of carrying passengers for hire meets the maintenance and inspection requirements, if such inspections are required of a vessel.

(b) The outfitting company shall maintain a file of its maintenance and inspections for each vessel, or the components and equipment that configure a float trip vessel, that is required to be inspected in its fleet. Maintenance and inspection files shall be maintained for the duration in which the vessel is in the service of carrying passengers for hire, plus one additional year.

(12) The owner of a vessel carrying passengers for hire, shall carry general liability insurance. The insurance coverage shall be for a minimum of \$1,000,000 aggregate per incident.

(13) Upon request of an agent of the Division, an outfitting company shall provide the Division with a copy of the company's

(a) Drug free workplace policy;

(b) A passenger manifest and trip voyage plan;

(c) Trip operation logs;

(d) A vessel's maintenance and inspection files; or

(e) A vessel operator's training log.

(14) An outfitting company that is registered to carry passengers for hire in another state and possesses a state-issued certificate of outfitting company registration, or similar license, permit or registration accepted and recognized by the Division, where the state has similar outfitting company registration provisions, shall not be required to obtain and display a Utah certificate of outfitting company registration as required by this section when:

(a) Operating vessels on Bear Lake, Flaming Gorge, and Lake Powell where a trip embarks and disembarks from the out-of-state portion of the lake and less than 25 percent of a trip is conducted on the Utah portion of the lake.

(b) Operating vessels on rivers flowing into Utah where the river trip originates out-of-state and terminates at the first available launch ramp/take-out.

(i) For vessels operating on the Colorado River, the first available take-out is the Westwater Ranger Station launch ramp/take-out.

(ii) For vessels operating on the Dolores River, the first available take-out is the Dewey Bridge launch ramp/take-out on the Colorado River.

(iii) For vessels operating on the Green River, the first available take out is the Split Mountain launch ramp/take-out.

(iv) For vessels operating on the San Juan River, the first available take-out is the Montezuma Creek launch ramp/take-out.

R651-206-3. Utah Captain's/Guides License and Utah Boat Crew Permit.

(1) No person shall operate a vessel engaged in carrying passengers for hire on sole state waters unless that person has in his possession a valid and appropriately endorsed Utah Captain's/Guide's License or Utah Boat Crew Permit issued by the Division, or a valid and appropriately endorsed U.S. Coast Guard Master's License.

(a) When carrying passengers for hire on a motorboat on the waters of Bear Lake, Flaming Gorge or Lake Powell, the operator must have a valid and appropriately endorsed U.S. Coast Guard Master's License.

(b) A Utah Captain's/Guide's License is valid on the waters of Bear Lake, Flaming Gorge, and Lake Powell when the holder is carrying or leading persons for hire on non-motorized vessels.

(c) A Utah Captain's/Guide's License or Utah Boat Crew Permit, with the appropriate whitewater river or other river endorsement, is valid when operating a vessel exiting from a river to the first appropriate and usable take-out or launch ramp on a lake or reservoir.

(2) License and Permit Requirements.

(a) The license or permit must be accompanied by current and appropriate first aid and CPR certificates. A photocopy of both sides of the first aid and CPR certificates is allowed when carrying passengers for hire on rivers.

(b) A license with a "Lake and Reservoir Captain" endorsement is required when carrying passengers for hire on any lake or reservoir.

(c) A license with a "Tow Vessel Captain" endorsement is required when towing or assisting other vessels for hire on waters of this state.

(d) A license with a "Whitewater River guide" endorsement is required when carrying passengers for hire on any river section, including "whitewater," "other," and "flatwater" river designations.

(e) A license with an "Other River Guide" endorsement is required when carrying passengers for hire on any river or river section designated as "other" or "flatwater."

(f) A permit with a "Lake and Reservoir Crew" endorsement is valid only when the holder is accompanied, on board the vessel, by a qualified license holder with a "Lake and Reservoir Captain" endorsement.

(g) A permit with a "Tow Vessel Crew" endorsement is valid only when the holder is accompanied, on board the vessel, by a qualified license holder with a "Tow Vessel Captain" endorsement.

(h) A permit with a "Whitewater River Crew" endorsement is valid only when the holder is accompanied on the river trip, by a qualified license holder with a "Whitewater River Guide" endorsement.

(i) A permit with an "Other River Crew" endorsement is valid only when the holder is accompanied on the river trip, by a qualified license holder with either a "Whitewater River Guide" or "Other River Guide" endorsement.

(j) All Vessel Operator Permits and River Guide 1, 2, 3, and 4 Permits will expire at the end of their current term. Applications for renewal or duplicate of a Vessel Operator or River Guide Permit will be changed to the respective Utah Captain's/Guide's License or Utah Boat Crew Permit.

(k) All Boatman Permits issued by the Division are expired.

(3) Requirements to obtain a Utah Captain's/Guides License.

(a) The applicant shall be at least 18 years of age as of the date the application is received by the Division.

(b) The applicant shall complete the prescribed application form.

(i) Information on the application form must be verified by an agent of the employing/sponsoring outfitting company.

(ii) The completed application form must be signed by the applicant and by an agent of the employing/sponsoring outfitting company.

(iii) For persons who are applying for their first license, the application, testing, and issuance of the license shall be done in person at a Division designated location.

(c) The applicant shall pay a \$50 application fee for the license and first endorsement. A fee of \$10 will be charged for each additional license endorsement.

(d) The applicant shall choose from the four types of license endorsements:

(i) Lake and Reservoir Captain (LCG)

(ii) Tow Vessel Captain (TCG)

(iii) Whitewater River Guide (WCG)

(iv) Other River Guide (OCG)

(e) The applicant shall provide an original proof of current and valid first aid and CPR certifications:

(i) The first aid certificate must be issued for an American Red Cross "Emergency Response" course or an equivalent course from a reputable provider whose curriculum is in accordance with the USDOT First Responder Guidelines or the Wilderness Medical Society Guidelines for Wilderness First Responder.

(ii) The CPR certificate must be issued for an American Red Cross, American Heart Association, American Safety and Health Institute, National Safety Council CPR or BLS course, or an equivalent course from a reputable provider whose curriculum is in accordance with the 2005 Consensus on Science for Cardiopulmonary Resuscitation (CPR) and Emergency Cardiovascular Care (ECC).

(iii) First aid and CPR certificates must include the following information: name, or title of the course; course provider; length of certification; name of the person certified and legible name of the course instructor.

(f) A current Utah Vessel Operator Permit holder, whose permit was issued prior to January 1, 2008, and who is renewing and converting their permit to a Utah Captain's/Guide's License, is exempt from showing proof of completion of a National Association of State Boating Law Administrators (NASBLA) approved boating safety course.

(g) The applicant shall complete a multiple-choice, written examination administered by an agent of the Division:

(i) 80 percent correct is required to pass.

(ii) In relation to the respective endorsement, the examination will have a specific focus on the carrying passengers for hire laws and rules along with general safety, etiquette and courtesy.

(iii) If an applicant fails to pass the exam, there is a seven-day waiting period to re-test.

(iv) Pay a \$15 fee for each re-test.

(h) The applicant shall provide documentation of vessel operation experience that has been obtained within 10 years previous to the date of application.

(i) Lake and Reservoir Captain (LCG) - a minimum of at least 80 hours of actual vessel operation experience. At least 40 of these hours must be obtained while operating the vessel, or a similar vessel, that will be carrying passengers for hire on the specific lake or reservoir on which the operator will be carrying passengers for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.

(ii) Tow Vessel Captain (TCG) - A minimum of at least 80 hours of actual vessel operation experience. At least 40 of these hours must be obtained while operating the vessel, or a similar vessel, that will be towing for hire on the specific lake or reservoir on which the operator will be towing vessels for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.

(iii) Whitewater River Guide (WCG) - A minimum of nine river trips on whitewater river sections. At least one of these trips must be obtained while operating the vessel, or similar vessel, on the respective river section on which the operator will be carrying passengers for hire. A Whitewater River Guide endorsement meets the requirements for an Other River Guide endorsement.

(iv) Other River Guide (OCG) - A minimum of six river trips on any river section. At least one of these trips must be obtained while operating the vessel or similar vessel, on the respective river section on which the operator will be carrying passengers for hire.

(4) A Utah Captain's/Guide's License is valid for a term of five years. The license will expire five years from the date of issue, unless suspended or revoked.

(a) A Utah Captain's/Guide's License may be renewed within the six months prior to its expiration.

(b) To renew a Utah Captain's/Guide's License, the applicant must complete the prescribed application form along with adhering to the requirements described above. A current license holder may renew his license in a manner accepted by the Division

(c) The renewed license will have the same month and day expiration as the original license.

(d) A Utah Captain's/Guide's License that has expired shall not be renewed and the applicant shall be required to apply for a new license.

(5) Requirements to obtain a Utah Boat Crew Permit.

(a) The applicant shall be at least 18 years of age as of the date the application is received by the Division.

(b) The applicant shall complete the prescribed application form.

(i) Information on the application form must be verified by an agent of the employing/sponsoring outfitting company.

(ii) The completed application form must be signed by the applicant and by an agent of the employing/sponsoring outfitting company.

(iii) For persons who are applying for their first permit, the application and issuance of the permit shall be done, in person, at a Division designated location.

(c) The applicant shall pay a \$50 application fee for the original permit and first endorsement. A \$10 fee shall be charged for each additional crew permit endorsement.

(d) The applicant shall choose from the four types of permit endorsements:

(i) Lake and Reservoir Crew (LRC)

(ii) Tow Vessel Crew (TVC)

(iii) Whitewater River Crew (WRC)

(iv) Other River Crew (ORC)

(e) The applicant shall provide original proof of current and valid first aid and CPR certifications:

(i) The first aid certificate must be issued for an American Red Cross "Standard" or "Basic" first aid course, or an equivalent course from a reputable provider.

(ii) The CPR certificate must be issued for an American Red Cross, American Heart Association, American Safety and Health Institute, National Safety Council CPR or BLS course, or an equivalent course from a reputable provider whose curriculum is in accordance with the 2005 Consensus on Science for Cardiopulmonary Resuscitation (CPR) and Emergency Cardiovascular Care (ECC).

(iii) First aid and CPR certificates must include the following information: name, or title of the course; course provider; length of certification; name of the person certified and legible name of the course instructor.

(f) The applicant shall provide documentation of vessel operation experience that has been obtained within the 10 years previous to the date of application.

(i) Lake and Reservoir Crew (LRC) - A minimum of at least 20 hours of actual vessel operation experience. At least 10 of these hours must be obtained while operating the vessel, or a similar vessel, on which the operator will be carrying passengers for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.

(ii) Tow Vessel Crew (TVC) - A minimum of at least 20 hours of actual vessel operation experience. At least 10 of these hours must be obtained while operating the vessel, or a similar vessel, that will be towing for hire on the specific lake or reservoir on which the operator will be towing vessels for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.

(iii) Whitewater River Crew (WRC) - A minimum of three river trips on "whitewater" rivers or river sections. At least one of these trips must be obtained while operating the vessel, or similar vessel, on the respective river or river section on which the operator will be carrying passengers for hire. A Whitewater River Crew endorsement meets the requirements for an Other River Crew endorsement.

(iv) Other River Crew (ORC) - A minimum of three river trips on any river or river section. At least one of these trips must be obtained while operating the vessel on a respective river or river section on which the operator will be carrying passengers for hire.

(6) A Utah Boat Crew Permit is valid for a term of five years. The permit will expire five years from the date of issue, unless suspended or revoked.

(a) A Utah Boat Crew Permit may be renewed within the six months prior to its expiration.

(b) To renew a Utah Boat Crew Permit, the applicant must complete the prescribed application form along with the requirements described above. A current permit holder may renew his license in a manner accepted by the Division.

(c) The renewed permit will have the same month and day expiration as the original permit.

(d) A Utah Boat Crew Permit that has expired shall not be renewed and the applicant shall be required to apply for a new permit.

(e) A Utah Boat Crew Permit holder who upgrades to a Utah Captain's/Guide's License, within one year of when the permit was issued, shall receive a \$25 discount on the fee for the Utah Captain's/Guide's License.

(7) In the event a Utah Captain's/Guide's License or a Utah Boat Crew permit is lost or stolen, a duplicate license or permit may be issued with the same expiration date as the original license or permit.

(a) The applicant must complete the prescribed application form.

(b) The fee for a duplicate license or permit is \$15.

(8) Current Utah Captain's/Guide's License and Utah Boat Crew Permit holders shall notify the Division within 30 days of

any change of address.

(9) A Utah Captain's/Guide's License or Utah Boat Crew Permit may be suspended, revoked, or denied for a length of time determined by the Division director, or individual designated by the Division director, if one of the following occurs:

(a) The license or permit holder is convicted of three violations of the Utah Boating Act, Title 73, Chapter 18, or rules promulgated thereunder during a three-year period.

(b) The license or permit holder is convicted of driving under the influence of alcohol or any drug while carrying passengers for hire, or refuses to submit to any chemical test that determines blood or breath alcohol content resulting from an incident while carrying passengers for hire;

(c) The license or permit holder's negligence or recklessness causes personal injury or death as determined by due process of the law;

(d) The license or permit holder is convicted of utilizing a private trip permit to carry passengers for hire;

(e) The license or permit holder is convicted of violating a resource protection regulation or public safety regulation in effect by the respective land managing and/or access permitting agency.

(f) The Division determines that the license or permit holder intentionally provided false or fictitious statements or qualifications to obtain the license or permit.

(10) A Utah Captain's/Guide's License or Utah Boat Crew Permit holder shall not carry passengers for hire while operating an unfamiliar vessel or operating on an unfamiliar lake, reservoir, or river section, unless there is a license holder aboard who is familiar with the vessel and the lake, reservoir, or river section. An exception to this rule allows a license or permit holder to lead passengers for hire on a lake, reservoir, or designated flatwater river section, as long as there is a license holder who is familiar with the vessel and the lake, reservoir, or river section and remains within sight of the rest of the group.

(11) Number of passengers carried for each license or permit holder.

(a) On a vessel that is carrying more than 49 passengers for hire, there shall be at least one license holder and one permit holder or two license holders on board.

(b) On a vessel carrying more than 24 passengers for hire, and operating more than one mile from shore, there shall be an additional license or permit holder on board.

(c) On a vessel carrying passengers for hire, there shall be a minimum of one license or permit holder on board for each passenger deck on the vessel.

(12) Low capacity vessels being led requirements.

(a) On all river sections, except as noted in Subsection (b) below, there shall be at least one qualified license or permit holder for every four low capacity vessels being led in a group.

(b) On lakes, reservoirs, and designated flatwater river sections, there shall be at least one qualified license or permit holder for every six low capacity vessels being led in a group.

(13) A license or permit holder shall not operate a vessel carrying passengers for hire for more than 12 hours in a 24 hour period.

(14) A license or permit holder shall conduct a safety and emergency protocols discussion with passengers prior to the vessel getting underway. This discussion shall include the topics of water safety, use and stowage of safety equipment, wearing and usage of life jackets and initiating the rescue of a passenger(s).

(15) Vessel operators who are licensed or permitted to carry passengers for hire in another state, and possess a state-issued vessel captain's license, or similar license or permit accepted and recognized by the Division, where the state has similar vessel operator licensing provisions, shall not be required to obtain and possess a Utah Captain's/Guide's License

or Utah Boat Crew Permit as required by this section.

R651-206-4. Additional PFD Requirements for Vessels Carrying Passengers for Hire.

(1) Type I PFDs are required. Each vessel shall have an adequate number of Type I PFDs on board, that meets or exceeds the number of persons on board the vessel. A Type V PFD may be used in lieu of a Type I PFD if the Type V PFD is approved for the activity in which it is going to be used.

(2) In situations where infants, children and youth are in enclosed cabin areas of vessels over 19 feet in length and not wearing PFDs, a minimum of ten percent of the wearable PFDs on board the vessel must be of an appropriate type and size for infants, children and youth passengers.

(3) Type I PFDs or Type V PFDs - used in lieu of the Type I PFD, must be listed for commercial use on the label.

(4) If PFDs are not being worn by passengers, and the PFDs a being stowed on the vessel, the PFDs shall be stowed in readily accessible containers that legibly and visually indicate their contents.

(5) Each PFD must be marked with the name of the outfitting company, in one-inch high letters that contrast with the color of the device.

(6) The Type IV PFD shall be a ring life buoy on vessels 26 feet or more in length.

(a) Vessels that are 40 feet or more in length shall carry a minimum of two Type IV PFDs.

(b) Ring life buoys shall have a minimum of 60 feet of line attached.

(7) If U.S. Coast Guard approved Type I PFDs are not available for infants under the weight of 30 pounds, Type II PFDs may be used, provided they are the correct size for the intended wearer.

(8) On rivers, hard-hulled kayak or white water canoe operators or a working employee of the outfitting company, may wear a Type III PFD in lieu of the Type I PFD.

(9) On lakes and reservoirs, for hard-hulled kayak or sea-kayak operators, a Type III PFD may be carried or worn in lieu of the required Type I PFD.

(10) All passengers and crew members shall wear a PFD when a vessel is being operated in hazardous conditions.

(11) The license or permit holder is responsible for the passengers on his vessel to be in compliance with this section and R651-215.

R651-206-5. Additional Fire Extinguisher Requirements for Vessels Carrying Passengers for Hire.

(1) Each motorboat that carries passengers for hire, must carry a minimum of one type B-1 fire extinguisher. Vessels equipped solely with an electric motor, and not carrying flammable fuels on board, are exempt from this provision.

(2) Each motorboat that carries more than six passengers for hire and is equipped with an inboard, inboard/outboard, inboard jet, or direct drive gasoline engine, and carrying passengers for hire, shall have at least one fixed U.S. Coast Guard approved fire extinguishing system mounted in the engine compartment.

(3) Portable fire extinguishers shall be mounted in a readily accessible location, near the helm, away from the engine compartment. For motorized vessels operating on rivers, portable fire extinguishers may be stowed in a readily accessible location near the operator's position.

(4) For vessels carrying more than 12 passengers for hire or providing on board overnight passenger accommodations, smoke detectors shall be installed in each enclosed passenger area.

R651-206-6. Additional Equipment Requirements for Vessels Carrying Passengers for Hire.

(1) Emergency communications equipment.

(a) An outfitting company shall have appropriate communication equipment for contacting emergency services, or, have a policy and emergency communications protocols that describe the quickest and most efficient means of contacting emergency services, taking into consideration the remoteness of the area in which the vessel will be operated.

(b) For vessels traveling in a group, this requirement can be met by carrying one communication device in the group.

(2) Carbon monoxide detectors.

Each vessel carrying passengers for hire shall be equipped with carbon monoxide detectors in each enclosed passenger area.

(3) Survival Craft.

Each vessel carrying more than six passengers for hire, and operating at a distance greater than one mile from shore, shall carry an appropriate number of life rafts or other life-saving apparatus respective to the number of passengers carried on board.

(4) Visual distress signals.

Each vessel carrying more than six passengers for hire, and operating at a distance greater than one mile from shore, shall carry a minimum of three visual distress signal flares that are approved for day and night use.

(5) Navigation equipment.

(a) Each vessel must carry a map or chart of the water body and a compass or GPS unit that is in good and serviceable condition.

(b) For vessels traveling in a group, this requirement can be met by carrying a map or chart and a compass or GPS unit in the group.

(c) Float trip vessels are only required to carry a map of the water body.

(6) Lines, straps and anchorage.

(a) Each vessel shall be equipped with at least one suitable anchor and an appropriate anchorage system, respective of the body of water on which the vessel will be operating. Any line, when attached to an anchor, shall be attached by an eye splice, thimble and shackle.

(b) Vessels operating on rivers are exempt from carrying an anchor, but shall have sufficient lines to secure the vessel to shore.

(c) Lines and straps utilized for anchorage, mooring and maintaining vessel structural integrity shall be in good and serviceable condition.

(7) Portable lighting.

Each vessel carrying passengers for hire shall carry on board, at least one portable, battery-operated light per operator or crew member. That portable battery-operated light shall be in good and serviceable condition and readily accessible.

(8) First Aid Kit.

(a) Each vessel shall have on board, an adequate first aid kit, stocked with supplies respective to the number of passengers carried on board, and the nature of boating activity in which the vessel will be engaged.

(b) For vessels traveling in a group, this requirement can be met by carrying one first aid kit in the group.

(9) Identification of outfitting company.

(a) An outfitting company shall prominently display its name on the hull or superstructure of the vessel.

(b) The display of an outfitting company's name shall not interfere with any required numbering, registration or documentation display.

(c) If another governmental agency prohibits the display of an outfitting company's name on the exterior of a vessel, the name shall be displayed in a visible manner that does not violate the agency's requirements.

(10) Marine toilets and sanitary facilities.

(a) Each vessel carrying more than six passengers for hire

shall be equipped with a minimum of one marine toilet and washbasin sanitary facilities, except for vessels where suitable privacy enclosures are not practical.

(b) The toilet and washbasin shall be connected to a permanently installed holding tank that allows for dockside pumpout at approved sanitary disposal facilities. Vessels that do not have access to dockside pumpout facilities may carry a portable marine toilet and washbasin to meet this requirement.

(c) For vessels traveling in a group, this requirement can be met by carrying one marine sanitation device in the group.

(d) Marine toilets and washbasins shall be maintained in a good and serviceable, sanitary condition.

(e) A vessel that carries more than 49 passengers shall have at least two marine toilets and washbasins, one each for men and women.

(f) A vessel operating on a trip or excursion with a duration of one hour or less, or operating on a river, is not required to be equipped with a marine toilet or washbasin.

R651-206-7. Towing Vessels for Hire Requirements.

(1) Any person or entity that provides the service of towing vessels for hire on waters of this state, shall register with the Division as an outfitting company and pay the appropriate fee. The registration of a person or entity towing for hire will be required beginning January 1, 2008.

(2) A vessel engaged in the activity of towing vessels for hire shall comply with the dockside and dry dock vessel maintenance and inspection requirements, plus the additional equipment requirements described in this section.

(3) Any conditions of a contract, special use permit, or other agreement with a person or entity that is towing vessels for hire, shall not supersede the boating safety and assistance activities of a state park ranger, other law enforcement officer, emergency and search and rescue personnel, a member of the U.S. Coast Guard Auxiliary, or any other person providing "Good Samaritan" service to vessels needing or requesting assistance.

(4) Any vessel receiving assistance from a state park ranger, other law enforcement officer, emergency and search and rescue personnel, a member of the U.S. Coast Guard Auxiliary, or any person providing "Good Samaritan" service need not be turned over to, or directed to a person or entity registered with the Division and authorized to tow vessels for hire, unless the operator or owner of the vessel receiving assistance specifically requests such action.

(5) A person or entity towing vessels for hire shall immediately notify a law enforcement officer of any vessel they assist, if the person reasonably believes the vessel being assisted was involved in a reportable boating accident.

(6) A person or entity towing vessels for hire shall not perform an emergency rescue unless he reasonably believes immediate emergency assistance is required to save the lives of persons, prevent additional injuries to persons onboard a vessel, or reduce damage to a vessel, and a state park ranger, other law enforcement officer, emergency and search and rescue personnel, or a member of the U.S. Coast Guard Auxiliary is not immediately available, or a state park ranger, other law enforcement officer, or emergency and search and rescue personnel make such a request for emergency assistance.

(7) The owner of a vessel engaged towing vessels for hire shall carry general liability insurance. The insurance coverage shall be a minimum of \$1,000,000 per incident.

(8) A vessel engaged in towing vessels for hire, shall be a minimum of 21 feet in length and have a minimum total of a 150 hp gasoline engine(s) or a 90 hp diesel engine(s). The towing vessel should be as large or larger than the average vessel it will be towing.

(9) A vessel engaged in towing vessels for hire, must have at least one license holder on board.

(10) A person or entity towing vessels for hire shall provide appropriate types of training for each of its license and permit holders. Each vessel operator shall conduct a minimum of five training evolutions of towing a vessel each year, with at least one evolution being a side tow.

(11) The operator and any crew members on board a vessel engaged in towing vessels for hire, shall wear a PFD at all times. The operator of a vessel engaged in towing vessels for hire is responsible to have all occupants of a vessel being towed to wear a properly fitted PFD for the duration of the tow.

(12) A person or entity engaged in towing vessels for hire must keep a log of each tow or vessel assist. The towing vessels for hire log of activities shall include:

- (a) Assisted vessel's assigned bow number.
- (b) Name of assisted vessel's owner or operator, including address and phone number.
- (c) Number of persons on board the assisted vessel.
- (d) Nature of assistance.
- (e) Date and time assistance provided.
- (f) Location of the assisted vessel.
- (g) The operator of the vessel towing for hire shall make appropriate radio or other communications of the above actions with a person on land preferable at the company's place of business.

(h) Upon request of an agent of the Division, an outfitting company shall provide the Division with a copy of a towing vessels for hire log.

(13) Additional Equipment Requirements for Vessels Towing for Hire.

- (a) PFDs.
 - (i) Shall carry a sufficient number of Type I PFDs for persons on board a towed vessel.
 - (ii) Shall carry a minimum of two Type IV PFDs, one of which must be a ring life buoy.
- (b) Vessel shall be equipped with a depth finder.
- (c) Tow Line.
- (i) Shall have a minimum of 100 feet of 5/8" line with a tow bridle.
 - (ii) Towing vessel shall be equipped with a towing post or reinforced cleats.
- (d) Vessel shall carry a dewatering pump with a minimum capacity of 25 gallons per minute, to be used to dewater other vessels.
- (e) If a vessel is towing for hire between sunset and sunrise, the vessel shall carry the following pieces of equipment.
 - (i) A white spot light with a minimum brightness of 500,000 candle power.
 - (ii) It is recommended that a vessel be equipped with electronic RADAR equipment.
- (f) Vessel shall carry a loudhailer, speaker, or other means of communicating with another vessel from a distance.
- (g) Vessel shall carry the following equipment, in addition to the equipment required for vessels carrying passengers for hire.
 - (i) A knife capable of cutting the vessel's towline;
 - (ii) A boat hook;
 - (iii) A minimum of four six-inch fenders;
 - (iv) Binoculars;
 - (v) A jump starting system;
 - (vi) A tool kit and spare items for repairs on assisting vessel; and
 - (vii) Damage control items for quick repairs to another vessel.

R651-206-8. Maintenance and Inspections of Vessels Carrying Passengers for Hire.

(1) Each outfitting company carrying passengers for hire shall have an ongoing vessel maintenance and inspection program. The vessel maintenance and inspection program shall

include the structural integrity, flotation, propulsion of the vessel, and equipment associated with passenger safety.

(2) The annual vessel maintenance and inspection program certification will be required beginning January 1, 2009. The five-year vessel inspections will be required no later than January 1, 2014.

(3) The Division shall prepare and maintain a "Carrying Passengers for Hire Vessel Inspection Manual".

(a) The Division shall establish a committee to oversee, maintain, and recommend any substantive changes in the "Carrying Passengers for Hire Vessel Inspection Manual".

(i) The members of this committee shall be selected by the Boating Advisory Council and shall report directly to the Boating Advisory Council.

(ii) This committee shall consist of five members: two members who will represent the non-float trip vessel carrying passengers for hire industry in Utah; two members who will represent the float trip vessel carrying passengers for hire industry in Utah; and one member who will represent a state or federal agency responsible for managing or regulating the activity of carrying passengers for hire in Utah.

(iii) This committee shall convene when information regarding substantive changes to the "Carrying Passengers for Hire Vessel Inspection Manual" has been presented to the Boating Advisory Council.

(b) The Division shall establish a committee to prepare and develop the portions of the "Carrying Passengers for Hire Vessel Inspection Manual" that do not pertain to Float Trip Vessels.

(i) This committee shall consist of five members: three members who represent the carrying passengers for hire industry in Utah; and two members who represent a state or federal agency responsible for managing or regulating the activity of carrying passengers for hire in Utah.

(ii) This committee will disband after the original "Carrying Passengers for Hire Vessel Inspection Manual" is approved and accepted by the Boating Advisory Council.

(c) The Division shall establish a committee to prepare and develop the portions of the "Carrying Passengers For Hire Vessel Inspection Manual" that pertain to Float Trip Vessels.

(i) This committee shall consist of five members: three members who represent the Float Trip Vessel carrying passengers for hire industry in Utah; and two members who represent a state or federal agency responsible for managing or regulating the activity of carrying passengers for hire in Utah.

(ii) This committee will disband after the original "Carrying Passengers for Hire Vessel Inspection Manual" is approved and accepted by the Boating Advisory Council.

KEY: boating, parks

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R651. Natural Resources, Parks and Recreation.**R651-215. Personal Flotation Devices.****R651-215-1. Definitions.**

- (1) "PFD" means personal flotation device.
- (2) "Vessel length" is the measurement of the permanent part of the hull, from bow to stern, across the deck down the centerline, excluding sheer.
- (3) "Wear" means to have the PFD properly worn with all fasteners connected.
- (4) "Whitewater canoe" means a one or two person capacity hard hulled canoe designed for white water activities and is equipped with: floatation (e.g., factory end chambers or float bags) and thigh straps or retention devices to hold the operator(s) in the vessel if it rolls.

R651-215-2. PFD Requirements for Vessels Less than 16 Feet in Length.

No person shall operate or give permission for the operation of a vessel less than 16 feet in length unless there is at least one Type I, II, or III PFD for each person on board.

R651-215-3. PFD Requirements for Vessels 16 Feet or More in Length.

No person shall operate or give permission for the operation of a vessel 16 feet or more in length unless there is at least one Type I, II, or III PFD for each person on board. In addition to the total number of PFD's, there shall also be one Type IV PFD on board.

R651-215-4. Types of Personal Flotation Devices.

Type I - Off-shore Life Jacket - provides the most buoyancy of any type of PFD. Designed to turn the most unconscious wearers to a face-up position in the water. Effective for all waters, especially open, rough or remote waters where rescue may be delayed. Acceptable for use on all vessels.

Type II - Near Shore Buoyancy Vest - is designed to turn some unconscious wearers to a face-up position in the water. Intended for calm, inland waters where there is a good chance of quick rescue.

Type III - Flotation Aid - Good for conscious users in calm, inland waters where there is good chance of quick rescue. Designed so conscious wearers can place themselves in a face up position in the water. The wearer may have to tilt their head back to avoid turning face-down in the water.

Type IV - Throwable Device - Designed to be thrown to a person in the water and grasped and held by the user until rescued. Not designed to be worn.

Type V - Special Use Device - Intended for specific activities and may be carried instead of another PFD if used according to the approval conditions on its label.

R651-215-5. Immediately Available and Readily Accessible.

Type IV PFDs shall be immediately available; all other types of PFD shall be readily accessible, unless wearing is required.

R651-215-6. Type V PFD Carried in Lieu.

A Type V PFD may be carried or worn in lieu of another required PFD, but only if it is used according to the approval conditions on its label.

R651-215-7. Whitewater River PFD Requirements.

On whitewater rivers, as defined in Subsection R651-206-2 (1), Type I or Type III PFDs, are required and shall be used according to the approval conditions on their labels.

R651-215-8. River Throw Bag in Lieu of Type IV PFD.

On a river section where PFDs are required to be worn, or on any river section where all vessel occupants are wearing

PFDs, in lieu of the Type IV PFD requirement, a throw bag with a minimum of 40 feet of line may be carried.

R651-215-9. Required Wearing of PFDs.

(1) An inflatable PFD may not be used to meet the requirements of this Section.

(2) All persons on board a personal watercraft shall wear a PFD.

(3) The operator of a vessel under 19 feet in length shall require each passenger 12 years of age or younger to wear a PFD. This rule is also applicable to vessels 19 feet or more in length, except when the child is inside the cabin area.

(4) On rivers, every person on board a vessel shall wear a PFD, except PFDs may be loosened or removed by persons 13 years of age or older on designated flat water areas as listed in Section R651-215-12.

R651-215-10. River Flat Water Areas.

- (1) On the Green River:
 - (a) from Red Creek Camp below Red Creek Rapids to the Indian Crossing Boat Ramp;
 - (b) from 100 yards below Taylor Flats Bridge to the Utah/Colorado state line in Browns Park;
 - (c) within Dinosaur National Monument, from the mouth of Whirlpool Canyon to the head of Split Mountain Gorge;
 - (d) from the mouth of Split Mountain to Jack Creek in Desolation Canyon; and
 - (e) from the Green River Diversion Dam below Gray Canyon to the confluence with the Colorado River.
- (2) On the Colorado River:
 - (a) from the Colorado/Utah state line to the Westwater Ranger Station;
 - (b) from Big Hole Canyon in Westwater Canyon to Onion Creek;
 - (c) from Drinks Canyon, mile 70, to the confluence with the Green River; and
 - (d) after the last active rapid in Cataract Canyon.
- (3) On the San Juan River, after the last active rapid prior to Lake Powell.

R651-215-11. PFDs.

All Personal Flotation Devices (PFDs) must be used according to the conditions or restrictions listed on the U.S. Coast Guard Approval Label.

KEY: boating, parks**November 3, 2008****Notice of Continuation February 13, 2006****73-18-8**

R652. Natural Resources; Forestry, Fire and State Lands.**R652-6. Government Records Access and Management.****R652-6-100. Purpose and Authority.**

1. This rule provides procedures for appropriate access to division records.

2. This rule is authorized by Sections 63G-2-204, 63G-2-603, 63A-12-104, 65A-1-10, and 65A-6-7.

R652-6-200. Definitions.

1. Terms used in this rule are defined in Section 63G-2-103.

2. In addition:

(a) Records officer: the individual designated by the director of the division as defined in Subsection 63G-2-103(25) to work with the state archives in the care, maintenance, scheduling, designation, classification, disposal and preservation of records and shall be responsible for supervision of the records access activities of the records coordinators.

(b) Records coordinators: individuals designated by the division director to coordinate records access requests and to assist the public in gaining access to records maintained by the division. Records coordinators are located in the following:

i) State Office, 1594 W. North Temple, Suite 3520, PO Box 145703, Salt Lake City, UT 84114-5703.

ii) Central Area Office, 1139 N. Centennial Park Drive, Richfield, UT 84701-1860.

iii) Southwestern Area Office, 585 N. Main St, Cedar City, UT 84720.

iv) Southeastern Area Office, 1165 S. Highway 191, Suite 6, Moab, UT 84532.

v) Bear River Area Office, 1780 N. Research Parkway, Suite 104, North Logan, UT 84341-1940.

vi) Northeastern Area Office, 152 East 100 North, Vernal, UT 84078.

R652-6-300. Allocation of Responsibility Within the Division.

The division is considered a governmental entity and the director of the division is considered the head of the government entity.

R652-6-400. Requests for Access.

1. Request for access to records shall be on a form provided by the division or in another legible written document which contains the following information: the requester's name, mailing address, daytime telephone, a description of the records requested that identifies the record with reasonable specificity, and if the record is not public, information regarding requester's status.

2. The request shall be submitted to the records officer or coordinator. The response to the request may be delayed if not properly directed.

3. The division shall deny a request for private, controlled, protected or limited access records if the request is not made in writing and does not contain information required in this section.

4. Notwithstanding the provision of subsection 63G-2-204(1), the division may 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 providing access or copying at the time the request is made.

R652-6-500. Other Requests.

1. For research purposes:

Access requests for private or controlled records for research purposes pursuant to Section 63G-2-202(8), shall be made in writing and directed only to the records officer.

2. To amend a record:

An individual may contest the accuracy or completeness of

a document pertaining to him as maintained by the division pursuant to Section 63G-2-603.

(a) The request to amend shall be made in writing to the records officer. (b) Appeals of requests to amend a record shall be handled as informal hearings under the Utah Administrative Procedures Act.

3. To claim business confidentiality:

A request for protected records status based on a claim of business confidentiality may be made pursuant to Section 63G-2-309. Such a request shall be submitted in writing to the director or his designee. The request shall contain the claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality.

4. To claim limited records status:

A lessee may claim that mineral information provided to the division should be protected under Section 65A-6-7.

(a) Such a request shall be submitted in writing to the director or his designee. The request shall contain a claim that the information provided the division is of a proprietary nature and a concise statement of reasons supporting the claim.

(b) If the division agrees the information is of a proprietary nature, the request shall be granted and the information shall receive limited records status until:

i) the lease is terminated and the division believes the release of the information is not detrimental to the trust; or

ii) the lessee or its successor in interest ceases to exist as an entity and the division believes the release of the information is not detrimental to the trust.

(c) A record granted limited records status under this section shall not be released to another party without written permission from the lessee providing the information during the period the limited records status is in effect.

(d) The division may make information provided limited records status under this section available for inspection, but not for copying, by the Utah Geological Survey or the Division of Oil, Gas and Mining if consultation is requested by the division, provided further that the confidentiality of such information is safeguarded.

R652-6-600. Denials.

1. If any access or status request is denied in whole or in part, a notice of denial shall be given to the requester in person or sent to the requester's address.

2. The notice of denial shall contain the information required in subsection 63G-2-205(2).

R652-6-700. Appeal of Determination.

1. Any person aggrieved by an access or status request determination including a person not a party to the division proceeding may, within 30 days after the determination, appeal the determination to the director by submitting a notice of appeal either on a form provided by the division or another legible written document which contains the following information: the petitioner's name, mailing address and daytime telephone number (if available); and the relief sought. 2. Upon receiving the notice of appeal and review of relevant information including that submitted with the appeal and criteria prescribed in Sections 63G-2-204, 63G-2-603, 63A-12-104, 65A-1-10 and 65A-6-7, the director may:

(a) uphold the original classification or status request determination; or,

(b) reclassify the record if he believes the original classification was incorrect; or,

(c) release the record regardless of its classification if the director believes that the interest of the public in obtaining access to the record outweighs the interest of the division in prohibiting access to the record.

R652-6-800. Fees.

1. A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from the records officer or any records coordinator located at the addresses provided in R652-6-200, Definitions.

KEY: GRAMA, government documents, public records
March 14, 1997 65A-6-7
Notice of Continuation April 2, 2007 65A-1-10

R652. Natural Resources; Forestry, Fire and State Lands.**R652-140. Utah Forest Practices Act.****R652-140-100. Authority and Purpose.**

This rule is adopted pursuant to the authority of Subsection 65A-1-4(2), which requires the Division to promulgate rules, and by Section 65A-8a-101 et seq., to clarify the procedure through which operators must register with the Division and notify the Division of the intent to conduct forest practices.

R652-140-200. Exceptions to Forest Practice.

For purposes of Section 65A-8a-101 et seq., and this rule, the term "Forest practice" does not include the control of invasive or exotic species, removal of Pinyon-Juniper woodlands, or cutting trees for posts, poles or firewood.

R652-140-300. Procedures for Registration of Operators.

(1) To register, operators shall complete and submit a printed or electronic version of a registration form provided by the Division, which includes information required under Subsection 65A-8a-103(2).

(2) The registration form shall be submitted to the Division's headquarter office or one of the Division's six administrative area offices. Offices are located in the following areas:

(a) Headquarter Office, 1594 West North Temple, Suite 3520, PO Box 145703, Salt Lake City, UT 84114-5703.

(b) Bear River Area Office, 1780 North Research Parkway, Suite 104, North Logan, UT 84341-1940.

(c) Wasatch Front Area Office, 1594 West North Temple, Suite 3520, PO Box 145703, Salt Lake City, UT 84114-5703.

(d) Central Area Office, 1139 N. Centennial Park Drive, Richfield, UT 84701-1860.

(e) Northeastern Area Office, 152 East 100 North, Vernal, UT 84078.

(f) Southwestern Area Office, 585 North Main Street, Cedar City, UT 84720.

(g) Southeastern Area Office, 1165 South Highway 191, Suite 6, Moab, UT 84532.

(3) Upon receipt of the registration form, the Division will acknowledge receipt by providing the operator a registration number and date of expiration and returning a copy of the registration form to the operator.

(4) Registration shall be valid for a period of two years from the date of receipt. At the end of the two-year period, the operator must renew the registration with the Division.

R652-140-400. Procedures for Notification of Intent to Conduct Forest Practices.

(1) At least 30 days prior to the commencement of a forest practice, the operator shall submit written notification of intent to conduct forest practices to the Division as required by Subsection 65A-8a-104(1). The 30 days shall commence on the date of postmark, if mailed, or on the date received if hand delivered or electronically submitted.

(2) Notifications shall be submitted to the Division's headquarter's office or one of the Division's six administrative area offices listed in Subsection R652-140-300(2).

(3) Operators shall submit a written notification on a form provided by the Division, a copy thereof or its electronic version, and include the information required under Subsection 65A-8a-104(2).

(4) Notifications submitted to the Division shall be acknowledged within ten days of receipt by the Division. The acknowledgment shall include information identified in Subsection 65A-8a-104(3).

KEY: registration, notification, forest practices**March 26, 2007****65A-8a-103****65A-8a-104**

R657. Natural Resources, Wildlife Resources.**R657-9. Taking Waterfowl, Common Snipe and Coot.****R657-9-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, and in accordance with 50 CFR 20, 50 CFR 32.64 and 50 CFR 27.21, 2004 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking waterfowl, Common snipe, and coot.

(2) Specific dates, areas, limits, requirements and other administrative details which may change annually are published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices birds.

(b) "CFR" means the Code of Federal Regulations.

(c) "Live decoys" means tame or captive ducks, geese or other live birds.

(d) "Off-highway vehicle" means any motor vehicle designed for or capable of travel over unimproved terrain.

(e) "Permanent waterfowl blind" means any waterfowl blind that is left unattended overnight and that is not a portable structure capable of immediate relocation.

(f) "Sinkbox" means any type of low floating device, having a depression, affording the hunter a means of concealment beneath the surface of the water.

(g) "Transport" means to ship, export, import or receive or deliver for shipment.

(h) "Waterfowl" means ducks, mergansers, geese, brant and swans.

(i) "Waterfowl blind" means any manufactured place of concealment, including boats, rafts, tents, excavated pits, or similar structures, which have been designed to partially or completely conceal a person while hunting waterfowl.

R657-9-3. Stamp Requirements.

(1) Any person 16 years of age or older may not hunt waterfowl without first obtaining a federal migratory bird hunting and conservation stamp, and having the stamp in possession.

(2) The stamp must be validated by the hunter's signature in ink across the face of the stamp.

(3) A federal migratory bird hunting and conservation stamp is not required for any person 12 through 15 years of age.

R657-9-4. Permit Applications for Swan.

(1) Applications for swan permits are available through the division's Internet address. Residents and nonresidents may apply.

(2)(a) Applications must be submitted online by the date prescribed in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

(b) If an error is found on the application, the applicant may be contacted for correction.

(c) The division reserves the right to correct applications.

(3) A person may obtain only one swan permit each year

(4) A person may not apply more than once annually.

(5) Group applications are accepted. Up to four applicants may apply as a group.

(6)(a) Fifteen percent of the swan permits in each region are reserved for youth hunters.

(b) For purposes of this section, "youth" means any person 15 years of age or younger on the opening day of the swan season.

(c) Youth hunters who wish to participate in the youth

drawing must:

(i) submit an application in accordance with Section R657-9-4; and

(ii) not apply as a group.

(d) Youth applicants who apply for a swan 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 swan drawing.

(7) A Utah hunting or combination license may be purchased before applying, or the hunting or combination license will be issued to the applicant upon successfully drawing a permit.

(8) The permit fees and handling fees must be paid pursuant to Rule R657-42-8(5).

R657-9-5. Drawing.

(1)(a) Applicants will be notified by mail or e-mail of draw results on the date published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe, and coot.

(b) Any remaining permits are available by mail-in request or over the counter at the Salt Lake division office beginning on the date specified in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

(2)(a) The division shall issue no more than the number of swan permits authorized by the U.S. Fish and Wildlife Service each year.

(b) The division may withhold up to 1% of the authorized number of swan permits each year to correct division errors, which may occur during the drawing process.

(c) Division errors may be corrected using the withheld swan permits in accordance with the Division Error Remedy Rule R657-50.

(d) Withheld swan permits shall be used to correct division errors reported to or discovered by the division on or before the fifth day preceding the opening day of the swan hunt.

(e) Withheld swan permits remaining after correcting any division errors shall be issued prior to the opening day of the swan hunt to the next person on the alternate drawing list.

(3)(a) A person must complete a one-time orientation course before applying for a swan permit, except as provided under Subsection R657-9-7(3)(b).

(b) Remaining swan permits available for sale shall be issued only to persons having previously completed the orientation course.

(4) Licenses and permits are mailed to successful applicants.

(5)(a) An applicant may withdraw their application for the swan permit drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe, and coot.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the Salt Lake division office.

(c) Handling fee will not be refunded.

(6)(a) An applicant may amend their application for the swan permit drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe, and coot.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the Salt Lake division office.

(c) The applicant must identify in their statement the requested amendment to their application.

(d) If the application is amended and that amendment results in an error, the division reserves the right to reject the entire application.

R657-9-6. Tagging Swans.

(1) The carcass of a swan must be tagged before the carcass is moved from or the hunter leaves the site of kill as provided in Section 23-20-30.

(2) A person may not hunt or pursue a swan after the notches have been removed from the tag or the tag has been detached from the permit.

R657-9-7. Return of Swan Harvest and Hunt Information.

(1) Swan permit holders who do not hunt or are unsuccessful in taking a swan must respond to the swan questionnaire through the division's Internet address, or by telephone, within 30 calendar days of the conclusion of the prescribed swan hunting season.

(2) Within three days of harvest, swan permit holders successful in taking a swan must personally present the swan or its head for measurement to the division or the Bear River Migratory Bird Refuge and further provide all harvest information requested by the division or Refuge.

(3) Hunters who fail to comply with the requirements of Subsections (1) or (2) shall be ineligible to:

(a) obtain a swan permit the following season; and

(b) obtain a swan permit after the first season of ineligibility until the swan orientation course is retaken.

(4) Late swan questionnaires may be accepted pursuant to Rule R657-42-9(3). Swan permit holders are still required to present the swan or its head for measurement to a division office.

R657-9-8. Purchase of License by Mail.

(1) A person may purchase a hunting or combination license by mail by sending the following information to a division office: full name, complete mailing address, phone number, date of birth, weight, height, sex, color of hair and eyes, Social Security number, driver license number (if available), proof of hunter education certification, and fees.

(2)(a) Personal checks, money orders and cashier's checks are accepted.

(b) Personal checks drawn on an out-of-state account are not accepted.

(c) Checks must be made payable to the Utah Division of Wildlife Resources.

R657-9-9. Firearms.

(1) Migratory game birds may be taken with a shotgun or archery tackle.

(2) Migratory game birds may not be taken with a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, crossbow, except as provided in Rule R657-12, poison, drug, explosive or stupefying substance.

(3) Migratory game birds may not be taken with a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells.

R657-9-10. Nontoxic Shot.

(1) Only nontoxic shot may be in possession or used while hunting waterfowl and coot.

(2) A person may not possess or use lead shot:

(a) while hunting waterfowl or coot in any area of the state;

(b) on federal refuges;

(c) on the following waterfowl management areas: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadow, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek,

Stewart Lake, Timpie Springs; or

(d) on the Scott M. Matheson wetland preserve.

R657-9-11. Use of Firearms on State Waterfowl Management Areas.

(1) A person may not possess a firearm or archery tackle on the following waterfowl management areas any time of the year except during the specified waterfowl hunting seasons or as authorized by the division:

(a) Box Elder County - Harold S. Crane, Locomotive Springs, Public Shooting Grounds, and Salt Creek;

(b) Daggett County - Brown's Park;

(c) Davis County - Farmington Bay, Howard Slough, and Ogden Bay;

(d) Emery County - Desert Lake;

(e) Millard County - Clear Lake, Topaz Slough;

(f) Tooele County - Timpie Springs;

(g) Uintah County - Stewart Lake;

(h) Utah County - Powell Slough;

(i) Wayne County - Bicknell Bottoms; and

(j) Weber County - Ogden Bay and Harold S. Crane.

(2) During the waterfowl hunting seasons, a shotgun is the only firearm that may be in possession, except as provided in Rule R657-12.

(3) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-9-12. Airborne, Terrestrial, and Aquatic Vehicles.

Migratory game birds may not be taken:

(1) from or by means of any motorboat or other craft having a motor attached, or sailboat unless the motor has been completely shut off or sails furled and its progress has ceased: provided, that a craft under power may be used to retrieve dead or crippled birds; however, crippled birds may not be shot from such craft under power; or

(2) by means or aid of any motor driven land, water or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying or stirring up of any migratory bird.

R657-9-13. Airboats.

(1) Air-thrust or air-propelled boats and personal watercraft are not allowed in designated parts of the following waterfowl management or federal refuge areas:

(a) Box Elder County: Box Elder Lake, Bear River, that part of Harold S. Crane within one-half mile of all dikes and levees, Locomotive Springs, Public Shooting Grounds and Salt Creek, that part of Bear River Migratory Bird Refuge north of "D" line as posted.

(b) Daggett County: Brown's Park

(c) Davis County: Howard Slough, Ogden Bay and Farmington Bay within diked units.

(d) Emery County: Desert Lake

(e) Millard County: Clear Lake, Topaz Slough

(f) Tooele County: Timpie Springs

(g) Uintah County: Stewart Lake

(h) Utah County: Powell Slough

(i) Wayne County: Bicknell Bottoms

(j) Weber County: Ogden Bay within diked units or as posted and all of Harold S. Crane Waterfowl Management Area.

(2) "Personal watercraft" means a motorboat that is:

(a) less than 16 feet in length;

(b) propelled by a water jet pump; and

(c) designed to be operated by a person sitting, standing or kneeling on the vessel, rather than sitting or standing inside the vessel.

R657-9-14. Motorized Vehicle Access.

(1) Motorized vehicle travel is restricted to county roads, improved roads and parking areas.

(2) Off-highway vehicles are not permitted on state waterfowl management areas, except as marked and posted open.

(3) Off-highway vehicles are not permitted on Bear River Migratory Bird Refuge.

(4) Motorized boat use is restricted on waterfowl management areas as specified in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-15. Sinkbox.

A person may not take migratory game birds from or by means, aid, or use of any type of low floating device, having a depression affording the hunter a means of concealment beneath the surface of the water.

R657-9-16. Live Decoys.

A person may not take migratory game birds with the use of live birds as decoys or from an area where tame or captive live ducks or geese are present unless such birds are and have been, for a period of ten consecutive days prior to such taking, confined within an enclosure which substantially reduces the audibility of their calls and totally conceals such birds from the sight of wild migratory waterfowl.

R657-9-17. Amplified Bird Calls.

A person may not use recorded or electrically amplified bird calls or sounds or recorded or electronically amplified imitations of bird calls or sounds.

R657-9-18. Baiting.

(1) A person may not take migratory game birds by the aid of baiting, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. This section does not prohibit:

(a) the taking of any migratory game bird on or over the following lands or areas that are not otherwise baited areas:

(i) standing crops or flooded standing crops (including aquatics), standing, flooded or manipulated natural vegetation, flooded harvested croplands, or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice;

(ii) from a blind or other place of concealment camouflaged with natural vegetation;

(iii) from a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing or scattering of grain or other feed; or

(iv) standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys or retrieving downed birds.

(b) The taking of any migratory game bird, except waterfowl, coots and cranes, on or over lands or areas that are not otherwise baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown or solely as the result of a normal agricultural operation.

R657-9-19. Possession During Closed Season.

No person shall possess any freshly killed migratory game birds during the closed season.

R657-9-20. Live Birds.

(1) Every migratory game bird wounded by hunting and reduced to possession by the hunter shall be immediately killed

and become part of the daily bag limit.

(2) No person shall at any time, or by any means possess or transport live migratory game birds.

R657-9-21. Waste of Migratory Game Birds.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or any part of them.

(2) No person shall kill or cripple any migratory game bird pursuant to this rule without making a reasonable effort to immediately retrieve the bird and include it in that person's daily bag limit.

R657-9-22. Termination of Possession.

Subject to all other requirements of this part, the possession of birds taken by any hunter shall be deemed to have ceased when the birds have been delivered by the hunter to another person as a gift; to a post office, a common carrier, or a migratory bird preservation facility and consigned for transport by the Postal Service or common carrier to some person other than the hunter.

R657-9-23. Tagging Requirement.

(1) No person shall put or leave any migratory game bird at any place other than at that person's personal abode, or in the custody of another person for picking, cleaning, processing, shipping, transporting or storing, including temporary storage, or for the purpose of having taxidermy services performed unless there is attached to the birds a disposal receipt, donation receipt or transportation slip signed by the hunter stating the hunter's address, the total number and species of birds, the date such birds were killed and the Utah hunting license number under which they were taken.

(2) Migratory game birds being transported in any vehicle as the personal baggage of the possessor shall not be considered as being in storage or temporary storage.

R657-9-24. Donation or Gift.

No person may receive, possess or give to another, any freshly killed migratory game birds as a gift, except at the personal abodes of the donor or donee, unless such birds have a tag attached, signed by the hunter who took the birds, stating such hunter's address, the total number and species of birds taken, the date such birds were taken and the Utah hunting license number under which taken.

R657-9-25. Custody of Birds of Another.

No person may receive or have in custody any migratory game birds belonging to another person unless such birds are tagged as required by Section R657-9-23.

R657-9-26. Species Identification Requirement.

No person shall transport within the United States any migratory game birds unless the head or one fully feathered wing remains attached to each bird while being transported from the place where taken until they have arrived at the personal abode of the possessor or a migratory bird preservation facility.

R657-9-27. Marking Package or Container.

(1) No person shall transport by the Postal Service or a common carrier migratory game birds unless the package or container in which such birds are transported has the name and address of the shipper and the consignee and an accurate statement of the numbers and kinds of species of birds contained therein clearly and conspicuously marked on the outside thereof.

(2) A Utah shipping permit obtained from the division must accompany each package shipped within or from Utah.

R657-9-28. Migratory Bird Preservation Facilities.

(1) No migratory bird preservation facility shall:

(a) receive or have in custody any migratory game bird unless accurate records are maintained that can identify each bird received by, or in the custody of, the facility by the name of the person from whom the bird was obtained, and show:

- (i) the number of each species;
- (ii) the location where taken;
- (iii) the date such birds were received;
- (iv) the name and address of the person from whom such birds were received;
- (v) the date such birds were disposed of; and
- (vi) the name and address of the person to whom such birds were delivered; or

(b) destroy any records required to be maintained under this section for a period of one year following the last entry on record.

(2) Record keeping as required by this section will not be necessary at hunting clubs that do not fully process migratory birds by removal of the head and wings.

(3) No migratory bird preservation facility shall prevent any person authorized to enforce this part from entering such facilities at all reasonable hours and inspecting the records and the premises where such operations are being carried out.

R657-9-29. Importation.

A person may not:

(1) import migratory game birds belonging to another person; or

(2) import migratory game birds in excess of the following importation limits:

(a) From any country except Canada and Mexico, during any one calendar week beginning on Sunday, not to exceed 10 ducks, singly or in the aggregate of all species, and five geese including brant, singly or in the aggregate of all species;

(b) From Canada, not to exceed the maximum number to be exported by Canadian authorities;

(c) From Mexico, not to exceed the maximum number permitted by Mexican authorities in any one day: provided that if the importer has his Mexican hunting permit date-stamped by appropriate Mexican wildlife authorities on the first day he hunts in Mexico, he may import the applicable Mexican possession limit corresponding to the days actually hunted during that particular trip.

R657-9-30. Use of Dogs.

(1) Dogs may be used to locate and retrieve migratory game birds during open hunting seasons.

(2) Dogs are not allowed on state wildlife management or waterfowl management areas, except during open hunting seasons or as posted by the division.

R657-9-31. Season Dates and Bag and Possession Limits.

(1) Season dates and bag and possession limits are specified in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

(2) A youth duck hunting day may be allowed for any person 15 years of age or younger as provided in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-32. Closed Areas.

(1) A person may not trespass on state waterfowl management areas except during prescribed seasons, or for other activities as posted without prior permission from the division.

(2) A person may not participate in activities that are posted as prohibited.

(3) A person may not trespass, take, hunt, shoot at, or rally any waterfowl, snipe, or coot in the following specified areas:

- (a) Brown's Park - That part adjacent to headquarters.
- (b) Clear Lake - Spring Lake.

(c) Desert Lake - That part known as "Desert Lake."

(d) Farmington Bay - Headquarters and Learning center area, within 600 feet of dikes and roads accessible by motorized vehicles and the waterfowl rest area in the northwest quarter of unit one as posted.

(e) Ogden Bay - Headquarters area.

(f) Public Shooting Grounds - That part as posted lying above and adjacent to the Hull Lake Diversion Dike known as "Duck Lake."

(g) Salt Creek - That part as posted known as "Rest Lake."

(h) Bear River Migratory Bird Refuge - For information contact the refuge manager, U.S. Fish and Wildlife Service, at (435) 723-5887. The entire refuge is closed to the hunting of snipe.

(i) Fish Springs and Ouray National Wildlife Refuges - Waterfowl hunters must register at Fish Springs refuge headquarters prior to hunting. Both refuges are closed to the hunting of swans, and Fish Springs is closed to the hunting of geese.

(j) State Parks

Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated open by appropriate signing as provided in Rule R651-614-4.

(k) Great Salt Lake Marina and adjacent areas as posted.

(l) Millard County

Gunnison Bend Reservoir and the inflow upstream to the Southerland Bridge.

(m) Salt Lake International Airport - Hunting and shooting prohibited as posted.

R657-9-33. Shooting Hours.

(1) A person may not hunt, pursue, or take wildlife, or discharge any firearm or archery tackle on state-owned lands adjacent to the Great Salt Lake, on division-controlled waterfowl management areas, or on federal refuges between official sunset and one-half hour before official sunrise.

(2) Legal shooting hours for taking or attempting to take waterfowl, Common snipe, and coot are provided in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-34. Falconry.

(1) Falconers must obtain a valid hunting or combination license, a federal migratory bird stamp and a falconry certificate of registration to hunt waterfowl.

(2) Areas open and bag and possession limits for falconry are specified in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-35. Migratory Game Bird Harvest Information Program (HIP).

(1) A person must obtain an annual Migratory Game Bird Harvest Information Program (HIP) registration number to hunt migratory game birds.

(2)(a) A person must call the telephone number published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot, or register online at the address published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot to obtain their HIP registration number.

(b) A person must write their HIP registration number on their current year's hunting license.

(3) Any person obtaining a HIP registration number will be required to provide their:

- (a) hunting license number;
- (b) hunting license type;
- (c) name;
- (d) address;
- (e) phone number;

(f) birth date; and
 (g) information about the previous year's migratory bird hunts.

(4) Lifetime license holders will receive a sticker every three years from the division to write their HIP number on and place on their lifetime license card.

(5) Any person hunting migratory birds will be required, while in the field, to prove that they have registered and provided information for the HIP program.

R657-9-36. Waterfowl Blinds on Waterfowl Management Areas.

(1) Waterfowl blinds on division waterfowl management areas may be constructed or used as provided in Subsection (a) through Subsection (e).

(a) Waterfowl blinds may not be left unattended overnight, except for blinds constructed entirely of non-woody, vegetative materials that naturally occur where the blind is located.

(b) Trees and shrubs on waterfowl management areas that are live or dead standing may not be cut or damaged except as expressly authorized in writing by the division.

(c) Excavating soil or rock on waterfowl management areas above or below water surface is strictly prohibited, except as expressly authorized in writing by the division.

(d) Rock and soil material may not be transported to waterfowl management areas for purposes of constructing a blind.

(e) Waterfowl blinds may not be constructed or used in any area or manner, which obstructs vehicular or pedestrian travel on dikes.

(2) The restrictions set forth in Subsection (1)(a) through Subsection (1)(c) do not apply to the following waterfowl management areas:

(a) Farmington Bay Waterfowl Management Area - West and North of Unit 1, Turpin Unit and Crystal Unit.

(b) Howard Slough Waterfowl Management Area - West and South of the exterior dike separating the waterfowl management area's fresh water impoundments from the Great Salt Lake.

(c) Ogden Bay Waterfowl Management Area - West of Unit 1, Unit 2, and Unit 3.

(d) Harold Crane Waterfowl Management Area - one half mile North and West of the exterior dike separating the waterfowl management area's fresh water impoundments from Willard Spur.

(3) Waterfowl blinds constructed or maintained on waterfowl management areas in violation of this section may be removed or destroyed by the division without notice.

(4) Any unoccupied, permanent waterfowl blind located on state land open to public access for hunting may be used by any person without priority to the person that constructed the blind. It being the intent of this rule to make such blinds available to any person on a first-come, first-serve basis.

(5) Waterfowl blinds or decoys cannot be left unattended overnight on state land open to public access for hunting in an effort to reserve the particular location where the blinds or decoys are placed.

R657-9-37. Preference Point System.

(1) Preference points are used in the swan 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 swan permit; or

(ii) each valid application when applying only for a preference point in the swan drawing.

(3)(a) A person may not apply in the drawing for both a preference point and a permit.

(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 swan drawing.

(4) Preference points are forfeited if a person obtains a swan permit through the drawing.

(5)(a) Preference points are not transferable.

(b) Preference points shall only be applied to the swan 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 electronic applications from 2008 to the current swan drawing for the purpose of researching preference point records.

(c) Any requests for researching an applicant's preference point records must be requested within the time frames provided in Subsection (b).

(d) Any preference points on the division's records shall not be researched beyond the time frames provided in Subsection (b).

(e) The division may eliminate any preference points earned that are obtained by fraud or misrepresentation.

KEY: wildlife, birds, migratory birds, waterfowl

November 10, 2008

23-14-18

Notice of Continuation August 21, 2006

23-14-19

50 CFR part 20

R657. Natural Resources, Wildlife Resources.**R657-39. Wildlife Board and Regional Advisory Councils.****R657-39-1. Purpose and Authority.**

This rule is established under the authority of Sections 23-14-2, 23-14-2.6(7), 23-14-3, and 23-14-19 to provide the standards and procedures for the operation of the Wildlife Board and regional advisory councils.

R657-39-2. Definitions.

- (1) Terms used in this rule are defined in Section 23-13-2.
- (2) In addition:
 - (a) "Anchor location" means the physical location from which:
 - (i) an electronic meeting originates; or
 - (ii) the participants are connected.
 - (b) "Electronic meeting" means a public meeting convened or conducted by means of a conference using electronic communications.

R657-39-3. Regional Advisory Council Memberships -- Terms of Office.

- (1)(a) There are created five regional advisory councils which shall consist of at least 12 members and not more than 15 members each from the wildlife region whose boundaries are established for administrative purposes by the division.
- (b) Regional advisory councils shall be established as follows:
 - (i) two members who represent agriculture;
 - (ii) two members who represent sportsman;
 - (iii) two members who represent nonconsumptive wildlife;
 - (iv) one member who represents locally elected public officials;
 - (v) one member who represents the U.S. Forest Service;
 - (vi) one member who represents the Bureau of Land Management;
 - (vii) one member who represents Native Americans where appropriate; and
 - (viii) two members of the public at large who represent the interests of the region.
- (c) The executive director of the Department of Natural Resources, in consultation with the director of the Division of Wildlife Resources, shall appoint additional members to the councils, up to a total of 15 per region, if deemed necessary to provide adequate representation of local interests and needs.
- (d) Members of the councils shall serve a term of four years, except members may be appointed for a term of two years to ensure that the terms of office are staggered.
- (e) Members may serve no more than two terms, except:
 - (i) members representing Native Americans may serve unlimited terms;
 - (ii) members filling a vacancy under Subsection (3) for two years or less will not be credited with having served a term; and
 - (iii) members who have served two terms may be eligible to serve an additional two terms after four years absence from regional advisory council membership.
- (f) Members' terms expire on July 1 of the final year in the appointed term.
- (2) The executive director of the Department of Natural Resources, in consultation with the director of the Division of Wildlife Resources, may remove members of the councils from office for cause, but may not do so without a public hearing if requested by the member.
- (3) If a vacancy occurs, the executive director of the Department of Natural Resources, in consultation with the director of the Division of Wildlife Resources, shall appoint a replacement to serve the remainder of the term from a list of nominees submitted by the respective interest group, agency, or the public at large.

- (4)(a) Each council shall appoint:
 - (i) a chair to conduct meetings and present council recommendations to the Wildlife Board; and
 - (ii) a vice chair to conduct meetings in the absence of the chair.
- (b) The chair and vice chair shall serve for a two year term of office.
- (5) Regional supervisors of the division shall serve as executive secretary to the councils and shall provide administrative support.
- (6) Each new member shall attend an orientation course provided by the division to assist them in the performance of the duties of the their office.
- (7) Any member who fails to attend two consecutive, previously scheduled meetings without contacting the chair shall be considered to have resigned and shall be replaced as provided in this section.

R657-39-4. Regional Advisory Council Meetings.

- (1) Meeting dates and times may be proposed by the Division of Wildlife Resources, but shall be determined by the chair upon at least ten days notice or upon shorter notice in emergency situations.
- (2) Meeting locations may be proposed by the Division of Wildlife Resources, but shall be determined by the chair and must be held within the council's regional boundary.
- (3) Meetings should be conducted in accordance with Robert's Rules of Order.
- (4)(a) Each council shall provide not less than 24 hours' public notice of the agenda, date, time, and place of each of its meetings.
 - (b) Public notice is satisfied by:
 - (i) posting written notice at the regional division office; and
 - (ii) providing notice to at least one newspaper of general circulation within the geographic jurisdiction of the council, or to a local media correspondent.
 - (c) When because of unforeseen circumstances it is necessary for a council to consider matters of an emergency or urgent nature, the notice requirements in this section may be disregarded and the best notice practicable given. No such meeting shall be held unless an attempt has been made to notify all of its members and a majority votes in the affirmative to hold the meeting.
 - (5) No formal decisions or recommendations may be made at any meeting unless there is a quorum present consisting of a simple majority of the membership of the council.
 - (6) Written minutes shall be kept of all council meetings pursuant to Section 52-4-7. Such minutes shall include:
 - (a) the date, time and place of the meeting;
 - (b) the names of members present and absent;
 - (c) the substance of all matters proposed, discussed, or decided, and a record, by individual member, of votes taken;
 - (d) the names of all citizens who appeared and the substance in brief of their testimony;
 - (e) any other information that any member requests be entered into the minutes.
 - (7)(a) All council meetings shall be open to the public except that a council may hold a closed meeting as authorized in Utah Code Sections 52-4-4 and 52-4-5.
 - (b) A record of all closed meetings shall be kept and maintained consistent with Utah Code Section 52-4-7.5.

R657-39-5. Regional Advisory Council Recommendations.

- (1) Each council shall:
 - (a) hear broad input, including recommendations, biological data, and information regarding the effects of wildlife;
 - (b) gather information from staff, the public, and

government agencies; and

(c) make recommendations to the Wildlife Board in an advisory capacity.

(2) The chair of each council or his or her designee shall submit a written recommendation to the Wildlife Board and present its recommendations orally to the Wildlife Board during an open public meeting.

(3) Councils may not make formal recommendations to the Wildlife Board concerning the internal policies and procedures of the division, personnel matters, or expenditure of the division's budget.

R657-39-6. Wildlife Board Electronic Meetings.

(1) Utah Code Section 52-4-207 authorizes a public body to convene or conduct an electronic meeting provided written procedures are established for such meetings. This rule establishes procedures for conducting Wildlife Board meetings by electronic means.

(2) The following provisions govern any meeting at which one or more Wildlife Board members appear telephonically or electronically pursuant to Section 52-4-207:

(a) If one or more board members participate in a public meeting electronically or telephonically, public notices of the meeting shall specify:

(i) the board members participating in the meeting electronically and how they will be connected to the meeting;

(ii) the anchor location where interested persons and the public may attend, monitor, and participate in the open portions of the meeting;

(iii) the meeting agenda; and

(iv) the date and time of the meeting.

(b) Written or electronic notice of the meeting and the agenda shall be posted or provided no less than 24 hours prior to the meeting:

(i) at the anchor location;

(ii) on the Utah Public Notice Website; and

(iii) to at least one newspaper of general circulation within the state or to a local media correspondent.

These notices shall be provided at least 24 hours before the meetings.

(c) Notice of the possibility of an electronic meeting shall be given to board members at least 24 hours before the meeting. In addition, the notice shall describe how a board member may participate in the meeting electronically or telephonically.

(d) When notice is given of the possibility of a board member appearing electronically or telephonically, any board member may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the board.

(i) At the commencement of the meeting, or at such time as any board member initially appears electronically or telephonically, the chair should identify for the record all those who are appearing telephonically or electronically.

(ii) Votes by members of the board who are not at the physical location of the meeting shall be confirmed by the chair.

(e) The anchor location, unless otherwise designated in the notice, shall be at the offices of the Utah Department of Natural Resources, 1594 West North Temple, Salt Lake City, Utah.

(i) The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected.

(ii) The anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

R657-39-7. Wildlife Board Emergency Meetings.

(1) There are times when, due to the necessity of considering matters of an emergency or urgent nature, the public notice provisions of Sections 52-4-202(1) cannot be met.

Pursuant to Section 52-4-202(5), the notice requirements in Section 52-4-202(1) may be disregarded when unforeseen circumstances require the wildlife board to meet and consider matters of an emergency or urgent nature.

(2) The following procedure shall govern any emergency meeting:

(a) No emergency meeting shall be held unless an attempt has been made to notify all of the members of the board of the proposed meeting and a majority of the convened members vote in the affirmative to hold such an emergency meeting.

(b) Public notice of the emergency meeting shall be provided as soon as practicable and shall include at a minimum the following:

(i) Posting of the date, time, and place of the meeting and the topics to be considered:

(A) at the offices of the division;

(B) on the division's web page; and

(C) at the location where the emergency meeting will be held.

(ii) If members of the board appear electronically or telephonically, notice shall comply with the requirements of R657-39-6(2) to the extent practicable.

(c) In convening the meeting and voting in the affirmative to hold such an emergency meeting, the board shall affirmatively state and find what unforeseen circumstances have rendered it necessary for the board to hold an emergency meeting to consider matters of an emergency or urgent nature such that the ordinary public notice of meetings provisions of Utah Code Section 52-4-202 could not be followed.

KEY: terms of office, public meetings, regional advisory councils

November 10, 2008

Notice of Continuation January 9, 2006

23-14-2.6(7)

23-14-19

R657. Natural Resources, Wildlife Resources.**R657-54. Taking Wild Turkey.****R657-54-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19 and in accordance with 50 CFR 20, 2003 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking wild turkey.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the Turkey Proclamation of the Wildlife Board for taking wild turkey.

R657-54-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices birds.

(b) "CFR" means the Code of Federal Regulations.

(c) "Cleared and planted land" means private land or privately leased state or federal land used to produce a cultivated crop for commercial gain and the cultivated crop is routinely irrigated or routinely mechanically or manually harvested, or is crop residue that has forage value for livestock.

(d) "Commercial gain" means intent to profit from cultivated crops through an enterprise in support of the crop owner's livelihood.

(e) "Essential habitat" means areas where wild turkeys regularly and consistently roost, feed, loaf, nest or winter.

(f) "Immediate family" means the landowner's lessee, or landowner's or lessee's spouse, children, son-in-law, daughter-in-law, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, stepchildren, and grandchildren.

(g) "Landowner" means any individual, family or corporation who owns property in Utah and whose name appears on the deed as the owner of eligible property or whose name appears as the purchaser on a contract for sale of eligible property.

(h) "Livestock Forage" means any forage, excluding cultivated crops and crop residues, meant for consumption by livestock, not routinely irrigated or routinely mechanically or manually harvested.

(i) "Open season" means the days when upland game may lawfully be taken. Each period prescribed as an open season shall include the first and last days thereof.

(j) "Private land" means land in private fee ownership and in agricultural use as provided in Section 59-2-502 and eligible for agricultural use valuation as provided in Section 59-2-503 and 59-2-504. Private land does not include tribal trust lands.

R657-54-3. Application Procedure for Wild Turkey.

(1)(a) Applications are available through the division's internet address. Applications must be submitted by the date prescribed in the Turkey Proclamation of the Wildlife Board for taking wild turkey.

(b) Residents and nonresidents may apply.

(2)(a) Group applications for wild turkey will not be accepted.

(b) Applicants may select up to five hunt choices when applying for limited entry turkey permits. Hunt unit choices must be listed in order of preference.

(c) A person must possess a valid hunting or combination license in order to apply for or obtain a wild turkey permit.

(d) To apply for a resident permit, a person must be a resident at the time of purchase.

(e) The posting date of the drawing shall be considered the purchase date of a permit.

(3)(a) A person may obtain only one wild turkey permit

each year, except a person may obtain wild turkey conservation permits in addition to obtaining a limited entry or remaining wild turkey permit.

(b) A person may not apply for wild turkey more than once annually.

(4)(a) If an error is found on the application, the applicant may be contacted for correction.

(b) The division reserves the right to correct applications.

(c) A turkey permit allows a person using any legal weapon as provided in Section R657-54-7 to take one bearded turkey within the area and season specified on the permit.

(5) The permit fees and handling fees must be paid pursuant to Rule R657-42-8(5).

(6) Applicants will be notified by mail or e-mail of drawing results by the date published in the Turkey Proclamation of the Wildlife Board for taking wild turkey.

(7) Any permits remaining after the drawing are available on the date published in the Turkey Proclamation on a first-come, first-served basis from division offices and participating online license agents.

(8)(a) An applicant may withdraw their application for the wild turkey permit drawing by the date published in the Turkey Proclamation of the Wildlife Board for taking wild turkey.

(b) Handling fees and hunting or combination license fees will not be refunded.

(9)(a) An applicant may amend their application for the wild turkey permit drawing by the date published in the Turkey Proclamation of the Wildlife Board for taking wild turkey.

R657-54-4. Waiting Period for Wild Turkey.

(1) Waiting periods do not apply to wild turkey permits.

R657-54-5. Bonus Points for Wild Turkey.

(1) A bonus point is awarded for:

(a) a valid unsuccessful application when applying for a permit in the turkey drawing; or

(b) a valid application when applying for a bonus point in the turkey drawing.

(2)(a) A person may not apply for a bonus point if that person is ineligible to apply for a permit.

(b) A person may apply for one turkey bonus point each year, except a person may not apply in the drawing for both a turkey permit and a turkey bonus point in the same year.

(c) Group applications will not be accepted when applying for bonus points.

(3) A bonus point shall not be awarded for an unsuccessful landowner application.

(4)(a) Each applicant receives a random drawing number for:

(i) the current valid turkey application; and

(ii) each bonus point accrued.

(b) The applicant will retain the lowest random number for the drawing.

(5)(a) Fifty percent of the permits for each hunt unit will be reserved for applicants with bonus points.

(b) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points.

(c) If reserved permits remain, the reserved permits will be designated by random number to eligible applicants with the next greatest number of bonus points.

(d) The procedure in Subsection (c) will continue until all reserved permits have been issued or no applications for that hunt unit remain.

(e) Any reserved permits remaining and any applicants who were not selected for reserved permits will be returned to the drawing.

(6) Bonus points are forfeited if a person obtains a wild turkey permit, except as provided in Subsection (7).

- (7) 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 Permit; or
 - (c) a person obtains a Poaching-Reported Reward Permit.
- (8) Bonus points are not transferable.
- (9) Bonus points are tracked using social security numbers or Division-issued hunter identification numbers.

R657-54-6. Landowner Permits.

(1)(a) Up to an additional 20 percent of the limited entry permits authorized for taking Merriam's and Rio Grande turkeys are available to private landowners through a drawing.

(2) Landowners interested in obtaining landowner permits must:

(a) contact the regional Division office in their area on the dates published in the Turkey Proclamation of the Wildlife Board for taking wild turkey;

(b) obtain and complete a landowner application;

(c) obtain a Division representative's signature on the landowner application; and

(d) submit the landowner application in accordance with Section R657-54-3.

(4)(a) Landowner permit applications that are not signed by the local Division representative will be rejected.

(5)(a) Only one eligible landowner may submit an application for the same parcel of land within the respective regional hunt boundary area.

(b) In cases where more than one application is received for the same parcel of land, all applications will be rejected.

(6) Applications must include:

(a) description of total acres owned within the respective regional hunt boundary;

(b) evidence of property ownership, including a copy of a title, deed, or tax notice indicating the applicant is the owner of the property; and

(c) the signature of the landowner.

(i) The signature on the application will serve as an affidavit certifying land ownership.

(7)(a) A landowner is eligible to participate in the drawing for available landowner turkey permits provided the landowner owns:

(i) at least 640 acres of essential habitat, or 40 acres of essential habitat that is cleared and planted land, in an open unit designated as a Merriam's unit that supports wild turkeys; or

(ii) at least 20 acres of essential habitat in an open unit designated as a Rio Grande unit that supports wild turkeys.

(b) Land qualifying as essential habitat, or cleared and planted land, and owned by more than one landowner may qualify for a landowner permit. However, the landowners who own the qualifying land must determine the landowner who will be participating in the drawing.

(8)(a) A landowner who applies for a landowner permit may:

(i) be issued the permit; or

(ii) designate a member of the landowner's immediate family or landowner's regular full-time employee to receive the permit.

(b) At the time of application, the landowner must identify the designee who will receive the permit.

(c) The landowner permit may be used only on the open limited entry area in which the landowner's property is located during the open season established for hunting wild turkeys.

(d) A person may not apply for or obtain a landowner permit without possessing a Utah hunting or combination license.

(9) Applicants will be notified by mail or e-mail of the drawing results for landowner permits by the date published in the Turkey Proclamation of the Wildlife Board for taking wild

turkey.

(10)(a) Any landowner permits remaining after the landowner drawing shall be converted to public limited entry permits for that specific unit.

(b) These permits shall be issued through the limited entry drawing. Therefore, the number of public permits listed in the Turkey Proclamation of the Wildlife Board for taking wild turkey, may increase.

(11)(a) A waiting period does not apply to landowners applying for landowner permits.

(b) A landowner may apply once annually for a landowner permit and a limited entry permit, but may only draw or obtain one permit.

R657-54-7. Firearms and Archery Tackle.

Wild turkey may be taken only with a bow and broadhead tipped arrows or a shotgun no larger than 10 gauge and no smaller than 20 gauge, firing shot sizes between BB and no. 6.

R657-54-8. Shooting Hours.

(1) Wild turkey may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

(b) A person must add to or subtract from the official sunrise and sunset depending on the geographic location of the state. Specific times are provided in a time zone map in the proclamation of the Wildlife Board for taking wild turkey.

R657-54-9. State Parks.

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas, except those areas designated open to hunting by the Division of Parks and Recreation in Rule R651-614-4.

(2) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(3) Hunting with shotguns or archery tackle is prohibited within one quarter mile of the above stated areas.

R657-54-10. Falconry.

Falconers may not release a raptor on wild turkey.

R657-54-11. Live Decoys and Electronic Calls.

A person may not take a wild turkey by the use or aid of live decoys, records or tapes of turkey calls or sounds, or electronically amplified imitations of turkey calls.

R657-54-12. Baiting.

A person may not hunt turkey using bait, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. An area is considered baited for 10 days after bait is removed, or 10 days after bait in an area is eaten.

R657-54-13. Sitting or Roosting Turkeys.

A person may not take or attempt to take any turkey sitting or roosting in a tree.

R657-54-14. Tagging Requirements.

(1) The carcass of a turkey must be tagged before the carcass is moved from, or the hunter leaves, the site of kill.

(2) To tag a carcass, a person shall:

(a) completely detach the tag from the license or permit;

(b) completely remove the appropriate notches to correspond with:

(i) the date the animal was taken;

(ii) the sex of the animal; and

(c) attach the tag to the carcass so that the tag remains

securely fastened and visible.

(3) A person may not:

- (a) remove more than one notch indicating date or sex; or
- (b) tag more than one carcass using the same tag.

(4) A person may not hunt or pursue turkey after any of the notches have been removed from the tag or the tag has been detached from the permit.

R657-54-15. Identification of Species and Sex.

The head and beard must remain attached to the carcass of wild turkey while being transported.

R657-54-16. Use of Dogs.

(1) Dogs may be used to locate and retrieve wild turkey during open hunting seasons.

(2) Dogs are not allowed on state wildlife management or waterfowl management areas, except during open hunting seasons or as posted by the Division.

R657-54-17. Closed Areas.

A person may not hunt wild turkey in any area posted closed by the Division or any of the following areas:

- (1) Salt Lake Airport boundaries as posted.
- (2) Incorporated municipalities: Most of the incorporated areas of Alta, a portion of Davis County, Garland City, Layton, Logan, Pleasant View City, South Ogden City, West Jordan, and West Valley City are closed to the discharge of firearms. Check with the respective city officials for specific boundaries. Other municipalities may have additional firearm restrictions.
- (3) Wildlife Management Areas:

(a) Waterfowl management areas are open for hunting wild turkey only during designated turkey hunting seasons, including: Bear River National Wildlife Refuge, Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Mills Meadows, Ogden Bay, Ouray National Wildlife Refuge, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, and Timpie Springs.

(b) Fish Springs National Wildlife Refuge is closed to wild turkey hunting.

(c) Goshen Warm Springs is closed to wild turkey hunting.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

R657-54-18. Possession of Live Protected Wildlife.

It is unlawful for any person to hold in captivity at any time any protected wildlife, except as provided by Title 23, Wildlife Resources Code or any rules and regulations of the Wildlife Board. Protected wildlife that is wounded must be immediately killed and shall be included in the hunter's bag limit.

R657-54-19. Spotlighting.

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-54-20. Exporting Wild Turkey from Utah.

A person may export wild turkey or their parts from Utah only if:

(1) the person who harvested the turkey accompanies it and possess a valid permit corresponding to the tag; or

(2) the person exporting the turkey or its parts, if it is not the person who harvested the turkey, has obtained a shipping permit from the Division.

R657-54-21. Waste of Game.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts.

(2) A person shall not kill or cripple any wild turkey without making a reasonable effort to retrieve the turkey.

R657-54-22. Wild Turkey Poaching Reported Reward Permits.

(1) Any person who provides information leading to another person's arrest and successful prosecution for wanton destruction of a wild turkey under Section 23-20-4, within any limited entry area may receive a permit from the Division to hunt wild turkey in the following year on the same limited entry area where the violation occurred, except as provided in Subsection (2).

(2)(a) In the event that issuance of a Poaching-Reported Reward Permit would exceed 5 percent of the total number of limited entry 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 Subsection (b).

(b) A permit for a wild turkey, on an alternative limited entry area that has been allocated more than 20 permits, may be issued.

(3)(a) The Division may issue only one Poaching-Reported Reward Permit for any one wild turkey 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 shall be issued to any one person in any one calendar year.

(d) A person must possess a Utah hunting or combination license to receive a Poaching-Reported Reward Permit.

(4)(a) Poaching-Reported Reward permits may only be issued to the person who provides the most pertinent information leading to a successful prosecution. Permits are not transferrable.

(b) If information is received from more than one person, the director of the Division shall make a determination based on the facts of the case, as to which person provided the most pertinent information leading to the successful prosecution in the case.

(c) The person providing the most pertinent information shall qualify for the Poaching-Reported Reward Permit.

(5) Any person who receives a Poaching-Reported Reward Permit must be eligible to hunt and obtain wild turkey permits as provided in all rules and regulations of the Wildlife Board and the Wildlife Resources Code.

(6) For purposes of this section, "successful prosecution" means the screening, filing of charges and subsequent adjudication for the poaching incident.

R657-54-23. Season Dates, Bag and Possession Limits, and Areas Open.

Season dates, bag and possession limits, areas open, and number of permits for taking wild turkey are provided in the Turkey Proclamation of the proclamation of the Wildlife Board for taking wild turkey.

R657-54-24. Youth Hunting.

(1)(a) Up to 15 percent of the limited entry permits

authorized for taking Merriam's and Rio Grande turkeys are available to youth hunters.

(b) For purposes of this section "youth" means any person who is 18 years of age or younger on the posting date of the wild turkey drawing.

(2)(a) Youth hunters who wish to participate in the youth limited entry wild turkey permit drawing must submit an application in accordance with Section R657-54-3.

(b) Youth who apply for a turkey permit in accordance with Section R657-54-3, will automatically be considered in the youth permit drawing based on their birth date.

(3)(a) Bonus points shall be used when applying for youth turkey permits in accordance with Section R657-54-5.

(b) Waiting periods will be incurred in accordance with Section R657-54-4.

KEY: wildlife, wild turkey, game laws
November 10, 2008

23-14-18
23-14-19

R657. Natural Resources, Wildlife Resources.**R657-61. Valuation of Real Property Interests for Purposes of Acquisition or Disposal.****R657-61-1. Purpose and Authority.**

(1) Pursuant to Utah Code Sections 63-34-21, 23-14-8, and Section 23-21-1, this rule defines the process by which the value of real property is determined for purposes of acquisition or disposal by the Division.

R657-61-2. Definitions.

(1) For purposes of this rule:

(a) "Appraisal" means an independent analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, an identified parcel of real property, and conducted by a state registered, licensed or certified appraiser.

(b) "Value" means as an opinion on the worth of an identified parcel of real property or interest therein at a specific time and may be comprised of one or more of the following values, as commonly understood within the real estate and appraisal services business communities: assessed value, insurable value, use value, investment value, going-concern value, business enterprise value, market value, and public interest value.

R657-61-3. Obtaining an Opinion of Value.

(1) When purchasing or disposing real property interests, the Division shall obtain a written opinion on the value of the property interest in the form of either an appraisal or a real estate broker's estimate of value.

(a) The division will keep and maintain the written opinion of value in its real property acquisition and disposal files.

(2) An appraisal or real estate broker's estimate of value is not required under the following circumstances:

(a) The market value of the subject property interest is less than One-Hundred Thousand Dollars (\$100,000), as estimated by the Division;

(b) The asking price for the property interest is considerably below prevailing market conditions, as estimated by the Division;

(c) The asking price for the property interest is reasonable based upon prevailing market conditions, but the Division will lose the opportunity to purchase the property if time is taken to conduct an appraisal or acquire a real estate broker's estimate of value prior to making an offer;

(d) An appraisal has been conducted on the subject property interest within the past twelve months;

(e) The real property interest is a gift, contribution, or donation to the division; or

(f) The real property interest is a right-of-way, lease, or other less-than-fee interest that is not perpetual.

(2) A written opinion of value may be rendered by:

(a) a state registered, licensed, or certified appraiser conducting an appraisal for the Division; or

(b) a real estate broker or sales agent rendering an opinion of value in accordance with Utah Code Section 61-2b-3(2).

(3) When values other than market value are considered in addition to or in place of an appraisal rendered by a state registered, licensed, or certified appraiser; or are considered in addition to, or in place of, an opinion of value rendered by a real estate broker or sales agent acting in accordance with Utah Code Section 61-2b-3(2); the Division shall create and keep a memo-to-file describing:

(a) the Division's consideration of said value(s);

(b) the Division's rationale in said consideration relative to the proposed price and other terms of the purchase, sale, or exchange; and

(c) the acquisition or disposal decision made by the Division.

R657-61-4. Congruency in Value.

(1) Based on the written opinion of value, the Division shall consider and weigh the various economic and social values associated with the real property in an effort to maintain a level of congruency between the compensation for the property and its values.

**KEY: wildlife, land sales, property values
November 24, 2008**

23-21-1

R710. Public Safety, Fire Marshal.**R710-13. Reduced Cigarette Ignition Propensity and Firefighter Protection Act.****R710-13-1. Adoption, Title, Purpose, and Prohibitions.**

Pursuant to Section 53-7-407, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules for the enactment of the Reduced Cigarette Ignition Propensity and Firefighter Protection Act.

R710-13-2. Definitions.

2.1 "AG" means Attorney General

2.2 "Board" means Utah Fire Prevention Board.

2.3 "NFPA" means National Fire Protection Association.

2.4 "SFM" means State Fire Marshal or authorized deputy.

2.5 "Tax Commission" means the Utah State Tax Commission.

2.6 "UCA" means Utah State Code Annotated 1953 as amended.

R710-12-3. Certification and Product Change.

3.1 As required in UCA 53-7-404(1), accepted alternative test methods of other states that are equal to or stricter performance standards as allowed in UCA 53-7-403(4), may also be accepted as meeting the standards established in the statute.

3.2 If the SFM intends to remove a brand from the certified list, it will send a notice of intent to deny to the manufacturer. The notice of intent shall include the following:

3.2.1 The factual and legal deficiencies upon which the SFM intended action rests.

3.2.2 The actions the manufacturer must take to satisfy the factual or legal deficiencies upon which the intended action is based.

3.2.3 The notification that the manufacturer shall have 15 working days to cure the deficiencies and submit documentation or other information to correct the deficiencies. The SFM may extend the time period for a manufacturer to cure the deficiencies.

R710-12-4. Implementation and Inspection.

4.1 As required in UCA 53-7-404(3), 53-7-405(6)(c), 53-7-407(2), and 53-7-408, the SFM, AG, and the Tax Commission will cooperate to produce a list or lists of cigarette brands that are legal for sale under any and all statutes of the State of Utah.

R710-12-5. Adjudicative Proceedings.

5.1 Adjudicative proceedings performed by the agency shall proceed informally as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

**KEY: fire safe cigarettes
November 24, 2008**

53-7-407

R714. Public Safety, Highway Patrol.**R714-158. Vehicle Safety Inspection Program Requirements.****R714-158-1. Authority.**

This rule is authorized by Subsection 53-8-204(5).

R714-158-2. Purpose.

The purpose of this rule is to set standards governing the administration and enforcement of the safety inspection program in accordance with Title 53, Chapter 8, Part 2.

R714-158-3. Definitions.

As used in this rule:

(1) "Agency Action" means a written warning, suspension or revocation applied against a certification or license.

(2) "Certificate" means the certificate of inspection given when a vehicle fails or meets the requirements of the inspection program.

(3) "Certification" means the authority given to an inspector by the department to conduct safety inspections.

(4) "Commercial motor vehicle" means any vehicle, machine, tractor, trailer or semi-trailer, propelled or drawn by mechanized power upon the highway in transportation of passengers or property, or any combination thereof. It does not include implements of husbandry.

(5) "Department" means the Utah Department of Public Safety.

(6) "Fleet station" means a station licensed by the department and capable of conducting safety inspections of commercial motor vehicles, provided the fleet owns a minimum of twenty-five vehicles.

(7) "Inspector" means a person employed by a station licensed to conduct safety inspections.

(8) "License" means the authority given to a station by the department to conduct safety inspections.

(9) "Notice of agency action" means a written notice that the department intends to suspend or revoke a certification or license.

(10) "Re-inspection" means an inspection of previously rejected items that is completed within fifteen days of the original inspection. An inspection that is completed outside of the fifteen days is considered a new inspection, which all vehicle components are required to be inspected.

(11) "Station" means a business, including public garages, service stations, and repair shops licensed by the department to conduct safety inspections.

(12) "Sticker" means the sticker intended to be placed on the windshield or side wing window of a vehicle which has met the requirements of the inspection program. On trailers they should be placed on either of the two front corners where they can easily be seen.

(13) "Utah Interactive (UI)" means the company that has contracted with the State Of Utah for the setup and facilitation of the web-based inspection program.

R714-158-4. Station License.

A. Application for a license as a station can be made on forms provided by the department's Safety Inspection Section, 5500 West Amelia Earhart Drive, Suite 360, Salt Lake City, Utah 84116.

(1) A \$1,000 surety bond or garage keepers insurance is required for all stations except fleet stations and publicly owned stations.

(2) A \$100 station application fee is required.

(3) A \$25 annual license fee is required for all stations except publicly owned stations.

(4) A \$100 fee is required to renew a license that has been suspended or revoked.

(5) A \$100 fee is required for a station name and/or

address change.

B. Upon receiving an application for a license, the department will assign an investigator to inspect the place of business to determine if the applicant meets the requirements of this rule. This includes that the application is filled out completely and in addition to providing a list of all the station's certified inspectors.

C. An applicant for a license shall meet the building and equipment requirements set forth in the "Vehicle Inspection Manual" prior to approval and throughout their certification.

D. Upon approval, the license will be issued to the applicant and shall be displayed in a prominent location at the address shown on the license.

E. Licenses are not transferable. A change in the ownership, name, or location of a station requires a new application, bond, and license.

F. All new stations upon making application will be required to enroll in the web-based inspection program through Utah Interactive. All of the station's inspections will have to be completed on-line.

G. An agency action against a station using only paper certificates will require, after reinstatement, that the station's inspections be conducted on the on-line program.

R714-158-5. Inspector Certification.

A. An applicant for certification as an inspector shall:

(1) obtain training in accordance with the requirements of Section R714-158-6 of this rule;

(2) pay a \$10 non-refundable processing fee;

(3) be at least eighteen years of age; and

(4) have a valid drivers license.

B. Certification is valid for five years and expires on the month, day, and year shown on the certificate.

C. Certification can be renewed up to two months before the expiration date.

(1) A \$100 fee is required to process a return to the safety inspection program in the event of a suspension or revocation of certification.

D. A \$20 fee is required to replace a lost/missing inspector certification card.

R714-158-6. Inspector Training and Testing.

A. Inspector applicants shall obtain training, reference materials, and instructions from the department prior to certification.

B. The department may contract with educational institutions to provide training, re-training, or testing.

(1) Every educational institution will be required to have the same tools that each station is required to have for each individual vehicle type that they will be instructing.

C. An inspector seeking re-certification of his/her safety inspection authority shall do one of the following options:

(1) Option #1- Participate in the full 16 hour Safety Inspection Training Course and pass the final test.

(2) Option #2- Participate in either an on-line, or "CD" formatted recertification training program, and pass the quizzes.

D. An inspector whose certification has expired for more than one (1) year is required to re-take the 16 hour certification.

E. Every student that takes the 16 hour certification course, is required to attend all sixteen hours of the course, regardless of what vehicle type they are applying for. If they miss any portion of the course, they will be required to make up that missed portion before being allowed to take the certification test.

F. If an educational institute offers a motorcycle only course, then the student must attend the entire portion of that course that is covered under the curriculum set forth by the department before being allowed to take the certification test.

R714-158-7. General Safety Inspection Program Requirements.

A. Inspections shall be conducted honestly and thoroughly. Any attempt to coerce customers, or to sell unneeded parts or repairs is prohibited.

(1) Repairs or adjustments may not be made to a vehicle without prior approval of the customer.

(a) Any part that is replaced as a result of an inspection must be returned to the customer.

(b) If a part cannot be returned, it must be shown to the customer.

(c) The customer is under no obligation to have a vehicle repaired at the station. Repairs may be made at any business selected by the customer.

(2) A current set of inspection records, including the plate brake test records, shall be retained at each station or record keeping office.

(a) The records shall be retained for a minimum of twelve months.

(b) When requested, records shall be made available for inspection by the department.

(3) Reports required by the department shall be submitted to the department prior to every third order of inspection supplies.

(a) Reports submitted to the department shall be legible and in sequence.

(b) Certificates and stickers shall be filled out completely to include the name and address of the registered owner. They must be completed on the same date that the vehicle inspection was conducted.

(4) Each station in the safety inspection program shall maintain an adequate supply of certificates, stickers, and other inspection supplies.

(a) Certificates, stickers, and other inspection supplies shall be safeguarded against loss or theft.

(b) Missing or stolen certificates or stickers shall be immediately reported to the department.

(5) No certificate or sticker shall be issued without making a proper inspection, or issued to any vehicle that does not meet safety inspection requirements.

(6) An inspector may conduct inspections, print certificates, issue certificates, and attach stickers to vehicles only at the location designated on the license.

(7) Inspectors will not be added to a station on the Admin Console, without a member of the station's management first contacting our office. This management contact may be done in person, by phone or on a station's letterhead with an official signature.

(8) Certificates, stickers, or other inspection supplies, may not be sold or transferred from one station to another.

(9) Each station must be open for a least eight hours during the normal business day. Stations may close on holidays, Saturdays and Sundays.

(a) At least one inspector must be on duty at each station during business hours.

R714-158-8. Vehicle Safety Inspection Manual.

The department shall prepare the "Vehicle Inspection Manual" which shall be based on the "Utah Code," the "Federal Code of Regulations," the "Vehicle Inspection Handbook" of the American Association of Motor Vehicle Administrators, and on vehicle manufacturer specifications.

(1) The department shall seek the advice of the Safety Inspection Advisory Council prior to any substantive changes in the "Vehicle Inspection Manual."

(2) Inspectors shall conduct inspections in accordance with the "Vehicle Inspection Manual."

(3) All stations are required to have a copy of the most recent manual available. This requirement can be met by having

a hard copy on hand or by downloading a copy to a file on the station's computer from the Safety Inspection website. Accessing the manual through the website does not qualify for meeting this requirement.

R714-158-9. Certificates, Stickers, and Inspection Reports.

A. Paper Certificates will be issued in books of twenty-five for ATV's and fifty for Passenger/Light Truck.

(1) A maximum of ten books of certificates and twenty books of stickers may be purchased on one order.

(2) Each on-line station may be allowed to purchase a maximum of two books of certificates that are only to be used as a backup to the on-line program when the system is down.

(3) All orders shall be paid by check, except as authorized by the department.

(4) Unused certificates or stickers, if less than two years old and in quantities of ten or more, may be returned to the department for reimbursement or exchange.

(5) Returned certificates and stickers must be in the original book and sequence.

(6) Utah Interactive is responsible for billing the on-line stations for all completed on-line certificates each month.

(7) Each on-line station shall submit a full payment for each monthly bill received from UI.

(8) Entering a safety inspection certificate number into an outside agency computer system for the purpose of printing a certificate is prohibited.

(9) All 'ATV' inspections shall be conducted on a department approved ATV paper certificate, or on the on-line program under the 'ATV' vehicle type.

B. Certificates, stickers, and inspection reports, shall be completed and issued as set forth in the "Vehicle Inspection Manual."

R714-158-10. Incorporation of Federal Standards for Commercial Vehicles.

The department adopts federal regulation 49 CFR 393, 396, and 396 Appendix G (1997 edition), applicable to commercial motor vehicles and trailers operating in interstate commerce, and incorporates those regulations in this rule by reference.

R714-158-11. Grounds for Denial, Suspension, or Revocation of License or Certification.

A license or certification may be denied, suspended, or revoked for either of the following reasons:

(1) violation of state laws or rules applicable to vehicle inspections.

(2) conviction of any crime involving moral turpitude.

(3) Providing any false information on a station or inspector application.

(4) A station that transfers ownership while serving a suspension/revocation period, shall serve the full period of the suspension/revocation before reinstatement of certification or approval as a new inspection station will be made.

(5) An on-line station that is more than 60 days delinquent on their balance with Utah Interactive, may have an agency action filed against them until their full payment is received by Utah Interactive.

R714-158-12. Adjudicative Proceedings.

A. All adjudicative proceedings set forth in this section shall be conducted informally, and as authorized by Sections 53-8-204, 63-46b-4, and 63-46b-5.

B. Action to deny, suspend or revoke any license or certification or to appeal any denial, suspension, or revocation shall be made on forms provided by the department in accordance with Section 63-46b-3.

C. Appeal to department. A person who has been issued

a notice of agency action to suspend or revoke a license or certification may request a hearing before the department by filing an appeal with the department within ten days of receipt of the notice of agency action. If a timely appeal is filed, the intended agency action shall automatically be stayed.

(1) The hearing before the department shall be informal and is intended to provide the person with an opportunity to show cause why the intended agency action should not be taken.

(2) The department will issue a signed order to the parties within five days of the hearing, ordering or denying the intended agency action.

D. Appeal to Advisory Council. A person who has been denied a license or certification, or a person whose license or certification has been suspended or revoked by the department, may request a hearing before the Advisory Council pursuant to Section 53-8-203, by filing an appeal with the department within ten days of receipt of the denial, suspension, or revocation.

(1) Except in the case of an emergency order, a timely appeal to the department requesting an Advisory Council hearing shall automatically stay a department order of suspension or revocation.

(2) The hearing before the Advisory Council shall be informal and shall be held within thirty days after the appeal is filed.

(3) The Advisory Council shall make written findings and conclusions and issue a signed order within ten days of the hearing; affirming, denying, or modifying the order of the department.

E. Reconsideration of the order of the Advisory Council may be requested in writing within twenty days of the date of the order in accordance with Section 63-46b-13.

F. The order of the Advisory Council shall be subject to judicial review in accordance with Section 63-46b-15.

G. A default order may be entered against a party who fails to participate in any of the hearings provided for in this section in accordance with Section 63-46b-11.

KEY: motor vehicle safety, inspections

December 1, 2008

Notice of Continuation November 6, 2007

53-8-201

53-8-203

63G-4

R714. Public Safety, Highway Patrol.**R714-200. Standards for Vehicle Lights and Illuminating Devices.****R714-200-1. Purpose.**

Section 41-6a-1620 requires that the Department shall approve or disapprove any lighting device or other safety equipment, component or assembly of a type for which approval is specifically required. The standards shall conform as nearly as practical to Federal Motor Vehicle Safety Standards and Regulations.

R714-200-2. Authority.

This rule is authorized by Sections 41-6a-1601 and 41-6a-1620, and Subsection 53-1-106(1)(a).

R714-200-3. Federal Standard Adopted and Incorporated by Reference.

The Department hereby adopts the standards set forth in 49 CFR 571 Standard 108 (1997 edition) as the standard governing vehicle lights and illuminating devices in Utah and incorporates such federal regulation into this rule by this reference.

R714-200-4. Miscellaneous Light Restrictions.

A. Alternately flashing lights described in Sections 41-6a-1616 and 41-6a-1302 may not be used on any vehicle other than a school bus or authorized emergency vehicle.

B. No vehicle, except an authorized emergency vehicle, may use rotating lights as described in Subsection 41-6a-1616(4).

C. No vehicle, except a police vehicle, may use rotating blue lights or flashing blue lights as described in Section 41-6a-1616.

R714-200-5. Process of Requesting Equipment Approval.

A. Upon receiving a written request, the Department shall review the equipment to ensure that it meets Federal Motor Vehicle Safety Standards.

B. After reviewing the equipment, the Department shall issue a written response, explaining the reason for approval or denial of the requested equipment.

KEY: lights, motor vehicle safety**December 1, 2008****Notice of Continuation November 6, 2007****41-6-117****41-6-142****53-1-106(1)(a)**

R714. Public Safety, Highway Patrol.**R714-300. Standards for Motor Vehicle Braking Systems.****R714-300-1. Purpose.**

The purpose of this rule is to adopt standards for motor vehicle braking systems.

R714-300-2. Authority.

This rule is authorized by Section 41-6a-1601 and 53-1-106(1)(a).

R714-300-3. Federal Standard Adopted and Incorporated by Reference.

The Department of Public Safety hereby adopts the motor vehicle braking standards set forth in 49 CFR 393.40 through 393.50, 571.105, and 571.122 (1996 edition) as the motor vehicle braking standards for Utah and incorporates such federal regulations into this rule by this reference.

KEY: brakes, motor vehicle safety**May 5, 1998****41-6a-1601****Notice of Continuation November 27, 2007 53-1-106(1)(a)**

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.**R722-900. Review and Challenge of Criminal Record.****R722-900-1. Purpose.**

Subsection 53-10-108(8)(a) requires the Commissioner of Public Safety to establish procedures to allow an individual to review his criminal history record information. Subsection 53-10-108(8)(c) requires the Commissioner to establish procedures to allow an individual to challenge the completeness and accuracy of his criminal history record information as contained in the department's computerized criminal history files. The purpose of this rule is to establish those procedures.

R722-900-2. Authority.

This rule is authorized by Sections 53-10-108 and 63-46a-3.

R722-900-3. Review.

An individual may review the department's criminal history record information about him, by contacting the Bureau of Criminal Identification (BCI) and:

- (a) filling out an application provided by BCI;
 - (b) providing a set of fingerprints;
 - (c) providing a copy of a government issued photo i.d.;
- and
- (d) filling out and signing a criminal history waiver form provided by BCI; and
 - (e) paying a \$10 processing fee.

R722-900-4. Application by Mail.

(a) Individuals who are unable to apply in person may obtain an application from BCI, be fingerprinted at a local law enforcement agency, and then mail the completed application, fingerprints, signed waiver, and \$10 processing fee to BCI at Box 14280, Salt Lake City, Utah 84114-8280.

(b) The local law enforcement agency verifies the identity of the individual by checking a government issued photo i.d. at the time of fingerprinting and signs the application form.

R722-900-5. Challenge.

(a) An individual may challenge the completeness and accuracy of his criminal history record information by filling out a challenge form provided by BCI. The submittal of a challenge form will be handled as an informal adjudicative proceeding in accordance with Section 63-46(b)-5. If the department denies the challenge, no further hearing, review, or reconsideration shall be granted. The individual making the challenge will be required to prove to the satisfaction of BCI through the use of appropriate documentation that the department's criminal history record information is incomplete or inaccurate.

(b) If BCI is satisfied that the individual has sufficiently documented that his criminal history record information is incomplete or inaccurate, BCI will amend the individual's files accordingly.

(c) An individual who is dissatisfied with the decision made by BCI regarding the completeness or accuracy of the department's criminal history record information on him, may appeal the decision to district court in accordance with Section 63-46b-15.

KEY: criminal records**December 15, 1998****53-10-108(8)****Notice of Continuation November 17, 2008**

**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 provide proof of U.S. citizenship.

1. Naturalized citizens may 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 or;

2. Naturalized citizens may indicate the number of their United States passport on the application for peace officer training and certification. The applicant shall attach a photocopy of their United States Passport to the application.

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*
November 25, 2008 53-6-203
Notice of Continuation February 26, 2007 53-6-211

**R728. Public Safety, Peace Officers Standards and Training.
R728-503. Utah Minimum Standards for All Emergency Pursuit Policies to be Adopted by Public Agencies that Operate Authorized Emergency Pursuit Vehicles.**

R728-503-1. Authority.

- (1) This rule establishes minimum standards for all emergency pursuit policies to be adopted by public agencies authorized to operate authorized emergency pursuit vehicles.
- (2) This rule is authorized by Subsection 41-6a-212(5).

R728-503-2. Definitions.

- (1) Terms in this rule are defined in Section 41-6a-102.
- (2) In addition:
 - (a) "agency emergency pursuit policy" means the written principles by which a Utah individual public agency that operates authorized emergency pursuit vehicles is guided in the management of its affairs concerning whether to, and how to, engage and disengage in the pursuit of a suspect by vehicle.
 - (b) "authorized emergency pursuit vehicle" means law enforcement vehicle, either marked or unmarked, properly equipped with audible sirens and visual lights owned and operated by a public agency.
 - (c) "back-up unit" means each authorized emergency pursuit vehicle assisting the primary unit.
 - (d) "balance test" means that a law enforcement officer shall act as a reasonably prudent emergency vehicle operator in like circumstances while making an ongoing decision process to analyze the risk of initiating, continuing, and terminating pursuit given the following considerations:
 - (i) the need to apprehend a fugitive who presents a danger to others because the serious and violent nature of the crime for which the fugitive is sought or because the fugitive's driving presents a threat to the public safety that may outweigh the risks that a pursuit poses to others; and
 - (ii) the need to avoid pursuit if the threat of public or officer safety is greater than the need for immediately apprehending the suspect.
 - (e) "boxing-in" means a technique designed to stop a violator's vehicle by surrounding it with authorized emergency pursuit vehicles and then slowing all vehicles to a stop.
 - (f) "channelization" means a technique where objects are placed in the anticipated or actual path of a pursued vehicle which tend to alter the vehicle's intended direction of travel.
 - (g) "intervention techniques" means specific operational tactics including immobilization, channelization, ramming, boxing-in, roadblock procedures, tire deflation devices (spike strips, etc.) which are intended to disable fleeing vehicles or otherwise prevent further flight or escape.
 - (h) "paralleling" means participating in the pursuit by proceeding in the same direction and maintaining approximately the same speed while traveling on an alternate street or highway that parallels the pursuit route.
 - (i) "primary unit" means the authorized emergency pursuit vehicle that initiates a pursuit or assumes control of the pursuit as the lead vehicle or the first authorized emergency pursuit vehicle immediately behind the fleeing suspect.
 - (j) "supervisor" means a law enforcement officer who, by virtue of rank or assignment, is responsible for the direction or supervision of the activities of other law enforcement officers.

R728-503-3. Purpose.

- (1)(a) The purpose of this rule is to provide minimum standards, below which, the individualized law enforcement agency emergency pursuit policy may not legally go.
- (b) It is not the intent nor legal purpose of these minimum standards to be exhaustive or all inclusive on this subject.
- (2) As law enforcement officers consider the balance test, these minimum standards assist in training as well as providing a threshold for the law enforcement officer while analyzing the

balance test in actual field situations.

(3)(a) The department establishes these minimum standards to assist each agency develop its own agency emergency pursuit policy.

(b) While implementing and revising an agency emergency pursuit policy, each agency shall use these minimum standards as a starting point and then individualize its agency emergency pursuit policy as needed.

R728-503-4. Initiating Pursuit Policy.

- (1) Each law enforcement officer shall consider the balance test prior to engaging in an emergency vehicle pursuit.
- (2) Each law enforcement officer in an authorized emergency pursuit vehicle may initiate a vehicular pursuit when the suspect exhibits the intention to avoid apprehension by refusing to stop when properly directed to do so.
- (3) In deciding whether to initiate pursuit, the law enforcement officer may take into consideration:
 - (a) road, weather, and environmental conditions;
 - (b) population density and vehicular and pedestrian traffic;
 - (c) the relative performance capabilities of the pursuit vehicle and driver and the suspect vehicle being pursued;
 - (d) the seriousness of the offense;
 - (e) likelihood of pursuit resulting in apprehension;
 - (f) familiarity with the area and road; and
 - (g) any other pertinent factors.

R728-503-5. Pursuit Operations Policy.

- (1) When initiating pursuit, each authorized emergency pursuit vehicle shall activate appropriate warning equipment including an audible signal or visual signal visible to the front of the pursuing vehicle.
- (2) When initiating pursuit and when reasonably possible during the pursuit the law enforcement officer shall notify communications of:
 - (a) the location, direction, and speed of the pursuit;
 - (b) the description of the pursued vehicle including suspects and occupants; and
 - (c) the reason for the pursuit.
- (3) When reasonably possible the law enforcement officer shall keep communications updated on the pursuit.
- (4) When reasonably possible, communications personnel shall:
 - (a) notify any available agency supervisor of the pursuit;
 - (b) clear the radio channel of non-emergency traffic; and
 - (c) relay necessary information to other law enforcement officers and jurisdictions.
- (5) When reasonably possible, units and supervisors involved in the pursuit shall use a single statewide or regional radio channel that communications may restrict to pursuit communications.
- (6) Unless circumstances dictate otherwise, a pursuit shall consist of no more than two police vehicles, a primary and a back-up unit. All other personnel shall stay clear of the pursuit unless instructed to participate by a supervisor. No unit shall pass another unit involved in the pursuit unless specifically requested to do so or it is otherwise considered necessary.
- (7) The primary unit shall become back-up when the pursued vehicle comes under air surveillance, if available, or when another unit is assigned primary responsibility.

R728-503-6. Supervisory Responsibilities.

- (1) As with any critical law enforcement incident, it may not be necessary for the supervisor to be present in order to begin exercising management and control of the pursuit.
- (2) When reasonably possible, the supervisor shall not actually be engaged in the pursuit itself.
- (3) Each supervisor shall consider the balance test prior to authorizing the pursuit or its continuance.

- (4) When reasonably possible each supervisor shall:
 - (a) monitor incoming information;
 - (b) coordinate and direct activities;
 - (c) appropriately limit the number of pursuing units; and
 - (d) ensure notification of law enforcement agencies into whose jurisdiction the pursuit is likely to enter.
- (5) A supervisor shall have the discretion to terminate the pursuit.

R728-503-7. Pursuit Tactics.

- (1) When reasonably possible, authorized emergency pursuit vehicles having the most prominent markings and emergency lights shall be used to pursue, particularly as the primary unit. When a pursuit is initiated by an unmarked patrol unit, such unit shall relinquish the pursuit to a marked patrol unit as soon as practical.
- (2) Intervention techniques shall be used only when it is possible to do so safely and when the law enforcement officers using them have received training in their use.
- (3) There shall be no paralleling the pursuit route.
- (4) Motorcycles may be used for pursuit in exigent circumstances and when weather and related conditions allow. They shall relinquish the pursuit to a marked patrol unit as soon as practical.
- (5) Roadblocks may not be used unless the circumstances would warrant the use of deadly force.
 - (a) When reasonably possible, roadblocks shall only be created with a supervisor's approval.
 - (b) When a roadblock is created, law enforcement officers shall:
 - (i) allow for reasonable stopping distance;
 - (ii) place the roadblock in a position that is reasonably visible;
 - (iii) reasonably ensure the safety of non-involved pedestrians and motorists; and
 - (iv) not place themselves or their vehicle in a position to jeopardize their own safety.
- (6) Decisions to discharge firearms at or from a moving vehicle shall be governed by the law enforcement agency's use of force policy and are prohibited when they present an unreasonable risk to others. These decisions shall first be authorized when reasonably possible by a supervisor.
- (7) When the pursued vehicle is stopped, law enforcement officers shall use appropriate officer safety tactics and shall be aware of the necessity to utilize only reasonable and necessary force to take suspects into custody.

R728-503-8. Interjurisdictional Pursuits.

- (1) Chapter 77-9, the Uniform Act on Fresh Pursuit, governs Rule R728-503-8 as applicable.
- (2) The primary unit shall notify communications when it is likely that a pursuit will continue into a neighboring jurisdiction or across the county or state line.
- (3) When possible, the supervisor shall authorize inter-jurisdictional pursuit.
- (4) When a pursuit enters another jurisdiction, the action of law enforcement officers shall be governed by the policy of the law enforcement officers' own agency, specific inter-local agreements and state law as applicable.
- (5) Pursuit into a bordering state shall comply with the law of both states and any applicable inter-jurisdictional agreements.

R728-503-9. Termination of Pursuit.

- (1) The supervisor or the primary unit in absence of a supervisor shall continually re-evaluate the balance test to assess the pursuit situation.
 - (a) The supervisor may order the termination of a pursuit at any time.
 - (b) The primary unit may terminate the pursuit at any time.

- (2) A pursuit may be terminated under the following conditions:
 - (a) the suspect's identity has been determined and future apprehension is likely;
 - (b) air support is available to track the suspect;
 - (c) weather or traffic conditions substantially increase the danger of the pursuit beyond the necessity of apprehending the suspect;
 - (d) the distance between the suspect and pursuing vehicles makes further pursuit futile;
 - (e) immediate apprehension is not necessary to protect the public or law enforcement officers;
 - (f) the law enforcement officer is unfamiliar with the area and is unable to accurately communicate location and direction of pursuit; and
 - (g) the pursuit proceeds the wrong way on a limited access road, for example an interstate highway.
- (3) Termination of pursuit shall include deactivating the audible siren and visual light equipment, pulling the vehicle to the side of the road, and stopping.

R728-503-10. Training.

- (1) Law enforcement officers who drive emergency authorized pursuit vehicles shall receive initial minimum tactical pursuit training and initial training defined in Rule R728-503.
- (2) Pursuit training shall include details concerning the balance test and its application as to initiating and terminating pursuits.
- (3) Ongoing annual policy and procedure and case law review shall be required for law enforcement officers to assure they are knowledgeable with their own individual agencies emergency pursuit policy.

**KEY: pursuit, emergency vehicles, policy
November 25, 2008**

41-6a-212(5)

R746. Public Service Commission, Administration.**R746-360. Universal Public Telecommunications Service Support Fund.****R746-360-1. General Provisions.**

A. Authorization -- Section 54-8b-15 authorizes the Commission to establish an expendable trust fund, known as the Universal Public Telecommunications Service Support Fund, the "universal service fund," "USF" or the "fund," to promote equitable cost recovery and universal service by ensuring that customers have access to basic telecommunications service at just, reasonable and affordable rates, consistent with the Telecommunications Act of 1996.

B. Purpose -- The purposes of these rules are:

1. to govern the methods, practices and procedures by which:

a. the USF is created, maintained, and funded by end-user surcharges applied to retail rates;

b. funds are collected for and disbursed from the USF to qualifying telecommunications corporations so that they will provide basic telecommunications service at just, reasonable and affordable rates; and,

2. to govern the relationship between the fund and the trust fund established under 54-8b-12, and establish the mechanism for the phase-out and expiration of the latter fund.

C. Application of the Rules -- The rules apply to all retail providers that provide intrastate public telecommunications services.

R746-360-2. Definitions.

A. Affordable Base Rate (ABR) -- means the monthly per line retail rates, charges or fees for basic telecommunications service which the Commission determines to be just, reasonable, and affordable for a designated support area. The Affordable Base Rate shall be established by the Commission. The Affordable Base Rate does not include the applicable USF retail surcharge, municipal franchise fees, taxes, and other incidental surcharges.

B. Average Revenue Per Line -- means the average revenue for each access line computed by dividing the sum of all revenue derived from a telecommunications corporation's provision of public telecommunications services, including, but not limited to, revenues received from the provision of services in both the interstate and intrastate jurisdictions, whether designated "retail," "wholesale," or some other categorization, all revenues derived from providing network elements, services, functionalities, etc. required under the Federal Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 or the Utah Telecommunications Reform Act, Laws of Utah 1995, Chapter 269, all support funds received from the Federal Universal Service Support Fund, and each and every other revenue source or support or funding mechanism used to assist in recovering the costs of providing public telecommunications services in a designated support area by that telecommunications corporation's number of access lines in the designated support area.

C. Basic Telecommunications Service -- means a local exchange service consisting of access to the public switched network; touch-tone, or its functional equivalent; local flat-rated, unlimited usage, exclusive of extended area service; single-party service with telephone number listed free in directories that are received free; access to operator services; access to directory assistance, lifeline and telephone relay assistance; access to 911 and E911 emergency services; access to long-distance carriers; access to toll limitation services; and other services as may be determined by the Commission.

D. Designated Support Area -- means the geographic area used to determine USF support distributions. A designated support area, or "support area," need not be the same as a USF proxy model's geographic unit. The Commission will determine

the appropriate designated support areas for determining USF support requirements. Unless otherwise specified by the Commission, the designated support area for a rate-of-return regulated Incumbent telephone corporation shall be its entire certificated service territory located in the State of Utah.

E. Facilities-Based Provider -- means a telecommunications corporation that uses its own facilities, a combination of its own facilities and essential facilities or unbundled network elements obtained from another telecommunications corporation, or a telecommunications corporation which solely uses essential facilities or unbundled network elements obtained from another telecommunications corporation to provide public telecommunications services.

F. Geographic Unit -- means the geographic area used by a USF proxy cost model for calculating costs of public telecommunications services. The Commission will determine the appropriate geographic area to be used in determining public telecommunications service costs.

G. Net Fund Distributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues collected by that company, when the former amount is greater than the latter amount.

H. Net Fund Contributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues generated by that company, when the latter amount is greater than the former amount.

I. Trust Fund -- means the Trust Fund established by 54-8b-12.

J. USF Proxy Model Costs -- means the total, jurisdictionally unseparated, cost estimate for public telecommunications services, in a geographic unit, based on the forward-looking, economic cost proxy model(s) chosen by the Commission. The level of geographic cost disaggregation to be used for purposes of assessing the need for and the level of USF support within a geographic unit will be determined by the Commission. These models shall be provided by the Commission by January 2, 2001.

K. Universal Service Fund (USF or fund) -- means the Universal Public Telecommunications Service Support Fund established by 54-8b-15 and set forth by this rule.

R746-360-3. Duties of Administrator.

A. Selection of Administrator -- The Division of Public Utilities will be the fund administrator. If the Division is unable to fulfill that responsibility, the administrator, who must be a neutral third party, unaffiliated with any fund participant, shall be selected by the Commission.

B. Cost of Administration -- The cost of administration shall be borne by the fund; unless administered by a state agency.

C. Access to Books -- Upon reasonable notice, the administrator shall have access to the books of account of all telecommunications corporations and retail providers, which shall be used to verify the intrastate retail revenue assessed in an end-user surcharge, to confirm the level of eligibility for USF support and to ensure compliance with this rule.

D. Maintenance of Records -- The administrator shall maintain the records necessary for the operation of the USF and this rule.

E. Report Forms -- The administrator shall develop report forms to be used by telecommunications corporations and retail providers to effectuate the provisions of this rule and the USF. An officer of the telecommunications corporation or retail provider shall attest to and sign the reports to the administrator.

F. Administrator Reports -- The administrator shall file reports with the Commission containing information on the average revenue per line calculations, projections of future USF

needs, analyses of the end-user surcharges and Affordable Base Rates, and recommendations for calculating them for the following 12-month period. The report shall include recommendations for changes in determining basic telecommunications service, designated support areas, geographic units, USF proxy cost models and ways to improve fund collections and distributions.

G. Periodic Review -- The administrator, under the direction of the Commission, shall perform a periodic review of fund recipients to verify eligibility for future support and to verify compliance with all applicable state and federal laws and regulations.

H. Proprietary Information -- Information received by the administrator which has been determined by the Commission to be proprietary shall be treated in conformance with Commission practices.

I. Information Requested -- Information requested by the administrator which is required to assure a complete review shall be provided within 45 days of the request. Failure to provide information within the allotted time period may be a basis for withdrawal of future support from the USF or other lawful penalties to be applied.

R746-360-4. Application of Fund Surcharges to Customer Billings.

A. Commencement of Surcharge Assessments -- Commencing June 1, 1998, end-user surcharges shall be the source of revenues to support the fund. Surcharges will be applied to intrastate retail rates, and shall not apply to wholesale services.

B. Surcharge Based on a Uniform Percentage of Retail Rates -- The retail surcharge shall be a uniform percentage rate, determined and reviewed annually by the Commission and billed and collected by all retail providers.

C. Surcharge -- The surcharge to be assessed shall equal 0.45 percent of billed intrastate retail rates.

R746-360-5. Fund Remittances and Disbursements.

A. Remitting Surcharge Revenues --

1. Telecommunications corporations, not eligible for USF support funds, providing telecommunications services subject to USF surcharges shall collect and remit surcharge revenues to the Commission within 45 days after the end of each month.

2. Telecommunications corporations eligible for USF support funds shall make remittances as follows:

a. Prior to the end of each month, the fund administrator shall inform each qualifying telecommunications corporation of the estimated amount of support that it will be eligible to receive from the USF for that month.

b. Net fund contributions shall be remitted to the Commission within 45 calendar days after the end of each month. If the net amount owed is not received by that date, remedies, including withholding future support from the USF, may apply.

3. The Commission will forward remitted revenues to the Utah State Treasurer's Office for deposit in a USF account.

B. Distribution of Funds -- Net Fund distributions to qualifying telecommunications corporations for a given month shall be made 60 days after the end of that month, unless withheld for failure to maintain qualification or failure to comply with Commission orders or rules.

R746-360-6. Eligibility for Fund Distributions.

A. Qualification --

1. To qualify to receive USF support funds, a telecommunications corporation shall be designated an "eligible telecommunications carrier," pursuant to 47 U.S.C. Section 214(e), and shall be in compliance with Commission orders and rules. Each telecommunications corporation receiving support

shall use that support only to provide basic telecommunications service and any other services or purposes approved by the Commission.

2. Additional qualification criteria for Incumbent telephone corporations - In addition to the qualification criteria of R746-360-6A.1.,

a. Non-rate-of-return Incumbent telephone corporations, except Incumbent telephone corporations subject to pricing flexibility pursuant to 54-8b-2.3 shall make Commission approved, aggregate rate reductions for public telecommunications services, provided in the State of Utah, equal to each incremental increase in USF distribution amounts received after December 1, 1999.

b. Rate-of-return Incumbent telephone corporations shall complete a Commission review of their revenue requirement and public telecommunications services' rate structure prior to any change in their USF distribution which differs from a prior USF distribution, beginning with the USF distribution for December, 1999.

B. Rate Ceiling -- To be eligible, a telecommunications corporation may not charge retail rates in excess of the Commission determined Affordable Base Rates for basic telecommunications service or vary from the terms and conditions determined by the Commission for other telecommunications services for which it receives Universal Service Fund support.

C. Lifeline Requirement -- A telecommunications corporation may qualify to receive distributions from the fund only if it offers Lifeline service on terms and conditions prescribed by the Commission.

D. Exclusion of Resale Providers -- Only facilities-based providers, will be eligible to receive support from the fund. Where service is provided through one telecommunications corporation's resale of another telecommunications corporation's service, support may be received by the latter only.

R746-360-7. Calculation of Fund Distributions in Non-rate-of-Return Regulated Incumbent Telephone Corporation Territories.

A. Use of Proxy Cost Models -- The USF proxy cost model(s) selected by the Commission and average revenue per line will be used to determine fund distributions within designated support areas.

B. Use of USF Funds -- Telecommunications corporations shall use USF funds to support each primary residential line in active service which it furnishes in each designated area.

C. Determination of Support Amounts --

1. Incumbent telephone corporation - Monies from the fund will equal the numerical difference between USF proxy model cost estimates of costs to provide residential Basic Telecommunications Service in the designated support area and the product of the Incumbent telephone corporation's Average Revenue per line, for the designated support area, times the number of Incumbent telephone corporation's active residential access lines in the designated support area.

2. Telecommunications corporations other than Incumbent telephone corporations - Monies from the fund will equal the Incumbent telephone corporation's average residential access line support amount for the respective designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active residential access lines in the designated support area, times the eligible telecommunications corporation's number of active residential access lines.

D. Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

E. Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

R746-360-8. Calculation of Fund Distributions in Rate-of-Return Incumbent Telephone Corporation Territories.

A. Determination of Support Amounts --

1. Incumbent telephone corporation - Monies from the fund will equal the numerical difference between the Incumbent telephone corporation's total embedded costs of providing public telecommunications services, for a designated support area, less the product of the Incumbent telephone corporation's Average Revenue Per Line, for the designated support area, times the Incumbent telephone corporation's active access lines in the designated support area.

2. Telecommunications corporations other than Incumbent telephone corporations - Monies from the fund will equal the respective Incumbent telephone corporation's average access line support amount for the designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active access lines in the designated support area, times the eligible telecommunications corporation's number of active access lines in the designated support area.

B. Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission-approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

C. Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

R746-360-9. One-Time Distributions From the Fund.

A. Applications for One-Time Distributions -- Telecommunications corporations, whether they are or are not receiving USF funds under R746-360-7 or R746-360-8, potential customers not presently receiving service because facilities are not available, or customers receiving inadequate service may apply to the Commission for one-time distributions from the fund for extension of service to a customer, or customers, not presently served or for amelioration of inadequate service.

1. These distributions are to be made only in extraordinary circumstances, when traditional methods of funding and service provision are infeasible.

2. One-time distributions will not be made for:

- a. New subdivision developments;
- b. Property improvements, such as cable placement, when associated with curb and gutter installations; or
- c. Seasonal developments that are exclusively vacation homes.

i. Vacation home is defined as: A secondary residence which is primarily used for recreation and is unoccupied for a period of four consecutive weeks per year.

3. An application for a one-time distribution may be filed with the Commission by an individual or group of consumers desiring telephone service or improved service, a telecommunications corporation on behalf of those consumers, the Division of Public Utilities, or any entity permitted by law to request agency action. An application shall identify the service(s) sought, the area to be served and the individuals or entities that will be served if the one-time distribution is

approved.

4. Following the application's filing, affected telecommunications corporations shall provide engineering, facilities, costs, and any other pertinent information that will assist in the Commission's consideration of the application.

5. In considering the one-time distribution application, the Commission will examine relevant facts including the type and grade of service to be provided, the cost of providing the service, the demonstrated need for the service, whether the customer is within the service territory of a telecommunications corporation, whether the proposed service is for a primary residence, the provisions for service or line extension currently available, and other relevant factors to determine whether the one-time distribution is in the public interest.

B. Presumed Reasonable Amounts and Terms -- Unless otherwise ordered by the Commission, the maximum one-time distribution will be no more than \$10,000 per customer for customers of rate-of-return regulated companies. For customers of non-rate of return companies, the maximum one-time distribution shall be calculated so that the required customer payments would equal the payments required from a customer of a rate-of-return regulated company. The Commission will presume a company's service or line extension terms and conditions reasonable, for a subscriber in connection with one-time universal service fund distribution requests, if the costs of service extension, for each extension, are recovered as follows:

1. For rate-of-return regulated Local Exchange Carriers who request USF One-Time Distribution support for facility placement: The first \$2,500 of cost coverage per account is provided by the company; and for cost amounts exceeding \$2,500 per account up to two times the statewide average loop investment per account for rate-of-return regulated telecommunication companies, as determined annually by the Division of Public Utilities, the company will pay 50 percent of the costs of the project.

2. For non-rate-of-return Local Exchange Carriers who request USF One-Time Distribution support for facility placement the first \$2,500 of cost coverage per account is provided by the company; and all other costs are shared between the customer and the fund as provided herein.

3. For projects that exceed \$2,500 per account, but are equal to or less than \$10,000 per account, the customer shall pay 25 percent of the costs that exceed \$2,500. For projects that exceed \$10,000 per account, but are equal to or less than \$20,000 per account, the customer shall pay 50 percent of the costs that are greater than \$10,000 plus the previously calculated amount. For projects exceeding \$20,000 per account the customer shall pay 75 percent of the cost above \$20,000 until the State Universal Service Support Fund has paid the maximum amount as provided herein, any project costs above that level will be paid for 100 percent by the customer.

4. The State Universal Service Support Fund shall pay the difference between the sum of the defined company contributions plus customer contribution amounts and the total project cost up to the maximum amount provided herein.

5. Other terms and conditions for service extension shall be reviewed by the Commission in its consideration of an application and may be altered by the Commission in order to approve the use of universal service funds through the requested one-time distribution.

C. Combination of One-Time Distribution Funds with Additional Customer Funds and Future Customer Payment Recovery --

1. At least 51 percent of the potential customers must be full-time residents in the geographic area being petitioned for and must be willing to pay the initial up-front contribution to the project as calculated by the Commission or its agent.

2. Qualified customers in the area shall be notified by the telecommunications corporation of the nature and extent of the

proposed service extension including the necessary customer contribution amounts to participate in the project. Customer contribution payments shall be made prior to the start of construction. In addition to qualified customers, the Local Exchange Company needs to make a good faith effort to contact all known property owners within the geographic boundaries of the proposed project and invite them to participate on the same terms as the qualified customers. Local Exchange Companies may ask potential customers to help in the process of contacting other potential customers.

3. New developments and empty lots will not be considered in the cost analysis for USF construction projects unless the property owner is willing to pay the per account costs for each lot as specified in this rule.

4. Potential customers who are notified and initially decline participation in the line extension project, but subsequently decide to participate, prior to completion of the project, may participate in the project if they make a customer contribution payment, prior to completion of the project, of 105 percent of the original customer contribution amount.

5. For a period of five years following completion of a project, new customers who seek telecommunications service in the project area, shall pay a customer contribution payment equal to 110 percent of the amount paid by the original customers in the project.

6. The telecommunications corporation shall ensure that all customer contribution payments required by R746-360-9(C)(3), (4), and (5) are collected. Funds received through these payments shall be sent to the universal service fund administrator. The company is responsible for tracking and notification to the Commission when the USF has been fully compensated. All monies will be collected and reported by the end of each calendar year, December 31st.

7. For each customer added during the five-year period following project completion, the telecommunications corporation and new customers shall bear the costs to extend service pursuant to the company's service or line extension terms and conditions, up to the telecommunications corporation's original contribution per customer for the project and the customer contributions required by this rule. The company may petition the Commission for a determination of the recovery from the universal service fund and the new customer for costs which exceed this amount.

D. Impact of Distribution on Rate of Return Companies -- A one-time distribution from the fund shall be recorded on the books of a rate base, rate of return regulated LEC as an aid to construction and treated as an offset to rate base.

E. Notice and Hearing -- Following notice that a one-time distribution application has been filed, any interested person may request a hearing or seek to intervene to protect his interests.

F. Bidding for Unserved Areas -- If only one telecommunications corporation is involved in the one-time distribution request, the distribution will be provided based on the reasonable and prudent actual or estimated costs of that company. If additional telecommunications corporations are involved, the distribution will be determined on the basis of a competitive bid. The estimated amount of the one-time distribution will be considered in evaluating each bid. Fund distributions in that area will be based on the winning bid.

R746-360-10. Altering the USF Charges and the End-User Surcharge Rates.

The uniform surcharge shall be adjusted periodically to minimize the difference between amounts received by the fund and amounts disbursed.

R746-360-11. Support for Schools, Libraries, and Health Care Facilities. Calculation of Fund Distributions.

The Universal Service Fund rules for schools, libraries and health care providers, as prescribed by the Federal Communications Commission in Docket 96-45, 97-157 Sections X and XI, paragraphs 424 - 749, of Order issued May 8, 1996, and CFR Sections 54.500 through 54.623 inclusive, incorporated by this reference, is the prescribed USF method that shall be employed in Utah. Funding shall be limited to funds made available through the federal universal service fund program.

**KEY: public utilities, telecommunications, universal service
October 1, 2008**

Notice of Continuation November 25, 2008

54-3-1

54-4-1

54-7-25

54-7-26

54-8b-12

54-8b-15

R850. School and Institutional Trust Lands, Administration.**R850-61. Native American Grave Protection and Repatriation.****R850-61-100. Authorities.**

1. This rule implements Sections 6, 8, 10 and 12 of the Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302(1)(a)(ii) and 53C-2-201(1)(a) which authorize the Director of the School and Institutional Trust Lands Administration to prescribe the management of cultural resources on trust lands. This rule outlines the manner by which the agency shall, pursuant to Section 53C-1-201(5)(b), provide policies for the ownership and control of Native American remains as defined in Section 9-9-402, that are discovered or excavated on school and institutional trust lands.

R850-61-200. Scope and Applicability.

1. This rule applies to all Native American remains found on school and institutional trust lands.

R850-61-300. Duties Upon Discovery of Remains.

1. Human remains are to be treated at all times with dignity and respect. Any person who discovers human remains on school and institutional trust lands must immediately cease all activity which might disturb the remains, take reasonable steps to protect the remains, and report the discovery to local law enforcement (in accordance with Section 76-9-704) and to the Director

2. If discontinuation of the activity is reasonable and prudent, and consistent with the Director's fiduciary responsibilities, the immediate site shall be restored and all activity in the area shall be re-routed or discontinued to limit any further disturbance to the site

3. If discontinuation is not reasonable or prudent, the agency shall follow the Utah Division of Indian Affairs' process (as contained in Utah Administrative Code R230-1) except when the Director concludes by written finding that:

(a) the determination of whether the remains in question are Native American, pursuant to U.A.C. R230-1-6(3), will unduly impact an authorized use of trust lands; or

(b) the time needed to prepare a preservation plan or the requirements of such a plan, pursuant to U.A.C. R230-1-7(1), will violate the fiduciary duty to the trust. When such a finding is made, the Director will assume control over the process.

4. Ownership or control of any Native American human remains that are excavated or removed from the site shall be determined pursuant to Utah Code Annotated Section 9-9-401 et seq.

KEY: cultural resources, Native American Grave Protection and Repatriation

November 17, 2003

53C-1-201(5)(b)

Notice of Continuation November 17, 2008

53C-1-302(1)(a)(ii)

53C-2-201(1)(a)

R884. Tax Commission, Property Tax.**R884-24P. Property Tax.****R884-24P-5. Abatement or Deferral of Property Taxes of Indigent Persons Pursuant to Utah Code Ann. Sections 59-2-1107 through 59-2-1109 and 59-2-1202(5).**

A. "Household income" includes net rents, interest, retirement income, welfare, social security, and all other sources of cash income.

B. Absence from the residence due to vacation, confinement to hospital, or other similar temporary situation shall not be deducted from the ten-month residency requirement of Section 59-2-1109(3)(a)(ii).

C. Written notification shall be given to any applicant whose application for abatement or deferral is denied.

R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201.**A. Definitions.**

1. "Allowable costs" means those costs reasonably and necessarily incurred to own and operate a productive mining property and bring the minerals or finished product to the customary or implied point of sale.

a) Allowable costs include: salaries and wages, payroll taxes, employee benefits, workers compensation insurance, parts and supplies, maintenance and repairs, equipment rental, tools, power, fuels, utilities, water, freight, engineering, drilling, sampling and assaying, accounting and legal, management, insurance, taxes (including severance, property, sales/use, and federal and state income taxes), exempt royalties, waste disposal, actual or accrued environmental cleanup, reclamation and remediation, changes in working capital (other than those caused by increases or decreases in product inventory or other nontaxable items), and other miscellaneous costs.

b) For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.1.a).

c) For purposes of the capitalized net revenue method, allowable costs shall include straight-line depreciation of capital expenditures in addition to those items outlined in A.1.a).

d) Allowable costs does not include interest, depletion, depreciation other than allowed in A.1.c), amortization, corporate overhead other than allowed in A.1.a), or any expenses not related to the ownership or operation of the mining property being valued.

e) To determine applicable federal and state income taxes, straight line depreciation, cost depletion, and amortization shall be used.

2. "Asset value" means the value arrived at using generally accepted cost approaches to value.

3. "Capital expenditure" means the cost of acquiring property, plant, and equipment used in the productive mining property operation and includes:

- a) purchase price of an asset and its components;
- b) transportation costs;
- c) installation charges and construction costs; and
- d) sales tax.

4. "Constant or real dollar basis" means cash flows or net revenues used in the discounted cash flow or capitalized net revenue methods, respectively, prepared on a basis where inflation or deflation are adjusted back to the lien date. For this purpose, inflation or deflation shall be determined using the gross domestic product deflator produced by the Congressional Budget Office, or long-term inflation forecasts produced by reputable analysts, other similar sources, or any combination thereof.

5. "Discount rate" means the rate that reflects the current yield requirements of investors purchasing comparable properties in the mining industry, taking into account the

industry's current and projected market, financial, and economic conditions.

6. "Economic production" means the ability of the mining property to profitably produce and sell product, even if that ability is not being utilized.

7. "Exempt royalties" means royalties paid to this state or its political subdivisions, an agency of the federal government, or an Indian tribe.

8. "Expected annual production" means the economic production from a mine for each future year as estimated by an analysis of the life-of-mine mining plan for the property.

9. "Fair market value" is as defined in Section 59-2-102.

10. "Federal and state income taxes" mean regular taxes based on income computed using the marginal federal and state income tax rates for each applicable year.

11. "Implied point of sale" means the point where the minerals or finished product change hands in the normal course of business.

12. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.

13. "Net revenue" for the capitalized net revenue method means, for any of the immediately preceding five years, the actual receipts from the sale of minerals (or if self-consumed, the value of the self-consumed minerals), plus actual related revenue cash flows, minus allowable costs.

14. "Non-operating mining property" means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan.

15. "Productive mining property" means the property of a mine that is either actively producing or currently capable of having economic production. Productive mining property includes all taxable interests in real property, improvements and tangible personal property upon or appurtenant to a mine that are used for that mine in exploration, development, engineering, mining, crushing or concentrating, processing, smelting, refining, reducing, leaching, roasting, other processes used in the separation or extraction of the product from the ore or minerals and the processing thereof, loading for shipment, marketing and sales, environmental clean-up, reclamation and remediation, general and administrative operations, or transporting the finished product or minerals to the customary point of sale or to the implied point of sale in the case of self-consumed minerals.

16. "Product price" for each mineral means the price that is most representative of the price expected to be received for the mineral in future periods.

a) Product price is determined using one or more of the following approaches:

(1) an analysis of average actual sales prices per unit of production for the minerals sold by the taxpayer for up to five years preceding the lien date; or,

(2) an analysis of the average posted prices for the minerals, if valid posted prices exist, for up to five calendar years preceding the lien date; or,

(3) the average annual forecast prices for each of up to five years succeeding the lien date for the minerals sold by the taxpayer and one average forecast price for all years thereafter for those same minerals, obtained from reputable forecasters, mutually agreed upon between the Property Tax Division and the taxpayer.

b) If self-consumed, the product price will be determined by one of the following two methods:

(1) Representative unit sales price of like minerals. The representative unit sales price is determined from:

- (a) actual sales of like mineral by the taxpayer;
- (b) actual sales of like mineral by other taxpayers; or
- (c) posted prices of like mineral; or

(2) If a representative unit sales price of like minerals is unavailable, an imputed product price for the self-consumed minerals may be developed by dividing the total allowable costs by one minus the taxpayer's discount rate to adjust to a cost that includes profit, and dividing the resulting figure by the number of units mined.

17. "Related revenue cash flows" mean non-product related cash flows related to the ownership or operation of the mining property being valued. Examples of related revenue cash flows include royalties and proceeds from the sale of mining equipment.

18. "Self consumed minerals" means the minerals produced from the mining property that the mining entity consumes or utilizes for the manufacture or construction of other goods and services.

19. "Straight line depreciation" means depreciation computed using the straight line method applicable in calculating the regular federal tax. For this purpose, the applicable recovery period shall be seven years for depreciable tangible personal mining property and depreciable tangible personal property appurtenant to a mine, and 39 years for depreciable real mining property and depreciable real property appurtenant to a mine.

B. Valuation.

1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by:

- a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and
- b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.

2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division.

3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method. This method is outlined as follows:

- a) Determine annual net revenue, both net losses and net gains, from the productive mining property for each of the immediate past five years, or years in operation, if less than five years. Each year's net revenue shall be adjusted to a constant or real dollar basis.

- b) Determine the average annual net revenue by summing the values obtained in B.3.a) and dividing by the number of operative years, five or less.

- c) Divide the average annual net revenue by the discount rate to determine the fair market value of the entire productive mining property.

- d) Subtract from the fair market value of the entire productive mining property the fair market value, as of the lien date, of licensed vehicles and nontaxable items, to determine the taxable value of the productive mining property.

4. The discount rate shall be determined by the Property Tax Division.

- a) The discount rate shall be determined using the weighted average cost of capital method, a survey of reputable mining industry analysts, any other accepted methodology, or

any combination thereof.

- b) If using the weighted average cost of capital method, the Property Tax Division shall include an after-tax cost of debt and of equity. The cost of debt will consider market yields. The cost of equity shall be determined by the capital asset pricing model, arbitrage pricing model, risk premium model, discounted cash flow model, a survey of reputable mining industry analysts, any other accepted methodology, or a combination thereof.

5. Where the discount rate is derived through the use of publicly available information of other companies, the Property Tax Division shall select companies that are comparable to the productive mining property. In making this selection and in determining the discount rate, the Property Tax Division shall consider criteria that includes size, profitability, risk, diversification, or growth opportunities.

6. A non-operating mine will be valued at fair market value consistent with other taxable property.

7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division may use other valuation methods to estimate the fair market value of a mining property.

8. The fair market value of a productive mining property may not be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property. The mine value shall include all equipment, improvements and real estate upon or appurtenant to the mine. All other tangible property not appurtenant to the mining property will be separately valued at fair market value.

9. Where the fair market value of assets upon or appurtenant to the mining property is determined under the cost method, the Property Tax Division shall use the replacement cost new less depreciation approach. This approach shall consider the cost to acquire or build an asset with like utility at current prices using modern design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional and economic factors.

C. When the fair market value of a productive mining property in more than one tax area exceeds the asset value, the fair market value will be divided into two components and apportioned as follows:

- 1. Asset value that includes machinery and equipment, improvements, and land surface values will be apportioned to the tax areas where the assets are located.

- 2. The fair market value less the asset value will give an income increment of value. The income increment will be apportioned as follows:

- a) Divide the asset value by the fair market value to determine a quotient. Multiply the quotient by the income increment of value. This value will be apportioned to each tax area based on the percentage of the total asset value in that tax area.

- b) The remainder of the income increment will be apportioned to the tax areas based on the percentage of the known mineral reserves according to the mine plan.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

R884-24P-8. Security for Property Tax on Uranium and Vanadium Mines Pursuant to Utah Code Ann. Section 59-2-211.

A. The security deposit allowed by Section 59-2-211 shall be requested from the mine owners or operators by giving notice in the manner required by Section 59-2-211. A list of mine owners and operators who have made lump sum security deposits with the Tax Commission will be furnished annually by the Tax Commission to any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah.

B. At the option of the mine owner or operator, within 30 days after receiving proper notice from the Tax Commission, or if the mine owner or operator has not complied with the request within the 30 day period, the Tax Commission may implement the following procedure:

1. Any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah shall withhold 4 percent, or any higher amount set by the Tax Commission, of the gross proceeds due to the mine operator or owner.

2. All amounts withheld shall be remitted to the Tax Commission by the last day of April, July, October, and January for the immediately preceding calendar quarter, in the manner set forth by the Tax Commission.

3. Not later than the last day of February, owners or operators of uranium and vanadium mines who have not made lump sum security deposits with the Tax Commission shall be provided with a statement from the Tax Commission showing all security deposit amounts withheld from their gross proceeds during the previous calendar year.

4. The Tax Commission shall provide the county treasurers with a list of all uranium and vanadium mine owners and operators who have had security deposit amounts withheld. The county treasurers shall then advise the Tax Commission in writing of the amount of taxes due from each mine owner or operator on the Tax Commission's list.

5. Once all county treasurers have responded, the Tax Commission shall forward to each county treasurer the taxes due, or the pro rata portion thereof, to the extent taxes have been withheld and remitted to the Tax Commission.

a. Any amount withheld in excess of the total taxes due to all counties shall be refunded to the appropriate mine owner or operator by the Tax Commission.

b. If the amount withheld is not sufficient to pay the full amount of taxes due, the county treasurers shall collect the balance of taxes directly from the mine owner or operator.

R884-24P-10. Taxation of Underground Rights in Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201 and 59-2-210.

A. Definitions.

1. "Person" is as defined in Section 68-3-12.

2. "Working interest owner" means the owner of an interest in oil, gas, or other hydrocarbon substances burdened with a share of the expenses of developing and operating the property.

3. "Unit operator" means a person who operates all producing wells in a unit.

4. "Independent operator" means a person operating an oil or gas producing property not in a unit.

5. One person can, at the same time, be a unit operator, a working interest owner, and an independent operator and must comply with all requirements of this rule based upon the person's status in the respective situations.

6. "Expected annual production" means the future economic production of an oil and gas property as estimated by the Property Tax Division using decline curve analysis. Expected annual production does not include production used on the same well, lease, or unit for the purpose of repressuring or pressure maintenance.

7. "Product price" means:

a) Oil: The weighted average posted price for the calendar year preceding January 1, specific for the field in which the well is operating as designated by the Division of Oil, Gas, and Mining. The weighted average posted price is determined by weighing each individual posted price based on the number of days it was posted during the year, adjusting for gravity, transportation, escalation, or deescalation.

b) Gas:

(1) If sold under contract, the price shall be the stated price as of January 1, adjusted for escalation and deescalation.

(2) If sold on the spot market or to a direct end-user, the price shall be the average price received for the 12-month period immediately preceding January 1, adjusted for escalation and deescalation.

8. "Future net revenue" means annual revenues less costs of the working interests and royalty interest.

9. "Revenue" means expected annual gross revenue, calculated by multiplying the product price by expected annual production for the remaining economic life of the property.

10. "Costs" means expected annual allowable costs applied against revenue of cost-bearing interests:

a) Examples of allowable costs include management salaries; labor; payroll taxes and benefits; workers' compensation insurance; general insurance; taxes (excluding income and property taxes); supplies and tools; power; maintenance and repairs; office; accounting; engineering; treatment; legal fees; transportation; miscellaneous; capital expenditures; and the imputed cost of self consumed product.

b) Interest, depreciation, or any expense not directly related to the unit shall not be included as allowable costs.

11. "Production asset" means any asset located at the well site that is used to bring oil or gas products to a point of sale or transfer of ownership.

B. The discount rate shall be determined by the Property Tax Division using methods such as the weighted cost of capital method.

1. The cost of debt shall consider market yields. The cost of equity shall be determined by the capital asset pricing model, risk premium model, discounted cash flow model, a combination thereof, or any other accepted methodology.

2. The discount rate shall reflect the current yield requirements of investors purchasing similar properties, taking into consideration income, income taxes, risk, expenses, inflation, and physical and locational characteristics.

3. The discount rate shall contain the same elements as the expected income stream.

C. Assessment Procedures.

1. Underground rights in lands containing deposits of oil or gas and the related tangible property shall be assessed by the Property Tax Division in the name of the unit operator, the independent operator, or other person as the facts may warrant.

2. The taxable value of underground oil and gas rights shall be determined by discounting future net revenues to their present value as of the lien date of the assessment year and then subtracting the value of applicable exempt federal, state, and Indian royalty interests.

3. The reasonable taxable value of productive underground oil and gas rights shall be determined by the methods described in C.2. of this rule or such other valuation method that the Tax Commission believes to be reasonably determinative of the property's fair market value.

4. The value of the production assets shall be considered in the value of the oil and gas reserves as determined in C.2. above. Any other tangible property shall be separately valued at fair market value by the Property Tax Division.

5. The minimum value of the property shall be the value of the production assets.

D. Collection by Operator.

1. The unit operator may request the Property Tax Division to separately list the value of the working interest, and the value of the royalty interest on the Assessment Record. When such a request is made, the unit operator is responsible to provide the Property Tax Division with the necessary information needed to compile this list. The unit operator may make a reasonable estimate of the ad valorem tax liability for a given period and may withhold funds from amounts due to royalty. Withheld funds shall be sufficient to ensure payment of

the ad valorem tax on each fractional interest according to the estimate made.

a) If a unit operating agreement exists between the unit operator and the fractional working interest owners, the unit operator may withhold or collect the tax according to the terms of that agreement.

b) In any case, the unit operator and the fractional interest owner may make agreements or arrangements for withholding or otherwise collecting this tax. This may be done whether or not that practice is consistent with the preceding paragraphs so long as all requirements of the law are met. When a fractional interest owner has had funds withheld to cover the estimated ad valorem tax liability and the operator fails to remit such taxes to the county when due, the fractional interest owner shall be indemnified from any further ad valorem tax liability to the extent of the withholding.

c) The unit operator shall compare the amount withheld to the taxes actually due, and return any excess amount to the fractional interest owner within 60 days after the delinquent date of the tax. At the request of the fractional interest owner the excess may be retained by the unit operator and applied toward the fractional interest owner's tax liability for the subsequent year.

2. The penalty provided for in Section 59-2-210 is intended to ensure collection by the county of the entire tax due. Any unit operator who has paid this county imposed penalty, and thereafter collects from the fractional interest holders any part of their tax due, may retain those funds as reimbursement against the penalty paid.

3. Interest on delinquent taxes shall be assessed as set forth in Section 59-2-1331.

4. Each unit operator may be required to submit to the Property Tax Division a listing of all fractional interest owners and their interests upon specific request of the Property Tax Division. Working interest owners, upon request, shall be required to submit similar information to unit operators.

R884-24P-14. Valuation of Real Property Encumbered by Preservation Easements Pursuant to Utah Code Ann. Section 59-2-303.

A. The assessor shall take into consideration any preservation easements attached to historically significant real property and structures when determining the property's value.

B. After the preservation easement has been recorded with the county recorder, the property owner of record shall submit to the county assessor and the Tax Commission a notice of the preservation easement containing the following information:

1. the property owner's name;
2. the address of the property; and
3. the serial number of the property.

C. The county assessor shall review the property and incorporate any value change due to the preservation easement in the following year's assessment roll.

R884-24P-16. Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-302.

(1) Definitions:

(a) "Utah fair market value" means the fair market value of that portion of the property of a project entity located within Utah upon which the fee in lieu of ad valorem property tax may be calculated.

(b) "Fee" means the annual fee in lieu of ad valorem property tax payable by a project entity pursuant to Section 11-13-302.

(c) "Energy supplier" means an entity that purchases any capacity, service or other benefit of a project to provide electrical service.

(d) "Exempt energy supplier" means an energy supplier

whose tangible property is exempted by Article XIII, Sec. 3 of the Constitution of Utah from the payment of ad valorem property tax.

(e) "Optimum operating capacity" means the capacity at which a project is capable of operating on a sustained basis taking into account its design, actual operating history, maintenance requirements, and similar information from comparable projects, if any. The determination of the projected and actual optimum operating capacities of a project shall recognize that projects are not normally operated on a sustained basis at 100 percent of their designed or actual capacities and that the optimum level for operating a project on a sustained basis may vary from project to project.

(f) "Property" means any electric generating facilities, transmission facilities, distribution facilities, fuel facilities, fuel transportation facilities, water facilities, land, water or other existing facilities or tangible property owned by a project entity and required for the project which, if owned by an entity required to pay ad valorem property taxes, would be subject to assessment for ad valorem tax purposes.

(g) "Sold," for the purpose of interpreting Subsection (4), means the first sale of the capacity, service, or other benefit produced by the project without regard to any subsequent sale, resale, or lay-off of that capacity, service, or other benefit.

(h) "Taxing jurisdiction" means a political subdivision of this state in which any portion of the project is located.

(i) All definitions contained in Section 11-13-103 apply to this rule.

(2) The Tax Commission shall determine the fair market value of the property of each project entity. Fair market value shall be based upon standard appraisal theory and shall be determined by correlating estimates derived from the income and cost approaches to value described below.

(a) The income approach to value requires the imputation of an income stream and a capitalization rate. The income stream may be based on recognized indicators such as average income, weighted income, trended income, present value of future income streams, performance ratios, and discounted cash flows. The imputation of income stream and capitalization rate shall be derived from the data of other similarly situated companies. Similarity shall be based on factors such as location, fuel mix, customer mix, size and bond ratings. Estimates may also be imputed from industry data generally. Income data from similarly situated companies will be adjusted to reflect differences in governmental regulatory and tax policies.

(b) The cost approach to value shall consist of the total of the property's net book value of the project's property. This total shall then be adjusted for obsolescence if any.

(c) In addition to, and not in lieu of, any adjustments for obsolescence made pursuant to Subsection (2)(b), a phase-in adjustment shall be made to the assessed valuation of any new project or expansion of an existing project on which construction commenced by a project entity after January 1, 1989 as follows:

(i) During the period the new project or expansion is valued as construction work in process, its assessed valuation shall be multiplied by the percentage calculated by dividing its projected production as of the projected date of completion of construction by its projected optimum operating capacity as of that date.

(ii) Once the new project or expansion ceases to be valued as construction work in progress, its assessed valuation shall be multiplied by the percentage calculated by dividing its actual production by its actual optimum operating capacity. After the new project or expansion has sustained actual production at its optimum operating capacity during any tax year, this percentage shall be deemed to be 100 percent for the remainder of its useful life.

(3) If portions of the property of the project entity are located in states in addition to Utah and those states do not apply a unit valuation approach to that property, the fair market value of the property allocable to Utah shall be determined by computing the cost approach to value on the basis of the net book value of the property located in Utah and imputing an estimated income stream based solely on the value of the Utah property as computed under the cost approach. The correlated value so determined shall be the Utah fair market value of the property.

(4) Before fixing and apportioning the Utah fair market value of the property to the respective taxing jurisdictions in which the property, or a portion thereof is located, the Utah fair market value of the property shall be reduced by the percentage of the capacity, service, or other benefit sold by the project entity to exempt energy suppliers.

(5) For purposes of calculating the amount of the fee payable under Section 11-13-302(3), the percentage of the project that is used to produce the capacity, service or other benefit sold shall be deemed to be 100 percent, subject to adjustments provided by this rule, from the date the project is determined to be commercially operational.

(6) In computing its tax rate pursuant to the formula specified in Section 59-2-924(2), each taxing jurisdiction in which the project property is located shall add to the amount of its budgeted property tax revenues the amount of any credit due to the project entity that year under Section 11-13-302(3), and shall divide the result by the sum of the taxable value of all property taxed, including the value of the project property apportioned to the jurisdiction, and further adjusted pursuant to the requirements of Section 59-2-924.

(7) Subsections (2)(a) and (2)(b) are retroactive to the lien date of January 1, 1984. Subsection (2)(c) is effective as of the lien date of January 1, 1989. The remainder of this rule is retroactive to the lien date of January 1, 1988.

R884-24P-17. Reappraisal of Real Property by County Assessors Pursuant to Utah Constitution, Article XIII, Subsection 11, and Utah Code Ann. Sections 59-2-303, 59-2-302, and 59-2-704.

A. The following standards shall be followed in sequence when performing a reappraisal of all classes of locally-assessed real property within a county.

1. Conduct a preliminary survey and plan.
 - a) Compile a list of properties to be appraised by property class.
 - b) Assemble a complete current set of ownership plats.
 - c) Estimate personnel and resource requirements.
 - d) Construct a control chart to outline the process.
2. Select a computer-assisted appraisal system and have the system approved by the Property Tax Division.
3. Obtain a copy of all probable transactions from the recorder's office for the three-year period ending on the effective date of reappraisal.
4. Perform a use valuation on agricultural parcels using the most recent set of aerial photographs covering the jurisdiction.
 - a) Perform a field review of all agricultural land, dividing up the land by agricultural land class.
 - b) Transfer data from the aerial photographs to the current ownership plats, and compute acreage by class on a per parcel basis.
 - c) Enter land class information and the calculated agricultural land use value on the appraisal form.
5. Develop a land valuation guideline.
6. Perform an appraisal on improved sold properties considering the three approaches to value.
7. Develop depreciation schedules and time-location modifiers by comparing the appraised value with the sale price of sold properties.

8. Organize appraisal forms by proximity to each other and by geographical area. Insert sold property information into the appropriate batches.

9. Collect data on all nonsold properties.

10. Develop capitalization rates and gross rent multipliers.

11. Estimate the value of income-producing properties using the appropriate capitalization method.

12. Input the data into the automated system and generate preliminary values.

13. Review the preliminary figures and refine the estimate based on the applicable approaches to value.

14. Develop an outlier analysis program to identify and correct clerical or judgment errors.

15. Perform an assessment/sales ratio study. Include any new sale information.

16. Make a final review based on the ratio study including an analysis of variations in ratios. Make appropriate adjustments.

17. Calculate the final values and place them on the assessment role.

18. Develop and publish a sold properties catalog.

19. Establish the local Board of Equalization procedure.

20. Prepare and file documentation of the reappraisal program with the local Board of Equalization and Property Tax Division.

B. The Tax Commission shall provide procedural guidelines for implementing the above requirements.

R884-24P-19. Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702.

(1) "State certified general appraiser," "state certified residential appraiser," and "state licensed appraiser" are as defined in Section 61-2b-2.

(2) The ad valorem training and designation program consists of several courses and practica.

(a) Certain courses must be sanctioned by either the Appraiser Qualification Board of the Appraisal Foundation (AQB) or the Western States Association of Tax Administrators (WSATA).

(b) The courses comprising the basic designation program are:

- (i) Course A - Assessment Practice in Utah;
- (ii) Course B - Fundamentals of Real Property Appraisal

;

- (iii) Course C - Mass Appraisal of Land;
- (iv) Course D - Building Analysis and Valuation;
- (v) Course E - Income Approach to Valuation ;
- (vi) Course G - Development and Use of Personal Property Schedules;

(vii) Course H - Appraisal of Public Utilities and Railroads (WSATA); and

(viii) Course J - Uniform Standards of Professional Appraisal Practice (AQB).

(c) The Tax Commission may allow equivalent appraisal education to be submitted in lieu of Course B, Course D, Course E, and Course J.

(3) Candidates must attend 90 percent of the classes in each course and pass the final examination for each course with a grade of 70 percent or more to be successful.

(4) There are four recognized ad valorem designations: ad valorem residential appraiser, ad valorem general real property appraiser, ad valorem personal property auditor/appraiser, and ad valorem centrally assessed valuation analyst.

(a) These designations are granted only to individuals working as appraisers, review appraisers, valuation auditors, or analysts/administrators providing oversight and direction to appraisers and auditors.

(b) An assessor, county employee, or state employee must hold the appropriate designation to value property for ad

valorem taxation purposes.

(5) Ad valorem residential appraiser.

(a) To qualify for this designation, an individual must:

(i) successfully complete:

(A) Courses A, B, C, D, and J; or

(B) equivalent appraisal education as allowed under Subsection (2)(c);

(ii) successfully complete a comprehensive residential field practicum; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the appraiser may value residential, vacant, and agricultural property for ad valorem taxation purposes.

(6) Ad valorem general real property appraiser.

(a) In order to qualify for this designation, an individual must:

(i) successfully complete:

(A) Courses A, B, C, D, E, and J; or

(B) equivalent appraisal education as allowed under Subsection (2)(c);

(ii) successfully complete a comprehensive field practicum including residential and commercial properties; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the appraiser may value all types of locally assessed real property for ad valorem taxation purposes.

(7) Ad valorem personal property auditor/appraiser.

(a) To qualify for this designation, an individual must:

(i) successfully complete:

(A) Courses A, B, G, and J; or

(B) equivalent appraisal education as allowed under Subsection (2)(c); and

(ii) successfully complete a comprehensive auditing practicum.

(b) Upon designation, the auditor/appraiser may value locally assessed personal property for ad valorem taxation purposes.

(8) Ad valorem centrally assessed valuation analyst.

(a) In order to qualify for this designation, an individual must:

(i) successfully complete:

(A) Courses A, B, E, H, and J; or

(B) equivalent appraisal education as allowed under Subsection (2)(c);

(ii) successfully complete a comprehensive valuation practicum; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the analyst may value centrally assessed property for ad valorem taxation purposes.

(9) If a candidate fails to receive a passing grade on a final examination, one re-examination is allowed. If the re-examination is not successful, the individual must retake the failed course. The cost to retake the failed course will not be borne by the Tax Commission.

(10) A practicum involves the appraisal or audit of selected properties. The candidate's supervisor must formally request that the Property Tax Division administer a practicum.

(a) Emphasis is placed on those types of properties the candidate will most likely encounter on the job.

(b) The practicum will be administered by a designated appraiser assigned from the Property Tax Division.

(11) An appraiser trainee referred to in Section 59-2-701 shall be designated an ad valorem associate if the appraiser trainee:

(a) has completed all Tax Commission appraiser education and practicum requirements for designation under Subsections (5), (6), and (8); and

(b) has not completed the requirements for licensure or certification under Title 71, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(12) An individual holding a specified designation can qualify for other designations by meeting the additional requirements outlined above.

(13) Maintaining designated status requires completion of 28 hours of Tax Commission approved classroom work every two years.

(14) Upon termination of employment from any Utah assessment jurisdiction, or if the individual no longer works primarily as an appraiser, review appraiser, valuation auditor, or analyst/administrator in appraisal matters, designation is automatically revoked.

(a) Ad valorem designation status may be reinstated if the individual secures employment in any Utah assessment jurisdiction within four years from the prior termination.

(b) If more than four years elapse between termination and rehire, and:

(i) the individual has been employed in a closely allied field, then the individual may challenge the course examinations. Upon successfully challenging all required course examinations, the prior designation status will be reinstated; or

(ii) if the individual has not been employed in real estate valuation or a closely allied field, the individual must retake all required courses and pass the final examinations with a score of 70 percent or more.

(15) All appraisal work performed by Tax Commission designated appraisers shall meet the standards set forth in section 61-2b-27.

(16) If appropriate Tax Commission designations are not held by assessor's office personnel, the appraisal work must be contracted out to qualified private appraisers. An assessor's office may elect to contract out appraisal work to qualified private appraisers even if personnel with the appropriate designation are available in the office. If appraisal work is contracted out, the following requirements must be met:

(a) The private sector appraisers contracting the work must hold the state certified residential appraiser or state certified general appraiser license issued by the Division of Real Estate of the Utah Department of Commerce. Only state certified general appraisers may appraise nonresidential properties.

(b) All appraisal work shall meet the standards set forth in Section 61-2b-27.

(17) The completion and delivery of the assessment roll required under Section 59-2-311 is an administrative function of the elected assessor.

(a) There are no specific licensure, certification, or educational requirements related to this function.

(b) An elected assessor may complete and deliver the assessment roll as long as the valuations and appraisals included in the assessment roll were completed by persons having the required designations.

R884-24P-20. Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301.

A. For purposes of this rule:

1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.

2. Project means any undertaking involving construction, expansion or modernization.

3. "Construction" means:

a) creation of a new facility;

b) acquisition of personal property; or

c) any alteration to the real property of an existing facility other than normal repairs or maintenance.

4. Expansion means an increase in production or capacity as a result of the project.

5. Modernization means a change or contrast in character or quality resulting from the introduction of improved techniques, methods or products.

6. Functionally complete means capable of providing economic benefit to the owner through fulfillment of the purpose for which it was constructed. In the case of a cost-regulated utility, a project shall be deemed to be functionally complete when the operating property associated with the project has been capitalized on the books and is part of the rate base of that utility.

7. Allocable preconstruction costs means expenditures associated with the planning and preparation for the construction of a project. To be classified as an allocable preconstruction cost, an expenditure must be capitalized.

8. Cost regulated utility means a power company, oil and gas pipeline company, gas distribution company or telecommunication company whose earnings are determined by a rate of return applied to rate base. Rate of return and rate base are set and approved by a state or federal regulatory commission.

9. Residential means single-family residences and duplex apartments.

10. Unit method of appraisal means valuation of the various physical components of an integrated enterprise as a single going concern. The unit method may employ one or more of the following approaches to value: the income approach, the cost approach, and the stock and debt approach.

B. All construction work in progress shall be valued at "full cash value" as described in this rule.

C. Discount Rates

For purposes of this rule, discount rates used in valuing all projects shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions.

D. Appraisal of Allocable Preconstruction Costs.

1. If requested by the taxpayer, preconstruction costs associated with properties, other than residential properties, may be allocated to the value of the project in relation to the relative amount of total expenditures made on the project by the lien date. Allocation will be allowed only if the following conditions are satisfied by January 30 of the tax year for which the request is sought:

- a) a detailed list of preconstruction cost data is supplied to the responsible agency;
- b) the percent of completion of the project and the preconstruction cost data are certified by the taxpayer as to their accuracy.

2. The preconstruction costs allocated pursuant to D.1. of this rule shall be discounted using the appropriate rate determined in C. The discounted allocated value shall either be added to the values of properties other than residential properties determined under E.1. or shall be added to the values determined under the various approaches used in the unit method of valuation determined under F.

3. The preconstruction costs allocated under D. are subject to audit for four years. If adjustments are necessary after examination of the records, those adjustments will be classified as property escaping assessment.

E. Appraisal of Properties not Valued under the Unit Method.

1. The full cash value, projected upon completion, of all properties valued under this section, with the exception of residential properties, shall be reduced by the value of the allocable preconstruction costs determined D. This reduced full cash value shall be referred to as the "adjusted full cash value."

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their

respective areas of appraisal responsibility, the following:

a) The full cash value of the project expected upon completion.

b) The expected date of functional completion of the project currently under construction.

(1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

c) The percent of the project completed as of the lien date.

(1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:

- (a) 10 - Excavation-foundation
- (b) 30 - Rough lumber, rough labor
- (c) 50 - Roofing, rough plumbing, rough electrical, heating
- (d) 65 - Insulation, drywall, exterior finish
- (e) 75 - Finish lumber, finish labor, painting
- (f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical

(g) 100 - Floor covering, appliances, exterior concrete, misc.

(2) In the case of all other projects under construction and valued under this section the percent of completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion; or in the case of nonresidential projects,

b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;

c) adjust the resulting product of E.3.a) or E.3.b) for the expected time of completion using the discount rate determined under C.

F. Appraisal of Properties Valued Under the Unit Method of Appraisal.

1. No adjustments under this rule shall be made to the income indicator of value for a project under construction that is owned by a cost-regulated utility when the project is allowed in rate base.

2. The full cash value of a project under construction as of January 1 of the tax year, shall be determined by adjusting the cost and income approaches as follows:

a) Adjustments to reflect the time value of money in appraising construction work in progress valued under the cost and income approaches shall be made for each approach as follows:

(1) Each company shall report the expected completion dates and costs of the projects. A project expected to be completed during the tax year for which the valuation is being determined shall be considered completed on January 1 or July 1, whichever is closest to the expected completion date. The Tax Commission shall determine the expected completion date for any project whose completion is scheduled during a tax year subsequent to the tax year for which the valuation is being made.

(2) If requested by the company, the value of allocable preconstruction costs determined in D. shall then be subtracted from the total cost of each project. The resulting sum shall be referred to as the adjusted cost value of the project.

(3) The adjusted cost value for each of the future years prior to functional completion shall be discounted to reflect the

present value of the project under construction. The discount rate shall be determined under C.

(4) The discounted adjusted cost value shall then be added to the values determined under the income approach and cost approach.

b) No adjustment will be made to reflect the time value of money for a project valued under the stock and debt approach to value.

G. This rule shall take effect for the tax year 1985.

R884-24P-24. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918 through 59-2-924.

(1) The county auditor must notify all real property owners of property valuation and tax changes on the Notice of Property Valuation and Tax Changes form.

(a) If a county desires to use a modified version of the Notice of Property Valuation and Tax Changes, a copy of the proposed modification must be submitted for approval to the Property Tax Division of the Tax Commission no later than March 1.

(i) Within 15 days of receipt, the Property Tax Division will issue a written decision, including justifications, on the use of the modified Notice of Property Valuation and Tax changes.

(ii) If a county is not satisfied with the decision, it may petition for a hearing before the Tax Commission as provided in R861-1A-22.

(b) The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A property description may be included at the option of the county.

(2) The Notice of Property Valuation and Tax Changes must be completed by the county auditor in its entirety, except in the following circumstances:

(a) New property is created by a new legal description; or

(b) The status of the improvements on the property has changed.

(c) In instances where partial completion is allowed, the term nonapplicable will be entered in the appropriate sections of the Notice of Property Valuation and Tax Changes.

(d) If the county auditor determines that conditions other than those outlined in this section merit deletion, the auditor may enter the term "nonapplicable" in appropriate sections of the Notice of Property Valuation and Tax Changes only after receiving approval from the Property Tax Division in the manner described in Subsection (1).

(3) Real estate assessed under the Farmland Assessment Act of 1969 must be reported at full market value, with the value based upon Farmland Assessment Act rates shown parenthetically.

(4)(a) All completion dates specified for the disclosure of property tax information must be strictly observed.

(b) Requests for deviation from the statutory completion dates must be submitted in writing on or before June 1, and receive the approval of the Property Tax Division in the manner described in Subsection (1).

(5) If the proposed rate exceeds the certified rate, jurisdictions in which the fiscal year is the calendar year are required to hold public hearings even if budget hearings have already been held for that fiscal year.

(6) If the cost of public notice required under Sections 59-2-918 and 59-2-919 is greater than one percent of the property tax revenues to be received, an entity may combine its advertisement with other entities, or use direct mail notification.

(7) Calculation of the amount and percentage increase in property tax revenues required by Sections 59-2-918 and 59-2-919, shall be computed by comparing property taxes levied for the current year with property taxes collected the prior year, without adjusting for revenues attributable to new growth.

(8) If a taxing district has not completed the tax rate setting process as prescribed in Sections 59-2-919 and 59-2-920 by August 17, the county auditor must seek approval from the Tax Commission to use the certified rate in calculating taxes levied.

(9) The value of property subject to the uniform fee under Section 59-2-405 is excluded from taxable value for purposes of calculating new growth, the certified tax rate, and the proposed tax rate.

(10) The value and taxes of property subject to the uniform fee under Section 59-2-405, as well as tax increment distributions and related taxable values of redevelopment agencies, are excluded when calculating the percentage of property taxes collected as provided in Section 59-2-913.

(11) The following formulas and definitions shall be used in determining new growth:

(a) Actual new growth shall be computed as follows:

(i) the taxable value for the current year adjusted for redevelopment minus year-end taxable value for the previous year adjusted for redevelopment; then

(ii) plus or minus changes in value as a result of factoring; then

(iii) plus or minus changes in value as a result of reappraisal; then

(iv) plus or minus any change in value resulting from a legislative mandate or court order.

(b) Net annexation value is the taxable value for the current year adjusted for redevelopment of all properties annexed into an entity during the previous calendar year minus the taxable value for the previous year adjusted for redevelopment for all properties annexed out of the entity during the previous calendar year.

(c) New growth is equal to zero for an entity with:

(i) an actual new growth value less than zero; and

(ii) a net annexation value greater than or equal to zero.

(d) New growth is equal to actual new growth for:

(i) an entity with an actual new growth value greater than or equal to zero; or

(ii) an entity with:

(A) an actual new growth value less than zero; and

(B) the actual new growth value is greater than or equal to the net annexation value.

(e) New growth is equal to the net annexation value for an entity with:

(i) a net annexation value less than zero; and

(ii) the actual new growth value is less than the net annexation value.

(f) Adjusted new growth equals new growth multiplied by the mean collection rate for the previous five years.

(12)(a) For purposes of determining the certified tax rate, ad valorem property tax revenues budgeted by a taxing entity for the prior year are calculated by:

(i) increasing or decreasing the adjustable taxable value from the prior year Report 697 by the average of the percentage net change in the value of taxable property for the equalization period for the three calendar years immediately preceding the current calendar year; and

(ii) multiplying the result obtained in Subsection (12)(a)(i) by:

(A) the percentage of property taxes collected for the five calendar years immediately preceding the current calendar year; and

(B) the prior year approved tax rate.

(b) If a taxing entity levied the prior year approved tax rate, the budgeted revenues determined under Subsection (12)(a) are reflected in the budgeted revenue column of the prior year Report 693.

(13) Entities required to set levies for more than one fund must compute an aggregate certified rate. The aggregate

certified rate is the sum of the certified rates for individual funds for which separate levies are required by law. The aggregate certified rate computation applies where:

(a) the valuation bases for the funds are contained within identical geographic boundaries; and

(b) the funds are under the levy and budget setting authority of the same governmental entity.

(14) For purposes of determining the certified tax rate of a municipality incorporated on or after July 1, 1996, the levy imposed for municipal-type services or general county purposes shall be the certified tax rate for municipal-type services or general county purposes, as applicable.

(15) No new entity, including a new city, may have a certified tax rate or levy a tax for any particular year unless that entity existed on the first day of that calendar year.

R884-24P-27. Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Sections 59-2-704 and 59-2-704.5.

A. Definitions.

1. "Coefficient of dispersion (COD)" means the average deviation of a group of assessment ratios taken around the median and expressed as a percent of that measure.

2. "Coefficient of variation (COV)" means the standard deviation expressed as a percentage of the mean.

3. "Division" means the Property Tax Division of the State Tax Commission.

4. "Nonparametric" means data samples that are not normally distributed.

5. "Parametric" means data samples that are normally distributed.

6. "Urban counties" means counties classified as first or second class counties pursuant to Section 17-50-501.

B. The Tax Commission adopts the following standards of assessment performance.

1. For assessment level in each property class, subclass, and geographical area in each county, the measure of central tendency shall meet one of the following measures.

a) The measure of central tendency shall be within 10 percent of the legal level of assessment.

b) The 95 percent confidence interval of the measure of central tendency shall contain the legal level of assessment.

2. For uniformity of the property being appraised under the cyclical appraisal plan for the current year, the measure of dispersion shall be within the following limits.

a) In urban counties:

(1) a COD of 15 percent or less for primary residential and commercial property, and 20 percent or less for vacant land and secondary residential property; and

(2) a COV of 19 percent or less for primary residential and commercial property, and 25 percent or less for vacant land and secondary residential property.

b) In rural counties:

(1) a COD of 20 percent or less for primary residential and commercial property, and 25 percent or less for vacant land and secondary residential property; and

(2) a COV of 25 percent or less for primary residential and commercial property, and 31 percent or less for vacant land and secondary residential property.

3. Statistical measures.

a) The measure of central tendency shall be the mean for parametric samples and the median for nonparametric samples.

b) The measure of dispersion shall be the COV for parametric samples and the COD for nonparametric samples.

c) To achieve statistical accuracy in determining assessment level under B.1. and uniformity under B.2. for any property class, subclass, or geographical area, the minimum sample size shall consist of 10 or more ratios.

C. Each year the Division shall conduct and publish an

assessment-to-sale ratio study to determine if each county complies with the standards in B.

1. To meet the minimum sample size, the study period may be extended.

2. A smaller sample size may be used if:

a) that sample size is at least 10 percent of the class or subclass population; or

b) both the Division and the county agree that the sample may produce statistics that imply corrective action appropriate to the class or subclass of property.

3. If the Division, after consultation with the counties, determines that the sample size does not produce reliable statistical data, an alternate performance evaluation may be conducted, which may result in corrective action. The alternate performance evaluation shall include review and analysis of the following:

a) the county's procedures for collection and use of market data, including sales, income, rental, expense, vacancy rates, and capitalization rates;

b) the county-wide land, residential, and commercial valuation guidelines and their associated procedures for maintaining current market values;

c) the accuracy and uniformity of the county's individual property data through a field audit of randomly selected properties; and

d) the county's level of personnel training, ratio of appraisers to parcels, level of funding, and other workload and resource considerations.

4. All input to the sample used to measure performance shall be completed by March 31 of each study year.

5. The Division shall conduct a preliminary annual assessment-to-sale ratio study by April 30 of the study year, allowing counties to apply adjustments to their tax roll prior to the May 22 deadline.

6. The Division shall complete the final study immediately following the closing of the tax roll on May 22.

D. The Division shall order corrective action if the results of the final study do not meet the standards set forth in B.

1. Assessment level adjustments, or factor orders, shall be calculated by dividing the legal level of assessment by one of the following:

a) the measure of central tendency, if the uniformity of the ratios meets the standards outlined in B.2.; or

b) the 95 percent confidence interval limit nearest the legal level of assessment, if the uniformity of the ratios does not meet the standards outlined in B.2.

2. Uniformity adjustments, or reappraisal orders, shall only apply to the property being appraised under the cyclical appraisal plan for the current year. A reappraisal order shall be issued if the property fails to meet the standards outlined in B.2. Prior to implementation of reappraisal orders, counties shall submit a preliminary report to the Division that includes the following:

a) an evaluation of why the standards of uniformity outlined in B.2. were not met; and

b) a plan for completion of the reappraisal that is approved by the Division.

3. A corrective action order may contain language requiring a county to create, modify, or follow its cyclical appraisal plan.

4. All corrective action orders shall be issued by June 10 of the study year.

E. The Tax Commission adopts the following procedures to insure compliance and facilitate implementation of ordered corrective action.

1. Prior to the filing of an appeal, the Division shall retain authority to correct errors and, with agreement of the affected county, issue amended orders or stipulate with the affected county to any appropriate alternative action without Tax

Commission approval. Any stipulation by the Division subsequent to an appeal is subject to Tax Commission approval.

2. A county receiving a corrective action order resulting from this rule may file and appeal with the Tax Commission pursuant to Tax Commission rule R861-1A-11.

3. A corrective action order will become the final Tax Commission order if the county does not appeal in a timely manner, or does not prevail in the appeals process.

4. The Division may assist local jurisdictions to ensure implementation of any corrective action orders by the following deadlines.

a) Factor orders shall be implemented in the current study year prior to the mailing of valuation notices.

b) Other corrective action, including reappraisal orders, shall be implemented prior to May 22 of the year following the study year. The preliminary report referred to in D.2. shall be completed by November 30 of the current study year.

5. The Division shall complete audits to determine compliance with corrective action orders as soon after the deadlines set forth in E.4. as practical. The Division shall review the results of the compliance audit with the county and make any necessary adjustments to the compliance audit within 15 days of initiating the audit. These adjustments shall be limited to the analysis performed during the compliance audit and may not include review of the data used to arrive at the underlying factor order. After any adjustments, the compliance audit will then be given to the Tax Commission for any necessary action.

6. The county shall be informed of any adjustment required as a result of the compliance audit.

R884-24P-28. Reporting Requirements For Leased or Rented Personal Property, Pursuant to Utah Code Ann. Section 59-2-306.

A. The procedure set forth herein is required in reporting heavy equipment leased or rented during the tax year.

1. On forms or diskette provided by the Tax Commission, the owner of leased or rented heavy equipment shall file semi-annual reports with the Tax Commission for the periods January 1 through June 30, and July 1 through December 31 of each year. The reports shall contain the following information:

- a) a description of the leased or rented equipment;
- b) the year of manufacture and acquisition cost;
- c) a listing, by month, of the counties where the equipment has situs; and
- d) any other information required.

2. For purposes of this rule, situs is established when leased or rented equipment is kept in an area for thirty days. Once situs is established, any portion of thirty days during which that equipment stays in that area shall be counted as a full month of situs. In no case may situs exceed twelve months for any year.

3. The completed report shall be submitted to the Property Tax Division of the Tax Commission within thirty days after each reporting period.

- a) Noncompliance will require accelerated reporting.

R884-24P-29. Taxable Household Furnishings Pursuant to Utah Code Ann. Section 59-2-1113.

A. Household furnishings, furniture, and equipment are subject to property taxation if:

1. the owner of the abode commonly receives legal consideration for its use, whether in the form of rent, exchange, or lease payments; or

2. the abode is held out as available for the rent, lease, or use by others.

R884-24P-32. Leasehold Improvements Pursuant to Utah Code Ann. Section 59-2-303.

A. The value of leasehold improvements shall be included in the value of the underlying real property and assessed to the owner of the underlying real property.

B. The combined valuation of leasehold improvements and underlying real property required in A. shall satisfy the requirements of Section 59-2-103(1).

C. The provisions of this rule shall not apply if the underlying real property is owned by an entity exempt from tax under Section 59-2-1101.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2000.

R884-24P-33. 2009 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301.

(1) Definitions.

(a)(i) "Acquisition cost" does not include indirect costs such as debugging, licensing fees and permits, insurance, or security.

(ii) Acquisition cost may correspond to the cost new for new property, or cost used for used property.

(b)(i) "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

(ii) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

(c) "Cost new" means the actual cost of the property when purchased new.

(i) Except as otherwise provided in this rule, the Tax Commission and assessors shall rely on the following sources to determine cost new:

- (A) documented actual cost of the new or used vehicle; or
- (B) recognized publications that provide a method for approximating cost new for new or used vehicles.

(ii) For the following property purchased used, the taxing authority may determine cost new by dividing the property's actual cost by the percent good factor for that class:

- (A) class 6 heavy and medium duty trucks;
- (B) class 13 heavy equipment;
- (C) class 14 motor homes;
- (D) class 17 vessels equal to or greater than 31 feet in length; and
- (E) class 21 commercial trailers.

(d) For purposes of Sections 59-2-108 and 59-2-1115, "item of taxable tangible personal property" means a piece of equipment, machinery, furniture, or other piece of tangible personal property that is functioning at its highest and best use for the purpose it was designed and constructed and is generally capable of performing that function without being combined with other items of personal property. An item of taxable tangible personal property is not an individual component part of a piece of machinery or equipment, but the piece of machinery or equipment. For example, a fully functioning computer is an item of taxable tangible personal property, but the motherboard, hard drive, tower, or sound card are not. Similarly, an automobile is an item of taxable tangible personal property, but the transmission, tires, and battery are not.

(e) "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.

(i) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.

(ii) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, other data sources or research, and vehicle valuation guides such as Penton Price Digests.

- (2) Each year the Property Tax Division shall update and

publish percent good schedules for use in computing personal property valuation.

(a) Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

(b) A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

(c) County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

(d) A party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value.

(3) The provisions of this rule do not apply to:

(a) a vehicle subject to the age-based uniform fee under Section 59-2-405.1;

(b) the following personal property subject to the age-based uniform fee under Section 59-2-405.2:

- (i) an all-terrain vehicle;
- (ii) a camper;
- (iii) an other motorcycle;
- (iv) an other trailer;
- (v) a personal watercraft;
- (vi) a small motor vehicle;
- (vii) a snowmobile;
- (viii) a street motorcycle;
- (ix) a tent trailer;
- (x) a travel trailer; and
- (xi) a vessel, including an outboard motor of the vessel, that is less than 31 feet in length and

(c) an aircraft subject to the uniform statewide fee under Section 59-2-404.

(4) Other taxable personal property that is not included in the listed classes includes:

(a) Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business. Supplies are assessed at total cost, including freight-in.

(b) Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.

(c) Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.

(5) Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.

(6) All taxable personal property, other than personal property subject to an age-based uniform fee under Section 59-2-405.1 or 59-2-405.2, or a uniform statewide fee under Section 59-2-404, is classified by expected economic life as follows:

(a) Class 1 - Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.

(i) Examples of property in the class include:

- (A) barricades/warning signs;
- (B) library materials;
- (C) patterns, jigs and dies;
- (D) pots, pans, and utensils;
- (E) canned computer software;

- (F) hotel linen;
- (G) wood and pallets;
- (H) video tapes, compact discs, and DVDs; and
- (I) uniforms.

(ii) With the exception of video tapes, compact discs, and DVDs, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) A licensee of canned computer software shall use one of the following substitutes for acquisition cost of canned computer software if no acquisition cost for the canned computer software is stated:

- (A) retail price of the canned computer software;
- (B) if a retail price is unavailable, and the license is a nonrenewable single year license agreement, the total sum of expected payments during that 12-month period; or

(C) if the licensing agreement is a renewable agreement or is a multiple year agreement, the present value of all expected licensing fees paid pursuant to the agreement.

(iv) Video tapes, compact discs, and DVDs are valued at \$15.00 per tape or disc for the first year and \$3.00 per tape or disc thereafter.

TABLE 1

Year of Acquisition	Percent Good of Acquisition Cost
08	72%
07	43%
06 and prior	11%

(b) Class 2 - Computer Integrated Machinery.

(i) Machinery shall be classified as computer integrated machinery if all of the following conditions are met:

(A) The equipment is sold as a single unit. If the invoice breaks out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.

(B) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.

(C) The machine can perform multiple functions and is controlled by a programmable central processing unit.

(D) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.

(E) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.

(ii) Examples of property in this class include:

- (A) CNC mills;
- (B) CNC lathes;
- (C) high-tech medical and dental equipment such as MRI equipment, CAT scanners, and mammography units.

(iii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 2

Year of Acquisition	Percent Good of Acquisition Cost
08	91%
07	83%
06	75%
05	66%
04	56%
03	43%
02	29%
01 and prior	15%

(c) Class 3 - Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.

(i) Examples of property in this class include:

- (A) office machines;
- (B) alarm systems;

- (C) shopping carts;
- (D) ATM machines;
- (E) small equipment rentals;
- (F) rent-to-own merchandise;
- (G) telephone equipment and systems;
- (H) music systems;
- (I) vending machines;
- (J) video game machines; and
- (K) cash registers and point of sale equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 3

Year of Acquisition	Percent Good of Acquisition Cost
08	86%
07	71%
06	56%
05	39%
04 and prior	21%

(d) Class 4 Short Life Expensed Property.

(i) Property shall be classified as short life expensed property if all of the following conditions are met:

(A) the property is an item of taxable tangible personal property with an acquisition cost of \$1,000 or less;

(B) the property is the same type as the following personal property:

- (I) short life property;
- (II) short life trade fixtures; or
- (III) computer hardware; and
- (C) the owner of the property elects to have the property assessed as short life expensed property.

(ii) Examples of property in this class include:

- (A) short life property defined in Class 1;
- (B) short life trade fixtures defined in Class 3 ; and
- (C) computer hardware defined in Class 12.

(iii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 4

Year of Acquisition	Percent Good of Acquisition Cost
08	69%
07	52%
06	30%
05	17%
04	11%

(e) Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.

(i) Examples of property in this class include:

- (A) furniture;
- (B) bars and sinks;
- (C) booths, tables and chairs;
- (D) beauty and barber shop fixtures;
- (E) cabinets and shelves;
- (F) displays, cases and racks;
- (G) office furniture;
- (H) theater seats;
- (I) water slides; and
- (J) signs, mechanical and electrical.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 5

Year of Acquisition	Percent Good of Acquisition Cost
08	93%
07	85%
06	79%
05	71%
04	63%
03	52%
02	39%
01	26%
00 and prior	13%

Year of Acquisition	Percent Good of Acquisition Cost
08	93%
07	85%
06	79%
05	71%
04	63%
03	52%
02	39%
01	26%
00 and prior	13%

(f) Class 6 - Heavy and Medium Duty Trucks.

(i) Examples of property in this class include:

- (A) heavy duty trucks;
- (B) medium duty trucks;
- (C) crane trucks;
- (D) concrete pump trucks; and
- (E) trucks with well-boring rigs.

(ii) Taxable value is calculated by applying the percent good factor against the cost new.

(iii) Cost new of vehicles in this class is defined as follows:

(A) the documented actual cost of the vehicle for new vehicles; or

(B) 75 percent of the manufacturer's suggested retail price.

(iv) For state assessed vehicles, cost new shall include the value of attached equipment.

(v) The 2009 percent good applies to 2009 models purchased in 2008.

(vi) Trucks weighing two tons or more have a residual taxable value of \$1,750.

TABLE 6

Model Year	Percent Good of Cost New
09	90%
08	84%
07	77%
06	71%
05	65%
04	59%
03	52%
02	46%
01	40%
00	34%
99	27%
98	21%
97	15%
96 and prior	8%

(g) Class 7 - Medical and Dental Equipment. Class 7 property is subject to a high degree of technological development by the health industry.

(i) Examples of property in this class include:

- (A) medical and dental equipment and instruments;
- (B) exam tables and chairs;
- (C) microscopes; and
- (D) optical equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 7

Year of Acquisition	Percent Good of Acquisition Cost
08	94%
07	89%
06	85%
05	79%
04	74%
03	65%
02	55%
01	44%
00	33%
99	23%
98 and prior	11%

(h) Class 8 - Machinery and Equipment. Property in this

class is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available.

(i) Examples of property in this class include:

- (A) manufacturing machinery;
- (B) amusement rides;
- (C) bakery equipment;
- (D) distillery equipment;
- (E) refrigeration equipment;
- (F) laundry and dry cleaning equipment;
- (G) machine shop equipment;
- (H) processing equipment;
- (I) auto service and repair equipment;
- (J) mining equipment;
- (K) ski lift machinery;
- (L) printing equipment;
- (M) bottling or cannery equipment;
- (N) packaging equipment; and
- (O) pollution control equipment.

(ii) Except as provided in Subsection (6)(g)(iii), taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii)(A) Notwithstanding Subsection (6)(g)(ii), the taxable value of the following oil refinery pollution control equipment required by the federal Clean Air Act shall be calculated pursuant to Subsection (6)(g)(iii)(B):

- (I) VGO (Vacuum Gas Oil) reactor;
- (II) HDS (Diesel Hydrotreater) reactor;
- (III) VGO compressor;
- (IV) VGO furnace;
- (V) VGO and HDS high pressure exchangers;
- (VI) VGO, SRU (Sulfur Recovery Unit), SWS (Sour Water Stripper), and TGU; (Tail Gas Unit) low pressure exchangers;
- (VII) VGO, amine, SWS, and HDS separators and drums;
- (VIII) VGO and tank pumps;
- (IX) TGU modules; and
- (X) VGO tank and air coolers.

(B) The taxable value of the oil refinery pollution control equipment described in Subsection (6)(g)(iii)(A) shall be calculated by:

(I) applying the percent good factor in Table 8 against the acquisition cost of the property; and

(II) multiplying the product described in Subsection (6)(g)(iii)(B)(I) by 50%.

TABLE 8

Year of Acquisition	Percent Good of Acquisition Cost
08	94%
07	89%
06	85%
05	79%
04	74%
03	65%
02	55%
01	44%
00	33%
99	23%
98 and prior	11%

(i) Class 9 - Off-Highway Vehicles.

(i) Because Section 59-2-405.2 subjects off-highway vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(j) Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Taxable value is calculated by applying the percent

good factor against the acquisition cost of the property.

TABLE 10

Year of Acquisition	Percent Good of Acquisition Cost
08	96%
07	92%
06	90%
05	87%
04	85%
03	78%
02	70%
01	61%
00	54%
99	45%
98	36%
97	28%
96	19%
95 and prior	10%

(k) Class 11 - Street Motorcycles.

(i) Because Section 59-2-405.2 subjects street motorcycles to an age-based uniform fee, a percent good schedule is not necessary.

(l) Class 12 - Computer Hardware.

(i) Examples of property in this class include:

- (A) data processing equipment;
- (B) personal computers;
- (C) main frame computers;
- (D) computer equipment peripherals;
- (E) cad/cam systems; and
- (F) copiers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 12

Year of Acquisition	Percent Good of Acquisition Cost
08	62%
07	46%
06	21%
05	9%
04 and prior	7%

(m) Class 13 - Heavy Equipment.

(i) Examples of property in this class include:

- (A) construction equipment;
- (B) excavation equipment;
- (C) loaders;
- (D) batch plants;
- (E) snow cats; and
- (F) pavement sweepers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) 2009 model equipment purchased in 2008 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
08	63%
07	59%
06	56%
05	52%
04	49%
03	45%
02	41%
01	38%
00	34%
99	31%
98	27%
97	24%
96	20%
95 and prior	17%

- (n) Class 14 - Motor Homes.
- (i) Taxable value is calculated by applying the percent good against the cost new.
- (ii) The 2009 percent good applies to 2009 models purchased in 2008.
- (iii) Motor homes have a residual taxable value of \$1,000.

TABLE 14

Model Year	Percent Good of Cost New
09	90%
08	70%
07	67%
06	63%
05	59%
04	56%
03	52%
02	49%
01	45%
00	41%
99	38%
98	34%
97	30%
96	27%
95	23%
94	19%
93 and prior	16%

(o) Class 15 - Semiconductor Manufacturing Equipment. Class 15 applies only to equipment used in the production of semiconductor products. Equipment used in the semiconductor manufacturing industry is subject to significant economic and functional obsolescence due to rapidly changing technology and economic conditions.

- (i) Examples of property in this class include:
 - (A) crystal growing equipment;
 - (B) die assembly equipment;
 - (C) wire bonding equipment;
 - (D) encapsulation equipment;
 - (E) semiconductor test equipment;
 - (F) clean room equipment;
 - (G) chemical and gas systems related to semiconductor manufacturing;
 - (H) deionized water systems;
 - (I) electrical systems; and
 - (J) photo mask and wafer manufacturing dedicated to semiconductor production.
- (ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 15

Year of Acquisition	Percent Good of Acquisition Cost
08	47%
07	34%
06	24%
05	15%
04 and prior	6%

(p) Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.

- (i) Examples of property in this class include:
 - (A) billboards;
 - (B) sign towers;
 - (C) radio towers;
 - (D) ski lift and tram towers;
 - (E) non-farm grain elevators; and
 - (F) bulk storage tanks.
- (ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 16

Year of Acquisition	Percent Good of Acquisition Cost
08	98%
07	96%
06	94%
05	93%
04	91%
03	90%
02	85%
01	79%
00	74%
99	68%
98	61%
97	55%
96	49%
95	43%
94	37%
93	30%
92	23%
91	15%
90 and prior	8%

(q) Class 17 - Vessels Equal to or Greater Than 31 Feet in Length.

- (i) Examples of property in this class include:
 - (A) houseboats equal to or greater than 31 feet in length;
 - (B) sailboats equal to or greater than 31 feet in length; and
 - (C) yachts equal to or greater than 31 feet in length.
- (ii) A vessel, including an outboard motor of the vessel, under 31 feet in length:
 - (A) is not included in Class 17;
 - (B) may not be valued using Table 17; and
 - (C) is subject to an age-based uniform fee under Section 59-2-405.2.
- (iii) Taxable value is calculated by applying the percent good factor against the cost new of the property.
- (iv) The Tax Commission and assessors shall rely on the following sources to determine cost new for property in this class:
 - (A) the following publications or valuation methods:
 - (I) the manufacturer's suggested retail price listed in the ABOS Marine Blue Book;
 - (II) for property not listed in the ABOS Marine Blue Book but listed in the NADA Marine Appraisal Guide, the NADA average value for the property divided by the percent good factor; or
 - (III) for property not listed in the ABOS Marine Blue Book or the NADA Appraisal Guide:
 - (aa) the manufacturer's suggested retail price for comparable property; or
 - (bb) the cost new established for that property by a documented valuation source; or
 - (B) the documented actual cost of new or used property in this class.
 - (v) The 2009 percent good applies to 2009 models purchased in 2008.
 - (vi) Property in this class has a residual taxable value of \$1,000.

TABLE 17

Model Year	Percent Good of Cost New
09	90%
08	64%
07	62%
06	60%
05	58%
04	56%
03	54%
02	52%
01	50%
00	48%
99	45%
98	43%
97	41%
96	39%

95	37%
94	35%
93	33%
92	31%
91	29%
90	27%
89	25%
88 and prior	23%

(r) Class 17a - Vessels Less Than 31 Feet in Length
 (i) Because Section 59-2-405.2 subjects vessels less than 31 feet in length to an age-based uniform fee, a percent good schedule is not necessary.

(s) Class 18 - Travel Trailers and Class 18a - Tent Trailers/Truck Campers.

(i) Because Section 59-2-405.2 subjects travel trailers and tent trailers/truck campers to an age-based uniform fee, a percent good schedule is not necessary.

(t) Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

(i) Examples of property in this class include:

- (A) oil and gas exploration equipment;
- (B) distillation equipment;
- (C) wellhead assemblies;
- (D) holding and storage facilities;
- (E) drill rigs;
- (F) reinjection equipment;
- (G) metering devices;
- (H) cracking equipment;
- (I) well-site generators, transformers, and power lines;
- (J) equipment sheds;
- (K) pumps;
- (L) radio telemetry units; and
- (M) support and control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 20

Year of Acquisition	Percent Good of Acquisition Cost
08	96%
07	92%
06	91%
05	87%
04	85%
03	77%
02	68%
01	59%
00	50%
99	41%
98	31%
97	21%
96 and prior	10%

(u) Class 21 - Commercial Trailers.

(i) Examples of property in this class include:

- (A) dry freight van trailers;
- (B) refrigerated van trailers;
- (C) flat bed trailers;
- (D) dump trailers;
- (E) livestock trailers; and
- (F) tank trailers.

(ii) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state assessed vehicles, cost new shall include the value of attached equipment.

(iii) The 2009 percent good applies to 2009 models purchased in 2008.

(iv) Commercial trailers have a residual taxable value of \$1,000.

TABLE 21

Model Year	Percent Good of Cost New
09	95%
08	92%
07	86%
06	81%
05	75%
04	70%
03	64%
02	58%
01	53%
00	47%
99	42%
98	36%
97	31%
96	25%
95	20%
94	14%
93 and prior	9%

(v) Class 21a - Other Trailers (Non-Commercial).

(i) Because Section 59-2-405.2 subjects this class of trailers to an age-based uniform fee, a percent good schedule is not necessary.

(w) Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.

(i) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.

(ii) Because Section 59-2-405.1 subjects Class 22 property to an age-based uniform fee, a percent good schedule is not necessary.

(x) Class 22a - Small Motor Vehicles.

(i) Because Section 59-2-405.2 subjects small motor vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(y) Class 23 - Aircraft Required to be Registered With the State.

(i) Because Section 59-2-404 subjects aircraft required to be registered with the state to a statewide uniform fee, a percent good schedule is not necessary.

(z) Class 24 - Leasehold Improvements.

(i) This class includes leasehold improvements to real property installed by a tenant. The Class 24 schedule is to be used only with leasehold improvements that are assessed to the lessee of the real property pursuant to Tax Commission rule R884-24P-32. Leasehold improvements include:

- (A) walls and partitions;
- (B) plumbing and roughed-in fixtures;
- (C) floor coverings other than carpet;
- (D) store fronts;
- (E) decoration;
- (F) wiring;
- (G) suspended or acoustical ceilings;
- (H) heating and cooling systems; and
- (I) iron or millwork trim.

(ii) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.

(iii) The Class 3 schedule is used to value short life leasehold improvements.

TABLE 24

Year of Installation	Percent of Installation Cost
08	94%
07	88%
06	82%
05	77%
04	71%
03	65%
02	59%

01	54%	78	19%
00	48%	77	17%
99	42%	76	14%
98	36%	75	12%
97 and prior	30%	74 and prior	9%

(aa) Class 25 - Aircraft Parts Manufacturing Tools and Dies. Property in this class is generally subject to rapid physical, functional, and economic obsolescence due to rapid technological and economic shifts in the airline parts manufacturing industry. Heavy wear and tear is also a factor in valuing this class of property.

- (i) Examples of property in this class include:
 - (A) aircraft parts manufacturing jigs and dies;
 - (B) aircraft parts manufacturing molds;
 - (C) aircraft parts manufacturing patterns;
 - (D) aircraft parts manufacturing taps and gauges;
 - (E) aircraft parts manufacturing test equipment; and
 - (F) aircraft parts manufacturing fixtures.
- (ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 25

Year of Acquisition	Percent Good of Acquisition Cost
08	86%
07	71%
06	57%
05	41%
04	23%
03 and prior	4%

(bb) Class 26 - Personal Watercraft.

(i) Because Section 59-2-405.2 subjects personal watercraft to an age-based uniform fee, a percent good schedule is not necessary.

(cc) Class 27 - Electrical Power Generating Equipment and Fixtures

- (i) Examples of property in this class include:
 - (A) electrical power generators; and
 - (B) control equipment.
- (ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 27

Year of Acquisition	Percent Good of Acquisition Cost
08	97%
07	95%
06	92%
05	90%
04	87%
03	84%
02	82%
01	79%
00	77%
99	74%
98	71%
97	69%
96	66%
95	64%
94	61%
93	58%
92	56%
91	53%
90	51%
89	48%
88	45%
87	43%
86	40%
85	38%
84	35%
83	32%
82	30%
81	27%
80	25%
79	22%

The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2009.

R884-24P-34. Use of Sales or Appraisal Information Gathered in Conjunction With Assessment/Sales Ratio Studies Pursuant to Utah Code Ann. Section 59-2-704.

- A. Market data gathered for purposes of an assessment/sales ratio study may be used for valuation purposes only as part of a systematic reappraisal program whereby all similar properties are given equitable and uniform treatment.
- B. Sales or appraisal data gathered in conjunction with a ratio study shall not be used for an isolated reappraisal of the sold or appraised properties.
- C. Information derived from ratio studies regarding the values assigned to real property and personal property shall not be used to establish the apportionment between real and personal property in future assessments.

R884-24P-35. Annual Statement for Certain Exempt Uses of Property Pursuant to Utah Code Ann. Section 59-2-1102.

- A. The purpose of this rule is to provide guidance to property owners required to file an annual statement under Section 59-2-1102 in order to claim a property tax exemption under Section 59-2-1101 (2)(d) or (e).
- B. The annual statement filed pursuant to Section 59-2-1102 shall contain the following information for the specific property for which an exemption is sought:
 1. the owner of record of the property;
 2. the property parcel, account, or serial number;
 3. the location of the property;
 4. the tax year in which the exemption was originally granted;
 5. a description of any change in the use of the real or personal property since January 1 of the prior year;
 6. the name and address of any person or organization conducting a business for profit on the property;
 7. the name and address of any organization that uses the real or personal property and pays a fee for that use that is greater than the cost of maintenance and utilities associated with the property;
 8. a description of any personal property leased by the owner of record for which an exemption is claimed;
 9. the name and address of the lessor of property described in B.8.;
 10. the signature of the owner of record or the owner's authorized representative; and
 11. any other information the county may require.
- C. The annual statement shall be filed:
 1. with the county legislative body in the county in which the property is located;
 2. on or before March 1; and
 3. using:
 - a) Tax Commission form PT-21, Annual Statement for Continued Property Tax Exemption; or
 - b) a form that contains the information required under B.

R884-24P-36. Contents of Real Property Tax Notice Pursuant to Utah Code Ann. Section 59-2-1317.

- A. In addition to the information required by Section 59-2-1317, the tax notice for real property shall specify the following:
 1. the property identification number;
 2. the appraised value of the property and, if applicable, any adjustment for residential exemptions expressed in terms of taxable value;

3. if applicable, tax relief for taxpayers eligible for blind, veteran, or poor abatement or the circuit breaker, which shall be shown as credits to total taxes levied; and

4. itemized tax rate information for each taxing entity and total tax rate.

R884-24P-37. Separate Values of Land and Improvements Pursuant to Utah Code Ann. Sections 59-2-301 and 59-2-305.

A. The county assessor shall maintain an appraisal record of all real property subject to assessment by the county. The record shall include the following information:

1. owner of the property;
2. property identification number;
3. description and location of the property; and
4. full market value of the property.

B. Real property appraisal records shall show separately the value of the land and the value of any improvements.

R884-24P-38. Nonoperating Railroad Properties Pursuant to Utah Code Ann. Section 59-2-201.

(1)(a) "Railroad right of way" (RR-ROW) means a strip of land upon which a railroad company constructs the road bed.

(b) RR-ROW within incorporated towns and cities shall consist of 50 feet on each side of the main line main track, branch line main track or main spur track. Variations to the 50-foot standard shall be approved on an individual basis.

(c) RR-ROW outside incorporated towns and cities shall consist of the actual right-of-way owned if not in excess of 100 feet on each side of the center line of the main line main track, branch line main track, or main spur track. In cases where unusual conditions exist, such as mountain cuts, fills, etc., and more than 100 feet on either side of the main track is required for ROW and where small parcels of land are otherwise required for ROW purposes, the necessary additional area shall be reported as RR-ROW.

(2) Assessment of nonoperating railroad properties. Railroad property formerly assessed by the unitary method that has been determined to be nonoperating, and that is not necessary to the conduct of the business, shall be assessed separately by the local county assessor.

(3) Assessment procedures.

(a) Properties charged to nonoperating accounts are reviewed by the Property Tax Division, and if taxable, are assessed and placed on the local county assessment rolls separately from the operating properties.

(b) RR-ROW is considered operating and necessary to the conduct and contributing to the income of the business. Any revenue derived from leasing of property within the RR-ROW is considered railroad operating revenues.

(c) Real property outside of the RR-ROW that is necessary to the conduct of the railroad operation is considered part of the unitary value. Some examples are:

- (i) company homes occupied by superintendents and other employees on 24-hour call;
 - (ii) storage facilities for railroad operations;
 - (iii) communication facilities; and
 - (iv) spur tracks outside of RR-ROW.
- (d) Abandoned RR-ROW is considered nonoperating and shall be reported as such by the railroad companies.

(e) Real property outside of the RR-ROW that is not necessary to the conduct of the railroad operations is classified as nonoperating and therefore assessed by the local county assessor. Some examples are:

- (i) land leased to service station operations;
 - (ii) grocery stores;
 - (iii) apartments;
 - (iv) residences; and
 - (v) agricultural uses.
- (f) RR-ROW obtained by government grant or act of

Congress is deemed operating property.

(4) Notice of Determination. It is the responsibility of the Property Tax Division to provide a notice of determination to the owner of the railroad property and the assessor of the county where the railroad property is located immediately after such determination of operating or nonoperating status has been made. If there is no appeal to the notice of determination, the Property Tax Division shall notify the assessor of the county where the property is located so that the property may be placed on the roll for local assessment.

(5) Appeals. Any interested party who wishes to contest the determination of operating or nonoperating property may do so by filing a request for agency action within ten days of the notice of determination of operating or nonoperating properties. Request for agency action may be made pursuant to Title 63G, Chapter 4.

R884-24P-40. Exemption of Parsonages, Rectories, Monasteries, Homes and Residences Pursuant to Utah Code Annotated 59-2-1101(d) and Article XIII, Section 2 of the Utah Constitution.

A. Parsonages, rectories, monasteries, homes and residences if used exclusively for religious purposes, are exempt from property taxes if they meet all of the following requirements:

1. The land and building are owned by a religious organization which has qualified with the Internal Revenue Service as a Section 501(c)(3) organization and which organization continues to meet the requirements of that section.

2. The building is occupied only by persons whose full time efforts are devoted to the religious organization and the immediate families of such persons.

3. The religious organization, and not the individuals who occupy the premises, pay all payments, utilities, insurance, repairs, and all other costs and expenses related to the care and maintenance of the premises and facilities.

B. The exemption for one person and the family of such person is limited to the real estate that is reasonable for the residence of the family and which remains actively devoted exclusively to the religious purposes. The exemption for more than one person, such as a monastery, is limited to that amount of real estate actually devoted exclusively to religious purposes.

C. Vacant land which is not actively used by the religious organization, is not deemed to be devoted exclusively to religious purposes, and is therefore not exempt from property taxes.

1. Vacant land which is held for future development or utilization by the religious organization is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt.

2. Vacant land is tax exempt after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes.

R884-24P-41. Adjustment or Deferral of Property Taxes Pursuant to Utah Code Ann. Section 59-2-1347.

A. Requested adjustments to taxes for past years may not be made under Utah Code Ann. Section 59-2-1347 if the requested adjustment is based only on property valuation.

B. Utah Code Ann. Section 59-2-1347 applies only to taxes levied but unpaid and may not serve as the basis for refunding taxes already paid.

C. Utah Code Ann. Section 59-2-1347 may only be applied to taxes levied for the five most recent tax years except where taxes levied remain unpaid as a result of administrative action or litigation.

R884-24P-42. Farmland Assessment Audits and Personal Property Audits Pursuant to Utah Code Ann. Subsection 59-

2-508(2), and Section 59-2-705.

A. The Tax Commission is responsible for auditing the administration of the Farmland Assessment Act to verify proper listing and classification of all properties assessed under the act. The Tax Commission also conducts routine audits of personal property accounts.

1. If an audit reveals an incorrect assignment of property, or an increase or decrease in value, the county assessor shall correct the assessment on the assessment roll and the tax roll.

2. A revised assessment notice or tax notice or both shall be mailed to the taxpayer for the current year and any previous years affected.

3. The appropriate tax rate for each year shall be applied when computing taxes due for previous years.

B. Assessors shall not alter results of an audit without first submitting the changes to the Tax commission for review and approval.

C. The Tax Commission shall review assessor compliance with this rule. Noncompliance may result in an order for corrective action.

R884-24P-44. Farm Machinery and Equipment Exemption Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-1101.

A. The use of the machinery and equipment, whether by the claimant or a lessee, shall determine the exemption.

1. For purposes of this rule, the term owner includes a purchaser under an installment purchase contract or capitalized lease where ownership passes to the purchaser at the end of the contract without the exercise of an option on behalf of the purchaser or seller.

B. Farm machinery and equipment is used primarily for agricultural purposes if it is used primarily for the production or harvesting of agricultural products.

C. The following machinery and equipment is used primarily for the production or harvesting of agricultural products:

1. Machinery and equipment used on the farm for storage, cooling, or freezing of fruits or vegetables;

2. Except as provided in C.3., machinery and equipment used in fruit or vegetable growing operations if the machinery and equipment does not physically alter the fruit or vegetables; and

3. Machinery and equipment that physically alters the form of fruits or vegetables if the operations performed by the machinery or equipment are reasonable and necessary in the preparation of the fruit or vegetables for wholesale marketing.

D. Machinery and equipment used for processing of agricultural products are not exempt.

R884-24P-47. Uniform Tax on Aircraft Pursuant to Utah Code Ann. Sections 59-2-404, 59-2-1005, 59-2-1302, and 59-2-1303.

A. Registration of aircraft requires payment of a uniform tax in lieu of ad valorem personal property tax. This tax shall be collected by the county assessor at the time of registration at the rate prescribed in Section 59-2-404.

B. The average wholesale market value of the aircraft is the arithmetic mean of the average low wholesale book value and the average high wholesale book value. This average price will be used as the basis for the initial assessment. These amounts are obtained from the fall edition of the Aircraft Bluebook Price Digest in the year preceding the year of registration for all aircraft listed in that publication.

1. The average wholesale market value of aircraft subject to registration but not shown in the Aircraft Bluebook Price Digest will be assessed according to the annual depreciation schedule for aircraft valuation set forth in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and

Schedules."

2. Instructions for interpretation of codes are found inside the Aircraft Bluebook Price Digest.

a) Average low wholesale values are found under the heading "Average equipped per base avg change/invtry."

b) Average high wholesale values are found under the heading "change mktbl."

c) Aircraft values not in accordance with "average" may be adjusted by the assessor following the instructions in the Bluebook. Factors that have the greatest impact on value include: high engine time, air worthiness directives not complied with, status of annual inspection, crash damage, paint condition, and interior condition.

C. The uniform tax is due each year the aircraft is registered in Utah. If the aircraft is sold within the same registration period, no additional uniform tax shall be due. However, the purchaser shall pay any delinquent tax as a condition precedent to registration.

D. If an aircraft is purchased or moved to Utah during the year and newly registered in Utah, the uniform tax shall be prorated based on the number of months remaining in the registration period.

1. Any portion of a month shall be counted as a full month. For example, if registration is required during July, 50 percent of the uniform tax shall be paid as a condition of registration.

2. If the aircraft is moved to Utah during the year, and property tax was paid to another state prior to moving the aircraft into Utah, any property tax paid shall be allowed as a credit against the prorated uniform tax due in Utah.

a) This credit may not be refunded if the other state property tax exceeds the uniform tax due in Utah for the comparable year.

b) Proof of payment shall be submitted before credit is allowed.

E. The uniform tax collected by county assessors shall be distributed to the taxing districts of the county in which the aircraft is located as shown on the registration application. If the aircraft is registered in a county other than the county of the aircraft location, the tax collected shall be forwarded to the appropriate county within five working days.

F. The Tax Commission shall supply registration forms and numbered decals to the county assessors. Forms to assess the uniform tax shall be prepared by the counties each year. The Tax Commission shall maintain an owners' data base and supply the counties with a list of registrations by county after the first year and shall also supply registration renewal forms preprinted with the prior year's registration information.

G. The aircraft owner or person or entity in possession thereof shall immediately provide access to any aircraft hangar or other storage area or facility upon request by the assessor or the assessor's designee in order to permit the determination of the status of registration of the aircraft, and the performance of any other act in furtherance of the assessor's duties.

H. The provisions applicable to securing or collecting personal property taxes set forth in Sections 59-2-1302 and 59-2-1303 shall apply to the collection of delinquent uniform taxes.

I. If the aircraft owner and the county assessor cannot reach agreement concerning the aircraft valuation, the valuation may be appealed to the county board of equalization under Section 59-2-1005.

R884-24P-49. Calculating the Utah Apportioned Value of a Rail Car Fleet Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Average market value per rail car" means the fleet rail car market value divided by the number of rail cars in the fleet.

2. "Fleet rail car market value" means the sum of:

a)(1) the yearly acquisition costs of the fleet's rail cars;
 (2) multiplied by the appropriate percent good factors contained in Class 10 of R884-24P- 33, Personal Property Valuation Guides and Schedules; and

b) the sum of betterments by year.

(1) Except as provided in A.2.b)(2), the sum of betterments by year shall be depreciated on a 14-year straight line method.

(2) Notwithstanding the provisions of A.2.b)(1), betterments shall have a residual value of two percent.

3. "In-service rail cars" means the number of rail cars in the fleet, adjusted for out-of- service rail cars.

4. a) "Out-of-service rail cars" means rail cars:

(1) out-of-service for a period of more than ten consecutive hours; or

(2) in storage.

b) Rail cars cease to be out-of-service once repaired or removed from storage.

c) Out-of-service rail cars do not include rail cars idled for less than ten consecutive hours due to light repairs or routine maintenance.

5. "System car miles" means both loaded and empty miles accumulated in the U.S., Canada, and Mexico during the prior calendar year by all rail cars in the fleet.

6. "Utah car miles" mean both loaded and empty miles accumulated within Utah during the prior calendar year by all rail cars in the fleet.

7. "Utah percent of system factor" means the Utah car miles divided by the system car miles.

B. The provisions of this rule apply only to private rail car companies.

C. To receive an adjustment for out-of-service rail cars, the rail car company must report the number of out-of-service days to the commission for each of the company's rail car fleets.

D. The out-of-service adjustment is calculated as follows.

1. Divide the out-of-service days by 365 to obtain the out-of-service rail car equivalent.

2. Subtract the out-of-service rail car equivalent calculated in D.1. from the number of rail cars in the fleet.

E. The taxable value for each rail car fleet apportioned to Utah, for which the Utah percent of system factor is more than 50 percent, shall be determined by multiplying the Utah percent of system factor by the fleet rail car market value.

F. The taxable value for each rail car company apportioned to Utah, for which the Utah percent of system factor is less than or equal to 50 percent, shall be determined in the following manner.

1. Calculate the number of fleet rail cars allocated to Utah under the Utah percent of system factor. The steps for this calculation are as follows.

a) Multiply the Utah percent of system factor by the in-service rail cars in the fleet.

b) Multiply the product obtained in F.1.a) by 50 percent.

2. Calculate the number of fleet rail cars allocated to Utah under the time speed factor. The steps for this calculation are as follows.

a) Divide the fleet's Utah car miles by the average rail car miles traveled in Utah per year. The Commission has determined that the average rail car miles traveled in Utah per year shall equal 200,000 miles.

b) Multiply the quotient obtained in F.2.a) by the percent of in-service rail cars in the fleet.

c) Multiply the product obtained in F.2.b) by 50 percent.

3. Add the number of fleet rail cars allocated to Utah under the Utah percent of system factor, calculated in F.1.b), and the number of fleet rail cars allocated to Utah under the time speed factor, calculated in F.2.c), and multiply that sum by the average market value per rail car.

R884-24P-50. Apportioning the Utah Proportion of Commercial Aircraft Valuations Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Commercial air carrier" means any air charter service, air contract service or airline as defined by Section 59-2-102.

2. "Ground time" means the time period beginning at the time an aircraft lands and ending at the time an aircraft takes off.

B. The commission shall apportion to a tax area the assessment of the mobile flight equipment owned by a commercial air carrier in the proportion that the ground time in the tax area bears to the total ground time in the state.

C. The provisions of this rule shall be implemented and become binding on taxpayers beginning with the 1999 calendar year.

R884-24P-52. Criteria for Determining Primary Residence Pursuant to Utah Code Ann. Sections 59-2-102, 59-2-103, and 59-2-103.5.

A. "Household" is as defined in Section 59-2-1202.

B. "Primary residence" means the location where domicile has been established.

C. Except as provided in D. and F.3., the residential exemption provided under Section 59-2- 103 is limited to one primary residence per household.

D. An owner of multiple properties may receive the residential exemption on all properties for which the property is the primary residence of the tenant.

E. Factors or objective evidence determinative of domicile include:

1. whether or not the individual voted in the place he claims to be domiciled;

2. the length of any continuous residency in the location claimed as domicile;

3. the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;

4. the presence of family members in a given location;

5. the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;

6. the physical location of the individual's place of business or sources of income;

7. the use of local bank facilities or foreign bank institutions;

8. the location of registration of vehicles, boats, and RVs;

9. membership in clubs, churches, and other social organizations;

10. the addresses used by the individual on such things as:

a) telephone listings;

b) mail;

c) state and federal tax returns;

d) listings in official government publications or other correspondence;

e) driver's license;

f) voter registration; and

g) tax rolls;

11. location of public schools attended by the individual or the individual's dependents;

12. the nature and payment of taxes in other states;

13. declarations of the individual:

a) communicated to third parties;

b) contained in deeds;

c) contained in insurance policies;

d) contained in wills;

e) contained in letters;

f) contained in registers;

g) contained in mortgages; and

h) contained in leases.

14. the exercise of civil or political rights in a given

location;

15. any failure to obtain permits and licenses normally required of a resident;

16. the purchase of a burial plot in a particular location;

17. the acquisition of a new residence in a different location.

F. Administration of the Residential Exemption.

1. Except as provided in F.2., F.4., and F.5., the first one acre of land per residential unit shall receive the residential exemption.

2. If a parcel has high density multiple residential units, such as an apartment complex or a mobile home park, the amount of land, up to the first one acre per residential unit, eligible to receive the residential exemption shall be determined by the use of the land. Land actively used for residential purposes qualifies for the exemption.

3. If the county assessor determines that a property under construction will qualify as a primary residence upon completion, the property shall qualify for the residential exemption while under construction.

4. A property assessed under the Farmland Assessment Act shall receive the residential exemption only for the homestead.

5. A property with multiple uses, such as residential and commercial, shall receive the residential exemption only for the percentage of the property that is used as a primary residence.

6. If the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.

7.a) An application for the residential exemption required by an ordinance enacted under Section 59-2-103.5 shall contain the following information for the specific property for which the exemption is requested:

- (1) the owner of record of the property;
- (2) the property parcel number;
- (3) the location of the property;
- (4) the basis of the owner's knowledge of the use of the property;

- (5) a description of the use of the property;
- (6) evidence of the domicile of the inhabitants of the property; and

(7) the signature of all owners of the property certifying that the property is residential property.

b) The application under F.7.a) shall be:

- (1) on a form provided by the county; or
- (2) in a writing that contains all of the information listed in F.7.a).

R884-24P-53. 2008 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.

(1) Each year the Property Tax Division shall update and publish schedules to determine the taxable value for land subject to the Farmland Assessment Act on a per acre basis.

(a) The schedules shall be based on the productivity of the various types of agricultural land as determined through crop budgets and net rents.

(b) Proposed schedules shall be transmitted by the Property Tax Division to county assessors for comment before adoption.

(c) County assessors may not deviate from the schedules.

(d) Not all types of agricultural land exist in every county. If no taxable value is shown for a particular county in one of the tables, that classification of agricultural land does not exist in that county.

(2) All property defined as farmland pursuant to Section 59-2-501 shall be assessed on a per acre basis as follows:

(a) Irrigated farmland shall be assessed under the following classifications.

(i) Irrigated I. The following counties shall assess Irrigated I property based upon the per acre values listed below:

TABLE 1
Irrigated I

1) Box Elder	820
2) Cache	690
3) Carbon	540
4) Davis	840
5) Emery	525
6) Iron	815
7) Kane	450
8) Millard	800
9) Salt Lake	705
10) Utah	735
11) Washington	655
12) Weber	800

(ii) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed below:

TABLE 2
Irrigated II

1) Box Elder	720
2) Cache	590
3) Carbon	440
4) Davis	740
5) Duchesne	495
6) Emery	425
7) Grand	410
8) Iron	715
9) Juab	460
10) Kane	350
11) Millard	700
12) Salt Lake	605
13) Sanpete	550
14) Sevier	570
15) Summit	475
16) Tooele	460
17) Utah	635
18) Wasatch	500
19) Washington	555
20) Weber	700

(iii) Irrigated III. The following counties shall assess Irrigated III property based upon the per acre values listed below:

TABLE 3
Irrigated III

1) Beaver	565
2) Box Elder	570
3) Cache	440
4) Carbon	290
5) Davis	590
6) Duchesne	345
7) Emery	275
8) Garfield	220
9) Grand	260
10) Iron	565
11) Juab	310
12) Kane	200
13) Millard	550
14) Morgan	395
15) Piute	355
16) Rich	190
17) Salt Lake	455
18) San Juan	180
19) Sanpete	400
20) Sevier	420
21) Summit	325
22) Tooele	310
23) Uintah	385
24) Utah	485
25) Wasatch	350
26) Washington	405
27) Wayne	335
28) Weber	550

(iv) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed below:

TABLE 4
Irrigated IV

1) Beaver	465
2) Box Elder	470
3) Cache	340
4) Carbon	190
5) Daggett	220
6) Davis	490
7) Duchesne	245
8) Emery	175
9) Garfield	120
10) Grand	160
11) Iron	465
12) Juab	210
13) Kane	100
14) Millard	450
15) Morgan	295
16) Piute	255
17) Rich	90
18) Salt Lake	355
19) San Juan	80
20) Sanpete	300
21) Sevier	320
22) Summit	225
23) Tooele	210
24) Uintah	285
25) Utah	385
26) Wasatch	250
27) Washington	305
28) Wayne	235
29) Weber	450

(b) Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

1) Beaver	640
2) Box Elder	695
3) Cache	640
4) Carbon	640
5) Davis	695
6) Duchesne	640
7) Emery	640
8) Garfield	640
9) Grand	640
10) Iron	640
11) Juab	640
12) Kane	640
13) Millard	640
14) Morgan	640
15) Piute	640
16) Salt Lake	640
17) San Juan	640
18) Sanpete	640
19) Sevier	640
20) Summit	640
21) Tooele	640
22) Uintah	640
23) Utah	710
24) Wasatch	640
25) Washington	760
26) Wayne	640
27) Weber	695

(c) Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6
Meadow IV

1) Beaver	255
2) Box Elder	250
3) Cache	265
4) Carbon	130
5) Daggett	160
6) Davis	270
7) Duchesne	165
8) Emery	130
9) Garfield	100
10) Grand	125
11) Iron	250
12) Juab	150
13) Kane	110
14) Millard	195
15) Morgan	185

16) Piute	175
17) Rich	105
18) Salt Lake	225
19) Sanpete	195
20) Sevier	200
21) Summit	205
22) Tooele	185
23) Uintah	195
24) Utah	240
25) Wasatch	210
26) Washington	220
27) Wayne	170
28) Weber	305

(d) Dry land shall be classified as one of the following two categories and shall be assessed on a per acre basis as follows:

(i) Dry III. The following counties shall assess Dry III property based upon the per acre values listed below:

TABLE 7
Dry III

1) Beaver	50
2) Box Elder	85
3) Cache	100
4) Carbon	50
5) Davis	50
6) Duchesne	65
7) Garfield	50
8) Grand	50
9) Iron	55
10) Juab	50
11) Kane	50
12) Millard	50
13) Morgan	65
14) Rich	50
15) Salt Lake	55
16) San Juan	50
17) Sanpete	60
18) Summit	50
19) Tooele	50
20) Uintah	60
21) Utah	50
22) Wasatch	50
23) Washington	50
24) Weber	80

(ii) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed below:

TABLE 8
Dry IV

1) Beaver	10
2) Box Elder	50
3) Cache	65
4) Carbon	15
5) Davis	15
6) Duchesne	30
7) Garfield	15
8) Grand	15
9) Iron	20
10) Juab	15
11) Kane	15
12) Millard	15
13) Morgan	30
14) Rich	15
15) Salt Lake	20
16) San Juan	15
17) Sanpete	25
18) Summit	15
19) Tooele	15
20) Uintah	25
21) Utah	15
22) Wasatch	15
23) Washington	15
24) Weber	45

(e) Grazing land shall be classified as one of the following four categories and shall be assessed on a per acre basis as follows:

(i) Graze 1. The following counties shall assess Graze I property based upon the per acre values listed below:

TABLE 9

GR I	
1) Beaver	88
2) Box Elder	72
3) Cache	75
4) Carbon	56
5) Daggett	60
6) Davis	66
7) Duchesne	70
8) Emery	70
9) Garfield	80
10) Grand	76
11) Iron	68
12) Juab	70
13) Kane	85
14) Millard	84
15) Morgan	60
16) Piute	87
17) Rich	70
18) Salt Lake	72
19) San Juan	72
20) Sanpete	69
21) Sevier	70
22) Summit	78
23) Tooele	77
24) Uintah	74
25) Utah	60
26) Wasatch	57
27) Washington	65
28) Wayne	92
29) Weber	74

(ii) Graze II. The following counties shall assess Graze II property based upon the per acre values listed below:

TABLE 10 GR II	
1) Beaver	28
2) Box Elder	23
3) Cache	24
4) Carbon	16
5) Daggett	17
6) Davis	21
7) Duchesne	22
8) Emery	21
9) Garfield	25
10) Grand	22
11) Iron	20
12) Juab	21
13) Kane	26
14) Millard	26
15) Morgan	19
16) Piute	27
17) Rich	23
18) Salt Lake	22
19) San Juan	22
20) Sanpete	21
21) Sevier	21
22) Summit	23
23) Tooele	24
24) Uintah	23
25) Utah	20
26) Wasatch	18
27) Washington	21
28) Wayne	28
29) Weber	23

(iii) Graze III. The following counties shall assess Graze III property based upon the per acre values below:

TABLE 11 GR III	
1) Beaver	18
2) Box Elder	15
3) Cache	15
4) Carbon	12
5) Daggett	12
6) Davis	13
7) Duchesne	14
8) Emery	14
9) Garfield	16
10) Grand	15
11) Iron	14
12) Juab	14
13) Kane	17
14) Millard	17

15) Morgan	12
16) Piute	17
17) Rich	14
18) Salt Lake	14
19) San Juan	15
20) Sanpete	14
21) Sevier	14
22) Summit	15
23) Tooele	15
24) Uintah	14
25) Utah	12
26) Wasatch	12
27) Washington	13
28) Wayne	18
29) Weber	15

(iv) Graze IV. The following counties shall assess Graze IV property based upon the per acre values listed below:

TABLE 12 GR IV	
1) Beaver	7
2) Box Elder	6
3) Cache	5
4) Carbon	5
5) Daggett	5
6) Davis	5
7) Duchesne	5
8) Emery	5
9) Garfield	6
10) Grand	5
11) Iron	6
12) Juab	5
13) Kane	5
14) Millard	6
15) Morgan	6
16) Piute	6
17) Rich	5
18) Salt Lake	5
19) San Juan	5
20) Sanpete	5
21) Sevier	5
22) Summit	5
23) Tooele	6
24) Uintah	6
25) Utah	5
26) Wasatch	5
27) Washington	5
28) Wayne	6
29) Weber	6

(f) Land classified as nonproductive shall be assessed as follows on a per acre basis:

TABLE 13 Nonproductive Land	
Nonproductive Land	
1) All Counties	5

R884-24P-55. Counties to Establish Ordinance for Tax Sale Procedures Pursuant to Utah Code Ann. Section 59-2-1351.1.

A. "Collusive bidding" means any agreement or understanding reached by two or more parties that in any way alters the bids the parties would otherwise offer absent the agreement or understanding.

B. Each county shall establish a written ordinance for real property tax sale procedures.

C. The written ordinance required under B. shall be displayed in a public place and shall be available to all interested parties.

D. The tax sale ordinance shall address, as a minimum, the following issues:

1. bidder registration procedures;
2. redemption rights and procedures;
3. prohibition of collusive bidding;
4. conflict of interest prohibitions and disclosure requirements;
5. criteria for accepting or rejecting bids;
6. sale ratification procedures;

7. criteria for granting bidder preference;
8. procedures for recording tax deeds;
9. payments methods and procedures;
10. procedures for contesting bids and sales;
11. criteria for striking properties to the county;
12. procedures for disclosing properties withdrawn from the sale for reasons other than redemption; and
13. disclaimers by the county with respect to sale procedures and actions.

R884-24P-56. Assessment, Collection, and Apportionment of Property Tax on Commercial Transportation Property Pursuant to Utah Code Ann. Sections 41-1a-301 and 59-2-801.

A. For purposes of Section 59-2-801, the previous year's statewide rate shall be calculated as follows:

1. Each county's overall tax rate is multiplied by the county's percent of total lane miles of principal routes.
2. The values obtained in A.1. for each county are summed to arrive at the statewide rate.

B. The assessment of vehicles apportioned under Section 41-1a-301 shall be apportioned at the same percentage ratio that has been filed with the Motor Vehicle Division of the State Tax Commission for determining the proration of registration fees.

C. For purposes of Section 59-2-801(2), principal route means lane miles of interstate highways and clover leaves, U.S. highways, and state highways extending through each county as determined by the Commission from current state Geographic Information System databases.

R884-24P-57. Judgment Levies Pursuant to Utah Code Ann. Sections 59-2-918.5, 59-2-924, 59-2-1328, and 59-2-1330.

A. Definitions.

1. "Issued" means the date on which the judgment is signed.
2. "One percent of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year" includes any revenues collected by a judgment levy imposed in the prior year.

B. A taxing entity's share of a judgment or order shall include the taxing entity's share of any interest that must be paid with the judgment or order.

C. The judgment levy public hearing required by Section 59-2-918.5 shall be held as follows:

1. For taxing entities operating under a July 1 through June 30 fiscal year, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.
2. For taxing entities operating under a January 1 through December 31 fiscal year:
 - a) for judgments issued from the prior June 1 through December 15, the public hearing shall be held at the same time as the hearing at which the annual budget is adopted;
 - b) for judgments issued from the prior December 16 through May 31, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.
3. If the taxing entity is required to hold a hearing under Section 59-2-919, the judgment levy hearing required by C.1. and C.2.b) shall be held at the same time as the hearing required under Section 59-2-919.
4. If the Section 59-2-918.5 advertisement is combined with the Section 59-2-918 or 59-2-919 advertisement, the combined advertisement shall aggregate the general tax increase and judgment levy information.

E. In the case of taxing entities operating under a January 1 through December 31 fiscal year, the advertisement for judgments issued from the previous December 16 through May 31 shall include any judgments issued from the previous June 1

through December 15 that the taxing entity advertised and budgeted for at its December budget hearing.

F. All taxing entities imposing a judgment levy shall file with the Tax Commission a signed statement certifying that all judgments for which the judgment levy is imposed have met the statutory requirements for imposition of a judgment levy.

1. The signed statement shall contain the following information for each judgment included in the judgment levy:
 - a) the name of the taxpayer awarded the judgment;
 - b) the appeal number of the judgment; and
 - c) the taxing entity's pro rata share of the judgment.
2. Along with the signed statement, the taxing entity must provide the Tax Commission the following:
 - a) a copy of all judgment levy newspaper advertisements required;
 - b) the dates all required judgment levy advertisements were published in the newspaper;
 - c) a copy of the final resolution imposing the judgment levy;
 - d) a copy of the Notice of Property Valuation and Tax Changes, if required; and
 - e) any other information required by the Tax Commission.

G. The provisions of House Bill 268, Truth in Taxation - Judgment Levy (1999 General Session), do not apply to judgments issued prior to January 1, 1999.

R884-24P-58. One-Time Decrease in Certified Rate Based on Estimated County Option Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated sales tax revenue to be distributed to a county under Section 59-12-1102 shall be determined based on the following formula:

1. sharedown of the commission's sales tax econometric model based on historic patterns, weighted 40 percent;
2. time series models, weighted 40 percent; and
3. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, weighted 20 percent.

R884-24P-59. One-Time Decrease in Certified Rate Based on Estimated Additional Resort Communities Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated additional resort communities sales tax revenue to be distributed to a municipality under Section 59-12-402 shall be determined based on the following formula:

1. time series model, econometric model, or simple average, based upon the availability of and variation in the data, weighted 75 percent; and
2. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Section 59-12-402, weighted 25 percent.

R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain

subject to the ad valorem property tax:

1. vintage vehicles;
2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;
3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;
4. mobile and manufactured homes;
5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial vehicle, for purposes of Section 59-2-405.1, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the age of the vehicle under E. on the first day of the registration period for which the registrant:

1. in the case of an original registration, registers the vehicle; or
2. in the case of a renewal of registration, renews the registration of the vehicle in accordance with Section 41-1a-216.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.
2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the

Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by .015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.

A. Definitions.

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

2. "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, which is either self-propelled or pulled by another vehicle.

a) Recreational vehicle includes a travel trailer, a camping trailer, a motor home, and a fifth wheel trailer.

b) Recreational vehicle does not include a van unless specifically designed or modified for use as a temporary dwelling.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;

2. watercraft required to be registered with the state;

3. recreational vehicles required to be registered with the state; and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2-405 to determine the value of personal property that may be

subtracted from the allocated unit value.

F. If a property's valuation is appealed to the county board of equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33.

G. The county assessor may change the fair market value of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

4. Personal property belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405 uniform fee as long as the personal property is kept in another state.

5. Noncommercial trailers weighing 750 pounds or less are not subject to the Section 59-2-405 uniform fee or ad valorem property tax but may be registered at the request of the owner.

I. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the Section 59-2-405 uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2-217 and 59-2-309 as a condition precedent to registration.

J. The situs of personal property subject to the Section 59-2-405 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased personal property shall be the tax area of the purchaser's domicile, unless the personal property will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all personal property subject to state registration and its corresponding taxable situs.

4. Section 59-2-405 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the

Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405 uniform fee.

M. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-62. Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201.

(1) Purpose. The purpose of this rule is to:

(a) specify consistent mass appraisal methodologies to be used by the Property Tax Division (Division) in the valuation of tangible property assessable by the Commission; and

(b) identify preferred valuation methodologies to be considered by any party making an appraisal of an individual unitary property.

(2) Definitions:

(a) "Cost regulated utility" means any public utility assessable by the Commission whose allowed revenues are determined by a rate of return applied to a rate base set by a state or federal regulatory commission.

(b) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and best use, subject to regulatory constraints.

(c) "Rate base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

(d) "Unitary property" means operating property that is assessed by the Commission pursuant to Section 59-2-201(1)(a) through (c).

(i) Unitary properties include:

(A) all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state; and

(B) all property of public utilities as defined in Section 59-2-102.

(ii) These properties, some of which may be cost regulated utilities, are defined under one of the following categories.

(A) "Telecommunication properties" include the operating property of local exchange carriers, local access providers, long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers, and other similar properties.

(B) "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations, including electric generation, transmission, and distribution companies, and other similar entities.

(C) "Transportation properties" include the operating property of all airlines, air charter services, air contract services, including major and small passenger carriers and major and small air freighters, long haul and short line railroads, and other similar properties.

(3) All tangible operating property owned, leased, or used by unitary companies is subject to assessment and taxation according to its fair market value as of January 1, and as provided in Utah Constitution Article XIII, Section 2. Intangible property as defined under Section 59-2-102 is not subject to assessment and taxation.

(4) General Valuation Principles. Unitary properties shall be assessed at fair market value based on generally accepted

appraisal theory as provided under this rule.

(a) The assemblage or enhanced value attributable to the tangible property should be included in the assessed value. See *Beaver County v. WilTel, Inc.*, 995 P.2d 602 (Utah 2000). The value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the reconciliation process.

(b) The preferred methods to determine fair market value are the cost approach and a yield capitalization income indicator as set forth in Subsection (5).

(i) Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary to more accurately estimate fair market value.

(ii) Direct capitalization and the stock and debt method typically capture the value of intangible property at higher levels than other methods. To the extent intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the reconciliation process, as set forth in Subsection (5)(d).

(iii) Preferred valuation methods as set forth in this rule are, unless otherwise stated, rebuttable presumptions, established for purposes of consistency in mass appraisal. Any party challenging a preferred valuation method must demonstrate, by a preponderance of evidence, that the proposed alternative establishes a more accurate estimate of fair market value.

(c) Non-operating Property. Property that is not necessary to the operation of unitary properties and is assessed by a local county assessor, and property separately assessed by the Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

(5) Appraisal Methodologies.

(a) Cost Approach. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. A cost indicator may be developed under one or more of the following methods: replacement cost new less depreciation (RCNLD), reproduction cost less depreciation (reproduction cost), and historic cost less depreciation (HCLD).

(i) "Depreciation" is the loss in value from any cause. Different professions recognize two distinct definitions or types of depreciation.

(A) Accounting. Depreciation, often called "book" or "accumulated" depreciation, is calculated according to generally accepted accounting principles or regulatory guidelines. It is the amount of capital investment written off on a firm's accounting records in order to allocate the original or historic cost of an asset over its life. Book depreciation is typically applied to historic cost to derive HCLD.

(B) Appraisal. Depreciation, sometimes referred to as "accrued" depreciation, is the difference between the market value of an improvement and its cost new. Depreciation is typically applied to replacement or reproduction cost, but should be applied to historic cost if market conditions so indicate. There are three types of depreciation:

(I) Physical deterioration results from regular use and normal aging, which includes wear and tear, decay, and the impact of the elements.

(II) Functional obsolescence is caused by internal property characteristics or flaws in the structure, design, or materials that diminish the utility of an improvement.

(III) External, or economic, obsolescence is an impairment of an improvement due to negative influences from outside the boundaries of the property, and is generally incurable. These influences usually cannot be controlled by the property owner or user.

(ii) Replacement cost is the estimated cost to construct, at

current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout. The use of replacement cost instead of reproduction cost eliminates the need to estimate some forms of functional obsolescence.

(iii) Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying any functional obsolescence.

(iv) Historic cost is the original construction or acquisition cost as recorded on a firm's accounting records. Depending upon the industry, it may be appropriate to trend HCLD to current costs. Only trending indexes commonly recognized by the specific industry may be used to adjust HCLD.

(v) RCNLD may be impractical to implement; therefore the preferred cost indicator of value in a mass appraisal environment for unitary property is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value.

(b) Income Capitalization Approach. Under the principle of anticipation, benefits from income in the future may be capitalized into an estimate of present value.

(i) Yield Capitalization. The yield capitalization formula is $CF/(k-g)$, where "CF" is a single year's normalized cash flow, "k" is the nominal, risk adjusted discount or yield rate, and "g" is the expected growth rate of the cash flow.

(A) Cash flow is restricted to the operating property in existence on the lien date, together with any replacements intended to maintain, but not expand or modify, existing capacity or function. Cash flow is calculated as net operating income (NOI) plus non-cash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to working capital necessary to achieve the expected growth "g". Information necessary for the Division to calculate the cash flow shall be summarized and submitted to the Division by March 1 on a form provided by the Division.

(I) NOI is defined as net income plus interest.

(II) Capital expenditures should include only those necessary to replace or maintain existing plant and should not include any expenditure intended primarily for expansion or productivity and capacity enhancements.

(III) Cash flow is to be projected for the year immediately following the lien date, and may be estimated by reviewing historic cash flows, forecasting future cash flows, or a combination of both.

(Aa) If cash flows for a subsidiary company are not available or are not allocated on the parent company's cash flow statements, a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. The subsidiary's total is divided by the parent's total to derive the allocation percentage to estimate the subsidiary's cash flow.

(Bb) If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, the Division may estimate cash flow using the best information available.

(B) The discount rate (k) shall be based upon a weighted average cost of capital (WACC) considering current market debt rates and equity yields. WACC should reflect a typical capital structure for comparable companies within the industry.

(I) The cost of debt should reflect the current market rate (yield to maturity) of debt with the same credit rating as the subject company.

(II) The cost of equity is estimated using standard methods such as the capital asset pricing model (CAPM), the Risk Premium and Dividend Growth models, or other recognized models.

(Aa) The CAPM is the preferred method to estimate the

cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 50% in the correlation.

(Bb) The CAPM formula is $k(e) = R(f) + (\text{Beta} \times \text{Risk Premium})$, where $k(e)$ is the cost of equity and $R(f)$ is the risk free rate.

(Cc) The risk free rate shall be the current market rate on 20-year Treasury bonds.

(Dd) The beta should reflect an average or value-weighted average of comparable companies and should be drawn consistently from Value Line or an equivalent source. The beta of the specific assessed property should also be considered.

(Ee) The risk premium shall be the arithmetic average of the spread between the return on stocks and the income return on long term bonds for the entire historical period contained in the Ibbotson Yearbook published immediately following the lien date.

(C) The growth rate "g" is the expected future growth of the cash flow attributable to assets in place on the lien date, and any future replacement assets.

(I) If insufficient information is available to the Division, either from public sources or from the taxpayer, to determine a rate, "g" will be the expected inflationary rate in the Gross Domestic Product Price Deflator obtained in Value Line. The growth rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

(ii) A discounted cash flow (DCF) method may be impractical to implement in a mass appraisal environment, but may be used when reliable cash flow estimates can be established.

(A) A DCF model should incorporate for the terminal year, and to the extent possible for the holding period, growth and discount rate assumptions that would be used in the yield capitalization method defined under Subsection (5)(b)(i).

(B) Forecasted growth may be used where unusual income patterns are attributed to

- (I) unused capacity;
- (II) economic conditions; or
- (III) similar circumstances.

(C) Growth may not be attributed to assets not in place as of the lien date.

(iii) Direct Capitalization is an income technique that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by a capitalization rate or by multiplying the normalized income estimate by an income factor.

(c) Market or Sales Comparison Approach. The market value of property is directly related to the prices of comparable, competitive properties. The market approach is estimated by comparing the subject property to similar properties that have recently sold.

(I) Sales of comparable property must, to the extent possible, be adjusted for elements of comparison, including market conditions, financing, location, physical characteristics, and economic characteristics. When considering the sales of stock, business enterprises, or other properties that include intangible assets, adjustments must be made for those intangibles.

(II) Because sales of unitary properties are infrequent, a stock and debt indicator may be viewed as a surrogate for the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liabilities plus shareholder's equity.

(d) Reconciliation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, quantity, and quality of data, as well as the strength and weaknesses of each value indicator.

Weighting percentages used to correlate the value approaches will generally vary by industry, and may vary by company if evidence exists to support a different weighting. The Division must disclose in writing the weighting percentages used in the reconciliation for the final assessment. Any departure from the prior year's weighting must be explained in writing.

(6) Property Specific Considerations. Because of unique characteristics of properties and industries, modifications or alternatives to the general value indicators may be required for specific industries.

(a) Cost Regulated Utilities.

(i) HCLD is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. HCLD is calculated by taking the historic cost less depreciation as reflected in the utility's net plant accounts, and then:

(A) subtracting intangible property;

(B) subtracting any items not included in the utility's rate base (e.g., deferred income taxes and, if appropriate, acquisition adjustments); and

(C) adding any taxable items not included in the utility's net plant account or rate base.

(ii) Deferred Income Taxes, also referred to as DFIT, is an accounting entry that reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude deferred income taxes from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by deferred income taxes for rate base regulated companies, they shall be removed from HCLD.

(iii) Items excluded from rate base under Subsections (6)(a)(i)(A) or (B) should not be subtracted from HCLD to the extent it can be shown that regulators would likely permit the rate base of a potential purchaser to include a premium over existing rate base.

(b)(i) Railroads.

(ii) The cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value.

(c)(i) Wind Power Generating Plants.

(ii) Due to the unique financial nature of operating wind power generating plants, the following tax credits provided to entities operating wind power generating plants shall be identified and removed as intangible property from the indicators of value considered under this rule:

(A) renewable electricity production credits for wind power generation pursuant to Section 45, Internal Revenue Code; and

(B) refundable wind energy tax credits pursuant to Section 59-7-614(2)(c).

R884-24P-63. Performance Standards and Training Requirements Pursuant to Utah Code Ann. Section 59-2-406.

A. The party contracting to perform services shall develop a written customer service performance plan within 60 days after the contract for performance of services is signed.

1. The customer service performance plan shall address:

a) procedures the contracting party will follow to minimize the time a customer waits in line; and
b) the manner in which the contracting party will promote alternative methods of registration.

2. The party contracting to perform services shall provide a copy of its customer service performance plan to the party for whom it provides services.

3. The party for whom the services are provided may, no more often than semiannually, audit the contracting party's performance based on its customer service performance plan, and may report the results of the audit to the county commission

or the state tax commissioners, as applicable.

B. Each county office contracting to perform services shall conduct initial training of its new employees.

C. The Tax Commission shall provide regularly scheduled training for all county offices contracting to perform motor vehicle functions.

R884-24P-64. Determination and Application of Taxable Value for Purposes of the Property Tax Exemptions for Disabled Veterans and the Blind Pursuant to Utah Code Ann. Sections 59-2-1104 and 59-2-1106.

For purposes of Sections 59-2-1104 and 59-2-1106, the taxable value of tangible personal property subject to a uniform fee under Sections 59-2-405.1 or 59-2-405.2 shall be calculated by dividing the uniform fee the tangible personal property is subject to by .015.

R884-24P-65. Assessment of Transitory Personal Property Pursuant to Utah Code Ann. Section 59-2-402.

A. "Transitory personal property" means tangible personal property that is used or operated primarily at a location other than a fixed place of business of the property owner or lessee.

B. Transitory personal property in the state on January 1 shall be assessed at 100 percent of fair market value.

C. Transitory personal property that is not in the state on January 1 is subject to a proportional assessment when it has been in the state for 90 consecutive days in a calendar year.

1. The determination of whether transitory personal property has been in the state for 90 consecutive days shall include the days the property is outside the state if, within 10 days of its removal from the state, the property is:

- a) brought back into the state; or
- b) substituted with transitory personal property that performs the same function.

D. Once transitory personal property satisfies the conditions under C., tax shall be proportionally assessed for the period:

1. beginning on the first day of the month in which the property was brought into Utah; and
2. for the number of months remaining in the calendar year.

E. An owner of taxable transitory personal property who removes the property from the state prior to December and who qualifies for a refund of taxes assessed and paid, shall receive a refund based on the number of months remaining in the calendar year at the time the property is removed from the state and for which the tax has been paid.

1. The refund provisions of this subsection apply to transitory personal property taxes assessed under B. and C.

2. For purposes of determining the refund under this subsection, any portion of a month remaining shall be counted as a full month.

F. If tax has been paid for transitory personal property and that property is subsequently moved to another county in Utah:

1. No additional assessment may be imposed by any county to which the property is subsequently moved; and
2. No portion of the assessed tax may be transferred to the subsequent county.

R884-24P-66. Appeal to County Board of Equalization Pursuant to Utah Code Ann. Section 59-2-1004.

A.1. "Factual error" means an error that is:

- a) objectively verifiable without the exercise of discretion, opinion, or judgment, and
 - b) demonstrated by clear and convincing evidence.
2. Factual error includes:
- a) a mistake in the description of the size, use, or ownership of a property;
 - b) a clerical or typographical error in reporting or entering

the data used to establish valuation or equalization;

c) an error in the classification of a property that is eligible for a property tax exemption under:

- (1) Section 59-2-103; or
- (2) Title 59, Chapter 2, Part 11;

d) valuation of a property that is not in existence on the lien date; and

e) a valuation of a property assessed more than once, or by the wrong assessing authority.

B. Except as provided in D., a county board of equalization shall accept an application to appeal the valuation or equalization of a property owner's real property that is filed after the time period prescribed by Section 59-2-1004(2)(a) if any of the following conditions apply:

1. During the period prescribed by Section 59-2-1004(2)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal.

2. During the period prescribed by Section 59-2-1004(2)(a), the property owner or an immediate family member of the property owner died, and no co-owner of the property was capable of filing an appeal.

3. The county did not comply with the notification requirements of Section 59-2-919(4).

4. A factual error is discovered in the county records pertaining to the subject property.

5. The property owner was unable to file an appeal within the time period prescribed by Section 59-2-1004(2)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Section 59-2-1004(2)(a), and no co-owner of the property was capable of filing an appeal.

C. Appeals accepted under B.4. shall be limited to correction of the factual error and any resulting changes to the property's valuation.

D. The provisions of B. apply only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

E. The provisions of this rule apply only to appeals to the county board of equalization. For information regarding appeals of county board of equalization decisions to the Commission, please see Section 59-2-1006 and R861-1A-9.

R884-24P-67. Information Required for Valuation of Low-Income Housing Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-301.3.

A. The purpose of this rule is to provide an annual reporting mechanism to assist county assessors in gathering data necessary for accurate valuation of low-income housing projects.

B. The Utah Housing Corporation shall provide the following information that it has obtained from the owner of a low-income housing project to the commission:

1. for each low-income housing project in the state that is eligible for a low-income housing tax credit:

- a) the Utah Housing Corporation project identification number;
- b) the project name;
- c) the project address;
- d) the city in which the project is located;
- e) the county in which the project is located;
- f) the building identification number assigned by the Internal Revenue Service for each building included in the project;
- g) the building address for each building included in the project;
- h) the total apartment units included in the project;
- i) the total apartment units in the project that are eligible for low-income housing tax credits;

j) the period of time for which the project is subject to rent restrictions under an agreement described in B.2.;

k) whether the project is:

- (1) the rehabilitation of an existing building; or
- (2) new construction;

l) the date on which the project was placed in service;

m) the total square feet of the buildings included in the project;

n) the maximum annual federal low-income housing tax credits for which the project is eligible;

o) the maximum annual state low-income housing tax credits for which the project is eligible; and

p) for each apartment unit included in the project:

- (1) the number of bedrooms in the apartment unit;
- (2) the size of the apartment unit in square feet; and
- (3) any rent limitation to which the apartment unit is subject; and

2. a recorded copy of the agreement entered into by the Utah Housing Corporation and the property owner for the low-income housing project; and

3. construction cost certifications for the project received from the low-income housing project owner.

C. The Utah Housing Corporation shall provide the commission the information under B. by January 31 of the year following the year in which a project is placed into service.

D. 1. Except as provided in D.2., by April 30 of each year, the owner of a low-income housing project shall provide the county assessor of the county in which the project is located the following project information for the prior year:

- a) operating statement;
- b) rent rolls; and
- c) federal and commercial financing terms and agreements.

2. Notwithstanding D.1., the information a low-income project housing owner shall provide by April 30, 2004 to a county assessor shall include a 3-year history of the information required under D.1.

E. A county assessor shall assess and list the property described in this rule using the best information obtainable if the property owner fails to provide the information required under D.

R884-24P-68. Property Tax Exemption for Taxable Tangible Personal Property With a Total Aggregate Fair Market Value of \$3,500 or Less Pursuant to Utah Code Ann. Section 59-2-1115.

(1) The purpose of this rule is to provide for the administration of the property tax exemption for a taxpayer whose taxable tangible personal property has a total aggregate fair market value of \$3,500 or less.

(a) Total aggregate fair market value is determined by aggregating the fair market value of all taxable tangible personal property owned by a taxpayer within a county.

(b) If taxable tangible personal property is required to be apportioned among counties, the determination of whether taxable tangible personal property has a total aggregate fair market value of \$3,500 or less shall be made after apportionment.

(2) A taxpayer shall apply for the exemption provided under Section 59-2-1115:

(a) if the county assessor has requested a signed statement from the taxpayer under Section 59-2-306, within the time frame set forth under Section 59-2-306 for filing the signed statement; or

(b) if the county assessor has not requested a signed statement from the taxpayer under Section 59-2-306, within 30 days from the day the taxpayer is requested to indicate whether the taxpayer has \$3,500 or less of taxable tangible personal property in the county.

KEY: taxation, personal property, property tax, appraisals
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9-2-201
11-13-302
41-1a-202
41-1a-301
59-1-210
59-2-102
59-2-103
59-2-103.5
59-2-104
59-2-201
59-2-210
59-2-211
59-2-301
59-2-301.3
59-2-302
59-2-303
59-2-305
59-2-306
59-2-401
59-2-402
59-2-404
59-2-405
59-2-405.1
59-2-406
59-2-508
59-2-515
59-2-701
59-2-702
59-2-703
59-2-704
59-2-704.5
59-2-705
59-2-801
59-2-918 through 59-2-924
59-2-1002
59-2-1004
59-2-1005
59-2-1006
59-2-1101
59-2-1102
59-2-1104
59-2-1106
59-2-1107 through 59-2-1109
59-2-1113
59-2-1115
59-2-1202
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