R23. Administrative Services, Facilities Construction and Management.
R23-3. Planning and Programming for Capital Projects.
R23-3-1. Purpose and Authority.

(1) This rule establishes policies and procedures for the authorization, funding, and development of programs for capital development and capital improvement projects and the use and administration of the Planning Fund.

(2) The Board's authority to administer the planning process for state facilities is contained in Section 63A-5-103.

(3) The statutes governing the Planning Fund are contained in Section 63A-5-211.

(4) The Board's authority to make rules for its duties and those of the Division is set forth in Subsection 63A-5-103(1).

R23-3-2. Definitions.

(1) "Agency" means each department, agency, institution, commission, board, or other administrative unit of the State of Utah.

(2) "Board" means the State Building Board established pursuant to Section 63A-5-101.

(3) "Capital Development" is defined in Section 63A-5-104.

(4) "Capital Improvement" is defined in Section 63A-5-104.

(5) "Director" means the Director of the Division, including, unless otherwise stated, his duly authorized designee.

(6) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.

(7) "Planning Fund" means the revolving fund created pursuant to Section 63A-5-211 for the purposes outlined therein.

(8) "Program" means a document containing a detailed description of the scope, the required areas and their relationships, and the estimated cost of a construction project.

(a) "Program" typically refers to an architectural program but, as used in this rule, the term "program" includes studies that approximate an architectural program in purpose and detail.

(b) "Program" does not mean feasibility studies, building evaluations, master plans, or general project descriptions prepared for purposes of soliciting funding through donations or grants.

R23-3-3. When Programs Are Required.

(1) For capital development projects, a program must be developed before the design may begin unless the Director determines that a program is not needed for that specific project. Examples of capital development projects that may not require a program include land purchases, building purchases requiring little or no remodeling, and projects repeating a previously used design.

(2) For capital improvement projects, the Director shall determine whether the nature of the project requires that a program be prepared.

R23-3-4. Authorization of Programs.

(1) The initiation of a program for a capital development project must be approved by the Legislature or the Board if it is anticipated that state funds will be requested for the design or construction of the project.

(2) When requesting Board approval, the agency shall justify the need for initiating the programming process at that point in time and also address the level of support for funding the project soon after the program will be completed.

R23-3-5. Funding of Programs.

Programs may be funded from one of the following sources.

(1) Funds appropriated for that purpose by the Legislature.

(2) Funds provided by the agency.

(a) This would typically be the funding source for the development of programs before the Legislature funds the project.

(b) Funds advanced by agencies for programming costs may be included in the project budget request but no assurance can be given that project funds will be available to reimburse the agency.

(c) Agencies that advance funds for programming that would otherwise lapse may not be reimbursed in a subsequent fiscal year.

(3) If an agency is able to demonstrate to the Board that there is no other funding source for programming for a project that is likely to be funded in the upcoming legislative session, it may request to borrow funds from the Planning Fund as provided for in Section R23-3-8.

R23-3-6. Administration of Programming.

(1) The development of programs shall be administered by the Division in cooperation with the requesting agency unless the Director authorizes the requesting agency to administer the programming.

(2) This Section R23-3-6 does not apply to projects that are exempt from the Division's administration pursuant to Subsection 63A-5-206(3).

R23-3-7. Restrictions of Programming Firm.

(1) A firm that prepares a program for a project may not be selected as the lead design firm or be a subconsultant to the lead design firm or contractor of that project.

(2) The restriction contained in subsection (1) does not apply to:

(a) a subconsultant to the firm preparing the program unless the procurement documents for the selection of the programming firm state otherwise;

(b) a single selection of a firm to provide both the programming and design services for a project;

(c) the selection of a design firm if the scope and cost of the design services are small enough to be procured under the small purchase of architect/engineer services contained in Section R23-2-19;

(d) firms entering into contracts for programming services prior to the effective date of this rule in which case the programming firm will be subject to any restrictions contained in the solicitation or contract for those programming services; or

(e) projects where the Director makes a determination that it is in the best interests of the State to waive the requirements of this Section.

R23-3-8. Use and Reimbursement of Planning Fund.

(1) The Planning Fund may be used for the purposes stated in Section 63A-5-211 including the development of:

(a) facility master plans;

(b) programs; and

(c) building evaluations or studies to determine the feasibility, scope and cost of capital development and capital improvement requests.

(2) Expenditures from the Planning Fund must be approved by the Director.

(3) Expenditures in excess of $25,000 for a single planning or programming purpose must also be approved in advance by the Board.

(4) The Planning Fund shall be reimbursed from the next funded or authorized project for that agency that is related to the purposes for which the expenditure was made from the Planning Fund.

(5) The Division shall report changes in the status of the

Planning Fund to the Board.

R23-3-9. Development and Approval of Master Plans.

(1) For each major campus of state-owned buildings, the agency with primary responsibility for operations occurring at the campus shall, in cooperation with the Division, develop and maintain a master plan that reflects the current and projected development of the campus.

(2) The purpose of the master plan is to encourage long term planning and to guide future development.

(3) Master plans for campuses and facilities not covered by Subsection (1) may be developed upon the request of the Board or when the Division and the agency determine that a master plan is necessary or appropriate.

(4) The initial master plan for a campus, and any substantial modifications thereafter, shall be presented to the Board for approval.

KEY: planning, public buildings, design, procurement
March 24, 2003 63A-5-103
Notice of Continuation July 28, 2004 63A-5-211

R25. Administrative Services, Finance.
R25-7. Travel-Related Reimbursements for State Employees.
R25-7-1. Purpose.

The purpose of this rule is to establish procedures to be followed by departments to pay travel-related reimbursements to state employees.

R25-7-2. Authority and Exemptions.

(1) This rule is established pursuant to Section 63A-3-107, which authorizes the Division of Finance to adopt rules covering in-state and out-of-state travel.

(2) Senate Bill 1, Line Item 60 of the 2000 legislative session (2000 Utah Laws 344), as continued by House Bill 1, Item 57 of the 2001 legislative session (2001 Utah Laws 334), Senate Bill 1, Item 49 of the 2002 legislative session (2002 Utah Laws 277), House Bill 1, Item 52 of the 2003 legislative session (2003 Utah Laws 342), and Senate Bill 1, Item 50 of the 2004 legislative session, contains intent language directing that the mileage reimbursement rate authorized in Section R25-7-10 also be applied to legislative staff, the Judicial Branch and to the Utah System of Higher Education.

R25-7-3. Definitions.

(1) "Agency" means any department, division, commission, council, board, bureau, committee, office, or other administrative subunit of state government.

(2) "Boards" means policy boards, advisory boards, councils, or committees within state government.

(3) "Department" means all executive departments of state government.

(4) "Finance" means the Division of Finance.

(5) "Per diem" means an allowance paid daily.

(6) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."

(7) "Rate" means an amount of money.

(8) "Reimbursement" means money paid to compensate an employee for money spent.

(9) "State employee" means any person who is paid on the state payroll system.

R25-7-4. Eligible Expenses.

(1) Reimbursements are intended to cover all normal areas of expense.

(2) Requests for reimbursement must be accompanied by original receipts for all expenses except those for which flat allowance amounts are established.

R25-7-5. Approvals.

(1) For insurance purposes, all state business travel, whether reimbursed by the state or not, must have prior approval by an appropriate authority. This also includes non-state employees where the state is paying for the travel expenses.

(2) Both in-state and out-of-state travel must be approved by the department head or designee.

(3) Exceptions to the prior approval for out-of-state travel must be justified in the comments section of the Request for Out-of-State Travel Authorization, form FI 5, or on an attachment, and must be approved by the Department Director or the designee.

(4) The Department Director, the Executive Director, or the designee must approve all travel to out-of-state functions where more than two employees from the same department are attending the same function at the same time.

R25-7-6. Reimbursement for Meals.

(1) State employees who travel on state business may be eligible for a meal reimbursement.

(2) The reimbursement will include tax, tips, and other expenses associated with the meal.

(3) Allowances for in-state travel differ from those for out-of-state travel.

(a) The daily travel meal allowance for in-state travel is $30.00 and is computed according to the rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances

Meals	Rate
Breakfast	$6.00
Lunch	$9.00
Dinner	$15.00
Total	$30.00

(b) The daily travel meal allowance for out-of-state travel is $38.00 and is computed according to the rates listed in the following table.

TABLE 2

Out-of-State Travel Meal Allowances

Meals	Rate
Breakfast	$9.00
Lunch	$11.00
Dinner	$18.00
Total	$38.00

(4) When traveling to premium cities (New York, Los Angeles, Chicago, San Francisco, Washington DC, Boston, and Atlanta), the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the actual meal cost, with original receipts, up to $50 per day.

(a) The traveler will qualify for premium rates on the day the travel begins and/or the day the travel ends only if the trip is of sufficient duration to qualify for all meals on that day.

(b) Complimentary meals of a hotel, motel and/or association and meals included in registration costs are deducted from the $50 premium allowance as follows:

(i) If breakfast is provided deduct $12, leaving a premium allowance for lunch and dinner of actual up to $38.

(ii) If lunch is provided deduct $15, leaving a premium allowance for breakfast and dinner of actual up to $35.

(iii) If dinner is provided deduct $23, leaving a premium allowance for breakfast and dinner of actual up to $27.

(c) The traveler must use the same method of reimbursement for an entire day.

(d) Actual meal cost includes tips.

(e) Alcoholic beverages are not reimbursable.

(5) When traveling in foreign countries, the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the reasonable, actual meal cost, with original receipts.

(a) The traveler may combine the reimbursement methods during a trip; however, he must use the same method of reimbursement for an entire day.

(b) Actual meal cost includes tips.

(c) Alcoholic beverages are not reimbursable.

(6) The meal reimbursement calculation is comprised of three parts:

(a) The day the travel begins. The traveler's entitlement is determined by the time of day he leaves his home base (the location the employee leaves from and/or returns to), as illustrated in the following table.

TABLE 3

The Day Travel Begins

1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
a.m.	a.m.	p.m.	p.m.

12:01-6:00	6:01-noon	12:01-6:00	6:01-midnight
*B, L, D	*L, D	*D	*no meals
In-State			
$30.00	$24.00	$15.00	$0
Out-of-State			
$38.00	$29.00	$18.00	$0

*B=Breakfast, L=Lunch, D=Dinner

(b) The days at the location.

(i) Complimentary meals of a hotel, motel, and/or association and meals included in the registration cost are deducted from the total daily meal allowance.

(ii) Meals provided on airlines will not reduce the meal allowance.

(c) The day the travel ends. The meal reimbursement the traveler is entitled to is determined by the time of day he returns to his home base, as illustrated in the following table.

TABLE 4

The Day Travel Ends

1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
a.m.	a.m.	p.m.	p.m.
12:01-6:00	6:01-noon	12:01-7:00	7:01-midnight
*no meals	*B	*B, L	*B, L, D
In-State			
$0	$6.00	$15.00	$30.00
Out-of-State			
$0	$9.00	$20.00	$38.00

*B=Breakfast, L=Lunch, D=Dinner

(7) An employee may be authorized by his Department Director or designee to receive a meal allowance when his destination is at least 100 miles from his home base and he does not stay overnight.

(a) Breakfast is paid when the employee leaves his home base before 6:01 a.m.

(b) Lunch is paid when the trip meets one of the following requirements:

(i) The employee is on an officially approved trip that warrants entitlement to breakfast and dinner.

(ii) The employee leaves his home base before 10 a.m. and returns after 2 p.m.

(iii) The Department Director provides prior written approval based on circumstances.

(c) Dinner is paid when the employee leaves his home base and returns after 7 p.m.

(d) The allowance is not considered an absolute right of the employee and is authorized at the discretion of the Department Director or designee.

R25-7-7. Meal Per Diem for Statutory Non-Salaried State Boards.

(1) When a board meets and conducts business activities during mealtime, the cost of meals may be charged as public expense.

(2) Where salaried employees of the State of Utah or other advisors or consultants must, of necessity, attend such a meeting in order to permit the board to carry on its business, the meals of such employees, advisors, or consultants may also be paid. In determining whether or not the presence of such employees, advisors, or consultants is necessary, the boards are requested to restrict the attendance of such employees, advisors, or consultants to those absolutely necessary at such mealtime meetings.

R25-7-8. Reimbursement for Lodging.

State employees who travel on state business may be eligible for a lodging reimbursement.

(1) Lodging is reimbursed for single occupancy only.

(2) For non-conference hotel in-state travel, where the department/traveler makes reservations through the State Travel Agency, the state will reimburse the actual cost up to $55 per night plus tax except in Moab, Cedar City, St. George, metropolitan Salt Lake City (Draper to Centerville), Ogden, Layton, Park City, Tooele, Heber City, Midway, and Provo/Orem. In these areas, the rates are:

(a) Moab, Cedar City, and St. George - $65 per night plus tax

(b) Metropolitan Salt Lake City (Draper to Centerville), Park City, Tooele, Heber City, and Midway - $68 per night plus tax

(c) Ogden, Layton, and Provo/Orem - $63 per night plus tax

(3) The state will reimburse the actual cost per night plus tax for out-of-state travel where the department/traveler makes reservations through the State Travel Agency.

(4) The same rates apply for in-state travel for stays at a non-conference hotel where the department/traveler makes their own reservations.

(5) For out-of-state travel, the state will reimburse the actual cost up to $65 per night plus tax.

(6) Exceptions will be allowed for unusual circumstances when approved in writing by the Department Director or designee prior to the trip.

(a) For out-of-state travel, the approval may be on the form FI 5.

(b) Attach the written approval to the Travel Reimbursement Request, form FI 51B or FI 51D.

(7) For stays at a conference hotel, the state will reimburse the actual cost plus tax for both in-state and out-of-state travel. The traveler must include the conference registration brochure with the Travel Reimbursement Request, form FI 51A or FI 51B.

(8) A proper receipt for lodging accommodations must accompany each request for reimbursement.

(a) The tissue copy of the MasterCard Corporate charge receipt is not acceptable.

(b) A proper receipt is a copy of the registration form generally used by motels and hotels which includes the following information: name of motel/hotel, street address, town and state, telephone number, current date, name of person/persons staying at the motel/hotel, date of occupancy, amount and date paid, signature of agent, number in the party, and single or double occupancy.

(9) Travelers may also elect to stay with friends or relatives or use their personal campers or trailer homes instead of staying in a hotel.

(a) With proof of staying overnight away from home on approved state business, the traveler will be reimbursed the following:

(i) $20 per night with no receipts required or

(ii) Actual cost up to $30 per night with a signed receipt from a facility such as a campground or trailer park, not from a private residence.

(10) Travelers who are on assignment away from their home base for longer than 90 days will be reimbursed as follows:

(a) First 30 days - follow regular rules for lodging and meals. Lodging receipt is required.

(b) After 30 days - $46 per day for lodging and meals. No receipt is required.

R25-7-9. Reimbursement for Incidentals.

State employees who travel on state business may be eligible for a reimbursement for incidental expenses.

(1) Travelers will be reimbursed for actual out-of-pocket costs for incidental items such as baggage tips and transportation costs.

(a) Tips for maid service, doormen, and meals are not reimbursable.

(b) No other gratuities will be reimbursed.

(c) Include an original receipt for each individual incidental item above $20.00 and for all airport parking.

(2) The state will reimburse incidental ground transportation and parking expenses.

(a) Travelers shall document all official business use of taxi, bus, parking, and other ground transportation including dates, destinations, parking locations, receipts, and amounts.

(b) Personal use of such transportation to restaurants is not reimbursable.

(c) Parking at the Salt Lake City airport will be reimbursed at a maximum of the airport long-term parking rate with a receipt.

(3) Registration should be paid in advance on a state warrant.

(a) A copy of the approved FI 5 form must be included with the Payment Voucher for out-of-state registrations.

(b) If a traveler must pay the registration when he arrives, the agency is expected to process a Payment Voucher and have the traveler take the state warrant with him.

(4) Telephone calls related to state business are reimbursed at the actual cost.

(a) The traveler shall list the amount of these calls separately on the Travel Reimbursement Request, form FI 51A or FI 51B.

(b) The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for business telephone calls and personal telephone calls made during stays of five nights or more.

(5) Allowances for personal telephone calls made while out of town on state business overnight will be based on the number of nights away from home.

(a) Four nights or less - actual amount up to $2.50 per night (documentation is not required for personal phone calls made during stays of four nights or less)

(b) Five to eleven nights - actual amount up to $20.00

(c) Twelve nights to thirty nights - actual amount up to $30.00

(d) More than thirty days - start over

(6) Actual laundry expenses up to $18.00 per week will be allowed for trips in excess of six consecutive nights, beginning after the sixth night out.

(a) The traveler must provide receipts for the laundry expense.

(b) For use of coin-operated laundry facilities, the traveler must provide a list of dates, locations, and amounts.

(7) An amount of $5 per day will be allowed for travelers away in excess of six consecutive nights beginning after the sixth night out.

(a) This amount covers miscellaneous incidentals not covered in this rule.

(b) This allowance is not available for travelers going to conferences.

R25-7-10. Reimbursement for Transportation.

State employees who travel on state business may be eligible for a transportation reimbursement.

(1) Air transportation is limited to Air Coach or Excursion class.

(a) All reservations (in-state and out-of-state) should be made through the State Travel Office for the least expensive air fare available at the time reservations are made.

(b) Only one change fee per trip will be reimbursed.

(c) The explanation for the change and any other exception to this rule must be given and approved by the Department Director or designee.

(d) In order to preserve insurance coverage, travelers must fly on tickets in their names only.

(2) Travelers may be reimbursed for mileage to and from the airport and long-term parking or away-from-the-airport parking.

(a) The maximum reimbursement for parking, whether travelers park at the airport or away from the airport, is the airport long-term parking rate.

(b) The parking receipt must be included with the Travel Reimbursement Request, form FI 51A or FI 51B.

(c) Travelers may be reimbursed for mileage to and from the airport to allow someone to drop them off and to pick them up.

(3) Travelers may use private vehicles with prior approval from the Department Director or designee.

(a) Only one person in a vehicle may receive the reimbursement, regardless of the number of people in the vehicle.

(b) Reimbursement for a private vehicle will be at the rate of 32 cents per mile, or 37 1/2 cents per mile if a state fleet vehicle is not available to the employee.

(c) Agencies may establish a reimbursement rate that is more restrictive than the rate established in this Section.

(d) Exceptions must be approved in writing by the Director of Finance.

(e) Mileage will be computed from the latest official state road map and will be limited to the most economical, usually traveled routes.

(f) The mileage rate is all-inclusive, and additional expenses such as parking and storage will not be allowed unless approved in writing by the Department Director.

(g) An approved Private Vehicle Usage Report, form FI 40, should be included with the department's payroll documentation reporting miles driven on state business during the payroll period.

(h) Departments may allow mileage reimbursement on an approved Travel Reimbursement Request, form FI 51A or FI 51B, if other costs associated with the trip are to be reimbursed at the same time.

(4) A traveler may choose to drive instead of flying if approved by the Department Director.

(a) If the traveler drives a state-owned vehicle, the traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of the airline trip. The traveler may also be reimbursed for incidental expenses such as toll fees and parking fees.

(b) If the traveler drives a privately-owned vehicle, reimbursement will be at the rate of 32 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Department Director.

(i) The lowest fare available within 30 days prior to the departure date will be used when calculating the cost of travel for comparison to private vehicle cost.

(ii) An itinerary printout which is available through the State Travel Office is required when the traveler is taking a private vehicle.

(c) The traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of an airline trip.

(d) These reimbursements are all-inclusive, and additional expenses such as parking and toll fees will not be allowed unless approved in writing by the Department Director.

(e) When submitting the reimbursement form, attach a schedule comparing the cost of driving with the cost of flying. The schedule should show that the total cost of the trip driving was less than or equal to the total cost of the trip flying.

(f) If the travel time taken for driving during the employee's normal work week is greater than that which would have occurred had the employee flown, the excess time used will be taken as annual leave and deducted on the Time and Attendance System.

(5) Use of rental vehicles must be approved in writing in

advance by the Department Director.

(a) An exception to advance approval of the use of rental vehicles shall be fully explained in writing with the request for reimbursement and approved by the Department Director.

(b) Detailed explanation is required if a rental vehicle is requested for a traveler staying at a conference hotel.

(c) When making rental car arrangements through the State Travel Agency, reserve the vehicle you need. Upgrades in size or model made when picking up the rental vehicle will not be reimbursed.

(i) State employees should rent vehicles to be used for state business in their own names, using the state contract so they will have full coverage under the state's liability insurance.

(ii) Rental vehicle reservations not made through the travel agency must be approved in advance by the Department Director.

(iii) The traveler will be reimbursed the actual rate charged by the rental agency.

(iv) The traveler must have approval for a rental car in order to be reimbursed for rental car parking.

(6) Travel by private airplane must be approved in advance by the Department Director or designee.

(a) The pilot must certify to the Department Director that he is certified to fly the plane being used for state business.

(b) If the plane is owned by the pilot/employee, he must certify the existence of at least $500,000 of liability insurance coverage.

(c) If the plane is a rental, the pilot must provide written certification from the rental agency that his insurance covers the traveler and the state as insured. The insurance must be adequate to cover any physical damage to the plane and at least $500,000 for liability coverage.

(d) Reimbursement will be made at 50 cents per mile.

(e) Mileage calculation is based on air mileage and is limited to the most economical, usually-traveled route.

(7) Travel by private motorcycle must be approved prior to the trip by the Department Director or designee. Travel will be reimbursed at 16 cents per mile.

(8) A car allowance may be allowed in lieu of mileage reimbursement in certain cases. Prior written approval from the Department Director, the Department of Administrative Services, and the Governor is required.

KEY: air travel, per diem allowances, state employees, transportation
July 2, 2004 63A-3-107
Notice of Continuation May 1, 2003 63A-3-106
2000 Utah Laws 344
2001 Utah Laws 334
2002 Utah Laws 277
2003 Utah Laws 342
S.B. 1 Item 50, 2004 General Session

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

(1) The Executive Secretary shall respond in writing to the notice of appeal within 3 business days.

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

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

R35-1-2. Procedures for Appeal Hearings.

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

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

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

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

(5) Questioning of the evidence presented and the witnesses by Committee members shall be permitted.

(6) The Committee may view documents in camera.

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

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

(9) Committee deliberations.

(a) Following deliberations, a motion to grant in whole or part or to deny the petitioner's request shall be made by a member. Following discussion of the motion, the Chair shall call for the question. The motion shall serve as the basis for the Committee Decision and Order. The Committee shall vote and make public the decision of the Committee during the hearing.

(10) Adjournment.

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

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

R35-1-4. Committee Minutes.

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

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

KEY: government documents, state records committee*, records appeal hearings*
March 18, 1999 63-2-502(2)(a)
Notice of Continuation July 2, 2004

R35. Administrative Services, Records Committee.
R35-2. Declining Appeal Hearings.
R35-2-1. Authority and Purpose.

In accordance with Section 63-2-502 and Subsection 63-2-403(4), Utah Code, this rule establishes the procedure for denial of claims by the executive secretary of the Records Committee.

R35-2-2. Definitions.

In addition to terms defined in Section 63-2-102, Utah Code, the following apply to this rule:

(a) "Executive Secretary" means the individual appointed annually as required in Subsection 63-2-502(3), Utah Code.

(b) "Committee" means the State Records Committee in accordance with Section 63-2-501, Utah Code.

(c) "Hearing" means a meeting by the committee to hear an appeal of a records decision by a government entity in accordance with Section 63-2-403, Utah Code.

R35-2-3. Declining Requests for Hearings.

(a) In order to decline a request for a hearing under Subsection 63-2-403(4), the Executive Secretary shall consult with the chair of the Committee and at least one other member of the Committee as selected by the chair.

(b) The Executive Secretary shall organize and disseminate all relevant information and documents to members of the entire committee, including a copy of the appeal and the previous order of the Committee holding the records series at issue appropriately classified.

(c) The two members of the Committee must both agree with the Executive Secretary's recommendation to decline to schedule a hearing. Such a decision shall consider the potential for a public interest claim as may be put forward by the petitioner under the provisions of Subsection 63-2-402(11)(b), Utah Code. A copy of each decision to deny a hearing shall be signed and retained in the file.

(d) The Executive Secretary's notice to the petitioner indicating that the request for hearing has been denied, as provided for in Subsection 63-2-403(4)(ii), Utah Code, shall include a copy of the previous order of the Committee holding the records series at issue appropriately classified.

(e) The Executive Secretary shall notify the members of the entire Committee each time an appeal hearing is denied. Such notices shall include a copy of the petitioner's appeal and the previous order of the Committee holding the records series at issue appropriately classified. Any Committee member may request that a discussion of the Executive Secretary's decision be placed on the agenda for the next regularly scheduled Committee meeting.

(f) The Executive Secretary shall report on each of the hearings declined at each regularly scheduled meeting of the Committee in order to provide a public record of the actions taken.

(g) If a Committee member has requested a discussion to reconsider the decisions to decline a hearing, the Committee may, after discussion and by a majority vote, choose to reverse the decision of the Executive Secretary and hold a hearing. Any discussion of reconsideration shall be limited to those Committee members then present, and shall be based only on two questions: (1) whether the records being requested were covered by a previous order of the Committee, and/or (2) whether the petitioner has, or is likely to, put forth a public interest claim. Neither the petitioner nor the agency whose records are requested shall be heard at this time. If the Committee votes to hold a hearing, the Executive Secretary shall schedule it on the agenda of the next regularly scheduled Committee meeting.

(h) The Executive Secretary shall compile and include in an annual report to the Committee a complete documented list of all hearings held and all hearings declined.

KEY: government documents, state records committee, records appeal hearings
July 16, 1999 63-2-403(4)
Notice of Continuation July 2, 2004

R35. Administrative Services, Records Committee.
R35-3. Prehearing Conferences.
R35-3-1. Authority and Purpose.

In accordance with the general objectives of the Government Records Access and Management Act in facilitating access to records, and in keeping with the objectives of hearing procedures found in Section 63-2-403 , Utah Code, to resolve disputes, this rule authorizes and establishes the procedure for holding prehearing conferences.

R35-3-2. Definitions.

In addition to terms defined in Section 63-2-103, Utah Code, and in rule Section R35-2-2 of the Utah Administrative Code, the following terms apply:

(a) "Prehearing" means a meeting by one or more members of the State Records committee to explore issues and facilitate settlement of a records dispute involving a government entity prior to the completion of efforts to resolve such disputes through an official appeals process.

R35-3-3. Scheduling Prehearing Conferences.

(a) In the process of planning and organizing efforts to execute appeals which are filed pursuant to Section 63-2-403, the chair of the state records committee, at his or her discretion, may direct the disputing parties to appear before him or her, in person or telephonically, for a prehearing conference, to be held before any official appeals hearing, for such purposes as:

(1) encouraging exploration of areas of agreement, including stipulations; or

(2) facilitating settlement of the appeal.

(b) In the event that the issue, or issues scheduled for an appeals hearing are resolved at a prehearing conference, the committee chair shall report the settlement to the entire records committee at the next scheduled meeting for the purposes of creating a public record. Any stipulations shall be written and presented to the members of the records committee at the hearing.

KEY: government documents, state records committee, records appeal hearings
July 16, 1999 63-2-502(2)(a)
Notice of Continuation July 2, 2004

R35. Administrative Services, Records Committee.
R35-4. Compliance with State Records Committee Decisions and Orders.
R35-4-1. Authority and Purpose.

In accordance with Subsection 63-2-403(14) Utah Code, this rule intends to establish the procedure for complying with an order of the Records Committee.

R35-4-2. Definitions.

In addition to terms defined in Section 63-2-102, Utah Code, and in rule R35-2-2 of the Utah Administrative Code, the following apply to this rule:

(a) "Order" means the Decision and Order issued by the State Records Committee in accordance with Subsection 63-2-403(11), Utah Code.

R35-4-3. Notices of Compliance.

(a) The executive secretary of the state records committee shall send an order of the state records committee by certified mail to the governmental entity ordered to produce records.

(b) Pursuant to Subsection 63-2-403(14), Utah Code, each governmental entity ordered to produce records by the records committee, shall file with the state records committee either a notice of compliance, or a copy of the appellant's notice of appeal of the records committee order, no later than the thirtieth day following the date of the state records committee order.

(c) The notice of compliance shall contain a statement, signed by the head of the governmental entity, that the records ordered to be produced have been delivered to the petitioner, and the method and date of delivery.

(d) In the event a governmental entity fails to file a notice of compliance or a copy of the appellants notice of appeal of the records committee order within the time frame specified, the state records committee shall send written notice of the entity's noncompliance to the governor for executive branch agencies, to the Legislative Management Committee for legislative branch entities, to the Judicial Council for judicial branch entities, and to the mayor or chief executive officer of a local government for local or regional governmental entities.

(e) The state records committee may also impose a civil penalty of up to $500 for each day of continuing noncompliance, but only after holding a discussion of the matter at issue, and obtaining a majority vote at a regularly scheduled committee meeting. The non-complying governmental entity shall be heard at that meeting, with discussion being limited specifically to reasons for the neglectful, willful, or intentional act. Any civil penalty imposed shall be retroactive to the first date of noncompliance.

KEY: government documents, state records committee, records appeal hearings
July 16, 1999 63-2-502(2)(a)
Notice of Continuation July 2, 2004

R35. Administrative Services, Records Committee.
R35-5. Subpoenas Issued by the Records Committee.
R35-5-1. Authority and Purpose.

In accordance with Subsection 63-2-403(10), Utah Code, this rule intends to establish the procedures for issuing subpoenas by the Records Committee.

R35-5-2. Definitions.

In addition to terms defined in Section 63-2-102, Utah Code, and in rule Section R35-2-2 of the Utah Administrative Code, the following apply to this rule:

(a) "Order" means the Decision and Order issued by the State Records Committee as provided by Subsection 63-2-403(11), Utah Code.

(b) "Subpoena" means a written order requiring appearance before the State Records Committee to give testimony in accordance with Section 63-2-403, Utah Code.

R35-5-3. Subpoenas.

(a) In order to initiate a request for subpoena, a party shall file a written request with the chair of the state records committee at least 14 business days prior to a hearing. The request shall describe the purpose for which the subpoena is sought, and state specifically why, given that hearsay is available before the state records committee, the individual being subpoenaed must be present.

(b) The chair of the state records committee shall review each subpoena request and grant or deny the request within three business days, based on the following considerations:

(1) a weighing of the proposed witness' testimony as material and necessary; or

(2) a weighing of the burden to the witness against the need to have the witness present.

(c) If the chair grants the request, the requesting party may obtain a subpoena form, signed, but otherwise in blank, from the executive secretary of the state records committee. The requesting party shall fill out the subpoena and have it served upon the proposed witness at least seven business days prior to a hearing.

(d) A subpoenaed witness shall be entitled to witness fees and mileage reimbursement to be paid by the requesting party. Witnesses shall receive the same witness fees and mileage reimbursement allowed by law to witnesses in a state district court.

(e) A subpoenaed witness may file a motion to quash the subpoena with the executive secretary at least three business days prior to the hearing at which the witness has been ordered to be present, and shall simultaneously transmit a copy of that motion to the parties. Such motion shall include the reasons for quashing the subpoena, and shall be granted or denied based on the same considerations as outlined in Subsection R35-5-3(b)(2). As part of the motion to quash, the witness must indicate whether a hearing on the motion is requested. If a hearing is requested, it shall be granted. All parties to the appeal have a right to be present at the hearing. The hearing must occur prior to the appeal hearing, and shall be heard by the committee chair. The hearing may be in person, or by telephone, as determined by the committee chair. A decision on the motion to quash shall be rendered prior to the appeal hearing.

(f) If the chair denies the request for subpoena, the denial is final and unreviewable.

KEY: government documents, state records committee, records appeal hearings
July 16, 1999 63-2-502(2)(a)
Notice of Continuation July 2, 2004

R35. Administrative Services, Records Committee.
R35-6. Expedited Hearing.
R35-6-1. Authority and Purpose.

In accordance with Subsection 63-2-403(4)(a), this rule establishes the procedure for requesting and scheduling an Expedited Hearing.

R35-6-2. Definitions.

In addition to terms defined in Section 63-2-102, Utah Code, and in rule Section R35-2-2 of the Utah Administrative Code, the following apply to this rule:

(a) "Expedited Hearing" means a meeting by the Committee to review a designation of records by a government entity in a quicker manner than in accordance with Subsection 63-2-403(4)(a).

R35-6-3. Requests for an Expedited Hearing.

(a) A party appealing a records designation to the Committee may request that a hearing be scheduled to hear the appeal prior to 14 days after the date the notice of appeal is filed by making a written request to the Executive Secretary. A copy of this request shall also be mailed to the government entity.

(b) A written request shall include the reason(s) the request is being made.

(c) The Executive Secretary shall consult with the chair of the Committee to decide whether an Expedited Hearing is warranted.

(d) The standard for granting an Expedited Hearing is "good cause shown." The chair shall take into account the reason for the request, and balance that against the burden to the Committee and the government entity.

R35-6-4. Scheduling the Expedited Hearing.

(a) In the event that an Expedited Hearing is granted, the Executive Secretary shall poll the Committee to determine a date upon which a quorum can be obtained.

(b) After settling on a date no sooner than 5 days nor later than 14 days after the notice of appeal has been filed, the Executive Secretary shall contact the petitioner and government entity and schedule the hearing.

(c) The government entity shall file its response to the appeal with the Executive Secretary, and mail a copy to the petitioner no later than three days prior to the scheduled hearing. The Executive Secretary shall make this response available to the Committee as soon as possible.

R35-6-5. Holding the Expedited Hearing.

(a) With the exception of the time frame for scheduling a hearing and providing responses, all other provisions governing hearings under the Government Records Access and Management Act (GRAMA) shall apply to Expedited Hearings.

KEY: government documents, state records committee, records appeal hearings
July 16, 1999 **63-2-502(2)**
Notice of Continuation July 2, 2004

R70. Agriculture and Food, Regulatory Services.
R70-310. Grade A Pasteurized Milk.
R70-310-1. Authority.

A. Promulgated Under the Authority of Subsection 4-2-2(1)(j).

B. Scope - this rule shall apply to all Grade A pasteurized milk products sold, bought, processed, manufactured or distributed within the State of Utah.

R70-310-2. Adoption of USPHS Ordinance.

The Grade A Pasteurized Milk Ordinance, 2003 Recommendations of the United States Public Health Service/Food and Drug Administration, is hereby adopted and incorporated by reference within this rule. This document is available for public inspection, during normal working hours, and may be reviewed at the main office of the Utah Department of Agriculture and Food, 350 No. Redwood Road, SLC, UT 84116.

R70-310-3. Regulatory Agency Defined.

The definition of "regulatory agency" as given in section 1(x) of the Grade A Pasteurized Milk Ordinance shall mean the Commissioner of Agriculture and Food of the State of Utah or his authorized representative(s).

R70-310-4. Penalty.

Violation of any portion of the Grade A Pasteurized Milk Ordinance 2003 recommendation may result in civil or criminal action, pursuant to Section 4-2-15.

KEY: food inspection
July 2, 2004 4-2-2
Notice of Continuation July 9, 2004

R70. Agriculture and Food, Regulatory Services.
R70-630. Water Vending Machine.
R70-630-1. Authority.

Promulgated under authority of Title 4, Chapter 5.

R70-630-2. Purpose.

The purpose of these rules is to set forth requirements and controls for vending machines designed to dispense water intended for human consumption to assure:

(1) Consumers using such machines are given appropriate information as to the nature of the vended water;

(2) The quality of the water vended meets acceptable standards for potability; and

(3) The vending equipment is installed, operated, and maintained to protect the health, safety, and welfare of the consuming public.

R70-630-3. Definitions.

For the purpose of this rule, the following words and phrases shall have the meanings indicated:

(1) "Approved" means a water vending machine, drinking water source, backflow prevention device or other devices or services that meets the minimum standards of this rule. Approved does not imply satisfactory performance for a specific period of time. Approval, when required, shall be in writing based upon departmental review of data submitted by the water vending industry, manufacturers, operators, owners or managers.

(2) "Approved material" means materials approved by the department as being free of substances which may render the water injurious to health or which may adversely affect the flavor, color, odor, radiological, microbial or chemical quality of the water.

(3) "Department" means the Department of Agriculture and Food, Division of Regulatory Services, or its representative.

(4) "Nontoxic" means free of substances which may render the water injurious to health or may adversely affect the flavor, color, odor, chemical or microbial quality of the water.

(5) "Person" means any individual, partnership, firm, company, corporation, trustee, association, public body or private entity engaged in the water vending business.

(6) "Potable water" means water satisfactory for drinking, culinary and domestic purposes meeting the quality standards of rule R309-103, under the Department of Environmental Quality, the Division of Drinking Water.

(7) "Purified water" means water produced by distillation, deionization, reverse osmosis, or other method of equal effectiveness that meets the requirements for purified water as described in the 21st Edition of the United States Pharmacopoeia issued by Mack Publishing, Easton, Penn. 18042.

(8) "Sanitize" means the effective bactericidal treatment of clean surfaces of equipment, utensils, and containers by a process that provides enough accumulative heat or concentration of chemicals for sufficient time to reduce the bacterial count, including pathogens, to a safe level.

(9) "Sanitizing solution" means Aqueous solutions described by 21 CFR 178.1010, 1999, for the purpose of sanitizing food or water contact surfaces.

(10) "Vended water" means water that is dispensed by a water vending machine or retail water facility for drinking, culinary or other purposes involving a likelihood of the water being ingested by humans. Vended water does not include water from a public water system which has not undergone additional treatment and shall be labeled accordingly.

(11) "Vending machine" means any self-service device which upon insertion of a coin, coins, paper currency, token, card or receipt of payment by other means dispenses unit servings of food, either in bulk or in packages without the necessity of replenishing the device between each vending operation.

(12) "Water vending machine" means a vending machine connected to water designed to dispense drinking water, purified and/or other water products. Such machines shall be designed to reduce or remove turbidity, off-taste and odors and to provide disinfectant treatment and may include processes for dissolved solid reduction or removal.

(13) "Water vending machine operator" means any person who owns, leases, manages, or is otherwise responsible for the operation of a water vending machine.

R70-630-4. Location and Operation.

(1) Each water vending machine shall be located indoors or otherwise protected against tampering and vandalism, and shall be located in an area that can be maintained in a clean condition, and in a manner that avoids insect and rodent harborage.

(2) The floor on which a water vending machine is located shall be smooth and of cleanable construction.

(3) Each machine shall have an adequate system for collecting and disposing drippage, spillage, and overflow of water to prevent creation of a nuisance. Where process waste water is collected within the machine for pumping or gravity flow to an outside drain, the water line from the processing unit shall terminate at least two inches above the top rim of the retention vessel. Additionally, the waste line from the machine shall be air-gapped. Containers or drip pans used for the storage or collection of liquid wastes within a vending machine shall be leakproof, readily removable, easily cleanable and corrosion resistant. In water vending machines which utilize the bottom of the cabinet interior as an internal sump, the sump shall be readily accessible and corrosion resistant. The waste disposal holding tank shall be maintained in a clean and sanitary manner.

(4) Each machine shall have a backflow prevention device for all connections with the water supply source which meets requirements of The International Plumbing Code and its amendment as adopted by the State of Utah Building Codes Commission and shall have no cross connections between the drain and potable water.

(5) Each person who establishes, maintains, or operates any water vending machine in the state shall first secure a Water Vending Machine Operating Permit issued under Section 4-5-9. Such a permit shall be renewed annually.

(6) Application for permit shall be made in writing and include the location of each water vending machine, the source of the water to be vended, the treatment that the water will receive prior to being vended, and the name of the manufacturer and the model number of each machine.

(7) The source of the water supply shall be an approved public water system as defined under the Department of Environmental Quality, Division of Drinking Water. Upon application for an initial operating permit, the operator shall submit information which indicates the product being dispensed into the container meets all finished product quality standards applicable to drinking water. When indicated by reason of complaint or illness, the department may require that additional analyses be performed on the source or products of water vending machines.

(8) Each water vending machine shall be maintained in a clean and sanitary condition, free from dust, dirt and vermin.

(9) Labels or advertisements located on or near water vending machines shall not imply nor describe the vended water as "spring water."

(10) Water vending machine labels or advertisements shall not describe or use other words to imply, on the machine or elsewhere, the water as being "purified water" unless such water conforms to the definition contained in this rule.

(11) Water vending machine labels or advertisements shall not describe, on the machine or elsewhere, the water as having

medicinal or health giving properties.

(12) Each water vending machine shall have in a position clearly visible to customers the following information:

(a) Name and address of the operator.

(b) Name of the water supply purveyor.

(c) The method of treatment that is utilized.

(d) The method of post-disinfection that is utilized.

(e) A local or toll free number that may be called for further information, problems, or complaints; or the name of the store or building manager can be listed when the machine is located within a business establishment and the establishment manager is responsible for the operation of the machine.

R70-630-5. Construction Requirements.

(1) Water vending machines shall comply with the construction and performance standards of the National Sanitation Foundation or National Automatic Merchandising Association. A list of acceptable third party certification groups is available from 8:00 to 5:00 p.m. at the Utah Department of Agriculture and Food. Water vending machines shall be designed and constructed to permit easy cleaning and maintenance of all exterior and interior surfaces and component parts.

(2) Water contact surfaces and parts of the water vending machine shall be of non-toxic, corrosion-resistant, non-absorbent material capable of withstanding repeated cleaning and sanitizing treatment.

(3) Water vending machines shall have a guarded or recessed spout.

(4) Owners, managers and operators of water vending machines shall ensure that the methods used for treatment of vended water are acceptable to the department. Such acceptable treatment includes distillation, ion-exchange, filtration, ultra-violet light, mineral addition and reverse osmosis.

(5) Water vending machines shall be equipped to disinfect the vended water by ultra-violet light, ozone, or equally effective methods prior to delivery into the customer's container.

(6) Water vending machines shall be equipped with monitoring devices designed to shut down operation of the machine when the treatment or disinfectant unit fails to properly function.

(7) Water vending machines shall be equipped with a self-closing, tight-fitting door on the vending compartment if the machine is not located in an enclosed building.

(8) Granular activated carbon, if used in the treatment process of vended water, shall comply with the specifications provided by the American Water Works Association for that substance (Standard B604-90).

R70-630-6. Operator Requirements.

(1) Water vending machine operators shall have on file and perform a maintenance program that includes:

(a) Visits for cleaning, sanitizing and servicing of machines at least every two weeks.

(b) Written servicing instructions.

(c) Technical manuals for the machines.

(d) Technical manuals for the water treatment appurtenances involved.

(2) Parts and surfaces of water vending machines shall be kept clean and maintained by the water vending machine operator. The vending chamber and the vending nozzle shall be cleaned and sanitized each time the machine is serviced. A record of cleaning and maintenance operations shall be kept by the operator for each water vending machine. These records shall be made available to the department's employees upon request.

(3) Water vending machine operators shall ensure that machines are maintained and monitored to dispense water meeting quality standards specified in this rule. Water analysis shall be performed using approved testing procedures set forth in 21 CFR 165, 1999. Each machine's finished product shall be sampled at least once every three months by the operator, to determine total coliform content. However, provided a satisfactory method of post-treatment disinfection is utilized and based on a sustained record of satisfactory total coliform analyses, the department shall allow modification of the three-month sampling requirement as follows:

(a) When three consecutive three-month samples are each found to contain zero coliform colonies per 100 milliliters of the vended water, microbiological sampling intervals shall be extended to a period not exceeding six months. Should a subsequent six-month sample test positive for total coliform, the required sampling frequency shall revert to the three-month frequency until three consecutive samples again test negative for total coliform bacteria.

(b) If any sample collected from a machine is determined to be unsatisfactory, exceeding the zero coliform colonies per 100 milliliter, the machine shall be cleaned, sanitized and resampled immediately. If, after being cleaned and sanitized, the vended product is determined to be positive for coliform, the machine shall be taken out of service until the source of contamination has been located and corrected.

(4) Each water vending machine operator shall take whatever investigative or corrective actions are necessary to assure a potable water is supplied to consumers.

(5) The vended water from each vending machine utilizing silver-impregnated carbon filters in the treatment process shall be sampled once every six months for silver.

(6) All records pertaining to the sampling and analyses shall be retained by the operator for a period of not less than two years. Results of the analyses shall be available for department review upon request.

R70-630-7. Duties and Responsibilites of the Department.

(1) The department may collect and analyze samples of vended water when necessary to determine if the vended water meets the standards of potable water.

(2) After considering the source of water and the treatment process provided by the water vending machine, the department shall determine whether the finished product water will or will not meet quality standards as provided under rule R309-103 under the Division of Drinking Water. If it is determined that the water will not meet potable water standards, the permit to operate a water vending machine shall be denied.

(3) The department will evaluate water vending machines, as well as their locations and support facilities as often as may be deemed necessary for enforcement of the provisions of this rule.

(4) Water vending machine operators shall allow the department to examine necessary records pertaining to the operation and maintenance of the vending machines and also provide access to the machines for inspection at reasonable hours.

R70-630-8. Enforcement and Penalties.

(1) The department shall order a water vending machine operator to discontinue the operation of any water vending machine that represents a threat to the life or health of any person, or whose finished water does not meet the minimum standards provided for in this rule. Such water vending machine shall not be returned to use or used until such time the department determines that the conditions which caused the discontinuance of operation no longer exist.

(2) The department shall revoke a permit (procedures for permit revocation are stated in R51-2) when it is determined that there has been a substantial failure to comply with the provisions of this rule by which the health or life of an individual, or the health or lives of individuals is threatened or

impaired, or by which or through which, directly or indirectly, disease is caused. Permit can also be revoked if the water has been adulterated.

R70-630-9. Preemption of Authority to Regulate.

The regulation of water vending machines is hereby preempted by the state. No county or municipality may adopt or enforce any ordinance which regulates the licensure or operation of water vending machines, unless the director of the county public health unit determines that unique conditions exist within the county which make it necessary for the county to regulate water vending machines in order to protect the public health or welfare, pursuant to Section 4-5-17 and R70-530, Food Protection rule.

KEY: food inspection
March 3, 2000 4-5
Notice of Continuation July 13, 2004

R156. Commerce, Occupational and Professional Licensing.
R156-38. Residence Lien Restriction and Lien Recovery Fund Rules.
R156-38-101. Title.

These rules are known as the "Residence Lien Restriction and Lien Recovery Fund Act Rules."

R156-38-102. Definitions.

In addition to the definitions in Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; Title 58, Chapter 1, Division of Occupational and Professional Licensing Act; and Rule R156-1, General Rules of the Division of Occupational and Professional Licensing, which shall apply to these rules, as used in these rules:

(1) "Applicant" means either a claimant, as defined in Subsection (2), or a homeowner, as defined in Subsection (5), who submits an application for a certificate of compliance.

(2) "Claimant" means a person who submits an application or claim for payment from the fund.

(3) "Construction project", as used in Subsection 38-11-203(4), means all qualified services related to the written contract required by Subsection 38-11-204(3)(a).

(4) "Contracting entity" means an original contractor, a factory built housing retailer, or a real estate developer that contracts with a homeowner.

(5) "Homeowner" means the owner of an owner-occupied residence.

(6) "Licensed or exempt from licensure", as used in Subsection 38-11-204(3) means that, on the date the written contract was entered into, the contractor held a valid, active license issued by the Division pursuant to Title 58, Chapter 55 of the Utah Code in any classification or met any of the exemptions to licensure given in Title 58, Chapters 1 and 55.

(7) "Necessary party" includes the division, on behalf of the fund, and the claimant.

(8) "Owner", as defined in Subsection 38-11-102(16), does not include any person or developer who builds residences that are offered for sale to the public.

(9) "Permissive party" includes:

(a) with respect to claims for payment: the nonpaying party, the homeowner, and any entity who will be required to reimburse the fund if a claimant's claim is paid from the fund;

(b) with respect to an application for a certificate of compliance: the original contractor and any entity who has demanded from the homeowner payment for qualified services.

(10) "Qualified services", as used in Subsection 38-11-102(19) do not include:

(a) services provided by the claimant to cure a breach of the contract between the claimant and the nonpaying party; or

(b) services provided by the claimant under a warranty or similar arrangement.

R156-38-103a. Authority - Purpose - Organization.

(1) These rules are adopted by the division under the authority of Section 38-11-103 to enable the division to administer Title 38, Chapter 11, the Residence Lien Restriction and Lien Recovery Fund Act.

(2) The organization of these rules is patterned after the organization of Title 38, Chapter 11.

R156-38-103b. Duties, Functions, and Responsibilities of the Division.

The duties, functions and responsibilities of the division with respect to the administration of Title 38, Chapter 11, shall, to the extent applicable and not in conflict with the Act or these rules, be in accordance with Section 58-1-106.

R156-38-104. Board.

Board meetings shall comply with the requirements set forth in Section R156-1-204.

R156-38-105a. Adjudicative Proceedings.

(1) Except as provided in Subsection 38-1-11(4)(d), the classification of adjudicative proceedings initiated under Title 38, Chapter 11 is set forth at Sections R156-46b-201 and R156-46b-202.

(2) The identity and role of presiding officers for adjudicative proceedings initiated under Title 38, Chapter 11, is set forth in Sections 58-1-109 and R156-1-109.

(3) Issuance of investigative subpoenas under Title 38, Chapter 11 shall be in accordance with Subsection R156-1-110.

(4) Adjudicative proceedings initiated under Title 38, Chapter 11, shall be conducted in accordance with Title 63, Chapter 46b, Utah Administrative Procedures Act, and Rules R151-46b and R156-46b, Utah Administrative Procedures Act Rules for the Department of Commerce and the Division of Occupational and Professional Licensing, respectively, except as otherwise provided by Title 38, Chapter 11 or these rules.

(5) Claims for payment and applications for a certificate of compliance shall be filed with the division and served upon all necessary and permissive parties.

(6) Service of claims, applications for a certificate of compliance, or other pleadings by mail to a qualified beneficiary of the fund addressed to the address shown on the division's records with a certificate of service as required by R151-46b-8, shall constitute proper service. It shall be the responsibility of each registrant to maintain a current address with the division.

(7) A permissive party is required to file a response to a claim or application for certificate of compliance within 30 days of notification by the division of the filing of the claim or application for certificate of compliance, to perfect the party's right to participate in the adjudicative proceeding to adjudicate the claim or application.

(8)(a) For claims wherein the claimant has had judgment entered against the nonpaying party, findings of fact and conclusions of law entered by a civil court or state agency submitted in support of or in opposition to a claim against the fund shall not be subject to readjudication in an adjudicative proceeding to adjudicate the claim.

(b) For claims wherein the nonpaying party's bankruptcy filing precluded the claimant from having judgment entered against the nonpaying party, a claim or issue resolved by a prior judgment, order, findings of fact, or conclusions of law entered in by a civil court or a state agency submitted in support of or in opposition to a claim against the fund shall not be subject to readjudication with respect to the parties to the judgment, order, findings of fact, or conclusions of law.

(9) A party to the adjudication of a claim against the fund may be granted a stay of the adjudicative proceeding during the pendency of a judicial appeal of a judgment entered by a civil court or the administrative or judicial appeal of an order entered by an administrative agency provided:

(a) the administrative or judicial appeal is directly related to the adjudication of the claim; and

(b) the request for the stay of proceedings is filed with the presiding officer conducting the adjudicative proceeding and concurrently served upon all parties to the adjudicative proceeding, no later than the deadline for filing the appeal.

R156-38-105b. Notices of Denial - Notices of Incomplete Application - Conditional Denial of Claims - Extensions of Time to Correct Claims - Prolonged Status.

(1)(a) A written notice of denial of claim shall be provided to an applicant who submits a complete application if the division determines that the application does not meet the requirements of Section 38-11-204.

(b) A written notice of incomplete application shall be provided to an applicant who submits an incomplete

application. The notice shall advise the applicant that the application is incomplete and that the application is denied, unless the applicant corrects the deficiencies within the time period specified in the notice and the application otherwise meets all qualification for approval.

(2) An applicant may receive a single 30 day extension of the time period in Subsection (1)(b). Additional extensions of the time period shall only be granted if the applicant makes the request in writing and demonstrates, with adequate documentation, that the applicant:

(a) has made all reasonable efforts to complete the application;

(b) has been prevented from completing the application because of unusual and extraordinary circumstances entirely beyond its control; and

(c) can be reasonably expected to complete the application if an additional extension is granted.

(3) (a) A claimant may for any reason be granted a single request that its claim be prolonged.

(b) A claim granted prolonged status shall be inactive for a period of one year or until reactivated by the claimant, whichever comes first.

(c) At the end of the one year period, the claimant shall be required to either complete the claim or demonstrate reasonable cause for prolonged status to be renewed for another one year period. The following shall constitute valid causes for renewing prolonged status:

(i) continuing litigation pursuant to Subsection R156-38-105a(9);

(ii) ongoing bankruptcy proceedings involving the nonpaying party that would prevent the claimant from complying with Section 38-11-204;

(iii) continuing compliance by the nonpaying party with a payment agreement between the claimant and the nonpaying party; or

(iv) other reasonable cause as determined by the presiding officer.

(d) Upon expiration of the one year prolonged status of a claim, the Division shall issue to the claimant an updated notice of incomplete application pursuant to Subsection (1)(b). Included with that notice shall be a form that provides the claimant an opportunity to:

(i) reactivate the claim by submitting documentation necessary to complete the claim;

(ii) withdraw the claim; or

(iii) request prolonged status be renewed pursuant to Subsection (3)(c).

(e) Any request for renewal of prolonged status made under Subsection (3)(c)(iv) shall include evidence sufficient to demonstrate the validity of the reasons given as justification for renewal.

(f) If a claimant's request for renewal of prolonged status is denied, the claimant may request agency review.

(g) A claim which has been reactivated from prolonged status may not be again prolonged unless the claimant can establish compliance with the requirements of Subsection (3)(c).

R156-38-108. Notification of Rights under Title 38, Chapter 11.

(1) A notice in substantially the following form shall prominently appear in an easy-to-read type style and size in every contract between an original contractor and homeowner and in every notice of intent to hold and claim lien filed under Section 38-1-7 against a homeowner or against an owner-occupied residence:

"X. PROTECTION AGAINST LIENS AND CIVIL ACTION. Notice is hereby provided in accordance with Section 38-11-108 of the Utah Code that under Utah law an "owner" may be protected against liens being maintained against an "owner-occupied residence" and from other civil action being maintained to recover monies owed for "qualified services" performed or provided by suppliers and subcontractors as a part of this contract, if and only if the following conditions are satisfied:

(1) the owner entered into a written contract an original contractor, a factory built housing retailer, or a real estate developer;

(2) the original contractor was properly licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act at the time the contract was executed; and

(3) the owner paid in full the original contractor, factory built housing retailer, or real estate developer or their successors or assigns in accordance with the written contract and any written or oral amendments to the contract."

R156-38-109. Format for Form Affidavit and Motion.

The form affidavit required under Subsection 38-1-11(4) shall be the Homeowner's Application for Certificate of Compliance prepared by the Division.

R156-38-202a. Initial Assessment Procedures.

(1) The initial assessment shall be a flat or identical assessment levied against all qualified beneficiaries to create the fund.

(2) The amount of the initial assessment shall be established by the division and board in accordance with the procedures for a "new program" under Subsection 63-38-3.2(5).

R156-38-202b. Special Assessment Procedures.

(1) Special assessments shall take into consideration the claims history against the fund.

(2) The amount of special assessments shall be established by the division and board in accordance with the procedures set forth in Subsection 38-11-206(1).

R156-38-203. Limitation on Payment of Claims.

(1) Claims may be paid prior to the pro-rata adjustment required by Subsection 38-11-203(4)(b) if, based upon an evaluation of the notices of commencement of action filed with respect to an owner-occupied residence or the total claim filings on an owner-occupied residence, the division determines that a pro-rata payment will likely not be required.

(2) If any claims have been paid before the division determines a pro-rata payment will likely be required, the division will notify the claimants of the likely adjustment and that the claimants will be required to reimburse the division when the final pro-rata amounts are determined.

(3) The pro-rata payment amount required by Subsection 38-11-203(4)(b) shall be calculated as follows:

(a) Determine the total claim amount each claimant would be entitled to without consideration of the limit set in Subsection 38-11-203(4)(b).

(b) Sum the amounts each claimant would be entitled to without consideration of the limit to determine the total amount payable to all claimants without consideration of the limit.

(c) Divide the limit amount by the total amount payable to all claimants without consideration of the limit to find the claim allocation ratio.

(d) For each claim, multiply the total claim amount without consideration of the limit by the claim allocation ratio to find the net claim payment for each claim.

R156-38-204a. Applications for Certificate of Compliance by Homeowners - Supporting Documents and Information.

The following supporting documents shall, at a minimum, accompany each homeowner application for a certificate of compliance:

(1) a copy of the written contract between the homeowners

and the contracting entity;

(2)(a) if the homeowner contracted with an original contractor, documentation issued by the division that the original contractor was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, on the date the contract was entered into;

(b) if the homeowner contracted with a real estate developer:

(i) credible evidence that the real estate developer had an ownership interest in the property;

(ii) a copy of the contract between the real estate developer and the licensed contractor with whom the real estate developer contracted for construction of the residence or other credible evidence showing the existence of such a contract and setting forth a description of the services provided to the real estate developer by the contractor;

(iii) credible evidence that the real estate developer offered the residence for sale to the public; and

(iv) documentation issued by the division that the contractor with whom the real estate developer contracted for construction of the residence was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, on the date the contract was entered into;

(c) if the homeowner contracted with a manufactured housing retailer, a copy of the completed retail purchase contract;

(3) one of the following:

(a) an affidavit from the contracting entity acknowledging that the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract; or

(b) other credible evidence establishing that the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract; and

(4) an affidavit from the homeowner establishing that he is an owner as defined in Subsection 38-11-102(16) and that the residence is an owner-occupied residence as defined in Subsection 38-11-102(17).

R156-38-204b. Claims Against the Fund by Nonlaborers - Supporting Documents and Information.

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

(1) one of the following:

(a) a copy of the certificate of compliance issued by the Division for the residence at issue in the claim;

(b) the documents required in Section R156-38-204a; or

(c) a copy of a civil judgment containing findings of fact that:

(i) the homeowner entered a written contract in compliance with Subsection 38-11-204(3)(a);

(ii) the contracting entity was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act;

(iii) the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract; and

(iv) the homeowner is an owner as defined in Subsection 38-11-102(16) and the residence is an owner-occupied residence as defined in Subsection 38-11-102(17);

(2) one of the following as applicable:

(a) a copy of an action date stamped by a court of competent jurisdiction filed by the claimant against the nonpaying party to recover monies owed for qualified services performed on the owner-occupied residence, filed within 180 days from the date the claimant last provided qualified services; or

(b) documentation that a bankruptcy filing by the nonpaying party prevented the claimant from satisfying Subsection (a);

(3) one of the following:

(a) a copy of a civil judgment entered in favor of the claimant against the nonpaying party containing a finding that the nonpaying party failed to pay the claimant pursuant to their contract; or

(b) documentation that a bankruptcy filing by the nonpaying party prevented the claimant from obtaining a civil judgment, including a copy of the proof of claim filed by the claimant with the bankruptcy court, together with credible evidence establishing that the nonpaying party failed to pay the claimant pursuant to their contract;

(4) one or more of the following as applicable:

(a) a copy of a supplemental order issued following the civil judgment entered in favor of the claimant and a copy of the return of service of the supplemental order indicating either that service was accomplished on the nonpaying party or that said nonpaying party could not be located or served;

(b) a writ of execution issued if any assets are identified through the supplemental order or other process, which have sufficient value to reasonably justify the expenditure of costs and legal fees which would be incurred in preparing, issuing, and serving execution papers and in holding an execution sale; or

(c) documentation that a bankruptcy filing or other action by the nonpaying party prevented the claimant from satisfying Subparagraphs (a) and (b);

(5) certification that the claimant is not entitled to reimbursement from any other person at the time the claim is filed and that the claimant will immediately notify the presiding officer if the claimant becomes entitled to reimbursement from any other person after the date the claim is filed; and

(6) one or more of the following:

(a) a copy of invoices setting forth a description of, the performance dates of, and the value of the qualified services claimed;

(b) a copy of a civil judgment containing a finding setting forth a description of, the performance dates of, and the value of the qualified services claimed; or

(c) credible evidence setting forth a description of, the performance dates of, and the value of the qualified services claimed.

(7) If the claimant is requesting payment of costs and attorney fees not specifically enumerated in the judgment against the nonpaying party, the claim shall include documentation of those costs and fees adequate for the Division to apply the requirements set forth in Section R156-38-204d.

(8) In claims in which the presiding officer determines that the claimant has made a reasonable but unsuccessful effort to produce all documentation specified under this rule to satisfy any requirement to recover from the fund, the presiding officer may elect to accept the evidence submitted by the claimant if the requirements to recover from the fund can be established by that evidence.

(9) A separate claim must be filed for each residence and a separate filing fee must be paid for each claim.

R156-38-204c. Claims Against the Fund by Laborers - Supporting Documents.

(1) The following supporting documents shall, at a minimum, accompany each laborer claim for recovery from the fund:

(a) one of the following:

(i) a copy of a wage claim assignment filed with the Employment Standards Bureau of the Antidiscrimination and Labor Division of the Labor Commission of Utah for the amount of the claim, together with all supporting documents submitted in conjunction therewith; or

(ii) a copy of an action filed by claimant against claimant's

employer to recover wages owed;

(b) one of the following:

(i) a copy of a final administrative order for payment issued by the Employment Standards Bureau of the Antidiscrimination and Labor Division of the Labor Commission of Utah containing a finding that the claimant is an employee and that the claimant has not been paid wages due for work performed at the site of construction on an owner-occupied residence;

(ii) a copy of a civil judgment entered in favor of claimant against the employer containing a finding that the employer failed to pay the claimant wages due for work performed at the site of construction on an owner-occupied residence; or

(iii) a copy of a bankruptcy filing by the employer which prevented the entry of an order or a judgment against the employer;

(c) one of the following:

(i) a copy of the certificate of compliance issued by the Division for the residence at issue in the claim;

(ii) an affidavit from the homeowner establishing that he is an owner as defined in Subsection 38-11-102(16) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(17);

(iii) a copy of a civil judgment containing a finding that the homeowner is an owner as defined by Subsection 38-11-102(16) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(17); or

(iv) other credible evidence establishing that the owner is an owner as defined by Subsection 38-11-102(16) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(17).

(2) When a laborer makes claim on multiple residences as a result of a single incident of non-payment by the same employer, the division must require payment of at least one application fee required under Section 38-11-204(1)(b) and at least one registration fee required under Subsection 38-11-204(7), but may waive additional application and registration fees for claims for the additional residences, where no legitimate purpose would be served by requiring separate filings.

R156-38-204d. Calculation of Costs, Attorney Fees and Interest for Payable Claims.

(1) Payment for qualified services, costs, attorney fees, and interest shall be made as specified in Section 38-11-203.

(2) When a claimant provides qualified service on multiple properties, irrespective of whether those properties are owner-occupied residences, and files claim for payment on some or all of those properties and the claims are supported by a single judgment or other common documentation and the judgment or documentation does not differentiate costs and attorney fees by property, the amount of costs and attorney fees shall be allocated among the related properties using the following formula: (Qualified services attributable to the owner-occupied residence at issue in the claim divided by Total qualified services awarded as judgment principal or total documented qualified services) x Total costs or total attorney fees.

(3)(a) For claims wherein the claimant has had judgment entered against the nonpaying party, post-judgment costs shall be limited to those costs allowable by a district court, such as costs of service, garnishments, or executions, and shall not include postage, copy expenses, telephone expenses, or other costs related to the preparation and filing of the claim application.

(b) For claims wherein the nonpaying party's bankruptcy filing precluded the claimant from having judgment entered against the nonpaying party, total costs shall be limited to those costs that would have been allowable by the district court had judgment been entered, such as, but not limited to, costs of services, garnishments, or executions, and shall not include postage, copy expenses, telephone expenses, or other costs related to the preparation and filing of the claim application.

(4) The interest rate or rates applicable to a claim shall be the rate for the year or years in which payment for the qualified services was due.

R156-38-204e. Format for Notice of Commencement of Action.

The Notice of Commencement required under Subsection R156-38-204a(5)(b) shall be in substantially the following format:

TABLE I

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

John Doe, Plaintiff	:	Notice of Commencement of Action
-vs-	:	NCA No.
Richard Roe, Defendant	:	

Notice is hereby provided of the filing of Case No. (number) on (date)
before (Court).

Brief explanation of nature of case:

Address of defendant:

Name and address of potential fund claimant:

Name and address of original contractor, subcontractor, real estate
developer, and/or factory built housing retailer described in Subsection
38-11-204(3)(c):

For each owner-occupied residence included in the civil action:

Name and address of the owner of the owner-occupied residence;

Street address of the owner-occupied residence;

Amount of damages sought against the owner-occupied residence;

Last date qualified services were provided for the owner-occupied residence
by the potential fund claimant:

Signature of Claimant or claimant's representative

Date of signature

R156-38-301a. Contractor Registration as a Qualified Beneficiary - All License Classifications Required to Register Unless Specifically Exempted - Exempted Classifications.

(1) All license classifications of contractors are determined to be regularly engaged in providing qualified services for purposes of automatic registration as a qualified beneficiary, as set forth in Subsections 38-11-301(1) and (2), with the exception of the following license classifications:

TABLE II

Primary Classification Number	Subclassification Number	Classification
E100		General Engineering Contractor
	S211	Boiler Installation Contractor
	S213	Industrial Piping Contractor
	S262	Granite and Pressure Grouting Contractor
S320		Steel Erection Contractor
	S321	Steel Reinforcing Contractor

	S322	Metal Building Erection Contractor
	S323	Structural Stud Erection Contractor
S340		Sheet Metal Contractor
S360		Refrigeration Contractor
S440		Sign Installation Contractor
	S441	Non Electrical Outdoor Advertising Sign Contractor
S450		Mechanical Insulation Contractor
S470		Petroleum System Contractor
S480		Piers and Foundations Contractor
I101		General Engineering Trades Instructor
I102		General Building Trades Instructor
I103		General Electrical Trades Instructor
I104		General Plumbing Trades Instructor
I105		General Mechanical Trades Instructor

(2) Any person holding a license requiring registration in the fund that is on inactive status on the assessment date of any special assessment of the fund, may defer payment of that special assessment and any assessment made during the time the license remains on inactive status and the licensee does not engage in the licensed occupation or profession.

(3) Before a licensee can be reinstated to an active status, the licensee must pay:

(a) the initial assessment of $195 assessed July 1, 1995, if that assessment has never been paid by that licensee; and

(b) all unpaid special assessments.

R156-38-301b. Event Necessitating Registration - Name Change by Qualified Beneficiary - Reorganization of Registrant's Business Type - Transferability of Registration.

(1) Any change in entity status by a registrant requires registration with the Fund by the new or surviving entity before that entity is a qualified beneficiary.

(2) The following constitute a change of entity status for purposes of Subsection (1):

(a) creation of a new legal entity as a successor or related-party entity of the registrant;

(b) change from one form of legal entity to another by the registrant; or

(c) merger or other similar transaction wherein the existing registrant is acquired by or assumed into another entity and no longer conducts business as its own legal entity.

(3) A qualified beneficiary registrant shall notify the division in writing of a name change within 30 days of the change becoming effective. The notice shall provide the following:

(a) the registrant's prior name;

(b) the registrant's new name;

(c) the registrant's registration number; and

(d) proof of registration with the Division of Corporations and Commercial Code as required by state law.

(4) A registration shall not be transferred, lent, borrowed, sold, exchanged for consideration, assigned, or made available for use by any entity other than the registrant for any reason.

(5) A claimant shall not be considered a qualified beneficiary registrant merely by virtue of owning an entity that is a qualified beneficiary.

R156-38-302. Renewal and Reinstatement Procedures.

(1) Renewal notices required in connection with a special assessment shall be mailed to each registrant at least 30 days prior to the expiration date for the existing registration established in the renewal notice. Unless the registrant pays the special assessment by the expiration date shown on the renewal notice, the registrant's registration in the fund automatically expires on the expiration date.

(2) Renewal notices shall be sent by letter deposited in the post office with postage prepaid, addressed to the last address shown on the division's records. Such mailing shall constitute legal notice. It shall be the duty and responsibility of each registrant to maintain a current address with the division.

(3) Renewal notices shall specify the amount of the special assessment, the application requirement, and other renewal requirements, if any; shall require that each registrant document or certify that the registrant meets the renewal requirements; and shall advise the registrant of the consequences of failing to renew a registration.

(4) Renewal applications must be received by the division in its ordinary course of business on or before the renewal application due date in order to be processed as a renewal application. Late applications will be processed as reinstatement applications.

(5) A registrant whose registration has expired may have the registration reinstated by complying with the requirements and procedures specified in Subsection 38-11-302(5).

R156-38-401. Requirements for a Letter of Credit and/or Evidence of a Cash Deposit as Alternate Security for Mechanics' Lien.

To qualify as alternate security under Section 38-1-28 "evidence of a cash deposit" must be an account at a federally insured depository institution that is pledged to the protected party and is payable to the protected party upon the occurrence of specified conditions in a written agreement.

KEY: licensing, contractors, liens

July 26, 2004	**38-11-101**
Notice of Continuation April 6, 2000	**58-1-106(1)(a)**
	58-1-202(1)(a)

R162. Commerce, Real Estate.
R162-106. Professional Conduct.
R162-106-1. Uniform Standards.

106.1. As required by the Appraisal Foundation in accordance with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), all appraisers must comply with the edition of the Uniform Standards of Professional Appraisal Practice (USPAP) currently approved by the Board. Information on which version of USPAP is currently approved by the Board may be obtained from the division. All persons licensed or certified under this chapter must also observe the Advisory Opinions of USPAP. Copies of USPAP may be obtained from the Appraisal Foundation, 1029 Vermont Avenue N.W., Suite 900,Washington, D.C. 20005. Registered expert witnesses, licensed and certified appraisers and candidates for registration, licensure or certification may obtain copies from the division.

R162-106-2. Use of Terms.

106.2. The terms "State-Certified Residential Appraiser," "State-Certified General Appraiser,"and State- Licensed Appraiser shall not be abbreviated or reduced to a letter or group of letters. If these terms are used on letterhead or in advertising, the appraiser's certificate number or license number must follow his name.

R162-106-3. Signatures, Size and Use of Seal.

106.3.1. State-Certified Appraiser's Seal.

106.3.1.1. When signing a certified appraisal report, State-Certified General Appraisers and State-Certified Residential Appraisers shall place on at least the certification page of the appraisal report, immediately below the appraiser's signature, the seal required by Section 61-2b-17(3)(e).

106.3.1.2. The seal to be affixed on reports prepared by state-certified appraisers shall contain the words "Utah State-Certified Residential Appraiser" or "Utah State-Certified General Appraiser" along with the appraiser's certificate number and expiration date. The zeros preceding the certificate number may be deleted.

106.3.1.3. The seal may be reproduced as a stamp with ink that can be copied, or may be inserted by computer in an appraisal report at the appropriate place.

106.3.2. State-Licensed Appraisers. State- Licensed appraisers may not place a seal on an appraisal report or use a seal in any other manner likely to create the impression that the appraiser is a state-certified appraiser.

106.3.3. Signatures.

106.3.3.1. Signature stamps. Appraisers may not affix their signatures to appraisal reports by means of a signature stamp.

106.3.3.2. Appraisers may not affix their signatures to blank or partially completed appraisal reports which will be filled in later by anyone other than the appraiser who has signed the reports.

106.3.3.3. If it is necessary for an appraiser to delegate authority to another individual to sign the appraiser's signature on an appraisal report, the other individual may sign the report for the appraiser only if: a) the report explicitly discloses that the other individual has been authorized to sign the report for the appraiser; b) the permission must have been granted in writing and limited to a specific property address; c) a copy of the written permission to sign must be attached to the report; and d) the appraiser who signs the other's signature must write the word "by" followed by his own name after the other's signature.

106.3.3.4. Digital signatures. A digital signature may be used in place of a handwritten signature only if: a) the software program which generates the digital signature has a security feature; and b) the appraiser ensures that his signature is protected and that no one other than the appraiser has control of that signature.

R162-106-4. Testimony by an Appraiser.

106.4. Testimony. An appraiser who testifies as to an appraisal opinion in a deposition or an affidavit, or before any court, public body, or hearing officer, shall prepare a written appraisal report or a file memorandum prior to giving such testimony.

106.4.1. File memoranda. For the purpose of this rule, a file memorandum shall include work sheets, data sheets, the reasoning and conclusions upon which the testimony is based, and other sufficient information to demonstrate substantial compliance with USPAP Standards Rule 2-2, or in the case of mass appraisal, Standards Rule 6-7.

R162-106-5. Failure to Respond to Investigation.

106.5. When the Division notifies an appraiser or registered expert witness of a complaint, the notified individual must respond to the complaint in writing within ten business days of the notice from the Division. Failure to respond within the required time period to a notice of complaint, a subpoena, or any written request for information from the Division shall be considered a violation of these rules and separate grounds for disciplinary action against the appraiser or registered expert witness.

R162-106-6. Recordkeeping Requirements.

106.6. The true copy of an appraisal report which an appraiser is required by Section 61-2b-34(1) to retain shall be a photocopy or other exact copy of the report as it was provided to the client, including the appraiser's signature.

R162-106-7. Sales and Listing History.

In order to comply with Standard 1 of the Uniform Standards of Professional Appraisal Practice (USPAP), appraisers who are licensed or certified under this chapter shall analyze and report the listing history of the subject property for the three years preceding the appraisal if such information is available to the appraiser from a multiple listing service, listing agent(s), or the property owner.

R162-106-8. Draft Reports.

For the purpose of this rule, a "draft report" is defined as an appraisal report that is a work in progress and that has not yet been finished by the Appraiser.

106.8.1. One to Four Unit Residential Real Property. An appraiser may not release a draft report to a client in the appraisal of one to four unit residential real property.

106.8.2. An appraiser may release a draft report to a client in the appraisal of other than one to four unit residential real property if: a) the first page of the report prominently identifies the report as a draft; b) the draft report has been signed by the appraiser; and c) the appraiser complies with USPAP in the preparation of the draft report.

KEY: real estate appraisals, conduct
July 28, 2004 **61-2b-27**
Notice of Continuation March 27, 2002

R270. Crime Victim Reparations, Administration.
R270-1. Award and Reparation Standards.
R270-1-1. Authorization and Purpose.

As provided in Section 63-25a-406 the purpose of this rule is to provide interpretation and standards for the administration of crime victim reparations.

R270-1-2. Funeral and Burial Award.

A. Pursuant to Subsection 63-25a-411(4)(f), total award for funeral and burial expenses is $7,000 for any reasonable and necessary charges incurred directly relating to the funeral and burial of a victim. This amount includes transportation of the deceased. Allowable expenses in this category may include the emergency acquisition of a burial plot for victims who did not previously possess or have available to them a plot for burial.

B. Transportation of secondary victims to attend a funeral and burial service shall be considered as an allowable expense in addition to the $7,000.

C. Loss of earnings for secondary victims to attend a funeral and burial service shall be allowed as follows:

1. Three days in-state
2. Five days out-of-state

D. When a victim dies leaving no identifying information, claims made by a provider cannot be considered.

R270-1-3. Negligent Homicide and Hit and Run Claims.

A. Negligent homicide claims shall be considered criminally injurious conduct as defined in Subsection 63-25a-402(9).

B. Pursuant to Subsection 63-25a-402(9)(a), criminally injurious conduct shall not include victims of hit and run crimes.

R270-1-4. Counseling Awards.

A. Pursuant to Subsections 63-25a-402(20) and 63-25a-411(4)(c), out-patient mental health counseling awards are subject to limitations as follows:

1. The reparation officer shall approve a standardized treatment plan.

2. The cost of initial evaluation and testing may not exceed $300 and shall be part of the maximum allowed for counseling. For purposes herein, an evaluation shall be defined as diagnostic interview examination including history, mental status, or disposition, in order to determine a plan of mental health treatment.

3. Primary victims of a crime shall be eligible for a $3500 maximum mental health counseling award.

(a) Parents, children and siblings of homicide victims shall be considered at the same rate as primary victims for inpatient and outpatient counseling.

4. Secondary victims of a crime shall be eligible for a $2000 maximum mental health counseling award.

5. Extenuating circumstances warranting consideration of counseling beyond the maximum may be submitted by the mental health provider after the maximum award has been reached.

6. Counseling costs will not be paid in advance but will be paid on an ongoing basis as victim is being billed.

7. In-patient hospitalization shall only be considered when the treatment has been recommended by a licensed therapist in life-threatening situations. In these cases the Crime Victim Reparations Board shall consider reimbursement of in-patient treatment or contract with a managed mental health care provider to make recommendations to the Reparations Officer regarding treatment. A direct relationship to the crime needs to be established. Acute in-patient hospitalization shall not exceed $600 per day, which includes all ancillary expenses, and will be considered payment in full to the provider. Inpatient psychiatric visits will be limited to one visit per day with payment for the visit made to the institution at the highest rate of the individuals providing therapy as set by rule. Reimbursement for testing costs may also be allowed. Secondary victims shall not be considered for in-patient hospitalization.

8. Residential and day treatment shall only be considered when the treatment has been recommended by a licensed therapist to stabilize the victim's behavior and symptoms. Only facilities with 24 hour nursing care or 24 hour on call nursing care will be compensated for residential and day treatment. Residential and day treatment shall not be used for extended care of dysfunctional families and containment placements. A direct relationship to the crime needs to be established. Residential treatment shall not exceed $300 per day and will be considered payment in full to the provider. Residential treatment shall be limited to 30 days, unless there are extenuating circumstances requiring extended care. All residential clients shall receive routine assessments from a psychiatrist and/or APRN at least once a week for medication management. Day treatment shall not exceed $200 per day and will be considered payment in full to the provider. Secondary victims shall not be considered for residential or day treatment.

9. Child sexual abuse victims under the age of 13 who become perpetrators shall only be considered for mental health treatment awards directly related to the victimization. Perpetrators age 13 and over who have been child sexual abuse victims shall not be eligible for compensation. The CVR Board or contracting agency for managed mental health care shall help establish a reasonable percentage regarding victimization treatment for inpatient, residential and day treatment. Out-patient claims shall be determined by the Reparation Officer on a case by case basis upon review of the mental health treatment plan.

10. Payment for mental health counseling shall only be made to licensed therapists; or to individuals working towards a license that provide certified verification of satisfactory completion of an education and earned degree as required by the State of Utah Department of Commerce, Division of Professional and Occupational Licensing, working under the supervision of a supervisor approved by the Division. Student interns otherwise eligible under 58-1-307(1)(b) Exceptions from licensure, and/or the institution/facility/agency responsible for the supervision of the student, shall not be eligible for payment under this rule for counseling services provided by the student.

11. Payment of hypnotherapy shall only be considered when treatment is performed by a licensed mental health therapist based upon an approved Treatment Plan.

12. The following maximum amounts shall be payable for mental health counseling:

(a) up to $130 per hour for individual and family therapy performed by licensed psychiatrists, and up to $65 per hour for group therapy;

(b) up to $90 per hour for individual and family therapy performed by licensed psychologists and up to $45 per hour for group therapy;

(c) up to $70 per hour for individual and family therapy performed by a licensed master's level therapist or an Advanced Practice Registered Nurse, and up to $35 per hour for group therapy. These rates shall also apply to therapists working towards a license and supervised by a licensed therapist;

(d) The above-mentioned rates shall apply to individuals performing treatment, and not those supervising treatment.

13. Chemical dependency specific treatment will not be compensated unless the Reparation Officer determines that it is directly related to the crime. The CVR Board may review extenuating circumstance cases.

R270-1-5. Attorney Fees.

Pursuant to Subsection 63-25a-424(2) attorney fees shall be made within the reparation award and not in addition to the award. If an award is paid in a lump sum, the attorney's fee

shall not exceed 15% of the total award; if payments are awarded on an on going basis, attorney fees will be paid when warrants are generated but not to exceed 15%. When appeal hearing denials are overturned, attorney fees shall be calculated only on the appealed reparation issue.

R270-1-6. Reparation Awards.

Pursuant to Section 63-25a-403, reparation awards can be made to victims of violent crime where restitution has been ordered by the court but appears unlikely the restitution can be paid within a reasonable time period. However, notification of the award will be sent to the courts, prosecuting attorneys, Board of Pardons or probation and parole counselors indicating any restitution monies collected up to the amount of the award will be forwarded to the Crime Victim Reparations Trust Fund.

R270-1-7. Abortion.

Expenses for an abortion that is permitted pursuant to Sections 76-7-301 through 76-7-325 shall be eligible for a reparation award as long as all the requirements of Section 63-25a-411 have been met.

R270-1-8. Emergency Awards.

Pursuant to Section 63-25a-422, emergency awards up to $1000 can be granted. No time limit is required for filing an emergency claim. Processing of emergency claims is three to five days.

R270-1-9. Loss of Earnings.

A. Pursuant to Subsection 63-25a-411(4)(d), the 66-2/3% of the person's weekly salary or wages is calculated on gross earnings.

B. Loss of earnings for primary and secondary victims may be reimbursed for up to a maximum of twelve (12) weeks work loss, at an amount not to exceed the maximum allowed per week by Worker's Compensation guidelines in effect at the time of work loss. Reference should be made to Section R270-1-11 for guidelines on sick leave, annual leave or bereavement leave as a collateral source. The Crime Victim Reparations Board may review extenuating circumstances on loss of earnings claims.

R270-1-10. Moving, Transportation Expenses.

A. Pursuant to Subsection 63-25a-411(4)(a), victims of violent crime who suffer a traumatic experience or threat of bodily harm are allowed moving expenses up to $2000. Board approval is needed where extenuating circumstances exist.

B. Transportation expenses up to $500 are allowed for court, medical or mental health visits for primary and secondary victims. Board approval is needed where extenuating circumstances exist.

R270-1-11. Collateral Source.

A. Pursuant to Section 63-25a-413, sick leave and annual leave shall be considered as a collateral source. If there are extenuating circumstances, the director may make an exception to this requirement.

B. Crime Victim Reparations Trust Fund monies shall be used before State Social Services contract monies when considering out-of-pocket expenses in child sexual abuse cases, if the individuals qualify as victims. If the victim qualifies for Medicaid, the contract monies should be used first.

C. Crime Victim Reparations Trust Fund monies shall be used before the Utah Medical Assistance Program funds when considering allowable benefits for victims of violent crime.

R270-1-12. Record Retention.

A. Pursuant to Section 63-25a-401, retention of Crime Victim Reparations annual report and crime victim case files shall be as follows:

1. Annual reports and other statistical information shall be retained in office for a period of three years and then transferred to State Archives.

2. Crime victim case files shall be retained in office as needed for administrative use. After closure or denial of a case file, case file shall be retained in office for one year and then transferred to State Archives. Case files will be retained in the State Records Center for eleven years and then destroyed.

R270-1-13. Awards.

A. Pursuant to Section 63-25a-421, when billing from the providers exceeds the maximum allowed, the Reparation Officer shall pay the bills by the date of service. The Reparation Officer shall solicit input from the victim when making this determination. When the services and the billings have occurred at the same time, the Reparation Officer shall determine payment on a percentage basis.

R270-1-14. Essential Personal Property.

Pursuant to Subsection 63-25a-411(4)(h), essential personal property covers all personal articles necessary and essential for the health and safety of the victim. The Reparation Officer may allow up to $1500 for replacement of such items as eyeglasses, hearing aids, burglar alarms, door locks, crime scene cleanup, repair of walls and broken windows, etc. The board shall review any exceptions over $1500.

R270-1-15. Subrogation.

Pursuant to Section 63-25a-419, subrogation monies collected from the perpetrator, insurance, etc., will be placed in the Crime Victim Reparations Trust Fund and will not be credited toward a particular victim or claimant award amount.

R270-1-16. Unjust Enrichment.

A. Pursuant to Subsection 63-25a-410(1)(d), the following criteria shall be used when considering claims involving possible unjust enrichment of an offender:

1. Unjust enrichment determination shall not be based solely on the presence of the offender in the household at the time of the award.

2. Awards shall not be denied on the basis that the offender would be unjustly enriched, if the victim cooperates with investigation and prosecution of the crime and does what is possible to prevent access by the offender to substantial compensation.

3. Payment to third party providers shall be made to prevent monies intended for victim expenses be used by or on behalf of the offender.

4. Collateral resources such as court-ordered restitution and medical insurance that are available to the victim from the offender shall be examined. However, the victim shall not be penalized for failure of an offender to meet legal obligations to pay for the cost of the victim's recovery.

5. Factors to be considered in determining whether enrichment is substantial or inconsequential include the amount of the award and whether a substantial portion of the compensation award will be used directly by or on behalf of the offender. If the offender has direct access to a cash award and/or if a substantial portion of it will be used to pay for his living expenses, that portion of the award that will substantially benefit the offender may be reduced or denied. When enrichment is inconsequential or minimal, the award shall not be reduced or denied.

R270-1-17. Prescription or Over-the-Counter Medications.

A. Reimbursement of prescription or over-the-counter medications used in conjunction with mental health therapy shall be considered only for the duration of an approved Treatment Plan.

B. Reimbursement of prescription or over-the-counter medications used in conjunction with medical treatment shall be considered only during the course of treatment by the physician.

C. Medication management rates shall be limited to a maximum of $62.50 per thirty minute session.

R270-1-18. Peer Review Committee.

A. A volunteer Peer Review Committee may be established to review issues and/or provide input to Crime Victim Reparations staff on out-patient mental health counseling claims. The composition, duties, and responsibilities of this Committee shall be defined by the Crime Victim Reparations Board by written internal policy and procedure.

R270-1-19. Medical Awards.

A. Pursuant to Subsection 63-25a-411(4)(b), medical awards are subject to limitations as follows:

1. All medical costs must be related directly to the victimization and all treatment must be considered usual and customary.

2. The reparation officer reserves the right to audit any and all billings associated with medical care.

3. The reparation officer will not pay any interest, finance, or collection fees as part of the award.

4. After the effective date of this rule, in-patient hospital medical bills shall be reimbursed at a rate established between the CVR office and individual hospitals and shall be considered payment in full. A Memorandum of Agreement shall be signed and kept on file.

R270-1-20. Misconduct.

Pursuant to Subsections 63-25a-402(21) and 63-25a-412(1)(b) misconduct shall be considered conduct which contributed to the victim's injury or death or engaged in conduct in which the victim could have reasonably foreseen could lead to injury or death. In determining whether the victim engaged in misconduct, the CVR staff shall consider any behavior of the victim that may have directly or indirectly contributed to the victim's injury or death including consent, provocation, verbal utterance, gesture, incitement, prior conduct of the victim or the ability of the victim to have reasonably avoided the incident upon which the claim is based.

R270-1-21. Three Year Limitation.

Pursuant to Subsections 63-25a-406(1)(c) and 63-25a-428(2) a claim for benefits expires and no further payments will be made with regard to the claim after three years have elapsed from the date of application with the CVR office. All claimants who have filed a claim for benefits with the CVR office prior to the effective date of this rule shall be notified in writing of the three year limitation for payment of benefits. Any claimant who filed a claim for benefits more than two and one-half years prior to the effective date of this rule, other than a claim for benefits for permanent disability or loss of support, shall be notified in writing that they have six months in which to submit any remaining expenses before the three year limitation is imposed and the claim is closed. Claims for benefits for permanent disability or loss of support filed prior to the effective date of this rule shall not be subject to the three year limitation. The Crime Victim Reparations Officers may review extenuating circumstances on claims that have been closed because of the Three Year Limitation rule.

R270-1-22. Sexual Assault Forensic Examinations.

A. Pursuant to Subsections 63-25a-402(19) and 63-25a-411(4)(i), the cost of sexual assault forensic examinations for gathering evidence and providing treatment may be paid by the CVR office in the amount of $300.00 without photo documentation and up to $600.00 with a photo examination. The CVR office may also pay for the cost of medication and up to 85% of the hospital expenses. The following agency guidelines need to be adhered to when making payments for sexual assault forensic examinations:

1. A sexual assault forensic examination shall be reported to law enforcement.

2. Victims shall not be charged for sexual assault forensic examinations.

3. The agency may reimburse any licensed health care facility that provides services for sexual assault forensic examinations.

4. The agency may reimburse licensed medical personnel trained to gather evidence of sexual assaults who perform sexual assault forensic examinations.

5. CVR may pay for the collection of evidence and not attempt to prove or disprove the allegation of sexual assault.

6. A request for reimbursement shall include the law enforcement case number or be signed by a law enforcement officer, victim/witness coordinator or medical provider.

7. The application or billing for the sexual assault forensic examination must be submitted to CVR within one year of the examination.

8. The billing for the sexual assault forensic examination shall:

a. identify the victim by name, address, date of birth, Social Security number, telephone number, patient number;

b. indicate the claim is for a sexual assault forensic examination; and

c. itemize services and fees for services.

9. All collateral sources that are available for payment of the sexual assault forensic examination shall be considered before CVR Trust Fund monies are used. Pursuant to Subsection 63-25a-411(i), the Director may determine that reimbursement for a sexual assault forensic examination will not be reduced even though a claim could be recouped from a collateral source.

10. Evidence will be collected only with the permission of the victim or the legal guardian of the victim. Permission shall not be required in instances where the victim is unconscious, mentally incapable of consent or intoxicated.

11. Restitution for the cost of the sexual assault forensic examination may be pursued by the CVR office.

12. Payment for sexual assault forensic examinations shall be considered for the following:

a. Fees for the collection of evidence, for forensic documentation only, to include:

i. history;

ii. physical;

iii. collection of specimens and wet mount for sperm; and

iv. treatment for the prevention of sexually transmitted disease up to four weeks.

b. Emergency department services to include:

i. emergency room, clinic room or office room fee;

ii. cultures for gonorrhea, chlamydia, trichomonas, and tests for other sexually transmitted disease;

iii. serum blood test for pregnancy; and

iv. morning after pill or high dose oral contraceptives for the prevention of pregnancy.

13. The victim of a sexual assault that is requesting payment by CVR for services needed or rendered beyond the sexual assault forensic examination needs to submit an application for compensation to the CVR office.

R270-1-23. Loss of Support Awards.

A. Pursuant to Subsection 63-25a-411(4)(g), loss of support awards shall be covered on death claims only.

R270-1-24. Rent Awards.

A. Pursuant to Subsection 63-25a-411(4)(a), victims of

domestic violence or child abuse may be awarded a one time only rental award for actual rent expenses of $1800 for a maximum of three months if the following conditions apply:

1. The perpetrator was living with the victim at the time of the crime or the rent assistance appears directly related to the victim's ability to distance herself/himself from the perpetrator.

2. It appears reasonable that the perpetrator was assisting or was solely responsible for rent.

3. The victim agrees that the perpetrator is not allowed on the premises.

R270-1-25. Secondary Victim.

Secondary victims who are not primary victims pursuant to Subsections 63-25a-402(37) and who are traumatically affected by criminally injurious conduct shall be eligible for compensation as prescribed by the CVR Board. Secondary victims include only immediate family members (spouse, father, mother, stepparents, child, brother, sister, stepchild, stepbrother, stepsister, or legal guardian) and anyone residing in the household at the time of the crime who was traumatically affected by the crime. The CVR Board may review requests by other individuals who are not immediate family members or do not reside in the household.

R270-1-26. Victim Services.

Pursuant to Subsection 63-25a-406(1)(j), the CVR Board may approve victim service requests following receipt of an application or request for proposal. Applications or requests for proposals shall be submitted on a form approved by the CVR Board. Application requests for one time funding will be submitted to the CVR Board for their review and decision. Requests for ongoing funding may be approved by the CVR Board and then forwarded to the CVR grants program for administration and monitoring purposes. All requests for ongoing funding shall be reviewed annually to determine if additional funding is warranted. This process may be implemented in conjunction with the annual Victims of Crime Act (VOCA) request for proposal program. Each request shall comply with all CVR grant program guidelines, certifications and assurances as determined by the director. There is no commitment by the CVR office that once a grant has been funded that there will be any subsequent funding. Continuation of funding for new and existing projects is contingent on the availability of funds and a determination that a sufficient reserve has been established for reparation claims. Awards may be denied or limited as determined appropriate by the Board. Decisions by the CVR Board are final and may not be appealed. The CVR office shall review expenditures by award recipients to insure compliance with the provisions of the request. Recipients shall be required to provide the CVR office with all documentation and receipts requested.

KEY: victim compensation, victims of crimes
July 2, 2004 63-25a-401 et seq.
Notice of Continuation December 10, 2001

R277. Education, Administration.
R277-402. Online Testing.
R277-402-1. Definitions.

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

B. "Intent to implement a uniform online summative test system" as used in 53A-1-708(4) means the commitment by a school district/charter school to administer at least one U-PASS-required assessment in spring 2005 or spring 2006, including the willingness to provide documentation of preparatory activities or of actual test-taking by students.

C. "Summative tests" means tests administered near the end of a course to assess overall achievement of course goals.

D. "Uniform online summative test system" means a single system coordinated by the USOE for the online delivery of summative tests required under U-PASS.

E. "Utah Performance Assessment System for Students (U-PASS)" means:

(1) systematic norm-referenced achievement testing of all students in grades 3, 5, 8, and 11 required by this part in all schools within each school district and in charter schools by means of tests designated by the Board;

(2) criterion-referenced achievement testing of students in all grade levels in:

(a) language arts (grades 1-11);

(b) mathematics (grades 1-7) and pre-algebra, elementary algebra, and geometry;

(c) science (grades 4-8) and earth systems, biology, chemistry, and physics; and

(3) a direct writing assessment in grades 6 and 9;

(4) beginning with the 2004-2005 school year, a tenth grade basic skills competency test as detailed in Section 53A-1-611; and

(5) beginning with the 2002-2003 school year, the use of student behavior indicators in assessing student performance.

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

R277-402-2. 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-1-708(5) which directs the Board to specify procedures and accountability for online summative testing by school districts/charter schools consistent with existing U-PASS requirements, 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 additional definitions and a timeline for expeditious implementation of an educational technology infrastructure for school districts/charter schools to use to satisfy U-PASS requirements through an online testing system.

R277-402-3. Application and Award Procedures.

A. Online testing funds shall be distributed to school districts/charter schools consistent with 53A-1-708(5)(b).

B. The USOE shall provide non-competitive applications to school districts/charter schools for a twenty-five percent base and seventy-five percent per pupil distribution of funds. For the purpose of this funding, all charter schools are considered collectively for the twenty-five percent base.

(1) Applications shall express the intent of the school district/charter school to build educational technology infrastructure and capacity to participate in online testing consistent with R277-402-1B;

(2) Applications shall provide a timeline for online testing implementation including names of participating schools within the school district and participating charter schools and dates of tests and numbers of students who will participate in the online testing for each year of the school district's/charter school's online testing phase-in plan; and

(3) Applications shall provide an evaluation or accountability process for determining and documenting the effectiveness of the online testing phase-in plan.

(4) Application budget shall be consistent with the school district/charter school Consolidated Utah Student Achievement Plan (CUSAP) and educational technology plan.

R277-402-4. Distribution of Funds.

A. Twenty-five percent of the funds shall be distributed equally to school districts/charter schools that provide applications required under R277-402-3. Seventy-five percent of the funds appropriated by the Legislature in Section 53A-1-708 shall be distributed to school districts/charter schools on a per pupil basis that provide applications required under R277-402-3.

B. Per pupil amounts shall be derived from October 2004 student counts of applicants.

C. The USOE shall work with applicants, to the extent of resources available, to improve the applications for funding.

R277-402-5. Timelines.

A. School districts/charter schools shall submit to the USOE their intent to apply for funds under this rule no later than June 15, 2004.

B. Applications shall be available from the USOE for funds under this rule by July 1, 2004.

C. Applications shall be due to the USOE by August 15, 2004.

D. The USOE shall design and post a Request for Proposal to select an online testing company or service adequate to provide online testing services to schools no later than July 1, 2004.

D. School districts/charter schools shall provide an evaluation of planning or preparation for the use of online testing or an assessment of the actual online testing process as directed by the USOE.

E. Schools that do not provide timely, complete and accurate evaluations may not be considered for continued funding under this rule.

KEY: online testing
July 16, 2004 **Art X Sec 3**
53A-1-708(5)
53A-1-401(3)

R277. Education, Administration.
R277-418. School Professional Development Days Pilot Program.
R277-418-1. Definitions.

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

B. "Criterion Reference Test (CRT)" means a test to measure performance against a specific standard. The meaning of the scores is not tied to the performance of other students.

C. "Local school committee" means a committee developed by each applicant school designated by the school principal. The committee has the responsibility of designing the professional development days plan. The committee may include administrators, teachers, parents and classified employees, as appropriate. All or part of a school community council, under Section 53A-1a-108, may be designated as the local school committee.

D. "School community council" means a committee composed of school employees and parents as defined under Section 53A-1a-108(3).

R277-418-2. 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-3-702(4) which directs the Board to make rules to implement a professional development pilot program, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities

B. The purpose of this rule is to implement the pilot program and distribute funds consistent with Section 53A-3-702.

R277-418-3. Program Requirements and Timeline.

A. A School desiring and approved by its local board to develop a pilot program which allows the school to use a maximum of 22 hours of the 990 hours of student instructional time required under R277-419 for professional development days shall submit a proposed schedule of activities and school schedule variances to the school community council for recommendation to the local board by June 30 prior to the affected school year.

B. Following community council review and recommendation, a local school committee shall submit the plan to the local board by July 15.

C. A local board shall submit school plans accepted by the local board to the Board by July 20.

D. The Board shall review and approve or deny plans submitted by local boards by August 10. Local boards shall include signatures of approval by community council chairs, principals and local board presidents on school plans submitted to the Board.

R277-418-4. Plan Components and Accountability.

A. All plans shall include components/information consistent with the criteria under Section 53A-3-702(2) and:

(1) expected results expressed in terms of measurable student achievement outcomes with timelines for outcomes including:

(a) specific evaluation criteria to be used and personnel (by name, if available) employed or assigned by the district/charter school to measure the effect of the change;

(b) student achievement test scores on related CRTs;

(c) formative assessment scores or qualitative data, or both.

(2) an assessment/evaluation of the program shall be provided by each participating school to the local board.

B. School assessments shall include a parent comment and evaluation component.

C. Pilot program evaluations shall be submitted to the local school board by June 30 of each year of participation in the pilot program.

R277-418-5. Board Review and Accountability.

A. The Board may accept or approve all programs submitted by local boards that satisfy all components/requirements of Section 53A-3-702 and this rule.

B. The Board may allow schools that submit complete and satisfactory program evaluations to submit abbreviated plans for the 2005-06 school year.

C. The Board may review and audit schools, hours and programs, following adequate notice to the school and the local board, and may require additional assessment or information from the school or local board.

D. The Board shall report to the Education Interim Committee as required in Section 53A-3-702(5).

KEY: professional development days
July 16, 2004 **Art X Sec 3**
53A-3-702(4)
53A-1-402(1)(b)

R277. Education, Administration.
R277-422. State Supported Voted Leeway, Local Board-Approved Leeway and Local Board Leeway for Reading Improvement Programs.
R277-422-1. Definitions.

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

B. "Voted leeway program" or "state-supported voted leeway program" means a state-supported program in which a property tax levy approved under Section 53A-17a-133 is authorized to cover a portion of the costs within the general fund of the state-supported minimum school program in a district.

C. "Local board leeway program" or "local board-approved leeway program" means a state-supported program in which a local board authorizes a property tax levy under Section 53A-17a-134 to cover a portion of the costs within the school district general fund of the state-supported minimum school program. The levy may require voter approval under Section 53A-17a-134(4). These funds shall be spent for class size reduction or other purposes in a district if the local board determines that the average class size in the school district is not excessive.

D. "Local board" means the school board members elected to govern a school district.

E. "Local board leeway for reading improvement" means a local board leeway program in which a local board authorizes a property tax levy under Section 53A-17a-151 to cover a portion of the costs of a school district K-3 Reading Improvement Program established in Section 53A-17a-150.

F. "State-supported" means a formula-based state contribution of money to the voted leeway program and the board-approved leeway program as defined in Section 53A-17a-133(3) and Section 53A-17a-134(2).

R277-422-2. 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-1-402(1)(f) which directs the Board to establish rules for the minimum school program, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify requirements, timelines, and clarifications for the state-supported voted, local board-approved, and local board leeway for reading improvement programs.

R277-422-3. Requirements and Timelines for State-Supported Voted Leeway.

A. A local board may establish a state-supported voted leeway program following an election process that approves a special tax. The election process is provided for under Section 53A-17a-133(2).

B. Local boards which have approved voted leeway programs since 1965 may set an annual fiscal year fixed tax rate levy for the voted leeway equal to or less than the levy authorized by the election.

C. An election to consider adoption or modification of a state-approved voted leeway program is required.

D. A local board may continue an existing state-supported voted leeway program despite a majority vote opposing a modification of the state-supported voted leeway program.

E. If adoption of a voted leeway program is contingent upon an offset reduction of other local board tax levies, the local board shall allow the electors, in a election, to reconsider modifying or discontinuing the voted leeway program prior to a subsequent increase in the certified tax rate as set by the local board.

F. The state provides state guarantee funds to support the district state-supported voted leeway according to the amount specified in Section 53A-17a-133(3) and the local board-approved leeway according to the amount specified in Section 53A-17a-134(2).

G. State and local funds received by a local board under the state-supported voted leeway program are unrestricted revenue and may be budgeted and expended within the school district's general fund as authorized by the local board.

H. In order to receive state support for an initial or subsequent increase in a voted leeway tax rate, a local board shall receive voter approval no later than December 1 prior to the commencement of the fiscal year of implementation of that initial or additional voted leeway tax rate.

I. If a school district qualifies for state support the year prior to an increase in its existing voted leeway tax levy; and:

(1) receives voter approval for an increase after December 1, and

(2) intends to levy the additional rate for the fiscal year starting the following July 1, then

(3) the district shall only receive state support for the existing voted leeway tax rate and not the additional voter-approved tax rate for the fiscal year commencing the following July 1, and

(4) shall receive state support for the existing and additional voter-approved tax rate for each year thereafter, as long as the district qualifies to receive state support.

R277-422-4. Local Board-Approved Leeway Requirements and Timelines.

In order to receive state support for an initial or subsequent increase in a board-approved leeway tax rate, a local board shall approve the tax rate no later than April 1 prior to the commencement of the fiscal year of implementation of that initial or additional board leeway tax rate.

R277-522-5. Optional Reading Improvement Levy Requirements and Timelines.

A. Local funds received by a local board under the local board leeway for reading improvement tax levy shall be used for funding the school district's K-3 Reading Improvement Program.

(1) This levy is in addition to any other tax levy or maximum tax rate; and

(2) does not require voter approval; and

(3) may be modified or terminated by a majority vote of the local board.

(4) The local board leeway for reading improvement is not a state-supported levy.

B. A local board shall establish its optional board leeway for reading improvement levy by June 1 to have the levy apply to the fiscal year beginning July 1 in that same calendar year.

C. If after 36 months of K-3 Reading Improvement Program operation, a school district fails to meet the goals stated in the district's plan for student reading proficiency improvement, as measured by gain scores, the local board shall at the next possible tax rate setting opportunity terminate its board leeway for reading improvement tax levy.

D. School districts that fail to reach their reading goals shall terminate their levy under Section 53A-17a-150(15). After a period of no less than one year, school districts that terminated their levy may present a new or revised K-3 Reading Initiative plan to the Board. Following approval by the Board, the local board may reinstate the levy at the next possible tax rate setting opportunity.

R277-422-6. Tax Rate Setting Schedule.

Districts shall submit all approved tax levies to county auditors before the second Tuesday in August.

KEY: education, finance
July 16, 2004 **Art X Sec 3**

Notice of Continuation October 18, 2002	**53A-1-402(1)(f)**
	53A-1-401(3)
	53A-17a-133
	53A-17a-134
	53A-17a-150
	53A-17a-151

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

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

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

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

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

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

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

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

H. "Core academic subjects" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act (NCLB), Title IX, Part A, 20 U.S.C. 7801, Section 9101(11).

I. "Documentation of professional development activities" means:

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

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

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

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

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

K. "Highly qualified" means a teacher has met the specific requirements of ESEA, NCLB, Title IX, Part A, 20 U.S.C. 7801, Section 9101(23).

L. "HOUSSE" means high, objective, uniform state standard of evaluation permitted under ESEA, NCLB, Title IX, Part A, 20 U.S.C. 7801, Section 9101(23)(C)(ii).

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

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

O. "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.

P. "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.

Q. "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.

R. "License" means an authorization issued by the Board which permits the holder to serve in a professional capacity in a unit of the public education system or an accredited private school.

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

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

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

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

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

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

R277-501-2. Authority and Purpose.

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

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

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

A. A college/university course:

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

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

(3) Each quarter hour equals 12 license points.

B. Inservice:

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

(2) may be requested from the USOE by:

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

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

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

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

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

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

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

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

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

D. Service in professional activities in an educational institution:

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

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

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

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

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

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

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

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

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

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

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

G. Acceptable alternative professional development activities:

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

(2) These activities shall be approved by an educators's principal/supervisor.

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

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

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

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

R277-501-4. NCLB Highly Qualified - Secondary.

In order to meet the federal requirements under a Highly Objective Uniform Statewide System of Evaluation (HOUSSE), a secondary educator shall have a bachelor's degree, an educator license and one of the following for each of the teacher's NCLB Core academic subject assignments:

A. a University major degree, masters degree, doctoral degree or National Board Certification; or

B. documentation that the teacher has passed, at a level designated by the USOE, an appropriate USOE-approved subject area test(s); or

C. an endorsement in a subject area directly related to the educator's academic major; or

D. documentation of coursework equivalent to a major degree (30 semester or 45 quarter hours); or

E. documentation of satisfaction of Utah's HOUSSE requirements for assignments not directly related to the educator's academic major:

(1) a current endorsement for the assignment; and

(2) completion of 200 professional development points directly related to the area in which the teacher seeks to meet the federal standard under R277-501(3) as applicable. (No more than 100 points may be earned for successful teaching in related area(s)); and

(3) all Utah secondary teachers who teach NCLB content courses shall have points and documentation of highly qualified status before June 30, 2006; and

(4) documentation includes official transcripts, annual teaching evaluation(s), data of adequate student achievement.

R277-501-5. NCLB Highly Qualified - Elementary and Early Childhood.

A. In order to meet the federal requirements under a Highly Objective Uniform Statewide System of Evaluation (HOUSSE), an elementary/early childhood educator shall satisfy before June 30, 2006 R277-501-5A (1) and (2) and (3)(a) or (b), and B or C as provided below:

(1) the educator has a current Utah educator license; and

(2) the educator is assigned consistent with the teacher's current state educator license; and

(3) the educator shall:

(a) have completed an elementary or early childhood major or both from an accredited college or university; or

(b) the teacher's employer may review the teacher's college/university transcripts and subsequent professional development to document that the following have been satisfied with academic grades of C or better:

(i) nine semester hours of language arts/reading or the equivalent; and

(ii) six semester hours of physical/biological science or the equivalent; and

(iii) nine semester hours of social sciences or the equivalent; and

(iv) three semester hours of the arts or the equivalent; and

(v) nine semester hours of college level mathematics or the equivalent as approved by the USOE; and

(vi) six semester hours of elementary/early childhood methodology (block); and

B. the educator has obtained a Level 2 license; or

C. An elementary/early childhood teacher shall pass Board-approved content test(s).

R277-501-6. Required Renewal License Points for Designated License Holders.

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

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

B. Level 1 license holder with one year licensed educator experience within a three year period.

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

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

C. Level 1 license holder with two years licensed educator experience within a three year period.

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

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

D. Level 1 license holder with three years licensed educator experience within a three year period.

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

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

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

F. Level 2 license holder:

(1) An active educator shall earn at least 100 license points within each five year period. License points shall be earned in activities defined under this rule that contribute to competence, performance, and effectiveness in the education profession.

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

(3) An inactive educator who works one year within a five year period shall earn 165 license points within a five year period to maintain an active educator license.

(4) An inactive educator who works two years within a five year period shall earn 130 license points within a five year period to maintain an active educator license.

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

G. Level 3 license holder:

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

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

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

H. Teachers seeking license renewal who do not meet NCLB standards shall focus 100 of the 200 required professional development points in teaching assignments in which the teacher does not hold an appropriate major or major equivalent.

R277-501-7. Renewal Timeline with Point Requirements for Educator Level 2 License Holders.

A. Level 2 active educators:

(1) A licensed educator whose license expires June 30, 2004 shall earn 80 license points between July 1, 1999 and June 30, 2004 and shall provide verification of employment.

(2) A licensed educator whose license expires June 30, 2005 shall earn 100 license points between July 1, 1999 and June 30, 2005 and shall provide verification of employment.

B. Level 2 inactive educators:

(1) A licensed educator whose license expires on June 30, 2004 shall earn 180 license points between July 1, 1999 and June 30, 2004.

(2) A licensed educator whose license expires after June 30, 2004 shall earn 200 license points during the renewal period.

R277-501-8. Miscellaneous Renewal Information.

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

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

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

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

(4) may be adjusted as circumstances change.

(5) shall be reviewed and signed by the educator's supervisor.

(6) If an educator is not employed in education at the renewal date, the educator shall:

(a) review the plan and documentation with a professional colleague who may sign the professional development plan and USOE verification form, or

(b) review the professional development plan and personally sign the verification form.

B. Each Utah license holder shall be responsible for maintaining a professional development folder.

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

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

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

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

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

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

D. License holders may begin to acquire professional development points under this rule as of July 1, 1999.

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

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

G. A renewal fee set by the USOE shall be charged to educators who seek renewal from an inactive status or to make level changes. Educators with active licenses shall be charged

a renewal fee consistent with R277-503.

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

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

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

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

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

(1) Specialists shall be considered licensed as of September 15, 1999, the effective date of R277-521.

(2) All specialists shall be considered Level 1 license holders.

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

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

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

(2) submission by the employing school district of the names of educators who completed district-specific professional development plans; and

(3) submission of professional development information in a timely manner consistent with the educator's license renewal cycle; failure of timely notification by districts to the USOE may result in expiration of licenses and additional time and costs for relicensure.

K. Completion of relicensure requirements by an educator under R277-501-6 or R277-501-8J, may not satisfy HOUSSE requirements for highly qualified status under No Child Left Behind, as defined in R277-520.

L. Educators are individually responsible for tracking their renewal cycles and completing professional development in a timely manner.

KEY: educational program evaluations, educator license renewal

July 16, 2004 **Art X Sec 3**
53A-6-104
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. "Board" means the Utah State Board of Education.

C. "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 a school district. A teacher working under a letter of authorization who is not an alternative routes to licensing (ARL) candidate, cannot be designated highly qualified under R277-520-1G.

D. "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.

E. "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.

F. "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.

G. "License areas of concentration" are 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 (1-8), Middle (5-9), Secondary (6-12), Administrative/Supervisory, Applied Technology Education, School Counselor, School Psychologist, School Social Worker, Special Education (K-12), Preschool Special Education (Birth-Age 5), Communication Disorders, and may also bear endorsements relating to subjects or specific assignments.

H. "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.

I. "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.

J. "Renewal" means reissuing or extending the length of a license consistent with R277-501.

K. "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. 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) The recommendation indicates that the individual has satisfactorily completed the programs of study required for the preparation of educators and met licensing standards in the license areas of concentration for which the individual is recommended.

(2) The Level 1 license is issued for three years.

(3) Employing school districts and educator preparation institutions shall cooperate in making special assistance available for educator Level 1 license holders. The resources of both may be used to assist those educators experiencing significant problems. The institution in closest proximity to the employing school district is the first choice for district involvement; however, the school district is encouraged to make a cooperative arrangement with the institution from which the educator graduated.

(4) An educator shall satisfy requirements and criteria 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.

B. A Level 2 license may be issued by the Board to a Level 1 license holder upon satisfaction of all requirements and the recommendation of the employing school district.

(1) The recommendation shall be made following the completion of three years of successful, professional growth and educator experience and satisfaction of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers 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 or who holds a doctorate in the educator's field of practice.

(1) It 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 shown on the face of the license and may be renewed any time after January of that year. Responsibility for securing renewal of the license

rests upon 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) Middle (5-9);
(4) Secondary (6-12);
(5) Administrative/Supervisory;
(6) Applied Technology Education;
(7) School Counselor;
(8) School Psychologist;
(9) School Social Worker;
(10) Special Education (K-12);
(11) Preschool Special Education (Birth-Age 5)
(12) Communication Disorders.

B. Under-qualified educators:

(1) Educators who are licensed but working out of their endorsement area(s) shall request and prepare a SAEP to complete the requirements of an endorsement with a USOE education specialist; or

(2) Local boards may request from the Board a Letter of Authorization for educators employed by the local board who have completed requirements for licensing but are waiting documentation of that completion. An approved Letter of Authorization is valid for a limited period of time. Following the expiration of the Letter of Authorization, the educator who has still not been completely approved for licensing is considered under qualified.

C. Licenses may be endorsed to indicate qualification in a subject or content area. An endorsement without a current license is not valid for employment purposes.

R277-502-6. School Counselor Levels of Licensure.

There are three levels of licensure for a K-12 school counselor:

A. School Counselor Professional Educator License Level 1 is a license issued:

(1) upon completion of an accredited counselor education program; or

(2) to persons applying for licensure under interstate agreements.

(3) This license is issued to counselors who are beginning their professional careers who have completed an approved 600 hour field experience (400 hours if the applicant has completed two or more years of successful teaching experience as approved by USOE licensing).

B. School Counselor Professional Educator License Level 2 is:

(1) a license issued after satisfaction of all requirements for a Level 1 license and 3 years of successful experience as a school counselor in an accredited school in Utah; and

(2) is valid for five years.

C. Counseling Intern Temporary License is based on written recommendation from a USOE accredited program that a candidate:

(1) is currently enrolled in the program;

(2) has completed 30 semester hours of course work, including successful completion of a practicum; and

(3) has skills to work in a school as an intern with supervision from the school setting and from the counselor education program.

(a) Letters from the accredited program recommending eligible candidates shall be submitted to USOE at the beginning of each school year.

(b) The Counseling Intern Temporary License is valid for the current year only and is not renewable.

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) The institution conducting the teacher preparation program shall be accredited by (NCATE), TEAC or one of the major regional accrediting associations.

(2) If the applicant has one or more years of previous educator experience, a Level 2 license may be issued following satisfaction of the requirements of R277-522 upon the recommendation of the employing Utah school district after at least one year.

R277-502-8. Computer-Aided Credentials of Teachers in Utah Schools (CACTUS).

A. CACTUS maintains public and protected and private information on licensed Utah educators.

(1) Public information includes name, educational qualifications, degrees earned, and current assignment (if applicable).

(2) 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 is opened on a licensed Utah educator when:

(1) the individual's fingerprint cards are submitted to the USOE, 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 school district staff may change demographic data.

(2) Authorized USOE staff may change licensing data such as endorsements, degrees, license areas of concentration.

(3) Authorized employing school district staff may update data on work experience for the current school year only.

D. Licensed individuals may view personal data if registered with the Utah Education Network (UEN). An individual may not change or add data.

E. Individuals currently employed by public, private or parochial schools under letters of authorization are included in CACTUS. Interns may be included on CACTUS.

F. Designated individuals have access to CACTUS data:

(1) A licensed individual may view his own file.

(2) Designated USOE staff may view or change CACTUS files on a limited basis with specific authorization.

(3) For employment or assignment purposes only, designated district or school staff members may access data on individuals employed by their own districts or data on licensed individuals who are not currently employed by public schools, some private and parochial schools and ATCs.

(4) Designated individuals may also view specific limited information on job applicants if the applicant has provided a school district with a Social Security Number.

R277-502-9. Professional Educator License Fees.

A. The Board, or its designee, shall establish a fee schedule for the issuance and renewal of licenses and endorsements consistent with 53A-6-105. All endorsements to which the applicant is entitled may be issued or renewed with the same expiration date for one licensing fee.

B. A fee may be charged for a valid license to be reprinted or for an endorsement to be added.

C. All costs of testing, evaluation, and course work shall be borne by the applicant unless other arrangements are agreed to in advance by the employing school district.

D. Costs may include differentiated fees for resident and nonresident applicants.

E. Costs may include an expediting fee if an applicant seeks to have a license application reviewed before applications received earlier.

KEY: professional competency, educator licensing
July 16, 2004 Art X Sec 3
Notice of Continuation September 12, 2002 53A-6-104
53A-1-401(3)

R277. Education, Administration.
R277-520. Appropriate Licensing and Assignment of Teachers.
R277-520-1. Definitions.

A. "At will employment" means employment that may be terminated for any reason or no reason with minimum notice to the employee consistent with the employer's designated payroll cycle.

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

C. "Composite major" means credits earned in two or more related subjects, as determined by an accredited higher education institution.

D. "Core academic subjects or areas" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act (NCLB), Title IX, Part A, 20 U.S.C. 7801, Section 9101(11).

E. "Demonstrated competency" means that a teacher shall demonstrate current expertise to teach a specific class or course through the use of lines of evidence which may include completed USOE-approved course work, content test(s), or years of successful experience including evidence of student performance.

F. "Eminence" means distinguished ability in rank, in attainment of superior knowledge and skill in comparison with the generally accepted standards and achievements in the area in which the authorization is sought as provided in R277-520-5.

G. "Highly qualified" means a teacher has met the specific requirements of ESEA, NCLB, Title IX, Part A, 20 U.S.C. 7801, Section 9101(23).

H. "HOUSSE" means high, objective, uniform state standard of evaluation permitted under ESEA, NCLB, Title IX, Part A, 20 U.S.C. 7801, Section 9101(23)(C)(ii).

I. J-1 Visa means a visa issued by the U.S. Department of State to an international exchange visitor who has qualified by training and experience to work in U.S. schools for a period not to exceed three years. Such international exchange visitors may qualify for "highly qualified" status under NCLB only if assigned within their subject matter competency.

J. "LEA" means a school district or charter school.

K. "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 a school district. A teacher working under a letter of authorization who is not an alternative routes to licensing (ARL) candidate, cannot be designated highly qualified under R277-520-1G.

L. "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.

M. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license as well as completion of Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers, as provided in R277-522, a minimum of three years of successful teaching in a public or accredited private school, and completion of all NCLB requirements at the time the applicant is licensed.

N. "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 in education or in a field related to a content area under R277-501-1M from an accredited institution.

O. "License areas of concentration" are obtained by completing an approved preparation program or an alternative preparation program in a specific area of educational studies such as Early Childhood (K-3), Elementary 1-8, Middle (5-9), Secondary (6-12), Administrative/Supervisory, Applied Technology Education, School Counselor, School Psychologist, School Social Worker, Special Education (K-12), Preschool Special Education (Birth-Age 5), Communication Disorders.

P. "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.

Q. "Major equivalency" means 30 semester hours of USOE and local board-approved postsecondary education credit or CACTUS-recorded professional development in NCLB core academic subjects as appropriate to satisfy NCLB highly qualified status.

R. "No Child Left Behind Act (NCLB)" means the federal Elementary and Secondary Education Act, P.L. 107-110, Title IX, Part A, Section 9101(11).

S. "Professional staff cost program funds" means funding provided to school districts based on the percentage of a district's professional staff that is appropriately licensed in the areas in which staff members teach.

T. "State qualified" means that an individual has met the Board-approved requirements to teach core or non-core courses in Utah public schools.

U. "SAEP" means State Approved Endorsement Program. This identifies an educator working on a professional development plan to obtain an endorsement.

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

R277-520-2. 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 gives the Board authority to adopt rules in accordance with its responsibilities, and Section 53A-6-104(2)(a) which authorizes the Board to rank, endorse, or classify licenses. This rule is also necessary in response to ESEA NCLB.

B. The purpose of this rule is to provide criteria for local boards to employ educators in appropriate assignments, for the Board to provide state funding to local school boards for appropriately qualified and assigned staff, and for the Board and local boards to satisfy the requirements of ESEA in order for local boards to receive federal funds.

R277-520-3. Appropriate Licenses with Areas of Concentration and Endorsements.

A. An early childhood teacher (kindergarten through 3) shall hold a Level 1, 2, or 3 license with an early childhood license area of concentration.

B. An elementary teacher (one through 8) shall hold a Level 1, 2, or 3 license with an elementary license area of concentration.

C. A secondary teacher (grades 6-12) including high school, middle-level, intermediate, and junior high schools, shall hold a Level 1, 2, or 3 license with a secondary license area of concentration with endorsements in all teaching assignment(s).

D. A teacher with a subject-specific assignment in grades 6, 7 or 8 shall hold a secondary license area of concentration with endorsement(s) for the specific teaching assignment(s) or an elementary license area of concentration with the appropriate subject/content endorsement(s).

E. An elementary (grades 7-8), a secondary or middle-level teacher may be assigned temporarily in a core or non-core

academic area for which the teacher is not endorsed if the local board requests and receives a letter of authorization from the Board and the teacher is placed on an approved SAEP.

F. Secondary educators with special education areas of concentration may add content endorsement(s) to their educator licenses consistent with R277-520-10 (SAEP).

G. Educators who have qualified for a J-1 Visa as an international visitor and have provided documentation of holding the equivalent of a bachelors degree, subject content mastery, and appropriate work/graduate training may qualify for a Utah Level 1 license. Such temporary visitors may be exempted, at the employer's discretion, from subject content testing, license renewal requirements, and EYE requirements for the duration of their visa eligibility.

R277-520-4. Routes to Utah Educator Licensing.

A. In order to receive a license, an educator shall have completed a bachelors degree at an approved higher education institution and:

(1) completed an approved institution of higher education teacher preparation program in the desired area of concentration; or

(2) completed an approved alternative preparation for licensing program, under alternative routes to licensing, consistent with R277-503.

B. An individual may receive a Utah license with an applied technology area of concentration following successful completion of a USOE-approved professional development program for teacher preparation in applied technology education.

C. An individual may receive a district-specific, competency-based license under Section 53A-6-104.5 and R277-520-8.

R277-520-5. Eminence.

A. The purpose of an eminence authorization is to allow individuals with exceptional training or expertise, consistent with R277-520-1F, to teach or work in the public schools on a limited basis. Documentation of the exceptional training, skill(s) or expertise may be required by the USOE prior to the approval of the eminence authorization.

B. Teachers with an eminence authorization may teach no more than 37 percent of the regular instructional load.

C. Teachers working under an eminence authorization shall never be considered highly qualified.

D. Local boards shall require an individual teaching with an eminence authorization to have a criminal background check consistent with Section 53A-3-410(1) prior to employment by the local board.

E. The local board of education that employs the teacher with an eminence authorization shall determine the amount and type of professional development required of the teacher.

F. A local board of education that employs teachers with eminence authorizations shall apply for renewal of the authorization(s) annually.

G. Eminence authorizations may apply to individuals without teaching licenses or to unusual and infrequent teacher situations where a license-holder is needed to teach in a subject area for which he is not endorsed, but in which he may be eminently qualified.

R277-520-6. State Qualified Teachers (Teachers Who Satisfy HOUSSE Rules).

A. A teacher has a Utah Level 1, 2 or 3 license or a district-specific competency-based license.

B. A teacher has an appropriate area of concentration.

C. A teacher in grades 6-12 has the required endorsement for the course(s) the teacher is teaching by means of:

(1) an academic teaching major from an accredited postsecondary institution, or a passing score on content test(s) and pedagogy test(s), if available, or USOE-approved pedagogy courses; or

(2) an academic major or minor from an accredited postsecondary institution; or

(3) completion of a personal development plan under an SAEP in the appropriate subject area(s) as explained under R277-520-10 with approval from the USOE specialist(s) in the endorsement subject areas.

D. On an annual basis, local boards/charter school boards shall request letters of authorization for teachers who are teaching classes for which they are not endorsed.

R277-520-7. Highly Qualified Teachers.

A. A secondary teacher (7-12) is considered highly qualified if the teacher meets the requirements of R277-501-4.

B. An elementary/early childhood teacher (grades K-8) is considered highly qualified if the teacher meets the requirements of R277-501-5.

R277-520-8. School District/Charter School Specific Competency-based Licensed Teachers.

A. The following procedures and timelines apply to the employment of educators who have not completed the traditional licensing process under R277-520-5A, B, or C:

(1) A local board/charter school board may apply to the Board for a school district/charter school specific competency-based license to fill a position in the district.

(2) The employing school district shall request a school district/charter school specific competency-based license no later than 60 days after the date of the individual's first day of employment.

(3) The application for the school district/charter school specific competency-based license 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, results or scores of a rigorous state core academic subject test in each of the core academic subjects in which the teacher teaches.

(4) The application for the school district/charter school specific competency-based license 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, the USOE shall approve a district/charter school specific competency-based license.

(6) If an individual employed under a school 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 school district/charter school specific competency-based license for an individual's district/charter school specific competency-based license shall be valid only in the district/charter school that originally requested the school district/charter school specific competency-based license and for the individual originally employed under the school

district/charter school specific competency-based license.

B. The written copy of the state-issued district-specific competency-based license shall prominently state the name of the school district/charter school followed by DISTRICT/CHARTER SCHOOL-SPECIFIC COMPETENCY-BASED LICENSE.

C. 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.

D. School district/charter school specific competency-based license holders are at-will employees consistent with Section 53A-8-106(5).

R277-520-9. Routes to Appropriate Endorsements for Teachers.

Teachers shall be appropriately endorsed for their teaching assignment(s). To be highly qualified:

A. teachers may obtain the required endorsement(s) with a major or composite major or major equivalency consistent with their teaching assignment(s), including appropriate pedagogical competencies; or

B. teachers who have satisfactorily completed a minimum of nine semester hours of USOE-approved university level courses may complete a professional development plan under an SAEP in the appropriate subject area(s) with approval from USOE Curriculum specialists; or

C. teachers may demonstrate competency in the subject area(s) of their teaching assignment(s). In order to be endorsed through demonstrated competency, the educator shall pass designated Board-approved content knowledge and pedagogical knowledge assessments as they become available.

D. individuals shall be properly endorsed consistent with R277-520-3 or have USOE-approved SAEPs. Otherwise, the Board may withhold professional staff cost program funds.

R277-520-10. Board-Approved Endorsement Program (SAEP).

A. Teachers in any educational program who are assigned to teach out of their area(s) of endorsement and who have at least nine hours of USOE-approved university level courses shall participate in an SAEP and make satisfactory progress within the period of the SAEP as determined by USOE specialists.

B. The employing school district shall identify teachers who do not meet the state qualified definition and provide a written justification to the USOE.

C. Individuals participating in SAEPs shall demonstrate progress toward completion of the required endorsement(s) annually, as determined jointly by the school district/charter school and the USOE.

D. An SAEP may be granted for one two-year period and may be renewed by the USOE, upon written justification from the school district, for one additional two-year period.

R277-520-11. Background Check Requirement and Withholding of State Funds for Non-Compliance.

A. Educators qualified under any provision of this rule shall also satisfy the criminal background requirement of Section 53A-3-410 prior to unsupervised access to students.

B. If LEAs do not appropriately employ and assign teachers consistent with this rule, they may have state appropriated professional staff cost program funds withheld pursuant to R277-486, Professional Staff Cost Formula.

C. Local boards/charter school boards shall report highly qualified educators in core academic subjects and educators who do not meet the requirements of highly qualified educators in core academic subjects beginning July 1, 2003.

KEY: educator, license, assignment

July 16, 2004	**Art X Sec 3**
Notice of Continuation July 12, 2000	**53A-1-401(3)**
	53A-6-104(2)(a)

R277. Education, Administration.
R277-522. Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers.
R277-522-1. 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. "Board" means the Utah State Board of Education.

C. "Computer-Aided Credentials of Teachers in Utah Schools (CACTUS)" means a database that maintains public information on licensed Utah educators.

D. "Educational Testing Services (ETS)" is an educational measurement institution that has developed standard-based teacher assessment tests.

E. "Entry years" means the three years a beginning teacher holds a Level 1 license.

F. "INTASC" means the Interstate New Teacher Assessment and Support Consortium, that has established Model Standards for Beginning Teacher Licensing and Development. The ten principles reflect what beginning teachers should know and be able to do as a professional teacher. The Board has adopted these principles as part of the NCATE standards.

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 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. "Mentor" means a Level 2 or Level 3 educator, who is trained to advise and guide Level 1 teachers.

K. "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 use this test as an exit exam from teacher education programs.

L. "Professional development" means locally or Board-approved education-related training or activities that enhance an educator's background consistent with R277-501, Educator License Renewal.

M. "Teaching assessment/evaluation" means an observation of a Level 1 teacher's instructional skills by a school district or school administrator using an evaluation tool based on or similar to INTASC principles.

N. "Working portfolio" means a collection of documents prepared by a Level 1 teacher and used as a tool for evaluation.

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

R277-522-2. 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-9-103(5) which directs career ladder programs to include a program of evaluation and mentoring for beginning teachers designed to assist those beginning teachers in developing the skills required of capable teachers; Section 53A-6-102(2)(a)(iii) which finds that the implementation of progressive strategies regarding induction, professional development and evaluation are essential in creating successful teachers; Section 53A-6-106 which directs the Board to establish a rule for the training and experience required of license applicants for teaching; 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 outline required entry years enhancements of professional and emotional support for Level 1 teachers whose employment or reemployment in the Utah public schools began after January 1, 2003. The requirements apply to teachers during their first three years of teaching and include mentoring, testing, assessment/evaluation, and developing a professional portfolio. The purpose of these enhancements is to develop in Level 1 teachers successful teaching skills and strategies with assistance from experienced colleagues.

R277-522-3. Required Entry Year Enhancements Requirements for a Level 1 Teacher to Advance to a Level 2 License.

A. Level 1 teachers shall satisfactorily collaborate with a trained mentor, pass a required pedagogical exam, complete three years of employment and evaluation, and compile a working portfolio.

B. Collaboration with an assigned mentor:

(1) A mentor shall be assigned to each Level 1 teacher in the first semester of teaching:

(a) The beginning teacher shall be assigned a trained mentor teacher by the principal to supervise and act as a resource for the entry level teacher.

(b) The mentor teacher shall teach in the same school, and where feasible, in the same subject area as the Level 1 teacher.

(2) Qualification of a mentor:

(a) A mentor shall hold a Utah Professional Educator's Level 2 or 3 license;

(b) A mentor shall have completed a mentor training program including continuing professional development.

(3) A mentor shall:

(a) guide Level 1 teachers to meet the procedural demands of the school and school district;

(b) provide moral and emotional support;

(c) arrange for opportunities for the Level 1 teacher to observe teachers who use various models of teaching;

(d) share personal knowledge and expertise about new materials, planning strategies, curriculum development and teaching methods;

(e) assist the Level 1 teacher with classroom management and discipline;

(f) support Level 1 teachers on an ongoing basis;

(g) help Level 1 teachers understand the implications of student diversity for teaching and learning;

(h) engage the Level 1 teacher in self-assessment and reflection; and

(i) assist with development of Level 1 teacher's portfolio.

C. Passage of a pedagogical examination:

(1) The Praxis II - Principles of Learning and Teaching

(a) shall be administered by ETS;

(b) shall be taken by the beginning teacher; the beginning teacher shall earn a qualifying score of at least 160;

(c) may be taken successive times.

(2) Results shall be posted on CACTUS.

D. Successful evaluation under a school district employment and assessment/evaluation program:

(1) Teachers shall be fully employed for three years in

Utah public schools or in accredited private schools.

(2) Employing school districts may, following evaluation of the individual's experience, determine that teaching experience outside of the Utah public schools satisfies the teaching/experience requirement of this rule.

(3) The school district has discretion in determining the employment or reemployment status of individuals.

(4) Employing school districts shall be responsible for the evaluation; this duty may be assigned to the school principal.

(5) The assessment/evaluation shall take place at least twice during the first year of teaching and at least twice during each of the following two years with a satisfactory final evaluation.

E. Compilation of a working portfolio:

(1) The portfolio shall be reviewed and evaluated by the employing school district.

(2) the portfolio may be reviewed by USOE staff upon request during the Level 1 teacher's second year of teaching.

(3) the portfolio shall be based upon INTASC principles; and may:

(a) include teaching artifacts;

(b) include notations explaining the artifacts; and

(c) include a reflection and self-assessment of his or her own practice; or

(d) be interpreted broadly to include the employing school district's requirement of samples of the first year teaching experience.

R277-522-4. Satisfaction of Entry Years Enhancements.

A. If a Level 1 teacher fails to complete all enhancements as enumerated in this rule, the Level 1 teacher shall remain in a provisional employment status until the Level 1 teacher completes the enhancements.

(1) The school district may make a written request to the USOE Educator Licensing Section for a one year extension of the Level 1 license in order to provide time for the educator to satisfy entry years enhancements.

(2) The Level 1 teacher may repeat some or all of the entry years enhancements.

(3) An opportunity to repeat or appeal an incomplete or unsatisfactory entry years enhancements process shall be designed and offered by the employing school district.

B. Recommendation for a Level 2 license:

(1) Each school district shall make an annual recommendation to the Board of teachers approved in its schools to receive a Level 2 license, including documentation demonstrating completion of the enhancements.

(2) The names of teachers who did not successfully complete entry years enhancements may also be reported to the Board annually by school districts.

C. The Board shall receive an annual report tracking the success of retention and the job satisfaction of Utah educators who complete the entry years enhancement program.

KEY: teachers
July 16, 2004

Art X Sec 3
53A-9-103(5)
53A-6-102(a)(iii)
53A-6-106
53A-1-401(3)

R317. Environmental Quality, Water Quality.
R317-6. Ground Water Quality Protection.
R317-6-1. Definitions.

1.1 "Aquifer" means a geologic formation, group of geologic formations or part of a geologic formation that contains sufficiently saturated permeable material to yield usable quantities of water to wells and springs.

1.2 "Background Concentration" means the concentration of a pollutant in ground water upgradient or lateral hydraulically equivalent point from a facility, practice or activity which has not been affected by that facility, practice or activity.

1.3 "Best Available Technology" means the application of design, equipment, work practice, operation standard or combination thereof at a facility to effect the maximum reduction of a pollutant achievable by available processes and methods taking into account energy, public health, environmental and economic impacts and other costs.

1.4 "Best Available Technology Standard" means a performance standard or pollutant concentration achievable through the application of best available technology.

1.5 "Board" means the Utah Water Quality Board.

1.6 "Class TDS Limit" means the upper boundary of the TDS range for an applicable class as specified in Section R317-6-3.

1.7 "Community Drinking Water System" means a public drinking water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents.

1.8 "Comparable Quality (Source)" means a potential alternative source or sources of water supply which has the same general quality as the ground water source.

1.9 "Comparable Quantity (Source)" means a potential alternative source of water supply capable of reliably supplying water in quantities sufficient to meet the year-round needs of the users served by the ground water source.

1.10 "Compliance Monitoring Point" means a well, seep, spring, or other sampling point used to determine compliance with applicable permit limits.

1.11 "Contaminant" means any physical, chemical, biological or radiological substance or matter in water.

1.12 "Conventional Treatment" means normal and usual treatment of water for distribution in public drinking water supply systems including flocculation, sedimentation, filtration, disinfection and storage.

1.13 "Discharge" means the release of a pollutant directly or indirectly into subsurface waters of the state.

1.14 "Existing Facility" means a facility or activity that was in operation or under construction after August 14, 1989 and before February 10, 1990.

1.15 "Economically Infeasible" means, in the context of a public drinking water source, the cost to the typical water user for replacement water would exceed the community's ability to pay.

1.16 "Executive Secretary" means the Executive Secretary of the Utah Water Quality Board.

1.17 "Facility" means any building, structure, processing, handling, or storage facility, equipment or activity; or contiguous group of buildings, structures, or processing, handling or storage facilities, equipment, or activities or combination thereof.

1.18 "Gradient" means the change in total water pressure head per unit of distance.

1.19 "Ground Water" means subsurface water in the zone of saturation including perched ground water.

1.20 "Ground Water Quality Standards" means numerical contaminant concentration levels adopted by the Board in or under R317-6-2 for the protection of the subsurface waters of the State.

1.21 "Infiltration" means the movement of water from the land surface into the pores of rock, soil or sediment.

1.22 "Institutional Constraints" means legal or other restrictions that preclude replacement water delivery and which cannot be alleviated through administrative procedures or market transactions.

1.23 "Lateral Hydraulically Equivalent Point" means a point located hydraulically equal to a facility and in the same ground water with similar geochemistry such that the ground water at that point has not been affected by the facility.

1.24 "Limit of Detection" means the concentration of a chemical below which it can not be detected using currently accepted sampling and analytical techniques for drinking water as determined by the U.S. Environmental Protection Agency.

1.25 "New Facility" means a facility for which construction or modification is initiated after February 9, 1990.

1.26 "Permit Limit" means a ground water pollutant concentration limitation specified in a Ground Water Discharge Permit and may include protection levels, class TDS limits, ground water quality standards, alternate concentration limits, permit-specific ground water quality standards, or limits stipulated in the application and use of best available technology. For facilities permitted by rule under R317-6-6.2, a permit limit is a ground water pollutant concentration limitation specified in R317-6-6.2.B.

1.27 "Person" means any individual, corporation, partnership, association, company or body politic, including any agency or instrumentality of the federal, state, or local government.

1.28 "Point of Discharge" means the area within outermost location at which effluent or leachate has been stored, applied, disposed of, or discharged; for a diked facility, the outermost edge of the dikes.

1.29 "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, sewage sludge, garbage, munitions, trash, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into waters of the state.

1.30 "Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the State, or such discharge of any liquid, gaseous, or solid substance into any waters of the state as will create a nuisance or render such waters harmful or detrimental or injurious to public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

1.31 "Professional Engineer" means any person qualified to practice engineering before the public in the state of Utah and professionally registered as required under the Professional Engineers and Professional Land Surveyors Licensing Act rules (UAC 156-22).

1.32 "Professional Geologist" means any person qualified to practice geology before the public in the State of Utah and professionally registered as required under the Professional Geologist Licensing Act rules (UAC R156-76).

1.33 "Protection Level" means the ground water pollutant concentration levels specified in R317-6-4.

1.34 "Substantial Treatment" means treatment of water utilizing specialized treatment methods including ion exchange, reverse osmosis, electrodialysis and other methods needed to upgrade water quality to meet standards for public water systems.

1.35 "Technology Performance Monitoring" means the evaluation of a permitted facility to determine compliance with best available technology standards.

1.36 "Total Dissolved Solids (TDS)" means the quantity of dissolved material in a sample of water which is determined by weighing the solid residue obtained by evaporating a

measured volume of a filtered sample to dryness; or for many waters that contain more than 1000 mg/l, the sum of the chemical constituents.

1.37 "Radius of Influence" means the radial distance from the center of a well bore to the point where there is no lowering of the water table or potentiometric surface because of pumping of the well; the edge of the cone of depression.

1.38 "Upgradient" means a point located hydraulically above a facility such that the ground water at that point has not been impacted by discharges from the facility.

1.39 "Vadose Zone" means the zone of aeration including soil and capillary water. The zone is bound above by the land surface and below by the water table.

1.40 "Waste" see "Pollutant."

1.41 "Water Table" means the top of the saturated zone of a body of unconfined ground water at which the pressure is equal to that of the atmosphere.

1.42 "Water Table Aquifer" means an aquifer extending downward from the water table to the first confining bed.

1.43 "Waters of the State" means all streams, lakes, ponds, marshes, water courses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof; except bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance or a public health hazard, or a menace to fish and wildlife, shall not be considered to be "waters of the state" under this definition.

1.44 "Zone of Influence" means the area contained by the outer edge of the drawdown cone of a water well.

R317-6-2. Ground Water Quality Standards.

2.1 The following Ground Water Quality Standards as listed in Table I are adopted for protection of ground water quality.

TABLE 1
GROUND WATER QUALITY STANDARDS

Parameter	Milligrams per liter (mg/l) unless noted otherwise and based on analysis of filtered sample except for Mercury and organic compounds
PHYSICAL CHARACTERISTICS	
Color (units)	15.0
Corrosivity (characteristic)	noncorrosive
Odor (threshold number)	3.0
pH (units)	6.5-8.5
INORGANIC CHEMICALS	
Cyanide (free)	0.2
Fluoride	4.0
Nitrate (as N)	10.0
Nitrite (as N)	1.0
Total Nitrate/Nitrite (as N)	10.0
METALS	
Arsenic	0.05
Barium	2.0
Cadmium	0.005
Chromium	0.1
Copper	1.3
Lead	0.015
Mercury	0.002
Selenium	0.05
Silver	0.1
Zinc	5.0
ORGANIC CHEMICALS	
Pesticides and PCBs	
Alachlor	0.002
Aldicarb	0.003
Aldicarb sulfone	0.002
Aldicarb sulfoxide	0.004
Atrazine	0.003
Carbofuran	0.04
Chlordane	0.002
Dibromochloropropane	0.0002
2, 4-D	0.07
Diquat	0.02
Dichlorophenoxyacetic acid (2, 4-) (2,4D)	0.07
Endothall	0.1
Endrin	0.002
Ethylene Dibromide	0.00005
Heptachlor	0.0004
Heptachlor epoxide	0.0002
Lindane	0.0002
Methoxychlor	0.04
Polychlorinated Biphenyls	0.0005
Pentachlorophenol	0.001
Toxaphene	0.003
2, 4, 5-TP (Silvex)	0.05
VOLATILE ORGANIC CHEMICALS	
Benzene	0.005
Carbon tetrachloride	0.005
1, 2 - Dichloroethane	0.005
1, 1 - Dichloroethylene	0.007
1, 1, 1-Trichloroethane	0.200
para - Dichlorobenzene	0.075
o-Dichlorobenzene	0.6
cis-1,2 dichloroethylene	0.07
trans-1,2 dichloroethylene	0.1
1,2 Dichloropropane	0.005
Ethylbenzene	0.7
Monochlorobenzene	0.1
Styrene	0.1
Tetrachloroethylene	0.005
Toluene	1
Trichloroethylene	0.005
Vinyl chloride	0.002
Xylenes (Total)	10
OTHER ORGANIC CHEMICALS	
Trihalomethanes	0.1

RADIONUCLIDES

The following are the maximum contaminant levels for Radium-226 and Radium-228, and gross alpha particle radioactivity, beta particle radioactivity, and photon radioactivity:

Combined Radium-226 and Radium-228	5pCi/l
Gross alpha particle activity, including Radium-226 but excluding Radon and Uranium	15pCi/l

Beta particle and photon radioactivity

The average annual concentration from man-made radionuclides of beta particle and photon radioactivity from man-made radionuclides shall not produce an annual dose equivalent to the total body or any internal organ greater than four millirem/year.

Except for the radionuclides listed below, the concentration of man-made radionuclides causing four millirem total body or organ dose equivalents shall be calculated on the basis of a two liter per day drinking water intake using the 168 hour data listed in "Maximum Permissible Body Burden and Maximum Permissible Concentration Exposure", NBS Handbook 69 as amended August 1962, U.S. Department of Commerce. If two or more radionuclides are present, the sum of their annual dose equivalent to the total body or to any organ shall not exceed four millirem/year.

Average annual concentrations assumed to produce a total body or organ dose of four millirem/year:

Radionuclide	Critical Organ	pCi per liter
Tritium	Total Body	20,000
Strontium-90	Bone Marrow	8

2.2 A permit specific ground water quality standard for any pollutant not specified in Table 1 may be established by the Executive Secretary at a level that will protect public health and the environment. This permit limit may be based on U.S. Environmental Protection Agency maximum contaminant level goals, health advisories, risk based contaminant levels, standards established by other regulatory agencies and other

relevant information.

R317-6-3. Ground Water Classes.

3.1 GENERAL

The following ground water classes are established: Class IA - Pristine Ground Water; Class IB - Irreplaceable Ground Water; Class IC - Ecologically Important Ground Water; Class II - Drinking Water Quality Ground Water; Class III - Limited Use Ground Water; Class IV - Saline Ground Water.

3.2 CLASS IA - PRISTINE GROUND WATER

Class IA ground water has the following characteristics:

A. Total dissolved solids of less than 500 mg/l.

B. No contaminant concentrations that exceed the ground water quality standards listed in Table 1.

3.3 CLASS IB - IRREPLACEABLE GROUND WATER

Class IB ground water is a source of water for a community public drinking water system for which no reliable supply of comparable quality and quantity is available because of economic or institutional constraints.

3.4 CLASS IC - ECOLOGICALLY IMPORTANT GROUND WATER

Class IC ground water is a source of ground water discharge important to the continued existence of wildlife habitat.

3.5 CLASS II - DRINKING WATER QUALITY GROUND WATER

Class II ground water has the following characteristics:

A. Total dissolved solids greater than 500 mg/l and less than 3000 mg/l.

B. No contaminant concentrations that exceed ground water quality standards in Table 1.

3.6 CLASS III - LIMITED USE GROUND WATER

Class III ground water has one or both of the following characteristics:

A. Total dissolved solids greater than 3000 mg/l and less than 10,000 mg/l, or;

B. One or more contaminants that exceed the ground water quality standards listed in Table 1.

3.7 CLASS IV - SALINE GROUND WATER

Class IV ground water has total dissolved solids greater than 10,000 mg/l.

R317-6-4. Ground Water Class Protection Levels.

4.1 GENERAL

A. Protection levels are ground water pollutant concentration limits, set by ground water class, for the operation of facilities that discharge or would probably discharge to ground water.

B. For the physical characteristics (color, corrosivity, odor, and pH) and radionuclides listed in Table 1, the values listed are the protection levels for all ground water classes.

4.2 CLASS IA PROTECTION LEVELS

A. Class IA ground water will be protected to the maximum extent feasible from degradation due to facilities that discharge or would probably discharge to ground water.

B. The following protection levels will apply:

1. Total dissolved solids may not exceed the lesser of 1.1 times the background value or 500 mg/l.

2. When a contaminant is not present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 0.1 times the ground water quality standard value, or the limit of detection.

3. When a contaminant is present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 1.1 times the background concentration or 0.1 times the ground water quality standard; however, in no case will the concentration of a pollutant be allowed to exceed the ground water quality standard.

4.3 CLASS IB PROTECTION LEVELS

A. Class IB ground water will be protected as an irreplaceable source of drinking water.

B. The following protection levels will apply:

1. Total dissolved solids may not exceed the lesser of 1.1 times the background value or 2000 mg/l.

2. When a contaminant is not present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 0.1 times the ground water quality standard, or the limit of detection.

3. When a contaminant is present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 1.1 times the background concentration or 0.1 times the ground water quality standard; however, in no case will the concentration of a pollutant be allowed to exceed the ground water quality standard.

4.4 CLASS IC PROTECTION LEVELS

Class IC ground water will be protected as a source of water for potentially affected wildlife habitat. Limits on increases of total dissolved solids and organic and inorganic chemical compounds will be determined in order to meet applicable surface water standards.

4.5 CLASS II PROTECTION LEVELS

A. Class II ground water will be protected for use as drinking water or other similar beneficial use with conventional treatment prior to use.

B. The following protection levels will apply:

1. Total dissolved solids may not exceed 1.25 times the background value.

2. When a contaminant is not present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 0.25 times the ground water quality standard, or the limit of detection.

3. When a contaminant is present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 1.25 times the background concentration or 0.25 times the ground water quality standard; however, in no case will the concentration of a pollutant be allowed to exceed the ground water quality standard.

4.6 CLASS III PROTECTION LEVELS

A. Class III ground water will be protected as a potential source of drinking water, after substantial treatment, and as a source of water for industry and agriculture.

B. The following protection levels will apply:

1. Total dissolved solids may not exceed 1.25 times the background concentration level.

2. When a contaminant is not present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 0.5 times the ground water quality standard, or the limit of detection.

3. When a contaminant is present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 1.5 times the background concentration or 0.5 times the ground water quality standard; however, in no case will the concentration of a pollutant be allowed to exceed the ground water quality standard. If the background concentration exceeds the ground water quality standard no increase will be allowed.

4.7 CLASS IV PROTECTION LEVELS

Protection levels for Class IV ground water will be established to protect human health and the environment.

R317-6-5. Ground Water Classification for Aquifers.

5.1 GENERAL

A. When sufficient information is available, entire aquifers or parts thereof may be classified by the Board according to the quality of ground water contained therein and commensurate

protection levels will be applied.

B. Ground water sources furnishing water to community drinking water systems with ground water meeting Class IA criteria are classified as Class IA.

5.2 CLASSIFICATION AND RECLASSIFICATION PROCEDURE

A. The Board may initiate classification or reclassification.

B. A petition for classification or reclassification must be performed under the direction, and bear the seal, of a professional engineer or professional geologist.

C. Boundaries for class areas will be delineated so as to enclose distinct ground water classes as nearly as known facts permit. Boundaries will be based on hydrogeologic properties, existing ground water quality and for Class IB and IC, current use. Parts of an aquifer may be classified differently.

D. The petitioner requesting reclassification will provide sufficient information to determine if reclassification is in the best interest of the beneficial users.

E. A petition for classification or reclassification shall include:

1. factual data supporting the proposed classification;

2. a description of the proposed ground waters to be classified or reclassified;

3. potential contamination sources;

4. ground water flow direction;

5. current beneficial uses of the ground water; and

6. location of all water wells in the area to be classified or reclassified.

F. One or more public hearings will be held to receive comment on classification and reclassification proposals.

G. The Board will determine the disposition of all petitions for classification and reclassification, except as provided in R317-6-5.2.H.

H. Ground water proximate to a facility for which an application for a ground water discharge permit has been made may be classified by the Executive Secretary for purposes of making permitting decisions.

R317-6-6. Implementation.

6.1 DUTY TO APPLY FOR A GROUND WATER DISCHARGE PERMIT

A. No person may construct, install, or operate any new facility or modify an existing or new facility, not permitted by rule under R317-6-6.2, which discharges or would probably result in a discharge of pollutants that may move directly or indirectly into ground water, including, but not limited to land application of wastes; waste storage pits; waste storage piles; landfills and dumps; large feedlots; mining, milling and metallurgical operations, including heap leach facilities; and pits, ponds, and lagoons whether lined or not, without a ground water discharge permit from the Executive Secretary. A ground water discharge permit application should be submitted at least 180 days before the permit is needed.

B. All persons who constructed, modified, installed, or operated any existing facility, not permitted by rule under R317-6-6.2, which discharges or would probably result in a discharge of pollutants that may move directly or indirectly into ground water, including, but not limited to: land application of wastes; waste storage pits; waste storage piles; landfills and dumps; large feedlots; mining, milling and metallurgical operations, including heap leach facilities; and pits, ponds, and lagoons whether lined or not, must have submitted a notification of the nature and location of the discharge to the Executive Secretary before February 10, 1990 and must submit an application for a ground water discharge permit within one year after receipt of written notice from the Executive Secretary that a ground water discharge permit is required.

6.2 GROUND WATER DISCHARGE PERMIT BY RULE

A. Except as provided in R317-6-6.2.C, the following facilities are considered to be permitted by rule and are not required to obtain a discharge permit under R317-6-6.1 or comply with R317-6-6.3 through R317-6-6.7, R317-6-6.9 through R317-6-6.11, R317-6-6.13, R317-6-6.16, R317-6-6.17 and R317-6-6.18:

1. facilities with effluent or leachate which has been demonstrated to the satisfaction of the Executive Secretary to conform and will not deviate from the applicable class TDS limits, ground water quality standards, protection levels or other permit limits and which does not contain any contaminant that may present a threat to human health, the environment or its potential beneficial uses of the ground water. The Executive Secretary may require samples to be analyzed for the presence of contaminants before the effluent or leachate discharges directly or indirectly into ground water. If the discharge is by seepage through natural or altered natural materials, the Executive Secretary may require samples of the solution be analyzed for the presence of pollutants before or after seepage;

2. water used for watering of lawns, gardens, or shrubs or for irrigation for the revegetation of a disturbed land area except for the direct land application of wastewater;

3. application of agricultural chemicals including fertilizers, herbicides and pesticides including but not limited to, insecticides fungicides, rodenticides and fumigants when used in accordance with current scientifically based manufacturer's recommendations for the crop, soil, and climate and in accordance with state and federal statutes, regulations, permits, and orders adopted to avoid ground water pollution;

4. water used for irrigated agriculture except for the direct land application of wastewater from municipal, industrial or mining facilities;

5. flood control systems including detention basins, catch basins and wetland treatment facilities used for collecting or conveying storm water runoff;

6. natural ground water seeping or flowing into conventional mine workings which re-enters the ground by natural gravity flow prior to pumping or transporting out of the mine and without being used in any mining or metallurgical process;

7. leachate which results entirely from the direct natural infiltration of precipitation through undisturbed materials;

8. wells and facilities regulated under the underground injection control (UIC) program;

9. land application of livestock wastes, within expected crop nitrogen uptake;

10. individual subsurface wastewater disposal systems approved by local health departments or large subsurface wastewater disposal systems approved by the Board;

11. produced water pits, and other oil field waste treatment, storage, and disposal facilities regulated by the Division of Oil, Gas, and Mining in accordance with Section 40-6-5(3)(d) and R649-9, Disposal of Produced Water;

12. reserve pits regulated by the Division of Oil, Gas and Mining in accordance with Section 40-6-5(3)(a) and R649-3-7, Drilling and Operating Practices;

13. storage tanks installed or operated under regulations adopted by the Utah Solid and Hazardous Waste Control Board;

14. coal mining operations or facilities regulated under the Coal Mining and Reclamation Act by the Utah Division of Oil, Gas, and Mining (DOGM). The submission of an application for ground water discharge permit under R317-6-6.2.C may be required only if the Executive Secretary, after consideration of recommendations, if any, by DOGM, determines that the discharge violates applicable ground water quality standards, applicable Class TDS limits, or is interfering with a reasonable foreseeable beneficial use of the ground water. DOGM is not required to establish any administrative or regulatory requirements which are in addition to the rules of DOGM for

coal mining operations or facilities to implement these ground water regulations;

15. hazardous waste or solid waste management units managed or undergoing corrective action under R315-1 through R315-14;

16. solid waste landfills permitted under the requirements of R315-303;

17. animal feeding operations, as defined in UAC R317-8-3.5(2) that use liquid waste handling systems, which are not located within Zone 1 (100 feet) for wells in a confined aquifer or Zone 2 (250 day time of travel) for wells and springs in unconfined aquifers, in accordance with the Public Drinking Water Regulations UAC R309-113, and which meet either of the following criteria:

a) operations constructed prior to the effective date of this rule which incorporated liquid waste handling systems and which are either less than 4 million gallons capacity or serve fewer than 1000 animal units, or

b. operations with fewer than the following numbers of confined animals:

i. 1,500 slaughter and feeder cattle,

ii. 1,050 mature dairy cattle, whether milked or dry cows,

iii. 3,750 swine each weighing over 25 kilograms (approximately 55 pounds),

iv. 18,750 swine each weighing 25 kilograms or less (approximately 55 pounds),

v. 750 horses,

vi. 15,000 sheep or lambs,

vii. 82,500 turkeys,

viii. 150,000 laying hens or broilers that use continuous overflow watering but dry handle wastes,

ix. 45,000 hens or broilers,

x. 7,500 ducks, or

xi. 1,500 animal units

18. animal feeding operations, as defined in UAC R317-8-3.5(2), which do not utilize liquid waste handling systems;

19. mining, processing or milling facilities handling less than 10 tons per day of metallic and/or nonmetallic ore and waste rock, not to exceed 2500 tons/year in aggregate unless the processing or milling uses chemical leaching;

20. pipelines and above-ground storage tanks;

21. drilling operations for metallic minerals, nonmetallic minerals, water, hydrocarbons, or geothermal energy sources when done in conformance with applicable regulations of the Utah Division of Oil, Gas, and Mining or the Utah Division of Water Rights;

22. land application of municipal sewage sludge for beneficial use, at or below the agronomic rate and in compliance with the requirements of 40 CFR 503, July 1, 1993 edition;

23. land application of municipal sewage sludge for mine-reclamation at a rate higher than the agronomic rate and in compliance with 40 CFR 503, July 1, 1993 edition;

24. municipal wastewater treatment lagoons receiving no wastewater from a significant industrial discharger as defined in R317-8-8.2(12); and

25. facilities and modifications thereto which the Executive Secretary determines after a review of the application will have a de minimis actual or potential effect on ground water quality.

B. No facility permitted by rule under R317-6-6.2.A may cause ground water to exceed ground water quality standards or the applicable class TDS limits in R317-6-3.1 to R317-6-3.7. If the background concentration for affected ground water exceeds the ground water quality standard, the facility may not cause an increase over background. This section, R317-6-6.2B. does not apply to facilities undergoing corrective action under R317-6-6.15A.3.

C. The submission of an application for a ground water discharge permit may be required by the Executive Secretary for any discharge permitted by rule under R317-6-6.2 if it is determined that the discharge may be causing or is likely to cause increases above the ground water quality standards or applicable class TDS limits under R317-6-3 or otherwise is interfering or may interfere with probable future beneficial use of the ground water.

6.3 APPLICATION REQUIREMENTS FOR A GROUND WATER DISCHARGE PERMIT

Unless otherwise determined by the Executive Secretary, the application for a permit to discharge wastes or pollutants to ground water shall include the following complete information:

A. The name and address of the applicant and the name and address of the owner of the facility if different than the applicant. A corporate application must be signed by an officer of the corporation. The name and address of the contact, if different than above, and telephone numbers for all listed names shall be included.

B. The legal location of the facility by county, quarter-quarter section, township, and range.

C. The name of the facility and the type of facility, including the expected facility life.

D. A plat map showing all water wells, including the status and use of each well, topography, springs, water bodies, drainages, and man-made structures within a one-mile radius of the discharge. The plat map must also show the location and depth of existing or proposed wells to be used for monitoring ground water quality.

E. Geologic, hydrologic, and agricultural description of the geographic area within a one-mile radius of the point of discharge, including soil types, aquifers, ground water flow direction, ground water quality, aquifer material, and well logs.

F. The type, source, and chemical, physical, radiological, and toxic characteristics of the effluent or leachate to be discharged; the average and maximum daily amount of effluent or leachate discharged (gpd), the discharge rate (gpm), and the expected concentrations of any pollutant (mg/l) in each discharge or combination of discharges. If more than one discharge point is used, information for each point must be given separately.

G. Information which shows that the discharge can be controlled and will not migrate into or adversely affect the quality of any other waters of the state, including the applicable surface water quality standards, that the discharge is compatible with the receiving ground water, and that the discharge will comply with the applicable class TDS limits, ground water quality standards, class protection levels or an alternate concentration limit proposed by the facility.

H. For areas where the ground water has not been classified by the Board, information on the quality of the receiving ground water sufficient to determine the applicable protection levels.

I. The proposed monitoring plan, which includes a description, where appropriate, of the following:

1. ground water monitoring to determine ground water flow direction and gradient, background quality at the site, and the quality of ground water at the compliance monitoring point;

2. installation, use and maintenance of monitoring devices;

3. description of the compliance monitoring area defined by the compliance monitoring points including the dimensions and hydrologic and geologic data used to determine the dimensions;

4. monitoring of the vadose zone;

5. measures to prevent ground water contamination after the cessation of operation, including post-operational monitoring;

6. monitoring well construction and ground water sampling which conform to A Guide to the Selection of Materials for Monitoring Well Construction and Ground Water Sampling, (1983) and RCRA Ground Water Monitoring

Technical Enforcement Guidance Manual (1986), unless otherwise specified by the Executive Secretary;

7. description and justification of parameters to be monitored.

J. The plans and specifications relating to construction, modification, and operation of discharge systems.

K. The description of the ground water most likely to be affected by the discharge, including water quality information of the receiving ground water prior to discharge, a description of the aquifer in which the ground water occurs, the depth to the ground water, the saturated thickness, flow direction, porosity, hydraulic conductivity, and flow systems characteristics.

L. The compliance sampling plan which includes, where appropriate, provisions for sampling of effluent and for flow monitoring in order to determine the volume and chemistry of the discharge onto or below the surface of the ground and a plan for sampling compliance monitoring points and appropriate nearby water wells. Sampling and analytical methods proposed in the application must conform with the most appropriate methods specified in the following references unless otherwise specified by the Executive Secretary:

1. Standard Methods for the Examination of Water and Wastewater, eighteenth edition, 1992; Library of Congress catalogue number: ISBN: 0-87553-207-1.

2. E.P.A. Methods, Methods for Chemical Analysis of Water and Wastes, 1983; Stock Number EPA-600/4-79-020.

3. Techniques of Water Resource Investigations of the U.S. Geological Survey, (1982); Book 5, Chapter A3.

4. Monitoring requirements in 40 CFR parts 141 and 142, 1991 ed., Primary Drinking Water Regulations and 40 CFR parts 264 and 270, 1991 ed.

5. National Handbook of Recommended Methods for Water-Data Acquisition, GSA-GS edition; Book 85 AD-2777, U.S. Government Printing Office Stock Number 024-001-03489-1.

6. Manual of Analytical Methods for the Analysis of Pesticide Residues in Humans and Environmental Samples, 1980; Stock Number EPA-600/8-80-038, U.S. Environmental Protection Agency.

M. A description of the flooding potential of the discharge site, including the 100-year flood plain, and any applicable flood protection measures.

N. Contingency plan for regaining and maintaining compliance with the permit limits and for reestablishing best available technology as defined in the permit.

O. Methods and procedures for inspections of the facility operations and for detecting failure of the system.

P. For any existing facility, a corrective action plan or identification of other response measures to be taken to remedy any violation of applicable ground water quality standards, class TDS limits or permit limit established under R317-6-6.4E. which has resulted from discharges occurring prior to issuance of a ground water discharge permit.

Q. Other information required by the Executive Secretary.

R. All applications for a groundwater discharge permit must be performed under the direction, and bear the seal, of a professional engineer or professional geologist.

6.4 ISSUANCE OF DISCHARGE PERMIT

A. The Executive Secretary may issue a ground water discharge permit for a new facility if the Executive Secretary determines, after reviewing the information provided under R317-6-6.3, that:

1. the applicant demonstrates that the applicable class TDS limits, ground water quality standards protection levels, and permit limits established under R317-6-6.4E will be met;

2. the monitoring plan, sampling and reporting requirements are adequate to determine compliance with applicable requirements;

3. the applicant is using best available technology to minimize the discharge of any pollutant; and

4. there is no impairment of present and future beneficial uses of the ground water.

B. The Board may approve an alternate concentration limit for a new facility if:

1. The applicant submits a petition for an alternate concentration limit showing the extent to which the discharge will exceed the applicable class TDS limits, ground water standards or applicable protection levels and demonstrates that:

a. the facility is to be located in an area of Class III ground water;

b. the discharge plan incorporates the use of best available technology;

c. the alternate concentration limit is justified based on substantial overriding social and economic benefits; and,

d. the discharge would pose no threat to human health and the environment.

2. One or more public hearings have been held by the Board in nearby communities to solicit comment.

C. The Executive Secretary may issue a ground water discharge permit for an existing facility provided:

1. the applicant demonstrates that the applicable class TDS limits, ground water quality standards and protection levels will be met;

2. the monitoring plan, sampling and reporting requirements are adequate to determine compliance with applicable requirements;

3. the applicant utilizes treatment and discharge minimization technology commensurate with plant process design capability and similar or equivalent to that utilized by facilities that produce similar products or services with similar production process technology; and,

4. there is no current or anticipated impairment of present and future beneficial uses of the ground water.

D. The Board may approve an alternate concentration limit for a pollutant in ground water at an existing facility or facility permitted by rule under R317-6-6.2 if the applicant for a ground water discharge permit shows the extent the discharge exceeds the applicable class TDS limits, ground water quality standards and applicable protection levels that correspond to the otherwise applicable ground water quality standards and demonstrates that:

1. steps are being taken to correct the source of contamination, including a program and timetable for completion;

2. the pollution poses no threat to human health and the environment; and

3. the alternate concentration limit is justified based on overriding social and economic benefits.

E. An alternate concentration limit, once adopted by the Board under R317-6-6.4B or R317-6-6.4D, shall be the pertinent permit limit.

F. A facility permitted under this provision shall meet applicable class TDS limits, ground water quality standards, protection levels and permit limits.

G. The Board may modify a permit for a new facility to reflect standards adopted as part of corrective action.

6.5 NOTICE OF INTENT TO ISSUE A GROUND WATER DISCHARGE PERMIT

The Executive Secretary shall publish a notice of intent to approve in a newspaper in the affected area and shall allow 30 days in which interested persons may comment to the Board. Final action will be taken by the Executive Secretary following the 30-day comment period.

6.6 PERMIT TERM

A. The ground water discharge permit term will run for 5 years from the date of issuance. Permits may be renewed for 5-year periods or extended for a period to be determined by the Executive Secretary but not to exceed 5 years.

B. In the event that new ground water quality standards are adopted by the Board, permits may be reopened to extend the terms of the permit or to include pollutants covered by new standards. The holder of a permit may apply for a variance under the conditions outlined in R317-6-6.4.D.

6.7 GROUND WATER DISCHARGE PERMIT RENEWAL

The permittee for a facility with a ground water discharge permit must apply for a renewal or extension for a ground water discharge permit at least 180 days prior to the expiration of the existing permit. If a permit expires before an application for renewal or extension is acted upon by the Executive Secretary, the permit will continue in effect until it is renewed, extended or denied. Permit renewals with significant changes to the original permit must be performed under the direction, and bear the seal, of a professional engineer or professional geologist.

6.8 TERMINATION OF A GROUND WATER DISCHARGE PERMIT BY THE EXECUTIVE SECRETARY

A ground water discharge permit may be terminated or a renewal denied by the Executive Secretary if one of the following applies:

A. noncompliance by the permittee with any condition of the permit where the permittee has failed to take appropriate action in a timely manner to remedy the permit violation;

B. the permittee's failure in the application or during the permit approval process to disclose fully all significant relevant facts at any time;

C. a determination that the permitted facility endangers human health or the environment and can only be regulated to acceptable levels by plan modification or termination; or

D.the permittee requests termination of the permit.

6.9 PERMIT COMPLIANCE MONITORING

A. Ground Water Monitoring

The Executive Secretary may include in a ground water discharge permit requirements for ground water monitoring, and may specify compliance monitoring points where the applicable class TDS limits, ground water quality standards, protection levels or other permit limits are to be met.

The Executive Secretary will determine the location of the compliance monitoring point based upon the hydrology, type of pollutants, and other factors that may affect the ground water quality. The distance to the compliance monitoring points must be as close as practicable to the point of discharge. The compliance monitoring point shall not be beyond the property boundaries of the permitted facility without written agreement of the affected property owners and approval by the Executive Secretary.

B. Performance Monitoring

The Executive Secretary may include in a ground water discharge permit requirements for monitoring performance of best available technology standards.

6.10 BACKGROUND WATER QUALITY DETERMINATION

A. Background water quality contaminant concentrations shall be determined and specified in the ground water discharge permit. The determination of background concentration shall take into account any degradation.

B. Background water quality contaminant concentrations may be determined from existing information or from data collected by the permit applicant. Existing information shall be used, if the permit applicant demonstrates that the quality of the information and its means of collection are adequate to determine background water quality. If existing information is not adequate to determine background water quality, the permit applicant shall submit a plan to determine background water quality to the Executive Secretary for approval prior to data collection. One or more up-gradient, lateral hydraulically equivalent point, or other monitoring wells as approved by the Executive Secretary may be required for each potential discharge site.

C. After a permit has been issued, permittee shall continue to monitor background water quality contaminant concentrations in order to determine natural fluctuations in concentrations. Applicable up-gradient, and on-site ground water monitoring data shall be included in the ground water quality permit monitoring report.

6.11 NOTICE OF COMMENCEMENT AND DISCONTINUANCE OF GROUND WATER DISCHARGE OPERATIONS

A. The permittee shall notify the Division of Water Quality immediately upon commencement of the ground water discharge and submit a written notice within 30 days of the commencement of the discharge.

B. The permittee shall notify the Division of Water Quality of the date and reason for discontinuance of ground water discharge within 30 days.

6.12 SUBMISSION OF DATA

A. Laboratory Analyses

All laboratory analysis of samples collected to determine compliance with these regulations shall be performed in accordance with standard procedures by the Utah Division of Laboratory Services or by a laboratory certified by the Utah Department of Health.

B. Field Analyses

All field analyses to determine compliance with these regulations shall be conducted in accordance with standard procedures specified in R317-6-6.3.L.

C. Periodic Submission of Monitoring Reports

Results obtained pursuant to any monitoring requirements in the discharge permit and the methods used to obtain these results shall be periodically reported to the Executive Secretary according to the schedule specified in the ground water discharge permit.

6.13 REPORTING OF MECHANICAL PROBLEMS OR DISCHARGE SYSTEM FAILURES

The permittee shall notify the Executive Secretary within 24 hours of the discovery of any mechanical or discharge system failures that could affect the chemical characteristics or volume of the discharge. A written statement confirming the oral report shall be submitted to the Executive Secretary within five days of the failure.

6.14 CORRECTION OF ADVERSE EFFECTS REQUIRED

A. If monitoring or testing indicates that the permit conditions may be or are being violated by ground water discharge operations or the facility is otherwise in an out-of-compliance status, the permittee shall promptly make corrections to the system to correct all violations of the discharge permit.

B. The permittee, operator, or owner may be required to take corrective action as described in R317-6-6.15 if a pollutant concentration has exceeded a permit limit.

6.15 CORRECTIVE ACTION

It is the intent of the Board that the provisions of these regulations should be considered when making decisions under any state or federal superfund action; however, the protection levels are not intended to be considered as applicable, relevant or appropriate clean-up standards under such other regulatory programs.

A. Application of R317-6-6.15

1. Generally - R317-6-6.15 shall apply to any person who discharges pollutants into ground water in violation of Section 19-5-107, or who places or causes to be placed any wastes in a location where there is probable cause to believe they will cause pollution of ground water in violation of Section 19-5-107.

2. Corrective Action shall include, except as otherwise provided in R317-6-6.15, preparation of a Contamination Investigation and preparation and implementation of a

Corrective Action Plan.

3. The procedural provisions of R-317-6-6.15 shall not apply to any facility where a corrective or remedial action for ground water contamination, that the Executive Secretary determines meets the substantive standards of this rule, has been initiated under any other state or federal program. Corrective or remedial action undertaken under the programs specified in Table 2 are considered to meet the substantive standards of this rule unless otherwise determined by the Executive Secretary.

TABLE 2
PROGRAM

Leaking Underground Storage Tank, Sections 19-6-401, et seq.

Federal Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sections 9601, et seq.

Hazardous Waste Mitigation Act, Sections 19-6-301 et seq.
Utah Solid and Hazardous Waste Act, Sections 19-6-101 et seq.

B. Notification and Interim Action

1. Notification - A person who spills or discharges any oil or other substance which may cause pollution of ground waters in violation of Section 19-5-107 shall notify the Executive Secretary within 24 hours of the spill or discharge. A written notification shall be submitted to the Executive Secretary within five days after the spill or discharge.

2. Interim Actions - A person is encouraged to take immediate, interim action without following the steps outlined in R317-6-6.15 if such action is required to control a source of pollutants. Interim action is also encouraged if required to protect public safety, public health and welfare and the environment, or to prevent further contamination that would result in costlier clean-up. Such interim actions should include source abatement and control, neutralization, or other actions as appropriate. A person that has taken these actions shall remain subject to R317-6-6.15 after the interim actions are completed unless he demonstrates that:

a. no pollutants have been discharged into ground water in violation of 19-5-107; and

b. no wastes remain in a location where there is probable cause to believe they will cause pollution of ground water in violation of 19-5-107.

C. Contamination Investigation and Corrective Action Plan - General

1. The Executive Secretary may require a person that is subject to R317-6-6.15 to submit for the Executive Secretary's approval a Contamination Investigation and Corrective Action Plan, and may require implementation of an approved Corrective Action Plan. A person subject to this rule who has been notified that the Executive Secretary is exercising his or her authority under R317-6-6.15 to require submission of a Contamination Investigation and Corrective Action Plan, shall, within 30 days of that notification, submit to the Executive Secretary a proposed schedule for those submissions, which may include different deadlines for different elements of the Investigation and Plan. The Executive Secretary may accept, reject, or modify the proposed schedule.

2. The Contamination Investigation or the Corrective Action Plan may, in order to meet the requirements of this Part, incorporate by reference information already provided to the Executive Secretary in the Contingency Plan or other document.

3. The requirements for a Contamination Investigation and a Corrective Action Plan specified in R317-6-6.15.D are comprehensive. The requirements are intended to be applied with flexibility, and persons subject to this rule are encouraged to contact the Executive Secretary's staff to assure its efficient application on a site-specific basis.

4. The Executive Secretary may waive any or all Contamination Investigation and Corrective Action Plan requirements where the person subject to this rule demonstrates that the information that would otherwise be required is not necessary to the Executive Secretary's evaluation of the Contamination Investigation or Corrective Action Plan. Requests for waiver shall be submitted to the Executive Secretary as part of the Contamination Investigation or Corrective Action Plan, or may be submitted in advance of those reports.

D. Contamination Investigation and Corrective Action Plan - Requirements

1. Contamination Investigation - The contamination investigation shall include a characterization of pollution, a characterization of the facility, a data report, and, if the Corrective Action Plan proposes standards under R317-6-6.15.F.2. or Alternate Corrective Action Concentration Limits higher than the ground water quality standards, an endangerment assessment.

a. The characterization of pollution shall include a description of:

(1) The amount, form, concentration, toxicity, environmental fate and transport, and other significant characteristics of substances present, for both ground water contaminants and any contributing surficial contaminants;

(2) The areal and vertical extent of the contaminant concentration, distribution and chemical make-up; and

(3) The extent to which contaminant substances have migrated and are expected to migrate.

b. The characterization of the facility shall include descriptions of:

(1) Contaminant substance mixtures present and media of occurrence;

(2) Hydrogeologic conditions underlying and, upgradient and downgradient of the facility;

(3) Surface waters in the area;

(4) Climatologic and meteorologic conditions in the area of the facility; and

(5) Type, location and description of possible sources of the pollution at the facility;

(6) Groundwater withdrawals, pumpage rates, and usage within a 2-mile radius.

c. The report of data used and data gaps shall include:

(1) Data packages including quality assurance and quality control reports;

(2) A description of the data used in the report; and

(3) A description of any data gaps encountered, how those gaps affect the analysis and any plans to fill those gaps.

d. The endangerment assessment shall include descriptions of any risk evaluation necessary to support a proposal for a standard under R317-6-6.15.F.2 or for an Alternate Corrective Action Concentration Limit.

e. The Contamination Investigation shall include such other information as the Executive Secretary requires.

2. Proposed Corrective Action Plan

The proposed Corrective Action Plan shall include an explanation of the construction and operation of the proposed Corrective Action, addressing the factors to be considered by the Executive Secretary as specified in R317-6-6.15.E. and shall include such other information as the Executive Secretary requires. It shall also include a proposed schedule for completion.

3. The Contaminant Investigation and Corrective Action Plan must be performed under the direction, and bear the seal, of a professional engineer or professional geologist.

E. Approval of the Corrective Action Plan

After public notice in a newspaper in the affected area and a 30-day period for opportunity for public review and comment, the Executive Secretary shall issue an order approving, disapproving, or modifying the proposed Corrective Action Plan. The Executive Secretary shall consider the following factors and criteria in making that decision:

1. Completeness and Accuracy of Corrective Action Plan.

The Executive Secretary shall consider the completeness and accuracy of the Corrective Action Plan and of the information upon which it relies.

2. Action Protective of Public Health and the Environment

a. The Corrective Action shall be protective of the public health and the environment.

b. Impacts as a result of any off-site activities shall be considered under this criterion (e.g., the transport and disposition of contaminated materials at an off-site facility).

3. Action Meets Concentration Limits

The Corrective Action shall meet Corrective Action Concentration Limits specified in R317-6-6.15.F, except as provided in R317-6-6.15.G.

4. Action Produces a Permanent Effect

a. The Corrective Action shall produce a permanent effect.

b. If the Corrective Action Plan provides that any potential sources of pollutants are to be controlled in place, any cap or other method of source control shall be designed so that the discharge from the source following corrective action achieves ground water quality standards or, if approved by the Board, alternate corrective action concentration limits (ACACLs). For purposes of this paragraph, sources of pollutants are controlled "in place" even though they are moved within the facility boundaries provided that they are not moved to areas with unaffected ground water.

5. Action May Use Other Additional Measures

The Executive Secretary may consider whether additional measures should be included in the Plan to better assure that the criteria and factors specified in R317-6-6.15.E are met. Such measures may include:

a. Requiring long-term ground water or other monitoring;

b. Providing environmental hazard notices or other security measures;

c. Capping of sources of ground water contamination to avoid infiltration of precipitation;

d. Requiring long-term operation and maintenance of all portions of the Corrective Action; and

e. Periodic review to determine whether the Corrective Action is protective of public health and the environment.

F. Corrective Action Concentration Limits

1. Contaminants with specified levels

Corrective Actions shall achieve ground water quality standards or, where applicable, alternate corrective action concentration limits (ACACLs).

2. Contaminants without specified levels

For contaminants for which no ground water quality standard has been established, the proposed Corrective Action Plan shall include proposed Corrective Action Concentration Limits. These levels shall be approved, disapproved or modified by the Executive Secretary after considering U.S. Environmental Protection Agency maximum contaminant level goals, health advisories, risk-based contaminant levels or standards established by other regulatory agencies and other relevant information.

G. Alternate Corrective Action Concentration Limits

An Alternate Corrective Action Concentration Limit that is higher or lower than the Corrective Action Concentration Limits specified in R317-6-6.15.F may be required as provided in the following:

1. Higher Alternate Corrective Action Concentration Limits

A person submitting a proposed Corrective Action Plan may request approval by the Board of an Alternate Corrective Action Concentration Limit higher than the Corrective Action Concentration Limit specified in R317-6-6.15.F. The proposed limit shall be protective of human health, and the environment, and shall utilize best available technology. The Corrective Action Plan shall include the following information in support of this request:

a. The potential for release and migration of any contaminant substances or treatment residuals that might remain after Corrective Action in concentrations higher than Corrective Action Concentration Limits;

b. An evaluation of residual risks, in terms of amounts and concentrations of contaminant substances remaining following implementation of the Corrective Action options evaluated, including consideration of the persistence, toxicity, mobility, and propensity to bioaccumulate such contaminants substances and their constituents; and

c. Any other information necessary to determine whether the conditions of R317-6-6.15.G have been met.

2. Lower Alternate Corrective Action Concentration Limits

The Board may require use of an Alternate Corrective Action Concentration Limit that is lower than the Corrective Action Concentration Limit specified in R317-6-6.15.F if necessary to protect human health or the environment. Any person requesting that the Board consider requiring a lower Alternate Corrective Action Concentration Limit shall provide supporting information as described in R317-6-6.15.G.3.

3. Protective of human health and the environment

The Alternate Corrective Action Concentration Limit must be protective of human health and the environment. In making this determination, the Board may consider:

a. Information presented in the Contamination Investigation;

b. Other relevant cleanup or health standards, criteria, or guidance;

c. Relevant and reasonably available scientific information;

d. Any additional information relevant to the protectiveness of a Corrective Action; and

e. The impact of additional proposed measures, such as those described in R317-6-6.15.E.5.

4. Good cause

An Alternate Corrective Action Concentration Limit shall not be granted without good cause.

a. The Board may consider the factors specified in R317-6-6.15.E in determining whether there is good cause.

b. The Board may also consider whether the proposed remedy is cost-effective in determining whether there is good cause. Costs that may be considered include but are not limited to:

(1) Capital costs;

(2) Operation and maintenance costs;

(3) Costs of periodic reviews, where required;

(4) Net present value of capital and operation and maintenance costs;

(5) Potential future remedial action costs; and

(6) Loss of resource value.

5. Conservative

An Alternate Corrective Action Concentration Limit that is higher than the Corrective Action Concentration Limits specified in R317-6-6.15.F must be conservative. The Board may consider the concentration level that can be achieved using best available technology if attainment of the Corrective Action Concentration Limit is not technologically achievable.

6. Relation to background and existing conditions

a. The Board may consider the relationship between the Corrective Action Concentration Limits and background concentration limits in considering whether an Alternate Corrective Action Concentration Limit is appropriate.

b. No Alternate Corrective Action Concentration Limit higher than existing ground water contamination levels or ground water contamination levels projected to result from existing conditions will be granted.

6.16 OUT-OF-COMPLIANCE STATUS

A. Accelerated Monitoring for Probable Out-of-Compliance Status

If the concentration of a pollutant in any compliance monitoring sample exceeds an applicable permit limit, the facility shall:

1. Notify the Executive Secretary in writing within 30 days of receipt of data;

2. Initiate monthly sampling, unless the Executive Secretary determines that other periodic sampling is appropriate, for a period of two months or until the compliance status of the facility can be determined.

B. Violation of Permit Limits

Out-of-compliance status exists when:

1. two consecutive samples from a compliance monitoring point exceed:

a. one or more permit limits; and

b. the mean ground water pollutant concentration for that pollutant by two standard deviations (the standard deviation and mean being calculated using values for the ground water pollutant at that compliance monitoring point); or

2. the concentration value of any pollutant in two or more consecutive samples is statistically significantly higher than the applicable permit limit. The statistical significance shall be determined using the statistical methods described in Statistical Methods for Evaluating Ground Water Monitoring Data from Hazardous Waste Facilities, Vol. 53, No. 196 of the Federal Register, Oct. 11, 1988.

C. Failure to Maintain Best Available Technology Required by Permit

1. Permittee to Provide Information

In the event that the permittee fails to maintain best available technology or otherwise fails to meet best available technology standards as required by the permit, the permittee shall submit to the Executive Secretary a notification and description of the failure according to R317-6-6.13. Notification shall be given orally within 24 hours of the permittee's discovery of the failure of best available technology, and shall be followed up by written notification, including the information necessary to make a determination under R317-6-6.16.C.2, within five days of the permittee's discovery of the failure of best available technology.

2. Executive Secretary

The Executive Secretary shall use the information provided under R317-6-6.16.C.1 and any additional information provided by the permittee to determine whether to initiate a compliance action against the permittee for violation of permit conditions. The Executive Secretary shall not initiate a compliance action if the Executive Secretary determines that the permittee has met the standards for an affirmative defense, as specified in R317-6-6.16.C.3.

3. Affirmative Defense

In the event a compliance action is initiated against the permittee for violation of permit conditions relating to best available technology, the permittee may affirmatively defend against that action by demonstrating the following:

a. The permittee submitted notification according to R317-6-6.13;

b. The failure was not intentional or caused by the permittee's negligence, either in action or in failure to act;

c. The permittee has taken adequate measures to meet permit conditions in a timely manner or has submitted to the Executive Secretary, for the Executive Secretary's approval, an adequate plan and schedule for meeting permit conditions; and

d. The provisions of 19-5-107 have not been violated.

6.17 PROCEDURE WHEN A FACILITY IS OUT-OF-COMPLIANCE

A. If a facility is out of compliance the following is required:

1. The permittee shall notify the Executive Secretary of the out of compliance status within 24 hours after detection of that status, followed by a written notice within 5 days of the detection.

2. The permittee shall initiate monthly sampling, unless the Executive Secretary determines that other periodic sampling is appropriate, until the facility is brought into compliance.

3. The permittee shall prepare and submit within 30 days to the Executive Secretary a plan and time schedule for assessment of the source, extent and potential dispersion of the contamination, and an evaluation of potential remedial action to restore and maintain ground water quality and insure that permit limits will not be exceeded at the compliance monitoring point and best available technology will be reestablished.

4. The Executive Secretary may require immediate implementation of the contingency plan submitted with the original ground water discharge permit in order to regain and maintain compliance with the permit limit standards at the compliance monitoring point or to reestablish best available technology as defined in the permit.

5. Where it is infeasible to re-establish BAT as defined in the permit, the permittee may propose an alternative BAT for approval by the Executive Secretary.

6.18 GROUND WATER DISCHARGE PERMIT TRANSFER

A. The permittee shall give written notice to the Executive Secretary of any transfer of the ground water discharge permit, within 30 days of the transfer.

B. The notice shall include a written agreement between the existing and new permittee establishing a specific date for transfer of permit responsibility, coverage and liability.

6.19 ENFORCEMENT

These rules are subject to enforcement under Section 19-5-115 of the Utah Water Quality Act.

KEY: water quality, ground water
July 12, 2004 19-5
Notice of Continuation October 17, 2002

R317. Environmental Quality, Water Quality.
R317-401. Graywater Systems.
R317-401-1. General.

(a) This rule shall apply to the construction, installation, modification and repair of graywater systems for subsurface landscape irrigation for single-family residences.

(b) Nothing contained in this rule shall be construed to prevent the permitting local health department from:

(i) adopting stricter requirements than those contained herein;

(ii) prohibiting graywater systems; and

(iii) assessment of fees for administration of graywater systems.

(c) Graywater shall not be:

(i) applied above the land surface;

(ii) applied to vegetable gardens except where graywater is not likely to have direct contact with the edible part, whether the fruit will be processed or not;

(iii) allowed to surface; or

(iv) discharged directly into or reach any storm sewer system or any waters of the State.

(d) It shall be unlawful for any person to construct, install or modify, or cause to be constructed, installed or modified any graywater system in a building or on a given lot without first obtaining a permit to do such work from the local health department.

(e) The local health department may require the graywater system in its jurisdiction, be placed under:

(i) an umbrella of a management district for the purposes of operation, maintenance and repairs,

(ii) a third-party operation, maintenance and repair contract at the expense of the permittee with a requirement of notification by the permittee and the contractor to the local health department, of the termination of such services.

R317-401-2. Definitions.

(a) "Graywater" is untreated wastewater, which has not come into contact with toilet waste. Graywater includes wastewater from bathtubs, showers, bathroom washbasins, clothes washing machines, laundry tubs, etc., and does not include wastewater from kitchen sinks, photo lab sinks, dishwashers, garage floor drains, or other hazardous chemicals.

(b) Surfacing of graywater means the ponding, running off, or other release of graywater to or from the land surface.

(c) "The local health department" means a city-county or multi-county local health department established under Title 26A, which has been given approval by the Utah Water Quality Board to issue permits for graywater systems within its jurisdiction.

(d) "Bedroom" means any portion of a dwelling which is so designed as to furnish the minimum isolation necessary for use as a sleeping area. It may include, but not limited to, a den, study, sewing room, sleeping loft, or enclosed porch. Unfinished basements shall be counted as a minimum of one additional bedroom.

R317-401-3. Administrative Requirements.

(a) The local health department having jurisdiction must obtain approval from the Utah Water Quality Board to administer a graywater systems program, as outlined in this section, before permitting graywater systems.

(b) The local health department request for approval must include a description of its plan to properly manage these systems to protect public health. This plan must include:

(i) Documentation of:

(1) the adequacy of staff resources to manage the increased work load;

(2) the technical capability to administer the new systems including any training plans which are needed;

(3) the Local Board of Health and County Commission support this request; and

(4) the county's legal authority to implement and enforce correction of malfunctioning systems and its commitment to exercise this authority.

(ii) An agreement to:

(1) advise the owner of the system of the type of system, and information concerning risk of failure, level of maintenance required, financial liability for repair, modification or replacement of a failed system and periodic monitoring requirements;

(2) advise the building permitting agency of the approved graywater system on the property;

(3) provide oversight of installed systems;

(4) record the existence of the system on the deed of ownership for that property;

(5) issue a renewable operating permit at a frequency not exceeding five years with inspection of the permitted systems before renewal; or, inspect annually the greater of 20 per cent of all installed system or the minimum of ten installed systems; and

(6) maintain records of all installed systems, failures, modifications, repairs and all inspections recording the condition of the system at the time of inspection such as, but not limited to, overflow, surfacing, ponding and nuisance.

R317-401-4. Permitting or Approval Requirements.

(a) Designer certified at Level 3, in accordance with the requirements of R317-11, shall design the graywater systems.

(b) The local health department may require the following information with or in the plot plan before a permit is issued for a graywater system:

(i) plot plan drawn to scale, completely dimensioned, showing lot lines and structures, direction and slope of the ground, location of all present or proposed retaining walls, drainage channels, water supply lines, wells, paved areas and structures on the plot, other utilities, easements, number of bedrooms and plumbing fixtures plan in each structure, location of onsite wastewater system and replacement area of the onsite wastewater system, or building sewer connecting to a public sewer, and location of the proposed graywater system;

(ii) a log of soil formations and identification of the maximum anticipated ground water level as determined by the minimum of one test hole, dug in close proximity, two feet below the bottom of the subsurface irrigation field or drip irrigation area together with a statement of types of soil based on soil classification at the proposed site. Soil and groundwater evaluations will be conducted by professionals fulfilling the requirements of R317-11;

(iii) details of construction necessary to ensure compliance with the requirements of this rule together with full description of the complete installation including installation methods, construction and materials, as required by the local health department; and

(iv) other pertinent information the local health department may deem appropriate.

(c) The installed graywater system shall be operated only after receiving a written approval or an authorization from the local health department after the local health department has made the final construction inspection.

(d) The local health department will require written operation and maintenance procedures including checklists and maintenance instructions from the designer.

(e) No graywater system, or part thereof, shall be located on any lot other than the lot which is the site of the building or structure which discharges the graywater unless, when approved by the local health department, a perpetual utility easement and right-of-way is established on an adjacent or nearby lot.

(f) Onsite wastewater systems existing or to be constructed on a given lot shall comply with the requirements of R317-4 or

more restrictive local requirements. The capacity of the onsite wastewater system, including required future areas, shall not be decreased by the existence or proposed installation of a graywater system servicing a given lot.

(g) No potable water connection will be made to the graywater system without an air gap or a reduced pressure principle backflow prevention assembly for cross connection control, in accordance with R309-105.

(h) When abandoning a graywater system,

(i) the owner of the real property on which such system is located shall render it safe by having the surge tank pumped out only in a manner approved by the health department;

(ii) the surge tank shall be filled completely with earth, sand or gravel within 30 days;

(iii) the surge tank may also be removed within 30 days, at the owner's discretion;

(iv) the approving local health department shall be notified at least 30 days before the planned abandonment.

R317-401-5. Design of Graywater Systems.

(a) The basis of design for a graywater system shall be as follows:

TABLE 1
Basis of Design

Number of Bedrooms	Flow, gallons per day
Minimum two bedrooms	120
Three bedrooms	160
Each additional bedroom	40

(b) No graywater system or part thereof shall be located at any point having less than the minimum distances indicated as follows:

TABLE 2
Separation Distances

Minimum Horizontal Distance (in feet) From	Surge Tank	Subsurface or Drip Irrigation Field
Buildings or Structures (1)	5 feet (2)	2 feet
Property line adjoining private property	5 feet	5 feet
Public Drinking Water Sources (3)	(4)	(4)
Non-public Drinking Water Sources		
Protected (grouted)source	50 feet	100 feet
Unprotected (ungrouted)source	50 feet(5)	200 feet(5)
Streams, ditches and lakes (3)	25 feet	100 feet(6)
Seepage pits	5 feet	10 feet
Absorption System and replacement area	5 feet	10 feet
Septic tank	none	5 feet
Culinary water supply line	10 feet	10 feet(7)

Footnotes:
(1) Including porches and steps, whether covered or uncovered, but does not include carports, covered walks, driveways and similar structures.
(2) For above ground tanks the local health department may allow less than five feet separation.
(3) As defined in R309
(4) Recommended separation distances will comply with the Source Water Protection requirements R309-600 and 605.
(5) Recommended separation distance may increase at the discretion of the local health department for adequate public health protection.
(6) Lining or enclosing watercourse or location above irrigation area may justify reduced separation at the discretion of the local health department.
(7) For parallel construction or for crossing requires an approval of the local health department.

(c) Surge Tank

(i) Plans for surge tanks shall include dimensions, structural, bracing and connection details, and a certification of structural suitability for the intended installation from the manufacturer.

(ii) Surge tanks shall be:

(A) at least 250 gallons in volumetric capacity to provide settling of solids, accumulation of sludge and scum unless justified with a mass balance of inflow and outflow and type of distribution for irrigation;

(B) vented to the surface with a locking, gasketed access opening, or approved equivalent, to allow for inspection and cleaning;

(C) constructed of structurally durable materials to withstand all expected physical forces, and not subject to excessive corrosion or decay;

(D) watertight;

(E) anchored against overturning;

(F) installed below ground on dry, level, well compacted soil; in a dry well on compacted soil; or above ground on a level, four-inch thick concrete slab;

(G) Permanently marked showing the rated capacity, and "GRAYWATER IRRIGATION SYSTEM, DANGER - UNSAFE WATER" on the unit;

(H) provided with an overflow pipe:

(I) of diameter at least equal to that of the inlet pipe diameter;

(II) connected permanently to sanitary sewer or to septic tank; and

(III) equipped with a check valve, not a shut-off valve - to prevent backflow from sewer or septic tank.

(I) provided with a drain pipe of diameter at least equal to that of the inlet pipe diameter;

(J) provided with a vent pipe in conformance with the requirements of the International Plumbing Code; and

(K) provided with unions and fittings for all piping in conformance with the requirements of the International Plumbing Code.

(d) Valves and Piping

(i) Graywater piping discharging into a surge tank or having a direct connection to a sanitary drain or sewer piping shall be downstream of an approved water seal type trap(s) If no such trap(s) exists, an approved vented running trap shall be installed upstream of the connection to protect the building from any possible waste or sewer gases.

(ii) Vents and venting shall meet the requirements of the International Plumbing Code.

(iii) All graywater piping shall be marked or shall have a continuous tape marked with the words: DANGER - UNSAFE WATER.

(iv) All valves, including the three-way valve, shall be readily accessible.

(v) The design shall include necessary types of valves for isolation storage tank, irrigation zones and connection to a sanitary sewer or an onsite wastewater system.

R317-401-6. Irrigation Fields.

(a) Each irrigation zone shall have a minimum effective irrigation area for the type of soil and absorption characteristics.

(b) The area of the irrigation field shall be equal to the aggregate length of the perforated pipe sections within the irrigation zone times the width of the proposed trench. The required square footage shall be determined as follows:

TABLE 3
Subsurface Irrigation Field Design

Soil Characteristics	Subsurface Irrigation Field area Loading, gallons of graywater per day per square foot
Coarse Sand or gravel	5
Fine Sand	4
Sandy Loam	2.5
Sandy Clay	1.6
Clay with considerable sand or gravel	1.1

Clay with sand or gravel	0.8

TABLE 4
Drip Irrigation System Design

Soil Characteristics	Drip Irrigation System Maximum emitter discharge, gallons per day	Minimum number of emitters per gallon per day of graywater
Coarse Sand or gravel	1.8	0.6
Fine Sand	1.4	0.7
Sandy Loam	1.2	0.9
Sandy Clay	0.9	1.1
Clay with considerable sand or gravel	0.6	1.6
Clay with sand or gravel	0.5	2.0

(c) No irrigation point shall be within two vertical feet of the maximum groundwater table. The applicant shall supply evidence of ground water depth to the satisfaction of the local health department.

(d) Subsurface drip irrigation system.

(i) Minimum 140 mesh (115 micron) filter with a capacity of 25 gallons per minute, or equivalent filtration, sized appropriately to maintain the filtration rate, shall be used.

(ii) The filter backwash and flush discharge shall be captured, contained and disposed of to the sewer system, septic tank, or, with approval of the local health department, in a dry well sized to accept all the backwash and flush discharge water. Filter backwash water and flush water shall not be used for any purpose. Sanitary procedures shall be followed when handling filter backwash and flush discharge of graywater.

(iii) Emitters recommended by the manufacture shall be resistant to root intrusion, and suitable for subsurface and graywater use.

(iv) Each irrigation zone shall be designed to include no less than the number of emitters specified in this rule.

(v) Minimum spacing between emitters should be 14 inches in any direction, or as recommended by the manufacturer.

(vi) The system design shall provide user controls, such as valves, switches, timers, and other controllers as appropriate, to rotate the distribution of graywater between irrigation zones.

(vii) All drip irrigation supply lines shall be:

(A) polyethylene tubing or PVC class 200 pipe or better and schedule 40 fittings;

(B) With solvent-cemented joints, inspected and pressure tested at 40 pounds per square inch and shown to be drip tight for five minutes, before burial; and

(C) buried at a minimum depth of six inches. Drip feeder lines can be polyethylene or flexible PVC tubing and shall be covered to a minimum depth of six inches.

(viii) Where pressure at the discharge side of the pump exceeds 20 pounds per square inch, a pressure-reducing valve able to maintain downstream pressure no greater than 20 pounds per square inch shall be installed downstream from the pump and before any emission device.

(ix) Each irrigation zone shall include a flush valve/anti-siphon valve to prevent back siphonage of water and soil.

(e) Subsurface Irrigation Field

(i) Perforated sections shall be a minimum three-inch diameter and shall be constructed of perforated high-density polyethylene pipe, perforated ABS pipe, perforated PVC pipe, or other approved materials, provided that sufficient openings are available for distribution of the graywater in the trench area. Material, construction and perforation of the piping shall be in compliance with the requirements of the International Plumbing Code.

(ii) Clean stone, gravel, or similar filter material acceptable to the local health department, and varying in size from 3/4 inch to 2 1/2 inches, shall be placed in the trench to the depth and grade required by this section. Perforated sections shall be laid on the filter material. The perforated sections shall then be covered with filter material to the minimum depth required by this section. The filter material shall then be covered with landscape filter fabric or similar porous material to prevent closure of voids with earth backfill.

(iii) No earth backfill shall be placed over the filter material cover until after inspection and approval of the local health department.

(iv) Subsurface Irrigation fields shall be constructed as follows:

TABLE 5
Subsurface Irrigation Field Construction Details

Description	Minimum	Maximum
Number of drain lines per subsurface irrigation zone	one	---
Length of each perforated line, feet	---	100
Bottom width of trench, inches	6	18
Total depth of trench, inches	12	---
Spacing of lines, center to center, feet	4	---
Depth of earth cover on top of gravel, inches	4	---
Depth of filter material cover over lines, inches	2	---
Depth of filter material beneath lines, inches	3	---
Grade of perforated lines, Inches per 100 feet	Level	4

(f) Construction, Inspection and Testing

(i) Installation shall conform to the equipment and installation methods described in the approved plans.

(ii) The manufacturer of all system components shall be properly identified.

(iii) Surge tanks shall be filled with water to the overflow line prior to and during construction inspection. All seams and joints shall be left exposed and the tank shall remain watertight.

(iv) The irrigation field shall be installed in the area which has soils similar to the soils which have been evaluated, and has absorption rate corresponding to the given soil classification.

(v) A graywater stub-out may be allowed for future construction, provided it is capped prior to the connection to the installed irrigation lines and landscaping. Stub-out shall be permanently marked: GRAYWATER STUB-OUT, DANGER UNSAFE WATER.

(vi) A flow test shall be performed throughout the system, from surge tank to the point of graywater irrigation. All lines and components shall be watertight.

KEY: wastewater, graywater, drip irrigation
July 2, 2004 **19-5**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-1. Utah Medicaid Program.
R414-1-1. Introduction and Authority.

(1) This rule generally characterizes the scope of the Medicaid Program in Utah, and defines all of the provisions necessary to administer the program.

(2) The rule is authorized by Title XIX of the Social Security Act, and Sections 26-1-5, 26-18-2.1, 26-18-2.3, UCA.

R414-1-2. Definitions.

The following definitions are used throughout the rules of the Division:

(1) "Act" means the federal Social Security Act.

(2) "Applicant" means any person who requests assistance under the medical programs available through the Division.

(3) "Categorically needy" means aged, blind or disabled individuals or families and children:

(a) who are otherwise eligible for Medicaid; and

(i) who meet the financial eligibility requirements for AFDC as in effect in the Utah State Plan on July 16, 1996; or

(ii) who meet the financial eligibility requirements for SSI or an optional State supplement, or are considered under section 1619(b) of the federal Social Security Act to be SSI recipients; or

(iii) who is a pregnant woman whose household income does not exceed 133% of the federal poverty guideline; or

(iv) is under age six and whose household income does not exceed 133% of the federal poverty guideline; or

(v) who is a child under age one born to a woman who was receiving Medicaid on the date of the child's birth and the child remains with the mother; or

(vi) who is least age six but not yet age 18, or is at least age six but not yet age 19 and was born after September 30, 1983, and whose household income does not exceed 100% of the federal poverty guideline; or

(vii) who is aged or disabled and whose household income does not exceed 100% of the federal poverty guideline; or

(viii) who is a child for whom an adoption assistance agreement with the state is in effect.

(b) whose categorical eligibility is protected by statute.

(4) "Code of Federal Regulations" (CFR) means the publication by the Office of the Federal Register, specifically Title 42, used to govern the administration of the Medicaid Program.

(5) "Client" means a person the Division or its duly constituted agent has determined to be eligible for assistance under the Medicaid program.

(6) "Department" means the Department of Health.

(7) "Director" means the director of the Division.

(8) "Division" means the Division of Health Care Financing within the Department.

(9) "Emergency medical condition" means a medical condition showing acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:

(a) placing the patient's health in serious jeopardy;

(b) serious impairment to bodily functions;

(c) serious dysfunction of any bodily organ or part; or

(d) death.

(10) "Emergency service" means immediate medical attention and service performed to treat an emergency medical condition. Immediate medical attention is treatment rendered within 24 hours of the onset of symptoms or within 24 hours of diagnosis.

(11) "Emergency Services Only Program" means a health program designed to cover a specific range of emergency services.

(12) "Executive Director" means the executive director of the Department.

(13) "InterQual" means the InterQual Medical Review Criteria and System, a comprehensive, clinically based, patient focused medical review criteria and system developed by InterQual Inc.

(14) "Medicaid agency" means the Department of Health.

(15) "Medical assistance program" or "Medicaid program" means the state program for medical assistance for persons who are eligible under the state plan adopted pursuant to Title XIX of the federal Social Security Act; as implemented by Title 26, Chapter 18, UCA.

(16) "Medical or hospital assistance" means services furnished or payments made to or on behalf of recipients under medical programs available through the Division.

(17) "Medically necessary service" means that:

(a) it is reasonably calculated to prevent, diagnose, or cure conditions in the recipient that endanger life, cause suffering or pain, cause physical deformity or malfunction, or threaten to cause a handicap; and

(b) there is no other equally effective course of treatment available or suitable for the recipient requesting the service that is more conservative or substantially less costly.

(18) "Medically needy" means aged, blind, or disabled individuals or families and children who are otherwise eligible for Medicaid, who are not categorically needy, and whose income and resources are within limits set under the Medicaid State Plan.

(19) "Provider" means any person, individual or corporation, institution or organization, qualified to perform services available under the Medicaid program and who has entered into a written contract with the Medicaid program.

(20) "Recipient" means a person who has received medical or hospital assistance under the Medicaid program, or has had a premium paid to a managed care entity.

(21) "Undocumented alien" means an alien who is not recognized by Immigration and Naturalization Services as being lawfully present in the United States.

R414-1-3. Single State Agency.

The Utah Department of Health is the Single State Agency designated to administer or supervise the administration of the Medicaid program under Title XIX of the federal Social Security Act.

R414-1-4. Medical Assistance Unit.

Within the Utah Department of Health, the Division of Health Care Financing has been designated as the medical assistance unit.

R414-1-5. State Plan.

(1) As a condition for receipt of federal funds under title XIX of the Act, the Utah Department of Health must submit a State Plan contract to the federal government for the medical assistance program, and agree to administer the program in accordance with the provisions of the State Plan, the requirements of Titles XI and XIX of the Act, and all applicable federal regulations and other official issuances of the United States Department of Health and Human Services. A copy of the State Plan is available for public inspection at the Division's offices during regular business hours.

(2) The department adopts the Utah State Plan Under Title XIX of the Social Security Act Medical Assistance Program, in effect December 1, 2003, which is incorporated by reference.

R414-1-6. Services Available.

(1) Medical or hospital services available under the Medical Assistance Program are generally limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations

(CFR).

(2) The following services provided in the State Plan are available to both the categorically needy and medically needy:

(a) inpatient hospital services, with the exception of those services provided in an institution for mental diseases;

(i) A Medicaid recipient residing in an Intermediate Care Facilitiy for the Mentally Retarded (ICF/MR) may at any time apply for enrollment to the Medicaid 1915c Home and Community-Based Waiver for individuals with developmental disabilities or mental retardation through the application process established in the federally approved waiver implementation plan. ICF/MR resident applications are processed consistent with all waiver applications.

(ii) The Department, through an ICF/MR Portability Project established in rule, will make the Medicaid 1915c Home and Community-Based Waiver for Individuals with Developmental Disabilities or Mental Retardation available to Medicaid recipients who have resided for 12 or more continuous months in a Medicaid certified ICF/MR. The Department will make the ICF/MR Portability Project available to eligible individuals during a specified time period up to the number of individuals authorized for the project by the Utah Legislature through appropriation for that time period.

(b) outpatient hospital services and rural health clinic services;

(c) other laboratory and x-ray services;

(d) skilled nursing facility services, other than services in an institution for mental diseases, for individuals 21 years of age or older;

(e) early and periodic screening and diagnoses of individuals under 21 years of age, and treatment of conditions found, are provided in accordance with federal requirements;

(f) family planning services and supplies for individuals of child-bearing age;

(g) physician's services, whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere;

(h) podiatrist's services;

(i) optometrist's services;

(j) psychologist's services;

(k) interpreter's services;

(l) home health services:

(i) intermittent or part-time nursing services provided by a home health agency;

(ii) home health aide services by a home health agency; and

(iii) medical supplies, equipment, and appliances suitable for use in the home;

(m) private duty nursing services for children under age 21;

(n) clinic services;

(o) dental services;

(p) physical therapy and related services;

(q) services for individuals with speech, hearing, and language disorders furnished by or under the supervision of a speech pathologist or audiologist;

(r) prescribed drugs, dentures, and prosthetic devices and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist;

(s) other diagnostic, screening, preventive, and rehabilitative services other than those provided elsewhere in the State Plan;

(t) services for individuals age 65 or older in institutions for mental diseases:

(i) inpatient hospital services for individuals age 65 or older in institutions for mental diseases;

(ii) skilled nursing services for individuals age 65 or older in institutions for mental diseases; and

(iii) intermediate care facility services for individuals age 65 or older in institutions for mental diseases;

(u) intermediate care facility services, other than services in an institution for mental diseases. These services are for individuals determined, in accordance with section 1902(a)(31)(A) of the Social Security Act, to be in need of this care, including those services furnished in a public institution for the mentally retarded or for individuals with related conditions;

(v) inpatient psychiatric facility services for individuals under 22 years of age;

(w) nurse-midwife services;

(x) family or pediatric nurse practitioner services;

(y) hospice care in accordance with section 1905(o) of the Social Security Act;

(z) case management services in accordance with section 1905(a)(19) or section 1915(g) of the Social Security Act;

(aa) extended services to pregnant women, pregnancy-related services, postpartum services for 60 days, and additional services for any other medical conditions that may complicate pregnancy;

(bb) ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider in accordance with section 1920 of the Social Security Act; and

(cc) other medical care and other types of remedial care recognized under state law, specified by the Secretary of the United States Department of Health and Human Services, pursuant to 42 CFR 440.60 and 440.170, including:

(i) medical or remedial services provided by licensed practitioners, other than physician's services, within the scope of practice as defined by state law;

(ii) transportation services;

(iii) skilled nursing facility services for patients under 21 years of age;

(iv) emergency hospital services; and

(v) personal care services in the recipient's home, prescribed in a plan of treatment and provided by a qualified person, under the supervision of a registered nurse.

(dd) other medical care, medical supplies, and medical equipment not otherwise a Medicaid service if the Division determines that it meets both of the following criteria:

(i) it is medically necessary and more appropriate than any Medicaid covered service; and

(ii) it is more cost effective than any Medicaid covered service.

R414-1-7. Aliens.

(1) Certain qualified aliens described in Title IV of Public Law 104-193 may be eligible for the Medicaid program. All other aliens are prohibited from receiving non-emergency services, as described in Section 1903(v) of the Social Security Act, which is adopted and incorporated by reference.

(2) Aliens who are prohibited from receiving non-emergency services will have "Emergency Services Only Program" printed on their Medical Identification Cards, as noted in R414-3A.

R414-1-8. Statewide Basis.

The medical assistance program is state-administered and operates on a statewide basis in accordance with 42 CFR 431.50.

R414-1-9. Medical Care Advisory Committee.

There is a Medical Care Advisory Committee that advises the Medicaid agency director on health and medical care services. The committee is established in accordance with 42 CFR 431.12.

R414-1-10. Discrimination Prohibited.

In accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 70b), and the regulations at 45 CFR Parts 80 and 84, the Medicaid agency assures that no individual shall be subjected to discrimination under the plan on the grounds of race, color, gender, national origin, or handicap.

R414-1-11. Administrative Hearings.

The Medicaid agency has a system of administrative hearings for medical providers and dissatisfied applicants, clients, and recipients that meets all the requirements of 42 CFR Part 431, Subpart E.

R414-1-12. Utilization Review.

(1) Utilization review provides for review and evaluation of the utilization of Medicaid services provided in acute care general hospitals, and by members of the medical staff to patients entitled to benefits under the Medicaid plan.

(2) The Department shall conduct hospital utilization review as outlined in the Superior Utilization Waiver state implementation plan, November 1997 edition, which is incorporated by reference in this rule.

(3) The Department shall determine medical necessity and appropriateness of inpatient admissions during utilization review by use of InterQual Medical Review Criteria and System, published by InterQual, Inc., January 1998 edition, 293 Boston Post Road West, Suite 180, Marlborough, MA, 07152, which is incorporated by reference in this rule, or by following other criteria and protocols outlined in ATTACHMENT 4.19-A, Section 180, of the Medicaid State Implementation Plan.

(4) The standards in the InterQual Medical Review Criteria and System shall not apply to services that are:

(a) excluded as a Medicaid benefit by rule or contract;

(b) provided in an intensive physical rehabilitation center as described in R414-2B; or

(c) organ transplant services as described in R414-10A.

In these three exceptions, or where InterQual is silent, the Medicaid agency shall approve or deny claims based upon appropriate administrative rules or its own criteria as incorporated in provider contracts that incorporate the Medicaid Provider Manuals.

(5) The Department may take remedial action as outlined in ATTACHMENT 4.19-A, Section 180, of the Medicaid State Implementation Plan for inappropriate services identified through utilization review.

(6) In accordance with 42 CFR 431, Subpart E, the Utilization Review Committee shall send written notification of remedial action to the provider.

R414-1-13. Provider and Client Agreements.

(1) To meet the requirements of 42 CFR 431.107, the Department contracts with each provider who furnishes services under the Utah Medicaid Program.

(2) By signing a provider agreement with the Department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid Information Bulletins, and provider letters.

(3) By signing an application for Medicaid coverage, the client agrees that the Department's obligation to reimburse for services is governed by contract between the Department and the provider.

R414-1-14. Utilization Control.

(1) The Medicaid agency has implemented a statewide program of surveillance and utilization control that safeguards against unnecessary or inappropriate use of Medicaid services available under the plan. The plan also safeguards against excess payments, assesses the quality of services, and provides for control and utilization of inpatient services as outlined in the Superior Utilization Waiver state implementation plan. The program meets the requirements of 42 CFR Part 456.

(2) In order to control utilization, and in accordance with 42 CFR 440.230(d), services, equipment, or supplies not specifically identified by the Department as covered services under the Medicaid program, are not a covered benefit.

(3) The Medicaid agency may request records that support provider claims for payment under programs funded through the agency. Such requests must be in writing and identify the records to be reviewed. Responses to requests must be returned within 30 days of the date of the request. Responses must include the complete record of all services for which reimbursement is claimed and all supporting services. If there is no response within the 30 day period, the agency will close the record and will evaluate the payment based on the records available.

(4) If Medicaid pays for a service which is later determined not to be a benefit of the Utah Medicaid program or is not in compliance with state or federal policies and regulations, Medicaid will make a written request for a refund of the payment. Unless appealed, the refund must be made to Medicaid within 30 days of written notification. An appeal of this determination must be filed within 30 days of written notification as specified in R410-14-6.

(5) Reimbursement for services provided through the Medicaid program must be verified by adequate records. If these services cannot be properly verified, or when a provider refuses to provide or grant access to records, either the provider must promptly refund to the state any payments received for the undocumented services, or the state may elect to deduct an equal amount from future reimbursements. If the Department suspects fraud, it may refer cases for which records are not provided to the Medicaid Fraud Control Unit for additional investigation and possible action.

R414-1-15. Medicaid Fraud.

The Medicaid agency has established and will maintain methods, criteria, and procedures that meet all requirements of 42 CFR 455.13 through 455.21 for prevention and control of program fraud and abuse.

R414-1-16. Confidentiality.

State statute, Title 63, Chapter 2, and Section 26-1-17.5, impose legal sanctions and provide safeguards that restrict the use or disclosure of information concerning applicants, clients, and recipients to purposes directly connected with the administration of the plan.

All other requirements of 42 CFR Part 431, Subpart F are met.

R414-1-17. Eligibility Determinations.

Determinations of eligibility for Medicaid under the plan are made by the Division of Health Care Financing, the Utah Department of Workforce Services, and the Utah Department of Human Services. There is a written agreement among the Utah Department of Health, the Utah Department of Workforce Services, and the Utah Department of Human Services. The agreement defines the relationships and respective responsibilities of the agencies.

R414-1-18. Professional Standards Review Organization.

All other provisions of the State Plan shall be administered by the Medicaid agency or its agents according to written contract, except for those functions for which final authority has been granted to a Professional Standards Review Organization under Title XI of the Act.

R414-1-19. Timeliness in Eligibility Determinations.

The Medicaid agency shall adhere to all timeliness requirements of 42 CFR 435.911, for processing applications, determining eligibility, and approving Medicaid requests. If these requirements are not completed within the defined time limits, clients may notify the Division of Health Care Financing at 288 North, 1460 West, Salt Lake City, UT 84114-2906.

R414-1-20. Residency.

Medicaid is furnished to eligible individuals who are residents of the State under 42 CFR 435.403.

R414-1-21. Out-of-state Services.

Medicaid services shall be made available to eligible residents of the state who are temporarily in another state. Reimbursement for out-of-state services shall be provided in accordance with 42 CFR 431.52.

R414-1-22. Retroactive Coverage.

Individuals are entitled to Medicaid services under the plan during the three months preceding the month of application if they were, or would have been, eligible at that time.

R414-1-23. Freedom of Choice of Provider.

Unless an exception under 42 CFR 431.55 applies, any individual eligible under the plan may obtain Medicaid services from any institution, pharmacy, person, or organization that is qualified to perform the services and has entered into a Medicaid provider contract, including an organization that provides these services or arranges for their availability on a prepayment basis.

R414-1-24. Availability of Program Manuals and Policy Issuances.

In accordance with 42 CFR 431.18, the state office, local offices, and all district offices of the Department maintain program manuals and other policy issuances that affect recipients, providers, and the public. These offices also maintain the Medicaid agency's rules governing eligibility, need, amount of assistance, recipient rights and responsibilities, and services. These manuals, policy issuances, and rules are available for examination and, upon request, are available to individuals for review, study, or reproduction.

R414-1-25. General Rule Format.

The following format is used generally throughout the rules of the Division. Section headings as indicated and the following general definitions are for guidance only. The section headings are not part of the rule content itself. In certain instances, this format may not be appropriate and will not be implemented due to the nature of the subject matter of a specific rule.

(1) Introduction and Authority. A concise statement as to what Medicaid service is covered by the rule, and a listing of specific federal statutes and regulations and state statutes that authorize or require the rule.

(2) Definitions. Definitions that have special meaning to the particular rule.

(3) Client Eligibility. Categories of Medicaid clients eligible for the service covered by the rule: Categorically Needy or Medically Needy or both. Conditions precedent to the client's obtaining coverage such as age limitations or otherwise.

(4) Program Access Requirements. Conditions precedent external to the client's obtaining service, such as type of certification needed from attending physician, whether available only in an inpatient setting or otherwise.

(5) Service Coverage. Detail of specific services available under the rule, including limitations, such as number of procedures in a given period of time or otherwise.

(6) Prior Authorization. As necessary, a description of the procedures for obtaining prior authorization for services available under the particular rule. However, prior authorization must not be used as a substitute for regulatory practice that should be in rule.

(7) Other Sections. As necessary under the particular rule, additional sections may be indicated. Other sections include regulatory language that does not fit into sections (1) through (5).

KEY: Medicaid
July 19, 2004 26-1-5
Notice of Continuation April 30, 2002 26-18-1

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-49. Dental Service.
R414-49-1. Introduction and Authority.

(1) The Medicaid Dental Program provides a scope of dental services to meet the basic dental needs of Medicaid recipients.

(2) Dental services are authorized by 42 CFR, October 1995 ed., Sections 440.100, 440.120, 483.460, which are adopted and incorporated by reference.

R414-49-2. Definitions.

In addition to the definitions in R414-1-1, the following definitions apply to this rule:

(1) "Adult" means a person who has attained the age of 21.

(2) "Child" means a person under age 21 who is eligible for the EPSDT (CHEC) program.

(3) "Child Health Evaluation and Care" (CHEC) is the Utah-specific term for the federally mandated program of early and periodic screening, diagnosis, and treatment (EPSDT) for children under the age of 21.

(4) "Dental services" means diagnostic, preventive, or corrective procedures provided by, or under the supervision of, a dentist in the practice of his profession.

(5) "Emergency services" means treatment of an unforeseen, sudden, and acute onset of symptoms or injuries requiring immediate treatment, where delay in treatment would jeopardize or cause permanent damage to a person's dental health.

R414-49-3. Client Eligibility Requirements.

Dental services are available to categorically and medically needy clients.

R414-49-4. Program Access Requirements.

Dental services are available only from a dentist who meets all of the requirements necessary to participate in the Utah Medicaid Program, and who has signed a provider agreement.

R414-49-5. Service Coverage.

Specific services are identified for adults and for children eligible for the EPSDT (CHEC) program, since program covered services may differ. Specific program covered services for residents of ICFs/MR are detailed in this section.

(1) Diagnostic services are covered as follows:

(a) Each provider may perform a comprehensive oral evaluation one time only for either a child or an adult.

(b) A limited problem-focused oral evaluation for a child or an adult.

(c) Each provider may perform either two periodic oral evaluations, or a comprehensive and a periodic oral evaluation per calendar year.

(d) A choice of panoramic film, a complete series of intraoral radiographs, or a bitewing series of radiographs of diagnostic quality.

(e) Study models or diagnostic casts for children.

(2) Preventive services are covered as follows:

(a) Child:

(i) Two prophylaxis treatments in a calendar year by a provider, with or without fluoride.

(ii) Occlusal sealants are a benefit on the permanent molars of children under age 18.

(iii) Space maintainers.

(b) Adult: Two prophylaxis treatments in a calendar year by a provider.

(3) Restorative services are covered as follows:

(a) Amalgam restorations, composite restorations on anterior teeth, stainless steel crowns, crown build-up, prefabricated post and core, crown repair, and resin or porcelain crowns on permanent anterior teeth for children.

(b) Amalgam restorations, and composite restorations on anterior teeth for adults.

(4) Endodontics services are covered as follows:

(a) Therapeutic pulpotomy for primary teeth.

(b) Root canals, except for permanent third molars or primary teeth, or permanent second molars for adults.

(c) Apicoectomies.

(5) Periodontics services are covered as follows:

(a) Root planing or periodontal treatment for children.

(b) Gingivectomies for patients who use anticonvulsant medication, as verified by their physician.

(6) Oral Surgery services are covered as follows:

(a) Extractions for adults and children.

(b) Surgery for emergency treatment of traumatic injury.

(c) Emergency oral and maxillofacial services provided by dentists or oral and maxillofacial surgeons.

(7) Prosthodontics services are covered as follows:

Initial placement of dentures, including the relining to assure the desired fit.

(a) Full Dentures

(i) Child: Complete dentures.

(ii) Adult: "Initial" dentures.

(b) Partial dentures may be provided if the denture replaces an anterior tooth or is required to restore mastication ability where there is no mastication ability present on either side.

(c) Relining, rebasing, or repairing of existing full or partial dentures.

(8) Medicaid covered dental services are available to residents of an ICF/MR on a fee-for-service basis, except for the annual exam, which is part of the per diem paid to the ICF/MR.

(9) Patients who receive total parenteral or enteral nutrition may not receive dentures.

(10) The provider must mark all new placements of full or partial dentures with the patient's name to prevent lost or stolen dentures in facilities licensed under Title 26, Chapter 21.

(11) General anesthesia and I.V. sedation are covered services.

(12) Fixed bridges, osseo-implants, sub-periosteal implants, ridge augmentation, transplants or replants are not covered services.

(13) pontic services, vestibuloplasty, occlusal appliances, or osteotomies are not covered services.

(14) Consultations or second opinions not requested by Medicaid are not covered services.

(15) Treatment for temporomandibular joint syndrome, its prevention or sequela, subluxation, therapy, arthrotomy, meniscectomy, condylectomy are not covered services.

(16) Services to non-pregnant adults ages 20 and older are limited to X-rays, fillings, routine extractions for erupted teeth only, and root canals on permanent teeth excluding 2nd and 3rd molars.

(17) Prior authorization is required for gingivectomies, full mouth debridements, dentures, partial dentures, porcelain to metal crowns and general anesthesia procedures.

R414-49-6. Reimbursement.

(1) Reimbursement for Dental Services is through select ADA dental codes which are based on an established fee schedule unless a lower amount is billed. The Department pays the lower of the amount billed and the rate on the schedule.

(2) The amount billed cannot exceed usual and customary charges for private pay patients. Fee schedules were initially established after consultation with provider representatives. Adjustments to the schedule are made in accordance with appropriations and to produce efficient and effective services.

KEY: Medicaid

July 2, 2004 26-1-5
Notice of Continuation December 20, 1999 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-306. Program Benefits.
R414-306-1. Medicaid Benefits.

(1) The Department adopts 42 CFR 440.240, 441.56, and 431.625, 1999 ed., which are incorporated by reference.

(2) The Department elects to coordinate Medicaid with Medicare Part B for all Medicaid recipients.

(3) The Department is responsible for defining emergency services which will be paid for by Medicaid for aliens who do not meet citizenship requirements for full Medicaid coverage. Emergency services include medical services given to prevent death or permanent disability. Emergency services do not include prenatal or postpartum services, prolonged medical support, long term care, or organ transplants. Prior authorization is required if the client applies for medical assistance before receiving medical services.

(4) Workers must inform applicants about the Child Health Evaluation and Care (CHEC) program. By signing the application form the client acknowledges receipt of CHEC program information.

R414-306-2. QMB, SLMB, and QI-1 Benefits.

(1) The Department adopts Subsection 1905(p) and Section 1933 of the Compilation of the Social Security Laws, 2001 ed., U.S. Government Printing Office, Washington, D.C., which is incorporated by reference.

(2) The Department does not cover premiums for enrollment with any health insurance plans except for Medicare.

R414-306-3. QMB and SLMB Date of Entitlement.

The Department adopts Subsection 1902(e)(8) of the Compilation of the Social Security Laws, 2001 ed., U.S. Government Printing Office, Washington, D.C., which is incorporated by reference.

R414-306-4. Effective Date of Eligibility.

(1) The Department adopts 42 CFR 435.914, 2001 ed., which is incorporated by reference.

(2) Eligibility for any Medicaid program, or the SLMB or QI-1 program, shall begin no earlier than the date that is three months before the date of application for benefits. Coverage shall not be effective on the first day of a month if that date is more than three months before the application date. Coverage in the months before the application month cannot begin before the date the applicant met the eligibility criteria.

(a) Institutional Medicaid shall begin on the date that the Department receives verification of nursing home admission from the nursing home, but no earlier than the date that is three months before the date of application for nursing home services.

(b) Eligibility under a Home and Community Based (HCB) Services waiver shall begin on the date the client is determined to meet the level-of-care criteria and home and community based services are scheduled to begin within the month, but no earlier than the date that is three months before the date of application for HCB services.

(c) Eligibility for benefits as a Qualifying Individual-Group 1 can begin no earlier than the date that is three months before the date of application and in no case before January 1, 1998. An individual selected to receive QI-1 benefits in a month of the year is entitled to receive such assistance for the remainder of the calendar year if the individual continues to be a qualifying individual and the program still exists. Receipt of QI-1 benefits in one calendar year does not entitle the individual to continued assistance in any succeeding year.

(3) Eligibility in the application month and on-going months shall begin on the first day of such month, except for

(a) an individual who just moved to Utah, in which case the effective date of eligibility of such individual cannot be earlier than the date that the individual meets the state residency requirement defined in R414-302-2; and

(b) an individual who is a qualified alien subject to the five-year bar on receiving regular Medicaid services, in which case eligibility cannot begin earlier than the date that is five years after the date the person became a qualified alien, or the date the five-year bar ends due to other events defined in statute.

(c) an individual who is a qualified alien not subject to the five-year bar on receiving regular Medicaid services, in which case eligibility cannot begin earlier than the date the individual's qualified alien status began.

(4) There is no provision for retroactive QMB assistance.

(5) After being approved for Medicaid, a client may request retroactive coverage based on the date of the approved application, but only if the client had not previously requested the retroactive coverage, and had either been denied for such time period or had failed to meet a spenddown for such time period. The recipient must provide verifications needed to establish eligibility for the retroactive period being requested.

R414-306-5. Availability of Medical Services.

(1) The Department adopts 42 CFR 431.52, 2001 ed., which is incorporated by reference.

(2) A person may receive medical services from an out-of-state provider if that provider accepts the Utah Medicaid reimbursement rate for the service.

(3) If a medical service requires prior approval for reimbursement in-state, the medical service will require prior approval if received out-of-state.

(4) If a person has a primary care provider, the person shall receive medical services from that provider, or obtain authorization from the primary care provider to receive medical services from another medical provider.

(5) If a person is enrolled in a Medicaid Health Plan, the person shall receive medical services from a provider within the Medicaid Health Plan's network, or obtain authorization from the Medicaid Health Plan or Utah Medicaid to receive medical services from an out-of-network medical provider.

R414-306-6. Medical Transportation.

(1) The Department adopts 42 CFR 431.53, 2001 ed., which is incorporated by reference.

(2) The following applies to all forms of non-emergency medical transportation including services provided by a contracted medical transportation provider and reimbursement for use of personal transportation.

(a) Non-emergency medical transportation is limited to transportation expenses to go to and from the nearest appropriate Medicaid provider to obtain a Medicaid covered service that is medically necessary. If the recipient chooses to travel to a Medicaid provider that is not the nearest appropriate provider, reimbursement of mileage is limited to the distance to go to the nearest appropriate provider. The Department will not cover transportation expenses to go to non-Medicaid providers, or to obtain services not covered by the Medicaid plan.

(b) Non-emergency medical transportation is limited to individuals who are covered under the Traditional Medicaid benefit plan. Individuals covered by the Non-Traditional Medicaid plan, the Primary Care Network, the Covered-At-Work program, and Medicare Cost-Sharing programs are not eligible for non-emergency medical transportation.

(c) If transportation is available to a Traditional Medicaid recipient without cost to the recipient, the recipient shall use this transportation. A Traditional Medicaid recipient who needs specialized transportation and who meets the criteria for the Medicaid transportation contractor services found in subsection (13) may receive transportation from the Medicaid transportation contractor.

(d) A Traditional Medicaid recipient who has access to

and is able to use public transportation to get to medical appointments may receive a bus pass upon request. The bus pass may be used to pay the fare for an attendant who accompanies a recipient under age 18 or a recipient who has a medical need for an attendant. A recipient who has access to and is capable of using public paratransit services can request authorization to use such transportation. The recipient must follow procedures and meet criteria required by the paratransit provider.

(e) Transportation for picking up prescriptions is not covered unless en route to or from a medical appointment.

(f) The Department will not provide non-emergency medical transportation to nursing home residents because the nursing home must provide the transportation as part of its contracted rate.

(g) The Department will not provide non-emergency medical transportation to and from mental health appointments for recipients covered by a prepaid Mental Health Plan because the prepaid Mental Health Plan must provide transportation, as part of its contracted rate, to recipients to obtain covered mental health services.

(h) If medical services are not available in-state, a Traditional Medicaid recipient must receive prior authorization from the Department for the services and the transportation. If the services and the transportation are approved, the Department shall determine, at its discretion, the most cost effective and appropriate transportation, and method of payment for the transportation.

(3) If personal transportation is used and it is the most reasonable and economical mode of transportation available, the local office shall reimburse actual mileage at the rate of $0.18 per mile. The Department may deny reimbursement for multiple trips in a day unless the client can demonstrate why multiple trips were necessary. Total reimbursement for mileage must not exceed $150.00 a month per household, unless:

(a) an eligibility worker determines that higher reimbursement is necessary because a recipient's medical condition requires frequent travel to a Medicaid provider to obtain Medicaid covered services that are medically necessary; or

(b) an eligibility worker or supervisor determines that higher reimbursement is necessary because a recipient had an unusual medical need in a given month that required frequent or long-distance travel to a Medicaid provider to obtain Medicaid covered services that were medically necessary.

(4) The local office supervisor can authorize advance payment for use of personal transportation, overnight stay costs, or both, if the provider verifies the medical appointment, and the client would be unable to obtain the necessary medical services without an advance. The recipient is responsible to repay an advance if the recipient does not provide verification of travel expenses equal to or greater than the amount of funds advanced within 10 days after returning from the scheduled appointment.

(5) Transportation reimbursement for use of a personal vehicle may be made to the recipient, to a second party, or to the recipient and second party jointly.

(6) If more than one Traditional Medicaid recipients travel together in a personal vehicle, reimbursement shall be made to only one recipient, or to the driver, and only for the actual miles traveled.

(7) If medical services are not available locally, a Traditional Medicaid recipient may be reimbursed for transportation to obtain medical services outside of the recipient's local area. If the closest medical provider is out-of-state, a recipient may be reimbursed for transportation to the out-of-state provider if this travel is more cost effective than traveling to an in-state provider. The medical provider's office must verify that the recipient needs to travel outside the local area for medical services, unless:

(a) there are no Medicaid providers in the local area who can provide the services; or

(b) it is the custom in the local area to obtain medical services outside the local area or in neighboring states.

(8) A Traditional Medicaid recipient who receives medical treatment outside of the recipient's local area may receive reimbursement for lodging costs when staying overnight, if:

(a) the recipient is obtaining a Medicaid covered service that is medically necessary from the nearest Medicaid provider that can treat the recipient's medical condition; and

(b) the recipient must travel over 100 miles to obtain the medical treatment and would not arrive home before 8:00 p.m. due to the drive time;

(c) the recipient must travel over 100 miles to obtain the medical treatment and would have to leave home before 6:30 a.m. due to drive time to arrive at the scheduled appointment; or

(d) the medical treatment requires an overnight stay.

(9) The Department shall reimburse actual lodging and food costs or $50.00 per night, whichever is less. Reimbursement for food costs shall be no more than $25 of the $50 overnight reimbursement rate.

(10) If a recipient has a medical need to stay more than two nights to receive medical services, the recipient must obtain approval from the Department before expenses for additional nights can be reimbursed.

(11) If a recipient has a medical need for a companion or attendant when traveling outside of the recipient's local area, and the recipient is not staying in a medical facility, lodging costs for the companion or attendant may be reimbursed according to the rate specified in subsection (9). The reimbursement may also include salary if the attendant is not a member of the recipient's family, but not for standby time. One parent or guardian may qualify as an attendant if the parent or guardian must receive medical instructions to meet the recipient's needs, or the recipient is a minor child.

(12) Reimbursements for personal transportation shall not be made for trips made more than 12 months before the month the client requests reimbursement, with one exception. If a client is granted coverage for months more than one year prior to the eligibility decision, the client may request reimbursement and provide verification for personal transportation costs incurred during those months. In this case, the client must make the request and provide verification within three months after receiving the eligibility decision.

(13) Reimbursement for fee-for-service providers:

(a) Payments for Medical transportation are based on the established fee schedule unless a lower amount is billed. The amount billed cannot exceed usual and customary charges to private pay patients.

(b) Fees are established using the methodology as described in the State Plan, Attachment 4.19-B Section R, Transportation.

(14) Medical Transportation under a Section 1915(b) waiver using a transportation contractor:

(a) Non-emergency medical transportation will be provided by a contracted transportation provider. The contractor provides non-emergency medical transportation services statewide, either as the primary provider or through a subcontractor. Transportation service under the waiver do not include bus passes and paratransit services by a public carrier, such as Flextrans.

(b) Prior authorization is required for all transportation services provided through the contractor.

(c) If the medical service is not available within the state, or the nearest Medicaid provider is outside the state, medical transportation to services outside of Utah is covered up to 120 ground travel miles one-way outside of the Utah border. The ride must originate or end within Utah borders. Non-emergency transportation originating and ending outside of Utah is not

covered.

(d) A recipient is not eligible for non-emergency medical transportation services if the recipient owns a licensed vehicle or lives in a residence with a family member who owns a licensed vehicle, unless a physician verifies that the nature of the recipient's medical condition or disability makes driving inadvisable and there is no family member physically able to drive the recipient to and from medical appointments.

(e) A recipient is not eligible for non-emergency medical transportation services if public transportation is available in the recipient's area, unless the public transportation is inappropriate for the recipient's medical or mental condition as certified by a physician.

(f) A recipient is not eligible for non-emergency medical transportation services if parartransit services such as Flextrans are available in the recipient's area, unless the recipient's medical condition requires door to door services due to physical inability to get from the curb or parking lot to the medical provider's facility. This inability must be certified by a physician. To be eligible for transportation under the waiver, the recipient must receive a denial of services letter from Flextrans or other paratransit services.

(g) Transportation for urgent care services is provided under the provisions of items (d), (e) and (f) above and will be provided within 24 hours of request. Urgent care is defined as non-emergency medical care which is considered by the prudent lay person as medically safe to wait for medical attention within the next 24 hours.

R414-306-7. State Supplemental Payments for Institutionalized SSI Recipients.

(1) The Department adopts Subsection 1616(a) through (d) of the Compilation of the Social Security Laws, 2001 ed., U.S. Government Printing Office, Washington, D.C., which is incorporated by reference.

(2) A State Supplemental payment equal to $15 shall be paid to a resident of a medical institution who receives a Supplemental Security Income (SSI) payment.

(3) Recipients must be eligible for Medicaid benefits to receive the State Supplemental payment.

(4) Recipients are eligible to receive the $15 State Supplemental payment beginning with the first month that their SSI assistance is reduced to $30 a month because they stay in an institution and they are eligible for Medicaid.

(5) The State Supplemental payment terminates effective the month the recipient no longer meets the eligibility criteria for receiving such supplemental payment.

KEY: program benefits, medical transportation
July 19, 2004 26-18
Notice of Continuation January 31, 2003

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-401. Nursing Care Facility Assessment.
R414-401-1. Introduction and Authority.

(1) This rule implements the assessment imposed on certain nursing care facilities by Utah Code Title 26, Chapter 35a.

(2) The rule is authorized by Section 26-1-30 and Utah Code Title 26, Chapter 35a.

R414-401-2. Definitions.

(1) The definitions in Section 26-35a-103 apply to this rule.

(2) The definitions in R414-1 apply to this rule.

R414-401-3. Assessment.

(1) The collection agent for the nursing care facility assessment shall be the Department, which is vested with the administration and enforcement of the assessment.

(2) The uniform rate of assessment for every facility is $6.18 per non-Medicare patient day provided by the facility. The Utah State Veteran's Home is exempted from this assessment and this rule.

(3) Each nursing care facility must pay its assessment monthly on or before the last day of the next succeeding month.

(4) The Department shall extend the time for paying the assessment to the next month succeeding the federal approval of a Medicaid State Plan Amendment allowing for the assessment, and consequent reimbursement rate adjustments.

R414-401-4. Reporting and Auditing Requirements.

(1) Each nursing care facility shall, on or before the end of the succeeding month, file with the Department a report for the month, and shall remit with the report the assessment required to be paid for the month covered by the report.

(2) Each report shall be on the Department-approved form, and shall disclose the total number of patient days in the facility, by designated category, during the period covered by the report.

(3) Each nursing care facility shall supply the data required in the report and certify that the information is accurate to the best of the representative's knowledge.

(4) Each nursing care facility subject to this assessment shall maintain complete and accurate records. The Department may inspect each nursing care facility's records and the records of the facility's owners to verify compliance.

(5) Separate nursing care facilities owned or controlled by a single entity may combine reports and payments of assessments provided that the required data are clearly set forth for each separately reporting nursing care facility.

(6) The Department shall extend the time for making required reports to the next month succeeding the federal approval of a Medicaid State Plan Amendment allowing for the assessment, and consequent reimbursement rate adjustments.

R414-401-5. Penalties and Interest.

The penalties for failure to file a report, to pay the assessment due within the time prescribed, to pay within 30 days of a notice of deficiency of the assessment, for underpayment of the assessment, for intent to evade the assessment are as provided in Utah Code Section 26-35a-105.

KEY: Medicaid, nursing facility
July 2, 2004 **26-1-30**
26-35a

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-504. Nursing Facility Payments.
R414-504-1. Introduction.

(1) This rule adopts a case mix or severity based payment system, commonly referred to as RUGS (Resource Utilization Group System). This system reimburses facilities based on the case mix index of the facility.

(2) This rule is authorized by Utah Code sections 26-1-5 and 26-18-3.

R414-504-2. Definitions.

The definitions in R414-1-2 and R414-501-2 apply to this rule. In addition:

(1) "Behaviorally complex resident" means a long-term care resident with a severe, medically based behavior disorder, including traumatic brain injury, dementia, Alzheimer's, Huntington's Chorea, which causes diminished capacity for judgment, retention of information or decision-making skills, or a resident, who meets the Medicaid criteria for nursing facility level of care and who has a medically-based mental health disorder or diagnosis and has a high level resource use in the nursing facility not currently recognized in the case mix.

(2) "Case Mix Index" means a score assigned to each facility based on the average of the Medicaid patients' RUGS scores for that facility.

(3) "Facility Case Mix Rate" means the rate the Department issues to a facility for a specified period of time. This rate utilizes the case mix index for a provider, labor wage index application and other case mix related costs.

(4) "FCP" means the Facility Cost Profile cost report filed by the provider on an annual basis.

(5) "Minimum Data Set" (MDS) means a set of screening, clinical and functional status elements, including common definitions and coding categories, that form the foundation of the comprehensive assessment for all residents of long term care facilities certified to participate in Medicaid.

(6) "Nursing Costs" means the most current costs from the annual FCP report reported on lines 070-012 Nursing Admin Salaries and Wages; 070-013 Nursing Admin Tax and Benefits; 070-040 Nursing Direct Care Salaries and Wages; 070-041 Nursing Direct Care Tax and Benefits, and 070-050 Purchased Nursing Services.

(7) "Nursing facility" or "facility" means a Medicaid-participating NF, SNF, or a combination thereof, as defined in 42 USC 1396r (a) (1988), 42 CFR 440.150 and 442.12 (1993), and UCA 26-21-2(15).

(8) "Patient day" means the care of one patient during a day of service, excluding the day of discharge.

(9) "Property costs" means the most current property costs from the annual FCP report reported on lines 230 (Rent and Leases Expense), 240 (Real Estate and Personal Property Taxes), 250 (Depreciation - Building and Improvement), 260 (Depreciation - Transportation Equipment), 270 (Depreciation - Equipment), 280 (Interest - Mortgage, Personal Property Furniture and Equipment - Small Items), 300 (Property Insurance).

(10) "RUGS" means the 34 RUG identification system based on the Resource Utilization Group System established by Medicare to measure and ultimately pay for the labor, fixed costs and other resources necessary to provide care to Medicaid patients. Each "RUG" is assigned a weight based on an assessment of its relative value as measured by resource utilization.

(11) "RUGS score" means a total number based on the individual RUGS derived from a resident's physical, mental and clinical condition, which projects the amount of relative resources needed to provide care to the resident. RUGS is calculated from the information obtained through the submission of the MDS data.

(12) "Sole community provider" means a facility that is not an urban provider and is not within 30 paved road miles of another existing facility is the only facility:

(a) within a city, if the facility is located within the incorporated boundaries of a city; or

(b) within the unincorporated area of the county if it is located in an unincorporated area.

(13) "Urban provider" means a facility located in a county of more than 90,000 population.

R414-504-3. Principles of Facility Case Mix Rates and Other Payments.

The following principles apply to the payment of freestanding and provider based nursing facilities for services rendered to nursing care level I, II, and III Medicaid patients, as defined in R414-502. This rule does not affect the system for reimbursement for intensive skilled Medicaid patients.

(1) Effective January 1, 2003, approximately 50% of total payments in aggregate to nursing facilities for nursing care level I, II and III Medicaid patients are based on a prospective facility case mix rate. In addition, these facilities shall be paid a flat basic operating expense payment equal to approximately 38% of the total payments. The balance of the total payments will be paid in aggregate to facilities as required by R414-504-3 based on other authorized factors, including property and behaviorally complex residents, in the proportion that the facility qualifies for the factor.

(2) Pending federal approval of a Medicaid State Plan Amendment implementing the Utah Nursing Care Facility Assessment Act, and consequent rules, the case mix rate in effect on July 2, 2004, as well as other components of the total rate will be the same as those in effect on June 30, 2004.

(3) Upon federal approval of the nursing care facility assessment State Plan Amendment, rate components will be adjusted retroactively to July 2, 2004, to reflect the additional funding made available.

(4) The Department calculates each nursing facility's case mix index quarterly based upon the previous 12 month moving average case mix history.

(5) A facility may apply for a special add-on rate for behaviorally complex residents by filing a written request with the Division of Health Care Financing. The Department may approve an add-on rate if an assessment of the acuity and needs of the patient demonstrates that the facility is not adequately reimbursed by the RUGS score for that patient. The rate is added on for the specific resident's payment and is not subsumed as part of the facility case mix rate. The Resident Assessment Section will make the determination as to qualification for any additional payment. The Division of Health Care Financing shall determine the amount of any add-on.

(6) Property costs are paid separately from the RUGS rate.

(a) Each facility's reimbursement rate effective July 2, 2004, includes a property payment of $11.19 per patient day.

(b) A facility with property costs greater than $11.19 per patient day as reported on the most recent FCP may receive a property differential payment, as follows:

(i) For facilities with the most recent FCP-reported occupancy greater than 75%, the property differential is the FCP-reported property cost divided by the sum of the number of Medicaid patient days and non-Medicaid patient days from which the $11.19 base is subtracted. This can be algebraically stated as: (FCP-reported property cost / (total number of Medicaid patient days + non-Medicaid patient days)) - $11.19 = property differential.

(ii) For facilities with an FCP-reported occupancy less than 75%, the property differential is the FCP-reported property cost divided by the number of licensed beds times 365 times .75

from which the $11.19 base is subtracted. This can be algebraically stated as: (FCP-reported property cost / (total number of licensed beds x 365 x .75)) - $11.19 = property differential.

(c) Regardless of the result produced under subsection (b), the property differential payment shall not exceed $8.81 per patient day from the effective date of this rule until December 31, 2004. Regardless of the result produced under subsection (b), beginning January 1, 2005, the property differential shall not exceed $4.40. The amount reduced beginning January 1, 2005 from property payments shall be shifted to other components of the rate and distributed to facilities.

(7) Newly constructed facilities' case mix component of the rate shall be paid at the average rate. This average rate shall remain in place for a new facility for six months, whereupon the provider's case mix index and property payment is established. At this point, the Department shall issue a new case mix adjusted rate. The property payment to the facility is controlled by R414-504-3(6). A newly constructed facility's property payment may not exceed $20.00 per patient day.

(8) An existing facility acquired by a new owner will continue at the same case mix index and property cost payment established for the facility under the previous ownership for the remainder of the quarter. The new owners property payment may not exceed $20.00 per patient day.

(9)(a) A sole community provider that is financially distressed may apply for a payment adjustment above the case mix index established rate. The maximum increase will be the lesser of the facility's reasonable costs (as defined in CMS publication 15-1, Section 2102.2), or 7.5% above the average of the most recent FCP Medicaid daily rate for all Medicaid residents in all freestanding nursing facilities in the state. The maximum duration of this adjustment is 12 months.

(b) The application shall propose what the adjustment should be and include a financial review prepared by the facility documenting:

(i) the facility's income and expenses for the past 12 months; and

(ii) steps taken by the facility to reduce costs and increase occupancy.

(c) Financial support from the local municipality and county governing bodies for the continued operation of the facility in the community is a necessary prerequisite to an acceptable application. The Department, the facility, and the local governing bodies may negotiate the amount of the financial commitment from the governing bodies, but in no case may the local commitment be less than 50% of the state share required to fund the proposed adjustment. Any continuation of the adjustment beyond 6 months requires a local commitment of 100% of the state share for the rate increase above the base rate. The applicant shall submit letters of commitment from the applicable municipality or county, or both, committing to make an intergovernmental transfer for the amount of the local commitment.

(d) The Department may conduct its own independent financial review of the facility prior to making a decision whether to approve a different payment rate.

(e) If the Department determines that the facility is in imminent peril of closing, it may make an interim rate adjustment for up to 90 days.

(f) The Department's determination shall be based on maintaining access to services on and maintaining economy and efficiency in the Medicaid program.

(g) If the facility desires an adjustment for more than 90 days, it must demonstrate that:

(i) the facility has taken all reasonable steps to reduce costs, increase revenue and increase occupancy;

(ii) despite those reasonable steps the facility is currently losing money and forecast to continue losing money; and

(iii) the amount of the approved adjustment will allow the facility to meet expenses and continue to support the needs of the community it serves, without unduly enriching any party.

(h) If the Department approves an interim or other adjustment, it shall notify the facility when the adjustment is scheduled to take effect and how much contribution is required from the local governing bodies. Payment of the adjustment is contingent on the facility obtaining a fully executed binding agreement with local governing bodies to pay the contribution to the Department.

(i) The Department may withhold or deny payment of the interim or other adjustment if the facility fails to obtain the required agreement prior to the scheduled effective date of the adjustment.

(10) A provider may challenge the rate set pursuant to this rule using the appeal in R410-14. A provider must exhaust administrative remedies before challenging rates in any other forum.

(11) In developing payment rates, the Department may adjust urban and non-urban rates to reflect differences in urban and non-urban labor costs. The urban labor costs reimbursement cannot exceed 106% of the non-urban labor costs. Labor costs are as reported on the most recent FCP but do not include FCP-reported management, consulting, director, and home office fees.

R414-504-4. Quality Improvement Incentive.

Upon federal approval of the Nursing Care Facilities State Plan Amendment, funds in the amount of $500,000 shall be set aside annually to reimburse facilities that have a quality improvement plan and have no violations that are at an "immediate jeopardy" level, as determined by the Department, at the most recent recertification survey and during the incentive period. The Department shall distribute incentive payments to qualifying facilities based on the proportionate share of the total Medicaid patient days in qualifying facilities. If a facility appeals the determination of a survey violation, the incentive payment will be withheld pending the final administrative appeal. On appeal, if violations are found not to have occurred at a severity level of "immediate jeopardy" or higher, the incentive payment will be paid to the facility. If the survey findings are upheld, the remaining incentive payments will be distributed to all qualifying facilities.

KEY: Medicaid
July 2, 2004 **26-1-5**
26-18-3

R432. Health, Health Systems Improvement, Licensing.
R432-100. General Hospital Standards.
R432-100-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-100-2. Purpose.

The purpose of this rule is to promote the public health and welfare through establishment and enforcement of the licensure standards. The rule sets standards for the construction and operation of a general hospital. The standards of patient care apply to inpatient, outpatient, and satellite services.

R432-100-3. Construction, Facilities, and Equipment Standards.

Hospitals shall be constructed and maintained in accordance with R432-4-1 through R432-4-24.

R432-100-4. Hospital Swing-Bed and Transitional Care Units.

Hospitals with designated swing bed units or transitional care units shall comply with this section.

(1) In addition to R432-100, designated hospital swing beds shall comply with the following sections of R432-150, Nursing Care Facility Rules: 150-4, 150-5, 150-11 through 150-17, 150-20, 150-22, and 150-24.

(2) Transitional Care Units shall be licensed as Nursing Care Facilities under a separate licensing category and shall conform to the requirements of R432-150, Nursing Care Facility Rules.

R432-100-5. Governing Body.

(1) Each licensed hospital shall have a governing body hereinafter called the board.

(2) The board shall be legally responsible for the conduct of the hospital. The board is also responsible for the appointment of the medical staff.

(3) The board shall be organized in accordance with the Articles of Incorporation or Bylaws.

(a) The Articles or Bylaws shall specify:

(i) the duties and responsibilities of the board;

(ii) the method for election or appointment to the board;

(iii) the size of the board;

(iv) the terms of office of the board;

(v) the methods for removal of board members and officers;

(vi) the duties and responsibilities of the officers and any standing committees;

(vii) the numbers or percentages of members that constitute a quorum for board meetings;

(viii) the board's functional organization, including any standing committees;

(ix) to whom responsibility for operation and maintenance of the hospital, including evaluation of hospital practices, may be delegated;

(x) the methods established by the board for holding such individuals responsible;

(xi) the mechanism for formal approval of the organization, bylaws, rules of the medical staff and hospital departments; and

(xii) the frequency of meetings.

(4) The board shall meet not less than quarterly, and shall keep written minutes of meetings and actions, and distribute copies to members of the board.

(5) The board shall employ a competent executive officer or administrator and vest this person with authority and responsibility for carrying out board policies. The administrator's qualifications, responsibilities, authority, and accountability shall be defined in writing.

(6) The board, through its officers, committees, medical and other staff, shall:

(a) develop and implement a long range plan;

(b) appoint members of the medical staff and delineate their clinical privileges;

(c) approve organization, bylaws, and rules of medical staff and hospital departments; and

(d) maintain a list of the scope and nature of all contracted services.

R432-100-6. Administrator.

(1) The administrator shall establish and maintain an organizational structure for the hospital indicating the authority and responsibility of various positions, departments, and services within the hospital.

(2) The administrator shall designate in writing a person to act in the administrator's absence.

(3) The administrator shall be the direct representative of the board in the management of the hospital.

(4) The administrator shall function as liaison between the board, the medical staff, the nursing staff, and departments of the hospital.

(5) The administrator shall advise the board in the formulation of hospital policies and procedures. The administrator shall review and revise policies and procedures to reflect current hospital practice.

(6) The administrator is responsible to see that hospital policies and procedures are implemented and followed.

(7) The administrator shall maintain a written record of all business transactions and patient services rendered in the hospital and submit reports as requested to the board.

(8) Patient billing practices shall comply with the requirements of 26-21-20 UCA.

(9) The administrator shall appoint a member of the staff to oversee compliance with the requirements of the Utah Anatomical Gift Act.

R432-100-7. Medical and Professional Staff.

(1) Each hospital shall have an organized medical and professional staff that operates under bylaws approved by the board.

(2) The medical and professional staff shall advise and be accountable to the board for the quality of medical care provided to patients.

(3) The medical and professional staff must adopt bylaws and policies and procedures to establish and maintain a qualified medical and professional staff including current licensure, relevant training and experience, and competency to perform the privileges requested. The bylaws shall address:

(a) the appointment and re-appointment process;

(b) the necessary qualifications for membership;

(c) the delineation of privileges;

(d) the participation and documentation of continuing education; and

(e) a fair hearing and appeals process.

(4) The medical care of all persons admitted to the hospital shall be under the supervision and direction of a fully qualified physician who is licensed by the state.

(5) An applicant for staff membership and privileges may not be denied solely on the ground that the applicant is a licensed podiatrist or licensed psychologist rather than licensed to practice medicine under the Utah Medical Practice Act or the Utah Osteopathic Medical Licensing Act.

(6) Membership and privileges may not be denied on any ground that is otherwise prohibited by law.

(7) Each applicant for medical and professional staff membership must be oriented to the bylaws and must agree in writing to abide by all conditions.

(8) The medical and professional staff shall review each applicant and grant privileges based on the scope of their license

and abilities.

(9) The medical and professional staff shall review appointments and re-appointments to the medical and professional staff at least every two years.

R432-100-8. Personnel Management Service.

(1) The personnel management system is organized to ensure personnel are competent to perform their respective duties, services, and functions.

(2) There shall be written policies, procedures, and performance standards that include:

(a) job descriptions for each position or employee;

(b) periodic employee performance evaluations;

(c) employee health screening, including Tuberculosis testing in accordance with R386-702, The Communicable Disease Rule;

(d) policies to ensure that all employees receive unit specific training;

(e) policies to ensure that all hospital direct care staff receive continued competency training in current patient care practices;

(f) policies to ensure that all hospital direct care staff have current cardiopulmonary resuscitation certification; and

(g) policies to ensure that OSHA regulations regarding Blood Borne Pathogens are implemented and followed.

(3) All personnel shall be registered, certified or licensed as required by the Utah Department of Commerce within 45 days of employment.

(4) A copy of the current certificate, license or registration shall be available for Department review.

(5) All direct care and housekeeping staff shall receive annual documented inservice training in the requirements for reporting abuse, neglect, or exploitation of children or adults.

(6) Volunteers may be utilized in the daily activities of the hospital, but shall not be included in the hospital staffing plan in lieu of hospital employees.

(a) Volunteers shall be screened and supervised according to hospital policy.

(b) Volunteers shall be familiar with hospital volunteer policies, including patient rights and hospital emergency procedures.

(7) If the hospital participates in a professional graduate education program, there shall be policies and procedures specifying the patient care responsibilities and supervision of the graduate education program participants.

R432-100-9. Quality Improvement Plan.

(1) The Board shall ensure that there is a well-defined quality improvement plan designed to improve patient care.

(2) The plan shall be consistent with the delivery of patient care.

(3) The plan shall be implemented and include a system for the collection of indicator data.

(a) The plan shall include an incident reporting system to identify problems, concerns, and opportunities for improvement of patient care.

(b) Incident reports shall be available for Department review.

(c) A system shall be implemented for assessing identified problems, concerns, and opportunities for improvement.

(4) The plan shall implement actions that are designed to eliminate identified problems and improve patient care.

(5) Each hospital shall maintain a quality improvement committee. The quality improvement committee shall keep and make available for Department review written minutes documenting corrective actions and results.

(6) The quality improvement committee shall report findings and concerns at least quarterly to the board, the medical staff, and the administrator.

(7) Infection reporting shall be integrated into the quality improvement plan, and shall be reported to the Department in accordance with R386-702 Communicable Diseases.

R432-100-10. Infection Control.

Each hospital must implement a hospital-wide infection control program.

(1) The infection control program shall include at least the following:

(a) definitions of nosocomial infections;

(b) a system for reporting, evaluating, and investigating infections;

(c) review and evaluation of aseptic, isolation, and sanitation techniques;

(d) methods for isolation in relation to the medical condition involved;

(e) preventive, surveillance, and control procedures;

(f) laboratory services;

(g) an employee health program;

(h) orientation of all new employees; and

(i) documented in-service education for all departments and services relative to infection control.

(2) Infection control reporting data shall be incorporated into the hospital quality improvement process.

(3) There shall be written infection control policies and procedures for each area of the hospital, including requirements dictated by the physical layout, personnel and equipment involved.

(4) There shall be written policies for the selection, storage, handling, use, and disposition of disposable or reusable items. Single-use items may be reused according to hospital policy.

(a) Reusable items shall have specific policies and procedures for each type of reuse item.

(b) Reuse data shall be incorporated into the quality improvement process.

(c) Reuse data shall be incorporated in the hospital infection control identification and reporting process.

R432-100-11. Patient Rights.

(1) The facility shall inform each patient at the time of admission of patient rights and support the exercise of the patient's right to the following:

(a) to access all medical records, and to purchase at a cost not to exceed the community standard, photocopies of his record;

(b) to be fully informed of his medical health status in a language he can understand;

(c) to reasonable access to care;

(d) to refuse treatment;

(e) to formulate an advanced directive in accordance with the Personal Choice and Living Will Act, UCA 75-2-1102 ;

(f) to uniform, considerate and respectful care;

(g) to participate in decision making involved in managing his health care with his physician, or to have a designated representative involved;

(h) to express complaints regarding the care received and to have those complaints resolved when possible;

(i) to refuse to participate in experimental treatment or research;

(j) to be examined and treated in surroundings designed to give visual and auditory privacy; and

(k) to be free from mental and physical abuse, and to be free from chemical and (except in emergencies) physical restraints except as authorized in writing by a licensed practitioner for a specified and limited period of time or when necessary to protect the patient from injury to himself or others.

(2) The hospital shall establish a policy and inform patients and legal representatives regarding the withholding of

resuscitative services and the forgoing or withdrawing of life sustaining treatment and care at the end of life. This policy shall be consistent with state law.

R432-100-12. Nursing Care Services.

(1) There shall be an organized nursing department that is integrated with other departments and services.

(a) The chief nursing officer of the nursing department shall be a registered nurse with demonstrated ability in nursing practice and administration.

(b) Nursing policies and procedures, nursing standards of patient care, and standards of nursing practice shall be approved by the chief nursing officer.

(c) A registered nurse shall be designated and authorized to act in the chief nursing officer's absence.

(d) Nursing tasks may be delegated pursuant to R156-31-603, Delegation of Nursing Tasks.

(2) Qualified registered nurses shall be on duty at all times to give patients nursing care that requires the judgment and special skills of a registered nurse. The nursing department shall develop and maintain a system for determining staffing requirements for nursing care on the basis of demonstrated patient need, intervention priority for care, patient load, and acuity levels.

(3) Nursing care shall be documented for each patient from admission through discharge.

(a) A registered nurse shall be responsible to document each patient's nursing care and coordinate the provision of interdisciplinary care.

(b) Nursing care documentation shall include the assessments of patient's needs, clinical diagnoses, intervention identified to meet the patient's needs, nursing care provided and the patients response, the outcome of the care provided, and the ability of the patient, family, or designated caregiver in managing the continued care after discharge.

(c) Patients shall receive prior to discharge written instructions for any follow-up care or treatment.

R432-100-13. Critical Care Unit.

(1) Hospitals that provide critical care units shall comply with the requirements of R432-100-13. Medical direction for the unit(s) shall be according to the scope of services provided as delineated in hospital policy and approved by the board.

(2) Critical care unit nursing direction shall be provided by a designated, qualified registered nurse manager who has relevant education, training and experience in critical care. The supervising nurse shall coordinate the care provided by all nursing service personnel in the critical care unit. The registered nurse manager shall have administrative responsibility for the critical care unit, assuring that a registered nurse who has advanced life support certification is on duty and in the unit at all times.

(3) Each critical care unit shall be designed and equipped to facilitate the safe and effective care of the patient population served. Equipment and supplies shall be available to the unit as determined by hospital policy in accordance with the needs of the patients.

(4) An emergency cart must be readily available to the unit and contain appropriate drugs and equipment according to hospital policy. The cart, or the cart locking mechanism, must be checked every shift and after each use to assure that all items required for immediate patient care are in place in the cart and in usable condition.

(5) The following support services shall be immediately available to the critical care unit on a 24-hour basis:

(a) blood bank or supply;

(b) clinical laboratory; and

(c) radiology services.

(6) If the hospital provides dialysis services, the dialysis services shall comply with R432-650 End Stage Renal Disease Facility Rules, sections R432-650-8, Required Staffing; and R432-650-13, Water Quality.

R432-100-14. Surgical Services.

(1) Surgical services provided by the hospital shall be integrated with other departments or services of the hospital. The relationship, objective, and scope of all surgical services shall be specified in writing.

(a) Administrative direction of surgical services shall be provided by a person appointed and authorized by the administrator.

(b) Medical direction of surgical services shall be provided by a member of the medical staff.

(c) Qualified registered nurses shall supervise the provision of surgical nursing care.

(d) The operating room suites shall be directed and supervised by a qualified registered nurse. The supervisor shall have authority and responsibility for:

(i) assuring that the planned procedure is within the scope of privileges granted to the physician.

(ii) maintaining the operating room register; and

(iii) other administrative functions, including serving on patient care committees.

(e) The hospital shall establish a policy governing the use of obstetrical delivery and operating rooms to ensure that any patient with parturition imminent, or with an obstetrical emergency requiring immediate medical intervention to preserve the health and life of the mother or her infant, is given priority over other obstetrical and non-emergent surgical procedures.

(f) Qualified surgical assistants shall be used as needed in operations in accordance with hospital by-laws.

(g) Surgical technicians and licensed practical nurses may serve as scrub nurses under the direct supervision of a registered nurse, but may not function as circulation nurses in the operating rooms, unless the scrub nurse is a registered nurse.

(h) Outpatient surgical patients shall not be routinely admitted to the hospital as inpatients. A systematic review process shall evaluate patients who require hospitalization after outpatient surgery.

(2) A safe operating room environment shall be established, controlled and consistently monitored.

(a) Surgical equipment including suction facilities and instruments in good repair shall be provided to assure safe and aseptic treatment of all surgical cases.

(b) Traffic in and out of the operating room shall be controlled. There shall be no through traffic.

(c) There shall be a scavenging system for evacuation of anesthetic waste gases.

(d) The following equipment shall be available to the operating suite:

(i) a call-in system;

(ii) a cardiac monitor;

(iii) a ventilation support system;

(iv) a defibrillator;

(v) an aspirator; and

(vi) equipment for cardiopulmonary resuscitation.

(3) The administration of anesthetics shall conform to the requirements of Anesthesia Services, R432-100-15.

(4) Removal of surgical specimens shall conform with the requirements of Laboratory and Pathology Services, R432-100-22.

R432-100-15. Anesthesia Services.

(1) There shall be facilities and equipment for the administration of anesthesia commensurate with the clinical and surgical procedures planned for the institution. Anesthesia care shall be available on a 24-hour basis.

(a) Administrative direction of anesthesia services shall be

provided by a person appointed and authorized by the hospital administrator.

(b) Medical direction of anesthesia services shall be provided by a member of the medical staff.

(c) Anesthesia care shall be provided by anesthesiologists, other qualified physicians, dentists, oral surgeons, or Certified Registered Nurse Anesthetists who are members of the medical staff within the scope of their practice and license.

(i) A qualified physician, dentist or oral surgeon shall have documented training that includes the equivalent of 40 days preceptorship with an anesthesiologist and shall be able to perform at least the following:

(A) procedures commonly used to render the patient insensible to pain during the performance of surgical, obstetrical, and other pain producing clinical procedures;

(B) life support functions during the administration of anesthesia, including induction and intubation procedures; and

(C) provide pre-anesthesia and post-anesthesia management of the patient.

(ii) The responsibilities and privileges of the person administering anesthesia shall be clearly defined by the medical staff.

(iii) Both the patient and the operating surgeon shall be informed prior to surgery of who will be administering anesthesia.

(iv) Medicaid certified hospitals shall comply with the requirements of 42 CFR 482.52(a), Subpart D, Anesthesia Services.

(2) The use of flammable anesthetic agents for anesthesia or for the pre-operative preparation of the surgical field is prohibited.

(3) The anesthetic equipment shall be inspected and tested by the person administering anesthesia before use in accordance with hospital policy.

R432-100-16. Emergency Care Service.

(1) Each hospital shall evaluate and classify itself to indicate its capability in providing emergency care. Acute Hospitals and Critical Access Hospitals shall be classified as Type I, II or III. Type IV category may be used for Specialty Hospitals.

(a) Type I offers comprehensive emergency care 24 hours a day in-house, with at least one physician experienced in emergency care on staff in the emergency care area. There shall be in-hospital support by members of the medical staff for at least medical, surgical, orthopedic, obstetric, pediatric, and anesthesia services. Specialty consultation shall be available within 30 minutes, or two-way voice communication is available for the initial consultation.

(b) Type II offers emergency care 24 hours a day, with at least one physician experienced in emergency care on duty in the emergency care area, and with specialty consultation available within 30 minutes by members of the medical staff.

(c) Type III offers emergency care 24 hours a day, with at least one physician available to the emergency care area within approximately 30 minutes through a medical staff call roster. Specialty consultation shall be available by request of the attending medical staff member by transfer to a type I or type II hospital where care can be provided.

(d) Type IV offers emergency first aid treatment to patients, staff, and visitors; and to persons who may be unaware of, or unable to immediately reach services in other facilities.

(2) The emergency service shall be organized and staffed by qualified individuals based on the defined capability of the hospital.

(a) Administrative direction of emergency services shall be provided by an individual appointed and authorized by the hospital administrator.

(b) Medical direction of emergency services shall be defined in writing and provided by one or more members of the medical staff. The medical staff shall provide back-up and on-call coverage for emergency services and as needed for emergency specialty services.

(c) The evaluation and treatment of a patient who presents himself or is brought to the emergency care area shall be the responsibility of a licensed practitioner and shall include an appropriate medical screening examination, stabilizing treatment, and, if necessary for definitive treatment, an appropriate transfer to another medical facility that has agreed to accept the patient for care.

(d) The priority by which persons seeking emergency care are seen by a physician may be determined by trained personnel using guidelines established by the emergency room director and approved by the medical staff.

(e) Rosters designating medical staff members on duty or on call for primary coverage and specialty consultation shall be posted in the emergency care area.

(f) A designated registered nurse who is qualified by relevant training, experience, and current competence in emergency care shall supervise the care provided by all nursing service personnel in the department.

(i) The number of nursing service personnel shall be sufficient for the types and volume of patients served.

(ii) Type I and II emergency departments shall have at least one registered nurse with Advanced Cardiac Life Support certification, and sufficient number of other nursing staff assigned and on duty within the emergency care area.

(iii) The emergency nurse supervisor shall participate in internal committee activities concerned with the emergency service.

(g) The emergency service shall be integrated with other departments in the hospital.

(i) Clinical laboratory services with the capability of performing all routine studies and standard analyses of blood, urine, and other body fluids shall be available. A supply of blood shall be available at all times.

(ii) Diagnostic radiology services shall be available at all times.

(h) The duties and responsibilities of all personnel, including physicians and nurses, providing care within the emergency service area shall be defined in writing.

(3) Each hospital shall define its scope of emergency services in writing and implement a plan for emergency care, based on community need and on the capability of the hospital.

(a) Each hospital shall comply with federal anti-dumping regulations as defined in CFR 489.20 and 489.24.

(b) The role of the emergency service in the hospital's disaster plans shall be defined.

(c) Each hospital must have a communication system that permits instant contact with law enforcement agencies, rescue squads, ambulance services, and other emergency services within the community.

(d) Emergency department policies and protocols shall address the care, security, and control of prisoners or people to be detained for police or protective custody.

(e) Emergency department policies and protocols shall address the provision of care to an unemancipated minor not accompanied by parent or guardian, or to an unaccompanied unconscious patient.

(f) Emergency department policies and procedures shall address the evaluation and handling of alleged or suspected child or adult abuse cases. Criteria shall be developed to alert emergency department and service personnel to possible child or adult abuse. The criteria shall address:

(i) suspected physical assault;

(ii) suspected rape or sexual molestation;

(iii) suspected domestic abuse of elders, spouses, partners and children;

(iv) the collection, retention, and safeguarding of specimens, photographs, and other evidentiary materials; and

(v) visual and auditory privacy during examination and consultation of patients.

(g) A list shall be available in the emergency department of private and public community agencies and resources that provide, arrange, evaluate and care for the victims of abuse.

(h) Emergency department policies and procedures shall address the handling of hazardous materials and contaminated patients.

(i) Emergency department policies and procedures shall address the reporting of persons dead-on-arrival to the proper authorities including the legal requirements for the collection and preservation of evidence.

(4) The hospital shall in a timely manner make reasonable effort to contact the guardian, parents, or next of kin of any unaccompanied minor, or any unaccompanied unconscious patient admitted to the emergency department.

R432-100-17. Perinatal Services.

(1) Each hospital shall comply with the requirements of this section and shall designate its capability to provide perinatal (antepartum, labor, delivery, postpartum and nursery) care in accordance with Level I basic, Level II specialty, or Level III sub-specialty or tertiary care as described in the Guidelines for Perinatal Care, Fifth Edition and the Guidelines for Design and Construction of Hospital and Heath Care Facilities, 2001 Edition, which is incorporated by reference.

(a) A qualified member of the hospital staff shall provide administrative, medical and nursing direction and oversight for perinatal services according to each hospital's designated level of care, Level I, II or III.

(b) A qualified registered nurse shall be immediately available at all hours of the day and as well as sufficient numbers of trained competent staff to meet the designated level.

(c) Support personnel shall be available to the perinatal care service according to each hospital's designated level of care.

(2) Each hospital shall establish and implement security protocols for perinatal patients.

(3) The perinatal department shall include facilities and equipment for antepartum, labor and delivery, nursery, postpartum, and optional birthing rooms.

(a) Perinatal areas shall be located and arranged to avoid non-related traffic to and from other areas.

(b) The hospital shall isolate patients with infections or other communicable conditions. The use of maternity rooms for patients other than maternity patients shall be restricted according to hospital policy.

(c) Each hospital shall have at least one surgical suite for operative delivery.

(d) Equipment and supplies shall be immediately available and maintained for the mother and newborn, including:

(i) furnishings suitable for labor, birth, and recovery;

(ii) oxygen with flow meters and masks or equivalent;

(iii) mechanical suction and bulb suction;

(iv) resuscitation equipment;

(v) emergency medications, intravenous fluids, and related supplies and equipment;

(vi) a device to assess fetal heart rate;

(vii) equipment to monitor and maintain the optimum body temperature of the newborn;

(viii) a clock capable of showing seconds;

(ix) an adjustable examination light; and

(x) a newborn warming unit with temperature controls that comply with Underwriters' Laboratories requirements. The unit must be capable of administering oxygen and suctioning.

(e) The hospital shall maintain a delivery room record keeping system for cross referencing information with other departments.

(4) If birthing rooms are provided, they shall be equipped in accordance with 100-17(3(d)).

(5) The nursery shall include facilities and equipment according to its designated level of care: Level I - Basic Newborn Care; Level II - Specialty Continuing Care; and Level III - Sub-specialty or Tertiary Newborn Intensive Care including an individual bassinet for each infant; with space between bassinets as follows:

(a) Level I Basic: Full Term or Well Baby Nursery 24 inches between bassinets;

(b) Level II Specialty: Continuous Care Nursery 50 square feet per bassinet and four feet between bassinets for Continuing Care nurseries;

(c) Level III Sub-specialty: Newborn Intensive Care Nursery 100 square feet per bassinet and four feet between bassinets.

(d) accurate scales; and

((e) a wall thermometer;

(6) The following equipment and supplies shall be available:

(a) an individual thermometer, or one with disposable tips, for each infant;

(b) a supply of medication shall be immediately available for emergencies;

(c) a covered soiled-diaper container with removable lining;

(d) a linen hamper with removable bag for soiled linen other than diapers;

(e) a newborn warming unit with temperature controls that comply with Underwriters' Laboratories requirements;

(f) oxygen, oxygen equipment, and suction equipment; and

(g) an oxygen concentration monitoring device.

(7) Temperature shall be maintained between 70-80 degrees Farenheit in the nursery area.

(8) Infant formula storage space shall be available that conforms to the manufacturer's recommendations. Only single-use bottles shall be used for newborn feeding.

(9) A suspect nursery or isolation area shall be available. Equipment and supplies shall be provided for the isolation area.

(a) Isolation facilities shall be used for any infant who:

(i) has a communicable disease;

(ii) is delivered of an ill mother infected with a communicable disease;

(iii) is readmitted after discharge from a hospital; or

(iv) is delivered outside the hospital.

(b) There shall be separate hand washing facilities for the isolation area.

(10) Each hospital shall comply with the following provisions:

(a) No attempt shall be made to delay the imminent, normal birth of a child;

(b) A prophylactic solution in accordance with R386-702-9 shall be instilled in the eyes of the infant within three hours of birth;

(c) Metabolic screening shall be performed in accordance with Section 26-10-6 and R398-1; and

(d) A newborn hearing screening shall be performed in accordance with R398-2.

R432-100-18. Pediatric Services.

(1) If the hospital provides pediatric services, those services shall be under the direction of a member of the medical staff who is experienced in pediatrics and whose functions and scope of responsibility are defined by the medical staff.

(a) A pediatrics qualified registered nurse must supervise nursing care and must supervise the documentation of the implementation of pediatric patient care on an interdisciplinary plan of care.

(b) If the hospital provides a pediatric unit, it shall have an

interdisciplinary committee responsible for policy development and review of practice within the unit. This committee must include representatives from administration, the medical and nursing staff, and rehabilitative support staff.

(c) Hospitals admitting pediatric patients shall have written policies and procedures specifying the criteria for admission to the hospital and conditions requiring transfer when indicated. These policies and procedures shall be based upon the resources available at the hospital, specifically, in terms of personnel, space, equipment, and supplies.

(d) The hospital shall assess all pediatric patients for maturity and development. Information obtained from the maturity and development assessment must be incorporated into the plan of care.

(e) The hospital shall establish and implement security protocols for pediatric patients.

(f) The hospital shall provide a safe area for diversional play activities.

(2) Hospitals admitting pediatric patients shall have equipment and supplies in accordance with the hospital's scope of pediatric services.

(3) The hospital shall have written guidelines for the placement or room assignment of pediatric patients according to patient acuity under usual, specific, or unusual conditions within the hospital. The guidelines shall address the use of cribs, bassinets, or beds; including the proper use of restraints, bed rails, and other safety devices.

(a) The hospital shall place infant patients in beds where frequent observation is possible.

(b) Pediatric patients other than infants shall be placed in beds to allow frequent observation according to each patient's assessed care needs.

(4) Personnel working with pediatric patients shall have specific training and experience relating to the care of pediatric patients.

(5) Orientation and inservice training for pediatric care staff shall include pediatric specific training on drugs and toxicology, intravenous therapy, pediatric emergency procedures, infant and child nutrition, the emotional needs and behavioral management of hospitalized children, child abuse and neglect, and other topics according to the needs of the pediatric patients.

R432-100-19. Respiratory Care Services.

(1) Administrative direction of respiratory care services shall be provided by a person authorized by the hospital administrator.

(2) The respiratory care service shall be under the medical direction of a member of the medical staff who has the responsibility and authority for the overall direction of respiratory care services.

(a) When the scope of services warrants, respiratory care services shall be supervised by a technical director who is registered or certified by the National Board For Respiratory Therapy, Inc., or has the equivalent education, training, and experience.

(b) The technical director shall inform physicians about the use and potential hazards in the use of any respiratory care equipment.

(3) Respiratory care services shall be provided to patients in accordance with a written prescription of the responsible licensed practitioner which specifies the type, frequency, and duration of the treatment; and when appropriate, the type and dose of medication, the type of diluent, and the oxygen concentration.

(a) The hospital must have equipment to perform any pulmonary function study or blood-gas analysis provided by the hospital.

(b) Resuscitation, ventilatory, and oxygenation support equipment shall be available in accordance with the needs of the patient population served.

R432-100-20. Rehabilitation Therapy Services.

(1) If rehabilitation therapy services are provided by the hospital, the services may include physical therapy, speech therapy, and occupational therapy.

(a) Rehabilitation therapy services shall be directed by a qualified, licensed provider who shall have clinical responsibility for the specific therapy service.

(b) Patient services performed by support personnel, shall be commensurate with each person's documented training and experience.

(c) Rehabilitation therapy services may be initiated by a member of the medical staff or by a licensed rehabilitation therapist.

(i) A physician's written request for services must include reference to the diagnosis or problems for which treatment is planned, and any contraindications.

(ii) The patient's physician shall retain responsibility for the specific medical problem or condition for which the referral was made.

(2) Rehabilitation therapy services provided to the patient shall include evaluation of the patient, establishment of goals, development of a plan of treatment, regular and frequent assessment, maintenance of treatment and progress records, and periodic assessment of the quality and appropriateness of the care provided.

R432-100-21. Radiology Services.

(1) Each hospital shall provide an organized radiology department offering services that are in accordance with the needs and size of the institution.

(a) Administrative direction of radiology services shall be provided by a person appointed and authorized by the hospital administrator.

(b) Medical direction of the department shall be provided by a member of the medical staff.

(i) If a radiologist is not the medical director of the radiology services, the services of a radiologist shall be retained on a part-time basis.

(ii) If a radiologist provides services on less than a full-time basis, the time commitment shall allow the radiologist to complete the necessary functions to meet the radiological needs of the patients and the medical staff.

(c) The radiologist is responsible to:

(i) maintain a quality control program that minimizes unnecessary duplication of radiographic studies and maximizes the quality of diagnostic information available;

(ii) develop technique charts that include part, thickness, exposure factors, focal film distances and whether a grid or screen technique; and

(iii) assure the availability of information regarding the purpose and yield of radiological procedures and the risks of radiation.

(d) At least one licensed radiologic technologist shall be on duty or available when needed.

(e) Diagnostic radiology services shall be performed only at the request of a member of the medical staff or other persons authorized by the hospital.

(f) If radiation oncology services are provided, the following applies:

(i) Physicians and staff who provide radiation oncology services have delineated privileges;

(ii) The medical director of the radiation oncology services is a physician member of the medical staff who is qualified by education and experience in radiation oncology.

(2) Radiologic patient records shall be integrated with the hospital patient record.

(a) All requests for radiologic services shall contain the reasons for the examinations.

(b) Authenticated reports of these examinations shall be filed in the patient's medical record as soon as possible. Radiological film shall be retained in accordance with hospital policy.

(c) If requested by the attending physician and if the quality of the radiograph permits, the radiology department may officially enter the interpretations of the radiologic examinations performed outside of the hospital in the patient's medical record.

(d) Radiotherapy summaries shall be filed in the patient's medical record. A copy may be filed in the radiotherapy department. The radiotherapy summary shall be forwarded to the referring physician. Unless otherwise justified, the medical record of the patient receiving radiotherapy for treatment or palliation of a malignancy shall reflect the histologically substantiated diagnosis.

R432-100-22. Laboratory and Pathology Services.

(1) Each hospital shall provide laboratory and pathology services that are in accordance with the needs and size of the institution.

(a) Administrative direction of laboratory and pathology services shall be provided by a person appointed and authorized by the hospital administrator.

(b) Medical direction of laboratory and pathology services shall be provided by a member of the medical staff.

(2) Laboratory and pathology services shall comply with the requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA). CLIA inspection reports shall be available for Department review.

(3) Laboratories certified by a Health Care Financing Administration (HCFA) approved accrediting agency are determined to be in compliance with this section. Accrediting agency inspection reports shall be available for Department review.

R432-100-23. Blood Services.

(1) Hospital blood services are defined as follows:

(a) A "donor center" means a facility that procures, prepares, processes, stores and transports blood and blood components.

(b) A "transfusion service" means a facility that stores, determines compatibility, transfuses blood and blood components, and monitors transfused patients for any ill effect.

(c) A "blood bank" means a facility that combines the functions of a donor center and transfusion service within the same facility.

(2) The hospital blood service shall establish and maintain an appropriate blood inventory in the hospital at all times, have immediate access to community blood services or other institutions, or have an up-to-date list of donors, equipment and trained personnel to draw and process blood.

(a) Blood or blood components must be collected, stored, and handled in such manner that they retain potency and safety.

(b) Blood or blood components must be properly processed, tested, and labeled.

(3) If the hospital operates a donor center, transfusion service or a blood bank the donor center, transfusion service, or blood bank must be accredited.

(a) Hospital blood banks and donor centers must be accredited by the Food and Drug Administration (FDA).

(b) Hospital transfusion services must be certified by the Health Care Financing Administration to meet Clinical Laboratory Improvement Amendments of 1988 (CLIA), or any accrediting organization approved by the Health Care Financing Administration.

(4) Results of the accrediting organization survey, or current CLIA certification must be available for Department review.

R432-100-24. Pharmacy Services.

(1) The pharmacy of a hospital currently accredited and conforming to the standards of JCAHO shall be determined to be in compliance with these rules.

(a) If a hospital is not accredited by JCAHO, then the pharmacy of such hospital shall comply with rules in this section.

(b) The pharmacy department and service shall be directed by a licensed pharmacist.

(i) Competent personnel shall be employed in keeping with the size and activity of the department and service. If the hospital uses only a drug room and the size of the hospital does not warrant a full-time pharmacist, a consultant pharmacist may be employed.

(ii) The pharmacist shall be responsible for developing, supervising, and coordinating all the activities of the pharmacy.

(iii) Provision shall be made for access to emergency pharmaceutical services.

(iv) The pharmacist shall be trained in the specific functions and scope of the hospital pharmacy.

(2) Facilities shall be provided for the safe storage, preparation, safeguarding, and dispensing of drugs.

(a) All floor-stocks shall be kept in secure areas in the patient care units.

(b) Double-locked storage shall be provided for controlled substances. Electronically controlled storage of narcotics may be permitted if automated dispensing technology is utilized by the hospital.

(c) Medications stored at room temperatures shall be maintained within 59 and 80 degrees F.

(d) Refrigerated medications shall be maintained within 36 and 46 degrees F.

(e) A current toxicology reference, and other references as needed for effective pharmacy operation and professional information shall be available.

(3) Records shall be kept of the transactions of the pharmacy and medication storage unit and coordinated with other hospital records.

(a) There shall be a recorded and signed floor-stock controlled substance count once per shift.

(b) Hospitals that utilize automated dispensing technology must implement a system for accounting of controlled substances dispensed by the automated dispensing system.

(c) The record shall list the name of the patient receiving the controlled substance, the date, type of substance, dosage, and signature of the person administering the substance.

(4) Written policies and procedures that pertain to the intra-hospital drug distribution system and the safe administration of drugs shall be developed by the director of the pharmaceutical department or service in concert with the medical staff.

(a) Drugs that are provided to floor units shall be administered in accordance with hospital policies and procedures.

(b) The medical staff in conjunction with the pharmacist shall establish standard stop orders for all medications not specifically prescribed as to time or number of doses.

(c) The pharmacist shall have full responsibility for dispensing of all drugs.

(d) There shall be a policy stating who may have access to the pharmacy or drug room when the pharmacist is not available.

(e) There shall be a documentation system for the accounting and replacement of drugs, including narcotics, to the emergency department.

(f) Medication errors and adverse drug reactions shall be reported immediately in accordance with written procedures

including notification of the practitioner who ordered the drug.

R432-100-25. Social Services.

(1) In a hospital with an organized social services department, a qualified social worker shall direct the provision of social work services. If a hospital does not have a full or part-time qualified social worker, the administrator shall designate an employee to coordinate and assure the provision of social work services. The social worker, or designee shall be knowledgeable about community agencies, institutions, and other resources.

(2) In a hospital without an organized social services department, the hospital shall obtain consultation from a qualified social worker to provide social work services.

(3) The staff shall be oriented to help the patient make the best use of available inpatient, outpatient, extended care, home health, and hospice services.

(4) Social Services shall be integrated with other departments and services of the hospital.

R432-100-26. Psychiatric Services.

(1) If provided by the hospital, psychiatric services shall be integrated with other departments or services of the hospital according to the nature, extent, and scope of service provided.

(a) If the hospital does not provide psychiatric services, the hospital must have procedures to transfer patients to a facility that can provide the necessary psychiatric services.

(b) Administrative direction of psychiatric services shall be provided by a person appointed and authorized by the hospital administrator.

(c) Medical direction of psychiatric services shall be defined in writing and provided by a qualified physician who is a member of the medical staff.

(d) Psychiatric services shall comply with the following sections of R432-101, Specialty Hospitals, Psychiatric:

(i) R432-101-13 Patient Security;

(ii) R432-101-14 Special Treatment Procedures;

(iii) R432-101-17 Admission and Discharge;

(iv) R432-101-20 Inpatient Services;

(v) R432-101-21 Adolescent or Child Treatment Programs;

(vi) R432-101-22 Residential Treatment Services;

(vii) R432-101-23 Physical Restraints, Seclusion, and Behavior Management;

(viii) R432-101-24 Involuntary Medication Administration; and

(ix) R432-101-34 Partial Hospitalization Services.

(2) If outreach services are ordered by a physician as part of the plan of care or hospital discharge plan, the outreach services may be provided in a clinic, physician's office, or the patient's home.

R432-100-27. Substance Abuse Rehabilitation Services.

(1) A hospital may provide inpatient or outpatient substance abuse rehabilitation services. A hospital that provides substance abuse rehabilitation services shall be staffed to meet the needs of the patients or clients.

(a) Administrative direction shall be provided by an individual appointed and authorized by the hospital administrator.

(b) Medical direction shall be defined in writing and provided by a qualified physician who is a member of the medical staff.

(c) Nursing services shall be under the direction of a full-time registered nurse.

(d) Substance abuse counseling shall be under the direction of a licensed mental health therapist.

(e) A licensed substance abuse counselor may serve as the primary therapist under the direction of an individual licensed under the Mental Health Practice Act.

(f) An interdisciplinary team including the physician, registered nurse, licensed mental health therapist, and substance abuse counselor shall be responsible for program and treatment services. The patient or client may be included as a member of the interdisciplinary team.

(2) Substance abuse rehabilitation services shall include at least the following:

(a) Detoxification care shall be available for the systematic reduction or elimination of a toxic agent in the body by use of rest, fluids, medication, counseling, or nursing care.

(b) Counseling shall be available in at least one of the following areas: individual, group, or family counseling. In addition, there shall be provisions for educational, employment, or other counseling as needed.

(c) Treatment services shall be coordinated with other hospital and community services to assure continuity of care through discharge planning and aftercare referrals. Counselors may refer patients or clients to public or private agencies for substance abuse rehabilitation, and employment and educational counseling.

(d) A comprehensive assessment shall be documented that includes at least a physical examination, a psychiatric and psychosocial assessment, and a social assessment.

(3) The confidentiality of medical records of substance abuse patients and clients shall be maintained according to the federal guidelines in 42 CFR, Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

(4) Residential treatment services may be provided under the direction of the medical director or his designee. Residential treatment services shall comply with R432-101-22.

R432-100-28. Outpatient Services.

(1) Outpatient care services provided by the hospital shall be integrated with other departments or services of the hospital according to the nature, extent, and scope of services provided.

(2) Outpatient care shall meet the same standards of care that apply to inpatient care.

(3) Outpatient care includes hospital owned outpatient services, and hospital satellite services.

R432-100-29. Respite Services.

(1) A remote-rural general acute hospital with a federal swing bed designation may provide respite services to provide intermittent, time-limited care to give primary caretakers relief from the demands of caring for an individual.

(a) The hospital may provide respite care services and need comply only with the requirements of this section.

(b) If, however, the hospital provides respite care to an individual for longer than 14 consecutive days, the hospital must admit the individual as an inpatient subject to the requirements of this rule applicable to non-respite inpatient admissions.

(2) Respite services may be provided at an hourly rate or daily rate.

(3) The hospital shall coordinate the delivery of respite services with the recipient of services, case manager, if one exists, and the family member or primary caretaker.

(4) The hospital shall document the individual's response to the respite placement and coordinate with all provider agencies to ensure an uninterrupted service delivery program.

(5) The hospital must complete the following:

(a) a Level 1 Pre-admission Screening upon the person's admission for respite services; and

(b) a service agreement which will serve as the plan of care. The service agreement shall identify the prescribed medications, physician treatment orders, need for assistance for activities of daily living and diet orders.

(6) The hospital shall have written policies and procedures

available to staff regarding the respite care patients which include:

(a) medication administration;

(b) notification of a responsible party in the case of an emergency;

(c) service agreement and admission criteria;

(d) behavior management interventions;

(e) philosophy of respite services;

(f) post-service summary;

(g) training and in-service requirement for employees; and

(h) handling patient funds.

(7) The facility shall provide a copy of the Resident Rights to the patient upon admission.

(8) The facility shall maintain a record for each patient who receives respite services which includes:

(a) a service agreement;

(b) demographic information and patient identification data;

(c) nursing notes;

(d) physician treatment orders;

(e) records made by staff regarding daily care of the patient in service;

(f) accident and injury reports; and

(g) a post-service summary.

(9) If a patient has an advanced directive, the facility shall file a copy of the directive in the record and inform staff.

(10) Retention and storage of records shall comply with R432-100-33.

(11) The hospital shall provide for confidentiality and release of information in accordance with R432-100-33.

R432-100-30. Pet Therapy.

(1) If a hospital utilizes pet therapy, household pets such as dogs, cats, birds, fish, and hamsters may be permitted.

(a) Pets must be clean and disease free.

(b) The immediate environment of the pets must be clean.

(c) Small pets shall be kept in appropriate enclosures.

(d) Pets that are not confined shall be kept under leash control or voice control.

(e) Pets that are kept at the hospital, or are frequent visitors shall have current vaccinations, including rabies, as recommended by a licensed veterinarian.

(f) Hospitals with birds shall have procedures in place which protect patients, staff, and visitors from psittacosis.

(2) Hospitals that permit pets to remain overnight shall have policies and procedures for the care, housing and feeding of such pets; and for the proper storage of pet food and supplies.

(3) Pets shall not be permitted in any area where their presence would create a significant health or safety hazard or nuisance to others.

(4) Pets shall not be permitted in food preparation and storage areas.

(5) Persons caring for pets shall not have patient care or food handling responsibilities.

R432-100-31. Dietary Service.

(1) There shall be an organized dietary department under the supervision of a certified dietitian or a qualified individual who, by education or specialized training and experience, is knowledgeable in food service management. If the latter is head of the department, there must be a registered dietitian on a full-time, regular part-time, or consulting basis.

(a) Direction of the dietary service shall be provided by a person whose qualifications, authority, responsibilities and duties are approved by the administrator. The director shall have the administrative responsibility for the dietary service.

(b) If the services of a certified dietitian are used on less than a full-time basis, the time commitment shall permit performance of all necessary functions to meet the dietary needs of the patients.

(c) There shall be food service personnel to perform all necessary functions.

(2) If dietetic services are provided by an outside provider, the outside provider shall comply with the standards of this section.

(3) A current diet manual approved by the dietary department and the medical staff shall be available to dietary, medical, and nursing personnel.

(a) The food and nutritional needs of patients shall be met in accordance with the physician's orders.

(b) Regular menus and modifications for basic therapeutic diets shall be written at least one week in advance and posted in the kitchen.

(c) The menus shall provide for a variety of foods served in adequate amounts at each meal.

(d) At least three meals shall be served daily with not more than a 14-hour span between the evening meal and breakfast. If a substantial evening snack is offered, a 16-hour time span is permitted.

(e) A source of non-neutral exchanged water shall be provided for use in preparation of no sodium meals, snacks, and beverages.

(4) The dietary department shall comply with the Utah Department of Health Food Service Sanitation Rule R392-100.

(a) The dietary facilities and equipment shall be in compliance with federal, state, and local sanitation and safety laws and rules.

(b) Traffic of unauthorized individuals through food preparation areas shall be controlled.

(5) Written reports of inspections by state or local health departments shall be on file at the hospital and available for Department review.

(6) The dietitian or authorized designee is responsible for documenting nutritional information in the patient's medical record.

(7) Diets shall be ordered by a member of the medical staff and transmitted in writing to the dietary department.

R432-100-32. Telemedicine Services.

If a hospital participates in telemedicine, it shall develop and implement policies governing the practice of telemedicine in accordance with the scope and practice of the hospital.

(1) The policies shall address security, access and retention of telemetric data.

(2) The policies shall define the privileging of physicians and allied health professionals who participate in telemedicine.

R432-100-33. Medical Records.

(1) The hospital shall establish a medical records department or service that is responsible for the administration, custody and maintenance of medical records.

(a) The administrative direction of the department shall be established by the hospital administrator and correspond to the organizational structure and policies of the hospital.

(b) The medical records department shall retain the technical services of either a Registered Records Administrator (RRA) or an Accredited Records Technician (ART) through employment or consultation. If retained by consultation, visits shall be at least quarterly and documented through written reports to the hospital administrator.

(2) The medical records department shall provide secure storage, controlled access, prompt retrieval, and equipment and facilities to review medical records.

(a) Medical records shall be available for use or review by members of the medical and professional staff; authorized hospital personnel and agents; persons authorized by the patient through a consent form; and Department representatives to determine compliance with licensing rules.

(b) Medical records may be stored in multiple locations providing the record is able to be retrieved or accessed in a reasonable time period.

(c) If computer terminals are utilized for patient charting, the hospital shall have policies governing access and identification codes, security, and information retention.

(d) The hospital medical record shall be indexed according to diagnosis, procedure, demographic information and physician or licensed health practitioner. The indexes shall be current within six months following discharge of the patient.

(e) Original medical records are the property of the hospital and shall not be removed from the control of the hospital or the hospital's agent as defined by policy except by court order or subpoena.

(f) Medical records for persons who have received or requested admission to alcohol or drug programs shall comply with 42 CFR Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

(3) All medical record entries shall be legible, complete, authenticated, and dated by the person responsible for ordering the service, providing or evaluating the service, or making the entry. Prepared transcriptions of dictated reports, evaluations and consultations must be reviewed by the author before authentication.

(a) The authentication may include written signatures, computer key, or other methods approved by the governing body and medical staff to identify the name and discipline of the person making the entry.

(b) Use of computer key or other methods to identify the author of a medical record entry is not assignable or to be delegated to another person.

(c) There shall be a current list of persons approved to use these methods of authentication. Hospital policies shall include appropriate sanctions for the unauthorized or improper use of computer codes.

(d) Verbal orders for the care and treatment of the patient shall be accepted and transcribed by qualified personnel and authenticated as stated in hospital policy.

(4) Patient records shall be organized according to hospital policy.

(a) Medical records shall be reviewed at least quarterly for completeness, accuracy, and adherence to hospital policy.

(b) Records of discharged patients shall be collected, assembled, reviewed for completeness, and authenticated within 30 days of the patient's discharge.

(c) Medical records shall be retained for at least seven years. Medical records of minors shall be kept until the age of eighteen plus four years, but in no case less than seven years.

(d) Medical records may be destroyed after being retained the minimum length of time, according to hospital policy. Prior to destruction of the record, the following information shall be extracted and retained:

(i) patient name, medical record number, next of kin, date of birth, admission and discharge date(s); and,

(ii) the name of attending physician(s), admitting and discharge diagnoses, surgical procedures(s) and pathological and diagnostic findings.

(e) If a hospital ceases operation, the hospital shall make provision for secure, safe storage and prompt retrieval of all medical records, patient indexes and discharges for the period specified in R432-100-33(4)(c). The hospital may arrange for storage of medical records with another hospital, or an approved medical record storage facility, or may return patient medical records to the attending physician if the physician is still in the community.

(5) A complete medical record shall be established and maintained for each patient admitted to, or who receives hospital services. Emergency and outpatient records shall document the service rendered, and shall contain other pertinent information in accordance with hospital policy.

(a) Each medical record shall contain patient identification and demographic information to include at least the patient's name, address, date of birth, sex, and next of kin.

(b) Each medical record shall contain initial or admitting medical history, physical and other examinations or evaluations. Recent histories and examinations may be substituted if updated to include changes that reflect the patient's current status.

(c) Each medical record shall contain admitting, secondary and principal diagnoses.

(d) Each medical record shall contain results of consultive evaluations and findings by persons involved in the care of the patient.

(e) Each medical record shall contain documentation of complications, hospital acquired infections, and unfavorable reactions to medications, treatments, and anesthesia.

(f) Each medical record shall contain properly executed informed consent documents for all procedures and treatments ordered for, and received by, the patient.

(g) Each medical record shall document that the facility requested of each admitted person whether the person has initiated an advanced directive as defined in the Personal Choice and Living Will Act, UCA 75-2-1102.

(h) Each medical record shall contain all practitioner orders, nursing notes, reports of treatment, medication records, laboratory and radiological reports, vital signs and other information that documents the patient condition and status.

(i) Each medical record shall contain a discharge summary including outcome of hospitalization, disposition of case with an autopsy report when indicated, or provisions for follow-up.

(j) Medical records of deceased patients shall contain a completed Inquiry of Anatomical Gift form or a modified hospital death form which has been approved by the Utah Department of Health as required by Section 26-28-6, UCA.

(k) Medical records of surgical patients shall contain a pre-operative history and physical examination; surgeon's diagnosis; an operative report describing a description of findings; an anesthesia report including dosage and duration of all anesthetic agents and all pertinent events during the induction, maintenance, and emergence from anesthesia; the technical procedures used; the specimen removed; the post-operative diagnosis; and the name of the primary surgeon and any assistants written or dictated by the surgeon within 24 hours after the operation.

(l) Medical records of obstetrical patients shall contain a relevant family history, a pre-natal examination, the length of labor and type of delivery with related notes, the anesthesia or analgesia record, the Rh status and immune globulin administration when indicated, a serological test for syphilis, and a discharge summary for complicated deliveries or final progress note for uncomplicated deliveries.

(m) Medical records of newborn infants shall contain the following documentation in addition to the requirements for obstetrical medical records:

(i) Documentation must include a copy of the mother's delivery room record. In adoption cases where the identity of the mother is confidential, inclusion and access to the mother's delivery room record shall be according to hospital policy.

(ii) Documentation must include the date and hour of birth, period of gestation, sex, reactions after birth, delivery room care, temperature, weight, time of first urination, and number, character, and consistency of stools.

(iii) Documentation must include a record of the physical examination completed at birth and discharge, record of ophthalmic prophylaxis, and the identification number of the newborn screening kit, referred to in R398-1.

(iv) If the infant is discharged to any person other than the infant's parents, the hospital shall record the authorization by the parents, state agency, or court authority. and

(v) Documentation of the record and results of the newborn hearing screening according to Section 26-10-6, UCA and R398-2-6.

(n) Emergency department patient medical records shall be integrated into the hospital medical record and include time and means of arrival, emergency care given to the patient prior to arrival, history and physical findings, lab and x-ray reports, diagnosis, record of treatment, and disposition and discharge instructions.

(o) Patient medical social services records shall include a medical-social or psycho-social study of referred inpatients and outpatients; the financial status of the patient, social therapy and rehabilitation of patients, environmental investigations for attending physicians, and cooperative activities with community agencies.

(p) Medical records of patients receiving rehabilitation therapy shall include a written plan of care appropriate to the diagnosis and condition, a problem list, and short and long term goals.

(6) The medical records department shall maintain records, reports and documentation of admissions, discharges, and the number of autopsies performed.

(7) The medical records department shall maintain vital statistic registries for births, deaths, and the number of operations performed. The medical records department shall report vital statistics data in accordance with the Vital Statistics Act, Utah Health Code, (26-2, UCA).

R432-100-34. Central Supply Services.

(1) The central supply service supervisor shall be qualified for the position by education, training, and experience.

(2) The hospital shall provide space and equipment for the cleaning, disinfecting, packaging, sterilizing, storing, and distributing of medical and surgical patient care supplies.

(a) A hospital central service area shall provide for the following:

(i) A decontamination area which shall be separated by a barrier or divider to allow the receiving, cleaning, and disinfection functions to be performed separately from all other central service functions;

(ii) A linen assembly or pack-making area which shall have ventilation to control lint. The linen assembly or pack-making area shall be separated from the general sterilization and processing area.

(iii) The sterilization area shall contain hospital sterilizers with approved controls and safety features.

(b) The accuracy of the sterilizers' performance shall be checked by a method that includes a permanent record of each run.

(c) Sterilizers shall be tested by biological monitors at least weekly.

(d) If gas sterilizers are used, they shall be inspected, maintained, and operated in accordance with the manufacturer's recommendations.

(3) The storage area shall be separated into sterile and non-sterile areas. The storage area shall have temperature and humidity controls, and shall be free of excessive moisture and dust. Outside shipping cartons shall not be stored in this area.

(4) During each shift that the central service area is staffed, counter tops and tables shall be wiped with a broad spectrum disinfectant.

(5) All apparel worn in central supply shall be issued and laundered according to hospital policy.

R432-100-35. Laundry Service.

(1) Direction of the laundry service shall be provided by a person whose qualifications, authority, responsibilities and duties are approved by the administrator.

(2) Hospitals using commercial linen services shall require written assurance from the commercial service that standards in this subsection are maintained.

(a) Clean linen shall be completely packaged and protected from contamination until received by the hospital.

(b) The use of a commercial linen service does not relieve the hospital from its quality improvement responsibilities.

(3) Hospitals that maintain an in-house laundry service must have equipment, supplies and staff available to meet the needs of the patients.

(a) Soiled linen shall be collected in a manner to minimize cross-contamination. Containers shall be properly closed as filled and before further transport.

(i) Soiled linen shall be sorted only in a sorting area.

(ii) Handwashing is required after handling soiled linen and prior to handling clean items.

(iii) Employees handling soiled linen shall wear protective clothing which must be removed before leaving the soiled work area.

(iv) Soiled linen shall be transported separately from clean linen.

(b) The hospital shall maintain a supply of clean linen.

(i) Clean linen shall be handled and stored in a manner to minimize contamination from surface contact or airborne deposition.

(ii) Clean linen shall be stored in enclosed closet areas or carts.

(iii) Clean linen shall be covered during transport.

(4) The hospital is responsible to launder employee scrubs that are worn in the following areas:

(a) surgical areas;

(b) other areas as required by the Occupational Health and Safety Act.

(5) If hospital employee scrubs are designated as uniforms that may be worn to and from work, policies and procedures shall be developed and implemented defining the scope and usage of scrubs as uniforms including hospital storage of employee scrubs, and provisions for hospital-provided scrubs in case of contamination.

R432-100-36. Housekeeping Services.

(1) There shall be housekeeping services to maintain a clean, safe, sanitary, and healthful environment in the hospital.

(2) If the hospital contracts for housekeeping services with an outside service, there shall be a signed and dated agreement that details the services provided.

(3) The hospital shall provide safe, secure storage of cleaners and chemicals. Cleaners and chemicals stored in areas that may be accessible to patients shall be kept secure in accordance with hospital policy.

(4) Storage and supplies in all areas of the hospital shall be stored at least four inches off the floor, and at least 18 inches below the lowest portion of the sprinkler system.

(5) Personnel engaged in housekeeping or laundry services may not be engaged simultaneously in food service or patient care.

(6) If personnel work in food or direct patient care services, hospital policy shall be established and followed to govern the transition from housekeeping services to patient care.

R432-100-37. Maintenance Services.

(1) There shall be maintenance services to ensure that hospital equipment and grounds are maintained in a clean and sanitary condition and in good repair at all times for the safety and well-being of patients, staff, and visitors.

(a) The administrator shall employ a person qualified by experience and training to be in charge of hospital maintenance.

(b) If the hospital contracts for maintenance services, there shall be a signed and dated agreement that details the services provided.

(c) A pest-control program shall be conducted to ensure the hospital is free from vermin and rodents.

(d) Entrances, exits, steps, ramps, and outside walkways shall be maintained in a safe condition with regard to snow, ice and other hazards.

(2) All patient care equipment shall be tested, calibrated and maintained in accordance with the specifications from the manufacturer.

(a) Testing frequency and calibration documentation shall be available for Department review.

(b) Testing or calibration procedures conducted by an outside agency or service shall be documented and available for Department review.

(3) Hot water at public and patient faucets shall be delivered between 105 to 120 degrees Fahrenheit.

R432-100-38. Emergency and Disaster Plan.

(1) The hospital is responsible to assure the safety and well-being of patients. There must be provisions for the maintenance of a safe environment in the event of an emergency or disaster. An emergency or disaster may include utility interruption such as gas, water, sewer, fuel or electricity interruption, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic, bio-terrorism event or mass casualty incident.

(2) The administrator or designee is responsible for the development of a plan, coordinated with state and local emergency or disaster offices, to respond to emergencies or disasters. This plan shall be in writing and list the coordinating authorities by agency name and title. The plan shall be distributed or made available to all hospital staff to assure prompt and efficient implementation.

(a) The plan shall be reviewed and updated as necessary in coordination with local emergency or disaster management authorities. The plan shall be available for review by the Department.

(b) The administrator or designee is in charge of operations during any significant emergency. If not on the premises, the administrator shall make every reasonable effort to get to the hospital to relieve subordinates and take charge of the situation.

(c) The name of the person in charge and names and telephone numbers of emergency medical personnel, agencies and appropriate communication and emergency transport systems shall be readily available to all hospital staff.

(3) The hospital's emergency response procedures shall address the following:

(a) evacuation of occupants to a safe place within the hospital or to another location;

(b) delivery of essential care and services to hospital occupants by alternate means regardless of setting;

(c) delivery of essential care and services when additional persons are housed in the hospital during an emergency;

(d) delivery of essential care and services to hospital occupants when staff is reduced by an emergency; and

(e) maintenance of safe ambient air temperatures within the hospital.

(4) The hospital shall have an emergency plan that is current and appropriate to the operation and construction of the hospital. The plan shall be approved by the board and the hospital administrator.

(a) The hospital's emergency plan shall delineate:

(i) the person or persons with decision-making authority for fiscal, medical, and personnel management;

(ii) on-hand personnel, equipment, and supplies and how to acquire additional help, supplies, and equipment after an emergency or disaster;

(iii) assignment of personnel to specific tasks during an emergency;

(iv) methods of communicating with local emergency agencies, authorities, and other appropriate individuals;

(v) the telephone numbers of individuals to be notified in an emergency in order of priority;

(vi) methods of transporting and evacuating patients and staff to other locations; and

(vii) conversion of the hospital for emergency use.

(b) Emergency telephone numbers shall be accessible to staff at each nurses station.

(c) The hospital shall document emergency events and responses and record patients and staff evacuated from the hospital to another location. Any emergency involving patients shall be documented in the patient record.

(d) Simulated disaster drills shall be held semiannually for all staff. One disaster drill shall address a bio-terrorism or communicable disease event.

(e) Fire drills and fire drill documentation shall be in accordance with R710-4, State of Utah Fire Prevention Board.

(5) There shall be a fire emergency evacuation plan written in consultation with qualified fire safety personnel. The evacuation plan shall be posted in prominent locations throughout the hospital.

R432-100-39. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health facilities

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	26-21-20

R477. Human Resource Management, Administration.
R477-1. Definitions.
R477-1-1. Definitions.

The following definitions apply throughout these rules unless otherwise indicated within the text of each rule.

(1) Abandonment of Position: An act of resignation resulting from an employee's unexcused absence from work or failure to come to work for three consecutive days when the employee is capable, but does not properly notify his supervisor.

(2) Active Duty: Full-time active military or reserve duty; a term used for veteran's preference adjustments. It does not include active or inactive duty for training or initial active duty for training.

(3) Actual Hours Worked: Time spent performing duties and responsibilities associated with the employee's job assignments.

(4) Administrative Leave: Leave with pay granted to an employee at management discretion that is not charged against the employee's leave accounts.

(5) Administrative Adjustment: A DHRM approved change of a position from one job to another job or salary range change for administrative purposes that is not based on a change of duties and responsibilities.

(6) Administrative Salary Decrease: A salary decrease of one or more pay steps based on non-disciplinary administrative reasons determined by an agency head or commissioner.

(7) Administrative Salary Increase: A salary increase of one or more pay steps based on special circumstances determined by an agency head or commissioner.

(8) Agency: An entity of state government that is:

(a) directed by an executive director, elected official or commissioner defined in Chapter 67-22 or in other sections of the code ;

(b) authorized to employ personnel; and

(c) subject to DHRM rules.

(9) Agency Head: The executive director or commissioner of each agency or their designated appointee.

(10) Agency Management: The agency head and all other officers or employees who have responsibility and authority to establish, implement, and manage agency policies and programs.

(11) Appeal: A formal request to a higher level review for consideration of an unacceptable grievance decision.

(12) Appointing Authority: The officer, board, commission, person or group of persons authorized to make appointments in their agencies.

(13) Bumping: A procedure that may be applied prior to a reduction in force action (RIF). It allows employees with higher retention points to bump other employees with lower retention points as identified in the work force adjustment plan, as long as employees meet the eligibility criteria outlined in interchangeability of skills.

(14) Career Mobility: A time limited assignment of an employee to a position of equal or higher salary range for purposes of professional growth or fulfillment of specific organizational needs.

(15) Career Service Employee: An employee who has successfully completed a probationary period in a career service position.

(16) Career Service Exempt Employee: An employee appointed to work for an unspecified period of time or who serves at the pleasure of the appointing authority and may be separated from state employment at any time without just cause.

(17) Career Service Exempt Position: A position in state service exempted by law from provisions of competitive career service as prescribed in 67-19-15 and in R477-2-1(1).

(18) Career Service Status: Status granted to employees who successfully complete a probationary period for competitive career service positions.

(19) Category of Work: A job series within an agency that is designated by the agency head as having positions to be eliminated agency wide through a reduction in force. Category of work may be further reduced after review by DHRM as follows:

(a) a unit smaller than the agency upon providing justification and rationale for approval, for example:

(i) low org;

(ii) cost centers;

(iii) geographic locations;

(iv) agency programs.

(b) positions identified by a set of essential functions, for example:

(i) position analysis data;

(ii) certificates;

(iii) licenses;

(iv) special qualifications;

(v) degrees that are required or directly related to the position.

(20) Certifying: The act of verifying the qualifications and availability of individuals on the hiring list. The number of individuals certified shall be based on standards and procedures established by the Department of Human Resource Management.

(21) Change of Workload: A change in position responsibilities and duties or a need to eliminate or create particular positions in an agency caused by legislative action, financial circumstances, or administrative reorganization.

(22) Classification Grievance: The approved procedure by which an agency or a career service employee may grieve a formal classification decision regarding the classification of a position.

(23) Classified Service: Positions that are subject to the classification and compensation provisions stipulated in Section 67-19-12 of the Utah Code Annotated.

(24) Classification Study: A Classification review conducted by DHRM or an approved contract agency, under the rules outlined in R477-3-4. A study may include single or multiple job or position reviews.

(25) Compensatory Time: Time off that is provided to an employee in lieu of monetary overtime compensation.

(26) Constant Review: A period of formal review of an employee, not to exceed six months, resulting from substandard performance or behavior, as defined by Utah law and contained in these rules. Removal from constant review requires a formal evaluation.

(27) Contract Agency: An agency with authority to perform specific HR functions as outlined in a formal delegation agreement with DHRM under authority of section 67-19-7.

(28) Contractor: An individual who is contracted for service, is not supervised by a state supervisor, but is responsible for providing a specified service for a designated fee within a specified time. The contractor shall be responsible for paying all taxes and FICA payments, and shall not accrue benefits.

(29) Corrective Action: A written administrative action to address substandard performance or behavior of an employee as described in R477-10-2. Corrective action includes a period of constant review.

(30) Critical Incident Drug or Alcohol Test: A drug or alcohol test conducted on an employee as a result of the behavior, action, or inaction of an employee that is of such seriousness it requires an immediate intervention on the part of management.

(31) Demeaning Behavior: Any behavior which lowers the status, dignity or standing of any other individual.

(32) Demotion: An action resulting in a salary reduction on the current salary range or the movement of an incumbent from one job or position to another job or position having a lower salary range, which may include a reduction in salary.

Administrative adjustments and reclassifications are not included in the definition of a demotion.

(33) Department: The Department of Human Resource Management.

(34) Derisive Behavior: Any behavior which insults, taunts, or otherwise belittles or shows contempt for another individual.

(35) Designated Hiring Rule: A rule promulgated by DHRM that defines which individuals on a certification are eligible for appointment to a career service position.

(36) DHRM: The Department of Human Resource Management.

(37) DHRM Approved Recruitment and Selection System: The state's recruitment and selection system, which includes:

(a) continuous recruitment of all positions;

(b) a centralized and automated computer database of resumes and related information administered by the Department of Human Resource Management;

(c) decentralized access to the database based on delegation agreements.

(38) Disability: Disability shall have the same definition found in the Americans With Disabilities Act (ADA) of 1990, 42 USC 12101 (1994); Equal Employment Opportunity Commission regulation, 29 CFR 1630 (1993); including exclusions and modifications.

(39) Disciplinary Action: Action taken by management under the rules outlined in R477-11.

(40) Discrimination: Unlawful action against an employee or applicant based on race, religion, national origin, color, sex, age, disability, protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation, or any other non-merit factor, as specified by law.

(41) Dismissal: A separation from state employment for cause.

(42) Drug-Free Workplace Act: A 1988 congressional act, 34 CFR 85 (1993), requiring a drug-free workplace certification by state agencies that receive federal grants or contracts.

(43) Employee Personnel Files: For purposes of Titles 67-18 and 67-19, the files maintained by DHRM and agencies as required by R477-2-6. This does not include employee information maintained by supervisors.

(44) Employment Eligibility Certification: A requirement of the Immigration Reform and Control Act of 1986, 8 USC 1324 (1988) that employers verify the identity and eligibility of individuals for employment in the United States.

(45) "Escalator" Principle: Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), returning veterans are entitled to return back onto their seniority escalator at the point they would have occupied had they not left state employment.

(46) Equal Employment Opportunity (EEO): Nondiscrimination in all facets of employment by eliminating patterns and practices of illegal discrimination.

(47) Excess Hours: A category of compensable hours separate and apart from compensatory or overtime hours that accrue at straight time only when an employee's actual hours worked, plus additional hours paid, exceed an employee's normal work period.

(48) Fair Employment Opportunity and Practice: Assures fair treatment of applicants and employees in all aspects of human resource administration without regard to age, disability, national origin, political or religious affiliation, race, sex, or any non-merit factor.

(49) Fitness For Duty Evaluation: Evaluation, assessment or study by a licensed professional to determine if an individual is able to meet the performance or conduct standards required by the position held, or is a direct threat to the safety of self or others.

(50) FLSA: Fair Labor Standards Act. The federal statute that governs overtime. See 29 USC 201 (1996).

(51) FLSA Exempt: Employees who are exempt from the Fair Labor Standards Act.

(52) FLSA Nonexempt: Employees who are not exempt from the Fair Labor Standards Act.

(53) Follow Up Drug or Alcohol Test: Unannounced drug or alcohol tests conducted for up to five years on an employee who has previously tested positive or who has successfully completed a voluntary or required substance abuse treatment program.

(54) Full Time Equivalent (FTE): The budgetary equivalent of one full time position filled for one year.

(55) Furlough: A temporary leave of absence from duty without pay for budgetary reasons or lack of work.

(56) Grievance: A career service employee's claim or charge of the existence of injustice or oppression, including dismissal from employment resulting from an act, occurrence, omission, condition, discriminatory practice or unfair employment practice not including position classification or schedule assignment.

(57) Grievance Procedures: The statutory process of grievances and appeals as set forth in Sections 67-19a-101 through 67-19a-408 and the rules promulgated by the Career Service Review Board.

(58) Gross Compensation: Employee's total earnings, taxable and nontaxable, as shown on the employee's paycheck stub.

(59) Hiring List: A list of qualified and interested applicants who are eligible to be considered for appointment or conditional appointment to a specific position.

(60) Hostile Work Environment: A work environment or work related situation where an individual suffers physical or emotional stress due to the unwelcome behavior of another individual which is motivated by race, religion, national origin, color, sex, age, disability or protected activity under the anti-discrimination statutes.

(61) HRE: Human Resource Enterprise; the state human resource management information system.

(62) Immediate Supervisor: The employee or officer who exercises direct authority over an employee and who appraises the employee's performance.

(63) Incompetence: Inadequacy or unsuitability in performance of assigned duties and responsibilities.

(64) Inefficiency: Wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.

(65) Interchangeability of Skills: Employees are considered to have interchangeable skills only for those positions they have previously held successfully in Utah state government employment or for those positions which they have successfully supervised and for which they satisfy job requirements.

(66) Intern: An individual in a college degree program assigned to work in an activity where on-the-job training is accepted.

(67) Job: A group of positions similar in duties performed, in degree of supervision exercised or required, in requirements of training, experience, or skill and other characteristics. The same salary range and test standards are applied to each position in the group.

(68) Job Description: A document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.

(69) Job Identification Number: A unique number assigned to a job by DHRM.

(70) Job Proficiency Rating: An average of the last three annual performance evaluation ratings used in reduction in force proceedings.

(71) Job Requirements: Skill requirements defined a the

job level.

(72) Job Series: Two or more jobs in the same functional area having the same job class title, but distinguished and defined by increasingly difficult levels of duties and responsibilities and requirements.

(73) Legislative Salary Adjustment: A legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.

(74) Malfeasance: Intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.

(75) Market Based Bonus: One time lump sum monies given to a new hire or a current employee to encourage employment with the state.

(76) Market Comparability Adjustment: Legislatively approved reallocation of a salary range for a job based on a compensation survey conducted by DHRM.

(77) Merit Increase: A legislatively approved and funded salary increase for employees to recognize and reward successful performance.

(78) Misfeasance: The improper or unlawful performance of an act that is lawful or proper.

(79) Nonfeasance: Failure to perform either an official duty or legal requirement.

(80) Performance Evaluation: A formal, periodic evaluation of an employee's work performance.

(81) Performance Evaluation Date: The date when an employee's performance evaluation shall be conducted. An evaluation shall be conducted at least once during the probationary period and no less than once annually thereafter consistent with the common review date.

(82) Performance Management: The ongoing process of communication between the supervisor and the employee which defines work standards and expectations, and assesses performance leading to a formal annual performance evaluation.

(83) Performance Plan: A written summary of the standards and expectations required for the successful performance of each job duty or task. These standards normally include completion dates and qualitative and quantitative levels of performance expectations.

(84) Performance Standard: Specific, measurable, observable and attainable objectives that represent the level of performance to which an employee and supervisor are committed during an evaluation period.

(85) Personnel Adjudicatory Proceedings: The informal appeals procedure contained in Title 63, Chapter 46b, for all human resource policies and practices not covered by the state employees grievance procedure promulgated by the Career Service Review Board, or the classification appeals procedure.

(86) Position: A unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.

(87) Position Description: A document that describes the detailed tasks performed, as well as the knowledge, skills, abilities, and other requirements of a specific position.

(88) Position Identification Number: A unique number assigned to a position for FTE management.

(89) Position Management Report: A document that lists an agency's authorized positions including job identification numbers, salaries, and schedules. The list includes occupied or vacant positions and full or part-time positions.

(90) Position Sharing: A situation where two employees share the duties and responsibilities of one full-time career service position. Salary, retirement service credits and leave benefits for position sharing employees are pro-rated according to the number of hours worked. To be eligible for benefits, position sharing employees must work at least 50% of a full-time equivalent.

(91) Post Accident Drug or Alcohol Test: A Drug or alcohol test conducted on an employee who is involved in a vehicle accident while on duty:

(a) where a fatality occurs;

(b) where the employee receives a citation under state or local law for a moving traffic violation arising from the accident and the accident involves bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident;

(c) where the employee receives a citation under state or local law for a moving traffic violation arising from the accident and the accident involves one or more motor vehicles that incur disabling damage as a result of the accident that must be transported away from the scene by a tow truck or other vehicle;

(d) where there is reasonable suspicion that the employee had been driving while under the influence of a controlled substance.

(92) Preemployment Drug Test: A drug test conducted on final candidates for a safety sensitive position or on a current employee prior to assuming safety sensitive duties.

(93) Probationary Employee: An employee hired into a career service position who has not completed the required probationary period for that position.

(94) Probationary Period: A period of time considered part of the selection process, identified at the job level, the purpose of which is to allow management to evaluate an employee's ability to perform assigned duties and responsibilities and to determine if career service status should be granted.

(95) Productivity Step Adjustment: A management authorized salary increase of one to four steps. Management and employees agree to the adjustment for employees who accept an increased workload resulting from FTE reductions and agency base budget reduction.

(96) Promotion: An action moving an employee from a position in one job to a position in another job having a higher maximum salary step.

(97) Protected Activity: Opposition to discrimination or participation in proceedings covered by the antidiscrimination statutes or the Utah State Grievance and Appeal Procedure. Harassment based on protected activity can constitute unlawful retaliation.

(98) Random Drug or Alcohol Test: Unannounced drug or alcohol testing of a sample of safety sensitive employees done in accordance with federal regulations or state rules, policies, and procedures, and conducted in a manner such that each safety sensitive employee has an equal chance of being selected for testing.

(99) Reappointment: Return to work of an individual from the reappointment register. Accrued annual leave, converted sick leave, compensatory time and excess hours in the employee's former position were cashed out upon separation.

(100) Reappointment Register: A register of individuals who have:

(a) held career service positions and been separated in a reduction in force;

(b) held career service positions and accepted career service exempt positions without a break in service and were not retained, unless discharged for cause;

(c) by Career Service Review Board decision been placed on the reappointment register.

(101) Reasonable Suspicion: Knowledge sufficient to induce an ordinary, reasonable and prudent person to arrive at a conclusion of thought or belief based on factual, non-subjective and substantiated observations or reported circumstances. Factual situations verified through personal visual observation of behavior or actions, or substantiated by a reliable witness.

(102) Reasonable Suspicion Drug or Alcohol Test: A drug or alcohol test conducted on an employee based on reasonable

suspicion that the employee may be under the influence of drugs or alcohol.

(103) Reassignment: A management initiated action moving an employee from his current job or position to a job or position of an equal salary range for administrative, corrective action or other reasons not included in the definition of demotion, transfer or reclassification. Management may also move an employee to a job or position with a lower salary range with employee written consent, when permitted by applicable federal or state law, including, but not limited to the Americans with Disabilities Act. A reassignment may be to one or more of the following:

(a) a different job or position;

(b) a different work location;

(c) a different organizational unit; or

(d) a different agency.

(104) Reclassification: A DHRM or an approved contract agency reallocation of a single position or multiple positions from one job to another job to reflect management initiated changes in duties and responsibilities as determined by a classification study.

(105) Reduction in Force: (RIF) Abolishment of positions resulting in the termination of career service staff. RIFs can occur due to inadequate funds, a change of workload, or a lack of work.

(106) Reemployment: Return to work of an employee who resigned from state employment to join the uniformed services covered under USERRA. Accrued annual leave, converted sick leave, compensatory time and excess hours may have been cashed out at separation.

(107) Rehire: Return to work of a former career service employee who resigned from state employment. Accrued annual leave, converted sick leave, compensatory time and excess hours in their former position were cashed out at separation.

(108) Retaliation: An adverse employment action taken against an employee who has engaged in a protected activity. The adverse action must have a causal link.

(109) Return to Duty Drug or Alcohol Test: A drug or alcohol test conducted on an employee prior to allowing the employee to return to duty after successfully completing a drug or alcohol treatment program.

(110) Requisition: An electronic document used for Utah Skill Match search and tracking purposes that includes specific information for a particular position.

(111) Return from LWOP: A return to work from any leave without pay status. Accrued annual leave, converted sick leave, compensatory time and excess hours may have been cashed out before the leave without pay period began.

(112) Ridiculing Behavior: Any behavior specifically performed to cause humiliation or to mock, taunt or tease another individual.

(113) RIF'd Individual: A former employee who is terminated as a result of a reduction in force.

(114) Safety Sensitive Position: A position approved by DHRM that includes the performance of functions:

(a) directly related to law enforcement; or

(b) involving direct access or having control over direct access to controlled substance; or

(c) directly impacting the safety or welfare of the general public;or

(d) which require an employee to carry or have access to firearms.

(115) Salary Range: The segment of an approved pay plan assigned to a job.

(116) Schedule: The determination of whether a position meets criteria stipulated in the Utah Code Annotated to be career service (Schedule B) or career service exempt (Schedule A).

(117) Serious Health Condition: An illness, injury, impairment, physical or mental condition that involves:

(a) inpatient care in a hospital, hospice, or residential medical care facility;

(b) continuing treatment by a health care provider.

(118) Sexual Harassment:

(a) A form of unlawful discrimination of a sexual nature which is unwelcome and pervasive, demeaning, ridiculing, derisive or coercive and results in a hostile, abusive or intimidating work environment.

(i) Level One: sex role stereotyping

(ii) Level Two: targeted gender harassment/discrimination

(iii) Level Three: targeted or individual harassment

(iv) Level Four: criminal touching of another's body parts or taking indecent liberties with another.

(b) Any quid pro quo behavior which requires an employee to submit to sexual conduct in return for increased employment benefits or under threat of adverse employment repercussions.

(119) Tangible Employment Action: Any significant change in employment status e.g. hiring, firing, promotion, failure to promote, demotion, undesirable assignment, a decision causing a significant change in benefits, compensation decisions, and work assignment. Tangible employment action does not include insignificant changes in employment status such as a change in job title without a change in salary, benefits or duties.

(120) Temporary Transitional Assignment: An assignment on a temporary basis to a position or duties of lesser responsibility and salary range to accommodate an injury or illness or to provide a temporary reasonable accommodation.

(121) Transfer: An employee initiated movement from one job or position to another job or position for which the employee qualifies in response to a recruitment. A transfer may be to one or more of the following:

(a) a job or position with the same salary range;

(b) a job or position with a lower salary range;

(c) a different work location;

(d) a different organizational unit; or

(e) a different agency.

(122) Underfill: DHRM authorization for an agency to fill a position at a lower salary range within the same job series.

(123) Uniformed Services: The United States Army, Navy, Marine Corps, Air Force, Coast Guard; Reserve units of the Army, Navy, Marine Corps, Air Force, or Coast Guard; Army National Guard or Air National Guard; Commissioned Corps of Public Health Service, or any other category of persons designated by the President in time of war or emergency. Service in Uniformed Services includes: voluntary or involuntary duty, including active duty; active duty for training; initial active duty for training; inactive duty training; full-time National Guard duty; absence from work for an examination to determine fitness for any of the above types of duty.

(124) Unlawful Harassment: Any behavior or conduct of an unlawful nature based on race, religion, national origin, color, sex, age, disability or protected activity under the anti-discrimination statutes that is unwelcome, pervasive, demeaning, derisive or coercive and results in a hostile, abusive or intimidating work environment or tangible employment action.

(125) USERRA: Uniformed Services Employment and Reemployment Rights Act of 1994 (P.L. 103-353), requires state governments to re-employ eligible veterans who left state employment to enter the uniformed services and who return to work within a specified time period after military discharge. Employees covered under USERRA are in a leave without pay status from their state position.

(126) Veteran: An individual who has served on active duty in the armed forces for more than 180 consecutive days, or was a member of a reserve component who served in a campaign or expedition for which a campaign medal has been

authorized. Individuals must have been separated or retired under honorable conditions.

(127) Volunteer: Any person who donates services to the state or its subdivisions without pay or other compensation except actual and reasonable expenses incurred, as approved by the supervising agency.

(128) Volunteer Experience Credit: Credit given in meeting job requirements to participants who gain experience through unpaid or uncompensated volunteer work with the state, its subdivisions or other public and private organizations.

KEY: personnel management, rules and procedures, definitions
July 2, 2004 67-19-6
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R477. Human Resource Management, Administration.
R477-2. Administration.
R477-2-1. Rules Applicability.

These rules apply to all career and career service exempt state employees except those specifically exempted in Section 67-19-12.

(1) Certificated employees of the State Board of Education are covered by these rules except for rules governing classification and compensation, found in R477-3 and R477-6.

(2) Nonstate agencies with employees protected by the career service provisions of these rules in R477-4, R477-5, R477-9 and R477-11 are exempted by contract from any provisions deemed inappropriate in their jurisdictions by the Executive Director, DHRM.

(3) Unless employees in exempt positions have written contracts of employment for a definite period of time, they are career service exempt employees. The following employees are exempt from mandatory compliance with these rules:

(a) members of the Legislature and legislative employees;

(b) members of the judiciary and judicial employees;

(c) elected members of the executive branch and their direct staff who are career service-exempt employees;

(d) officers, faculty, and other employees of state institutions of higher education;

(e) any positions for which the salary is set by law;

(f) attorneys in the Attorney General's Office;

(g) agency heads and other persons appointed by the governor when authorized by statute;

(h) employees of the Department of Community and Economic Development whose positions have been designated executive/professional by the executive director of the Department of Community and Economic Development with the concurrence of the Executive Director, DHRM.

(4) All other exempt positions are covered by provisions of these rules except rules governing career service status in R477-4, R477-5, R477-9 and R477-11.

(5) The above positions may or may not be exempt from federal and other state regulations.

R477-2-2. Compliance Responsibility.

Agencies shall manage their own human resources in compliance with these rules. Agencies are authorized to correct any administrative errors.

(1) The Executive Director, DHRM, may authorize exceptions to provisions of these rules when one or more of the following criteria are satisfied:

(a) Applying the rule prevents the achievement of legitimate government objectives;

(b) Applying the rule impinges on the legal rights of an employee.

(2) Agency personnel records, practices, policies and procedures, employment and actions, shall comply with these rules and are subject to compliance audits by DHRM.

(3) In cases of noncompliance with the State Personnel Management Act, Title 67, Chapter 19, and these rules, the Executive Director, DHRM, may find the responsible agency official to be subject to the penalties prescribed by Section 67-19-18(1) pertaining to misfeasance, malfeasance or nonfeasance in office.

R477-2-3. Fair Employment Practice.

All state personnel actions must provide equal employment opportunity for all individuals.

(1) Employment actions including appointment, tenure or term, condition or privilege of employment shall be based on the ability to perform the essential duties, functions, and responsibilities assigned to a particular position.

(2) Employment actions shall not be based on race, religion, national origin, color, sex, age, disability, protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation or any other non-job related factor, nor shall any person be subjected to unlawful harassment by a state employee.

(3) Any employee who alleges that they have been illegally discriminated against, may submit a claim to the agency head.

(a) If the employee does not agree with the decision of the agency head, the employee may file a complaint with the Utah Anti-Discrimination and Labor Division.

(b) If the employee does not agree with the decision of the agency head, the employee may also file a complaint with the Equal Employment Opportunity Commission.

(c) No state official shall impede any employee from the timely filing of a discrimination complaint in accordance with state and federal requirements.

R477-2-4. Control of Personal Service Expenditures.

(1) Statewide control of personal service expenditures shall be the shared responsibility of the employing agency, the Governor's Office of Planning and Budget, the Department of Human Resource Management and the Division of Finance.

(2) Agency management may request changes to the Position Management Report which are justified as cost reduction or improved service measures.

(a) Changes in the numbers, job identification, or salary ranges of positions listed in the Position Management Report shall be approved by the Executive Director, DHRM or designee.

(3) No person shall be placed or retained on an agency payroll unless that person occupies a position listed in an agency's approved Position Management Report.

R477-2-5. Records.

(1) DHRM shall maintain a computerized file for each employee that contains the following, as appropriate:

(a) performance ratings;

(b) records of actions affecting employee salary, current classification, title and salary range, salary history, and other personal data, status or standing.

(2) Agencies shall maintain the following records in each employee's personnel file:

(a) applications for employment, Employment Eligibility Certification record, Form I-9, and other documents required by Immigration and Naturalization Service (INS) Regulations, under the Immigration Reform and Control Act of 1986, employee signed overtime agreement, personnel action records, notices of corrective or disciplinary actions, new employee orientation form, performance evaluation records, separation and leave without pay records, including employee benefits notification forms for PEHP and URS;

(b) references to or copies of transcripts of academic, professional, or training certification or preparation;

(c) copies of items recorded in the DHRM computerized file and other materials required by agency management to be placed in the personnel file. The agency personnel file shall be considered a supplement to the DHRM computerized file and shall be subject to the rules governing personnel files;

(d) leave and time records; and

(e) Copies of any documents affecting the employee's conduct, status or salary. The agency shall inform employees of any changes in their records based on conduct, status or salary no later than when changes are entered into the file.

(3) Agencies shall maintain a separate file from the personnel file if the agency obtains confidential employee medical information.

(a) Information in this file shall include all written and orally obtained information pertaining to medical issues, including Family Medical and Leave Act forms, medical and

dental enrollment forms which contain health related information, health statements, applications for additional life insurance, fitness for duty evaluations, drug testing results, and any other medical information.

(b) Information in this file is considered private or controlled information. Communication shall adhere to the Government Records Access and Management Act, Section 63-2-101.

(c) An employee who violates confidentiality is subject to state disciplinary procedures.

(4) An employee has the right to review the employee's personnel file, upon request, in DHRM or the agency, as governed by law and as provided through agency policy.

(a) An employee may correct, amend, or challenge any information in the DHRM computerized or agency personnel file, through the following process:

(i) The employee shall request in writing that changes occur.

(ii) The employing agency shall be given an opportunity to respond.

(iii) Disputes over information that are not resolved between the employing agency and the employee, shall be decided in writing by the Executive Director, DHRM. DHRM shall maintain a record of the employee's letter; the agency's response; and the DHRM Executive Director's decision.

(5) When a disciplinary action is rescinded or disapproved upon appeal, forms, documents and records pertaining to the case shall be removed from the personnel file.

(a) When the record in question is on microfilm, a seal will be placed on the record and a suitable notice placed on the carton or envelope. This notice shall indicate the limits of the sealed section and the authority for the action.

(6) Upon employee separation, DHRM and agencies shall retain computerized records for thirty years. Agency hard copy records shall be retained by the agency for a minimum of two years, then transferred to the State Record Center by State Archives Division to be retained for 65 years.

(7) Information classified as private in both DHRM and agency personnel and payroll files shall be available only to the following people:

(a) the employee;

(b) users authorized by the Executive Director, DHRM, who have a legitimate "need-to-know";

(c) individuals who have the employee's written consent.

(8) Utah is an open records state, according to Chapter 2, Title 63, the Government Records Access and Management Act. Requests for information shall be in writing. The following information concerning current or former state employees, volunteers, independent contractors, and members of advisory boards or commissions shall be given to the public upon written request where appropriate with the exception of employees whose records are private or protected:

(a) the employee's name;

(b) gross compensation;

(c) salary range;

(d) contract fees;

(e) the nature of employer-paid benefits;

(f) the basis for and the amount of any compensation in addition to salary, including expense reimbursement;

(g) job title;

(h) performance plan;

(i) education and training background as it relates to qualifying the individual for the position;

(j) previous work experience as it relates to qualifying the individual for the position;

(k) date of first and last employment in state government;

(l) the final disposition of any appeal action by the Career Service Review Board;

(m) the final disposition of any disciplinary action;

(n) work location;

(o) a work telephone number;

(p) city and county of residence, excluding street address;

(q) honors and awards as they relate to state government employment;

(r) number of hours worked per pay period;

(s) gender;

(t) other records as approved by the State Records Committee.

(9) When an employee transfers from one agency to another, the former agency shall transfer the employee's original file to the new agency. The file shall contain a record of all actions that have affected the employee's status and standing.

(10) An employee may request a copy of any documentary evidence used for disciplinary purposes in any formal hearing, regardless of the document's source, prior to such use. This shall not apply to documentary evidence used for rebuttal.

(11) Employee medical information obtained orally or documented in separate confidential files is considered private or controlled information. Communication must adhere to the Government Records Access and Management Act, Section 63-2-101. Employees who violate confidentiality are subject to state disciplinary procedures and may be personally liable for slander or libel.

(12) In compliance with the Government Records Access and Management Act, only information classified as "public" or "private" which can be determined to be related to and necessary for the disposition of a long term disability or unemployment insurance determination shall be approved for release on a need to know basis. The agency human resource manager or authorized manager in DHRM shall make the determination.

(13) An employee may verbally request the release of information for personal use, or authorize in writing the release of personal performance records for use by an outside agent based on a need to know authorization. "Private" data shall only be released, except to the employee, after a written request has been evaluated and approved.

R477-2-6. Release of Information in a Reference Inquiry.

Reference checks or inquiries made regarding current or former public employees, volunteers, independent contractors, and members of advisory boards or commissions can be released if the information falls under a category outlined in R477-2-6(7), or if the subject of the record has signed and provided a reference release form for information authorized under Title 63, Chapter 2.

(1) The employment record is the property of Utah State Government with all rights reserved to utilize, disseminate or dispose of in accordance with the Government Records Access and Management Act.

(2) Additional information may be provided if authorized by law.

R477-2-7. Employment Eligibility Certification (Immigration Reform and Control Act - 1986).

(1) All career and career service exempt employees appointed on and after November 7, 1986, as a new hire, rehire, agency transfer or through reciprocity with or assimilation from another career service jurisdiction must provide verifiable documentation of their identity and eligibility for employment in the United States as required under the Immigration Reform and Control Act of 1986.

(2) Agency hiring officials are responsible for verifying the identity and employment eligibility of these employees, by completing all sections of the Employment Eligibility Certification Form I-9 in conformance with Bureau of Citizenship and Immigration Services (BCIS) Regulations. The I-9 form shall be maintained in the agency personnel file.

R477-2-8. Disclosure by Public Officers Supervising a Relative.

It is unlawful for a public officer to appoint, directly supervise, or to make salary or performance recommendations for relatives except as prescribed in the Nepotism Act, Section 52-3-1.

(1) A public officer supervising a relative shall make a complete written disclosure of the relationship to the agency head in accordance with Section 52-3-1.

R477-2-9. Employee Liability.

An employee who becomes aware of any occurrence which may give rise to a law suit, who receives notice of claim, or is sued because of an incident related to his employment, shall give immediate notice to his supervisor and to the Department of Administrative Services, Office of Risk Management.

(1) In most cases, under provisions of the Governmental Immunity Act (GIA), Sections 63-30-36, 63-30-37, an employee shall receive defense and indemnification unless the case involves fraud, malice or the use of alcohol or drugs by the employee.

(2) If a law suit results against an employee, the GIA stipulates that the employee must request a defense from his agency head in writing within ten calendar days.

R477-2-10. Quality Service Award.

When requested by the Director, agencies shall assign employees to serve on the Utah Quality Award Evaluation Panel according to criteria established by section 67-19-6.4 and DHRM.

R477-2-11. Alternative Dispute Resolution.

Agency management may establish a voluntary alternative dispute resolution program in accordance with Chapter 63-46C, Utah Code Annotated.

KEY: administrative responsibility, confidentiality of information, fair employment practices, public information
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67-19-6
67-19-6.4
67-19-18

R477. Human Resource Management, Administration.
R477-3. Classification.
R477-3-1. Job Classification Methods.

The Executive Director, DHRM, shall prescribe the procedures and methods for classifying all positions not exempted by law from the classification plan. The Executive Director, DHRM, may authorize exceptions to provisions of the following rule, consistent with R477-2-2(1).

R477-3-2. Job Description.

DHRM shall maintain job descriptions, as appropriate, for all jobs in the classified plan.

(1) Job descriptions shall contain:

(a) job title;

(b) distinguishing characteristics;

(c) a description of tasks commonly associated with most positions in the job;

(d) statements of required knowledge, skills, and other requirements;

(e) FLSA status and other administrative information as approved by DHRM.

R477-3-3. Assignment of Duties.

Management may assign, modify, or remove any employee task or responsibility in order to accomplish reorganization, improve business practices or process, or for any other reason deemed appropriate by the department administration.

R477-3-4. Position Classification Review.

(1) A formal classification review may be conducted under the following circumstances:

(a) as part of a scheduled study;

(b) at the request of an agency, with the approval of the Executive Director, DHRM;

(c) as part of a classification grievance review; or

(d) by an agency authorized by DHRM to conduct classification studies.

(2) DHRM or an approved contract agency shall determine if there are significant changes in the duties of a position to warrant a review.

(3) When an agency is reorganized or positions are redesigned, no classification reviews shall be conducted during a three-month settling period unless otherwise determined necessary by DHRM or an approved contract agency.

(4) The Executive Director, DHRM, or designee shall make final classification decisions unless overturned by a hearing officer or court.

R477-3-5. Position Classification Grievances.

(1) An agency or a career service employee may grieve formal classification decisions regarding the classification of a position.

(a) This rule refers to grievances concerning the assignment of individual positions to appropriate jobs based on duties and responsibilities. The assignment of salary ranges is not included in this rule.

(b) An employee may only grieve a formal classification decision regarding the employee's own position.

(c) A career service employee or an agency who grieves a classification decision must complete the job classification grievance form. The form must be received by DHRM within 10 working days of receiving notice of the decision from DHRM or a contract agency; otherwise the grievance will not be processed.

(2) The position classification grievance process is as follows:

(a) Grievances must be submitted to DHRM on a currently approved grievance form.

(b) The Executive Director, DHRM, shall assign the grievance to a classification panel of three or more impartial persons who are trained in the state's classification procedures.

(c) The classification panel may:

(i) Access previous fact finding reviews, classification decisions, and reports;

(ii) Request new or additional fact finding interviews;

(iii) Consider new or additional information.

(d) The classification panel shall determine whether the assigned classification was appropriate. The panel shall follow the appropriate statutes, rules, and procedures which were current at the time the decision was made. The panel shall report its findings and recommendations to the Executive Director, DHRM. The Executive Director, DHRM, shall make a decision and notify the grievant and the agency representative of the decision.

(e) The grievant may grieve the Executive Director's decision to an impartial classification hearing officer contracted by the state. The grievance must be received by DHRM within 10 working days of the employee receiving notice of the panel decision.

(g) The hearing officer shall review the classification and make the final decision.

KEY: administrative procedures, grievances, job descriptions, position classifications
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R477. Human Resource Management, Administration.
R477-4. Filling Positions.
R477-4-1. Authorization to Fill a Position.

Agencies shall have sufficient funds to fill positions that are listed in the Position Management Report. The Executive Director, DHRM, may authorize exceptions to provisions of this rule, consistent with R477-2-2(1).

The DHRM approved recruitment and selection system is the state's recruitment and selection system for career service positions. Agencies shall use the DHRM approved recruitment and selection system unless an alternate system has been pre-approved by the Department of Human Resource Management.

R477-4-2. Selection for Career Service Exempt Positions.

(1) Agencies and managers may use any process to select an employee for a career service exempt position which complies with state and federal laws and regulations.

R477-4-3. Career Service Positions.

(1) Selection of a career service employee shall be governed by the following:

(a) DHRM standards and procedures;

(b) career service principles;

(c) equal employment opportunity principles;

(d) Utah Code governing nepotism found in Section 52-3-1;

(e) reasonable accommodation for qualified applicants covered under the Americans With Disabilities Act.

(2) DHRM shall take affirmative action to ensure that members of legally protected classes have the opportunity to apply and be considered for available positions in state government.

R477-4-4. Order of Selection for Career Service Positions.

(1) Prior to implementing the steps for order of selection, agencies may administer the following personnel actions:

(a) reemployment of a veteran eligible under USERRA;

(b) reassignment or transfer within an agency for the purposes of reasonable accommodation under the Americans with Disabilities Act;

(c) fill a position as a result of return to work from long term disability or workers compensation at the same or lesser salary range;

(d) reassignments made in order to avoid a reduction in force, or for reorganization or bumping purposes;

(e) reassignments, management initiated career mobility, or other movement of qualified career service employees at the same or lesser salary range to better utilize skills or assist management in meeting the organization's mission;

(f) reclassification.

(2) Agencies may carry out all the following steps for recruitment and selection of vacant career service positions concurrently. Appointing authorities may make appointments according to the following order of selection which applies to all vacant career service positions:

(a) First, agencies shall make appointments from the statewide reappointment register in compliance with R477-12-3(7) with the names of individuals who meet the position qualifications.

(b) Second, agencies may make appointments within an agency through promotion of a qualified career service employee, or through transfer or promotion of a qualified career service employee to another agency, career mobility assignments to a higher salary range, or conversions from schedule A to schedule B as authorized by R477-5-1.(3).

(c) Third, agencies may make appointments from a list of qualified applicants certified as eligible for appointment to the position, or from another competitive process pre-approved by the Executive Director, DHRM.

R477-4-5. Recruitment for Career Service Positions.

(1) Agencies shall use the DHRM approved recruitment and selection system for all career service position vacancies. This includes recruitments open within an agency, across agency lines, or to the general public. Recruitment shall comply with federal and state laws and DHRM rules and procedures.

(a) In addition to the DHRM required recruitment announcement, all other recruitment announcements shall include the following:

(i) position information about available vacancies;

(ii) information about the DHRM approved recruitment and selection system;

(iii) documented communication regarding examination methods and opening and closing dates, if applicable;

(iv) a strategy for equal employment opportunity, if applicable.

(2) Job information for career service positions shall be announced publicly for a minimum of five working days.

(3) Agencies are required to provide employees with information about the DHRM approved recruitment and selection system.

(4) Recruitment is not required for personnel actions outlined in R477-4-4(1).

(5) Appointment of an employee from the statewide reappointment register must comply with the order of selection specified in R477-4-4.

R477-4-6. Transfer and Reassignment.

(1) Positions may be filled by reassigning an employee without a reduction in pay for administrative reasons or corrective action pursuant to R477-10-2.

(2) The agency that receives a transfer or reassignment of an employee shall verify his career status and that the employee meets the job requirements for the position.

(a) An employee with a disability who is otherwise qualified may be eligible for transfer or reassignment to a vacant position within the agency as a reasonable accommodation measure.

(3) Agencies receiving a transfer or reassignment of an employee shall accept all of that employee's previously accrued sick, annual, and converted sick leave on the official leave records.

(4) A career service employee assimilated from another career service jurisdiction shall accrue leave at the same rate as a career service employee with the same seniority.

R477-4-7. Rehire.

(1) A former career service employee may be eligible for rehire to any career service position for which he is qualified.

(a) A rehired employee must compete through the DHRM approved recruitment and selection system and must serve a new probationary period, as designated in the official job description.

(i) The annual leave accrual rate for an employee who is rehired to a position which receives leave benefits shall be based on all state employment in which the employee was eligible to accrue leave. Any adjustments to the accrual rate shall be prospective from July 1, 2003.

(ii) An employee who is rehired within 12 months of separation to a position which receives sick leave benefits shall have his previously accrued sick leave credit reinstated.

(b) A rehired employee may be offered any salary within the regular salary range for the position.

(2) Career Service exempt employees cannot be rehired to career service positions, except as prescribed by Section 67-19-17.

R477-4-8. Examinations.

(1) Examinations shall be designed to measure and predict

success of individuals on the job. Appointment to career service positions shall be made through open, competitive selection.

(2) The Executive Director, DHRM, shall establish the standards for the development, approval and implementation of examinations. Examinations shall include the following:

(a) a documented job analysis;

(b) an initial, unbiased screening of the individual's qualifications;

(c) security of examinations and ratings;

(d) timely notification of individuals seeking positions;

(e) elimination from further consideration of individuals who abuse the process;

(f) unbiased evaluation and results;

(g) reasonable accommodation for qualified individuals with disabilities.

(3) When examinations utilizing ratings of training and experience are administered, agencies may establish maximum years of credit for training and experience for the purpose of rating qualified applicants. Separate maximums may be set for years of training and years of experience. These maximums shall be included in the agency's recruitment notice.

(4) The Executive Director, DHRM, may enter into delegation agreements with agencies to develop and administer examination instruments, subject to periodic administrative audits by DHRM.

R477-4-9. Hiring Lists.

(1) The hiring list shall include the names of qualified and interested applicants who are eligible to be considered for appointment or conditional appointment to a specific position.

(a) Hiring lists shall be constructed using the DHRM approved recruitment and selection system. All competitive processes shall be based on job related criteria.

(b) All applicants included on a hiring list shall be examined with the same examination or examinations.

(c) An individual shall be considered an applicant when he is determined to be both qualified for and interested in a particular position identified through a specific requisition.

(2) An applicant may be removed from further consideration when he, without valid reason, does not pursue appointment to a position.

(3) An individual who falsifies any information in the job application, examination or evaluation processes may be disqualified from further consideration prior to hire, or disciplined if already hired.

(4) Five percent of the total possible score shall be added to the rating or an appropriate adjustment shall be made on the hiring list for any applicant claiming veterans preference who:

(a) has served more than 180 consecutive days of active duty in and honorably discharged or released from the armed forces of the United States; or

(b) is the spouse or unremarried surviving spouse of any veteran.

(5) Ten percent of the total possible score shall be added to the rating or an appropriate adjustment shall be made on the hiring list for any applicant claiming veterans preference who:

(a) was honorably discharged or released from active duty with a disability incurred in the line of duty or is a recipient of a Purple Heart, whether or not that person completed 180 days of active duty;or

(b) is the spouse or unremarried surviving spouse of any disabled veteran.

(6) The Executive Director, DHRM, may enter into delegation agreements with agencies to develop and maintain hiring lists and certify eligible applicants to their appointing authorities, subject to periodic administrative audits by DHRM.

(7) When more than one RIF employee is certified by DHRM, the appointment shall be made from the most qualified.

(8) The appointing authority shall demonstrate and document that equal consideration was given to all applicants whose final score or rating is equal to or greater than that of the applicant hired.

(9) The appointing authority shall ensure that any employee hired meets the job requirements as outlined in the official job description.

R477-4-10. Time Limited Exempt Positions.

The Executive Director, DHRM, may approve the creation and filling of career service exempt positions for temporary, emergency, seasonal, intermittent or other special and justified agency needs. These appointments shall be career service exempt as defined in Section 67-19-15.

(1) Time limited, temporary or seasonal career service exempt appointments, such as schedules AJ and AL, may be made without competitive examination, provided job requirements are met.

(a) The following appointments are temporary, and may not receive benefits:

(i) AJ appointments for positions which are half-time or more shall last no longer than 1560 working hours in any consecutive 12 month period.

(ii) AJ appointments which are less than half-time, 19 or fewer hours per week, do not have a limitation on the duration of the appointment.

(b) Appointments under schedules AE, AI and AL shall be career service exempt positions. AE, AI and AL employees may receive benefits on a negotiable basis.

(i) Schedule AL appointments shall work on time limited projects for a maximum of two years or on projects with time limited funding.

(ii) Only schedule A appointments made from a hiring list as prescribed by R477-4-10(1) may be considered for conversion to career service.

(2) Appointments to fill an employee's position who is on approved leave without pay shall only be made temporarily.

(3) A time limited agreement shall be signed by the parties.

R477-4-11. Job Sharing.

Agency management may establish a job sharing program as a means of increasing opportunities for career part-time employment. In the absence of an agency program, individual employees may request approval for job sharing status through agency management.

R477-4-12. Internships and Cooperative Education.

Interns or students in a practicum program may be appointed with or without competitive selection. Intern appointments shall be to temporary, career service exempt positions.

R477-4-13. Reorganization.

When an agency is reorganized, but an employee's position does not change substantially, he shall not be required to compete for his current position. However, a reduction in the number of positions in a certain class shall be treated as a reduction in force.

R477-4-14. Career Mobility Programs.

Employees and agencies are encouraged to promote career mobility programs.

(1) Agencies may provide career mobility assignments inside or outside state government to qualified employees. Career mobility programs are designed to develop agency resources and to enhance the employee's career growth.

(a) Agencies shall establish procedures governing career mobility programs.

(2) Agencies shall develop and use written career mobility

contract agreements between employees and supervisors to outline all program provisions and requirements. The career mobility shall be both voluntary and mutually acceptable.

(a) Programs shall conform to equal employment opportunities and practices.

(b) An eligible employee, the agency or supervisor may initiate a career mobility.

(c) A participating employee shall retain all rights, privileges, entitlements, tenure and benefits from the previous position while on career mobility.

(d) If a reduction in force affects a position vacated by a participating employee, the participating employee shall be treated the same as other RIF employees.

(3) If a career mobility assignment does not become permanent at its conclusion, the employee shall return to the previous position or a similar position and shall receive, at a minimum, the same salary rate and the same or higher salary range that the employee would have received without the career mobility assignment.

(a) An employee who has not attained career service status prior to the career mobility program cannot permanently fill a career service position until the employee obtains career service status through a competitive process.

R477-4-15. Assimilation.

(1) An employee assimilated by the state from another career service system shall receive career service status after completing a probationary period if originally selected through a competitive examination process judged by the Executive Director, DHRM, to be equivalent to the process used in the state career service.

(a) Assimilation agreements shall specify whether there are employees eligible for reemployment under USERRA in positions affected by the agreement.

R477-4-16. Underfill.

(1) Underfill shall only be used in circumstances that meet the following conditions:

(a) The position is in the same classification series, as reflected on the position management report. A position shall be underfilled only until the employee satisfactorily meets the job requirements of the next higher level position as determined by management.

(b) There must be discernible and documented differences between levels in career ladders.

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R477. Human Resource Management, Administration.
R477-6. Compensation.
R477-6-1. Pay Plans.

(1) DHRM shall develop or modify pay plans for compensating employees.

(2) Market comparability salary range adjustments shall be legislatively approved.

R477-6-2. Allocation to the Pay Plans.

(1) Each job shall be assigned to a salary range on the applicable pay plan, except where compensation is established by statute.

(2) Salary range determination for benchmark jobs shall be based on salary survey data. The salary ranges for other jobs are determined by relative ranking with the appropriate benchmark job.

R477-6-3. Appointments.

(1) All appointments shall be placed on a salary step in the DHRM approved salary range for the job. Hiring officials shall receive approval from their agency head or agency human resource designee before making appointment offers to individuals.

(2) Reemployed veterans under USERRA shall be placed in their previous position or a similar position at their previous salary range. Reemployment shall include the same seniority status, any cost of living allowances, reclassification of the veteran's preservice position, or market comparability adjustments that would have affected the veteran's preservice position during the time spent by the affected veteran in the uniformed services. Performance related salary increases are not included.

R477-6-4. Salary.

(1) Merit increases. The following are applicable if merit increases are authorized and funded by the legislature:

(a) Employees, who are not on a longevity step and who are not at the maximum step of their salary range, who receive a successful or higher rating on their performance evaluations and who have been in a paid status by the state for at least six months shall receive a merit increase of one or more salary steps at the beginning of the new fiscal year.

(b) Employees designated as schedule AJ are not eligible for a merit step increase. Merit increases for employees in schedule AL, AM, or AS are not mandatory unless they are receiving benefits, and the increase is approved in agency policy.

(2) Highest Level Performer.

(a) Employees designated by the agency as a highest level performer consistent with subsection R477-10-1(2) shall receive, as determined by the agency head, either:

(i) a salary step increase; or

(ii) a bonus; or

(iii) administrative leave; or

(iv) other appropriate recognition as determined by the agency.

(b) An employee who is on a longevity step or at the maximum step of the salary range is not eligible for a salary step increase but may receive a bonus, administrative leave or other appropriate recognition as determined by the agency.

(3) Promotions and Reclassifications.

(a) An employee promoted or reclassified to a job with a salary range exceeding the employee's current salary range maximum by one salary step shall receive a salary increase of a minimum of one salary step and a maximum of four salary steps. An employee who is promoted or reclassified to a job with a salary range exceeding the employee's current salary range maximum by two or more salary steps shall receive a salary increase of a minimum of two salary steps and a maximum of four salary steps.

(i) An employee may not be placed higher than the maximum salary step or lower than the minimum salary step in the new salary range. Placement of an employee in longevity shall be consistent with subsection R477-6-4(4).

(ii) An employee who remains in longevity status after a promotion or reclassification shall retain the same salary by being placed on the corresponding longevity step.

(b) To be eligible for a promotion, an employee shall:

(i) meet the job requirements and skills specified in the job description and position specific criteria as determined by the agency for the position unless the promotion is to a career service exempt position.

(c) An employee whose position is reclassified or changed by administrative adjustment to a job with a lower salary range shall retain the current salary. The employee shall be placed on the corresponding longevity step if the salary exceeds the maximum of the new salary range.

(4) Longevity.

(a) An employee shall receive a longevity increase of 2.75 percent when:

(i) the employee has been in state service for eight years or more. The employee may accrue years of service in more than one agency and such service is not required to be continuous; and

(ii) the employee has been at the maximum salary step in the current salary range for at least one year and received a performance appraisal rating of successful or higher within the 12-month period preceding the longevity increase.

(b) An employee on a longevity step shall be eligible for the same across the board pay plan adjustments authorized for all other employee pay plans.

(c) An employee on a longevity step shall only be eligible for additional step increases every three years. To be eligible, an employee must receive a performance appraisal rating of successful or higher within the 12-month period preceding the longevity increase.

(d) An employee on a longevity step who is reclassified to a lower salary range shall retain the current salary.

(e) An employee on a longevity step who is promoted or reclassified to a higher salary range shall only receive an increase if the current salary step is less than the highest salary step of the new range.

(f) Agency heads or time limited exempt employees identified in R477-4-11 are not eligible for the longevity program.

(5) Administrative Adjustment.

(a) An employee whose position has been allocated by DHRM from one job to another job or salary range for administrative purposes, shall not receive an adjustment in salary.

(b) Implementation of new job descriptions as an administrative adjustment shall not result in a salary increase unless the employee is below the minimum step of the new range.

(6) Reassignment.

When permitted by federal or state law, including but not limited to the Americans with Disabilities Act, management may lower the salary of an employee one or more steps when the employee is reassigned to a job or position with a salary range having a lower maximum step.

(7) Transfer.

An employee who transfers from one job or position to another job or position may be offered a salary increase effective the same date as the transfer.

(8) Demotion.

An employee demoted consistent with R477-11-2 shall receive a salary reduction of one or more salary steps as determined by the agency head or designee. The agency head

or designee may move an employee to a position with a lower salary range concurrent with the salary reduction.

(9) Productivity step adjustment.

Agency management may establish policies to reward an employee who assumes additional workloads which result from the elimination of a position for at least one year with a salary increase of up to four salary steps. An employee at the maximum step of the salary range or in longevity shall be given a one time lump sum bonus award of 2.75% of their annual salary.

(a) To implement this program, agencies shall apply the following criteria:

(i) either the employee or management can make the suggestion;

(ii) the employee and management agree;

(iii) the agency head approves;

(iv) a written program policy achieves increased productivity through labor/management collaboration;

(v) the agency human resource representative approves;

(vi) the position will be abolished from the position authorization plan for a minimum of one year;

(vii) staff receive additional duties which are substantially above a normal full workload;

(viii) the same or higher level of service or productivity is achieved without accruing additional overtime hours;

(ix) the total dollar increase, including benefits, awarded to the workgroup as a result of the additional salary steps does not exceed 50 percent of the savings generated by eliminating the position.

(10) Administrative Salary Increase.

The agency head authorizes and approves administrative salary increases under the following parameters:

(a) An employee shall receive one or more steps up to the maximum of the salary range.

(b) Administrative salary increases shall only be granted when the agency has sufficient funding within their annualized base budgets for the fiscal year in which the adjustment is given.

(c) Justifications for Administrative Salary Increases shall be:

(i) in writing;

(ii) approved by the agency head;

(iii) supported by issues such as: special agency conditions or problems or other unique situations or considerations in the agency.

(d) The agency head is the final authority for salary actions authorized within these guidelines. The agency head or designee shall answer any challenge or grievance resulting from an administrative salary increase.

(e) Administrative salary increases may be given during the probationary period. These increases alone do not constitute successful completion of probation or the granting of career service status.

(f) An employee at the maximum step of the range or on a longevity step may not be granted administrative salary increases.

(11) Administrative Salary Decrease.

The agency head authorizes and approves administrative salary decreases for nondisciplinary reasons according to the following:

(a) An employee shall receive a one or more step decrease not to exceed the minimum of the salary range.

(b) Justification for administrative salary decreases shall be:

(i) in writing;

(ii) approved by the agency head; and

(iii) supported by issues such as previous written agreements between the agency and employees to include career mobility; reasonable accommodation, special agency conditions or problems, or other unique situations or considerations in the agency.

(c) The agency head is the final authority for salary actions within these guidelines. The agency head or designee shall answer any challenge or grievance resulting from an administrative salary decrease.

R477-6-5. Incentive Awards.

(1) Only agencies with written and published incentive award and bonus policies may reward employees with incentive awards or bonuses. Incentive awards and bonuses are discretionary, not an entitlement, and are subject to the availability of funds in the agency.

(a) Policies shall be approved annually by DHRM and be consistent with standards established in these rules and the Department of Administrative Services, Division of Finance, rules and procedures.

(b) Policies may provide for payments to a 401(k) program approved by the Utah Retirement System.

(c) Individual awards shall not exceed $4,000 per occurrence and $8,000 in a fiscal year.

(d) All cash incentive awards and bonuses shall be subject to payroll taxes.

(2) Performance Based Incentive Awards.

(a) Cash Incentive Awards

(i) Agencies may grant a cash incentive award to an employee or group of employees who:

(A) demonstrate exceptional effort or accomplishment beyond what is normally expected on the job for a unique event or over a sustained period of time.

(ii) All cash awards must be approved by the agency head or designee. They must be documented and a copy shall be maintained in the agency's individual employee file.

(b) Noncash Incentive Awards

(i) Agency heads may recognize an employee or group of employees with noncash incentive awards.

(ii) Individual noncash incentive awards shall not exceed a value of $50 per occurrence and $200 for each fiscal year.

(iii) Noncash incentive awards may not include cash equivalents such as gift certificates or tickets for admission.

(3) Cost Savings Bonus

(a) An agency may establish a bonus policy to increase productivity, generate savings within the agency, or reward an employee who submits a cost savings proposal.

(i) The agency shall document the cost savings involved.

(b) Amounts awarded are subject to the cost limits of R477-6-5(1)(c). In exceptional circumstances, an award may exceed these limits upon application to DHRM and approval by the Governor.

(4) Market Based Bonuses

Agencies may give a cash bonus to an employee as an incentive to acquire or retain an employee with job skills that are critical to the state and difficult to recruit in the market.

(a) Retention Bonus

An agency may pay a bonus to an employee who has unusually high or unique qualifications that are essential for the agency to retain.

(b) Recruitment or Signing Bonus

An agency may pay a bonus to a qualified job candidate to convince the candidate to work for the state.

(c) Scarce Skills Bonus

An agency may pay a bonus to a qualified job candidate that has the scarce skills required for the job.

(d) Relocation Bonus

An agency may pay a bonus to a current employee who must relocate to accept a position in a different commuting area.

(e) Referral Bonus

An agency may pay a bonus to a current employee who refers a job applicant who is subsequently selected and is successfully employed for at least six months.

R477-6-6. Employee Benefits.

(1) Agencies shall explain all benefits provided by the state to new hires or rehires within five working days of the hire date.

(2) Agency payroll or human resource staff shall submit personnel action forms to the appropriate agency levels within ten days of hire date.

(3) An employee must elect to enroll in the life, health, vision, and dental plans within 60 days of the hire date to avoid having to provide proof of insurability. An employee who does not enroll within 60 days can only enroll during the annual open enrollment period for all state employees. Agencies shall submit the enrollment forms to Group Insurance within three days of the date entered on the enrollment form.

(4) Flex Benefits

(a) A benefits eligible employee may participate in the FLEX benefits program. The annual open enrollment period will be held each November for the following FLEX plan year. Exceptions to this rule are as follows:

(i) A new employee wishing to participate in the FLEX benefits program shall enroll within the first 60 days of employment. Coverage becomes effective on the employment date.

(ii) An employee who has a change in family status such as marriage, divorce, or birth of a child, may enroll or make changes within 60 days of such event. A completed FLEX family status change form, accompanied by proper documentation such as a marriage license, divorce decree, or birth certificate, must be received by the plan administrator within 60 days of the change in family status.

(b) An employee must reenroll each year to participate in the FLEX benefits program.

(c) An employee's designated FLEX payroll deduction shall not be changed during the course of a year unless there is a change in family status.

(d) To be eligible for reimbursement, expenses must be incurred during the plan year.

(e) The claim submission deadline for any plan year shall be 90 days following the end of the calendar year.

(f) An employee terminating, retiring, or changing from eligible to ineligible status during the plan year may either submit claims incurred during employment no later than 90 days following the date of termination, retirement or status change, or elect COBRA for the health care account only.

(5) An employee in a position which normally requires working less than 40 hours per pay period is ineligible for benefits. An employee in a position which normally requires working 40 hours or more per pay period shall be eligible for all benefits, unless the employee is in a position specifically designated as ineligible for benefits. Leave benefits shall be determined on a prorated basis according to actual hours paid in a pay period.

(6) A reemployed veteran under USERRA shall be entitled to the same employee benefits given to other continuously employed eligible employees to include seniority based increased pension and leave accrual.

R477-6-7. Employee Converting from Career Service to Schedule AD, AR, or AS.

(1) A career service employee in a position meeting the criteria for career service exempt Schedule AD, AR, or AS shall have 60 days to elect to convert from career service to career service exempt. As an incentive to convert, an employee shall be provided the following:

(a) a base salary increase of one to three salary steps, as determined by the agency head. An employee at the maximum of the current salary range or on longevity shall receive, in lieu of the salary step adjustment, a one time bonus of 2.75 percent, 5.5 percent or 8.25 percent to be determined by the agency head;

(b) state paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program, Public Employees Health Plan:

(i) Salaries less than $50,000 shall receive $125,000 of term life insurance;

(ii) Salaries between $50,000 and $60,000 shall receive $150,000 of term life insurance;

(iii) Salaries more than $60,000 shall receive $200,000 of term life insurance.

(2) An employee electing to convert to career service exempt after the 60 day election period shall not be eligible for the salary increase, but shall be entitled to apply for the insurance coverage through the Group Insurance Office.

(3) An employee electing not to convert to career service exemption shall retain career service status even though the position shall be designated as Schedule AD, AR or AS. When these career service employees vacate these positions, subsequent appointments shall be career service exempt.

(4) An agency head may reorganize so that a current career service exempt position no longer meets the criteria for exemption. In this case, the employee shall be designated as career service if he had previously earned career service. However, the employee shall not be eligible for the severance package or the life insurance. In this situation, the agency and employee shall make arrangements through the Group Insurance Office to discontinue the coverage.

(5) A career service exempt employee without prior career service status shall remain exempt. When the employee leaves the position, subsequent appointments shall be consistent with R477-4.

(6) Agencies shall communicate to all impacted and future eligible employees the conditions and limitations of this incentive program.

R477-6-8. State Paid Life Insurance.

(1) A benefits eligible career service exempt employee on schedule AA, AB, AD, and AR shall be provided the following benefits if the employee is approved through underwriting:

(a) State paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program Public Employees Health Plan:

(i) Salaries less than $50,000 shall receive $125,000 of term life insurance;

(ii) Salaries between $50,000 and $60,000 shall receive $150,000 of term life insurance;

(iii) Salaries more than $60,000 shall receive $200,000 of term life insurance.

(2) An employee on schedule AC, AK, AM and AS may be provided these benefits at the discretion of the appointing authority.

R477-6-9. Severance Benefit.

(1) A benefits eligible career service exempt employee on schedule AB, AD or AR who is separated from state service through an action initiated by management, to include resignation in lieu of termination, shall receive at the time of severance a benefit equal to:

(a) one week of pay, up to a maximum of 12 weeks, for each year of consecutive exempt service; and

(b) one month of health insurance coverage, up to a maximum of six months, for each year of consecutive exempt service, at the level of coverage the employee has at the time of severance, to be paid in a lump sum payment to the state's health care provider.

(2) A severance benefit shall not be paid to an employee:

(a) whose statutory term has expired without reappointment;

(b) who is retiring from state service; or

(c) who is discharged for cause.

(3) A benefits eligible career service exempt employee on schedule AB, AD or AR who accepts reassignment to a position with a lower salary range, without a break in service, shall receive a severance benefit equal to the difference between the current hourly rate of pay and the new hourly rate of pay multiplied by the number of accrued annual leave, converted sick leave, and excess hours on the date of reassignment.

(4) An employee on schedule AC, AK, AM or AS may be provided these same severance benefits at the discretion of the appointing authority.

R477-6-10. Human Resource Transactions.

The Executive Director, DHRM, shall publicize procedures for processing payroll and human resource transactions actions and documents.

KEY: salaries, employee benefit plans, insurance, personnel management

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	67-19-12.5
	67-19-15.1(4)

R477. Human Resource Management, Administration.
R477-7. Leave.
R477-7-1. Conditions of Leave.

(1) An employee who normally works 40 hours or more per pay period, except those identified as career service exempt in R477-4-10, is eligible for leave benefits. An employee receives leave benefits in proportion to the time paid.

(a) An eligible employee who works 40 or more hours per pay period shall accrue annual and sick leave in proportion to the time paid.

(b) An employee shall use leave in no less than quarter hour increments.

(2) A seasonal, temporary, or part-time employee working less than 40 hours per pay period is not eligible for paid leave.

(3) Accrual rates for sick, holiday and annual leave are determined on the Annual, Sick and Holiday Leave Accrual table available through DHRM.

(4) An employee may not use annual, sick, excess or holiday leave before accrued.

(5) An employee may not use compensatory, annual, converted sick leave used as annual, or excess leave without advance approval by management.

(6) An employee transferring from one agency to another is entitled to transfer all accrued annual, sick, and converted sick leave to the new agency.

(7) An employee on paid leave shall continue to accrue annual and sick leave.

(8) An employee separating from state service shall be paid in a lump sum for all annual leave, excess hours, and converted sick leave. An FLSA nonexempt employee shall also be paid in a lump sum for all compensatory hours. A retiring employee shall be paid for all eligible accrued leave.

(a) An employee may transfer this payout, minus all nondeferred taxes, to a 401(k) or 457 account up to the amount allowed by IRS regulation.

(b) No leave on leave may accrue or be paid on the cashed out leave.

(c) Leave cannot be used or accrued after the last day worked, except for FMLA or other medical reasons, or administrative leave specifically approved by management to be used after the last day worked.

(9) Contributions to benefits may not be paid on cashed out leave, other than FICA tax, except as it applies to converted sick leave in R477-7-5(2) and the Retirement Benefit in R477-7-6.

R477-7-2. Holiday Leave.

(1) The following dates are designated legal holidays:

(a) New Years Day -- January 1

(b) Dr. Martin Luther King Jr. Day -- third Monday of January

(c) Washington and Lincoln Day -- third Monday of February

(d) Memorial Day -- last Monday of May

(e) Independence Day -- July 4

(f) Pioneer Day -- July 24

(g) Labor Day -- first Monday of September

(h) Columbus Day -- second Monday of October

(i) Veterans' Day -- November 11

(j) Thanksgiving Day -- fourth Thursday of November

(k) Christmas Day -- December 25

(l) The Governor may also designate any other day a legal holiday.

(2) If a holiday falls on a Sunday, the following Monday shall be observed as a holiday. If a holiday falls on a Saturday, the preceding Friday shall be observed as a holiday.

(3) If an employee is required to work on an observed holiday, the employee shall receive appropriate holiday leave, or shall receive compensation for the excess hours worked.

(4) The following employees are eligible to receive holiday leave:

(a) A full-time employee shall accrue eight hours of paid holiday leave on holidays.

(b) A part-time career service employee and a partner in a shared position who works 40 hours or more per pay period shall receive holiday leave in proportion to the hours paid in the pay period in which the holiday falls.

(c) An employee working flex time, as defined in R477-8-2, shall receive a maximum of 88 hours of holiday leave in each calendar year. If the holiday falls on a regularly scheduled day off, a flex time employee shall receive an equivalent workday off, not to exceed eight hours, or shall receive compensation for the excess hours at the later date.

(5) An employee receives holiday leave in proportion to the number of hours paid during the pay period in which the holiday falls.

(a) A new hire shall be in a paid status on or before the holiday in order to receive holiday leave.

(b) A separating employee shall be in a paid status on or after the holiday in order to receive holiday leave.

(c) An employee in a leave without pay status shall receive holiday leave in proportion to the time paid in the pay period in which the holiday falls.

(6) The first eight hours of annual leave used by an employee in the calendar leave year shall be the employee's personal preference day.

R477-7-3. Annual Leave.

(1) An employee eligible for annual leave shall accrue leave based on the following years of state service:

(a) zero through five years -- four hours per pay period;

(b) beginning of sixth year through ten years -- five hours per pay period;

(c) beginning of eleventh year through twenty years --six hours per pay period;

(d) beginning of the twenty-first year or more -- seven hours per pay period.

(2) The accrual rate for an employee rehired to a position which receives leave benefits shall be based on all state employment in which the employee was eligible to accrue leave.

(3) An eligible employee may begin to use annual leave after completing the equivalent of two full pay periods of employment.

(4) Agency management shall allow every employee the option to use annual leave each year for at least the amount accrued in the year.

(5) An employee may elect to convert unused annual leave to a 401(k) or 457 deferred compensation program sponsored by the Utah State Retirement Board.

(a) Only hours accrued in excess of 320 hours after the end of the last pay period of the leave year are eligible for conversion.

(b) The election to convert may only be made after the end of the last pay period of the leave year as determined by the Division of Finance.

(c) The conversion shall be in whole hour increments.

(d) An employee may convert up to 20 hours or $250 in value, whichever is less.

(e) The value of the converted leave may not cause the contribution to the 401(k) or 457 account to exceed the maximum authorized by the Internal Revenue Code.

(6) After the conversion in R477-7-3(5), unused accrued annual leave time in excess of 320 hours shall be forfeited at the beginning of the first full pay period of each calendar year.

(7) The maximum annual leave accrual rate shall be granted to a certain employee under the following conditions:

(a) an employee on the Executive Pay Plan, as described in 67-22-2, an employee in schedule AB, and agency deputy

directors and division directors appointed to career service exempt positions.

(b) an employee who has a direct reporting relationship to an elected official, executive director, or deputy director who is schedule A and FLSA exempt.

(c) The maximum accrual rate shall be effective from the day the employee is appointed through the duration of the appointment. Employees in these positions on July 1, 2003, shall have the leave accrual rate adjusted prospectively.

(d) The employee may not be eligible for any transfer of leave from other jurisdictions.

(e) Other provisions of leave shall apply as defined in R477-7-1.

R477-7-4. Sick Leave.

(1) An employee shall accrue sick leave with pay at the rate of four hours each pay period. Sick leave shall accrue without limit.

(2) An employee may begin to use accrued sick leave after completing the equivalent of at least two full pay periods of employment.

(3) Sick leave shall be granted for:

(a) preventive health and dental care, maternity, paternity, and adoption care, or for absence from duty because of illness, injury or temporary disability of the employee, a spouse or dependents living in the employee's home;

(b) FMLA purposes under R477-7-15; or

(c) exceptions for other unique medical situations.

(4) An employee shall arrange for a telephone report to supervisors at the beginning of the scheduled workday the employee is absent due to illness or injury. Management may require reports for serious illnesses or injuries.

(5) Any application for a grant of sick leave to cover an absence that exceeds four successive working days shall be supported by administratively acceptable evidence. If there is reason to believe that an employee is abusing sick leave, a supervisor may require an employee to produce evidence regardless of the number of sick hours used.

(6) Any absence for illness beyond the accrued sick leave credit may continue under the following provisions:

(a) an approved leave without pay status, not to exceed 12 months;

(b) an approved Family Medical Leave Status; or

(c) in an annual or other accrued leave status.

(7) After filing a resignation notice, an employee must support a sick leave request with a doctor's certificate.

(8) An employee separating from state service may not receive compensation for accrued unused sick leave unless retiring.

(a) An employee who is rehired within 12 months of separation to a position that receives sick leave benefits shall have previously accrued unused sick leave credit reinstated.

(b) An employee who retires from state service and is rehired may not reinstate unused sick leave credit.

R477-7-5. Converted Sick Leave.

As an incentive to reduce sick leave abuse, an employee may convert sick leave hours to converted sick leave after the end of the last pay period of the calendar year in which the employee is eligible.

(1) To be eligible, an employee's sick leave account must have accrued a minimum total of 144 hours at the beginning of the first pay period of the calendar year.

(a) At the end of the last pay period of a calendar year in which an employee is eligible, all unused hours accrued that year in excess of 64 shall be converted to converted sick leave. An employee who does not wish to have the sick leave converted shall notify agency management no later than the end of February. The converted sick leave hours will then be returned to the sick leave account.

(b) Upon separation, an eligible employee may convert any unused hours accrued in the current calendar leave year in excess of 64 to converted sick. In the event the employee has the maximum accrued in converted sick these hours will be added to the annual leave account balance.

(c) The maximum hours of converted sick leave an employee may accrue is 320.

(2) Converted sick leave may be used as annual leave, regular sick leave, or as paid health and life insurance at the time of retirement for employees under age 65. If an employee is 65 years of age or older at the time of retirement, converted sick leave may be used to purchase a Medicare supplement.

(a) Payment for health and life insurance is the responsibility of the employing agency.

(b) The purchase rate shall be eight hours of converted sick leave for the state paid portion of the premium for one month's coverage for health and life insurance.

(c) The retiree shall pay the same percentage of the premium as a current employee on the same plan.

R477-7-6. Sick Leave Retirement Benefit.

Upon retirement from active employment, an employee may be offered a retirement benefit program, according to Section 67-19-14(2).

(1) This program is optional for each agency. However, any decision whether or not to participate shall be agency wide and shall be consistent through an entire fiscal year.

(a) If an agency decides to withdraw for the next fiscal year after initially deciding to participate, the agency must notify all employees at least 60 days before the new fiscal year begins.

(b) The employing agency shall provide the same health and life insurance benefits as provided to current employees for five years or until the employee reaches the age eligible for Medicare, whichever comes first.

(i) Health insurance provided shall be the same coverage carried by the employee at the time of retirement; i.e., family, two-party, or single. If the employee has no health coverage in place upon retirement, none shall be offered or provided.

(ii) Life insurance provided shall be the minimum authorized coverage provided for all state employees at the time the employee retires.

(iii) The retiree shall pay the same percentage of the premium as a current employee on the same plan.

(2) Employee participation in any part of this incentive program shall be voluntary, but the decision to participate shall be made at retirement.

(3) An employee may elect to receive a cash payment, or transfer to an approved 401(k) or 457 account, up to 25 percent of his accrued unused sick leave at his current rate of pay.

(4) After the election for cash out is made, 480 hours shall be deducted from the employees remaining sick leave balance.

(5) The employee may use remaining sick leave hours to participate in the following incentive program.

(a) The retiree may purchase PEHP health insurance, or a state approved program, and life insurance coverage for himself until he reaches the age eligible for Medicare.

(i) Health insurance shall be the same coverage carried by the employee at the time of retirement; i.e., family, two-party, or single.

(ii) Life insurance provided shall be the minimum authorized coverage provided for state employees at the time the employee retires.

(iii) The purchase rate shall be eight hours of sick leave or converted sick leave for the state paid portion of one month's premium.

(iv) The employee shall pay the same percentage of the premium as a current employee on the same plan.

(b) After the employee reaches the age eligible for Medicare, he may purchase PEHP Preferred Care health insurance, or a state approved cost equivalent program for a spouse until the spouse reaches the age eligible for Medicare.

(i) The purchase rate shall be eight hours of sick leave or converted sick leave for one month's premium.

(c) When the employee reaches the age eligible for Medicare, he may purchase a high option Medicare supplement policy for himself at the rate of eight hours of sick leave or converted sick leave for one month's premium.

(d) When the spouse reaches the age eligible for Medicare, the employee may purchase a high option Medicare supplement policy for the spouse at the rate of eight hours of sick leave or converted sick leave for one month's premium.

(e) In the event an employee is killed in the line of duty, the employee's spouse shall be eligible to use the employee's available sick leave hours for the purchase of health and dental insurance as provided in R477-7-6.

R477-7-7. Administrative Leave.

(1) Administrative leave may be granted consistent with agency policy for the following reasons:

(a) administrative;

(i) governor approved holiday leave;

(ii) during management decisions that benefit the organization;

(iii) when no work is available due to unavoidable conditions or influences; or

(iv) other reasons consistent with agency policy.

(b) protected;

(i) suspension with pay pending hearing results;

(ii) personal decision making prior to discipline;

(iii) removal from adverse or hostile work environment situations;

(iv) fitness for duty or employee assistance; or

(v) other reasons consistent with agency policy.

(c) reward in lieu of cash;

(i) the agency head or designee may grant paid administrative leave up to eight hours per occurrence;

(ii) administrative leave in excess of eight hours may be granted with written approval by the agency head.

(iii) administrative leave given as a reward in lieu of cash may not exceed 40 hours in a fiscal year.

(d) student educational assistance.

(2) With the exception of administrative leave used as a reward, as described in R477-7(1)(c), the agency head or designee may grant paid administrative leave up to ten consecutive working days per occurrence. Administrative leave in excess of ten consecutive working days per occurrence may be granted by the agency head.

(3) Administrative leave taken must be documented in the employee's leave record.

R477-7-8. Jury Leave.

(1) An employee is entitled to a leave of absence with full pay when, in obedience to a subpoena or direction by proper authority, the employee is required to:

(a) appear as a witness as part of the employee's position for the federal government, the State of Utah, or a political subdivision of the state; or

(b) serve as a witness in a grievance hearing as provided in Section 67-19-31 and Title 67, Chapter 19a; or

(c) serve on a jury.

(2) An employee who is absent in order to litigate in matters unrelated to state employment shall use eligible accrued leave or leave without pay.

(3) An employee choosing to use paid leave while on jury duty shall be entitled to keep juror's fees; otherwise, juror's fees received shall be returned to agency payroll clerks for deposit with the State Treasurer. The fees shall be deposited as a refund of expenditure in the low org. where the salary is recorded.

R477-7-9. Funeral Leave.

An employee may receive a maximum of 24 hours funeral leave per occurrence with pay, at management's discretion, to attend the funeral of a member of the employee's immediate family. Funeral leave may not be charged against accrued sick or annual leave.

(1) The "immediate family" means: wife, husband, children, daughter-in-law, son-in-law, parents, grandchildren, mother-in-law, father-in-law, brother-in-law, sister-in-law, grandparents, step-grandparents, spouse's grandparents, spouse's step-grandparents, step-children, step-parents, brothers and sisters, and step-brothers and step-sisters of the employee.

R477-7-10. Military Leave.

One day of military leave is the equivalent to the employee's normal workday but not to exceed eight hours.

(1) An employee who is a member of the National Guard or Military Reserves is entitled to military leave not to exceed 15 days per calendar year without loss of pay, annual leave or sick leave. An employee shall be on official military orders and may not claim salary for nonworking days spent in military training or for traditional weekend training.

(2) After the first 15 days, officers and employees of the state shall be granted military leave without pay for the period of active service or duty, including travel time, Section 39-3-1.

(a) An employee may use accrued leave while on active duty.

(3) An employee shall give notice of active military service as soon as notified.

(4) Upon separation from active military service under honorable conditions, an employee shall be placed in the original position or one of like seniority, status and pay. The cumulative length of time allowed for reemployment may not exceed five years. An employee is entitled to reemployment rights and benefits including increased pension and leave accrual. An employee entering military leave may elect to have payment for annual leave deferred. In order to be reemployed, an employee shall present evidence of military service and leave without pay status, and:

(a) for service less than 31 days, return at the beginning of the next regularly scheduled work period on the first full day after release from service, taking into account safe travel home plus an eight hour rest period;

(b) for service of more than 31 days but less than 181 days, submit an application for reemployment within 14 days of release from service; or

(c) for service of more than 180 days, submit an application for reemployment within 90 days of release from service.

R477-7-11. Disaster Relief Volunteer Leave.

(1) An employee may be granted an aggregate of 15 working days or 120 work hours in any 12 month period to participate in disaster relief services for the American Red Cross. To request this leave an employee must be a certified disaster relief volunteer and file a written request with the employing agency. The request shall include:

(a) a copy of a written request for the employee's services from an official of the American Red Cross;

(b) the anticipated duration of the absence;

(c) the type of service the employee is to provide for the American Red Cross; and

(d) the nature and location of the disaster where the employee's services will be provided.

R477-7-12. Organ Donor Leave.

An employee who serves as a bone marrow or human organ donor shall be granted paid leave for the donation and recovery.

(1) An employee who donates bone marrow shall be granted up to seven days of paid leave.

(2) An employee who donates a human organ shall be granted up to 30 days of paid leave.

R477-7-13. Leave of Absence Without Pay.

An employee shall apply in writing to agency management for approval of a leave of absence without pay. Approval may be granted for continuous leave for up to 12 months from the last day worked. If unable to return to work within the time period granted, the employee shall be separated from state employment.

(1) Nonmedical Reasons

(a) Leave without pay may be granted only when there is an expectation that the employee will return to work. This section does not apply for military leave.

(b) Agency management may approve leave without pay for an employee even though annual or sick leave balances exist. An employee may take up to ten consecutive working days of leave without pay without affecting the leave accrual rate.

(c) An employee who receives no compensation for a complete pay period shall be responsible for payment of the full premium of state provided benefits.

(d) An employee who returns to work on or before the expiration of leave without pay shall be placed in a position with comparable pay and seniority to the previously held position. The employee shall also be entitled to previously accrued annual and sick leave.

(2) Medical Reasons

(a) An employee who is ineligible for FMLA, Workers Compensation, or Long Term Disability may be granted leave without pay for medical reasons.

(b) Medical leave without pay may be granted for no more than 12 months. Medical leave may be approved if a registered health practitioner certifies that an employee is temporarily disabled.

(c) An employee who is granted this leave shall provide a monthly status update to the employee's supervisor.

R477-7-14. Furlough.

(1) Agency management may furlough employees as a means of saving salary costs in lieu of or in addition to a reduction in force. Furlough plans are subject to the approval of the agency head and the following conditions:

(a) An employee shall accrue annual and sick leave.

(b) Full payment of all fringe benefits shall continue at the agency's expense.

(c) An employee shall return to the current position.

(d) Furlough is applied equitably; e.g., to all persons in a given class, all program staff, or all staff in an organization.

R477-7-15. Family and Medical Leave.

(1) This section, R477-7-15(1), is effective until January 1, 2005. This rule conforms to the federal Family and Medical Leave Act, 29 USC 2601. Employees eligible under this rule shall continue to receive medical insurance benefits provided the employee was entitled to medical insurance benefits prior to the commencement of FMLA leave.

(a) Agency management shall authorize up to 12 weeks of leave each calendar year to employees for any of the following reasons:

(i) birth of a child;

(ii) adoption of a child;

(iii) placement of a foster child;

(iv) a serious health condition of the employee; or

(v) care of a spouse, dependent child, or parent with a serious medical condition.

This paragraph and section, R477-7-15(1), are effective on January 1, 2005. This rule parallels the federal Family and Medical Leave Act, 29 USC 2601. Family and medical leave (FMLA) may be authorized when appropriate. This provision does not authorize FMLA leave in excess of that provided for by federal statutes and regulations.

(1) An employee is entitled to 12 weeks of family and medical leave in a 12 month period.

(a) The amount of FMLA leave available to an employee shall be 12 weeks minus any FMLA leave used in the immediately preceding 12 month period.

(b) Agency management shall approve FMLA leave for any of the following reasons:

(i) birth of a child;

(ii) adoption of a child;

(iii) placement of a foster child;

(iv) a serious health condition of the employee; or

(v) care of a spouse, dependent child, or parent with a serious medical condition.

(c) An employee on FMLA leave shall continue to receive the same health insurance benefits the employee was receiving prior to the commencement of FMLA leave.

(2) To be eligible for family medical leave, the employee must:

(a) be employed by the state for at least 12 months;

(b) be employed by the state for a minimum of 1250 compensable work hours as determined under FMLA during the 12 month period immediately preceding the commencement of leave; and

(c) apply in writing to the agency when the reason for requesting family medical leave changes in the course of a year.

(3) An employee, or an appropriate spokesperson, shall submit a leave request:

(a) thirty days in advance for foreseeable needs; or

(b) as soon as possible in emergencies.

(4) Agency Responsibility

(a) Agency management shall be responsible for:

(i) documenting employee leave requests which qualify as FMLA leave; and

(ii) designating any qualifying leave taken by an employee as FMLA leave. All leave requests which qualify as FMLA leave shall be designated as such and shall be subject to all provisions of this rule; and

(iii) notifying an employee orally or in writing of the designation within two business days, or as soon as a determination can be made that the leave request qualifies as FMLA leave if the agency does not initially have sufficient information to make a determination.

(A) An oral notice must be confirmed in writing no later than the following payday.

(B) If the payday is less than one week after the oral notice, then written notice must be issued by the subsequent payday.

(b) Written notification to an employee shall include the following information:

(i) that the leave will be counted against the employee's annual FMLA entitlement;

(ii) any requirements for the employee to furnish medical certification of a serious health condition and the consequences of failing to do so;

(iii) a statement explaining which types of leave the employee will be required to exhaust before going into a LWOP status;

(iv) the requirement for the employee to make premium payments to maintain health benefits, the arrangements for making such payments, and the possible consequences of failure to make such payments on a timely basis;

(v) the employee's potential liability for payment of health insurance premiums paid by the employer during the employee's unpaid FMLA leave if the employee fails to return to work after

taking FMLA leave;

(vi) any requirement for the employee to present a fitness for duty certificate to be restored to employment; and

(vii) the employee's rights to restoration to the same or an equivalent job upon return from leave.

(c) Agencies may designate FMLA leave after the fact only:

(i) if the reason for leave was previously unknown, provided the reason for leave is made known within two business days after the employee's return to work; or

(ii) the agency has preliminarily designated the leave as FMLA leave and is awaiting medical certification.

(d) Agencies shall allow the employee at least 15 calendar days to provide medical certification if FMLA leave is not foreseeable.

(e) Agencies shall inform Group Insurance that an employee is approved for FMLA leave.

(5) An employee shall be required to use accrued annual and converted sick leave and excess hours prior to the use of leave without pay for the family and medical leave period. An employee shall be required to use accrued sick leave only in situations considered eligible under R477-7-4(3). An employee who takes family and medical leave in a leave without pay status must comply with R477-7-13.

(a) An employee may choose to use compensatory time for an FMLA reason. Any period of leave paid from the employee's accrued compensatory time account may not be counted against the employee's FMLA leave entitlement.

(6) An employee shall be eligible to return to work under R477-7-13.

(a) If an employee has gone into leave without pay status and fails to return to work after FMLA leave has ended, an agency may recover, with certain exceptions, the health insurance premiums paid by the agency on the employee's behalf. An employee is considered to have returned to work if the employee returns for at least 30 calendar days.

(b) Exceptions to this provision include:

(i) an FLSA exempt and schedule AB, AD and AR employee who has been denied restoration upon expiration of their leave time;

(ii) an employee whose circumstances change unexpectedly beyond the employee's control during the leave period preventing the return to work at the end of 12 weeks.

(7) Leave taken for purposes of childbirth, adoption, placement for adoption or foster care shall not be taken intermittently or on a reduced leave schedule unless the employee and employer mutually agree.

(8) Leave required for certified medical reasons may be taken intermittently.

(9) Leave taken for a serious health condition covered under workers' compensation may be counted towards an employee's FMLA entitlement. Use of accrued paid leave shall not be required for FMLA leave at the same time the employee is collecting a workers' compensation benefit.

(10) Medical records created for purposes of FMLA and the Americans with Disabilities Act must be maintained in accordance with confidentiality requirements of R477-2-5(6).

R477-7-16. Workers Compensation Leave.

(1) An employee may use accrued leave benefits to supplement the workers compensation benefit.

(a) The combination of leave benefit and workers compensation benefit shall not exceed the employee's gross salary. Leave benefits shall only be used in increments of one hour in making up any difference.

(b) The use of accrued leave to supplement the worker compensation benefit shall be terminated if:

(i) the employee is declared medically stable by licensed medical authority;

(ii) the workers compensation fund terminates the benefit;

(iii) the employee has been absent from work for one year;

(iv) the employee refuses to accept appropriate employment offered by the state; or

(v) the employee receives Long Term Disability or Social Security Disability benefits.

(c) The employee shall refund to the state any accrued leave paid which exceeds the employee's gross salary for the period for which the benefit was received.

(2) An employee will continue to accrue state paid benefits and leave benefits while receiving a workers compensation time loss benefit for up to one year.

(3) Health insurance benefits shall continue for an employee on leave without pay while receiving workers compensation benefits. The employee is responsible for the payment of the employee share of the premium.

(4) If the employee is able to return to work within one year of the last day worked, the agency shall place the employee in the previously held position or a similar position at a comparable salary range.

(5) If the employee is unable to return to work within 12 months, the employee shall be separated from state employment.

(6) An employee who files a fraudulent workers compensation claim shall be disciplined according to the provisions of R477-11.

R477-7-17. Long Term Disability Leave.

(1) An employee who is determined eligible for the Long Term Disability Program (LTD) shall be granted up to one year of medical leave, if warranted by a medical condition.

(a) The medical leave begins on the last day the employee worked. LTD requires a three month waiting period before benefit payments begin. During this period, an employee may use available sick and converted sick leave. When those balances are exhausted, an employee may use other leave balances available.

(b) An employee determined eligible for Long Term Disability benefits, after the three month waiting period, shall be eligible for health insurance benefits beginning two months after the last day worked. The employee is responsible for the employee share of the premium during the two months following the last day worked. The health insurance benefit shall continue without premium payment for up to 22 months or until eligibility for Medicare or Medicaid, whichever occurs first. After 22 months, the health insurance may be continued with premiums being paid in accordance with LTD policy and practice.

Upon approval of the LTD claim:

(i) Biweekly salary payments that the employee may be receiving shall cease. If the employee received any salary payments after the three month waiting period, the LTD benefit shall be offset by the amount received.

(ii) The employee shall be paid for remaining balances of annual leave, compensatory hours and excess hours in a lump sum payment. This payment shall be made at the time LTD is approved unless the employee requests in writing to receive it upon separation from state employment. No reduction of the LTD payment shall be made to offset this payment. If the employee returns to work prior to one year after the last day worked, the employee has the option of buying back annual leave at the current hourly rate.

(iii) An employee with a converted sick leave balance at the time of LTD eligibility shall have the option to receive a lump sum payout of all or part of the balance or to keep the balance intact to pay for health and life insurance upon retirement. The payout shall be at the rate at the time of LTD eligibility.

(iv) An employee who retires from state government directly from LTD may be eligible for up to five years health

and life insurance as provided in Subsection 67-19-14(2)(b)(ii).

(v) Unused sick leave balance shall remain intact until the employee retires. At retirement, the employee shall be eligible for the cash payout and the purchase of health and life insurance as provided in Subsection 67-19-14(2)(c)(i).

(2) An employee shall continue to accrue service credit for retirement purposes while receiving long term disability benefits.

(3) Conditions for return from leave without pay shall include:

(a) If an employee is able to return to work within one year of the last day worked, the agency shall place the employee in the previously held position or similar position in a comparable salary range provided the employee is able to perform the essential functions of the job with or without a reasonable accommodation.

(b) If an employee is unable to perform the essential functions of the position because of a permanent disability that qualifies as a disability under the ADA, the agency shall place the employee in the best available, vacant position for which the employee qualifies and is able to perform the essential functions of the position with or without reasonable accommodation.

(c) If an employee is unable to return to work within one year after the last day worked, the employee shall be separated from state employment.

(4) An employee who files a fraudulent long term disability claim shall be disciplined according to the provisions of R477-11.

R477-7-18. Leave Bank.

With the approval of the agency head, agencies may establish a leave bank program as follows:

(1) Only annual leave, excess hours, compensatory time earned by an FLSA nonexempt employee, and converted sick leave hours may be donated to a leave bank.

(2) Only employees of agencies with approved leave bank programs may donate leave hours to another agency with a leave bank program, if mutually agreed on by both agencies.

(3) An employee may not receive donated leave until all individually accrued leave is used.

(4) Leave shall be accrued if an employee is on sick leave donated from an approved leave bank program.

R477-7-19. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to the provisions of this rule consistent with R477-2-3(1).

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63-13-2
67-19-6
67-19-12.9
67-19-14.5

R477. Human Resource Management, Administration.
R477-8. Working Conditions.
R477-8-1. Agency Policies and Exemptions.

(1) Each agency shall write its own policies for work schedules, overtime, leave, and other working conditions consistent with these rules.

(2) The Executive Director, DHRM, may authorize exceptions to this rule, consistent with R477-2-2(1).

R477-8-2. Work Period.

(1) Tasks shall be assigned and wages paid in return for work completed. During the state's standard work week, each employee is responsible for fulfilling the essential functions of his job.

(a) The state's standard work week begins Saturday and ends the following Friday.

(b) State offices are typically open Monday through Friday from 8 a.m. to 5 p.m. Agencies may adopt extended business hours to enhance service to the public, consistent with overtime provisions of R477-8-6.

(c) An employee may negotiate for flexible starting and quitting times with the immediate supervisor as long as scheduling is consistent with overtime provisions of the rules R477-8-6.

(d) Agencies may implement alternative work schedules approved by the Director.

(e) An employee is required to be at work on time. An employee who is late, regardless of the reason including inclement weather, shall make up the lost time by using accrued leave, leave without pay or, with management approval, adjust their work schedule.

(f) An employee must work in increments of 15 minutes or more to receive pay for hours worked and overtime hours worked. This rule incorporates by reference 29 CFR 785.48 for rounding practices when calculating time worked.

R477-8-3. Bus Passes.

Agencies may participate in the purchase of bus passes for employees.

R477-8-4. Telecommuting.

(1) Telecommuting is an agency option, not a universal employee benefit. Agencies utilizing a telecommuting program shall:

(a) establish a written policy governing telecommuting;

(b) enter into a written contract with each telecommuting employee to specify conditions, such as use of state or personal equipment, and results such as identifiable benefits to the state and how customer needs are being met; and

(c) not allow telecommuting employees to violate overtime rules.

R477-8-5. Lunch and Break Periods.

(1) Each full-time work day shall include a minimum of 30 minutes noncompensated lunch period. This lunch period is normally scheduled between 11:00 a.m. and 1:00 p.m. for a regular day shift.

(2) An employee may take a 15 minute compensated break period for every four hours worked.

(3) Lunch and break periods shall not be adjusted or accumulated to accommodate a shorter work day. Any exceptions must be approved in writing by the Executive Director, DHRM.

R477-8-6. Overtime.

The state's policy for overtime is adopted and incorporated from the Fair Labor Standards Act, 29 CFR Parts 500 to 899(2002) and Utah Code Section 67-19-6.7.

(1) Management may direct an employee to work overtime. Each agency shall develop internal rules and procedures to ensure overtime usage is efficient and economical. These policies and procedures shall include:

(a) prior supervisory approval for all overtime worked;

(b) recordkeeping guidelines for all overtime worked;

(c) verification that there are sufficient funds in the budget to compensate for overtime worked.

(2) Overtime compensation standards are identified for each job title in HRE as either FLSA nonexempt, or FLSA exempt.

(a) An employee may appeal the FLSA designation to the agency human resource office and DHRM concurrently. Further appeals must be filed directly with the United States Department of Labor, Wage and Hour Division. The provisions of Sections 67-19-31 and 67-19a-301 and Title 63, Chapter 46b shall not apply for FLSA appeals purposes.

(3) An FLSA nonexempt employee may not work more than 40 hours a week without management approval. Overtime shall accrue when the employee actually works more than 40 hours a week. Leave and holiday time taken within the work period shall not count as hours worked when calculating overtime accrual. Hours worked over two or more weeks shall not be averaged with the exception of certain types of law enforcement, fire protection, and correctional employees.

(a) An FLSA nonexempt employee shall sign a prior overtime agreement authorizing management to compensate the employee for overtime worked by actual payment or time off at time and one half.

(b) An FLSA nonexempt employee may receive compensatory time for overtime up to a maximum of 80 hours. Only with prior approval of the Executive Director, DHRM, may compensatory time accrue up to 240 hours for regular employees or up to 480 hours for peace or correctional officers, emergency or seasonal employees. Once an employee reaches the maximum, additional overtime shall be paid on the payday for the period in which it was earned.

(4) An FLSA exempt employee may not work more than 80 hours in a pay period without management approval. Compensatory time shall accrue when the employee actually works more than 80 hours in a work period. Leave and holiday time taken within the work period may not count as hours worked when calculating compensatory time. Each agency shall compensate an FLSA exempt employee who works overtime by granting time off. For each hour of overtime worked, an FLSA exempt employee shall accrue an hour of compensatory time. Compensatory hours earned in excess of a base of 80 shall be paid down to 80.

(a) Agencies shall establish in written policy a uniform overtime year and communicate it to employees. If an agency fails to establish a uniform overtime year, the Executive Director, DHRM, and the Director of Finance, Department of Administrative Services, will determine the date for the agency at the end of one of the following pay periods: Five, Ten, Fifteen, Twenty, or the last pay period of the calendar year.

(b) Any compensatory time earned by an FLSA exempt employee is not an entitlement, a benefit, nor a vested right.

(c) Any compensatory time earned by an FLSA exempt employee shall lapse upon occurrence of any one of the following events: when an employee transfers to another agency, terminates, retires, or otherwise does not return to work before the end of the overtime year.

(i) If an FLSA exempt employee's status changes to nonexempt, that employee's compensatory time earned while in exempt status shall lapse if not used by the end of the current overtime year.

(d) The agency head may approve overtime for career service exempt deputy and division directors, but overtime shall not be compensated with actual payment.

(5) Law enforcement, correctional and fire protection

employees

(a) To be considered for overtime compensation under this rule, a law enforcement or correctional officer must meet the following criteria:

(i) be a uniformed or plainclothes sworn officer;

(ii) be empowered by statute or local ordinance to enforce laws designed to maintain public peace and order, to protect life and property from accident or willful injury, and to prevent and detect crimes;

(iii) have the power to arrest;

(iv) be POST certified or scheduled for POST training; and

(v) perform over 80 percent law enforcement duties.

(b) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to law enforcement or correctional officers designated FLSA nonexempt and covered under this rule.

(i) 171 hours in a work period of 28 consecutive days; or

(ii) 86 hours in a work period of 14 consecutive days.

(c) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to fire protection employees.

(i) 212 hours in a work period of 28 consecutive days; or

(ii) 106 hours in a work period of 14 consecutive days.

(d) Agencies may designate a lesser threshold in a 14 day or 28 day consecutive work period as long as it conforms to the following:

(i) the Fair Labor Standards Act, Section 207(k);

(ii) 29 CFR 553.230;

(iii) the state's payroll period;

(iv) the approval of the Executive Director, DHRM.

(6) Compensatory Time

(a) Agency management shall arrange for an employee's use of compensatory time as soon as possible without unduly disrupting agency operations or endangering public health, safety or property.

(b) Compensatory time balances for an FLSA nonexempt employee shall be paid down to zero when transferring from one agency to a different agency, or when promoted, reclassified, reassigned, or transferred to an FLSA exempt position. The pay down for unused compensatory time balances shall be based on the employee's hourly rate of pay in the old position.

(7) Time Reporting

(a) An FLSA nonexempt employee must complete and sign a state approved biweekly time sheet. Time sheets developed by the agency shall have the same elements of the state approved time sheet and be approved by the Department of Administrative Services, Division of Finance.

(b) An FLSA exempt employee who works more than 80 hours in a work period must record the total hours worked and the compensatory time used on a biweekly time sheet. All hours must be recorded in order to claim overtime. Completion of the time sheet is at agency discretion when no overtime is worked during the work period.

(8) Hours Worked: An FLSA nonexempt employee shall be compensated for all hours worked. An employee who works unauthorized overtime may be subject to disciplinary action.

(a) All time that an FLSA nonexempt employee is required to wait for an assignment while on duty, before reporting to duty, or before performing activities is counted towards hours worked.

(b) Time spent waiting after being relieved from duty is not counted as hours worked if one or more of the following conditions apply:

(i) the employee arrives voluntarily before their scheduled shift and waits before starting duties;

(ii) the employee is completely relieved from duty and allowed to leave the job;

(iii) the employee is relieved until a definite specified time;

(iv) the relief period is long enough for the employee to use as the employee sees fit.

(c) On-call time: An employee required by agency management to be available for on-call work shall be compensated for on-call time at a rate of one hour for every 12 hours the employee is on-call.

(i) Time is considered "on-call time" when the employee has freedom of movement in personal matters as long as the employee is available for call to duty.

(ii) An employee must be directed by his supervisor, either verbally or in writing, that he is on call for a specified time period. Carrying a beeper or cell phone shall not constitute on-call time without a specific directive from a supervisor.

(iii) The employee shall record the hours spent in on-call status on his time sheet in order to be paid.

(d) Stand-by time: An employee restricted to "stand-by" at a specified location ready for work must be paid full-time or overtime, as appropriate. An employee must be paid for stand-by time if required to stand by the post ready for duty, even during lunch periods, equipment breakdowns, or other temporary work shutdowns.

(e) The meal periods of guards, police, and other public safety or correctional officers and firefighters who are on duty more than 24 consecutive hours must be counted as working time, unless an express agreement excludes the time.

(f) Commuting and Travel Time:

(i) Normal commuting time from home to work and back shall not count towards hours worked.

(ii) Time an employee spends traveling from one job site to another during the normal work schedule shall count towards hours worked.

(iii) Time an employee spends traveling on a special one day assignment shall count towards hours worked except meal time and ordinary home to work travel.

(iv) Travel that keeps an employee away from home overnight does not count towards hours worked if it is time spent outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

(v) Travel as a passenger counts toward hours worked if it is time spent during regular working hours. This applies to nonworking days, as well as regular working days. However, regular meal period time is not counted.

(g) Excess Hours: An employee may use excess hours the same way as annual leave.

(i) Agency management shall approve excess hours before the work is performed.

(ii) Agency management may deny the use of any leave time, other than holiday leave, that results in an employee accruing excess hours.

(iii) An employee on schedule AB may not accumulate more than 80 excess hours.

(iv) Agency management may pay out excess hours under one of the following:

(A) paid off automatically in the same pay period accrued;

(B) all hours accrued above 80; or

(C) an employee on schedule AB shall only be paid for excess hours at separation.

R477-8-7. Dual State Employment.

An employee who has more than one position within state government, regardless of schedule is considered to be in a dual employment situation. The following conditions apply to dual employment status.

(1) An employee may work in up to four different positions in state government.

(2) An employee's benefit status for any secondary position(s), regardless of schedule of any of the positions, shall be the same as the primary position.

(3) An employee's FLSA status (exempt or nonexempt) for

any secondary position(s) shall be the same as the primary position.

(4) Leave accrual shall be based on all hours worked in all positions and may not exceed the maximum amount allowed in the primary position.

(5) As a condition of dual employment, an employee in dual employment status is prohibited from accruing excess hours in either the primary or secondary positions. All excess hours earned shall be paid at straight time in the pay period in which the excess hours are earned.

(6) As a condition of dual employment, the Overtime or Comp selection shall be as overtime paid regardless of FLSA status. An employee may not accrue comp hours while in dual employment status.

(7) Overtime shall be calculated at straight time or time and one half depending on the FLSA status of the primary position. Time and a half overtime rates shall be calculated based on the weighted average rate of the multiple positions. Refer to Division of Finance's payroll policies, dual employment section.

(8) The Accepting Terms of Dual Employment form shall be completed, signed by the employee and supervisor, and placed in the employee's personnel file with a copy sent to the Division of Finance.

(9) Secondary positions may not interfere with the efficient performance of the employee's primary position or create a conflict of interest. An employee in dual employment status shall comply with conditions outlined in R477-9-2(1).

R477-8-8. Reasonable Accommodation.

Reasonable accommodation for qualified individuals with disabilities may be a factor in any employment action. Before notifying an employee of denial of reasonable accommodation, the agency shall consult with the Division of Risk Management.

R477-8-9. Fitness For Duty Evaluations.

Fitness for duty medical evaluations may be performed under any of the following circumstances:

(1) return to work from injury or illness;

(2) when management determines that there is a direct threat to the health or safety of self or others;

(3) in conjunction with corrective action, performance or conduct issues, or discipline;

(4) when a fitness for duty evaluation is a bona fide occupational qualification for selection, retention, or promotion.

R477-8-10. Temporary Transitional Assignment.

Temporary transitional assignments may be part of any of the following:

(1) return to work from injury or illness;

(2) when management determines that there is a direct threat to the health or safety of self or others;

(3) in conjunction with corrective action, performance or conduct issues, or discipline;

(4) where there is a bona fide occupational qualification for retention in a position;

(5) as a temporary measure while an employee is being evaluated to determine if reasonable accommodation is appropriate.

R477-8-11. Change in Work Location.

(1) A change in work location shall not be permitted if this requires the employee to commute or relocate 50 miles or more, one way, beyond his current one way commute, unless:

(a) the policy is communicated to the employee at employment;

(b) the agency shall either pay to move the employee consistent with R25-6-8 and Department of Administrative Services, Division of Finance Policy 05-04.03, or reimburse commuting expenses up to the cost of a move.

KEY: breaks, telecommuting, overtime, dual employment
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R477. Human Resource Management, Administration.
R477-9. Employee Conduct.
R477-9-1. Standards of Conduct.

An employee shall comply with the standards of conduct established in these rules and the policies and rules established by agency management.

(1) Employees shall apply themselves to and shall fulfill their assigned duties during the full-time for which they are compensated.

(a) An employee shall:

(i) comply with the standards established in the individual performance plans;

(ii) maintain an acceptable level of performance and conduct on all other verbal and written job expectations;

(iii) report conditions and circumstances, including controlled substances or alcohol impairment, that may prevent the employee from performing their job effectively and safely;

(iv) inform the supervisor of any unclear instructions or procedures.

(2) An employee shall make prudent and frugal use of state funds, equipment, buildings, and supplies.

(3) An employee who reports for duty or attempts to perform the duties of the position while under the influence of alcohol or nonprescribed controlled substances shall be subject to corrective action or discipline in accordance with R477-10-2, R477-11 and R477-14.

(a) The agency may decline to defend and indemnify an employee found violating this rule, in accordance with Section 63-30-36 (c)(ii) of the Utah Governmental Immunity Act.

(4) An employee shall not drive a state vehicle, or any other vehicle, on state time while under the influence of alcohol or controlled substances.

(a) An employee who violates this rule shall be subject to corrective action or discipline pursuant to R477-10-2, R477-11 and R477-14.

(b) The agency may decline to defend or indemnify an employee who violates this rule, according to Section 63-30-36(3)(c)(i) of the Utah Governmental Immunity Act.

R477-9-2. Outside Employment.

(1) State employment shall be the principal vocation for a full-time employee governed by these rules. An employee may engage in outside employment under the following conditions:

(a) Outside employment must not interfere with an employee's efficient performance in his state position.

(b) Outside employment must not conflict with the interests of the agency or the State of Utah.

(c) Outside employment must not give reason for criticism or suspicion of conflicting interests or duties.

(d) An employee shall notify agency management in writing if the outside employment has the potential or appears to conflict with Title 67, Chapter 16, Employee Ethics Act.

(e) Agency management may deny an employee permission to engage in outside employment, or to receive payment, if the outside activity is determined to cause a real or potential conflict of interest.

(i) An employee may grieve this decision.

(ii) Failure to notify the employer and to gain approval for outside employment is grounds for disciplinary action if the secondary employment is found to be a conflict of interest.

R477-9-3. Conflict of Interest.

(1) An employee may receive honoraria or paid expenses for activities outside of state employment under the following conditions:

(a) Outside activities must not interfere with the employee's efficient performance in his state position.

(b) Outside activities must not conflict with the interests of the agency or the State of Utah.

(c) Outside activities must not give reasons for criticism or suspicion of conflicting interests or duties.

(2) An employee shall not use his state position or any influence, power, authority or confidential information received in that position, or state time, equipment, property, or supplies for private gain.

(3) An employee shall not receive outside compensation for performing state duties, except for the following:

(a) awards for meritorious public contribution;

(b) honoraria or expenses paid for papers, speeches, or appearances on an employee's own time with the approval of agency management, which are not compensated by the state or prohibited by rule;

(c) usual social amenities, ceremonial gifts, or nonsubstantial advertising gifts.

(4) An employee shall declare a potential conflict of interest when required to do or decide something that could be interpreted as a conflict of interest. Agency management shall then excuse the employee from making decisions or taking actions that may cause a conflict of interest.

R477-9-4. Political Activity.

A state career service employee may voluntarily participate in political activity according to the provisions in this rule or other federal laws. The following rules apply to a career service employee in any salary range and position.

(1) Any state career service employee elected to any partisan or full-time nonpartisan political office shall be granted a leave of absence without pay while being monetarily compensated for service in political office. An employee shall not receive annual leave while serving in a political office.

(2) During work time, no career service employee may engage in any political activity. No person shall solicit political contributions from employees of the executive branch during hours of employment. However, a state employee may voluntarily contribute to any party or any candidate.

(3) Decisions regarding employment, promotion, demotion or dismissal or any other human resource actions shall not be based on partisan political activity.

(4) Regardless of other provisions in these rules, no member of the Utah State Highway Patrol may use official authority or influence to interfere with an election or to affect election results. No person may induce or attempt to induce any member of the Utah State Highway Patrol to participate in any prohibited activity.

(5) This rule shall not apply to an employee who is restricted or prevented from engaging in political activity through the provisions of the federal Hatch Act. To determine whether an employee shall adhere to the federal Hatch Act, an employee may contact DHRM or the employing agency's human resource office for guidelines.

(6) Violations of law governing political activity shall be reported in writing to the Executive Director, DHRM, who shall investigate the validity of any allegation and assess the extent to which any activity was knowingly and willfully conducted in violation of law.

R477-9-5. Employee Indebtedness to the State.

(1) An employee indebted to the state because of an action or performance in official duties may have a portion of pay that exceeds the minimum federal wage withheld. Overtime pay shall not be withheld.

(a) The following three conditions must be met before withholding of pay may occur:

(i) The debt must be a legitimately owed amount which can be validated through physical documentation or other evidence.

(ii) The employee must know about and, in most cases, acknowledge the debt. As much as possible, the employee

should provide written authorization to withhold the pay.

(iii) An employee must be notified of this rule which allows the state to withhold pay.

(b) An employee separating from state service will have pay withheld from the last paycheck.

(c) An employee going on leave without pay for more than two pay periods may have pay withheld from their last paycheck.

(d) The state may withhold an employee's pay to satisfy the following specific obligations:

(i) travel advances where travel and reimbursement for the travel has already occurred;

(ii) state credit card obligations where the state's share of the obligation has been reimbursed to the employee but not paid to the credit card company by the employee;

(iii) evidence that the employee negligently caused loss or damage of state property;

(iv) payroll advance obligations that are signed by the employee and that the Division of Finance authorizes;

(v) misappropriation of state assets for unauthorized personal use or for personal financial gain. This includes reparation for employee theft of state property or use of state property for personal financial gain or benefit;

(vi) overpayment of pay determined by evidence that an employee did not work the hours for which they received pay or was not eligible for the benefits received and paid for by the state;

(vii) excessive reimbursement of funds from flexible reimbursement accounts;

(viii) other obligations that satisfy the requirements of R477-9-4(1) above.

(2) This rule does not apply to state employee obligations to other state agencies where the obligation was not caused by their actions or performance as an employee.

R477-9-6. Acceptable Use of Information Technology Resources.

Information technology resources are provided to a state employee to assist in the performance of assigned tasks and in the efficient day to day operations of state government.

(1) An employee shall use assigned information technology resources in compliance with R365-7, Acceptable Use of Information Technology Resources.

(2) An employee who violates the Acceptable Use of Information Technology Resources policy may be disciplined according to R477-11.

R477-9-7. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to the provisions of this rule, consistent with R477-2-2(1).

KEY: conflict of interest, government ethics, Hatch Act, personnel management

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R477. Human Resource Management, Administration.
R477-11. Discipline.
R477-11-1. Disciplinary Action.

(1) Agency management may discipline any employee for any of the following causes or reasons:

(a) noncompliance with these rules, agency or other applicable policies, including but not limited to safety policies, agency professional standards and workplace policies;

(b) work performance that is inefficient or incompetent;

(c) failure to maintain skills and adequate performance levels;

(d) insubordination or disloyalty to the orders of a superior;

(e) misfeasance, malfeasance, nonfeasance or failure to advance the good of the public service;

(f) any incident involving intimidation, physical harm, or threats of physical harm against co-workers, management, or the public;

(g) no longer meets the requirements of the position.

(2) All disciplinary actions of career service employees shall be governed by principles of due process and Title 67, Chapter 19a. The disciplinary process shall include all of the following, except as provided under Subsection 67-19-18(4):

(a) The agency representative notifies the employee in writing of the proposed discipline and the underlying reasons supporting the intended action.

(b) The employee's reply must be received within five working days in order to have the agency representative consider the reply before discipline is imposed.

(c) If an employee waives the right to respond or does not reply within the time frame established by the agency representative or within five days, whichever is longer, discipline may be imposed in accordance with these rules.

(3) After a career service employee has been informed of the reasons for the proposed discipline and has been given an opportunity to respond and be responded to, the agency representative may discipline that employee, or any career service exempt employee not subject to the same procedural rights, by imposing one or more of the following:

(a) written reprimand;

(b) suspension without pay up to 30 calendar days per incident requiring discipline;

(c) demotion of any employee through one of the following methods:

(i) An employee may be moved from a position in one job to a position in another job having a lower maximum salary range and may receive a reduction in pay.

(ii) A demotion within the employee's current pay range may be accomplished by lowering the employee's salary rate back on the range, as determined by the agency head or designee.

(d) dismissal.

An agency head shall dismiss or demote a career service employee only in accordance with the provisions of Subsection 67-19-18(5) and R477-11-2.

(4) If agency management determines that a career service employee endangers or threatens the peace and safety of others or poses a grave threat to the public service or is charged with aggravated or repeated misconduct, the agency may impose the following actions, as provided by subsection 67-19-18-(4), pending an investigation and determination of facts:

(a) paid administrative leave; or

(b) temporary reassignment to another position or work location at the same rate of pay.

(5) At the time disciplinary action is imposed, the employee shall be notified in writing of the discipline, the reasons for the discipline, the effective date and length of the discipline.

(6) Disciplinary actions are subject to the grievance and appeals procedure as provided by law for career service employees only. The employee and the agency representative may agree in writing to waive or extend any grievance step, or the time limits specified for any grievance step.

R477-11-2. Dismissal or Demotion.

An employee may be dismissed or demoted for cause as explained under R477-10-2 and R477-11-1, and through the process outlined in this rule.

(1) An agency head or appointing officer may dismiss or demote a career service exempt employee without right of appeal.

(2) No employee shall be dismissed or demoted from a career service position unless the agency head or designee has observed the Grievance Procedure Rules and law cited in R137-1-13 and Title 67, Chapter 19a, and the following procedures:

(a) The agency head or designee shall notify the employee in writing of the specific reasons for the proposed dismissal or demotion.

(b) The employee shall have up to five working days to reply. The employee must reply within five working days for the agency head or designee to consider the reply before discipline is imposed.

(c) The employee shall have an opportunity to be heard by the agency head or designee. The hearing before the department head or designee shall be strictly limited to the specific reasons raised in the notice of intent to demote or dismiss.

(i) At the hearing the employee may present, either in person, in writing, or with a representative, comments or reasons as to why the proposed disciplinary action should not be taken. The agency head or designee is not required to receive or allow other witnesses on behalf of the employee.

(ii) The employee may present documents, affidavits or other written materials at the hearing. However, the employee is not entitled to present or discover documents within the possession or control of the department or agency that are private, protected or controlled under Chapter 63-2, the Governmental Access and Records Management Act.

(d) Following the hearing, the employee may be dismissed or demoted if the agency head finds adequate cause or reason.

(e) The employee shall be notified in writing of the agency head's decision. Specific reasons shall be provided if the decision is a demotion or dismissal.

(3) Agency management may suspend an employee with pay pending the administrative appeal to the agency head.

R477-11-3. Discretionary Factors.

(1) When deciding the specific type and severity of discipline, the agency head or representative may consider the following factors:

(a) consistent application of rules and standards;

(b) prior knowledge of rules and standards;

(c) the severity of the infraction;

(d) the repeated nature of violations;

(e) prior disciplinary/corrective actions;

(f) previous oral warnings, written warnings and discussions;

(g) the employee's past work record;

(h) the effect on agency operations;

(i) the potential of the violations for causing damage to persons or property.

KEY: discipline of employees, dismissal of employees, grievances, government hearings

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R477. Human Resource Management, Administration.
R477-12. Separations.
R477-12-1. Resignation.

A career service employee may resign by giving written or verbal notice to the immediate supervisor or an appropriate representative of management in the work unit.

(1) Agency management may accept an employee's resignation without prejudice when the resignation is received at least ten working days before its effective date.

(2) After submitting a resignation, an employee may withdraw it on the next working day by notifying the immediate supervisor or an appropriate representative of management in the work unit.

(a) After the close of the next working day following submission, withdrawal of a resignation may occur only with the consent of agency management.

(b) If the resignation withdrawal notice is verbal, the employee shall submit a written notification within 24 hours of the verbal notice.

R477-12-2. Abandonment of Position.

An employee who is absent from work for three consecutive working days and is capable of providing proper notification to the supervisor, but does not, shall be considered to have abandoned his position.

(1) An employee who has abandoned his position may be separated from state employment. Management shall inform the employee of the action in writing.

(a) The employee shall have the right to appeal to the agency head within five working days of receipt or delivery of the notice of abandonment to the last known address.

(b) If the separation is appealed, management may not be required to prove intent to abandon the position.

R477-12-3. Reduction in Force.

Reductions in force shall be required when there are inadequate funds, a change of workload, or lack of work. Reductions in force shall be governed by DHRM business practices, standards and the following rules:

(1) When staff will be reduced in one or more categories of work, agency management shall develop a work force adjustment plan (WFAP). A career service employee shall only be given formal written notification of separation after a WFAP has been reviewed and approved by the Executive Director, DHRM, or designee. The following items shall be considered in developing the work force adjustment plan:

(a) the categories of work to be eliminated, including positions impacted through bumping, as determined by management;

(b) a decision by agency management allowing or disallowing bumping;

(c) specifications of measures taken to facilitate the placement of affected employees through normal attrition, retirement, reassignment, relocation, and movement to vacant positions for which the employee qualifies;

(d) a list of all affected employees showing the retention points for each employee.

(2) Eligibility for RIF.

(a) Only career service employees who have been identified in an approved WFAP and given an opportunity for a hearing with the agency head may be RIF'd.

(b) An employee covered by USERRA and in a leave without pay status must be identified, assigned retention points, and notified of the RIF of the previous position in the same manner as a career service employee.

(3) Retention points shall be calculated for all affected employees within a category of work as follows:

(a) Seniority shall be determined by the length of total state career service, which commenced in a competitive career service position for which the probationary period was successfully completed.

(i) For part-time work, length of service shall be determined in proportion to hours actually worked.

(ii) Exempt service time subsequent to attaining career service tenure with no break in service shall also be counted for purposes of seniority.

(iii) In the event of ties in retention points, the amount of time employed in the affected agency or department serves as the tie breaker.

(b) Length of state service shall be measured in years and additional days shown as a fraction of a year.

(c) Time spent in a leave without pay status for service in the uniformed services covered under USERRA shall be counted for purposes of seniority.

(d) Any time spent in leave without pay status, to include worker's compensation leave, may not be counted for purposes of seniority.

(e) An employee within a category of work, including employees covered under USERRA in a leave without pay status, shall be assigned a job proficiency rating. The job proficiency rating shall be an average of the last three annual performance evaluation ratings as described in R477-10-1(1)(e). If employees have had fewer than three annual performance evaluations, the proficiency ratings shall be an average of all ratings received as of that time.

(f) The numeric values of each employee's job proficiency rating and that employee's actual length of service shall be added together to produce the retention points.

(g) Retention points shall be calculated for an employee covered under USERRA and in a leave without pay status in the same manner as for current employees in the affected class. If there are no performance evaluation ratings for an employee covered under USERRA, no proficiency rating shall be included in the retention points.

(4) The order of separation shall be:

(a) career service exempt employees;

(b) probationary employees;

(c) career service employees in the order of their retention points with the lowest points are released first. In the event of ties in retention points, the amount of seniority in the affected agency serves as the tie breaker.

(5) An employee, including one covered under USERRA in a leave without pay status, who is separated due to a reduction in force shall be given formal written notification of separation, allowing for a minimum of 20 working days prior to the effective date of the RIF.

(6) Appeals.

(a) An employee notified of separation due to a reduction in force may appeal to the agency head for an administrative review by submitting a written notice of appeal within 20 working days after the receipt of written notification of separation.

(b) The employee may appeal the decision of the agency head according to the appeals procedure of the Career Service Review Board.

(7) Reappointment of RIF'd individual.

(a) A RIF'd individual is eligible for reappointment into a half time or greater career service position for which he qualifies in a salary range comparable to or less than the last career service position held, for a period of one year following the date of separation. R477-4-4 applies for selection of individuals from the reappointment register.

(i) The Executive Director, DHRM, shall maintain a reappointment register and shall make the final determination on whether an eligible RIF'd individual meets the job requirements for position vacancies.

(ii) A RIF'd individual shall remain on the state reappointment register for twelve months from the date of

separation, unless reappointed sooner.

(b) During a statewide mandated freeze on hiring wherein the Governor disallows increases in each agency's FTEs, eligibility for the reappointment register shall be extended for the entire length of time covered by a freeze.

(c) When determining comparable salary ranges in cases of RIF eligibility, a comparison of the previous to the new salary range maximum step is required.

(i) The previous salary range shall be considered comparable if the maximum step is equal to or greater than the maximum step of the new salary range.

(ii) If the maximum step of the job or position previously held by the RIF'd individual has moved upward, the RIF'd individual shall be eligible to exercise RIF rights for vacancies with that job or position as long as the duties remain essentially the same as when the RIF'd individual held the job or position.

(d) A RIF'd individual who is reappointed to a career service position shall not be required to serve a probationary period. The RIF'd individual shall enjoy all the rights and privileges of a regular career service employee.

(e) At agency discretion, an individual reappointed from a reappointment register may buy back part or all accumulated annual and converted sick leave that was cashed out when RIF'd.

(8) Appeal rights of RIF'd individual. An individual whose name is on the reappointment register as a result of a reduction in force may use the grievance procedure regarding their reappointment rights.

(9) A career service employee in an exempt position. Any career service employee accepting an exempt position without a break in service, who is later not retained by the appointing officer, unless discharged for cause as provided for by these rules, shall be placed on a reappointment register.

(a) The Executive Director, DHRM, shall maintain a reappointment register for this purpose. An individual on this register shall:

(i) be appointed to any half time or greater career service position for which the individual qualifies in a pay range comparable to the individual's last position in the career service, provided an opening exists; or

(ii) be appointed to any lesser career service position for which the individual qualifies, pending the opening of a position at the last career service salary range held.

(b) The Executive Director, DHRM, shall make the final determination on whether an eligible individual meets the job requirements for position vacancies.

(c) The individual shall declare a desire to remain on the reappointment register upon inquiry by DHRM.

R477-12-4. Exceptions.

The Executive Director, DHRM, may authorize exceptions to provisions of this rule consistent with R477-2-2(1).

KEY: administrative procedures, employees' rights, grievances, retirement

July 2, 2004	**67-19-6**
Notice of Continuation June 11, 2002	**69-19-17**
	69-19-18

R527. Human Services, Recovery Services.
R527-475. State Tax Refund Intercept.
R527-475-1. State Tax Refund Intercept.

1. Pursuant to Section 59-10-529(1), the Office of Recovery Services/Child Support Services (ORS/CSS) may intercept a state tax refund to recover delinquent child support. For a state tax refund to be intercepted, there must be an administrative or judicial judgment with a balance owing. An installment of child support is considered a judgment for purposes of Section 59-10-529 on and after the date it becomes due as provided in Section 78-45-9.3.

2. State tax refunds intercepted will first be applied to current support, second to Non-IV-A arrearages, and third to satisfy obligations owed to the state and collected by ORS/CSS.

3. ORS/CSS shall mail prior written notice to the obligor who owes past-due support and the unobligated spouse that the state tax refund may be intercepted. The notice shall advise the unobligated spouse of his/her right to receive a portion of the tax refund if the unobligated spouse has earnings and files jointly with the obligor. If the unobligated spouse does not want his/her share of the tax refund to be applied to the obligated spouse's child support debt, the unobligated spouse shall make a written request and submit a copy of the tax return and W-2's to ORS/CSS at any time after prior notice, but in no case later than 25 days after the date ORS/CSS intercepts the tax refund. If W-2s are unavailable, ORS/CSS may use amounts of incomes as reported on the joint tax return. The unobligated spouse's portion of the joint tax refund will be prorated according to the percentage of income reported on the W-2 forms or the joint tax return for the tax year. If the unobligated spouse does not make a written request to ORS/CSS to obtain his share of the tax refund within the specified time limit, ORS/CSS shall not be required to pay any portion of the tax refund to the unobligated spouse.

KEY: child support
July 21, 2004 59-10-529
Notice of Continuation March 24, 2000 78-45-9.3

R590. Insurance, Administration.
R590-136. Title Insurance Agents' Annual Reports.
R590-136-1. Authority.

This rule is promulgated by the commissioner pursuant to Section 31A-23a-413 that requires the annual filing of a report by title agents and Subsection 31A-23a-503(8) that requires the commissioner to prescribe the forms for these annual filings.

R590-136-2. Purpose.

The purpose of this rule is to establish the form and filing deadline of title insurance agents' annual reports required by Section 31A-23a-413 and Subsection 31A-23a-503(8)(a).

R590-136-3. Definition.

For the purpose of this rule, "agent" shall mean:

(1) an agency as defined in Subsection 31A-23a-102(5); and

(2) individuals who are licensed to practice law in Utah and are not exempt from the requirements of Subsection 31A-23a-204(1) and (2).

R590-136-4. Financial Condition, Transactions and Affairs.

(A) Title insurance agents shall file a balance sheet and an income and expense statement prepared and presented in conformity with generally accepted accounting principles and a reserve fund report required by Subsection 31A-23-204(2). The reserve fund report shall include the following:

(1) gross income received from title insurance business;

(2) deposit required, 1% of gross income received from title insurance business;

(3) all deposits made and dates of deposits;

(4) reserve fund account number and depository institution name and address;

(5) balance after last deposit;

(6) copies of the account statements; and

(7) reporting period.

(B) The title insurance agent shall file a report that identifies the fidelity bond, professional liability insurance policy or other equivalent approved by the commissioner, that satisfies the requirement of Subsection 31A-23a-204(1).

(C) The reports required by this rule shall be verified and filed with the commissioner by April 30 of each year.

(D) The reports required are protected data. Access shall be restricted to the title insurance agent and the Insurance Department.

R590-136-5. Controlled Business.

(A) Pursuant to Subsection 31A-23a-503(8)(a) each title insurance agent shall report the names and addresses of any persons owning a financial interest in the title insurance agent as of the last day of the calendar year, who are known or reasonably believed by the title insurance agent to be producers of title business, and the proportion of the title insurance agent's gross operating revenues that are attributable to controlled business during the preceding calendar year. The report shall be filed by April 30 of each year. The controlled business report is a public record upon filing.

(B) Annual Report of Controlled Business Transactions forms are available from the Insurance Department and shall be utilized in reporting the controlled business transactions required by this rule. This form may be reproduced for use by a title insurance agent.

R590-136-6. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance law
November 1, 1996 31A-23-313
Notice of Continuation July 13, 2001 31A-23-403

R590. Insurance, Administration.
R590-192. Unfair Accident and Health Income Replacement Claims Settlement Practices Rule.
R590-192-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-201(1) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. Further authority to provide for timely settlement of claims is provided by Subsection 31A-26-301(1). Matters relating to proof and notice of loss are promulgated pursuant to Section 31A-26-301 and Subsection 31A-21-312(5). Authority to promulgate rules defining unfair claims settlement practices or acts is provided in Subsection 31A-26-303(4). The authority to require a timely, accurate, and complete response to the department is provided by Subsection 31A-2-202(4) and (6).

R590-192-2. Purpose.

This rule sets forth minimum standards for the investigation and disposition of accident and health insurance claims, which include income replacement claims, arising under policies or certificates issued in the State of Utah. These standards include fair and rapid settlement of claims, protection of claimants under insurance policies from unfair claims settlement practices, and the promotion of the professional competence of those engaged in processing of claims. The various provisions of this rule are intended to define procedures and practices which constitute unfair claim practices and responses to the department. This rule is regulatory in nature and is not intended to create a private right of action.

R590-192-3. Applicability and Scope.

(1) This rule applies to all accident and health insurance policies, as defined by Section 31A-1-301 covering individual and group accident and health plans issued or renewed after January 1, 2003.

(2) This rule incorporates by reference the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for Administration and Enforcement: Claims Procedure, 29 CFR 2560.503-1, excluding 2560.503-1(a).

R590-192-4. Definitions.

For the purpose of this rule the commissioner adopts the definitions as set forth in Section 31A-1-301, 29 CFR 2560.503-1(m), and the following:

(1) "Adverse benefit determination" means any of the following: a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for a benefit, including any such denial, reduction, termination, or failure to provide or make payment that is based on a determination of a participant's or beneficiary's eligibility to participate in a plan, and including, with respect to group health plans, a denial, reduction, or termination of or failure to provide or make payment, in whole or in part, for a benefit resulting from the application of any utilization review, as well as a failure to cover an item or service for which benefits are otherwise experimental or investigational or not medically necessary or appropriate.

(2) "Beneficiary" means the party entitled to receive the proceeds or benefits occurring under the policy.

(3) "Claim File" means any record either in its original form or as recorded by any process which can accurately and reliably reproduce the original material regarding the claim, its investigation, adjustment and settlement.

(4) "Claim Representative" means any individual, corporation, association, organization, partnership, or other legal entity authorized to represent an insurer with respect to a claim, whether or not licensed within the State of Utah to do so.

(5) "Claimant" means an insured, the beneficiary or legal representative of the insured, including a member of the insured's immediate family designated by the insured, making a claim under a policy.

(6) "Ongoing" or "Concurrent care" decision means an insurer has approved an ongoing course of treatment to be provided over a period of time or number of treatments.

(7) "Days" means calendar days.

(8) "Documentation" means a document, record, or other information that is considered relevant to a claimant's claim because such document, record, or other information:

(a) was relied upon in making the benefit determination;

(b) was submitted, considered, or generated in the course of making the benefit determination, without regard to whether such document, record, or other information was relied upon in making the benefit determination; and

(c) in the case of an insurer providing income replacement benefits, constitutes a statement of policy or guidance with respect to the insurer concerning the denied treatment option or benefit for the claimant's diagnosis, without regard to whether such advice or statement was relied upon in making the benefit determination.

(9) "General business practice" means a pattern of conduct.

(10) "Investigation" means all activities of an insurer directly or indirectly related to the determination of liabilities under coverages afforded by an insurance policy.

(11) "Medical necessity" means:

(a) health care services or product that a prudent health care professional would provide to a patient for the purpose of preventing, diagnosing or treating an illness, injury, disease or it symptoms in a manner that is:

(i) in accordance with generally accepted standards of medical practice in the United States;

(ii) clinically appropriate in terms of type, frequency, extent, site, and duration;

(iii) not primarily for the convenience of the patient, physician, or other health care provider; and

(iv) covered under the contract; and

(b) when a medical question-of-fact exists, medical necessity shall include the most appropriate available supply or level of service for the individual in question, considering potential benefits and harms to the individual, and known to be effective.

(i) For interventions not yet in widespread use, the effectiveness shall be based on scientific evidence.

(ii) For established interventions, the effectiveness shall be based on:

(A) scientific evidence;

(B) professional standards; and

(C) expert opinion.

(12) "Notice of Loss" means that notice which is in accordance with policy provisions and insurer practices. Such notice shall include any notification, whether in writing or other means, which reasonably apprizes the insurer of the existence of or facts relating to a claim.

(13) "Pre-service claim" means any claim for a benefit under an accident and health policy or income replacement policy with respect to which the terms of the plan condition receipt of the benefit, in whole or in part, on approval of the benefit in advance of obtaining medical care.

(14) "Post-service claim" means any claim for a benefit that is not a pre-service claim or urgent care claim.

(15) "Scientific evidence" is:

(a)(i) scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff; or

(ii) findings, studies or research conducted by or under the auspices of federal government agencies and nationally

recognized federal research institutes;

(b) scientific evidence shall not include published peer-reviewed literature sponsored to a significant extent by a pharmaceutical manufacturing company or medical device manufacturer or a single study without other supportable studies.

(16) "Urgent care claim" means any claim for medical care or treatment with respect to which the application of the time periods for making non-urgent care determination:

(a) could seriously jeopardize the life or health of the claimant or the ability of the claimant to regain maximum function; or

(b) in the opinion of a physician with knowledge of the claimant's medical condition, would subject the claimant to severe pain that cannot be adequately managed without the care or treatment that is the subject of the claim.

R590-192-5. File and Record Documentation.

Each insurer's claim files are subject to examination by the commissioner or by his duly appointed designees. To aid in such examination:

(1) Sufficient detailed documentation shall be contained in each claim file in order to reconstruct the benefit determination, and the calculation of the claim settlement for each claim.

(2) Each document within the claim file shall be noted as to date received, date processed and notification date.

(3) The insurer shall maintain claim data that are accessible and retrievable for examination. An insurer shall be able to provide:

(a) the claim number;
(b) copy of all applicable forms;
(c) date of loss;
(d) date of claim receipt;
(e) date of benefit determination;
(f) date of settlement of the claim; and
(g) type of settlement:
(i) payment, including the amount paid;
(ii) settled without payment;
(iii) denied.

R590-192-6. Misrepresentation of Policy Provisions: Prohibited Acts Applicable to All Insurers.

(1) An insurer, or the insurer's representative, shall fully disclose to a claimant the benefits, and/or limitations and exclusions of an insurance policy which relates to the diagnoses and services relating to the particular claim being presented.

(2) An insurer, or the insurer's representative, must disclose to a claimant, provisions of an insurance policy when receiving inquiries regarding such coverage.

R590-192-7. Notice of Loss.

(1) Notice of loss to an insurer, if required, shall be considered timely if made according to the terms of the policy, subject to the definitions and provisions of this rule.

(2) Notice of loss may be given to the insurer or its representative unless the insurer clearly directs otherwise by means of policy provisions or a separate written notice mailed or delivered to the insured.

(3) Subject to policy provisions, a requirement of any notice of loss may be waived by any authorized representative of the insurer.

(4) The general practice of the insurer when accepting a notice of loss or notice of claim shall be consistent for all policyholders in accordance with the terms of the policy.

R590-192-8. Notification.

(1) The insurer shall provide notification to the claimant which includes:

(a) the specific reason or reasons for the benefit determination, adverse or not;

(b) reference to the specific plan provisions on which the benefit determination is based;

(c) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and

(d) a description of the insurer's review procedures and the time limits applicable to such procedures, including a statement of the claimant's right to bring civil action.

(2) An insurer and the insurer's representative, in the case of a failure by a claimant or an authorized representative of a claimant to follow the individual or group health plan's procedures for filing a pre-service claim, shall notify the claimant or representative, of the failure and provide the proper procedures to be followed in filing a claim for benefits. This notification shall be provided to the claimant or authorized representative, as appropriate, as soon as possible, but not later than five days or 24 hours for a claim involving urgent care, following the failure. Notification may be oral, unless written notification is requested by the claimant or authorized representative.

(3) Income replacement adverse benefit determinations must:

(a) if an internal rule, guideline, protocol, or other criterion was relied upon in making the adverse determination, provide either the specific rule, guideline, protocol, or other similar criterion; or a statement that such a rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge to the claimant upon request; or

(b) if the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, provide either an explanation of the scientific or clinical judgment for the determination, applying the terms of the plan to the claimant's medical circumstances, or a statement that such explanation will be provided free of charge upon request.

(4) Urgent care adverse benefit determination must:

(a) provide written or electronic notification to the claimant no later than three days after the oral notification; and

(b) provide a description of the expedited review process applicable to such claims.

R590-192-9. Minimum Standards for Claim Benefit Determination and Settlement.

(1) All benefit determination time limits begin once the insurer receives a claim, without regard to whether all necessary information was filed with the original claim. If the insurer requires an extension due to the claimant's failure to submit necessary information, the time for making a decision is tolled from the date the notice is sent to the claimant through:

(a) the date that the claimant provides the necessary information; or

(b) 48 hours after the end of the period afforded the claimant to provide the specified additional information.

(2) Urgent Care Claims:

(a) In a case of urgent care, an insurer shall notify the claimant of the insurer's benefit decision, adverse or not, as soon as possible, taking into account the medical exigencies of the situation, but no later than 72 hours after the receipt of the claim.

(b) it is the insurer's duty to determine whether a claim is urgent based on the information provided by the claimant or authorized representative. However, if the claimant does not provide sufficient information for the plan to make a decision, the plan must notify the claimant as soon as possible, but not later than 24 hours after receipt of the claim, of the specific

information that is required. The claimant shall be given reasonable time, but not less than 48 hours, to provide that information.

(c) The insurer must notify the claimant of the insurer's decision as soon as possible but not later than 48 hours after the earlier of the plan's receipt of the requested information or the end of the time given to the claimant to provide the information.

(3) Concurrent Care Decision:

(a) Reduction or termination of concurrent care:

(i) Any reduction in the course of treatment is considered an adverse benefit determination.

(ii) The insurer must give the consumer notice, with sufficient time to appeal that adverse benefit determination and sufficient time to receive a decision of the appeal before any reduction or termination of care occurs.

(b) Extension of concurrent care:

(i) A claimant may request an extension of treatment beyond what has already been approved.

(ii) If the request for an extension is made at least 24 hours before the end of the approved treatment, the insurer must notify the claimant of the insurer's decision as soon as possible but no later than 24 hours after receipt of the claim.

(iii) If the request for extension does not involve urgent care, the insurer must notify the claimant of the insurer's benefit decision using the response times for a post-service claim.

(4) Pre-Service Benefit Determination:

(a) An insurer must notify the claimant of the insurer's benefit decision within 15 days of receipt of the request for care.

(b) If the insurer is unable to make a decision within that time due to circumstances beyond the insurer's control, such as late receipt of medical records, it must notify the claimant before expiration of the original 15 days that it intends to extend the time and then the insurer may take as long as 15 additional days to reach a decision.

(c) If the extension is due to failure of the claimant to submit necessary information, the extension notice of delay must give specific information about what the claimant has to provide and the claimant must be given at least 45 days to submit the requested information.

(d) once the pre-service claim determination has been made and the medical care rendered, the actual claim filed for payment will be processed according to the time requirements of a post-service claim.

(5) Post-Service Claims:

(a) An insurer must notify the claimant of the insurer's benefit decision within 30 days of receipt of the request for claim.

(b) If the insurer is unable to make a decision within that time due to circumstances beyond the insurer's control, such as late receipt of medical records, it must notify the claimant before expiration of the original 30 days that it intends to extend the time and then the insurer may take as long as 15 additional days to reach a decision.

(c) If the extension is due to failure of the claimant to submit necessary information, the extension notice of delay must give specific information about what the claimant has to provide and the claimant must be given at least 45 days to submit the requested information.

R590-192-10. Minimum Standards for Income Replacement Benefit Determination and Settlement.

In the case of a claim for income replacement benefits, the insurer shall notify the claimant, of the insurer's adverse benefit determination within a reasonable period of time, but not later than 45 days after receipt of the claim by the insurer.

(1) This period may be extended by the insurer for up to 30 days, provided that the insurer determines that such an extension is necessary due to matters beyond the control of the insurer and notifies the claimant, prior to the expiration of the initial 45-day period, of the circumstances requiring the extension of time and the date by which the insurer expects to render a decision.

(2) If, prior to the end of the first 30-day extension period, the insurer determines that, due to matters beyond the control of the insurer, a decision cannot be rendered within that extension period, the period for making the determination may be extended for up to an additional 30 days, provided the insurer notifies the claimant prior to the expiration of the first 30-day extension period, of the circumstances requiring the extension and the date at which the insurer expects to render a decision.

(3) Each notice of extension shall specifically explain the standards on which entitlement to a benefit is based, the unresolved issues that prevent a decision on the claim, and the additional information needed to resolve those issues, and the claimant shall be afforded at least 45 days within which to provide the specified information.

R590-192-11. Minimum Standards for Responses to the Department.

(1) Every insurer, upon receipt of an inquiry from the department regarding a claim, shall furnish the department with a substantive response to the inquiry within the appropriate number of days indicated by such inquiry. If it is determined by the insurer that they are unable to respond in the time frame requested, the insurer may contact the department to request an extension.

(2) The insurer shall acknowledge and substantively respond within 15 days to any written communication from the claimant relating to a pending claim.

R590-192-12. Unfair Methods, Deceptive Acts and Practices Defined.

The commissioner, pursuant to Subsection 31A-26-303(4), hereby finds the following acts, or the failure to perform required acts, to be misleading, deceptive, unfairly discriminatory or overreaching in the settlement of claims:

(1) denying or threatening the denial of the payment of claims or rescinding, canceling or threatening the rescission or cancellation of coverage under a policy for any reason which is not clearly described in the policy as a reason for such denial, cancellation or rescission;

(2) failing to provide the insured or beneficiary with a written explanation of the evidence of any investigation or file materials giving rise to the denial of a claim based on misrepresentation or fraud on an insurance application, when such alleged misrepresentation is the basis for the denial;

(3) compensation by an insurer of its employees, agents or contractors of any amounts which are based on savings to the insurer as a result of denying or reducing the payment of claims, unless compensation relates to the discovery of billing or processing errors;

(4) failing to deliver a copy of standards for prompt investigation of claims to the department when requested to do so;

(5) refusing to settle claims without conducting a reasonable and complete investigation;

(6) denying a claim or making a claim payment to the insured or beneficiary not accompanied by a statement or explanation of benefits setting forth the exclusion or benefit under which the denial or payment is being made and how the payment amount was calculated;

(7) failing to make payment of a claim following notice of loss when liability is reasonably clear under one coverage in order to influence settlements under other portions of the insurance policy coverage or under other policies of insurance;

(8) advising a claimant not to obtain the services of an attorney or other advocate or suggesting that the claimant will receive less money if an attorney is used to pursue or advise on

the merits of a claim;

(9) misleading a claimant as to the applicable statute of limitations;

(10) deducting from a loss or claims payment made under one policy those premiums owed by the insured on another policy, unless the insured consents to such arrangement;

(11) failing to settle a claim on the basis that responsibility for payment of the claim should be assumed by others, except as may otherwise be provided by policy provisions;

(12) issuing a check or draft in partial settlement of a loss or a claim under a specified coverage when such check or draft contains language which purports to release the insurer or its insured from total liability;

(13) refusing to provide a written reason for the denial of a claim upon demand of the claimant;

(14) refusing to pay reasonably incurred expenses to the claimant when such expenses resulted from a delay, as prohibited by this rule, in the claim settlement;

(15) failing to pay interest at the legal rate in Title 15:

(a) upon amounts that are due and unpaid within 20 days of completion of investigation;

(b) to a health care provider on amounts that are due and unpaid after the time limits allowed under 31A-26-301.6 ; and

(16) failing to provide a claimant with an explanation of benefits.

R590-192-13. 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.

R590-192-14. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 45 days from the rule's effective date.

KEY: insurance law

June 24, 2003	**31A-1-301**
Notice of Continuation July 30, 2004	**31A-2-201**
	31A-2-204
	31A-2-308
	31A-21-312
	31A-26-303

R614. Labor Commission, Occupational Safety and Health.
R614-1. General Provisions.
R614-1-1. Authority.

A. These rules and all subsequent revisions as approved and promulgated by the Labor Commission, Division of Occupational Safety and Health, are authorized pursuant to Title 34A, Chapter 6, Utah Occupational Safety and Health Act.

B. The intent and purpose of this chapter is stated in Section 34A-6-202 of the Act.

C. In accordance with legislative intent these rules provide for the safety and health of workers and for the administration of this chapter by the Division of Occupational Safety and Health of the Labor Commission.

R614-1-2. Scope.

These rules consist of the administrative procedures of UOSH, incorporating by reference applicable federal standards from 29 CFR 1910 and 29 CFR 1926, and the Utah initiated occupational safety and health standards found in R614-1 through R614-7. Notice has been given and rules filed as required by Subsection 34A-6-104(1)(c) and 34A-6-202(2) of the Utah Occupational Safety and Health Act and by Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

R614-1-3. Definitions.

A. "Access" means the right and opportunity to examine and copy.

B. "Act" means the Utah Occupational Safety and Health Act of 1973.

C. "Administration" means the Division of Occupational Safety and Health of the Labor Commission, also known as UOSH (Utah Occupational Safety and Health).

D. "Administrator" means the director of the Division of Occupational Safety and Health.

E. "Amendment" means such modification or change in a code, standard, rule, or order intended for universal or general application.

F. "Analysis using exposure or medical records" means any compilation of data, or any research, statistical or other study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.

G. "Commission" means the Labor Commission.

H. "Council" means the Utah Occupational Safety and Health Advisory Council.

I. "Days" means calendar days, including Saturdays, Sundays, and holidays. The day of receipt of any notice shall not be included, and the last day of the 30 days shall be included.

J. "Designated representative" means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purpose of access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

K. "Division" means the Division of Occupational Safety and Health, known by the acronyum of UOSH (Utah Occupational Safety and Health).

L. "Employee" includes any person suffered or permitted to work by an employer.

1. For Medical Records: "Employee" means a current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. In the case of deceased or legally incapacitated employee, the employee's legal representative may directly exercise all the employee's rights under this section.

M. "Employee exposure record" means a record containing any of the following kinds of information concerning employee exposure to toxic substances or harmful physical agents:

1. Environmental (workplace) monitoring or measuring, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretations of the results obtained;

2. Biological monitoring results which directly assess the absorption of a substance or agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent;

3. Material safety data sheets; or

4. In the absence of the above, any other record which reveals the identity (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent.

N. Employee medical record

1. "Employee medical record" means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician including:

a. Medical and employment questionnaires or histories (including job description and occupational exposures);

b. The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including X-ray examinations and all biological monitoring);

c. Medical opinions, diagnoses, progress notes, and recommendations;

d. Descriptions of treatments and prescriptions; and

e. Employee medical complaints.

2. "Employee medical record" does not include the following:

a. Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice, and not required to be maintained by other legal requirements;

b. Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.); or

c. Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

O. "Employer" means:

1. The state;

2. Each county, city, town, and school district in the state; and

3. Every person, firm, and private corporation, including public utilities, having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire.

4. For medical records: "Employer" means a current employer, a former employer, or a successor employer.

P. "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and separate notices shall be posted in each establishment to the extent that such notices have been furnished by the Administrator.

1. Establishments whose primary activity constitutes retail trade; finance, insurance, real estate and services are classified in SIC's 52-89.

2. Retail trades are classified as SIC's 52-59 and for the most part include establishments engaged in selling merchandise to the general public for personal or household consumption. Some of the retail trades are: automotive dealers, apparel and accessory stores, furniture and home furnishing stores, and eating and drinking places.

3. Finance, insurance and real estate are classified as SIC's 60-67 and include establishments which are engaged in banking, credit other than banking, security dealings, insurance and real estate.

4. Services are classified as SIC's 70-89 and include establishments which provide a variety of services for individuals, businesses, government agencies, and other organizations. Some of the service industries are: personal and business services, in addition to legal, educational, social, and cultural; and membership organizations.

5. The primary activity of an establishment is determined as follows: For finance, insurance, real estate, and services establishments, the value of receipts or revenue for services rendered by an establishment determines its primary activity. In establishments with diversified activities, the activities determined to account for the largest share of production, sales or revenue will identify the primary activity. In some instances these criteria will not adequately represent the relative economic importance of each of the varied activities. In such cases, employment or payroll should be used in place of normal basis for determining the primary activity.

Q. "Exposure" or "exposed" means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.) and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

R. "Hearing" means a proceeding conducted by the commission.

S. "Imminent danger" means a danger exists which reasonably could be expected to cause an occupational disease, death, or serious physical harm immediately, or before the danger could be eliminated through enforcement procedures under this chapter.

T. "Inspection" means any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed under R614-1-6.K.1. and 3., any re-inspection, follow-up inspection, accident investigation or other inspection conducted under Section 34A-6-301 of the Act.

U. "National consensus standard" means any occupational safety and health standard or modification:

1. Adopted by a nationally recognized standards-producing organization under procedures where it can be determined by the administrator and division that persons interested and affected by the standard have reached substantial agreement on its adoption;

2. Formulated in a manner which affords an opportunity for diverse views to be considered; and

3. Designated as such a standard by the Secretary of the United States Department of Labor.

V. "Person" means the general public, one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state and its political subdivisions.

W. "Publish" means publication in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

X. "Record" means any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, X-ray film, or automated data processing.)

Y. "Safety and Health Officer" means a person authorized by the Utah Occupational Safety and Health Administration to conduct inspections.

Z. "Secretary" means the Secretary of the United States Department of Labor.

AA. "Specific written consent" means written authorization containing the following:

1. The name and signature of the employee authorizing the release of medical information;

2. The date of the written authorization;

3. The name of the individual or organization that is authorized to release the medical information;

4. The name of the designated representative (individual or organization) that is authorized to receive the released information;

5. A general description of the medical information that is authorized to be released;

6. A general description of the purpose for the release of medical information; and

7. A date or condition upon which the written authorization will expire (if less than one year).

8. A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless this is expressly authorized, and does not operate for more than one year from the date of written authorization.

9. A written authorization may be revoked in writing prospectively at any time.

BB. "Standard" means an occupational health and safety standard or group of standards which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary to provide safety and healthful employment and places of employment.

CC. "Toxic substance" or "harmful physical agent" means any chemical substance, biological agent (bacteria, virus, fungus, etc.) or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo and hyperbaric pressure, etc) which:

1. Is regulated by any Federal law or rule due to a hazard to health;

2. Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) (See R614-103-20B Appendix B);

3. Has yielded positive evidence of an acute or chronic health hazard in human, animal, or other biological testing conducted by, or known to the employer; or

4. Has a material safety data sheet available to the employer indicating that the material may pose a hazard to human health.

DD. "Variance" means a special, limited modification or change in the code or standard applicable to the particular establishment of the employer or person petitioning for the modification or change.

EE. "Workplace" means any place of employment.

R614-1-4. Incorporation of Federal Standards.

A. General Industry Standards.

1. Sections 29 CFR 1910.21 to 1910.999 and 1910.1000 through the end of part 1910 of the July 1, 2002, edition are incorporated by reference.

2. 29 CFR 1908, July 1, 2001, is incorporated by

reference.

3. 29 CFR 1904, July 1, 2001, is incorporated by reference.

4. FR Vol. 67, No. 126, Monday, July 1, 2002, Pages 44037 to and including 44048, "29 CFR Part 1904 Occupational Injury and Illness Recording and Reporting Requirements; Final Rule" is incorporated by reference.

5. FR Vol. 67, No. 216, Thursday, November 7, 2002, Pages 67949 to and including 67965, "Exit Routes, Emergency Action Plans, and Fire Protection Plans; Final Rule" is incorporated by reference.

6. FR Vol. 67, No. 242, Tuesday, December 17, 2002, Pages 77165 to and including 77170, "Occupational Injury and Illness Recording Requirements: Final Rule" is incorporated by reference.

7. FR Vol. 68, No. 105, Monday, June 2, 2003, Pages 32637 to and including 32638, "29 CFR Part 1910.178 Powered Industrial Trucks; Final Rule" technical amendment in incorporated by reference.

8. FR Vol. 68, No. 125, Monday June 30, 2003, Pages 38601 to and including 38607, "29 CFR Part 1904 Occupational Injury and Illnesses Recording and Reporting Requirements; Final Rule" is incorporated by reference.

9. FR Vol. 68, No. 250, Wednesday, December 31, 2003, Pages 75776 to and including 75780, "Respiratory Protection for M. Tuberculosis"; Final Rule is incorporated by reference.

10. FR Vol. 69, No. 31, Tuesday, February 17, 2004, Pages 7351 to and including 7366, "Commercial Diving Operations"; Final Rule is incorporated by reference.

B. Construction Standards.

1. Section 29 CFR 1926.20 through the end of part 1926, of the July 1, 2002, edition is incorporated by reference.

2. FR Vol. 67, No. 177, Thursday, September 12, 2002, Pages 57722 to and including 57736, "Safety Standards for Signs, Signals, and Barricades; Final Rule" is incorporated by reference.

R614-1-5. Adoption and Extension of Established Federal Safety Standards and State of Utah General Safety Orders.

A. Scope and Purpose.

1. The provisions of this rule adopt and extend the applicability of: (1) established Federal Safety Standards, (2) R614, and (3) Workers' Compensation Coverage, as in effect July 1, 1973 and subsequent revisions, with respect to every employer, employee and employment within the boundaries of the State of Utah, covered by the Utah Occupational Safety and Health Act of 1973.

2. All standards and rules including emergency and/or temporary, promulgated under the Federal Occupational Safety and Health Act of 1970 shall be accepted as part of the Standards, Rules and Regulations under the Utah Occupational Safety and Health Act of 1973, unless specifically revoked or deleted.

3. All employers will provide workers' compensation benefits as required in Section 34A-2-201.

4. Any person, firm, company, corporation or association employing minors must comply fully with all orders and standards of the Labor Division of the Commission. UOSH standards shall prevail in cases of conflict.

B. Construction Work.

Federal Standards, 29 CFR 1926 and selected applicable sections of R614 are accepted covering every employer and place of employment of every employee engaged in construction work of:

1. New construction and building;
2. Remodeling, alteration and repair;
3. Decorating and painting;
4. Demolition; and
5. Transmission and distribution lines and equipment erection, alteration, conversion or improvement.

C. Reporting Requirements.

1. Each employer shall investigate or cause to be investigated all work-related injuries and occupational diseases and any sudden or unusual occurrence or change of conditions that pose an unsafe or unhealthful exposure to employees.

2. Each employer shall within 8 hours of occurrence, notify the Division of Utah Occupational Safety and Health of the Commission of any work-related fatalities, of any disabling, serious, or significant injury and of any occupational disease incident. Call (801) 530-6901.

3. Each employer shall file a report with the Commission within seven days after the occurrence of an injury or occupational disease, after the employer's first knowledge of the occurrence, or after the employee's notification of the same, on forms prescribed by the Commission, of any work-related fatality or any work-related injury or occupational disease resulting in medical treatment, loss of consciousness or loss of work, restriction of work, or transfer to another job. Each employer shall file a subsequent report with the Commission of any previously reported injury or occupational disease that later resulted in death. The subsequent report shall be filed with the Commission within seven days following the death or the employer's first knowledge or notification of the death. No report is required for minor injuries, such as cuts or scratches that require first-aid treatment only, unless the treating physician files, or is required to file the physician's initial report of work injury or occupational disease with the Commission. Also, no report is required for occupational diseases which manifest after the employee is no longer employed by the employer with which the exposure occurred, or where the employer is not aware of an exposure occasioned by the employment which results in an occupational disease as defined by Section 34A-3-103.

4. Each employer shall provide the employee with a copy of the report submitted to the Commission. The employer shall also provide the employee with a statement, as prepared by the Commission, of his rights and responsibilities related to the industrial injury or occupational disease.

5. Each employer shall maintain a record in a manner prescribed by the Commission of all work-related injuries and all occupational diseases resulting in medical treatment, loss of consciousness, loss of work, restriction of work, or transfer to another job.

6. Tools, equipment, materials or other evidence that might pertain to the cause of such accident shall not be removed or destroyed until so authorized by the Labor Commission or one of its Compliance Officers.

7. No person shall remove, displace, destroy, or carry away any safety devices or safeguards provided for use in any place of employment, or interfere in any way with the use thereof by other persons, or interfere in any method or process adopted for the protection of employees. No employee shall refuse or neglect to follow and obey reasonable orders that are issued for the protection of health, life, safety, and welfare of employees.

D. Employer, Employee Responsibility.

1. It shall be the duty and responsibility of any employee upon entering his or her place of employment, to examine carefully such working place and ascertain if the place is safe, if the tools and equipment can be used with safety, and if the work can be performed safely. After such examination, it shall be the duty of the employee to make the place, tools, or equipment safe. If this cannot be done, then it becomes his or her duty to immediately report the unsafe place, tools, equipment, or conditions to the foreman or supervisor.

2. Employees must comply with all safety rules of their employer and with all the Rules and Regulations promulgated by UOSH which are applicable to their type of employment.

3. Management shall inspect or designate a competent person or persons to inspect frequently for unsafe conditions and practices, defective equipment and materials, and where such conditions are found to take appropriate action to correct such conditions immediately.

4. Supervisory personnel shall enforce safety regulations and issue such rules as may be necessary to safeguard the health and lives of employees. They shall warn all employees of any dangerous condition and permit no one to work in an unsafe place, except for the purpose of making it safe.

E. General Safety Requirements.

1. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

2. Body protection: Clothing which is appropriate for the work being done should be worn. Loose sleeves, tails, ties, lapels, cuffs, or similar garments which can become entangled in moving machinery shall not be worn where an entanglement hazard exists. Clothing saturated or impregnated with flammable liquids, corrosive substances, irritant, oxidizing agents or other toxic materials shall be removed and shall not be worn until properly cleaned.

3. General. Wrist watches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

4. Safety Committees. It is recommended that a safety committee comprised of management and employee representatives be established. The committee or the individual member of the committee shall not assume the responsibility of management to maintain and conduct a safe operation. The duties of the committee should be outlined by management, and may include such items as reviewing the use of safety apparel, recommending action to correct unsafe conditions, etc.

5. No intoxicated person shall be allowed to go into or loiter around any operation where workers are employed.

6. No employee shall carry intoxicating liquor into a place of employment, except that the place of employment shall be engaged in liquor business and this is a part of his assigned duties.

7. Employees who do not understand or speak the English language shall not be assigned to any duty or place where the lack or partial lack of understanding or speaking English might adversely affect their safety or that of other employees.

8. Good housekeeping is the first law of accident prevention and shall be a primary concern of all supervisors and workers. An excessively littered or dirty work area will not be tolerated as it constitutes an unsafe, hazardous condition of employment.

9. Emergency Posting Required.

a. Good communications are necessary if a fire or disaster situation is to be adequately coped with. A system for alerting and directing employees to safety is an essential step in a safety program.

b. A list of telephone numbers or addresses as may be applicable shall be posted in a conspicuous place so the necessary help can be obtained in case of emergency. This list shall include:

(1) Responsible supervision (superintendent or equivalent)
(2) Doctor
(3) Hospital
(4) Ambulance
(5) Fire Department
(6) Sheriff or Police

10. Lockouts and Tagging.

a. Where there is any possibility of machinery being started or electrical circuits being energized while repairs or maintenance work is being done, the electrical circuits shall be locked open and/or tagged and the employee in charge (the one who places the lock) shall keep the key until the job is completed or he is relieved from the job, such as by shift change or other assignment. If it is expected that the job may be assigned to other workers, he may remove his lock provided the supervisor or other workers apply their lock and tag immediately. Where there is danger of machinery being started or of steam or air creating a hazard to workers while repairs on maintenance work is being done, the employee in charge shall disconnect the lines or lock and tag the main valve closed or blank the line on all steam driven machinery, pressurized lines or lines connected to such equipment if they could create a hazard to workers.

b. After tagging and lockout procedures have been applied, machinery, lines, and equipment shall be checked to insure that they cannot be operated.

c. If locks and tags cannot be applied, conspicuous tags made of nonconducting material and plainly lettered, "EMPLOYEES WORKING" followed by the other appropriate wording, such as "Do not close this switch" shall be used.

d. When in doubt as to procedure, the worker shall consult his supervisor concerning safe procedure.

11. Safety-Type hooks shall be used wherever possible.

12. Emergency Showers, Bubblers, and Eye Washers.

a. Readily accessible, well marked, rapid action safety showers and eye wash facilities must be available in areas where strong acid, caustic or highly oxidizing or irritating chemicals are being handled. (This is not applicable where first aid practices specifically preclude flushing with running water.)

b. Showers should have deluge type heads, easily accessible, plainly marked and controlled by quick opening valves of the type that stay open. The valve handle should be equipped with a pull chain, rope, etc., so the blinded employee will be able to more easily locate the valve control. In addition, it is recommended that the floor platform be so constructed to actuate the quick opening valve. The shower should be capable of supplying large quantities of water under moderately high pressure. Blankets should be located so as to be reasonably accessible to the shower area.

c. All safety equipment should be inspected and tested at regular intervals, preferably daily and especially during freezing weather, to make sure it is in good working condition at all times.

13. Grizzlies Over Chutes, Bins and Tank Openings.

a. Employees shall be furnished with and be required to use approved type safety harnesses and shall be tied off securely so as to suspend him above the level of the product before entering any bin, chute or storage place containing material that might cave or run. Cleaning and barring down in such places shall be started from the top using only bars blunt on one end or having a ring type or D handhold.

b. Employees shall not work on top of material stored or piled above chutes, drawholes or conveyor systems while material is being withdrawn unless protected.

c. Chutes, bins, drawholes and similar openings shall be equipped with grizzlies or other safety devices that will prevent employees from falling into the openings.

d. Bars for grizzly grids shall be so fitted that they will not loosen and slip out of place, and the operator shall not remove a bar temporarily to let large rocks through rather than to break them.

F. All requirements of PSM Standard 29 CFR 1910.119 are hereby extended to include the blister agents, HT, HD, H, Lewisite, and the nerve agents, GA, VX.

R614-1-6. Personal Protective Equipment.

A. When no other method or combination of methods can be provided to prevent employees from becoming exposed to toxic dusts, fumes, gases, flying particles or other objects, dangerous rays or burns from heat, acid, caustic, or any other hazard of a similar nature, the employer must provide each worker with the necessary personal protection equipment, such

as respirators, goggles, gas masks, certain types of protective clothing, etc. Provision must also be made to keep all such equipment in good, sanitary working condition at all times.

B. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

C. Except when, in the opinion of the Administrator, their use creates a greater hazard, life lines and safety harnesses shall be provided for and used by workers engaged in window washing, in securing or shifting thrustouts, inspecting or working on overhead machines supporting scaffolds or other high rigging, and on steeply pitched roofs. Similarly, they shall be provided for and used by all exposed to the hazard of falling, and by workmen on poles workers or steel frame construction more than ten (10) feet above solid ground or above a temporary or permanent floor or platform.

D. Every life line and safety harness shall be inspected by the superintendent or his authorized representative and the worker before it is used and at least once a week while continued in use.

E. Wristwatches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

R614-1-7. Inspections, Citations, and Proposed Penalties.

A. The Utah Occupational Safety and Health Act (Title 34A, Chapter 6) requires, that every employer covered under the Act furnish to his employees employment and a place of employment which are free from recognized hazards that are likely to cause death or serious physical harm to his employees. The Act also requires that employers comply with occupational safety and health standards promulgated under the Act, and that employees comply with standards, rules, regulations and orders issued under the Act applicable to employees actions and conduct. The Act authorizes the Utah Occupational Safety and Health Division to conduct inspections, and to issue citations and proposed penalties for alleged violations. The Act, under Section 34A-6-301, also authorizes the Administrator to conduct inspections and to question employers and employees in connection with research and other related activities. The Act contains provisions for adjudication of violations, periods prescribed for the abatement of violations, and proposed penalties by the Labor Commission, if contested by an employer or by an employee or authorized representative of employees, and for a judicial review. The purpose of R614-1-7 is to prescribe rules and general policies for enforcement of the inspection, citations, and proposed penalty provisions of the Act. Where R614-1-7 sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the Administrator or his designee determines that an alternative course of action would better serve the objectives of the Act.

B. Posting of notices; availability of Act, regulations and applicable standards.

1. Each employer shall post and keep posted notices, to be furnished by the Administrator, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact their employer or the office of the Administrator. Such notices shall be posted by the employer in each establishment in a conspicuous place where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

2. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation communications, and electric, gas and sanitary services, the notices required shall be posted at the location where employees report each day. In the case of employees who do not usually work at, or report to, a single establishment, such as traveling salesman, technicians, engineers, etc., such notices shall be posted in accordance with the requirements of R614-1-7.Q.

3. Copies of the Act, all regulations published under authority of Section 34A-6-202 and all applicable standards will be available at the office of the Administrator. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative.

4. Any employer failing to comply with the provisions of this Part shall be subject to citation and penalty in accordance with the provisions of Sections 34A-6-302 and 34A-6-307 of the Act.

C. Authority for Inspection.

1. Safety and Health Officers of the Division are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by the Act and regulations published in R614-1-7 and 8, and other records which are directly related to the purpose of the inspection.

2. Prior to inspecting areas containing information which has been classified as restricted by an agency of the United States Government in the interest of national security, Safety and Health Officers shall obtain the appropriate security clearance.

D. Objection to Inspection.

1. Upon a refusal to permit the Safety and Health Officer, in exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with R614-1-7.B. and C. or to permit a representative of employees to accompany the Safety and Health Officer during the physical inspection of any workplace in accordance with R614-1-7.G. the Safety and Health Officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records or interview concerning which no objection is raised.

2. The Safety and Health Officer shall endeavor to ascertain the reason for such refusal, and shall immediately report the refusal and the reason therefor to the Administrator. The Administrator shall take appropriate action, including compulsory process, if necessary.

3. Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the Administrator circumstances exist which make such preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):

a. When the employers past practice either implicitly or explicitly puts the Administrator on notice that a warrantless inspection will not be allowed:

b. When an inspection is scheduled far from the local office and procuring a warrant prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the office, obtain a warrant and return to the work-site;

c. When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would

alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

4. For purposes of this section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this section.

E. Entry not a Waiver.

Any permission to enter, inspect, review records, or question any person, shall not imply a waiver of any cause of action, citation, or penalty under the Act. Safety and Health Officers are not authorized to grant such waivers.

F. Advance notice of Inspections.

1. Advance notice of inspections may not be given, except in the following instances:

a. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible.

b. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection.

c. Where necessary to assure the presence of the employer or representative of the employer and employees or the appropriate personnel needed to aid the inspection; and

d. In other circumstances where the Administrator determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

2. In the instances described in R614-1-7.F.1., advance notice of inspections may be given only if authorized by the Administrator, except that in cases of imminent danger, advance notice may be given by the Safety and Health Officer without such authorization if the Administrator is not immediately available. Where advance notice is given, it shall be the employer's responsibility to notify the authorized representative of the employees of the inspection, if the identity of such representatives is known to the employer. (See R614-1-7.H.2. as to instances where there is no authorized representative of employees.) Upon the request of the employer, the Safety and Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Safety and Health Officer with the identity of such representatives and with such other information as is necessary to enable him promptly to inform such representatives of the inspection. A person who fails to comply with his responsibilities under this paragraph, may be subject to citation and penalty under Sections 34A-6-302 and 34A-6-307 of the Act. Advance notice in any of the instances described in R614-1-7.F. shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in cases of imminent danger and other unusual circumstances.

3. The Act provides in Subsection 34A-6-307(5)(b) conditions for which advanced notice can be given and the penalties for not complying.

G. Conduct of Inspections.

1. Subject to the provisions of R614-1-7.C., inspections shall take place at such times and in such places of employment as the Administrator or the Safety and Health Officer may direct. At the beginning of an inspection, Safety and Health Officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in R614-1-7.C. which they wish to review. However, such designations of records shall not preclude access to additional records specified in R614-1-7.C.

2. Safety and Health Officers shall have authority to take environmental samples and to take photographs or video recordings related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. (See R614-1-7.I. on trade secrets.) As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges, and other similar devices to employees in order to monitor their exposures.

3. In taking photographs and samples, Safety and Health Officers shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. Safety and Health Officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and shall wear and use appropriate protective clothing and equipment.

4. The conduct of inspections shall preclude unreasonable disruption of the operations of the employer's establishment.

5. At the conclusion of an inspection, the Safety and Health Officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the Safety and Health Officer any pertinent information regarding conditions in the workplace.

H. Representative of employers and employees.

1. Safety and Health Officer shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Safety and Health Officer during the physical inspection of any workplace for the purpose of aiding such inspection. A Safety and Health Officer may permit additional employer representative and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the Safety and Health Officer during each phase of an inspection if this will not interfere with the conduct of the inspection.

2. Safety and Health Officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and the employees for purpose of this Part. If there is no authorized representative of employees, or if the Safety and Health Officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

3. The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Safety and Health Officer during the inspection.

4. Safety and Health Officers are authorized to deny the right of accompaniment under this Part to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of R614-1-7.I.3. With regard to information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany a Safety and Health Officer in areas containing such information.

I. Trade secrets.

1. Section 34A-6-306 of the Act provides provisions for trade secrets.

2. At the commencement of an inspection, the employer may identify areas in the establishment which contain or which

might reveal a trade secret. If the Safety and Health Officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential-trade secret" and shall not be disclosed except in accordance with the provisions of Section 34A-6-306 of the Act.

3. Upon the request of an employer, any authorized representative of employees under R614-1-7.H. in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is not such representative or employee, the Safety and Health Officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

J. Consultation with employees.

Safety and Health Officers may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which he has reason to believe exists in the workplace to the attention of the Safety and Health Officer.

K. Complaints by employees.

1. Any employee or representative of employees who believe that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Administrator or to a Safety and Health Officer. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice shall be provided the employer or his agent by the Administrator or Safety and Health Officer no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Administrator.

2. If upon receipt of such notification the Administrator determines that the complaint meets the requirements set forth in R614-1-7.K.1., and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable. Inspections under this Part shall not be limited to matters referred to in the complaint.

3. Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Safety and Health Officer, in writing, of any violation of the Act which they have reason to believe exists in such workplace. Any such notice shall comply with requirements of R614-1-7.K.1.

4. Section 34A-6-203 of the Act provides protection for employees while engaged in protected activities.

L. Inspection not warranted; informal review.

1. If the Administrator determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under K, he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Administrator. The Administrator, at his discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral view presented, the Administrator shall affirm, modify, or reverse the determination of the previous decision and again furnish the complaining party and the employer written notification of his decision and the reasons therefor.

2. If the Administrator determines that an inspection is not warranted because the requirements of R614-1-7.K.1. have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of R614-1-7.K.1.

M. Imminent danger.

Whenever a Safety and Health Officer concludes, on the basis of an inspection, that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm before the imminence of such danger can be eliminated through the enforcement procedures of the Act, he shall inform the affected employees and employers of the danger, that he is recommending a civil action to restrain such conditions or practices and for other appropriate citations of proposed penalties which may be issued with respect to an imminent danger even though, after being informed of such danger by the Compliance Officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

N. Citations.

1. The Administrator shall review the inspection report of the Safety and Health Officer. If, on the basis of the report the Administrator believes that the employer has violated a requirement of Section 34A-6-201 of the Act, of any standard, rule, or order promulgated pursuant to Section 34A-6-202 of the Act, or of any substantive rule published in this chapter, shall issue to the employer a citation. A citation shall be issued even though, after being informed of an alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violations. Any citation shall be issued with reasonable promptness after termination of the inspection. No citation may be issued after the expiration of 6 months following the occurrence of any violation.

2. Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision of the Act, standard, rule, regulations, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violations.

3. If a citation is issued for an alleged violation in a request for inspection under R614-1-7.K.1. or a notification of violation under R614-1-7.K.3., a copy of the citation shall also be sent to the employee or representative of employees who made such request or notification.

4. Following an inspection, if the Administrator determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under R614-1-7.K.1.or a notification of violation under R614-1-7.K.3., the informal review procedures prescribed in R614-1-7.L.1. shall be applicable. After considering all views presented, the Administrator shall either affirm, order a re-inspection, or issue a citation if he believes that the inspection disclosed a violation. The Administrator shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor.

5. Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Commission.

O. Petitions for modification of abatement date.

1. An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of the citation, but such abatement has not been completed because of factors beyond his reasonable control.

2. A petition for modification of abatement date shall be in writing and shall include the following information.

a. All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed

abatement period.

b. The specific additional abatement time necessary in order to achieve compliance.

c. The reasons such additional time is necessary, including the unavailability, of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

e. A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with paragraph R614-1-7.O.3.a. and a certification of the date upon which such posting and service was made.

3. A petition for modification of abatement date shall be filed with the Administrator who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

a. A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted for a period of ten (10) days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

b. Affected employees or their representatives may file an objection in writing to such petition with the aforesaid Administrator. Failure to file such objection within ten (10) working days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.

c. The Administrator or his duly authorized agent shall have authority to approve any petition for modification of abatement date filed pursuant to paragraphs R614-1-7.O.2. and 3. Such uncontested petitions shall become final orders pursuant to Subsection 34A-6-303(1) of the Act.

d. The Administrator or his authorized representative shall not exercise his approval power until the expiration of ten (10) days from the date of the petition was posted or served pursuant to paragraphs R614-1-7.O.3.a. and b. by the employer.

4. Where any petition is objected to by the affected employees, the petition, citation, and any objections shall be forwarded to the Administrator per R614-1-7.O.3.b. Upon receipt the Administrator shall schedule and notify all interested parties of a formal hearing before the Administrator or his authorized representative(s). Minutes of this hearing shall be taken and become public records of the Commission. Within ten (10) days after conclusion of the hearing, a written opinion by the Administrator will be made, with copies to the affected employees or their representatives, the affected employer and to the Commission.

P. Proposed penalties.

1. After, or concurrent with, the issuance of a citation and within a reasonable time after the termination of the inspection, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of the proposed penalty under Section 34A-6-307 of the Act, or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed penalty shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notice, the employer notifies the Adjudication Division in writing that he intends to contest the citation or the notification of proposed penalty before the Commission.

2. The Administrator shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business, of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of Section 34A-6-307 of the Act.

3. Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for violations which have no direct or immediate relationship to safety or health.

Q. Posting of citations.

1. Upon receipt of any citation under the Act, the employer shall immediately post such citation, or copy thereof, unedited, at or near each place of alleged violation referred to in the citation occurred, except as hereinafter provided. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employees are engaged in activities which are physically dispersed (see R614-1-7.B.), the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location (see R614-1-7.B.2.), the citation must be posted at the location from which the employees commence their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material.

2. Each citation or a copy thereof, shall remain posted until the violation has been abated, or for 3 working days which ever is later. The filing by the employer of a notice of intention to contest under R614-1-7.R. shall not affect his posting responsibility unless and until the Commission issues a final order vacating the citation.

3. An employer, to whom a citation has been issued, may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Commission, such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

4. Any employer failing to comply with the provisions of R614-1-7.Q.1. and 2. shall be subject to citation and penalty in accordance with the provisions of Section 34A-6-307 of the Act.

R. Employer and employee hearings before the Commission.

1. Any employer to whom a citation or notice of proposed penalty has been issued, may under Section 34A-6-303 of the Act, notify the Adjudication Division in writing that the employer intends to contest such citation or proposed penalty before the Commission. Such notice of intention to contest must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

2. An employee or representative of employee of an employer to whom a citation has been issued may, under Section 34A-6-303(3) of the Act, file a written notice with the Adjudication Division alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable. Such notice must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed. The Adjudication Division shall handle such notice in accordance with the rules of procedure prescribed by the Commission.

S. Failure to correct a violation for which a citation has

been issued.

1. If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of such failure and of the additional penalty proposed under Section 34A-6-307 of the Act by reason of such failure. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the Commission in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

2. Any employer receiving a notification of failure to correct a violation and of proposed additional penalty may, under Section 34A-6-303(3) of the Act, notify the Adjudication Division in writing that he intends to contest such notification or proposed additional penalty before the Commission. Such notice of intention to contest shall be postmarked within 30 days of receipt by the employer of the notification of failure to correct a violation and of proposed additional penalty. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

3. Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notification, the employer notifies the Adjudication Division in writing that he intends to contest the notification or the proposed additional penalty before the Commission.

T. Informal conferences.

At the request of an affected employer, employee, or representative of employees, the Administrator may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The Administrator shall provide in writing the reasons for any settlement of issues at such conferences. If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate, at the discretion of the Administrator. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Administrator. Any party may be represented by counsel at such conference. No such conference or request for such conference shall operate as a stay of any 30 day period for filing a notice of intention to contest as prescribed in R614-1-7.R.

R614-1-8. Recording and Reporting Occupational Injuries and Illnesses.

A. The rules in this section implement Sections 34A-6-108 and 34A-6-301(3) of the Act. These sections provide for record-keeping and reporting by employers covered under the Act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics. Regardless of size or type of operation, accidents and fatalities must be reported to UOSH in accordance with the requirements of R614-1-5.C.

NOTE: Utah has adopted and will enforce the Federal Recordkeeping Standard 29CFR1904.

R614-1-4. Incorporation of Federal Standards.

A. General Industry Standards.

4. FR Vol. 66, No. 13, Friday, January 19, 2001, Pages 5916 to and including 6135. "Occupational Injury and reporting Requirements; Final Rule" is incorporated by reference.

Utah Specific Recordkeeping requirements follow:

B. Supplementary record.

Each employer shall have available for inspection at each establishment within 6 working days after receiving information that a recordable case has occurred, a supplementary record for that establishment. The record shall be completed in the detail prescribed in the instructions accompanying federal OSHA Form No. 301, Utah Industrial Accidents Form 122. Workers' compensation, insurance, or other reports are acceptable alternative records if they contain the information required by the federal OSHA Form No. 301, Utah Industrial Accidents Form 122. If no acceptable alternative record is maintained for other purposes, Federal OSHA Form No. 301, Utah Industrial Accidents Form 122 shall be used or the necessary information shall be otherwise maintained.

C. Retention of records.

Preservation of records.

a. This section applies to each employer who makes, maintains or has access to employee exposure records or employee medical records.

b. "Employee exposure record" means a record of monitoring or measuring which contains qualitative or quantitative information indicative of employee exposures to toxic materials or harmful physical agents. This includes both individual exposure records and general research or statistical studies based on information collected from exposure records.

c. "Employee medical record" means a record which contains information concerning the health status of an employee or employees exposed or potentially exposed to toxic materials or harmful physical agents. These records may include, but are not limited to:

(1) The results of medical examinations and tests;

(2) Any opinions or recommendations of a physician or other health professional concerning the health of an employee or employees; and

(3) Any employee medical complaints relating to workplace exposure. Employee medical records include both individual medical records and general research or statistical studies based on information collected from medical records.

d. Preservation of records. Each employer who makes, maintains, or has access to employee exposure records or employee medical records shall preserve these records.

e. Availability of records. The employer shall make available, upon request to the Administrator, or a designee, and to the Director of the Division of Health, or a designee, all employee exposure records and employee medical records for examination and copying.

D. Access to records.

1. Records provided for in R614-1-8.A.,E., and F. shall be available for inspection and copying by Compliance Officers during any occupational safety and health inspection provided for under R614-1-7 and Section 34A-6-301 of the Act.

2. The log and summary of all recordable occupational injuries and illnesses (OSHA No. 200) (the log) provided for in R614-1-8.A. shall, upon request, be made available by the employer to any employee, former employee, and to their representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee, and their representatives shall have access to the log for any establishment in which the employee is or has been employed.

3. Nothing in this section shall be deemed to preclude employees and employee representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

4. Access to the log provided under this section shall pertain to all logs retained under requirements of R614-1-8.G.

E. Reporting of fatality or accidents. (Refer to Utah Occupational Safety and Health Rule, R614-1-5.C.)

F. Falsification or failure to keep records or reports.

1. Section 34A-6-307 of the Act provides penalties for

false information and recordkeeping.

2. Failure to maintain records or file reports required by this part, or in the details required by forms and instructions issued under this part, may result in the issuance of citations and assessment of penalties as provided for in Sections 34A-6-302 and 34A-6-307 of the Act.

G. Description of statistical program.

1. Section 34A-6-108 of the Act directs the Administrator to develop and maintain a program of collection, compilation, and analysis of occupational safety and health statistics. The program shall consist of periodic surveys of occupational injuries and illnesses.

2. The sample design encompasses probability procedures, detailed stratification by industry and size, and a systematic selection within Stratification. Stratification and sampling will be carried out in order to provide the most efficient sample for eventual state estimates. Some industries will be sampled more heavily than others depending on the injury rate level based on previous experience. The survey should produce adequate estimates for most four-digit Standard Industrial Classification (SIC) industries in manufacturing and for three-digit classification (SIC) in non-manufacturing. Full cooperation with the U. S. Department of Labor in statistical programs is intended.

R614-1-9. Rules of Practice for Temporary or Permanent Variance from the Utah Occupational Safety and Health Standards. (Also Adopted and Published as Chapter XXIII of the Utah Occupational Safety and Health Field Operations Manual.)

A. Scope.

1. This rule contains Rules of Practice for Administrative procedures to grant variances and other relief under Section 34A-6-202 of the Act. General information pertaining to employer-employee rights, obligations and procedures are included.

B. Application for, or petition against Variances and other relief.

1. The applicable parts of Section 34A-6-202 of the Act shall govern application and petition procedure.

2. Any employer or class of employers desiring a variance from a standard must make a formal written request including the following information:

a. The name and address of applicant;

b. The address of the place or places of employment involved;

c. A specification of the standard or portion thereof from which the applicant seeks a variance;

d. A statement by the applicant, supported by opinions from qualified persons having first-hand knowledge of the facts of the case, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefore;

e. A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the existing standard;

f. A statement of when the applicant expects to be able to comply with the standard and of what steps he has taken and will take, with specific dates where appropriate, to come into compliance with the standards (applies to temporary variances);

g. A statement of the facts the applicant would show to establish that (applies to newly promulgated standards);

(1) The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

(2) He is taking all available steps to safeguard his employees against the hazards covered by the standards; and

(3) He has an effective program for coming into compliance with the standard as quickly as practicable;

h. Any request for a hearing, as provided in this rule;

i. A statement that the applicant has informed his affected employees of the application for variance by giving a copy thereof to their authorized representative, posting a summary statement of the application at the place or places where notices to employees are normally posted specifying where a copy may be examined; and

j. A description of how affected employees have been informed of their rights to petition the Administrator for a hearing.

3. The applicant shall designate the method he will use to safeguard his employees until a variance is granted or denied.

4. Whenever a proceeding on a citation or a related issue concerning a proposed penalty or period of abatement has been contested and is pending before an Administrative Law Judge or any subsequent review under the Administrative Procedures Act, until the completion of such proceeding, the Administrator may deny a variance application on a subject or an issue concerning a citation which has been issued to the employer.

C. Hearings.

1. The Administrator may conduct hearings upon application or petition in accordance with Section 34A-6-202(4) of the Act if:

a. Employee(s), the public, or other interested groups petition for a hearing; or

b. The Administrator deems it in the public or employee interest.

2. When a hearing is considered appropriate, the Administrator shall set the date, time, and place for such hearing. He shall provide timely notification to the applicant for variance and the petitioners. In the notice of hearing to the applicant, the applicant will be directed to notify his employees of the hearing.

3. Notice of hearings shall be published in the Administrative Rulemaking Bulletin. This shall include a statement that the application request may be inspected at the UOSH Division Office.

4. A copy of the Notification of Hearing along with other pertinent information shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

D. Inspection for Variance Application.

1. A variance inspection will be required by the Administrator or his designee prior to final determination of either acceptance or denial.

2. A variance inspection is a single purpose, pre-announced, non-compliance inspection and shall include employee or employer representative participation or interview where necessary.

E. Interim order.

1. The purpose of an interim order is to permit an employer to proceed in a non-standard operation while administrative procedures are being completed. Use of this interim procedure is dependent upon need and employee safety.

2. Following a variance inspection, and after determination and assurance that employees are to be adequately protected, the Administrator may immediately grant, in writing, an interim order. To expedite the effect of the interim order, it may be issued at the work-site by the Administrator. The interim order will remain in force pending completion of the administrative promulgation action and the formal granting or denying of a temporary/permanent variance as requested.

F. Decision of the Administrator.

1. The Administrator may deny the application if:

a. It does not meet the requirements of paragraph R614-1-8.B.;

b. It does not provide adequate safety in the workplace for affected employees; or

c. Testimony or information provided by the hearing or inspection does not support the applicant's request for variance as submitted.

2. Letters of notification denying variance applications shall be sent to the applicant, and will include posting requirements to inform employees, affected associations, and employer groups.

a. A copy of correspondence related to the denial request shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

b. The letter of denial shall be explicit in detail as to the reason(s) for such action.

3. The Administrator may grant the request for variances provided that:

a. Data supplied by the applicant, the UOSHA inspection and information and testimony affords adequate protection for the affected employee(s);

b. Notification of approval shall follow the pattern described in R614-1-9.C.2. and 3.;

c. Limitations, restrictions, or requirements which become part of the variance shall be documented in the letter granting the variance.

4. The Administrator's decision shall be deemed final subject to Section 34A-6-202(6).

G. Recommended Time Table for Variance Action.

1. Publication of agency intent to grant a variance. This includes public comment and hearing notification in the Utah Administrative Rulemaking Bulletin: within 30 days after receipt.

2. Public comment period: within 20 days after publication.

3. Public hearing: within 30 days after publication

4. Notification of U.S. Department of Labor Regional Administrator for OSHA: 10 days after agency publication of intent.

5. Final Order: 120 days after receipt of variance application if publication of agency intent is made.

6. Rejection of variance application without publication of agency intent: 20 days after receipt of application.

a. Notification of U.S. Department of Labor Regional Administrator for OSHA: 20 days after receipt of application.

H. Public Notice of Granted Variances, Tolerances, Exemptions, and Limitations.

1. Every final action granting variance, exemption, or limitation under this rule shall be published as required under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and the time table set forth in R614-1-9.G.

I. Acceptance of federally Granted Variances.

1. Where a variance has been granted by the U.S. Department of Labor, Occupational Safety and Health Administration, following Federal Promulgation procedures, the Administrator shall take the following action:

a. Compare the federal OSHA standard for which the variance was granted with the equivalent UOSH standard.

b. Identify possible application in Utah.

c. If the UOSH standard under consideration for application of the variance has exactly or essentially the same intent as the federal standard and there is the probability of a multi-state employer doing business in Utah, then the Administrator shall accept the variance (as federally accepted) and promulgate it for Utah under the provisions of Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

d. If the variance has no apparent application to Utah industry, or to a multi-state employer in Utah, or if it conflicts with Utah Legislative intent, or established policy or procedure, the federal variance shall not be accepted. In such case, the Regional Administrator will be so notified.

J. Revocation of a Variance.

1. Any variance (temporary or permanent) whether approved by the state or one accepted by State based on Federal approval, may be revoked by the Administrator if it is determined through on-site inspection that:

a. The employer is not complying with provisions of the variance as granted;

b. Adequate employee safety is not afforded by the original provisions of the variance; or

c. A more stringent standard has been promulgated, is in force, and conflicts with prior considerations given for employee safety.

2. A federally approved national variance may be revoked by the state for a specific work-site or place of employment within the state for reasons cited in R614-1-9.J.1. Such revocations must be in writing and give full particulars and reasons prompting the action. Full rights provided under the law, such as hearings, etc., must be afforded the employer.

3. Normally, permanent variances may be revoked or changed only after being in effect for at least six months.

K. Coordination.

1. All variances issued by the Administrator will be coordinated with the U.S. Department of Labor, OSHA to insure consistency and avoid improper unilateral action.

R614-1-10. Discrimination.

A. General.

1. The Act provides, among other things, for the adoption of occupational safety and health standards, research and development activities, inspections and investigations of work places, and record keeping requirements. Enforcement procedures initiated by the Commission; review proceedings as required by Title 63, Chapter 46b, Administrative Procedures Act; and judicial review are provided by the Act.

2. This rule deals essentially with the rights of employees afforded under section 34A-6-203 of the Act. Section 34A-6-203 of the Act prohibits reprisals, in any form, against employees who exercise rights under the Act.

3. The purpose is to make available in one place interpretations of the various provisions of Section 34A-6-203 of the Act which will guide the Administrator in the performance of his duties thereunder unless and until otherwise directed by authoritative decisions of the courts, or concluding, upon reexamination of an interpretation, that it is incorrect.

B. Persons prohibited from discriminating.

Section 34A-6-203 defines employee protections under the Act, because the employee has exercised rights under the Act. Section 34A-6-103(11) of the Act defines "person". Consequently, the prohibitions of Section 34A-6-203 are not limited to actions taken by employers against their own employees. A person may be chargeable with discriminatory action against an employee of another person. Section 34A-6-203 would extend to such entities as organizations representing employees for collective bargaining purposes, employment agencies, or any other person in a position to discriminate against an employee. (See, Meek v. United States, F. 2d 679 (6th Cir., 1943); Bowe v. Judson C. Burnes, 137 F 2d 37 (3rd Cir., 1943).)

C. Persons protected by section 34A-6-203.

1. All employees are afforded the full protection of Section 34A-6-203. For purposes of the Act, an employee is defined in Section 34A-6-103(6). The Act does not define the term "employ". However, the broad remedial nature of this legislation demonstrates a clear legislative intent that the existence of an employment relationship, for purposes of Section 34A-6-203, is to be based upon economic realities rather than upon common law doctrines and concepts. For a similar interpretation of federal law on this issue, see, U.S. v. Silk, 331 U.S. 704 (1947); Rutherford Food Corporation v. McComb, 331 U.S. 722 (1947).

2. For purposes of Section 34A-6-203, even an applicant

for employment could be considered an employee. (See, NLRB v. Lamar Creamery, 246 F. 2d 8 (5th Cir., 1957).) Further, because Section 34A-6-203 speaks in terms of any employee, it is also clear that the employee need not be an employee of the discriminator. The principal consideration would be whether the person alleging discrimination was an "employee" at the time of engaging in protected activity.

3. In view of the definitions of "employer" and "employee" contained in the Act, employees of a State or political subdivision thereof would be within the coverage of Section 34A-6-203.

D. Unprotected activities distinguished.

1. Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The proscriptions of Section 34A-6-203 apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Act does not automatically render him immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations. (See, NLRB v. Dixie Motor Coach Corp., 128 F. 2d 201 (5th Cir., 1942).)

2. To establish a violation of Section 34A-6-203, the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" engagement in protected activity, Section 34A-6-203 has been violated. (See, Mitchell v. Goodyear Tire and Rubber Co., 278 F. 2d 562 (8th Cir., 1960); Goldberg v. Bama Manufacturing, 302 F. 2d 152 (5th Cir., 1962).) Ultimately, the issue as to whether a discharge was because of protected activity will have to be determined on the basis of the facts in the particular case.

E. Specific protections - complaints under or related to the Act.

1. Discharge of, or discrimination against an employee because the employee has filed "any complaint under or related to this Act" is prohibited by Section 34A-6-203. An example of a complaint made "under" the Act would be an employee request for inspection pursuant to Section 34A-6-301(6). However, this would not be the only type of complaint protected by Section 34A-6-203. The range of complaints "related to" the Act is commensurate with the broad remedial purposes of this legislation and the sweeping scope of its application, which entails the full extent of the commerce power. ((See Cong. Rec., vol. 116 P. 42206 December 17, 1970).)

2. Complaints registered with Federal agencies which have the authority to regulate or investigate occupational safety and health conditions are complaints "related to" this Act. Likewise, complaints made to State or local agencies regarding occupational safety and health conditions would be "related to" the Act. Such complaints, however, must relate to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.

3. Further, the salutary principles of the Act would be seriously undermined if employees were discouraged from lodging complaints about occupational safety and health matters with their employers. Such complaints to employers, if made in good faith, therefore would be related to the Act, and an employee would be protected against discharge or discrimination caused by a complaint to the employer.

F. Proceedings under or related to the act.

1. Discharge of, or discrimination against, any employee because the employee has exercised the employee's rights under or related to this Act is also prohibited by Section 34A-6-203. Examples of proceedings which would arise specifically under the Act would be inspections of work-sites under Section 34A-6-301 of the Act, employee contest of abatement date under Section 34A-6-303 of the Act, employee initiation of proceedings for promulgation of an occupational safety and health standard under Section 34A-6-202 of the Act and Title 63, Chapter 46a, employee application for modification of revocation of a variance under Section 34A-6-202(4)(c) of the Act and R614-1-9., employee judicial challenge to a standard under Section 34A-6-202(6) of the Act, and employee appeal of an order issued by an Administrative Law Judge, Commissioner, or Appeals Board under Section 34A-6-304. In determining whether a "proceeding" is "related to" the Act, the considerations discussed in R614-1-10.G. would also be applicable.

2. An employee need not himself directly institute the proceedings. It is sufficient if he sets into motion activities of others which result in proceedings under or related to the Act.

G. Testimony.

Discharge of, or discrimination against, any employee because the employee "has testified or is about to testify" in proceedings under or related to the Act is also prohibited by Section 34A-6-203. This protection would of course not be limited to testimony in proceedings instituted or caused to be instituted by the employee, but would extend to any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, and administrative rulemaking or adjudicative functions. If the employee is giving or is about to give testimony in any proceeding under or related to the Act, he would be protected against discrimination resulting from such testimony.

H. Exercise of any right afforded by the Act.

1. In addition to protecting employees who file complaints, institute proceedings under or related to the Act it also prohibited by Section 34A-6-203 discrimination occurring because of the exercise "of any right afforded by this Act." Certain rights are explicitly provided in the Act; for example, there is a right to participate as a party in enforcement proceedings (34A-6-303). Certain other rights exist by necessary implications. For example, employees may request information from the Utah Occupational Safety and Health Administration; such requests would constitute the exercise of a right afforded by the Act. Likewise, employees interviewed by agents of the Administrator in the course of inspections or investigations could not subsequently be discriminated against because of their cooperation.

2. Review of the Act and examination of the legislative history discloses that, as a general matter, there is no right afforded by the Act which would entitle employees to walk off the job because of potential unsafe conditions at the workplace. Hazardous conditions which may be violative of the Act will ordinarily be corrected by the employer, once brought to his attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have opportunity to request inspection of the workplace pursuant to Section 34A-6-301 of the Act, or to seek the assistance of other public agencies which have responsibility in the field of safety and health. Under such circumstances, therefore, an employer would not ordinarily be in violation of Section 34A-6-203 by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.

a. Occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real

danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition.

I. Procedures - Filing of complaint for discrimination.

1. Who may file. A complaint of Section 34A-6-203 discrimination may be filed by the employee himself, or by a representative authorized to do so on his behalf.

2. Nature of filing. No particular form of complaint is required.

3. Place of filing. Complaint should be filed with the Administrator, Division of Occupational Safety and Health, Labor Commission, 160 East 300 South, Salt Lake City, Utah 84114-6650, Telephone 530-6901.

4. Time for filing.

a. Section 34A-6-203(2)(b) provides protection for an employee who believes that he has been discriminated against.

b. A major purpose of the 30-day period in this provision is to allow the Administrator to decline to entertain complaints which have become stale. Accordingly, complaints not filed within 30 days of an alleged violation will ordinarily be presumed to be untimely.

c. However, there may be circumstances which would justify tolling of the 30-day period on recognized equitable principles or because of strongly extenuating circumstances, e.g., where the employer has concealed, or misled the employee regarding the grounds for discharge or other adverse action; where the employee has, within the 30-day period, resorted in good faith to grievance-arbitration proceedings under a collective bargaining agreement or filed a complaint regarding the same general subject with another agency; where the discrimination is in the nature of a continuing violation. In the absence of circumstances justifying a tolling of the 30-day period, untimely complaints will not be processed.

J. Notification of administrator's determination.

The Administrator is to notify a complainant within 90 days of the complaint of his determination whether prohibited discrimination has occurred. This 90-day provision is considered directory in nature. While every effort will be made to notify complainants of the Administrator's determination within 90 days, there may be instances when it is not possible to meet the directory period set forth in this section.

K. Withdrawal of complaint.

Enforcement of the provisions of Section 34A-6-203 is not only a matter of protecting rights of individual employees, but also of public interest. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the Administrator's investigation. The Administrator's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. However, a voluntary and uncoerced request from a complainant to withdraw his complaint will be given careful consideration and substantial weight as a matter of policy and sound enforcement procedure.

L. Arbitration or other agency proceedings.

1. An employee who files a complaint under Section 34A-6-203(2) of the Act may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board. The Administrator's jurisdiction to entertain Section 34A-6-203 complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of other agencies or bodies. The Administrator may file action in district court regardless of the pendency of other proceedings.

2. However, the Administrator also recognizes the policy favoring voluntary resolution of disputes under procedures in collective bargaining agreements. (See, e.g., Boy's Market, Inc. v. Retail Clerks, 398 U.S. 235 (1970); Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965); Carey v. Westinghouse Electric Co., 375 U.S. 261 (1964); Collier Insulated Wire, 192 NLRB No. 150 (1971).) By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to Section 34A-6-203 complaints.

3. Where a complainant is in fact pursuing remedies other than those provided by Section 34A-6-203, postponement of the Administrator's determination and deferral to the results of such proceedings may be in order. (See, Burlington Truck Lines, Inc., v. U.S., 371 U.S. 156 (1962).)

4. Postponement of determination. Postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under Section 34A-6-203 and those proceedings are not likely to violate the rights guaranteed by Section 34A-6-203. The factual issues in such proceedings must be substantially the same as those raised by Section 34A-6-203 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination. (See, Rios v. Reynolds Metals Co., F. 2d (5th Cir., 1972), 41 U.S.L.W. 1049 (October 10, 1972): Newman v. Avco Corp., 451 F. 2d 743 (6th Cir., 1971).)

5. Deferral to outcome of other proceedings. A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-to-case basis, after careful scrutiny of all available information. Before deferring to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. In this regard, if such other actions initiated by a complainant are dismissed without adjudicative hearing thereof, such dismissal will not ordinarily be regarded as determinative of the Section 34A-6-203 complaint.

M. Employee refusal to comply with safety rules.

Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Act are not exercising any rights afforded by the Act. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations, will not ordinarily be regarded as discriminatory action prohibited by Section 34A-6-203. This situation should be distinguished from refusals to work, as discussed in R614-1-10.H.

R614-1-11. Rules of Agency Practice and Procedure Concerning UOSH Access to Employee Medical Records.

A. Policy.

UOSH access to employee medical records will in certain circumstances be important to the agency's performance of its statutory functions. Medical records, however, contain personal details concerning the lives of employees. Due to the substantial personal privacy interests involved, UOSH authority to gain access to personally identifiable employee medical information will be exercised only after the agency has made a careful determination of its need for this information, and only with appropriate safeguards to protect individual privacy. Once this information is obtained, UOSH examination and use of it will be limited to only that information needed to accomplish the purpose for access. Personally identifiable employee medical information will be retained by UOSH only for so long as needed to accomplish the purpose for access, will be kept secure while being used, and will not be disclosed to other agencies or members of the public except in narrowly defined circumstances. This section establishes procedures to implement these policies.

B. Scope.

1. Except as provided in paragraphs R614-1-11.B.3. through 6. below, this rule applies to all requests by UOSH personnel to obtain access to records in order to examine or copy personally identifiable employee medical information, whether or not pursuant to the access provision of R614-1-12.D.

2. For the purposes of this rule, "personally identifiably employee medical information" means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (e.g., exact age, height, weight, race, sex, date of initial employment, job title, etc.).

3. This rule does not apply to UOSH access to, or the use of, aggregate employee medical information or medical records on individual employees which is not a personally identifiable form. This section does not apply to records required by R614-1-8 to death certificates, or to employee exposure records, including biological monitoring records defined by R614-1-3.M. or by specific occupational safety and health standards as exposure records.

4. This rule does not apply where UOSH compliance personnel conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance record keeping requirements of an occupational safety and health standard, or with R614-1-12. An examination of this nature shall be conducted on-site and, if requested, shall be conducted under the observation of the record holder. The UOSH compliance personnel shall not record and take off-site any information from medical records other than documentation of the fact of compliance or non-compliance.

5. This rule does not apply to agency access to, or the use of, personally identifiable employee medical information obtained in the course of litigation.

6. This rule does not apply where a written directive by the Administrator authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results.

7. Even if not covered by the terms of this rule, all medically related information reported in a personally identifiable form shall be handled with appropriate discretion and care befitting all information concerning specific employees. There may, for example, be personal privacy interests involved which militate against disclosure of this kind of information to the public.

C. Responsible persons.

1. UOSH Administrator. The Administrator of the Division of Occupational Safety and Health of the Labor Commission shall be responsible for the overall administration and implementation of the procedures contained in this rule, including making final UOSH determinations concerning:

a. Access to personally identifiable employee medical information, and

b. Inter-agency transfer or public disclosure of personally identifiable employee medical information.

2. UOSH Medical Records Officer. The Administrator shall designate a UOSH official with experience or training in the evaluation, use, and privacy protection of medical records to be the UOSH Medical Records Officer. The UOSH Medical Records Officer shall report directly to the Administrator on matters concerning this section and shall be responsible for:

a. Making recommendations to the Administrator as to the approval or denial of written access orders.

b. Assuring that written access orders meet the requirements of paragraphs R614-1-11.D.2. and 3. of this rule.

c. Responding to employee, collective bargaining agent, and employer objections concerning written access orders.

d. Regulating the use of direct personal identifiers.

e. Regulating internal agency use and security of personally identifiable employee medical information.

f. Assuring that the results of agency analyses of personally identifiable medical information are, where appropriate, communicated to employees.

g. Preparing an annual report of UOSH's experience under this rule.

h. Assuring that advance notice is given of intended inter-agency transfers or public disclosures.

3. Principal UOSH Investigator. The Principal UOSH Investigator shall be the UOSH employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for assuring that the examination and use of this information is performed in the manner prescribed by a written access order and the requirements of this section. When access is pursuant to a written access order, the Principal UOSH Investigator shall be professionally trained in medicine, public health, or allied fields (epidemiology, toxicology, industrial hygiene, bio-statistics, environmental health, etc.)

D. Written access orders.

1. Requirement for written access order. Except as provided in paragraph R614-1-11.D.4. below, each request by a UOSH representative to examine or copy personally identifiable employee medical information contained in a record held by an employer or other record holder shall be made pursuant to a written access order which has been approved by the Administrator upon the recommendation of the UOSH Medical Records Officer. If deemed appropriate, a written access order may constitute, or be accompanied by an administrative subpoena.

2. Approval criteria for written access order. Before approving a written access order, the Administrator and the UOSH Medical Records Officer shall determine that:

a. The medical information to be examined or copied is relevant to a statutory purpose and there is a need to gain access to this personally identifiable information.

b. The personally identifiable medical information to be examined or copied is limited to only that information needed to accomplish the purpose for access, and

c. The personnel authorized to review and analyze the personally identifiable medical information are limited to those who have a need for access and have appropriate professional qualifications.

3. Content of written access order. Each written access order shall state with reasonable particularity:

a. The statutory purposes for which access is sought.

b. The general description of the kind of employee medical information that will be examined and why there is a need to examine personally identifiable information.

c. Whether medical information will be examined on-site, and what type of information will be copied and removed off-site.

d. The name, address, and phone number of the Principal UOSH Investigator and the names of any other authorized persons who are expected to review and analyze the medical information.

e. The name, address, and phone number of the UOSH Medical Records Officer, and

f. The anticipated period of time during which UOSH expects to retain the employee medical information in a personally identifiable form.

4. Special situations. Written access orders need not be obtained to examine or copy personally identifiable employee medical information under the following circumstances:

a. Specific written consent. If the specific written consent of an employee is obtained pursuant to R614-1-12.D., and the agency or an agency employee is listed on the authorization as the designated representative to receive the medical information,

then a written access order need not be obtained. Whenever personally identifiable employee medical information is obtained through specific written consent and taken off-site, a Principal UOSH Investigator shall be promptly named to assure protection of the information, and the UOSH Medical Records Officer shall be notified of this person's identity. The personally identifiable medical information obtained shall thereafter be subject to the use and security requirements of paragraphs R614-1-11.H.

b. Physician consultations. A written access order need not be obtained where a UOSH staff or contract physician consults with an employer's physician concerning an occupational safety or health issue. In a situation of this nature, the UOSH physician may conduct on-site evaluation of employee medical records in consultation with the employer's physician, and may make necessary personal notes of his or her findings. No employee medical records however, shall be taken off-site in the absence of a written access order or the specific written consent of an employee, and no notes of personally identifiable employee medical information made by the UOSH physician shall leave his or her control without the permission of the UOSH Medical Records Officer.

E. Presentation of written access order and notice to employees.

1. The Principal UOSH Investigator, or someone under his or her supervision, shall present at least two (2) copies each of the written access order and an accompanying cover letter to the employer prior to examining or obtaining medical information subject to a written access order. At least one copy of the written access order shall not identify specific employees by direct personal identifier. The accompanying cover letter shall summarize the requirements of this section and indicate that questions or objections concerning the written access order may be directed to the Principal UOSH Investigator or to the UOSH Medical Records Officer.

2. The Principal UOSH Investigator shall promptly present a copy of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to each collective bargaining agent representing employees whose medical records are subject to the written access order.

3. The Principal UOSH Investigator shall indicate that the employer must promptly post a copy of the written access order which does not identify specific employees by direct personal identifier, as well as post its accompanying cover letter.

4. The Principal UOSH Investigator shall discuss with any collective bargaining agent and with the employer the appropriateness of individual notice to employees affected by the written access order. Where it is agreed that individual notice is appropriate, the Principal UOSH Investigator shall promptly provide to the employer an adequate number of copies of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to enable the employer either to individually notify each employee or to place a copy in each employee's medical file.

F. Objections concerning a written access order. All employees, collective bargaining agents, and employer written objections concerning access to records pursuant to a written access order shall be transmitted to the UOSH Medical Records Officer. Unless the agency decides otherwise, access to the record shall proceed without delay notwithstanding the lodging of an objection. The UOSH Medical Records Officer shall respond in writing to each employee's and collective bargaining agent's written objection to UOSH access. Where appropriate, the UOSH Medical Records Officer may revoke a written access order and direct that any medical information obtained by it by returned to the original record holder or destroyed. The principal UOSH Investigator shall assure that such instructions by the UOSH Medical Records Officer are promptly implemented.

G. Removal of direct personal identifiers. Whenever employees medical information obtained pursuant to a written access order is taken off-site with direct personal identifiers included, the Principal UOSH Investigator shall, unless otherwise authorized by the UOSH Medical Records Officer, promptly separate all direct personal identifiers from the medical information, and code the medical information and the list of direct identifiers with a unique identifying number of each employee. The medical information with its numerical code shall thereafter be used and kept secured as though still in a directly identifiable form. The Principal UOSH Investigator shall also hand deliver or mail the list of direct personal identifiers with their corresponding numerical codes to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall thereafter limit the use and distribution of the list of coded identifiers to those with a need to know its contents.

H. Internal agency use of personally identifiable employee medical information.

1. The Principal UOSH Investigator shall in each instance of access be primarily responsible for assuring that personally identifiable employee medical information is used and kept secured in accordance with this section.

2. The Principal UOSH Investigator, the UOSH Medical Records Officer, the Administrator, and any other authorized person listed on a written access order may permit the examination or use of personally identifiable employee medical information by agency employees and contractors who have a need for access, and appropriate qualifications for the purpose for which they are using the information. No UOSH employee or contractor is authorized to examine or otherwise use personally identifiable employee medical information unless so permitted.

3. Where a need exists, access to personally identifiable employee medical information may be provided to attorneys in the office of the State Attorney General, and to agency contractors who are physicians or who have contractually agreed to abide by the requirements of this section and implementing agency directives and instructions.

4. UOSH employees and contractors are only authorized to use personally identifiable employee medical information for the purposes for which it was obtained, unless the specific written consent of the employee is obtained as to a secondary purpose, or the procedures of R614-1-11.D. through G. are repeated with respect to the secondary purpose.

5. Whenever practicable, the examination of personally identifiable employee medical information shall be performed on-site with a minimum of medical information taken off-site in a personally identifiable form.

I. Security procedures.

1. Agency files containing personally identifiable employee medical information shall be segregated from other agency files. When not in active use, files containing this information shall be kept secured in a locked cabinet or vault.

2. The UOSH Medical Records Officer and the Principal UOSH Investigator shall each maintain a log of uses and transfers of personally identifiable employee medical information and lists of coded direct personal identifiers, except as to necessary uses by staff under their direct personal supervision.

3. The photocopying or other duplication of personally identifiable employee medical information shall be kept to the minimum necessary to accomplish the purposes for which the information was obtained.

4. The protective measures established by this rule apply to all worksheets, duplicate copies, or other agency documents containing personally identifiable employee medical information.

5. Intra-agency transfers of personally identifiable employee medical information shall be by hand delivery, United States mail, or equally protective means. Inter-office mailing channels shall not be used.

J. Retention and destruction of records.

1. Consistent with UOSH records disposition programs, personally identifiable employee medical information and lists of coded direct personal identifiers shall be destroyed or returned to the original record holder when no longer needed for the purposes for which they were obtained.

2. Personally identifiable employee medical information which is currently not being used actively but may be needed for future use shall be transferred to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall conduct an annual review of all centrally-held information to determine which information is no longer needed for the purposes for which it was obtained.

K. Results of an agency analysis using personally identifiable employee medical information.

1. The UOSH Medical Records Officer shall, as appropriate, assure that the results of an agency analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as a part of the analysis.

2. Annual report. The UOSH Medical Records Officer shall on an annual basis review UOSH's experience under this section during the previous year, and prepare a report to the UOSH Administrator which shall be made available to the public. This report shall discuss:

a. The number of written access orders approved and a summary of the purposes for access;

b. The nature and disposition of employee; collective bargaining agent, and employer written objections concerning UOSH access to personally identifiable employee medical information; and

c. The nature and disposition of requests for inter-agency transfer or public disclosure of personally identifiable employee medical information.

L. Inter-agency transfer and public disclosure.

1. Personally identifiable employee medical information shall not be transferred to another agency or office outside of UOSH (other than to The Attorney General's Office) or disclosed to the public (other than to the affected employee or the original record holder) except when required by law or when approved by the Administrator.

2. Except as provided in paragraph R614-1-11.L.3. below, the Administrator shall not approve a request for an inter-agency transfer of personally identifiable employee medical information, which has not been consented to by the affected employees, unless the request is by a public health agency which:

a. Needs the requested information in a personally identifiable form for a substantial public health purpose;

b. Will not use the requested information to make individual determinations concerning affected employees which could be to their detriment;

c. Has regulations or established written procedures providing protection for personally identifiable medical information substantially equivalent to that of this section; and

d. Satisfies an exemption to the Privacy Act to the extent that the Privacy Act applies to the requested information (See 5 U.S.C. 552a(b); 29 CFR 70a.3).

3. Upon the approval of the Administrator, personally identifiable employee medical information may be transferred to:

a. The National Institute for Occupational Safety and Health (NIOSH).

b. The Department of Justice when necessary with respect to a specific action under the federal Occupational Safety and Health Act of 1970 and Utah Occupational Safety and Health Act of 1973.

4. The Administrator shall not approve a request for public disclosure of employee medical information containing direct personal identifiers unless there are compelling circumstances affecting the health or safety of an individual.

5. The Administrator shall not approve a request for public disclosure of employee medical information which contains information which could reasonably be used indirectly to identify specific employees when the disclosure would constitute a clearly unwarranted invasion of personal privacy.

6. Except as to inter-agency transfers to NIOSH or the State Attorney General's Office, the UOSH Medical Records Officer shall assure that advance notice is provided to any collective bargaining agent representing affected employees and to the employer on each occasion that UOSH intends to either transfer personally identifiable employee medical information to another agency or disclose it to a member of the public other than to an affected employee. When feasible, the UOSH Medical Records Officer shall take reasonable steps to assure that advance notice is provided to affected employees when the employee medical information to be released or disclosed contains direct personal identifiers.

M. Effective date.

This rule shall become effective on January 15, 1981.

R614-1-12. Access to Employee Exposure and Medical Records.

A. Purpose.

To provide employees and their designated representatives a right of access to relevant exposure and medical records, and to provide representatives of the Administrator a right of access to these records in order to fulfill responsibilities under the Utah Occupational Safety and Health Act. Access by employees, their representatives, and the Administrator is necessary to yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease. Each employer is responsible for assuring compliance with this Rule, but the activities involved in complying with the access to medical records provisions can be carried out, on behalf of the employer, by the physician or other health care personnel in charge of employee medical records. Except as expressly provided, nothing in this Rule is intended to affect existing legal and ethical obligations concerning the maintenance and confidentiality of employee medical information, the duty to disclose information to a patient/employee or any other aspect of the medical-care relationship, or affect existing legal obligations concerning the protection of trade secret information.

B. Scope.

1. This rule applies to each general industry, maritime, and construction employer who makes, maintains, contracts for, or has access to employee exposure or medical records, or analyses thereof, pertaining to employees exposed to toxic substances or harmful physical agents.

2. This rule applies to all employee exposure and medical records, and analyses thereof, of employees exposed to toxic substances or harmful physical agents, whether or not the records are related to specific occupational safety and health standards.

3. This rule applies to all employee exposure and medical records, and analyses thereof, made or maintained in any manner, including on an in-house or contractual (e.g., fee-for-service) basis. Each employer shall assure that the preservation and access requirements of this rule are complied with regardless of the manner in which records are made or maintained.

C. Preservation of records.

1. Unless a specific occupational safety and health

standard provides a different period of time, each employer shall assure the preservation and retention of records as follows:

a. Employee medical records. Each employee medical record shall be preserved and maintained for a least the duration of employment plus thirty (30) years, except that health insurance claims records maintained separately from the employer's medical program and its records need not be retained for any specified period.

b. Employee exposure records. Each employee exposure record shall be preserved and maintained for at least thirty (30) years, except that:

(1) Background data to environmental (workplace) monitoring or measuring, such a laboratory reports and worksheets, need only be retained for one (1) year so long as the sampling results, the collection methodology (sampling plan), a description of the analytical and mathematical methods used, and a summary of other background data relevant to interpretation of the results obtained, are retained for at least thirty (30) years; and

(2) Material safety data sheets and paragraph R614-1-3.M.4. records concerning the identity of a substance or agent need not be retained for any specified period as long as some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least thirty (30) years; and

c. Analyses using exposure or medical records. Each analysis using exposure or medical records shall be preserved and maintained for at least thirty (30) years.

2. Nothing in this rule is intended to mandate the form, manner, or process by which an employer preserves a record so long as the information contained in the record is preserved and retrievable, except that X-ray films shall be preserved in their original state.

D. Access to records.

1. Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a reasonable time, place, and manner, but in no event later than fifteen (15) days after the request for access is made.

2. Whenever an employee or designated representative requests a copy of a record, the employer shall, within the period of time previously specified, assure that either:

a. A copy of the record is provided without cost to the employee or representative;

b. The necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or representative for copying the record; or

c. The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

3. Whenever a record has been previously provided without cost to an employee or designated representative, the employer may charge reasonable, non-discriminatory administrative costs (i.e., search and copy expenses but not including overhead expenses) for a request by the employee or designated representative for additional copies of the record, except that:

a. An employer shall not charge for an initial request for a copy of new information that has been added to a record which was previously provided; and

b. An employer shall not charge for an initial request by a recognized or certified collective bargaining agent for a copy of an employee exposure record or an analysis using exposure or medical records.

4. Nothing in this rule is intended to preclude employees and collective bargaining agents from collectively bargaining to obtain access to information in addition to that available under this rule.

5. Employee and designated representative access.

a. Employee exposure records. Each employer shall, upon request, assure the access of each employee and designated representative to employee exposure records relevant to the employee. For the purpose of this rule exposure records relevant to the employee consist of:

(1) Records of the employee's past or present exposure to toxic substances or harmful physical agents,

(2) Exposure records of other employees with past or present job duties or working conditions related to or similar to those of the employee,

(3) Records containing exposure information concerning the employee's workplace or working conditions, and

(4) Exposure records pertaining to workplaces or working conditions to which the employee is being assigned or transferred.

b. Employee medical records.

(1) Each employer shall, upon request, assure the access of each employee to employee medical records of which the employee is the subject, except as provided in R614-1-12.D.4.

(2) Each employer shall, upon request, assure the access of each designated representative to the employee medical records of any employee who has given the designated representative specific written consent. R614-1-12A., Appendix A to R614-1-12., contains a sample form which may be used to establish specific written consent for access to employee medical records.

(3) Whenever access to employee medical records is requested, a physician representing the employer may recommend that the employee or designated representative:

(a) Consult with the physician for the purposes of reviewing and discussing the records requested;

(b) Accept a summary of material facts and opinions in lieu of the records requested;, or

(c) Accept release of the requested records only to a physician or other designated representative.

(4) Whenever an employee requests access to his or her employee medical records, and a physician representing the employer believes that direct employee access to information contained in the records regarding a specific diagnosis of a terminal illness or a psychiatric condition could be detrimental to the employees health, the employer may inform the employee that access will only be provided to a designated representative of the employee having specific written consent, and deny the employee's request for direct access to this information only. Where a designated representative with specific written consent requests access to information so withheld, the employer shall assure the access of the designated representative to this information, even when it is known that the designated representative will give the information to the employee.

(5) Nothing in this rule precludes physician, nurse, or other responsible health care personnel maintaining employee medical records from deleting from requested medical records the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.

c. Analysis using exposure or medical records.

(1) Each employer shall, upon request, assure the access of each employee and designated representative to each analysis using exposure or medical records concerning the employee's working conditions or workplace.

(2) Whenever access is requested to an analysis which reports the contents of employee medical records by either direct identifier (name, address, social security number, payroll number, etc.) or by information which could reasonably be used under the circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title, etc.) the employer shall assure that personal identifiers are removed before access is provided. If the employer can demonstrate that removal of personal identifiers from an analysis is not feasible, access to the

personally identifiable portions of analysis need not be provided.

(3) UOSH access.

(a) Each employer shall, upon request, assure the immediate access of representatives of the Administrator to employee exposure and medical records and to analysis using exposure or medical records. Rules of agency practice and procedure governing UOSH access to employee medical records are contained in R614-1-8.

(b) Whenever UOSH seeks access to personally identifiable employee medical information by presenting to the employer a written access order pursuant to R614-1-8, the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least fifteen (15) working days.

E. Trade Secrets.

1. Except as provided in paragraph R614-1-12.E.2., nothing in this rule precludes an employer from deleting from records requested by an employee or designated representative any trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in a mixture, as long as the employee or designated representative is notified that information has been deleted. Whenever deletion of trade secret information substantially impairs evaluation of the place where or the time when exposure to a toxic substance or harmful physical agent occurred, the employer shall provide alternative information which is sufficient to permit the employee to identify where and when exposure occurred.

2. Notwithstanding any trade secret claims, whenever access to records is requested, the employer shall provide access to chemical or physical agent identities including chemical names, levels of exposure, and employee health status data contained in the requested records.

3. Whenever trade secret information is provided to an employee or designated representative, the employer may require, as a condition of access, that the employee or designated representative agree in writing not to use the trade secret information for the purpose of commercial gain and not to permit misuse of the trade secret information by a competitor or potential competitor of the employer.

F. Employee information.

1. Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform employees exposed to toxic substances or harmful physical agents of the following;

a. The existence, location, and availability of any records covered by this rule;

b. The person responsible for maintaining and providing access to records; and

c. Each employee's right of access to these records.

2. Each employer shall make readily available to employees a copy of this rule and its appendices, and shall distribute to employees any informational materials concerning this rule which are made available to the employer by the Administrator.

G. Transfer of Records

1. Whenever an employer is ceasing to do business, the employer shall transfer all records subject to this Rule to the successor employer. The successor employer shall receive and maintain these records.

2. Whenever an employer is ceasing to do business and there is no successor employer to receive and maintain the records subject to this standard, the employer shall notify affected employees of their rights of access to records at least three (3) months prior to the cessation of the employer's business.

3. Whenever an employer either is ceasing to do business and there is no successor employer to receive and maintain the records, or intends to dispose of any records required to be preserved for at least thirty (30) years, the employer shall:

a. Transfer the records to the Director of the National Institute for Occupational Safety and Health (NIOSH) if so required by a specific occupational safety and health standard; or

b. Notify the Director of NIOSH in writing of the impending disposal of records at least three (3) months prior to the disposal of the records.

4. Where an employer regularly disposes of records required to be preserved for at least thirty (30) years, the employer may, with at least (3) months notice, notify the Director of NIOSH on an annual basis of the records intended to be disposed of in the coming year.

a. Appendices. The information contained in the appendices to this rule is not intended, by itself, to create any additional obligations not otherwise imposed by this rule nor detract from any existing obligation.

H. Effective date. This rule shall become effective on December 5, 1980. All obligations of this rule commence on the effective date except that the employer shall provide the information required under R614-1-12.F.1. to all current employees within sixty (60) days after the effective date.

R614-1-12A. Appendix A to R614-1-12 SAMPLE.

Authorization letter for the Release of Employee Medical Record Information to Designated Representative.

I, (full name of worker/patient), hereby authorize (individual or organization holding the medical records), to release to (individual or organization authorized to receive the medical information), the following medical information from my personal medical records: (Describe generally the information desired to be released).

I give my permission for this medical information to be used for the following purpose: ....., but I do not give permission for any other use or re-disclosure of this information.

(Note---Several extra lines are provided below so that you can place additional restrictions on this authorization letter if you want to. You may, however, leave these lines blank. On the other hand, you may want to (1) specify a particular expiration date for this letter (if less than one year): (2) describe medical information to be created in the future that you intend to be covered by this authorization letter, or (3) describe portions of the medical information in you records which you do not intend to be released as a result of this letter.)

Full name of Employee or Legal Representative

Signature of Employee or Legal Representative

Date of Signature

R614-1-12B. Appendix B to R614-1-12 Availability of NIOSH Registry of Toxic Effects of Chemical Substances (RTECS).

R614-1-12 applies to all employee exposure and medical records, and analysis thereof, of employees exposed to toxic substances or harmful physical agents (see R614-1-12.B.2.). The term "toxic substance" or "harmful physical agent" is defined by paragraph R614-1-3.FF. to encompass chemical substances, biological agents, and physical stresses for which there is evidence of harmful health effects. The standard uses the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) as one of the chief sources of information as to whether evidence of harmful health effects exists. If a substance is listed in the latest printed RTECS, the standard applies to exposure and medical records (and analysis of these records) relevant to employees exposed to the substances.

It is appropriate to note that the final standard does not require that employers purchase a copy of RTECS and many employers need not consult RTECS to ascertain whether their

employee exposure or medical records are subject to the standard. Employers who do not currently have the latest printed edition of the NIOSH RTECS, however, may desire to obtain a copy. The RTECS is issued in an annual printed edition as mandated by Rule 20(a)(6) of the Occupational Safety and Health Act (29 U.S.C. 669 (a)(6)). The 1978 edition is the most recent printed edition as of May 1, 1980. Its Forward and Introduction describes the RTECS as follows:

"The annual publication of a list of known toxic substances is a NIOSH mandate under the Occupational Safety and Health Act of 1970. It is intended to provide basic information on the known toxic and biological effects of chemical substances for the use of employers, employees, physicians, industrial hygienists, toxicologists, researchers, and, in general, anyone concerned with the proper and safe handling of chemicals. In turn, this information may contribute to a better understanding of potential occupational hazards by everyone involved and ultimately may help to bring about a more healthful workplace environment.

"This registry contains 142,247 listings of chemical substances: 33,929 are names of different chemicals with their associated toxicity data and 90,318 are synonyms. This edition includes approximately 7,500 new chemical compounds that did not appear in the 1977 Registry.

"The Registry's purposes are many, and it serves a variety of users. It is a single source document for basic toxicity information and for other data, such as chemical identifiers and information necessary for the preparation of safety directives and hazard evaluations for chemical substances. The various types of toxic effects linked to literature citations provide researchers and occupational health scientists with an introduction to the toxicological literature, making their own review of the toxic hazards of a given substance easier. By presenting data on the lowest reported doses that produce effects by several routes of entry in various species, the Registry furnishes valuable information to those responsible for preparing safety data sheets for chemical substances in the workplace. Chemical and production engineers can use the Registry to identify the hazards which may be associated with chemical intermediates in the development of final products, and thus can more readily select substitutes or alternate processes which may be less hazardous.

"In this edition of the Registry, the editors intend to identify "all known toxic substances" which may exist in the environment and to provide pertinent data on the toxic effects from known does entering an organism by any route described. Data may be used for the evaluation of chemical hazards in the environment, whether they be in the workplace, recreation area, or living quarters.

"It must be reemphasized that the entry of a substance in the Registry does not automatically mean that it must be avoided. A listing does mean, however, that the substance has the documented potential of being harmful if misused, and care must be exercised to prevent tragic consequences."

The RTECS 1978 printed edition may be purchased for $13.00 from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 (202-783-3238) (GPO Stock No. 017-033-00346-7). The 1979 printed edition is anticipated to be issued in the summer of 1980. Some employers may also desire to subscribe to the quarterly update to the RTECS which is published in a microfiche edition. An annual subscription to the quarterly microfiche may be purchase from the GPO for $14.00 (Order the "Microfiche Edition. Registry of Toxic Effects of Chemical Substances"). Both the printed edition and the microfiche edition of RTECS are available for review at many university and public libraries throughout the country. The latest RTECS editions may also be examined at OSHA Technical Data Center, Room N2439-Rear, United States Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (202-523-9700), or any OSHA Regional or Area Office (See major city telephone directories under United States Government-Labor Department).

KEY: safety
July 2, 2004 **34A-6**
Notice of Continuation November 25, 2002

R651. Natural Resources, Parks and Recreation.
R651-407. Off-Highway Vehicle Advisory Council.
R651-407-1. Appointment and Description of Vehicle Advisory Council Membership.

The board will appoint an eleven-member off-highway vehicle advisory council representing off-highway vehicle users in the state. One member will be from each of the following interests: the Bureau of Land Management; the U.S.D.A. Forest Service; the Utah School and Institutional Trust Lands Administration; snowmobiling; motorcycling; all-terrain vehicle usage; four-wheel drive vehicle usage; off-highway vehicle dealers; off-highway vehicle safety; a youth member; and a member-at-large.

KEY: off-highway vehicles
July 5, 2004 41-22-10(1)
Notice of Continuation October 23, 2003

R651. Natural Resources, Parks and Recreation.
R651-411. OHV Use in State Parks.
R651-411-1. Definitions.

(1) "OHV" means "off-highway vehicle" and includes the following vehicle types:

(a) Four-wheel drive automobiles or trucks;

(b) All-terrain vehicles (ATVs) designed to carry one or two passengers; and

(c) Snowmobiles.

R651-411-2. OHV Use-Restrictions.

(1) OHVs are to be used only in designated areas.

(2) Designated ice areas for OHV use are only those ice areas that are accessed via the board ramps to public ice fishing areas. These areas are at Bear Lake, East Canyon, Escalante, Hyrum, Jordanelle, Millsite, Otter Creek, Palisade, Piute, Red Fleet, Rockport, Scofield, Starvation, Steinaker and Yuba state parks.

(3) Responsibility for any accidents or problems while using OHVs in state parks rests with the user.

KEY: off-highway vehicles
July 19, 2004 **41-22-10**
63-11-17

R651. Natural Resources, Parks and Recreation.
R651-601. Definitions as Used in These Rules.
R651-601-1. Division.
"Division" means the Division of Parks and Recreation, Department of Natural Resources.

R651-601-2. Ranger.
"Ranger" means any employee of the Division who is designated by the Director or his designee as a law enforcement officer as defined in Section 53-13-103.

R651-601-3. Division Representative.
"Division Representative" means any employee of the Division authorized by the Director or his designee to act in an official capacity.

R651-601-4. Natural and Cultural Resources.
"Natural and Cultural Resources" means those features and values including all lands, minerals, soils and waters, natural systems and processes, and all plants, animals, topographic, geologic and paleontological components of a park area as well as all historic and pre-historic, sites, trails, structures, inscriptions, rock art and artifacts representative of a given culture occurring on or within any park area.

R651-601-5. Park System.
"Park system" means all natural and cultural resource, and all buildings and other improvements owned, leased, or otherwise managed by the Division.

R651-601-6. Park Area.
"Park area" means any individual park property in the park system.

R651-601-7. Manager.
"Manager" means the Division representative in charge of a park area.

R651-601-8. Permission.
"Permission" means oral or written authorization by a park representative.

R651-601-9. Permit.
"Permit" means written authorization by a park representative.

R651-601-10. Posted.
"Posted" means displayed printed instruction or information.

R651-601-11. Person.
"Person" means individual, corporation, company, partnership, trust, firm, or association of persons.

R651-601-12. Commercial Activity.
"Commercial Activity" means any activity, private or otherwise, that is for the purpose of commercial gain, or that is part of any scheme or plan established for the purpose of obtaining commercial gain. This includes, but is not limited to:
(1) sales of goods or merchandise.
(2) rentals of equipment.
(3) collection of entrance or admission fees.
(4) collection of storage or use fees.
(5) sales of services.

R651-601-13. Commercial Gain.
"Commercial gain" means compensation in money, services, or other consideration as part of a scheme or effort to generate income or financial advantage of any kind.

R651-601-14. Concession Contract.
"Concession Contract" means a use agreement granted to an individual, partnership, corporation, or other recognized organization, for the purpose of providing services or sales of goods or merchandise for conducting commercial activity.

R651-601-15. Special Use Permit.
"Special Use Permit" means a temporary authorization or concession, not to exceed one year, for the purpose of conducting commercial activity.

R651-601-16. Cooperative Agreement.
A written instrument whereby two or more parties agree to terms governing the parties' relationship, much as a contract. Informal interoffice communication definition does not apply in this case.

R651-601-17. Definitions.
(1) "Motorized Transportation Device" means any motorized device used as a mode of transportation that includes: "Electric assisted bicycles", "Mopeds", "Motor Assisted scooters", "motorcycles", "motor-driven cycle", and "personal motorized mobility device" as defined in Utah State Code 41-6-1. "Motorized wheelchairs" are also included under this definition.

KEY: parks, off-highway vehicles
July 19, 2004 41-22-10
Notice of Continuation October 23, 2003 63-11-3
63-11-17

R651. Natural Resources, Parks and Recreation.
R651-611. Fee Schedule.
R651-611-1. Use Fees.

All fees required under this fee schedule are to be paid in advance of occupancy or use of facilities.

A. Fees for services covering one or more months, for docks and dry storage, must be paid in advance for the season as determined by the Division.

B. Fee permits and passes are not refundable or transferable. Duplicate annual permits and special fun tags will be issued only upon completion of an affidavit and payment of the required fee. Inappropriate use of fee permits and passes may result in confiscation by park authorities.

C. Fees shall not be waived, reduced or refunded unless authorized by Division guideline; however, park or unit managers may determine and impose equitable fees for unique events or situations not covered in the current fee schedule. The director has the prerogative to waive or reduce fees.

D. The Multiple Park Permit, Senior Multiple Park Permit, Special Fun Tag, Camping Permit and Daily Private Vehicle Permit are good for one (1) private vehicle with up to eight (8) occupants, with the exception of any special charges. Multiple Park Permits, Senior Multiple Park Permits, and Special Fun Tags, are not honored at This Is The Place State Park.

E. No charge for persons five years old and younger.

F. With the exception of the Multiple Park Permit, Senior Multiple Park Permit, and Special Fun Tag, fees are applicable only to the specific park or facility where paid and will not be honored at other parks or facilities, unless otherwise stated in division guideline.

G. The contract operator, with the approval of the Division Director, will set fees for This Is The Place State Park.

H. A "senior" is defined as any resident of the State of Utah 62 years of age or older. Residency and proof of age are verified by presentation of a valid driver's license or a valid Utah identification card.

R651-611-2. Day Use Entrance Fees.

Permits the use of all day activity areas in a state park. These fees do not include overnight camping facilities or special use fees.

A. Annual Permits

1. $70.00 Multiple Park Permit (good for all parks)
2. $35.00 Senior Multiple Park Permit (good for all parks)
3. Snow Canyon Specialty Permits
a. $15.00 Family Pedestrian Permit
b. $5.00 Commuter Permit
4. Duplicate Annual Permits may be purchased if originals are lost, destroyed, or stolen, upon payment of a $10.00 fee and the submittal of a signed affidavit to the Division office. Only one duplicate is allowed.

B. Special Fun Tag - Available free to Utah residents, who are disabled, as defined by the Special Fun Tag permit affidavit.

C. Daily Permit - Allows access to a specific state park on the date of purchase.

1. $9.00 ($5.00 for seniors) per private motor vehicle or $5.00 per person ($3.00 for seniors), for pedestrians or bicycles at the following parks:

TABLE 1

Deer Creek	Jordanelle - Hailstone
Utah Lake	Willard Bay

2. $7.00 ($4.00 for seniors) per private motor vehicle or $4.00 per person ($2.00 for seniors) for pedestrians or bicycles at the following parks:

TABLE 2

Bear Lake - Marina	Bear Lake - Rendezvous
Dead Horse Point	East Canyon
Jordanelle - Rockcliff	Quail Creek
Rockport	Sand Hollow
Yuba	

3. $6.00 per adult, $3.00 per child (a child is defined as any person between the ages of six (6) and twelve (12) years old inclusively), and $3.00 for seniors at Utah Field House State Park.

4. $2.00 per person ($1.00 for seniors), or $6.00 per family (up to eight (8) individuals ($3.00 for seniors), at the following parks:

TABLE 3

Anasazi	Camp Floyd
Edge of the Cedars	Great Salt Lake
Fremont	Territorial
Iron Mission	

5. $5.00 ($3.00 for seniors) per private motor vehicle or $3.00 per person ($2.00 for seniors),for pedestrians or bicycles at the parks not identified above, including the east side of Bear Lake.

6. $10.00 per OHV rider at the Jordan River OHV Center.

7. $2.00 per person for commercial groups or vehicles with nine (9) or more occupants ($15.00 per group at Great Salt Lake).

D. Group Site Day Use Fee - Advance reservation only. $2.00 per person, age six (6) and over, for sites with basic facilities. Minimum $50.00 fee established for each facility.

E. Educational Groups - No charge for group visits by Utah public or parochial schools with advance notice to park. When special arrangements or interpretive talks are provided, a fee of $.50 per person may be charged at the park manager's discretion.

F. Antelope Island Wildlife Management Program: A $1.00 fee will be added to the entrance fee at Antelope Island. This additional fee will be used by the Division to fund the Wildlife Management Program on the Island.

R651-611-3. Camping Fees.

Permits overnight camping and day use for the day of arrival until 2:00 p.m. of the following day or each successive day. Camp sites must be vacated by 12:00 noon following the last camping night at Dead Horse Point. Camping is limited to 14 consecutive days at all campgrounds with the exception of Snow Canyon State Park, with a five (5) consecutive day limit.

A. Individual Sites -- One (1) vehicle with up to eight (8) occupants and any attached recreational equipment as one (1) independent camp unit. Fees for individual sites are based on the following schedule:

1. $8.00 with pit or vault toilets; $11.00 with flush toilets; $14.00 with flush toilets and showers or electrical hookups; $17.00 with flush toilets, showers and electrical hookups; $20.00 with full hookups.

2. Primitive camping fees may be decreased at the park manager's discretion dependent upon the developed state of the facilities to be used by park visitors. Notification of the change must be made to the Division's financial manager and reservations manager before the reduced fee can be made effective.

3. Special Fun Tag holders may receive a $2.00 discount for individual camping sites Monday through Thursday nights, excluding holidays.

4. One-half the campsite fee rounded up to the nearest dollar will be charged per vehicle at all parks and individual camping sites for all additional transportation vehicles that are separate and not attached to the primary vehicle, but are dependent upon that unit. No more than one additional vehicle is allowed at any individual campsite. This fee is not applicable at primitive campsites.

B. Group Sites - (by advance reservation for groups)
1. $2.00 per person, age six (6) and over at sites with vault toilets. Minimum $50.00 fee for each facility.
2. $3.00 per person, age six (6) and over at sites with flush toilets and/or pavilions. Minimum $75.00 fee for each facility.

R651-611-4. Special Fees.
A. Golf Course Fees
1. Palisade rental and green fees.
a. Nine holes general public - weekends and holidays - $10.00
b. Nine holes weekdays (except holidays) - $9.00
c. Nine holes Jr/Sr weekdays (except holidays) $8.00
d. 20 round card pass - $140.00
e. 20 round card pass (Jr only)- $100.00
f. Promotional pass - single person (any day) - $400.00
g. Promotional pass - single person (weekdays only) - $275.00
h. Promotional pass - couples (any day) - $650.00
i. Promotional pass - family (any day) - $850.00
j. Companion fee - walking, non -player - $4.00
k. Motorized cart (9 holes) - $8.00
l. Motorized cart (9 holes single rider) - $4.00
m. Pull carts (9 holes) - $2.00
n. Club rental (9 holes) - $5.00
o. School teams - No fee for practice rounds with coach and team roster. Tournaments are $3.00 per player.
p. Driving range - small bucket - $2.50
q. Driving range - large bucket - $3.50
2. Wasatch Mountain and Soldier Hollow rental and green fees.
a. Nine holes general public - $12.00
b. Nine holes general public (weekends and holidays) - 13.00
c. Nine holes Jr/Sr weekdays (except holidays) - $11.00
d. 20 round card pass - $220.00 - no holidays or weekends
e. Companion fee - walking, non-player - $4.00
f. Motorized cart (9 holes - mandatory on Mt. course) - $12.00
g. Motorized cart (9 holes single rider - $6.00)
h. Pull carts (9 holes) - $2.25
i. Club rental (9 holes) - $6.00
j. School teams - No fee for practice rounds with coach and team roster (Wasatch County only).
Tournaments are $3.00 per player.
k. Tournament fee (per player) - $5.00
l. Driving range - small bucket - $2.50
m. Driving range - large bucket - $5.00
n. Advance tee time booking surcharge - $15.00
3. Green River rental and green fees.
a. Nine holes general public - $9.00
b. Nine holes Jr/Sr weekdays (except holidays) - $8.00
c. Eighteen holes general public - $16.00
d. 20 round card pass - $140.00
e. Promotional pass - single person (any day) - $350.00
f. Promotional pass - personal golf cart - $350.00
g. Promotional pass - single person (Jr/Sr weekdays) - $275.00
h. Promotional pass - couple (any day) - $600.00
i. Promotional pass - family (any day) - $750.00
j. Companion fee - walking, non-player - $4.00
k. Motorized cart (9 holes) - $8.00
l. Motorized cart (9 holes single rider) - $4.00
m. Pull carts (9 holes) - $2.25
n. Club rental (9 holes) - $5.00
o. School teams - No fee for practice rounds with coach and team roster. Tournaments are $3.00 per player.
4. Golf course hours are daylight to dark
5. No private, motorized golf carts are allowed, except where authorized by existing contractual agreement.
6. Jr golfers are 17 years and under. Sr golfers are 62 and older.
B. Boat Mooring and Dry Storage
1. Mooring Fees:
a. Day Use - $5.00
b. Overnight Boat Parking - $7.00 (until 8:00 a.m.)
c. Overnight Boat Camping - $15.00 (until 2:00 p.m.)
d. Monthly - $4.00/ft.
e. Monthly with Utilities - (Bear Lake) $6.00/ft.
f. Monthly with Utilities - (Other Parks) $5.00/ft.
g. Monthly Off Season - $2.00/ft
h. Monthly (Off Season with utilities) - $3.00/ft
2. Dry Storage Fees:
a. Overnight (until 2:00 p.m.) - $5.00
b. Monthly During Season - $75.00
c. Monthly Off Season - $50.00
d. Monthly (unsecured) - $25.00
C. Meeting Rooms and Buildings
1. Day Use: 1-4 hours between 8:00 a.m. and 6:00 p.m.
a. Up to 50 persons - $50.00
b. 51 to 100 persons - $70.00
c. 101 to 150 persons - $90.00
d. Add 50% for after 6:00 p.m.
e. Fees include day use fee
2. Overnight Use 2:00 p.m. until 2:00 p.m., up to 100 people. Minimum Fee $250.00
3. Territorial Statehouse
a. Legislative Hall (per hour) - $30.00
b. School or Grounds (per hour) - $20.00
4. Utah Field House of Natural History
a. Training room per session - $75.00
b. Theater per session - $100.00
c. Lobby area per session - $500.00
d. Dinosaur garden per session - $1,000.00
e. Entire museum per day - $2,000.00
D. Roller Skating Fees:
1. Adults - $2.00
2. Children 6 through 11 - $1.00
3. Skate Rental - $1.00
4. Ice Skate Sharpening
5. Group Reservations
a. First Hour - $30.00
b. Every Hour Thereafter - $20.00
E. Other Miscellaneous Fees
1. Canoe Rental (includes safety equipment).
a. Up to one (1) hour - $ 5.00
b. Up to four (4) hours - $10.00
c. All day to 6:00 p.m. $20.00
2. Paddle boat Rental (includes safety equipment).
a. Up to one (1) hour $10.00
b. Up to four (4) hours $20.00
c. All day to 6:00 p.m. $30.00
3. Cross Country Skiing Trails.
a. $4.00 per person, twelve (12) and older.
b. $2.00 per person, six (6) through eleven (11).
4. Pavilion - 8:00 a.m. - 10:00 p.m. (non -fee areas).
a. $10.00 per day - (single unit).
b. $30.00 per day - (group unit).
5. Wagon Rental per day - $50.00
6. Recreation Field (non-fee areas) - $25.00.
7. Sports Equipment Rental - $10.00.
8. Life Jacket Rental - $1.00
9. Day Use Shower Fee - $2.00.
(where facilities can accommodate)
10. Cleaning Deposit (where applicable) - $100.00
11. Application Fees - Non -refundable PLUS Negotiated Costs.
a. Grazing Permit - $20.00

b. Easement - $ 200.00
c. Construction/Maintenance - $50.00
d. Special Use Permit - $50.00
e. Commercial Filming - $50.00
f. Waiting List - $10.00
12. Assessment and Assignment Fees.
a. Duplicate Document - $10.00
b. Contract Assignment - $20.00
c. Returned checks - $20.00
d. Staff time - $40.00/hour
e. Equipment - $30.00/hour
f. Vehicle - $20.00/hour
g. Researcher - $5.00/hour
h. Photo copy - $ .10/each
i. Fee collection - $10.00
13. Curation Fees.
a. Annual curation agreement $75.00
b. Curation storage Edge of Cedars $400.00/cubic foot.
c. Curation storage other parks $350.00/cubic foot
d. All curation storage fees are one time only.
14. Snowmobile Parking Fee - Monte Cristo Trail head.
a. Day use (6:00 a.m. to 10:00 p.m.) - $5.00
b. Overnight (10:00 p.m. to 10:00 p.m.) - $5.00
c. Season Pass (Day use only) - $30.00
d. Season Pass (Overnight) - $50.00

R651-611-5. Reservations.

A. Camping Reservation Fees.
1. Individual Campsite $7.00
2. Group site or building rental $10.25
3. Fees identified in #1 and #2 above are to be charged for both initial reservations and for changes to existing reservations.

B. All park facilities will be allocated on a first-come, first-serve basis.

C. Selected camp and group sites are reservable in advance by calling 322-3770, 1-800-322-3770 or on the Internet at: www.stateparks.utah.gov.

D. Applications for reservation of skating rinks, meeting rooms, buildings, mooring docks, dry storage spaces and other sites not covered above, will be accepted by the respective park personnel beginning on the first business day of February for the next 12 months. Application forms and instructions are available at the park.

E. All unreserved mooring docks, dry storage spaces and camp picnic sites are available on a first-come, first-serve basis.

F. The park manager for any group reservation or special use permit may require a cleanup deposit.

G. Golf course reservations for groups of 20 or more and tournaments will be accepted for the calendar year beginning the first Monday of March. Reservations for up to two starting times (8 persons) may be made for Saturday, Sunday and Monday, the preceding Monday; and for Tuesday through Friday, the preceding Saturday. Reservations will be taken by phone and in person during golf course hours.

H. One party will reserve park facilities for more than fourteen (14) consecutive days in any 30-day period.

KEY: parks, fees
July 19, 2004 **63-11-17(2)**
Notice of Continuation August 7, 2001

R651. Natural Resources, Parks and Recreation.
R651-615. Motor Vehicle Use.
R651-615-1. Traffic Rules and Regulations.

The use and operation of motor vehicles in general shall be in accordance with the Utah Traffic requirements as found in Title 41, Chapter 6 Utah Code.

R651-615-2. Blocking and Restricting Normal Use.

Blocking, restricting or otherwise interfering with the normal use of any park facility with a vehicle or towed device is prohibited.

R651-615-3. Roadway and Parking Areas.

Operating or parking a motor vehicle or trailer except on roadways and parking areas developed for that use is prohibited.

R651-615-4. Entering and Leaving Park Site.

Operating a motor vehicle in a developed park area for any purpose other than entering or leaving the site is prohibited.

R651-615-5. Off Road Use.

The operation of vehicles off road is prohibited within the boundaries of all park areas except those with designated off-highway vehicle riding areas.

R651-615-6. Off-Highway Vehicles.

Operation of off-highway vehicles is prohibited on all park area roads unless authorized in accordance with the provisions of the Utah Off-Highway Vehicle Act.

R651-615-7. Motorized Transportation Devices.

Motorized Transportation Devices (MTD) that are powered by electric motors may be used for transportation to and from facilities and structures within the state parks.

KEY: parks, off-highway vehicles
July 19, 2004 **63-11-17(2)(b)**
Notice of Continuation October 23, 2003 **41-22-10**
63-11-17

R651. Natural Resources, Parks and Recreation.
R651-619. Possession of Alcoholic Beverages or Controlled Substances.
R651-619-1. Possession of Alcohol and Controlled Substances.

Offenses for the possession or use of any alcoholic beverage or controlled substance, shall be handled through Utah Code, Titles 32A, 41, 58, 73 and 76.

R651-619-2. Alcohol in Buildings.

There shall be no possession and/or consumption of any alcoholic beverage in the state park system visitor centers, museums and administrative offices, unless permission is expressly given, in writing, by the division director, or designee. Organizations dispensing such beverages are required to carry one million dollars ($1,000,000) in insurance coverage.

KEY: parks
July 5, 2004 63-11-17(2)(b)
Notice of Continuation October 23, 2003

R651. Natural Resources, Parks and Recreation.
R651-626. Skating, Skateboards and Motorized Transportation Devices.
R651-626-1. Use of Roller Skates, Inline Skates, Motorized Transportation Devices (MTD), and Skateboards.

The recreational use of roller skates, inline skates, motorized transportation devices (MTD), and skateboards is prohibited except in locations designated and posted for that activity by the park manager.

KEY: parks
July 5, 2004 63-11-17(2)(b)
Notice of Continuation October 23, 2003

R657. Natural Resources, Wildlife Resources.
R657-5. Taking Big Game.
R657-5-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking deer, elk, pronghorn, moose, bison, bighorn sheep, and Rocky Mountain goat.

(2) Specific dates, areas, methods of take, requirements, and other administrative details which may change annually are published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation and the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Antlerless deer" means a deer without antlers or with antlers five inches or shorter.

(b) "Antlerless elk" means an elk without antlers or with antlers five inches or shorter.

(c) "Antlerless moose" means a moose with antlers shorter than its ears.

(d) "Arrow quiver" means a portable arrow case that completely encases all edges of the broadheads.

(e) "Buck deer" means a deer with antlers longer than five inches.

(f) "Buck pronghorn" means a pronghorn with horns longer than five inches.

(g) "Bull elk" means an elk with antlers longer than five inches.

(h) "Bull moose" means a moose with antlers longer than its ears.

(i) "Cow bison" means a female bison.

(j) "Doe pronghorn" means a pronghorn without horns or with horns five inches or shorter.

(k) "Highway" means the entire width between property lines of every way or place of any nature when any part of it is open to the use of the public as a matter of right for vehicular travel.

(l) "Hunter's choice" means either sex may be taken.

(m) "Ram" means a male desert bighorn sheep or Rocky Mountain bighorn sheep.

(n)(i) "Resident" for purposes of this rule means a person who:

(A) has been domiciled in the state of Utah for six consecutive months immediately preceding the purchase of a license or permit; and

(B) does not claim residency for hunting, fishing, or trapping in any other state or country.

(ii) A Utah resident retains Utah residency if that person leaves this state:

(A) to serve in the armed forces of the United States or for religious or educational purposes; and

(B) complies with Subsection (m)(i)(B).

(iii)(A) A member of the armed forces of the United States and dependents are residents for the purposes of this chapter as of the date the member reports for duty under assigned orders in the state if the member:

(I) is not on temporary duty in this state; and

(II) complies with Subsection (m)(i)(B).

(iv) A copy of the assignment orders must be presented to a wildlife division office to verify the member's qualification as a resident.

(v) A nonresident attending an institution of higher learning in this state as a full-time student may qualify as a resident for purposes of this chapter if the student:

(A) has been present in this state for 60 consecutive days immediately preceding the purchase of the license or permit; and

(B) complies with Subsection (m)(i)(B).

(vi) A Utah resident license or permit is invalid if a resident license for hunting, fishing, or trapping is purchased in any other state or country.

(vii) An absentee landowner paying property tax on land in Utah does not qualify as a resident.

(o) "Spike bull" means a bull elk which has at least one antler having no branching above the ears. Branched means a projection on an antler longer than one inch, measured from its base to its tip.

R657-5-3. License, Permit, and Tag Requirements.

(1) A person may engage in hunting protected wildlife or in the sale, trade, or barter of protected wildlife or their parts in accordance with Section 23-19-1 and the rules or proclamations of the Wildlife Board.

(2) Any license, permit, or tag that is mutilated or otherwise made illegible is invalid and may not be used for taking or possessing big game.

R657-5-4. Age Requirements and Restrictions.

(1)(a) A person 14 years of age or older may purchase a permit and tag to hunt big game. A person 13 years of age may purchase a permit and tag to hunt big game if that person's 14th birthday falls within the calendar year for which the permit and tag are issued.

(2)(a) A person at least 14 years of age and under 16 years of age must be accompanied by his parent or legal guardian, or other responsible person 21 years of age or older and approved by his parent or guardian, while hunting big game with any weapon.

(b) As used in this section, "accompanied" means at a distance within which visual and verbal communication are maintained for the purposes of advising and assisting.

R657-5-5. Duplicate License and Permit.

(1) Whenever any unexpired license, permit, tag or certificate of registration is destroyed, lost or stolen, a person may obtain a duplicate from a division office, for five dollars or half of the price of the original license, or permit, whichever is less.

(2) The division may waive the fee for a duplicate unexpired license, permit, tag or Certificate of Registration provided the person did not receive the original license, permit, tag or certificate of registration.

R657-5-6. Hunting Hours.

Big game may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

R657-5-7. Temporary Game Preserves.

(1)(a) A person who does not have a valid permit to hunt on a temporary game preserve may not carry a firearm or archery equipment on any temporary game preserve while the respective hunts are in progress.

(b) "Carry" means having a firearm on your person while hunting in the field.

(2) As used in this section, "temporary game preserve" means all bull elk, buck pronghorn, moose, bison, bighorn sheep, Rocky Mountain goat, limited entry buck deer areas and cooperative wildlife management units, excluding incorporated areas, cities, towns and municipalities.

(3) Weapon restrictions on temporary game preserves do not apply to:

(a) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Proclamation and Waterfowl Proclamation, respectively, and possessing only legal weapons to take upland game and waterfowl;

(b) livestock owners protecting their livestock;
(c) peace officers in the performance of their duties; or
(d) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife.

R657-5-8. Prohibited Weapons.
(1) A person may not use any weapon or device to take big game other than those expressly permitted in this rule.
(2) A person may not use:
(a) a firearm capable of being fired fully automatic; or
(b) any light enhancement device or aiming device that casts a beam of light.

R657-5-9. Rifles and Shotguns.
(1) The following rifles and shotguns may be used to take big game:
(a) any rifle firing centerfire cartridges and expanding bullets; and
(b) a shotgun, 20 gauge or larger, firing only 00 or larger buckshot or slug ammunition.

R657-5-10. Handguns.
(1) A handgun may be used to take deer and pronghorn, provided the handgun is a minimum of .24 caliber, fires a centerfire cartridge with an expanding bullet and develops 500 foot-pounds of energy at the muzzle.
(2) A handgun may be used to take elk, moose, bison, bighorn sheep, and Rocky Mountain goat provided the handgun is a minimum of .24 caliber, fires a centerfire cartridge with an expanding bullet and develops 500 foot-pounds of energy at 100 yards.

R657-5-11. Muzzleloaders.
(1) A muzzleloader may be used during any big game hunt, except an archery hunt, provided the muzzleloader:
(a) can be loaded only from the muzzle;
(b) has open sights, peep sights, or a fixed non-magnifying 1x scope;
(c) has a single barrel;
(d) has a minimum barrel length of 18 inches;
(e) is capable of being fired only once without reloading;
(f) powder and bullet, or powder, sabot and bullet are not bonded together as one unit for loading;
(g) is loaded with black powder or black powder substitute, which must not contain nitrocellulose based somkeless powder.
(2)(a) A lead or expanding bullet or projectile of at least 40 caliber must be used to hunt big game.
(b) A 170 grain or heavier bullet, including sabots must be used for taking deer and pronghorn.
(c) A 210 grain or heavier bullet must be used for taking elk, moose, bison, bighorn sheep, and Rocky Mountain goat, except sabot bullets used for taking these species must be a minimum of 240 grains.
(3)(a) A person who has obtained a muzzleloader permit may not possess or be in control of any firearm other than a muzzleloading rifle or have a firearm other than a muzzleloading rifle in his camp or motor vehicle during a muzzleloader hunt.
(b) The provisions of Subsection (a) do not apply to:
(i) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Proclamation and Waterfowl Proclamation, respectively, and possessing only legal weapons to take upland game or waterfowl;
(ii) a person licensed to hunt big game species during hunts that coincide with the muzzleloader hunt;
(iii) livestock owners protecting their livestock; or
(iv) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife.

R657-5-12. Archery Equipment.
(1) Archery equipment may be used during any big game hunt, except a muzzleloader hunt, provided:
(a) the minimum bow pull is 40 pounds at the draw or the peak, whichever comes first; and
(b) arrowheads used have two or more sharp cutting edges that cannot pass through a 7/8 inch ring;
(c) expanding arrowheads cannot pass through a 7/8 inch ring when expanded; and
(d) arrows must be a minimum of 20 inches in length from the tip of the arrowhead to the tip of the nock, and must weigh at least 300 grains.
(2) The following equipment or devices may not be used to take big game:
(a) a crossbow, except as provided in Rule R657-12;
(b) arrows with chemically treated or explosive arrowheads;
(c) a mechanical device for holding the bow at any increment of draw;
(d) a release aid that is not hand held or that supports the draw weight of the bow; or
(e) a bow with an attached electronic range finding device or a magnifying aiming device.
(3) Arrows carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.
(4)(a) A person who has obtained an archery permit may not possess or be in control of a firearm or have a firearm in his camp or motor vehicle during an archery hunt.
(b) The provisions of Subsection (a) do not apply to:
(i) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Proclamation and Waterfowl Proclamation, respectively, and possessing only legal weapons to take upland game or waterfowl;
(ii) a person licensed to hunt big game species during hunts that coincide with the archery hunt;
(iii) livestock owners protecting their livestock; or
(iv) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife.

R657-5-13. Areas With Special Restrictions.
(1)(a) Hunting of any wildlife is prohibited within the boundaries of all park areas, except those designated by the Division of Parks and Recreation in Rule R651-603-5.
(b) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park area facilities, including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.
(c) Hunting with shotguns or archery equipment is prohibited within one-quarter mile of the areas provided in Subsection (b).
(2) Hunting is closed within the boundaries of all national parks and monuments unless otherwise provided by the governing agency.
(3) Hunters obtaining a Utah license, permit or tag to take big game are not authorized to hunt on tribal trust lands. Hunters must obtain tribal authorization to hunt on tribal trust lands.
(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.
(5) In Salt Lake County, a person may not:
(a) hunt big game within one-half mile of Silver Lake in

Big Cottonwood Canyon;

(b) hunt big game or discharge a shotgun or archery equipment within 600 feet of a road, house, or any other building; or

(c) discharge a rifle, handgun, shotgun firing slug ammunition, or muzzleloader within one mile of a cabin, house, or other building regularly occupied by people, except west of I-15 a muzzleloader may not be discharged within one-half mile of a cabin, house, or other building regularly occupied by people.

(6) Hunting is closed within a designated portion of the town of Alta. Hunters may refer to the town of Alta for boundaries and other information.

(7) Domesticated Elk Facilities and Domesticated Elk Hunting Parks, as defined in Section 4-39-102(2) and Rules R58-18 and R58-20, are closed to big game hunting. This restriction does not apply to the lawful harvest of domesticated elk as defined and allowed pursuant to Rule R58-20.

(8) State waterfowl management areas are closed to taking big game, except as otherwise provided in the proclamation of the Wildlife Board for taking big game.

(9) Hunters are restricted to using archery equipment, muzzleloaders or shotguns on the Matheson Wetlands.

(10) A person may not discharge a firearm, except a shotgun or muzzleloader, from, upon, or across the Green River located near Jensen, Utah from the Highway 40 bridge upstream to the Dinosaur National Monument boundary.

R657-5-14. Spotlighting.

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight, or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland, or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of headlights or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-5-15. Use of Vehicle or Aircraft.

(1)(a) A person may not use an airplane or any other airborne vehicle or device, or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles, except a vessel as provided in Subsection (c), to take protected wildlife.

(b) A person may not take protected wildlife being chased, harmed, harassed, rallied, herded, flushed, pursued or moved by an aircraft or any other vehicle or conveyance listed in Subsection (a).

(c) Big game may be taken from a vessel provided:

(i) the motor of a motorboat has been completely shut off;

(ii) the sails of a sailboat have been furled; and

(iii) the vessel's progress caused by the motor or sail has ceased.

(2)(a) A person may not use any type of aircraft from 48 hours before any big game hunt begins through 48 hours after any big game hunting season ends to:

(i) transport a hunter or hunting equipment into a hunting area;

(ii) transport a big game carcass; or

(iii) locate, or attempt to observe or locate any protected wildlife.

(b) Flying slowly at low altitudes, hovering, circling or repeatedly flying over a forest, marsh, field, woodland or rangeland where protected wildlife is likely to be found may be used as evidence of violations of Subsections (1) and (2).

(3) The provisions of this section do not apply to the operation of an aircraft in a usual manner, or landings and departures from improved airstrips, where there is no attempt or intent to locate protected wildlife.

R657-5-16. Party Hunting and Use of Dogs.

(1) A person may not take big game for another person, except as provided in Section 23-19-1 and Rule R657-12.

(2) A person may not use the aid of a dog to take, chase, harm or harass big game.

R657-5-17. Big Game Contests.

A person may not enter or hold a big game contest that:

(1) is based on big game or their parts; and

(2) offers cash or prizes totaling more than $500.

R657-5-18. Tagging.

(1) The carcass of any species of big game must be tagged in accordance with Section 23-20-30.

(2) A person may not hunt or pursue big game after any of the notches have been removed from the tag or the tag has been detached from the permit.

(3) The tag must remain with the largest portion of the meat until the animal is entirely consumed.

R657-5-19. Transporting Big Game Within Utah.

(1) A person may transport big game within Utah only as follows:

(a) the head or sex organs must remain attached to the largest portion of the carcass;

(b) the antlers attached to the skull plate must be transported with the carcass of an elk taken in a spike bull unit; and

(c) the person who harvested the big game animal must accompany the carcass and must possess a valid permit corresponding to the tag attached to the carcass, except as provided in Subsection (2).

(2) A person who did not take the big game animal may transport it only after obtaining a shipping permit or disposal receipt from the division or a donation slip as provided in Section 23-20-9.

R657-5-20. Exporting Big Game From Utah.

(1) A person may export big game or their parts from Utah only if:

(a) the person who harvested the big game animal accompanies it and possesses a valid permit corresponding to the tag which must be attached to the largest portion of the carcass; or

(b) the person exporting the big game animal or its parts, if it is not the person who harvested the animal, has obtained a shipping permit from the division.

R657-5-21. Purchasing or Selling Big Game or Their Parts.

(1) A person may only purchase, sell, offer or possess for sale, barter, exchange or trade any big game or their parts as follows:

(a) Antlers, heads and horns of legally taken big game may be purchased or sold only on the dates published in the proclamation of the Wildlife Board for taking big game;

(b) Untanned hides of legally taken big game may be purchased or sold only on the dates published in the proclamation of the Wildlife Board for taking big game;

(c) Inedible byproducts, excluding hides, antlers and

horns, or legally possessed big game as provided in Subsection 23-20-3(1)(d), may be purchased or sold at any time;

(d) tanned hides of legally taken big game may be purchased or sold at any time; and

(e) shed antlers and horns may be purchased or sold at any time.

(2)(a) Protected wildlife that is unlawfully taken and seized by the division may be sold at any time by the division or its agent.

(b) A person may purchase protected wildlife, which is sold in accordance with Subsection (2)(a), at any time.

(3) A person selling or purchasing antlers, heads, horns or untanned hides shall keep transaction records stating:

(a) the name and address of the person who harvested the animal;

(b) the transaction date; and

(c) the permit number of the person who harvested the animal.

(4) Subsection (3) does not apply to scouting programs or other charitable organizations using untanned hides.

R657-5-22. Possession of Antlers and Horns.

(1) A person may possess antlers or horns or parts of antlers or horns only from:

(a) lawfully harvested big game;

(b) antlers or horns lawfully purchased as provided in Section R657-5-21; or

(c) shed antlers or horns.

(2) "Shed antler" means an antler which:

(a) has been dropped naturally from a big game animal as part of its annual life cycle; and

(b) has a rounded base commonly known as the antler button or burr attached which signifies a natural life cycle process.

(3) "Shed horn" means the sheath from the horn of a pronghorn that has been dropped naturally as part of its annual life cycle. No other big game species shed their horns naturally.

R657-5-23. Poaching-Reported Reward Permits.

(1) Any person who provides information leading to another person's arrest and successful prosecution for wanton destruction of a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat, bison, bull elk, buck deer or buck pronghorn under Section 23-20-4 for any once-in-a-lifetime species or within any limited entry area may receive a permit from the division to hunt for the same species and on the same once-in-a-lifetime or limited entry area where the violation occurred, except as provided in Subsection (2).

(2)(a) In the event that issuance of a poaching-reported reward permit would exceed 5% of the total number of limited entry or once-in-a-lifetime permits issued in the following year for the respective area, a permit shall not be issued for that respective area. As an alternative, the division may issue a permit as outlined in Subsections (b) or (c).

(b) If the illegally taken animal is a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat or bison, a permit for an alternative species and an alternative once-in-a-lifetime or limited entry area that has been allocated more than 20 permits may be issued.

(c) If the illegally taken animal is a bull elk, buck deer or buck pronghorn, a permit for the same species on an alternative limited entry area that has been allocated more than 20 permits may be issued.

(3)(a) The division may issue only one poaching-reported reward permit for any one animal illegally taken.

(b) No more than one poaching-reported reward permit shall be issued to any one person per successful prosecution.

(c) No more than one poaching-reported reward permit per species shall be issued to any one person in any one calendar year.

(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 big game 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.

R657-5-24. Application Process for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit and Once-In-A-Lifetime Permits, and Application Process for General Buck Deer, General Muzzleloader Elk, and Youth General Any Bull Elk Permits.

(1)(a) A person may obtain only one permit per species of big game, including premium limited entry, limited entry, cooperative wildlife management unit, once-in-a-lifetime, conservation, sportsman, landowner and general permits, except antlerless permits as provided in the Antlerless Addendum and permits as provided in Rule R657-42.

(b) Hunting with a permit where payment has not been received for that permit constitutes a violation of hunting without a valid permit.

(c) A person must notify the division of any change of mailing address, residency, telephone number, and physical description.

(2) Applications are available from license agents, division offices, and through the division's Internet address.

(3) A resident may apply in the big game drawing for the following permits:

(a) only one of the following:

(i) buck deer - premium limited entry, limited entry and cooperative wildlife management unit;

(ii) bull elk - limited entry and cooperative wildlife management unit; or

(iii) buck pronghorn - limited entry and cooperative wildlife management unit; and

(b) only one once-in-a-lifetime permit, including once-in-a-lifetime cooperative wildlife management unit permits, except as provided in Section R657-5-64(2)(b).

(4) A nonresident may apply in the big game drawing for the following permits:

(a) only one of the following:

(i) buck deer - premium limited entry and limited entry; or

(ii) bull elk - limited entry; or

(iii) buck pronghorn - limited entry; and

(b) only one once-in-a-lifetime permit.

(5) A resident or nonresident may apply in the big game drawing for:

(a)(i) a statewide general archery buck deer permit;

(ii) by region for general season buck deer; or

(iii) by region for general muzzleloader buck deer.

(b) A youth may apply in the drawing as provided in Subsection (a), and for youth general any bull elk pursuant to Section R657-5-46.

(6) A person may not submit more than one application per species as provided in Subsections (3) and (4), and Subsection (5) in the big game drawing.

(7)(a) Applications must be mailed by the date prescribed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation may be rejected.

(b) If an error is found on an application, the applicant may be contacted for correction.

(8)(a) Late applications, received by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation, will not be considered in the drawing, but will be processed, for the purpose of entering data into the division's draw database to provide:

(i) future preprinted applications;

(ii) notification by mail of late application and other draw opportunities; and

(iii) re-evaluation of division or third-party errors.

(b) The $5 handling fee will be used to process the late application. Any permit fees submitted with the application will be refunded.

(c) Late applications received after the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation shall not be processed and shall be returned to the applicant.

(9) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.

(10) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Subsections R657-5-27(4).

(12) To apply for a resident permit, a person must establish residency at the time of purchase.

(13) The posting date of the drawing shall be considered the purchase date of a permit.

R657-5-25. Fees for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit and Once-In-A-Lifetime Permits, and for General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Permits.

(1) Each premium limited entry, limited entry, cooperative wildlife management unit and once-in-a-lifetime application must include:

(a) the highest permit fee of any permits applied for;

(b) a $5 nonrefundable handling fee for one of the following permits:

(i) buck deer;

(ii) bull elk; or

(iii) buck pronghorn; and

(c) a $5 nonrefundable handling fee for a once-in-a-lifetime permit; and

(d) the $5 nonrefundable handling fee, if applying only for a bonus point.

(2) Each general buck deer and general muzzleloader elk application must include:

(a) the permit fee, which includes the $5 nonrefundable handling fee; or

(b) the $5 nonrefundable handling fee per species, if applying only for a preference point.

R657-5-26. Applying as a Group for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit and Once-In-A-Lifetime Permits, and for General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Permits.

(1)(a) Up to four people may apply together for premium limited entry, limited entry, and resident cooperative wildlife management unit deer, elk or pronghorn permits in the big game drawing and in the antlerless drawing.

(b) Up to two youth may apply together for youth general any bull elk permits in the big game drawing.

(c) Up to ten people may apply together for general deer permits in the big game drawing.

(d) Youth applicants who wish to participate in the Youth General Buck Deer Drawing Process as provided in Subsection R657-5-27(3), must not apply as part of a group.

(2)(a) Applicants must indicate the number of hunters in the group by filling in the appropriate box on each application form.

(b) If the appropriate box is not filled out with the number of hunters in the group, each hunter in that group shall be entered into the drawing as individual hunters, and not as a group.

(3) Group applicants must submit their applications together in the same envelope.

(4) Residents and nonresidents may apply together.

(5)(a) Group applications shall be processed as one single application.

(b) Any bonus points used for a group application, shall be averaged and rounded down.

(6) When applying as a group:

(a) if the group is successful in the drawing, then all applicants with valid applications in that group shall receive a permit;

(b) if the group is rejected due to an error in fees and only one species is applied for, then the entire group is rejected;

(c) if the group is rejected due to an error in fees and more than one species is applied for, the group will be kept in the drawing for any species with sufficient fees, using the draw order; or

(d) if one or more members of the group are rejected due to an error other than fees, the members with valid applications will be kept in the drawing, unless the group indicates on the application that all members are to be rejected.

(i) The applicant whose application is on the top of all the applications for that group, will be designated the group leader.

(ii) If any group member has an error on their application that is not corrected during the correction process, the reject box on the group leader's application will determine whether the entire group is rejected.

R657-5-27. Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit and Once-In-A-Lifetime and General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Drawings.

(1)(a) Big game drawing results may be posted at the Lee Kay Center for Hunter Education, Cache Valley Hunter Education Center, division offices and on the division Internet address on the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) Applicants shall be notified by mail of draw results by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) Permits for the big game drawing shall be drawn in the following order:

(a) premium limited entry, limited entry and cooperative wildlife management unit buck deer;

(b) limited entry and cooperative wildlife management unit bull elk;

(c) limited entry and cooperative wildlife management unit buck pronghorn;

(d) once-in-a-lifetime;

(e) youth general buck deer;

(f) general buck deer; and

(g) youth general any bull elk.

(3)(a) Fifteen percent of the general buck deer permits in each region are reserved for youth hunters.

(b) For purposes of this section, "youth" means any person 18 years of age or younger on the opening day of the general archery buck deer season.

(c) Youth hunters who wish to participate in the youth drawing must:

(i) submit an application in accordance with Section R657-5-24; and

(ii) not apply as a group.

(d) Youth applicants who apply for a general buck deer permit as provided in Subsection (c), will automatically be considered in the youth drawing based upon their birth date.

(e) Preference points shall be used when applying.

(f) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the general buck deer drawing.

(4) Any person who draws one of the following permits is not eligible to draw a once-in-a-lifetime permit:

(a) a premium limited entry, limited entry or cooperative wildlife management unit buck deer;

(b) a limited entry, or cooperative wildlife management unit bull elk; or

(c) a limited entry or cooperative wildlife management unit buck pronghorn.

(4) If any permits listed in Subsection (2)(a) through (2)(d) remain after the big game drawing after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

R657-5-28. Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit and Once-In-A-Lifetime, and General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Application Refunds.

(1) Unsuccessful applicants who applied in the big game drawing and who applied with a check or money order will receive a refund in May.

(2)(a) Unsuccessful applicants, who applied with a credit or debit card, will not be charged for a permit.

(b) Unsuccessful applicants, who applied as a group, will receive an equally distributed refund of money remaining after the successful applicants' permits are paid for.

(c) If group members have other financial arrangements between themselves, group members should be prepared to reallocate each group member's individual refunds among themselves.

(3) The handling fees are nonrefundable.

R657-5-29. Permits Remaining After the Drawing.

(1) Permits remaining after the big game drawing are sold only by mail or on a first-come, first-served basis beginning and ending on the dates provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-30. Waiting Periods for Deer.

(1) A person who obtained a premium limited entry buck, limited entry buck or cooperative wildlife management unit buck deer permit through the big game drawing process during the preceding two years may not apply in the big game drawing for any of these permits during the current year.

(2) A person who obtains a premium limited entry buck, limited entry buck or cooperative wildlife management unit buck deer permit through the big game drawing process, may not apply for any of these permits again for a period of two years.

(3) A waiting period does not apply to:

(a) general archery, general season, general muzzleloader, antlerless deer, conservation, sportsman and poaching-reported reward deer permits; or

(b) cooperative wildlife management unit or limited entry landowner buck deer permits obtained through the landowner.

R657-5-31. Waiting Periods for Elk.

(1) A person who obtained a limited entry or cooperative wildlife management unit bull elk permit through the big game drawing process during the preceding four years may not apply in the big game drawing for any of these permits during the current year.

(2) A person who obtains a limited entry or cooperative wildlife management unit bull elk permit through the big game drawing, may not apply for any of these permits for a period of five years.

(3) A waiting period does not apply to:

(a) general archery, general season, general muzzleloader, antlerless elk, cooperative wildlife management unit spike bull elk, conservation, sportsman and poaching-reported reward elk permits; or

(b) cooperative wildlife management unit or limited entry landowner bull elk permits obtained through the landowner.

R657-5-32. Waiting Periods for Pronghorn.

(1) A person who obtained a buck pronghorn permit through the big game drawing process in the preceding two years, may not apply in the big game drawing for a buck pronghorn permit during the current year.

(2) A person who obtains a buck pronghorn or cooperative wildlife management unit buck pronghorn permit through the big game drawing, may not apply for any of these permits for a period of two years.

(3) A waiting period does not apply to:

(a) doe pronghorn, pronghorn conservation, sportsman and poaching-reported reward permits; or

(b) cooperative wildlife management unit or limited entry landowner buck pronghorn permits obtained through the landowner.

R657-5-33. Waiting Periods for Antlerless Moose.

(1) A person who obtained an antlerless moose permit or a cooperative wildlife management unit antlerless moose permit through the antlerless drawing process during the preceding four years, may not apply for an antlerless moose permit during the current year.

(2) A person who obtains an antlerless moose permit or a cooperative wildlife management unit antlerless moose permit through the antlerless drawing process in the current year, may not apply for an antlerless moose permit for a period of five years.

(3) A waiting period does not apply to cooperative wildlife management unit antlerless moose permits obtained through the landowner.

R657-5-34. Waiting Periods for Once-In-A-Lifetime Species.

(1) Any person who has obtained a permit for any bull moose, bison, Rocky Mountain bighorn sheep, desert bighorn sheep, or Rocky Mountain goat may not apply for a once-in-a-lifetime permit for the same species in the big game drawing or sportsman permit drawing.

(2) A person who has been convicted of unlawfully taking a once-in-a-lifetime species may not apply for or obtain a permit for that species.

R657-5-35. Waiting Periods for Permits Obtained After the Drawing.

(1) Waiting periods provided in Sections R657-5-30 through R657-5-34 do not apply to the purchase of the

remaining permits sold over the counter.

(2) However, waiting periods are incurred as a result of purchasing remaining permits after the drawing. Therefore, if a remaining permit is purchased in the current year, waiting periods will be in effect when applying in the drawing in following years.

R657-5-36. Waiting Periods for Cooperative Wildlife Management Unit Permits and Landowner Permits.

(1)(a) A waiting period or once-in-a-lifetime status does not apply to purchasing limited entry landowner or cooperative wildlife management unit permits obtained through a landowner, except as provided in Subsection (b).

(b) Waiting periods are incurred for the purpose of applying in the big game drawing as a result of obtaining a cooperative wildlife management unit bull moose permit through a landowner.

R657-5-37. Bonus Point System and Preference Point System.

(1) Bonus points are used to improve odds for drawing permits.

(2)(a) A bonus point is awarded for:

(i) each valid unsuccessful application when applying for permits in the big game drawing; or

(ii) each valid application when applying for bonus points in the big game drawing.

(b) Bonus points are awarded by species.

(c) Bonus points are awarded for:

(i) premium limited entry, limited entry and cooperative wildlife management unit buck deer;

(ii) limited entry and cooperative wildlife management unit bull elk;

(iii) limited entry and cooperative wildlife management unit buck pronghorn; and

(iv) all once-in-a-lifetime species.

(3) A person may apply for a bonus point for:

(a) only one of the following species:

(i) buck deer - premium limited entry, limited entry and Cooperative Wildlife Management unit;

(ii) bull elk - limited entry and Cooperative Wildlife Management unit; or

(iii) buck pronghorn - limited entry and Cooperative Wildlife Management unit; and

(b) only one once-in-a-lifetime, including once-in-a-lifetime Cooperative Wildlife Management unit.

(4)(a) A person may not apply in the drawing for both a premium limited entry or limited entry bonus point and a premium limited entry or limited entry permit.

(b) A person may not apply in the drawing for a once-in-a-lifetime bonus point and a once-in-a-lifetime permit.

(c) A person may not apply for a bonus point if that person is ineligible to apply for a permit for the respective species.

(d) A person may only apply for bonus points in the big game drawing.

(e) Group applications will not be accepted when applying for bonus points.

(5)(a) Fifty percent of the permits for each hunt unit and species will be reserved for applicants with bonus points.

(b) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points for each species.

(c) If reserved permits remain, the reserved permits will be designated by a random number to eligible applicants with the next greatest number of bonus points for each species.

(d) The procedure in Subsection (c) will continue until all reserved permits have been issued or no applications for that species remain.

(e) Any reserved permits remaining and any applicants who were not selected for reserved permits will be returned to the big game drawing.

(6)(a) Each applicant receives a random drawing number for:

(i) each species applied for; and

(ii) each bonus point for that species.

(7) Bonus points are forfeited if a person obtains a permit through the drawing for that bonus point species as provided in Subsection (2)(c), including any permit obtained after the drawing.

(8) Bonus points are not forfeited if:

(a) a person is successful in obtaining a conservation permit or sportsman permit;

(b) a person obtains a landowner or a cooperative wildlife management unit permit from a landowner; or

(c) a person obtains a poaching-reported reward permit.

(9) Bonus points are not transferable.

(10) Bonus points are averaged and rounded down when two or more applicants apply together on a group application.

(11)(a) Bonus points are tracked using social security numbers or division-issued hunter identification numbers.

(b) The Division shall retain paper copies of applications for three years prior to the current big game drawing for the purpose of researching bonus point records.

(c) The Division shall retain electronic copies of applications from 1996 to the current big game drawing for the purpose of researching bonus point records.

(d) Any requests for researching an applicant's bonus point records must be requested within the time frames provided in Subsection (b) and (c).

(e) Any bonus points on the Division's records shall not be researched beyond the time frames provided in Subsection (b) and (c).

(f) The Division may eliminate any bonus points earned that are obtained by fraud or misrepresentation.

(12) Preference points are used in the big game drawing for general buck deer permits to ensure that applicants who are unsuccessful in the drawing for general buck deer permits, will have first preference in the next year's drawing.

(13) A preference point is awarded for:

(a) each valid unsuccessful application when applying for a general buck deer permit; or

(b) each valid application when applying only for a preference point in the big game drawing.

(14)(a) A person may not apply in the drawing for both a general buck deer preference point and a general buck deer 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 big game drawing.

(15) Preference points are forfeited if a person obtains a general buck deer permit through the drawing.

(16)(a) Preference points are not transferable.

(b) Preference points shall only be applied to the big game drawing.

(17) Preference points are averaged and rounded down when two or more applicants apply together on a group application.

(18)(a) Preference points are tracked using social security numbers or division-issued hunter identification numbers.

(b) The Division shall retain paper copies of applications for three years prior to the current big game drawing for the purpose of researching preference point records.

(c) The Division shall retain electronic copies of applications from 2000 to the current big game drawing for the purpose of researching preference point records.

(d) Any requests for researching an applicant's preference

point records must be requested within the time frames provided in Subsection (b) and (c).

(e) Any preference points on the Division's records shall not be researched beyond the time frames provided in Subsection (b) and (c).

(f) The Division may eliminate any preference points earned that are obtained by fraud or misrepresentation.

R657-5-38. General Archery Buck Deer Hunt.

(1) The dates of the general archery buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer may use archery equipment to take:

(a) one buck deer statewide within a general hunt area, except premium limited entry deer, limited entry deer and cooperative wildlife management unit deer areas and specific hunt areas published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game; or

(b) a deer of hunter's choice within the Wasatch Front or Uintah Basin extended archery area as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3)(a) A person who obtains a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may hunt within the Wasatch Front, Ogden or the Uintah Basin extended archery areas during the extended archery area seasons as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game and as provided in Subsection (b).

(b) A person must complete an extended archery ethics course annually to hunt the Wasatch Front, Ogden or Uintah Basin extended archery areas during the extended archery season.

(c) A person must possess the extended archery ethics course certificate of completion while hunting.

(4) A person who has obtained a general archery deer permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer.

(5)(a) Any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt the statewide general archery, or by region the general season and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-8 through R657-5-12, respectively, for each respective season, provided that person obtains a general season or general muzzleloader deer permit for a specified region.

(b) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the statewide general archery deer season.

(6) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Archers are cautioned to study rifle hunt tables and identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-39. General Season Buck Deer Hunt.

(1) The dates for the general season buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A person who has obtained a general season buck permit may use any legal weapon to take one buck deer within the hunt area specified on the permit, except premium limited entry deer, limited entry deer and cooperative wildlife management unit deer areas and specific hunt areas published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3) A person who has obtained a general season buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except:

(a) antlerless deer; and

(b) any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt the general archery, general season and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-8 through R657-5-12, respectively, for each respective season.

(i) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the statewide general archery deer season.

R657-5-40. General Muzzleloader Buck Deer Hunt.

(1) The dates for the general muzzleloader buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A person who has obtained a general muzzleloader buck permit may use a muzzleloader to take one buck deer within the general hunt area specified on the permit, except premium limited entry deer, limited entry deer and cooperative wildlife management unit deer areas and specific hunt areas published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3) A person who has obtained a general muzzleloader deer permit may not hunt during any other deer hunt or obtain any other deer permit, except:

(a) antlerless deer; and

(b) any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt the general archery, general season and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-8 through R657-5-12, respectively, for each respective season.

(i) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the statewide general archery deer season.

(4) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Muzzleloader hunters are cautioned to study the rifle hunt tables to identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-41. Limited Entry Buck Deer Hunts.

(1) To hunt in a premium limited entry or limited entry area, hunters must obtain the respective limited entry buck permit. Limited entry areas are not open to general archery buck, general season buck, or general muzzleloader buck hunting, except as specified in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A limited entry buck deer permit allows a person using the prescribed legal weapon, to take one buck deer within the area and season specified on the permit, except deer cooperative wildlife management units located within the limited entry unit.

(3)(a) A person who has obtained a limited entry buck deer permit must report hunt information within 30 days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a buck deer.

(b) Limited entry buck deer permit holders will receive information on reporting the hunt information with the permit.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or Cooperative Wildlife Management Unit permit or bonus points in the following year.

(4) A person who has obtained a limited entry buck permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer.

R657-5-42. Antlerless Deer Hunts.

(1) To hunt an antlerless deer, a hunter must obtain an antlerless deer permit.

(2)(a) An antlerless deer permit allows a person to take one antlerless deer, per antlerless deer tag, using any legal weapon within the area and season as specified on the permit and in the antlerless addendum.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless deer permit for a cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained an antlerless deer permit may not hunt during any other antlerless deer hunt or obtain any other antlerless deer permit.

(4)(a) A person who obtains an antlerless deer permit and any of the permits listed in Subsection (b), or any permit valid during the general archery deer hunt, may use the antlerless deer permit during the established season for the antlerless deer permit and during the established season for the permits listed in Subsection (b) provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used if hunting with an archery permit;

(iii) the appropriate muzzleloader equipment is used if hunting with a muzzleloader permit.

(b)(i) General archery deer;

(ii) general muzzleloader deer;

(iii) limited entry archery deer; or

(iv) limited entry muzzleloader deer.

R657-5-43. General Archery Elk Hunt.

(1) The dates of the general archery elk hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general archery elk permit may use archery equipment to take:

(i) one elk of hunter's choice on a general any bull elk unit, except on elk cooperative wildlife management units;

(ii) an antlerless elk or spike bull elk on a general spike bull elk unit, except on elk cooperative wildlife management units and the Plateau, Fish Lake-Thousand Lakes;

(iii) only a spike bull elk on the Plateau, Fish Lake-Thousand Lakes; or

(iv) one elk of hunter's choice on the Wasatch Front or Uintah Basin extended archery areas as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3)(a) A person who obtains a general archery elk permit may hunt within the Wasatch Front, Uintah Basin, Nebo-West Desert, and Sanpete Valley extended archery areas during the extended archery area seasons as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game and as provided in Subsection (b).

(b) A person must complete an extended archery ethics course annually to hunt the extended archery areas during the extended archery season.

(c) A person must possess the extended archery ethics course certificate of completion while hunting.

(4) A person who has obtained an archery elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-48(3).

(5) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Archers are cautioned to study the rifle hunt tables to identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-44. General Season Bull Elk Hunt.

(1) The dates for the general season bull elk hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game within general season elk units, except in the following areas:

(a) Salt Lake County south of I-80 and east of I-15; and

(b) elk cooperative wildlife management units.

(2)(a) A person may purchase either a spike bull permit or an any bull permit.

(b) A person who has obtained a general season spike bull elk permit may take a spike bull elk on a general season spike bull elk unit. Any bull units are closed to spike bull permittees.

(c) A person who has obtained a general season any bull elk permit may take any bull elk, including a spike bull elk on a general season any bull elk unit. Spike bull units are closed to any bull permittees.

(3) A person who has obtained a general season bull elk permit may use any legal weapon to take a spike bull or any bull elk as specified on the permit.

(4) A person who has obtained a general season bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-48(3).

R657-5-45. General Muzzleloader Elk Hunt.

(1) The dates of the general muzzleloader elk hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game within the general season elk units, except in the following closed areas:

(a) Salt Lake County south of I-80 and east of I-15; and

(b) elk cooperative wildlife management units.

(2)(a) General muzzleloader elk hunters may purchase either a spike bull elk permit or an any bull elk permit.

(b) A person who has obtained a general muzzleloader spike bull elk permit may take a spike bull elk on an any general spike bull elk unit. Any bull units are closed to spike bull muzzleloader permittees.

(c) A person who has obtained a general muzzleloader any bull elk permit may take any bull elk on an any bull elk unit. Spike bull units are closed to any bull muzzleloader permittees.

(3) A person who has obtained a general muzzleloader elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-48(3).

R657-5-46. Youth General Any Bull Elk Hunt.

(1)(a) For purposes of this section "youth" means any person 18 years of age or younger on the opening day of the youth any bull elk season published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A youth may apply for or obtain a youth any bull elk permit.

(c) A youth may only obtain a youth any bull elk permit once during their youth.

(2) The youth any bull elk hunting season and areas are published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3)(a) A youth who has obtained a youth general any bull elk permit may take any bull elk, including a spike bull elk, on a general any bull elk unit. Spike bull elk units are closed to youth general any bull elk permittees.

(b) A youth who has obtained a youth general any bull elk permit may use any legal weapon to take any bull elk as specified on the permit.

(4) A youth who has obtained a youth general any bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Section R657-5-48(3).

(5) Preference points shall not be awarded or utilized when applying for, or in obtaining, youth general any bull elk permits.

R657-5-47. Limited Entry Bull Elk Hunt.

(1) To hunt in a limited entry bull elk area, a hunter must obtain a limited entry elk permit.

(2) A limited entry bull elk permit allows a person, using the prescribed legal weapon, to take one bull elk within the area and season specified on the permit, except elk cooperative wildlife management units located within a limited entry unit. Spike bull elk restrictions do not apply to limited entry elk permittees.

(3)(a) A person who has obtained a limited entry bull elk permit must report hunt information within 30 days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bull elk.

(b) Limited entry bull elk permit holders will receive information on reporting the hunt information with the permit.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or Cooperative Wildlife Management Unit permit or bonus points in the following year.

(4) A person who has obtained a limited entry bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsections (4)(a) and R657-5-48(3).

R657-5-48. Antlerless Elk Hunts.

(1) To hunt an antlerless elk, a hunter must obtain an antlerless elk permit.

(2)(a) An antlerless elk permit allows a person to take one antlerless elk using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless elk permit for a cooperative wildlife management unit as specified on the permit.

(3)(a) A person may obtain two elk permits each year, provided one or both of the elk permits is an antlerless elk permit.

(b) For the purposes of obtaining two elk permits, a hunter's choice elk permit may not be considered an antlerless elk permit.

(4)(a) A person who obtains an antlerless elk permit and any of the permits listed in Subsection (b), or any permit valid during the general archery deer hunt, may use the antlerless elk permit during the established season for the antlerless elk permit and during the established season for the permits listed in Subsection (b) provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used if hunting with an archery permit;

(iii) the appropriate muzzleloader equipment is used if hunting with a muzzleloader permit.

(b)(i) General archery deer;

(ii) general archery elk;

(iii) general muzzleloader deer;

(iv) general muzzleloader elk;

(v) limited entry archery deer;

(vi) limited entry archery elk;

(vii) limited entry muzzleloader deer; or

(viii) limited entry muzzleloader elk.

R657-5-49. Buck Pronghorn Hunts.

(1) To hunt buck pronghorn, a hunter must obtain a buck pronghorn permit.

(2) A person who has obtained a buck pronghorn permit may not obtain any other pronghorn permit or hunt during any other pronghorn hunt.

(3)(a) A person who has obtained a limited entry buck pronghorn permit must report hunt information within 30 days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a buck pronghorn.

(b) Limited entry buck pronghorn permit holders will receive information on reporting the hunt information with the permit.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or Cooperative Wildlife Management Unit permit or bonus points in the following year.

(4) A buck pronghorn permit allows a person using any legal weapon to take one buck pronghorn within the area and season specified on the permit, except during the buck pronghorn archery hunt, only archery equipment may be used.

R657-5-50. Doe Pronghorn Hunts.

(1) To hunt a doe pronghorn, a hunter must obtain a doe pronghorn permit.

(2)(a) A doe pronghorn permit allows a person to take one doe pronghorn, per doe pronghorn tag, using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless moose permit for a cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained a doe pronghorn permit may not hunt during any other pronghorn hunt or obtain any other pronghorn permit.

R657-5-51. Antlerless Moose Hunts.

(1) To hunt an antlerless moose, a hunter must obtain an antlerless moose permit.

(2)(a) An antlerless moose permit allows a person to take one antlerless moose using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management unit unless that person obtains an antlerless moose cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained an antlerless moose permit may not hunt during any other moose hunt or obtain any other moose permit.

R657-5-52. Bull Moose Hunts.

(1) To hunt bull moose, a hunter must obtain a bull moose permit.

(2) A person who has obtained a bull moose permit may not obtain any other moose permit or hunt during any other moose hunt.

(3) A bull moose permit allows a person using any legal weapon to take one bull moose within the area and season specified on the permit, except in bull moose cooperative wildlife management units located within a limited entry unit.

(4)(a) A person who has obtained a bull moose permit must report hunt information within 30 days after the end of the hunting season, whether the permit holder was successful or

unsuccessful in harvesting a bull moose.

(b) Bull moose permit holders will receive information on reporting the hunt information with the permit.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or Cooperative Wildlife Management Unit permit or bonus points in the following year.

R657-5-53. Bison Hunts.

(1) To hunt bison, a hunter must obtain a bison permit.

(2) A person who has obtained a bison permit may not obtain any other bison permit or hunt during any other bison hunt.

(3) The bison permit allows a person using any legal weapon to take a bison within the area and season as specified on the permit.

(4)(a) An orientation course is required for bison hunters who draw a an Antelope Island bison permit. Hunters shall be notified of the orientation date, time and location.

(b) The Antelope Island hunt is administered by the Division of Parks and Recreation.

(5) An orientation course is required for bison hunters who draw Henry Mountain cow bison permits. Hunters will be notified of the orientation date, time and location.

(6)(a) A person who has obtained a bison permit must report hunt information within 30 days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bison.

(b) Bison permit holders will receive information on reporting the hunt information with the permit.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or Cooperative Wildlife Management Unit permit or bonus points in the following year.

R657-5-54. Desert Bighorn and Rocky Mountain Bighorn Sheep Hunts.

(1) To hunt desert bighorn sheep or Rocky Mountain bighorn sheep, a hunter must obtain the respective permit.

(2) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit may not obtain any other desert bighorn sheep or Rocky Mountain bighorn sheep permit or hunt during any other desert bighorn sheep or Rocky Mountain bighorn sheep hunt.

(3) Desert bighorn sheep and Rocky Mountain big horn sheep permits are considered separate once-in-a-lifetime hunting opportunities.

(4)(a) The desert bighorn sheep permit allows a person using any legal weapon to take one desert bighorn ram within the area and season specified on the permit.

(b) The Rocky Mountain sheep permit allows a person using any legal weapon to take one Rocky Mountain bighorn ram within the area and season specified on the permit.

(5) The permittee may attend a hunter orientation course. The division provides each permittee with the time and location of the course.

(6) All bighorn sheep hunters are encouraged to have a spotting scope with a minimum of 15 power while hunting bighorn sheep. Any ram may be legally taken, however, permittees are encouraged to take a mature ram. The terrain inhabited by bighorn sheep is extremely rugged, making this hunt extremely strenuous.

(7) Successful hunters must deliver the horns of the bighorn sheep to a division office within 72 hours of leaving the hunting area. A numbered seal will be permanently affixed to the horn indicating legal harvest.

(8)(a) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit must report hunt information within 30 days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a desert bighorn sheep or Rocky Mountain bighorn sheep.

(b) Desert bighorn sheep or Rocky Mountain bighorn sheep permit holders will receive information on reporting the hunt information with the permit.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or Cooperative Wildlife Management Unit permit or bonus points in the following year.

R657-5-55. Rocky Mountain Goat Hunts.

(1) To hunt Rocky Mountain goat, a hunter must obtain a Rocky Mountain goat permit.

(2) A person who has obtained a Rocky Mountain goat permit may not obtain any other Rocky Mountain goat permit or hunt during any other Rocky Mountain goat hunt.

(3) Any goat may be legally taken on a hunter's choice permit, however, permittees are encouraged to take a mature goat. A mature goat is a goat older than two years of age, as determined by counting the annual rings on the horn.

(4) The goat permit allows a person using any legal weapon to take one goat within the area and season specified on the permit.

(5) All goat hunters are encouraged to have a spotting scope with a minimum of 15 power while hunting goats. The terrain inhabited by Rocky Mountain goat is extremely rugged making this hunt extremely strenuous. The goat's pelage may be higher quality later in the hunting season.

(6) An orientation course is required for Rocky Mountain goat hunters who draw female only goat permits. Hunters will be notified of the orientation date, time and location.

(7)(a) A person who has obtained a Rocky Mountain goat permit must report hunt information within 30 days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a Rocky Mountain goat.

(b) Rocky Mountain goat permit holders will receive information on reporting the hunt information with the permit.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or Cooperative Wildlife Management Unit permit or bonus points in the following year.

R657-5-56. Depredation Hunter Pool Permits.

When deer, elk or pronghorn are causing damage, antlerless control hunts not listed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be held as provided in Rule R657-44. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

R657-5-57. Antlerless Application - Deadlines.

(1) Applications are available from license agents, division offices, and through the division's Internet address.

(2) Residents may apply for, and draw the following permits, except as provided in Subsection (4):

(a) antlerless deer;

(b) antlerless elk;

(c) doe pronghorn; and

(d) antlerless moose.

(3) Nonresidents may apply in the drawing for, and draw the following permits, except as provided in Subsection (4):

(a) antlerless deer;

(b) antlerless elk;

(c) doe pronghorn; and

(d) antlerless moose, if permits are available during the current year.

(4) Any person who has obtained a pronghorn permit, or a moose permit may not apply for a doe pronghorn permit or antlerless moose permit, respectively, except as provided in Section R657-5-61.

(5) A person may not submit more than one application in the antlerless drawing per each species as provided in Subsections (2) and (3).

(6) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Subsection R657-5-59(3) and Section R657-5-61.

(7)(a) Applications must be mailed by the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be rejected.

(b) If an error is found on an application, the applicant may be contacted for correction.

(8)(a) Late applications, received by the date published in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation, will not be considered in the drawing, but will be processed for the purpose of entering data into the division's draw data base to provide:

(i) future preprinted applications;

(ii) notification by mail of late application and other draw opportunities; and

(iii) re-evaluation of division or third-party errors.

(b) The $5 handling fee will be used to process the late application. Any permit fees submitted with the application will be refunded.

(c) Late applications received after the date published in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation shall not be processed and shall be returned to the applicant.

(9) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get written permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.

(10) To apply for a resident permit, a person must establish residency at the time of purchase.

(11) The posting date of the drawing shall be considered the purchase date of a permit.

R657-5-58. Fees for Antlerless Applications.

Each application must include the permit fee and a nonrefundable handling fee for each species applied for, except when applying with a credit or debit card, the permit fees and handling fees must be paid pursuant to Rule R657-42-8(5).

R657-5-59. Antlerless Big Game Drawing.

(1) The antlerless drawing results may be posted at the Lee Kay Center, Cache Valley Hunter Education Center, division offices and on the division Internet address on the date published in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) Permits are drawn in the order listed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

R657-5-60. Antlerless Application Refunds.

(1) Unsuccessful applicants, who applied with a check or money order will receive a refund in August.

(2)(a) Unsuccessful applicants, who applied with a credit or debit card, will not be charged for a permit.

(b) Unsuccessful applicants, who applied as a group, will receive an equally distributed refund of money remaining after the successful applicants' permits are paid for in accordance with Section R657-5-26(6).

(3) The handling fees are nonrefundable.

R657-5-61. Over-the-counter Permit Sales After the Antlerless Drawing.

Permits remaining after the drawing will be sold beginning on the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game on a first-come, first-served basis from Division offices, through participating online license agents, and through the mail.

R657-5-62. Application Withdrawal or Amendment.

(1)(a) An applicant may withdraw their application for premium limited entry, limited entry, cooperative wildlife management unit and once-in-a-lifetime, and general buck deer and general muzzleloader elk permits from the big game drawing, or antlerless drawing by requesting such in writing by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the Salt Lake Division office.

(c) Handling fees will not be refunded.

(2)(a) An applicant may amend their application for the premium limited entry, limited entry, cooperative wildlife management unit and once-in-a-lifetime, and general buck deer and general muzzleloader elk permits from the big game drawing, or antlerless drawing by requesting such in writing by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the Salt Lake Division office.

(c) The applicant must identify in their statement the requested amendment to their application.

(d) Handling fees will not be refunded.

(e) An amendment may cause rejection if the amendment causes an error on the application.

R657-5-63. Special Hunts.

(1)(a) In the event that wildlife management objectives are not being met for once-in-a-lifetime, premium limited entry, or limited entry species, the division may recommend that the Wildlife Board authorize a special hunt for a specific species.

(b) The division will only utilize Subsection (1)(a) if the Bucks, Bulls and Once-In-A-Lifetime Proclamation and Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game has been published and the Bucks, Bulls and Once-In-A-Lifetime and Antlerless drawings have been completed.

(2) The special hunt season dates, areas, number of permits, methods of take, requirements and other administrative details shall be provided in an addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum

of the Wildlife Board for taking big game.

(3) Permits will be allocated through a special drawing for the pertinent species.

R657-5-64. Special Hunt Application - Deadlines.

(1) Applications are available from license agents and division offices.

(2)(a) Residents and nonresidents may apply.

(b) Any person who was unsuccessful in the Bucks, Bulls and Once-In-A-Lifetime or Antlerless drawing may apply. However, any person who has obtained a permit may not apply, unless otherwise provided in this rule and the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3)(a) Applications must be mailed by the date prescribed in the addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum of the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be rejected. Late applications will be returned unopened.

(b) If an error is found on an application, the applicant may be contacted for correction.

(4) Bonus points will be used in the special hunt drawings to improve odds for drawing permits as provided in Section R657-5-37. However, bonus points will not be awarded for unsuccessful applications in the special hunt drawings.

(5) Any person who obtains a special hunt permit is subject to all rules and regulations provided in this rule, the Bucks, Bulls and Once-In-A-Lifetime Proclamation and Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game, unless otherwise provided in Sections R657-5-63 through R657-5-68.

R657-5-65. Fees for Special Hunt Applications.

(1) Each application must include:

(a) the permit fee for the species applied for; and

(b) a $5 nonrefundable handling fee.

(2)(a) Personal checks, money orders, cashier's checks and credit or debit cards are accepted from residents.

(b) Money orders, cashier's checks and credit or debit cards are accepted from nonresidents. Personal checks are not accepted from nonresidents.

(3)(a) Credit or debit cards must be valid at least 30 days after the drawing results are posted.

(b) If applicants are applying as a group, all fees for all applicants in that group must be charged to one credit or debit card.

(c) Handling fees are charged to the credit or debit card when the application is processed. Permit fees are charged after the drawing, if successful.

(d) Payments to correct an invalid or refused credit or debit card must be made with a cashier's check or money order for the full amount of the application fees plus any permits requested.

(4) An application is voidable if the check is returned unpaid from the bank or the credit or debit card is invalid or refused.

R657-5-66. Special Hunt Drawing.

(1) The special hunt drawing results are posted at the Lee Kay Center, Cache Valley Hunter Education Center and division offices on the date published in the addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

R657-5-67. Special Hunt Application Refunds.

(1) Unsuccessful applicants, who applied on the initial drawing and who applied with a check or money order will receive a refund within six weeks after posting of the drawing results.

(2) Unsuccessful applicants, who applied with a credit or debit card, will not be charged for a permit.

(3) The handling fees are nonrefundable.

R657-5-68. Permits Remaining After the Special Hunt Drawing.

Permits remaining after the special hunt drawing may be sold by mail or on a first-come, first-served basis as provided in the addendum to the Bucks, Bulls and Once-In-A-Lifetime or Antlerless Addendum of the Wildlife Board for taking big game. These permits may be purchased by either residents or nonresidents.

R657-5-69. Carcass Importation.

(1) It is unlawful to import dead elk, mule deer, or white-tailed deer or their parts from the areas of any state, province, game management unit, equivalent wildlife management unit, or county, which has deer or elk diagnosed with Chronic Wasting Disease, except the following portions of the carcass:

(a) meat that is cut and wrapped either commercially or privately;

(b) quarters or other portion of meat with no part of the spinal column or head attached;

(c) meat that is boned out;

(d) hides with no heads attached;

(e) skull plates with antlers attached that have been cleaned of all meat and tissue;

(f) antlers with no meat or tissue attached;

(g) upper canine teeth, also known as buglers, whistlers, or ivories; or

(h) finished taxidermy heads.

(2)(a) The affected states, provinces, game management units, equivalent wildlife management units, or counties, which have deer or elk diagnosed with Chronic Wasting Disease shall be available at division offices and through the division's Internet address.

(b) Importation of harvested elk, mule deer or white-tailed deer or their parts from the affected areas are hereby restricted pursuant to Subsection (1).

(3) Nonresidents of Utah transporting harvested elk, mule deer, or white-tailed deer from the affected areas are exempt if they:

(a) do not leave any part of the harvested animal in Utah and do not stay more than 24 hours in the state of Utah;

(b) do not have their deer or elk processed in Utah; or

(c) do not leave any parts of the carcass in Utah.

R657-5-70. Chronic Wasting Disease - Infected Animals.

(1) Any person who under the authority of a permit issued by the division legally takes a deer or elk that is later confirmed to be infected with Chronic Wasting Disease may:

(a) retain the entire carcass of the animal;

(b) retain any parts of the carcass, including antlers, and surrender the remainder to the division for proper disposal; or

(c) surrender all portions of the carcass in their actual or constructive possession, including antlers, to the division and receive a free new permit the following year for the same hunt.

(2) The new permit issued pursuant to Subsection (1)(c) shall be for the same species, sex, weapon type, unit, region, and otherwise subject to all the restrictions and conditions imposed on the original permit, except season dates for the permit shall follow the proclamation of the Wildlife Board for taking big game published in the year the new permit is valid.

(3) Notwithstanding other rules to the contrary, private landowners and landowner associations may refuse access to private property to persons possessing new permits issued under Subsection (1)(c).

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R657. Natural Resources, Wildlife Resources.
R657-27. License Agent Procedures.
R657-27-1. Purpose and Authority.

Under Section 23-19-15, this rule provides the application procedures, standards, and requirements for wildlife license agents.

R657-27-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Agent hunting and fishing licenses online" means the web application that allows an online license agent to print wildlife documents on license paper.

(b) "Bond" means a surety bond to remain in full force and effect continuously and indefinitely, until canceled.

(c) "Computer hardware" means electronic equipment the division deems necessary to perform the minimum required functions of the division's online license sales application system that may include a central processing unit, cables, or router.

(d) "Deactivated license agent or deactivated" means a license agent that holds license agent status but is temporarily precluded from selling wildlife documents for failure to comply with this rule or any other laws or agreements regulating license agent activity.

(e) "License agent" means a person authorized by the division to sell wildlife documents.

(f) "License Agent Application" means a written request to be authorized by the division to sell wildlife documents.

(g) "License Agent Authorization" means an agreement between the division and a license agent, allowing a license agent to sell wildlife documents.

(h) "License paper" means designated paper issued by the division for the sole purpose of printing specified licenses or permits through the agent hunting and fishing licenses online sales system.

(i) "Location" means the building or structure from which a license agent is authorized to sell wildlife documents.

(j) "Online license agent" means a person authorized by the division to sell wildlife documents through the agent hunting and fishing licenses online sales system.

(k) "Presiding officer" means the hearing officer designated by the director of the division.

(l) "Remuneration" means money that a license agent receives for each wildlife document sold as provided in Section 23-19-15.

(m) "Wildlife documents" means licenses, permits and tags preprinted by the division or printed by the online license agent on license paper.

R657-27-3. License Agent Application.

(1) License agent applications may be obtained from the Licensing Section in the Salt Lake Office or downloaded from the division's website.

(2) License agent applications shall be considered from any person located within Utah or in close proximity to Utah.

(3) Applications shall be processed within 30 days.

(4) The applicant must:

(a) complete and return the application to the Licensing Section in the Salt Lake Office; and

(b) pay a non refundable application fee.

(5) A separate application and application fee must be submitted for each location where wildlife documents will be sold.

(6)(a) All new license agent applicants, and existing license agents must become online license agents by December 1, 2005.

(b) The division may provide assistance to new and existing license agents in becoming online license agents as provided in Subsection R657-27-4(1)(b),(1)(c) or (1)(d).

R657-27-4. License Agent Eligibility - Reasons for Application Denial - Term of Authorization.

(1) A new license agent must meet the criteria provided in Subsection (a), except as provided in Subsection (b) or (c).

(a) A license agent must:

(i) successfully complete a division-sponsored training session;

(ii) provide and maintain approved computer hardware capable of processing and printing licenses and permits in a permanent, clear, and a legible manner; and

(iii) sign a supplemental wildlife documents sales agreement as provided in Section R657-27-16.

(b) The division may provide a printer as required in Subsection (a)(ii) provided the license agent's projected sales is estimated to be at least one-thousand dollars per year.

(c) The division may provide assistance up to one-thousand dollars for computer hardware required in Subsection (a)(ii) provided:

(i) there is not a current, eligible license agent within 45 miles of the proposed license agent location; and

(ii) the estimated sales revenue from the proposed location will recover the cost of the computer hardware within six months of providing the computer hardware.

(d) The division may provide assistance for a data line connection and the associated ongoing expense of the data line connection provided:

(i) there is not a current, eligible license agent within 45 miles of the proposed license agent location; and

(ii) the division anticipates the monthly cost for the data line connection to be less than 20% of the estimated monthly collection from the license agent.

(e) The division shall annually review the ongoing expenses for a data line connection to ensure the license agent is eligible for the assistance allowed in Subsection (d).

(f) A license agent must remain a license agent for the division for at least six months to retain the computer hardware or printer as provided in Subsections (b) or (c).

(2) Use of the agent hunting and fishing licenses online system must be used in compliance with the users manual provided by the division.

(3) The division shall send the applicant a written notice stating the reason for denial.

(4) If the division approves the license agent application, a license agent authorization shall be sent to the applicant.

(5) The license agent authorization is not effective until:

(a) it is signed and notarized by the applicant; and

(b) signed by the director.

(6)(a) The license agent authorization must be received by the Licensing Section in the Salt Lake Office within 30 days of being mailed to the applicant.

(b) A separate application, application fee, and license agent authorization is required for each location where wildlife documents will be sold.

(7) Each license agent authorization shall be established for a term of five years.

(8) The division may deny a license agent application for any of the following reasons:

(a) A sufficient number of license agents already exist in the area;

(b) The applicant does not have adequate security including a safe or locking cabinet in which to store wildlife documents or license paper;

(c) The applicant has previously been authorized to sell wildlife documents or possess license paper and the applicant:

(i) failed to comply with the license agent authorization or any provision of statute or rule governing license agents; or

(ii) was deactivated or revoked by the division as a license

agent;

(d) The applicant provided false information on the license agent application;

(e) The applicant has been convicted of a wildlife related violation; or

(f) The applicant has been convicted, pleaded guilty, pleaded no contest, or entered into a plea in abeyance to a criminal offense that bears a reasonable relationship to the license agent's ability to competently and responsibly perform the functions of a license agent.

R657-27-5. Bond Requirement.

(1) After approval, but before the license agent authorization is executed, the division may require the applicant to post a reasonable bond payable to the division in an amount determined by the division.

(2) The division may require any existing license agent to obtain a reasonable bond in an amount determined by the division after providing the license agent 30 days written notice.

(3) The division may require a reasonable increase in the amount of the bond after providing the license agent 30 days written notice.

R657-27-6. License Agent Obligations.

(1) Each license agent must:

(a) comply with the requirement and provisions provided in Section 23-19-15;

(b) keep wildlife documents or license paper secure and out of the public view during business hours;

(c) keep wildlife documents or license paper in a safe or locked cabinet after business hours;

(d) display all signs and distribute proclamations provided by the division;

(e) have all sales clerks and management staff available for sales training;

(f) maintain a License Agent Manual provided by the division and make it available to the license agent's staff, including supplemental manuals and addendums; and

(g) retain agent copies of licenses and permits for 12 months following the month of sale, at which time agent copies of licenses and permits must be destroyed by burning, shredding or submitting to the division.

(2) If a license agent becomes delinquent on reporting or remission of proceeds Subsection (2)(a), (2)(b) or (2)(c) shall apply.

(a) The license agent must immediately submit all reports when due along with the remission of required proceeds.

(b) If the license sales report is submitted in accordance with Subsection (1)(a) but funds are not submitted with the report then the following applies:

(i) A repayment plan may be structured in an agreement that will allow repayment in equal monthly installments for up to six months at a payment level that will provide repayment of the principal along with an annual percentage interest rate (APR) of 12%. This APR shall be calculated back to the date that the payment should have been received in accordance with Subsection (1)(a);

(ii) If the ongoing monthly report and proceed submissions are not received for the future months, from the month of the agreement in accordance with Subsection (1)(a), then any agreement made in Subsection (2)(b)(i) may be terminated and all outstanding balances and accrued interest shall become due immediately, along with a penalty of 20% of the unpaid balance. Interest shall continue to accumulate on any unpaid balance, including the penalty, at the APR;

(iii) Activate the bond and collect all remaining funds in accordance with Section R657-27-5 and hold any remaining unpaid balances of penalty, ongoing interest, and principle amounts as a receivable from the license agent; or

(iv) If the license agent enters into an agreement with the division as provided in Subsection (2)(b)(i), and then violates the terms of that agreement, the division may begin the revocation process in accordance with Section R657-27-11.

(c) Nothing in this rule shall be construed as requiring the division to offer a repayment agreement to a license agent delinquent on report submissions or proceeds remissions before taking action to revoke license agent status.

(d) If the license agent does not submit a monthly report as provided in Subsection (1)(a), or if the license agent does not immediately pay the delinquent funds or fails to execute and abide by the terms of a repayment agreement as provided in Subsection (2)(b), the division may:

(i) change the license agent's status to deactivated;

(ii) withhold issuing additional wildlife document inventory;

(iii) withhold access to the agent hunting and fishing licenses online sales system;

(iv) collect the license agent's inventory of wildlife documents and license paper, and determine unaccounted inventory of wildlife documents and license paper;

(v) assess a monetary penalty for each wildlife document and piece of license paper unaccounted for as provided in Subsection R657-27-7(2);

(vi) take action to revoke license agent status;

(vii) create a receivable from the license agent that equals the amount due as determined in Subsection (1)(a) and charge a 20% late penalty on the entire balance, and accumulate the unpaid balance, included penalties, at a 12% APR from the due date of the earliest date in which a license agent failed to submit a report in accordance with Subsection (1)(a); or

(viii) activate the bond and collect all available funds remaining in accordance with Section R657-27-5 and hold any remaining unpaid balances of penalty, ongoing interest, and principle amounts as a receivable from the license agent.

(e) A deactivated license agent that has not been revoked may regain active status by paying all due balances in full, and providing a bond, provided the license agent is otherwise in compliance with this rule or any other laws or agreements regulating license agent activity.

R657-27-7. Lost or Stolen Wildlife Documents or License Paper.

(1) The license agent must act as bailee for purposes of safeguarding all wildlife documents or license paper issued to the license agent by the division.

(2)(a) The license agent must remit full payment, less remuneration, to the division for any wildlife documents lost, stolen, or unaccounted for unless otherwise relieved for good cause by the director.

(b) The online license agent must remit full payment for lost, stolen, or unaccounted license paper in the amount of $10 per sheet of license paper.

(c) Payments made to the division for any wildlife documents or license paper that are lost or unaccounted may be refunded if the wildlife documents or license paper are returned to the Licensing Section in the Salt Lake office by June 30 of the current state fiscal year.

R657-27-8. Audits.

(1) License agents are subject to an audit without prior notification anytime during normal business hours to assess financial and procedural compliance with statute, rule, and the terms of the license agent authorization.

(2) The division shall provide a written report to the license agent of any finding of noncompliance within five days of the completion of the audit.

R657-27-9. Checks Returned for Non-sufficient Funds.

If a check from a license agent is returned to the division for non-sufficient funds, the division may:

(1) require a license agent to remit payment for wildlife documents in the form of a cashiers check or money order;

(2) change the license agent status to deactivated;

(3) activate the bond; or

(4) submit the license agent's account to the Utah Office of Debt Collection for collection activity.

R657-27-10. Change of Business Ownership.

(1) License agent authorizations are nontransferable.

(2) The license agent must notify the division of any anticipated change of ownership of the license agent's business at least 30 days prior to the change of ownership.

(3) Prior to change of ownership, unless otherwise directed by the division in writing, the license agent must:

(a) remit payment for all wildlife documents sold minus remuneration; and

(b) return all unsold wildlife documents or license paper to the division.

R657-27-11. Revocation of License Agent Authorization.

(1) The presiding officer may revoke a license agent authorization pursuant to Chapter 46b, Title 63, Utah Administrative Procedures Act, if the presiding officer determines that the license agent or the license agent's employee:

(a) violated the terms of the license agent authorization;

(b) violated the terms of any supplemental wildlife document sales agreements with the division;

(c) fails to maintain a bond in accordance with Section R657-27-5;

(d) is found to have committed fraud regarding wildlife documents or license paper;

(e) violated any provision of Title 23, Wildlife Resources Code;

(f) violated any rule promulgated under Title 23, Wildlife Resources Code; or

(g) has been convicted, pleaded guilty, pleaded no contest, or entered into a plea in abeyance to a criminal offense that bears a reasonable relationship to the license agent's ability to competently and responsibly perform the functions of a license agent.

(2) The presiding officer may hold a hearing to determine matters relating to the license agent revocation if the license agent makes a written request for a hearing within 20 days after the notice of agency action is issued.

R657-27-12. Termination of License Agent Authorization by the License Agent.

(1) A license agent may terminate a license agent authorization by submitting a written request to the Licensing Section in the Salt Lake Office.

(2) Any request for termination must state the requested date of termination.

(3) On or before the effective date of termination the license agent must:

(a) discontinue selling wildlife documents;

(b) return all unsold wildlife documents or license paper to the division; and

(c) return to the division any signs, proclamations or other information provided by the division.

(4) On or before the 10th day of the month following the date of termination the license agent must remit payment for all wildlife documents minus remuneration to the division.

R657-27-13. Renewal Application of a License Agent Authorization.

(1) At the end of the five-year term of authorization to sell wildlife documents, the division shall provide a renewal notice and renewal application to the license agent.

(2)(a) The license agent must complete and return the renewal application to the Licensing Section in the Salt Lake Office within 30 days of being mailed to the license agent.

(b) The division will not charge a renewal application fee.

(3) If the license agent fails to return the renewal application within 30 days of being mailed, the division may:

(a) confiscate wildlife document inventories;

(b) not provide new wildlife document inventories; or

(c) interrupt use of the agent hunting and fishing licenses online system.

(2) The division may deny a license agent renewal application for any of the reasons provided in Section R657-27-4(1).

R657-27-14. Violation.

It is unlawful for a license agent to sell wildlife documents in violation of:

(1) the License Agent Authorization; or

(2) any supplemental wildlife document sales agreements executed with the division.

R657-27-15. Distribution of Preprinted Licenses and Permits.

(1) The division shall determine, in its sole discretion, the types and numbers of preprinted licenses and permits issued to a license agent.

(2) Certain licenses or permits may not be available for sale by a license agent, unless a license agent becomes an online license agent in accordance with Section R657-27-16.

R657-27-16. Supplemental Wildlife Document Sales Agreement.

(1) Upon approval of a license agent authorization, the division may enter into a supplemental wildlife document sales agreement with the license agent.

(2)(a) The license agent must:

(i) complete all information indicated in the agreement; and

(ii) sign and date the agreement.

(b) The agreement must be returned by mail or hand-delivery to any division office and must be received no later than the date indicated under the terms on the agreement form. Facsimiles will not be accepted.

(c) Agreements received after the date indicated on the agreement form may be returned.

(4)(a) The division may not enter into an agreement with any license agent who was given reasonable notice of the time period for entering into the agreement and fails to return a complete agreement to the division.

(b) The division may notify a license agent who has made an error in completing the agreement form and may afford an opportunity for correction. However, if the division is unable to contact the license agent within two weeks following the filing date indicated on the agreement and correct the error, the agreement shall be void and the license agent may not receive authorization to sell the wildlife documents covered by the supplemental agreement.

(5) By signing the agreement, the license agent agrees to abide by the terms of the agreement.

R657-27-17. License Agent Authorization and Supplemental Agreements Subject to Change.

(1) A license agent authorization or supplemental agreement issued or renewed by the division under this rule is a privilege and not a right. The license agent authorization or supplemental agreement authorizes the license agent to sell wildlife documents subject to all present and future conditions,

restrictions, and regulations imposed on such activities by the division, the Wildlife Board, or the State of Utah.

(2) A license agent authorization or supplemental agreement does not guarantee or otherwise legally entitle the license agent to any of the following:

(a) a minimum number of wildlife documents;

(b) a particular type or types of wildlife documents;

(c) access to any particular wildlife document distribution system; or

(d) any other right or opportunity advantageous to the license agent.

(3) The procedures, processes and opportunities outlined in this rule regulating license agents and the distribution of wildlife documents are all subject to future change, including discontinuation, by the division and the Wildlife Board.

KEY: licensing, wildlife, wildlife law, rules and procedures
July 2, 2004 23-19-15
Notice of Continuation April 10, 2002

R850. School and Institutional Trust Lands, Administration.
R850-70. Sales of Forest Products From Trust Lands Administration Lands.
R850-70-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X, XVIII, and XX of the Utah Constitution, and Section 53C-1-302(1)(a)(ii) which authorize the director of the School and Institutional Trust Lands Administration to provide for the sale of forest products, desert products, and other vegetative material from Trust Lands Administration lands.

R850-70-150. Planning.

1. Pursuant to Section 53C-2-201(1)(a), the Trust Lands Administration shall complete the following planning obligations for all competitive and non-competitive forest product sales, in addition to the rule-based analysis and approval processes required by this rule:

(a) To the extent required by the Memorandum of Understanding between the State Planning Coordinator and the School and Institutional Trust Lands Administration, submit the proposal for review by the Resource Development Coordinating Committee (RDCC);

(b) Evaluation of and response to comments received through the RDCC process; and

(c) Evaluate and respond to any comments received through the advertising and notice processes described in R850-70-600(1).

2. All other forest product sales within this category of activity carry no planning obligations by the agency beyond existing rule-based analysis and approval processes.

R850-70-200. Definitions.

1. Sawlogs: portions of a tree stem that exceed seven feet in length and are at least six inches in diameter inside bark at the small end.

2. Poles: portions of a tree stem that are at least ten feet in length and do not exceed six inches in diameter at four and one-half feet above the ground.

3. Mine Props: portions of a tree stem that are between seven and ten feet in length, and six to nine inches diameter inside bark at the small end.

4. Posts: portions of a tree or tree stem, generally Utah juniper, which are no more than ten feet in length and are less than six inches in diameter at the top (small end).

5. Fuelwood: any portion of a tree, including those portions defined as sawlogs, poles, mine props, or posts that is harvested for use as fuel.

6. Christmas Tree: any coniferous tree, or part thereof, cut and removed from the place where grown without the foliage being removed.

7. Ornamental: any coniferous or deciduous tree, shrub, or bush less than 20' in height and no more than six inches diameter at four and one-half feet above the ground, which is removed from a natural setting, generally with roots attached, for transplant elsewhere.

8. Desert Plants: include any member of the Cactaceae Family or the Agavaceae Family.

9. Other Products: include boughs, branches, pinyon nuts, cones, Juniper berries, and native seed.

R850-70-300. Proof-of-Ownership.

Proof-of-ownership shall be issued with each sale of forest products in compliance with Section 78-38-4.5.

R850-70-400. Permit Sales.

The agency may make sales of forest products, with the exception of sawlogs, with a Small Forest Products Permit when the total sale value does not exceed $500.00. The permit shall be on a form prescribed by the agency. Persons purchasing Small Forest Product Permits shall be restricted to a total value of $500.00 per commodity per calendar year. A Small Forest Product Permit does not grant exclusive use of the permitted lands or the resources contained thereon.

R850-70-500. Noncompetitive Sales.

If the director finds it to be in the best interests of the trust, the agency may sell forest products at not less than an agency-established minimum value without soliciting competitive bids.

R850-70-600. Competitive Sales.

1. Sales of forest products shall be initiated by the agency and shall follow the procedures below:

(a) All competitive sales shall be advertised through publication at least once a week for at least two weeks in one or more newspapers of general circulation in the county in which the sale is located. The cost of the notice will be borne by the successful applicant. This notice shall contain, but is not limited to:

i) the legal description of the affected lands;
ii) the species and estimated quantity of forest products;
iii) minimum sale price;
iv) bond amounts;
v) advertising and processing costs, as far as is known;
vi) dates of bidding period;
vii) date, time, and location of oral auction; and
viii) bidder qualifications.

(b) Notice shall also be given to potential purchasers and other interested parties, whose names are on an agency maintained mailing list prior to any competitive sale.

(c) Initial bidding shall be conducted through sealed bids. Each sealed bid must contain 10% of the bid amount and the application fee. The bidders submitting the three highest sealed bids shall be allowed to enter into an oral auction.

(d) Sales shall be awarded to the highest qualified bidder unless a bidder has been previously disqualified, or is notified by the agency in writing within ten business days of the auction that the bid will be disqualified, on the grounds of previous poor performance or other good cause shown. The agency shall declare the successful bidder within ten business days of the bid opening. Failure of the successful bidder to execute a contract within 30 days of receipt may result in cancellation of the sale and forfeiture of all monies submitted.

2. The agency may withdraw, at its sole discretion any forest products sale prior to contract execution. All fees associated with a withdrawn sale shall be returned to the purchaser.

R850-70-700. Timber Sale Contracts.

1. Timber Sale Contracts must be used for all sales of sawlogs and any other forest product where the value exceeds $500.00.

2. Each Timber Sale Contract shall contain the provisions necessary to ensure the responsible harvest of forest products, including the applicable provisions of 53C-4-202.

R850-70-800. Timber Harvesting.

1. Prior to commencement of harvest operations, the purchaser shall submit a timber harvest plan for agency review. Harvesting operations shall not commence until the purchaser is notified, in writing, that the timber harvest plan has been approved by the agency.

2. Prior to commencement of harvest operations, the purchaser shall post with the agency bonds in the form and amounts as may be determined by the agency to assure compliance with all terms and conditions of the sale contract. Such bonds shall include the following:

(a) A performance bond shall be submitted in an amount

at least twice the estimated cost of rehabilitation.

(b) A payment bond shall be submitted in an amount equal to the full purchase price of the sale unless the sale has been paid for in advance, or, at the discretion of the agency, the full price of the largest cutting unit of the sale.

3. All bonds posted may be used for payment of all monies due to the Trust Lands Administration on the total purchase price, and also for the costs of compliance with all other performance terms and conditions of the sale as specified in the contract.

4. The purchaser's bonds shall be maintained in effect even if the purchaser conveys all or part of the sale interest to an assignee or subsequent purchaser until such time as the purchaser fully satisfies sale contract obligations, or until such time as the bond is replaced with a new bond posted by the assignee.

5. Bonds may be increased in reasonable amounts, at any time as the agency may order, provided the agency first gives the purchaser 30 days written notice stating the increase and the reason(s) for the increase.

6. Bonds may be accepted in any of the following forms at the discretion of the agency:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. The Trust Lands Administration will not be responsible for any investment returns on cash deposits.

(c) an irrevocable letter of credit for a period longer than the term of the sale.

7. Bonds shall remain in force until such time as all contract payments and performance provisions have been satisfied by the purchaser and so documented by the agency in writing.

R850-70-900. Assignments.

1. Competitively let sales may be assigned, in accordance with procedures established by the agency, to any person, firm, association, or corporation qualified to execute the terms and conditions of the sale contract, with prior written approval from the agency, provided that the assignee agrees to be bound by the terms and conditions of the sale and to accept the obligations of the assignor.

2. Permits and non-competitive sales may not be assigned.

R850-70-1000. Extensions of Time.

Extensions of time to complete the harvesting operations authorized by a timber contract may be granted if the director finds it to be in the best interests of the trust. Prior to the approval of a request for an extension of time, the agency may require amendments to the contract, including, but not limited to:

(a) Increasing the amounts and extending the effective dates of bonds; and,

(b) Increasing the price of the forest products authorized by the contract.

R850-70-1100. Forest Product Valuation.

Forest products shall be offered for sale based on a methodology or price schedule to be determined by the agency pursuant to board policy.

R850-70-1200. Long-Term Agreements.

1. Long-term agreements (LTA) are those sales where the harvest of specified forest products will take place over a period of time exceeding two years. Upon approval of the director, the agency may enter into an LTA with a purchaser for a period not to exceed ten years provided that:

(a) Resource or other benefits can be demonstrated by the LTA.

(b) The LTA is advertised and competitively bid.

(c) The area included in the LTA is defined by legal or other tangible description.

(d) The LTA includes provisions for periodic reappraisal and adjustment of prices.

(e) The LTA may not preclude or prohibit forest product sales to other purchasers on trust lands adjacent to or within the area designated by the LTA.

(f) The LTA provides for amendment and cancellation during the term of the LTA.

(g) The LTA does not preclude or prohibit other concurrent resource management activities and uses adjacent to or within the area designated by the LTA.

(h) Each LTA states that access granted by the LTA is not exclusive.

(i) A due-diligence provision is included in each LTA.

R850-70-1300. Fees and Procedures.

The agency may establish fees and develop procedures necessary to provide for the administration and sale of forest products pursuant to Section 53C-1-302(1)(b).

KEY: forest products, administrative procedures, timber
July 2, 2004 53C-1-302(1)
Notice of Continuation December 4, 2002 53C-2-201(1)(a)

R918. Transportation, Operations, Maintenance.
R918-4. Using Volunteer Groups for the Adopt-a-Highway Program.
R918-4-1. Purpose of Procedure.

To establish a procedure for using volunteer groups for litter pickup. To provide additional resources to increase UDOT's litter control effort at a minimal cost. This program is not operated for the purpose of providing a highway signing program for a free speech forum.

R918-4-2. Application.

(1) A group or person who wishes to participate in a program to pick up litter along UDOT right-of-way may apply with the UDOT Region in which the right-of-way is located. The application shall contain, at a minimum, the name of the organization or person, the right-of-way requested, along with alternatives if desired, and the name and address of a contact person, and the name of the sponsoring organization requested to be placed on the Recognition Sign.

(2) If the name of an organization is to appear on the sign, the applicant shall submit, with the application, documentation from the state showing the form, status, and official name of the entity. Only the official name of the organization will be printed on the sign.

R918-4-3. Conditions to Participation.

If the application is granted, UDOT shall notify the applicant's contact person in writing and promptly send to him or her a contract that sets forth the following basic conditions:

(1) the location of the right-of-way;

(2) a hold harmless agreement, waiver of liability, and indemnification for third-party claims;

(3) safety rules;

(4) information concerning safety apparel that must be used and that is recommended;

(5) the name of the entity or organization that is applying for the permit;

(6) an explanation of the condition in which UDOT expects the applicant to keep the roadway and notification that the decision whether or not the applicant has done so is solely within UDOT's discretion;

(7) notification of reasons for termination, which include failure to comply with any part of the agreement, fraud in the application, failure to follow safety requirements or commands;

(8) a date when the agreement will terminate, along with any automatic renewal provisions;

(9) volunteer groups shall provide a responsible supervisor to properly control the activities of the group, with the expertise and degree of supervision to be decided by UDOT;

(10) no person under the age of 11 may participate in the litter pick-up program or be on the right-of-way;

(11) volunteers shall accept and receive safety instructions by the Region Safety/Risk Manager, or designee;

(12) volunteers shall stay off the traveled area of the roadway, except when traveled area must be crossed, with any crossing being done by the entire group together along with the signing, flagging, or supervision directed by the Region Safety/Risk Manager or designee;

(13) volunteers shall stay off the traveled areas of Interstate Freeways at all times, except when crossing in the manner specified in paragraph (12);

(14) in areas where the Region Director or Safety/Risk Manager or Traffic Engineer believes it appropriate, the applicant shall use advance warning signs;

(15) work shall be done during daylight hours;

(16) such other information as UDOT believes may be required to adequate advise the applicant of its responsibilities and provide for the public safety;

(17) clean up the assigned right-of-way at least three times a year as well as when UDOT specifically requests; and

(18) notify the appropriate authorities like the Health Department or police if they find items that appear suspicious or unsafe, i.e., syringes, closed containers.

R918-4-4. UDOT discretion to allow use of right-of-way.

(1) Nothing in this rule or other UDOT rule may be construed to require UDOT to make any particular portion of right-of-way available for litter pick up. The decision whether to do so is exclusively within UDOT's discretion. Similarly, the decision to take a route out of the litter pick-up program is also within UDOT's exclusive discretion even if the route is currently available and being used for litter pick-up.

(2) Should UDOT determine that a route no longer qualifies for participation in the Adopt-a-Highway program, UDOT shall notify the person or organization that is assigned the route of that determination. The notification constitutes termination of the contract, regardless of how much time is left on the contract.

(3) UDOT may also terminate a contract at any time if it determines that continuing the contract would be counterproductive to the program's purpose or have undesirable results such as vandalism, increased litter, or would otherwise jeopardize the safety of the participants, the traveling public, or UDOT employees.

R918-4-5. Recognition Signs.

If the applicant's authorized representative (contact person) signs the contract sent to him or her by UDOT, UDOT will place a recognition sign along the route, if all other conditions are met. UDOT will not place either slogans or logos on a sign. The name may be edited to comply with space limitations.

R918-4-6. Replacement of Signs.

UDOT will not replace damaged or missing signs unless the damage was due to weather or other natural cause and then only if there is sufficient funding. In no case will UDOT replace a sign more than once every five years.

R918-4-7. UDOT's Responsibilities.

UDOT shall:

(1) furnish volunteers with UDOT-standard vests, which, when the contract is terminated shall be returned;

(2) furnish the litter bags, which, when filled, shall be placed along the shoulder of the road for collection by UDOT personnel.

KEY: adopt-a-highway, highways, transportation
July 20, 2004 **72-1-201**

R930. Transportation, Preconstruction.
R930-3. Highway Noise Abatement.
R930-3-0. Purpose.

The following is consistent with the Federal Highway Administration's Procedures for Abatement of Highway Traffic Noise, 23 CFR 772, which is hereby adopted and incorporated by reference, and in accordance with Utah Code Ann. Section 72-6-111. It is provided to address highway noise impacts and to determine the conditions under which noise abatement may be approved.

R930-3-1. Definitions.

(1) "Existing Noise Level" means the noise level, Leq, resulting from the natural and mechanical sources and human activity, considered to be usually present in a particular area.

(2) "Design Noise Level" means the noise level, Leq, calculated for the worst traffic noise conditions likely to occur on a regular basis during the future design year, using a method approved by FHWA.

(3) "Type I Project" means a highway construction project that is related to an increase in traffic noise - construction of a highway on new location or the physical alteration of an existing highway which significantly changes the alignment or increases the number of through-traffic lanes.

(4) "Type II Project" means a proposed highway project strictly for noise abatement on an existing highway.

(5) "UDOT" means Utah Department of Transportation.

(6) "FHWA" means Federal Highway Administration.

(7) "dBA" means decibels of sound expressed or measured using the "A" weighting scale of a sound-pressure level meter.

(8) "AASHTO" means American Association of State Highway and Transportation Officials.

R930-3-2. Applicability.

(1) Type I Projects. Noise abatement shall be considered for Type I projects where noise impacts are identified. A new or proposed subdivision or other development must have obtained a formal building permit from the appropriate local government agency for final plans for development before the issuance of the final environmental decision document.

(2) Type II Projects. UDOT does not provide a noise retrofit (Type II) program to construct noise abatement measures along existing state transportation facilities.

R930-3-3. Noise Impact Determination.

A traffic noise impact occurs, for purposes of this policy, when either of the following conditions exists at a sensitive land use:

(1) The design noise level is greater than or equal to the UDOT Noise Abatement Criterion (NAC) in Table 1 for each corresponding land use category.

(2) The design noise level substantially exceeds (ten dBA or more) the existing noise level.

R930-3-4. Noise Abatement Objective.

When noise abatement measures are being considered, every reasonable effort shall be made to obtain substantial noise reductions consistent with Department procedures.

R930-3-5. Noise Abatement Conditions.

In order to be considered for noise abatement, all of the following conditions must be met, if applicable:

(1) A noise abatement device shall not be installed where it will create a hazard or violate design standards. Specifically, noise abatement walls shall not be added within the highway clear zone as defined in the AASHTO Roadside Design Guide, unless a safety barrier already exists.

(2) At least five dBA of noise reduction must be achievable at typical impacted receivers nearest the highway.

(3) Residential Areas (Category B, Table 1):

(a) For residential areas, benefited receivers must be considered in determining a noise barrier's cost per receiver regardless of whether or not they were identified as impacted. A benefited receiver is any impacted or non-impacted receiver that gets a noise reduction of 5 dBA or more as a result of the noise barrier. The maximum cost used to determine reasonableness to provide noise abatement will be $25,000 per benefited receiver. This cost may be periodically reviewed by the Department for reasonableness and updating, as needed.

(b) In the event that the noise barrier cost is greater than $25,000 per receiver, the cost will be considered to be reasonable only if it can be demonstrated that a "severe" noise impact will occur. Severe traffic noise impacts are defined as traffic noise levels by 30 dBA or more, or results in absolute exterior nose levels of 80 dBA or greater. Based on severity, abatement will be considered on a case-by-case basis.

(c) For non-residential areas (Category A, B, or C, Table 1): The cost of noise abatement measures for schools, parks, churches and other non-residential developments including commercial and industrial areas will depend on height of noise wall required and corresponding length of frontage this type of development has exposed to the transportation facility. In any case, a reasonable cost for mitigation for noise abatement will not exceed $200 per linear foot of wall (for a 10-foot high wall) installed. The cost may be be periodically reviewed for reasonableness and updating, as needed.

R930-3-6. Other Considerations.

Noise abatement benefits shall be consistent with overall social, economic, and environmental conditions on both sides of the highway. Aesthetics shall be considered where appropriate' including graffiti deterrence and surrounding landscape. Other factors may be considered.

R930-3-7. Declaration of Intent.

Environmental documents shall indicate those areas where mitigation is "likely." "Likely" does not mean a firm commitment. A final decision on the installation of the abatement measures shall be made upon completion of the project design and the public involvement process and based upon what the department believes is reasonable and feasible.

R930-3-8. Public Involvement.

(1) Department representatives shall contact the local government agency and impacted residents. This shall be done prior to completion of the final environmental decision document. The concerns of the impacted residents and local government agency shall be a major consideration in reaching a decision on the abatement measures to be provided.

(2) Noise abatement may not be planned after local government agency and impacted residents' involvement if the majority of them are in opposition or indifferent to noise mitigation.

R930-3-9. Coordination with Local Officials.

The Department shall coordinate in the local government review process with regard to aesthetics, height, and other design features of the proposed noise abatement measure. Effective control of highway traffic noise requires land uses near highways to be controlled, but land use planning and control belong to local government jurisdiction. UDOT shall, upon request, assist local agencies by giving information that shall help them to be aware of incompatible land uses near state highways.

R930-3-10. Local Government Participation.

In instances where abatement costs would exceed a limit in paragraph R930-3-5(3), the local government agency may be

offered the option to share in the cost of abatement. In order for the Department to participate in shared abatement costs, the following conditions must be met:

(1) The Department's share of the cost shall not exceed the limits in paragraph R930-3-5(3). The participating local government agency shall pay the Department an amount equal to the estimated cost of the abatement measure and appurtenances proposed that exceeds the limits in paragraph R930-3-5(3). The settlement agreement shall be signed before design begins. Payment shall be made to the Department before construction begins.

(2) The participating local government agency's final share shall be based on actual construction costs.

R930-3-11. Projects Funded From Other Sources.

The Utah Code authorizes the Department to construct and maintain noise abatement measures along state highways in cases where the cost for the noise abatement is provided by citizens, adjacent property owners, developers, or local governments, and meeting other established criteria. These cases may be treated as a special application of Paragraph R930-3-10, in which the Department may design, build, and maintain the abatement measure, and the local government agency shall pay the Department for all preliminary engineering and construction costs.

R930-3-12. Construction Off Right-of-Way.

Normally, noise barriers (walls or berms) built pursuant to this policy shall be constructed within Department right-of-way and owned and maintained by the Department. There are cases in which Department right-of-way is not the most prudent location for noise barriers, yet noise abatement can be very feasible and reasonable if built on adjacent property or adjacent public right-of-way. In these cases:

(1) The Department's cost is limited to normal cost for abatement on Department right-of-way.

(2) In no case shall the Department construct a noise barrier unless the adjacent property owners allow access and easements as necessary in order to construct and maintain the barrier.

(3) Maintenance of noise walls and associated landscaping on the side facing the highway shall normally be the Department's responsibility. The opposite side shall be maintained by the property owner.

(4) When landscaping is included off the Department right-of-way, the Department and landowner shall sign an irrigation agreement. The Department shall not pay for irrigation off the right-of-way.

TABLE I - UDOT NOISE ABATEMENT CRITERIA (NAC)

Land Use Activity Category	Leq(h), dba*	Description of Activity Category
A	55 (Exterior)	Lands on which serenity and quiet are of extraordinary significance and serve an important public need and where the preservation of those qualities is essential if the area is to continue to serve its intended purpose.
B	65 (Exterior)	Picnic areas, fixed recreation areas, active sports areas, parks, residences, motels, hotels, schools, churches, libraries, and hospitals.
C	70 (Exterior)	Cemeteries, commercial areas, industrial areas, exterior office buildings, and other developed lands, properties or activities not included in Categories A or B above.
D	No limit	Undeveloped lands.
E	52 (Interior)	Motels, hotels, public meeting rooms, schools churches, libraries, hospitals, and auditoriums. (The interior criterion only applies when there are no exterior activities affected by traffic noise.)

* Hourly A-weighed sound level in Decibels, Reflecting a zdBA "Approach" Value Below 23 CFR 772

KEY: transportation, barrier, traffic noise abatement, highways
July 20, 2004 72-1-201
Notice of Continuation January 22, 2002 72-7-101

R994. Workforce Services, Workforce Information and Payment Services.
R994-309. Nonprofit Organizations.
R994-309-101. General Definition.

(1) Section 35A-4-309 describes how nonprofit organizations elect the method of paying for benefits, the effective period of such election, reimbursement methods, billing and collection procedures, their rights to notice of any determination and their various appeal rights.

(2) Nonprofit organizations described in Subsection 35A-4-309(1)(b) will pay contributions in the same manner as other employers under Section 35A-4-302 unless they elect to become reimbursable employers which are liable for payments in lieu of contributions. A nonprofit organization which elects to become a reimbursable employer pays to the Department an amount equal to the regular benefits and one-half of the extended benefits paid to former employees. These reimbursements for benefits paid are due and payable monthly. Reimbursable employers do not pay for any administrative expenses of the unemployment insurance program.

R994-309-102. Nonprofit Organizations (Section 501(c)(3) of IRC).

Section 35A-4-309 applies only to organizations exempt from income tax as described in Section 501(c)(3) of the Internal Revenue Code. Some examples are organizations operated exclusively for religious, charitable or educational purposes. The Internal Revenue Service issues a letter of exemption to exempted organizations. A copy of this letter is required by the Department to allow a nonprofit organization to elect to become a reimbursable employer.

R994-309-103. Election of Payments by Contributions or Reimbursement.

(1) Initial Election.

A nonprofit organization electing to become a reimbursable employer must make a written election within 30 days after the organization becomes subject to the Act. Since it may take some time for the employer to obtain the IRS letter of exemption required for this election, the employer will be a contributing employer until the letter is provided to the Department timely. The employer has 30 days from the date of the IRS letter to provide a copy to the Department in order to be granted reimbursable status retroactive to the date he became subject to the Act under Subsection 35A-4-309(1)(e). When the letter is provided timely, all contributions paid by the employer in excess of benefits paid to former employees will be refunded. Under Subsection 35A-4-309(1)(e) the Department may, for good cause, extend the 30-day period within which the election is made or the 30 days within which the letter of exemption is provided. An initial election to become a reimbursable employer remains in effect for at least one contribution year. A contribution year is a calendar year.

(2) Subsequent Elections.

A nonprofit organization may elect to change from the contributions to the reimbursement method or from the reimbursement to the contributions method. An election to change from the contributions to the reimbursement method can be made only if accompanied by a copy of the letter of exemption from the IRS. To be consistent with the principle of Subsection 35A-4-309(1)(d), changes from one method to the other will remain in effect for at least two contribution years. A contribution year is a calendar year. Any election to change from one method of payment to the other must be made in writing no later than 30 days prior to January 1 of the year for which the change is requested. Under Subsection 35A-4-309(1)(e) the Department may for good cause extend the 30 day period within which a change from one method to the other is requested. As provided by Subsection 35A-4-309(3), the Department may terminate the reimbursable status if the organization is delinquent in making the reimbursable payments.

R994-309-104. Liability of an Organization When Changing the Method of Payment.

A nonprofit organization changing from the reimbursement to the contributions method must reimburse the Department for benefits paid on wages earned during the time the organization was a reimbursable employer. Example: A nonprofit organization was a reimbursable employer during 1985 and 1986. For 1987 the organization elects to pay contributions. If a former employee receives benefits in 1987 based on wages paid by the organization in 1986, the organization must reimburse the Department for the benefits based on the 1986 wages. The organization must also pay contributions on the 1987 wages. If this organization changes back to the reimbursement method in 1989, any benefits received by a former employee which were based on wages paid in 1988 would not be subject to reimbursement since contributions have been paid on those wages.

R994-309-105. Reimbursable Employer's Liability for Benefits Paid.

The reimbursable employer's liability will be limited to the benefits paid to the claimant and benefits overpaid as a result of the failure of the reimbursable employer to provide complete and accurate information within the time limitations of the Department's request. The employer will not be liable for benefits overpaid as a result of a Department decision which is later reversed. Any benefits established as an overpayment due to claimant fault will be deducted from the employer's liability or refunded as the overpayment is repaid by the claimant.

R994-309-106. Records of Benefits Paid.

The Department will maintain records of benefits paid to former employees of reimbursable employers for five calendar years. Such records will include the name and social security account number of each employee, the week for which payment is made, and the amount of each payment.

R994-309-107. Monthly Billing of Benefits Paid.

The Department will send a monthly billing to the reimbursable employer if any benefits have been paid to former employees. The billing will include the name and social security account number of each claimant, the amount of the payment to each claimant on the basis of wages paid to him by the reimbursable employer in his base period, and the total amount paid to all such claimants during the previous calendar month.

KEY: unemployment compensation, nonprofit organization
1989 35A-4-309
Notice of Continuation July 14, 2004

R994. Workforce Services, Workforce Information and Payment Services.
R994-310. Coverage.
R994-310-101. General Definition.

This rule identifies when coverage under the Act will be terminated and specifies who has the authority to approve an employing unit's election to become covered under the Act.

R994-310-102. Terminating Coverage.

(1) Coverage will be terminated in two ways:

(a) Upon written request from the employing unit, coverage shall be terminated when the employing unit has paid wages less than $140 in each of the four calendar quarters of the preceding calendar year.

(b) Coverage will automatically be terminated only if the employing unit has paid no wages in the preceding calendar year.

(2) If within the calendar year after coverage is terminated an employer becomes subject to the Act again, the termination will be canceled. The employer is then responsible for filing delinquent reports caused by the cancellation of the termination and those reports are due 30 days after it is determined that the employer is subject again.

(3) If the Department determines that the termination was not bona fide, but an attempt to manipulate the rate provisions of the Act, the termination will be canceled and the employer will be assigned his earned rate.

R994-310-103. Elections to Become Covered.

An employing unit's election to become covered under the Act for either the entire employing unit or for services which do not constitute employment as defined in the Act, may be approved by the Executive Director of the Department.

KEY: unemployment compensation, coverage*
1989 35A-4-310
Notice of Continuation July 14, 2004

R994. Workforce Services, Workforce Information and Payment Services.
R994-311. Governmental Units.
R994-311-101. General Definition.

(1) Section 35A-4-311 describes how governmental units elect the method of paying for benefits, the effective period of such election, billing and collection procedures for the reimbursement method and appeal rights related to the election.

(2) Governmental units described in Subsection 35A-4-311(2) will pay contributions in the same manner as other employers under Section 35A-4-302 unless they elect to become reimbursable employers which are liable for payments in lieu of contributions. A governmental unit which elects to become a reimbursable employer pays to the Department an amount equal to the regular benefits and all of the extended benefits paid to former employees. These reimbursements for benefits paid are due and payable monthly. Reimbursable employers do not pay any administrative expenses of the unemployment insurance program.

R994-311-102. Governmental Units.

Section 35A-4-311 applies to governmental units including: any county, city, town, school district, or political subdivision and instrumentality of the foregoing or any combination thereof and political subdivisions or instrumentalities of the State of Utah or other states as provided by Subsection 35A-4-204(2)(d). A political subdivision or instrumentality of a state or county, city, town or school district is a subdivision thereof to which has been delegated certain functions of that state, county, etc. Examples of governmental units to which this section applies are county water conservancy districts, state universities, city fire departments, associations of county governments, etc. Indian tribes are not among the governmental entities included in this section and do not qualify to elect reimbursable status. The provisions of this rule to not apply to federal agencies.

R994-311-103. Effective Period of Payments by Contributions or Reimbursement.

(1) Initial Election

A governmental unit electing to become a reimbursable employer must make a written election within 30 days after the organization become subject to the Act. Under Subsection 35A-4-311(1)(e) the Department may, for good cause, extend the 30 day period within which the election is made. This initial election remains in effect for at least one full contribution year (calendar year).

(2) Subsequent Elections

A governmental unit may elect to change from the contributions to the reimbursement method or from the reimbursement method to the contributions method. To be consistent with the principle of Subsection 35A-4-311(1)(d), changes from one method to the other will remain in effect for at least two contribution years (calendar years). Any election to change from one method of payment to the other must be made in writing no later than 30 days prior to January 1 of the year for which the change is requested. Under Subsection 35A-4-311(1)(e) the Department may for good cause extend the 30 day period within which a change from one method to the other is requested. As provided by Subsection 35A-4-311(3), the Department may terminate the reimbursement status if the governmental unit is delinquent in making the reimbursement payments.

R994-311-104. Liability of a Governmental Unit When Changing the Method of Payment.

A governmental unit changing from the reimbursement to the contributions method must reimburse the Department for benefits paid on wages earned during the time the organization was a reimbursable employer. Example: A governmental unit was a reimbursable employer during 1985 and 1986. For 1987 the organization elects to pay contributions. If a former employee receives benefits in 1987 based on wages paid by the organization in 1986, the organization must reimburse the Department for the benefits based on the 1986 wages. The organization must also pay contributions on the 1987 wages. If this organization changes back to the reimbursement method in 1989, any benefits received by a former employee which were based on wages paid in 1988 would not be subject to reimbursement since contributions have been paid on those wages.

R994-311-105. Reimbursable Employer's Liability for Benefits Paid.

The reimbursable employer's liability will be limited to the benefits paid to the claimant and benefits overpaid as a result of the failure of the reimbursable employer to provide complete and accurate information within the time limitations of the Department's request. The employer will be liable even if good cause for the failure to properly provide the information can be established. The employer will not be liable for benefits overpaid as a result of a Department decision which is later reversed. Any benefits established as an overpayment due to claimant fault will be deducted from the employer's liability or refunded as the overpayment is repaid by the claimant. Federal regulation 20 CFR Sections 609.11 and 614.11 state that federal agencies receive adjustments (credits) when overpayments are recovered.

R994-311-106. Records of Benefits Paid.

The Department will maintain records of benefits paid to former employees of reimbursable employers for five calendar years. Such records will include the name and social security account number of each employee, the week for which payment is made, and the amount of each payment.

R994-311-107. Monthly Billing of Benefits Paid.

The Department will send a monthly billing to the reimbursable employer if any benefits have been paid to former employees. The billing will include the name and social security account number of each claimant, the amount of the payment to each claimant on the basis of wages paid to him by the reimbursable employer in his base period and the total amount paid to all such claimants during the previous calendar month.

KEY: unemployment compensation, government corporations
1989 35A-4-311
Notice of Continuation July 14, 2004

R994. Workforce Services, Workforce Information and Payment Services.
R994-312. Employing Units Records - Confidential.
R994-312-101. General Definition.

Subsection 35A-4-312 defines records an employing unit must keep and to which the Department may have access; it further outlines the rules for confidentiality of the records and the exceptions to those rules. The authority to determine who is or is not an employing unit is granted to the Department Representative in Subsection 35A-4-313.

R994-312-102. Records Required.

(1) Each employing unit shall, for a period of at least three calendar years, preserve and make available for inspection all records with respect to employment performed in its service. Information is required as follows:

(a) In each pay period and for each worker:

(i) His name and social security number (the social security number is required when filing reports to the Department).

(ii) His place of employment. This includes the city and town, or where appropriate the county, in which the work was performed. If work is performed in several locations, assignment of place of employment is made in the following order:

(A) the worker's base of operations,

(B) the place from which the worker's services are directed or controlled,

(C) the worker's place of residence.

(iii) The date hired.

(iv) The date and reason for separation from work.

(v) The ending date of each pay period.

(vi) The total amount of wages paid (in each pay period) showing separately:

(A) money wages;

(B) wages as otherwise defined in Section 35A-4-208 and Section R994-208-102.

(vii) Daily time cards or time records, kept in the regular course of business.

R994-312-103. Examination of Employer Records: Scope and Authority.

The Department is authorized to examine any and all records necessary for the administration of the Act. These records include payroll records, disbursement records, tax returns, magnetic media, personnel records, minutes of meetings, loan documentation and any other records which might be necessary to determine claimant eligibility and employer liability.

R994-312-104. Confidentiality of Records.

(1) Employers and individuals have a legitimate expectation of privacy in the information they provide to the Department. Therefore, consistent with federal and state requirements of confidentiality, it is the intent of this rule to limit access to Department records for use in:

(a) administration of the programs of the Department and the other divisions of the Department of Workforce Services;

(b) the detection and avoidance of duplicate or fraudulent claims against public assistance funds, or to avoid significant risk to public safety; and

(c) as specifically mandated by federal or state law. Department records shall not be published or open to public inspection in any manner revealing the employer's or the individual's identity except upon written request which shall set forth one or more of the following reasons for disclosure:

(i) Records used in making an initial determination or any decision by the Department may be provided to all interested parties prior to the rendering of any decision to the extent necessary for the proper presentation of the case.

(ii) Any information requested by employers concerning claims for benefits with respect to former or current employees may be provided where the employer's reason for seeking the information is directly related to the unemployment insurance program. Information in the records may be made available to the party who submitted the information to the Department; and an individual's wage data submitted by an employer may be made available to that individual.

(iii) Information in the record may be made available to the public for any purpose following a written waiver by all parties of their rights to non-disclosure.

(iv) Employment and claim information may be disclosed by the Department to other divisions of the Department of Workforce Services for the purpose of carrying out the programs administered by the Department for the protection of workers in the work place; to the Governor's office and other governmental agencies administratively responsible for statewide economic development, to the extent necessary for economic development policy analysis and formulation; and to any other governmental agency which is specifically authorized by federal or state law to receive such information, subject to the requirements of R994-312-304(2).

(v) Employment and claim information may be disclosed by the Department to any other public employees in the performance of their public duties only upon a determination by the Department that such disclosure will not discourage the willingness of employers to report wage and employment information or individuals to file claims for unemployment benefits, and such disclosure:

(A) is directly related to the detection or avoidance of duplicate, inconsistent or fraudulent claims against public assistance funds, or the recovery of overpayments of such funds; or

(B) is necessary to avoid a significant risk to public safety; and Disclosure pursuant to R994-312-304(1)(vi)(B) shall be subject to the requirements of R994-312-304(2).

(vi) No disclosure of employment or claim information may be made by the Department other than as set forth above. All requests for information must comply with the requirements and procedures contained in this rule. The Department will request a judicial or administrative body to withdraw any subpoena issued by that body if the subpoena does not conform to the Act and this rule.

(2) Employment and claim information may be disclosed to the divisions of the Department of Workforce Services, other governmental agencies, and other public employees only upon completion of a written agreement containing all of the following terms and conditions:

(a) The requesting division or agency must specify a bona fide need for the information, and must agree to use the information only to the extent necessary to assist in its valid administrative needs.

(b) The requesting division or agency must identify all agency officials, by position, authorized to request and receive information.

(c) The methods and timing of requests for information must be agreed upon by the Department and the requesting division or agency, and there must be provision for the appropriate reimbursement of the Department for the costs associated with furnishing the requested information.

(d) The requesting division or agency must agree to implement, at a minimum, the following requirements for safeguarding disclosed information:

(i) the disclosed information may not be used by the requesting division or agency for any purposes not specifically authorized; and

(ii) the information must be stored by the requesting division or agency in a secure place, and electronically stored

information must be secured so that unauthorized persons cannot access the information; and

(iii) the requesting division or agency must instruct all persons authorized to request and receive information as to the confidential nature of the information and of the legal sanctions for unauthorized disclosure; and

(iv) the requesting division or agency must permit the Department to make on-site inspections to insure that there is a genuine need for the information, that the information is being used only for that purpose, and that state and federal confidentiality requirements are being met; and

(v) the head of the requesting division or agency must sign a written acknowledgement attesting to the confidentiality requirements of this rule.

KEY: unemployment compensation, confidentiality of information
1989 35A-4-312
Notice of Continuation July 14, 2004

R994. Workforce Services, Workforce Information and Payment Services.
R994-401. Payment of Benefits.
R994-401-101. Bi-Weekly Payment of Benefits - General Definition.

Eligibility for benefits is established with regard to a calendar week. Benefits shall be paid on a bi-weekly basis. Therefore, benefits will not become due until the end of a two-week period for which benefits are claimed in accordance with Section 35A-4-401 governing the filing of claims.

R994-401-201. Weekly Benefit Amount - General Definition.

Section 35A-4-401 outlines the procedure for determining the Weekly Benefit Amount (WBA) and the Maximum Benefit Amount (MBA) which an eligible claimant can receive and establishes the provisions for recomputations based on retirement income. Claimants are instructed when filing the initial claim to report all base period employers. Employers are required by law to report to the Department the wages paid to all employees. Wage information is requested from the employers listed by the claimant if wages have not already been reported for the claimant by that employer. Based on the wage information reported by the employers which the claimant listed on his initial claim, a determination is made of his Weekly Benefit Amount which is called his "monetary determination." When the regular monetary determination is made, the claimant is sent notification of the wages reported by the employers and he is told of his appeal rights. The claimant is also told that he may lose all rights to adjustment to the monetary determination if he does not notify the Department of errors or omissions within the time permitted for an appeal. Employers are notified as to the wages used in determining a claimant's monetary determination, the employer's potential liability for benefit costs, and the time limitation for requesting relief of charges or correction of the wages. The employer's tax rate is dependent upon the proportion of the claimant's base period wages paid by that employer and the amount of benefits actually received by the claimant. The employer is also given a second opportunity to report to the Department any errors or omissions. When a second notice is sent to the employer he is given 30 days as provided by Subsection 35A-4-306(3) to advise the Department of any corrections.

R994-401-202. Total Wages.

The total wages used to determine the Weekly Benefit Amount are limited to wages reported to the Department by base period employers and verifiable wages paid by additional base period employers reported by the claimant on his initial claim form.

R994-401-203. Revision of Monetary Determination.

(1) After a claimant has been notified by a Monetary Determination of the amount of the weekly and maximum benefits for which he may be eligible, and the employer has been notified of the wages used in determining his potential liability for benefit costs, a revision of the monetary determination will be made consistent with rules pertaining to Subsection 35A-4-403(1)(e) only when:

(a) the appellant, either the claimant or employer, files an appeal within the time limitations established by the act for filing appeals, or the appellant has shown good cause for filing the appeal late in accordance with the regulations under Subsection 35A-4-406(3) which limit good cause for late appeals, or

(b) the appellant can show good cause for failure to accurately report the base period employment, or

(c) the Department may exercise continuing jurisdiction based upon a mistake as to the facts, but the exercise of this jurisdiction is discretionary with the Department.

(2) As a general rule, the Department will not revise a monetary determination when the request is made by the party who will benefit by that revision if that party has had a previous opportunity to appeal and has failed to show good cause for not filing a timely appeal. The Department may exercise its jurisdiction based upon knowledge of a mistake as to facts if the revision would be substantial and required by fairness for a party who did not have access to the information and therefore could not reasonably have filed a timely appeal. No redetermination will be made if the claimant has received Extended Benefits unless a redetermination would provide sufficient regular benefits to offset the payments made on the Extended Benefit program.

R994-401-204. Wages Paid.

"Wages paid" include those wages actually received by the worker and wages constructively paid without regard to the ending date of the pay period, provided the employer's liability for payment has become unconditionally established. Wages are considered constructively paid on the earliest of: the next regular pay day in accordance with the employer's customary payment practices, the day required by contractual agreement, or as required by state law.

R994-401-205. Wages Paid During the Quarter.

"Wages paid during the quarter" are all regular wages paid within the calendar quarter. Special payments made within the quarter which were not due on any specific day shall be treated as wages paid during the quarter in which the payment is made unless a written request is made by the claimant for apportionment to the calendar quarters in which the remuneration was earned and the request is received by the Department within ten days of the issuance of the monetary determination as provided by Subsection 35A-4-401(7) of the Utah Employment Security Act.

R994-401-206. Calendar Quarter.

Calendar quarter means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31.

R994-401-207. Retirement or Disability Retirement Income.

(1) A claimant's weekly benefit amount is reduced by 100% of any retirement benefits, social security, pension or disability retirement pay (referred to collectively in this section as "retirement benefits" or "retirement pay") received by the claimant. Except, for social security retirement benefits, the reduction is 50% for claims with an effective date on or after July 4, 2004 and on or before July 2, 2006. The payments must be:

(a) from a plan contributed to by a base-period employer. Payments made by the employer for whom the claimant did not work during the benefit year are not counted. Social security payments are counted if a base period employer contributed to social security even if the social security payment is not based on employment during the base period.

(b) based on prior employment and the claimant qualifies because of age, length of service, disability or any combination of these criteria. Disability payments must be based, at least in part, by length of service. Savings plans such as a 401(k), or IRA should not be used to reduce the weekly benefit amount. Payments from worker's compensation for temporary disability, black lung disability income, and benefits from the Department of Veterans Affairs are not counted because the amount of the payment is based on disability and not on length of service. Payments received as a spouse or beneficiary are not counted. That portion of retirement benefits payable to a claimant's former spouse is not counted if the paying entity pays the former spouse directly and it is pursuant to court order or a signed,

stipulated agreement in accordance with the law;

(c) periodic and not made in a lump sum. Lump sum payments, even if drawn from the employer's contributions to a fund established for the purpose of retirement, are not treated as severance pay under 35A-4-405(7); and

(d) payable during the benefit year. A claimant's WBA is not reduced if the claimant is eligible for, but not receiving retirement income. However, if the claimant subsequently receives a retroactive payment of retirement benefits which, if received during the time unemployment insurance claims were filed would have resulted in a reduced payment, an overpayment will be established. The period of time the payment represents, not the time of the receipt, is the determining factor. An assumption that a claimant is entitled to receive a pension, even if correct, is not sufficient basis to recompute the Weekly Benefit Amount. However, if a claimant has applied for a pension and expects to be determined eligible for a specific amount attributable to weeks when Unemployment Insurance benefits are payable, and the claimant is only awaiting receipt of those payments, a reduction of the claimant's Weekly Benefit Amount will be made.

(2) A claimant who could be eligible for a retirement income, but chooses not to apply until after the Unemployment Insurance benefits have been paid, will be at fault for any overpayment resulting from a retroactive payment of retirement benefits.

(3) The formula for recomputation of the Maximum Benefit Amount in the event a claimant begins receiving retirement income after the beginning of the benefit year is found in 35A-4-401(2)(d).

R994-401-301. Partial Payments - General Definition.

(1) A claimant who is working less than full time can earn up to 30% of his Weekly Benefit Amount (WBA) without any reduction in the benefit payment. The claimant's gross earnings which are more than 30% of the WBA will be deducted dollar for dollar with respect to any claim filed. A claimant who earns less than his WBA and files a claim may be credited with a waiting week, or paid a part payment. A claimant who earns equal to or more than his WBA will not be credited with a waiting week nor be eligible for any part payment for that week.

(2) All work and earnings must be reported with respect to a specific week. For example, when an otherwise eligible claimant is required to report income from a farm, and is paid one day of holiday pay from a former employer, and then he accepts a one day temporary job, the work and earnings from all three sources must be reported. The accumulated earnings reported by the claimant in excess of 30% of his WBA will be deducted from the payment for that week. If the total earnings are equal to or in excess of the WBA, no payment would be made.

(3) Reportable earnings which a claimant must report on the weekly claim includes any and all wages, remuneration, or compensation for services even if the employer is not required to pay contributions on these wages.

R994-401-302. Liability of Part-time Concurrent Reimbursable Employers.

(1) If the claimant worked concurrently for two or more employers during his base period and is separated from one or more of these employers, but continues in his regular part-time work with a reimbursable employer, his Weekly Benefit Amount will be determined on the basis of his total base period employment and earnings. However, his Maximum Benefit Amount for the Benefit year will be based solely on the employment from the separating employer excluding the employment and earnings from the part-time reimbursable employer. The non-separating employer will not be liable for benefits paid provided: 1) the employer makes a written request within ten days of the first notification of the employer's potential liability, and 2) the hours of work have not been reduced below the least number of hours normally worked during the base period of the claim, and 3) the claimant is not working on an "on call" basis. If the claimant is also separated from this employer within the benefit year or the claimant's hours of work are reduced below the least number of hours worked during the base period, the reimbursable employer will be liable to pay the proportionate amount of benefit payments paid thereafter.

(a) For example: The claimant has two base period employers for whom he worked concurrently, one full-time where he earned $8,000 and was separated and one part-time reimbursable employer where he earned $2,000 and is still working. If his high quarter earnings were $2,500, his weekly benefit amount would be $96 per week using the base period wages from both employers. However, under this rule, the Maximum Benefit Amount (MBA) is determined only by using the wages from the employer from whom he is separated, in this case, the total base period wages from the separating employer are only $8,000. The MBA is determined by taking 27% of the $8,000 which is $2,160 divided by the full WBA ($96) which equals 22.5 or 22 weeks of benefits. Therefore, the claimant's WBA is 22 x $96 or $2,112 and the part-time employer is relieved of any benefit costs until the claimant is separated from this employer. The weekly payment is determined by reducing the claimant's WBA by that portion of his weekly earnings in excess of 30% of his WBA. In this example the claimant must report all of his earnings, but only those earnings of over $28 which is 30% OF $96, will be deducted from his weekly payment.

(2) If the claimant is separated within the benefit year from the remaining employment, a new Monetary Determination can be made at the request of the claimant and would include all base period wages. The effective date of the Revised Monetary Determination will be the first day of the week in which the request is made.

R994-401-303. Income Which Is Reportable.

(1) All payments whether an hourly wage, salary, or commission paid for the performance of any service shall be reportable as a wage unless specifically identified as an exception in Sections R994-401-304 and R994-401-305.

(2) Any payments in kind which are remuneration for services performed by an employee as a part of wages, or wholly comprises an employee's wages must be reported and shall be determined as follows:

(a) If a cash value for meals, lodging or other payment is to promote good will or to attract prospective employees, except where the payments are for the convenience of the employer as identified in Subsection R994-401-305(1), the amount agreed upon by contract shall be deemed the value of any meals, lodging or other payment provided the value equals or exceeds the cash value prevailing under similar conditions in the locality.

(b) If a cash value for any meals, lodging or other payment for service as identified in the preceding paragraph, is not agreed upon, the Department may determine or approve, on the basis of prevailing amounts paid under similar conditions in the locality, the cash value.

(c) Gratuities or tips paid directly to an employee by a customer or his employer for a service provided.

(d) Where an employee is hired with work equipment, the fair value of the employee's services, as distinguished from an allowance for use of his equipment, if specified in the contract of hire, shall be considered "wages". If the contract of hire does not specify the employee's wages, or the value of wages agreed upon under the contract of hire is not a fair value, the Department shall determine the employee's wages taking into

consideration the prevailing wages for similar work under comparable conditions.

R994-401-304. Income Which May Not Be Reportable.

(1) Bonus.

A bonus is given to an employee in addition to his usual wages. If paid as a direct result of past performance of service or for a specific prior period it is not a wage with respect to a week after the claimant was separated. If the payment is made contingent upon termination it is a wage with respect to the week or weeks after the individual has been separated. Payments given at the time of separation that are based on years of service will be considered severance payment and reportable in accordance with Subsection 35A-4-405(7).

(2) Training Allowances.

Some employers may require training as a prerequisite to employment even though a job may not be guaranteed at the end of the training. Learning a new job may be considered a service, for example: on-the-job training or in-service training, will be considered to be service rendered for wages. Any payment made in consideration of training is considered to be wages unless shown to be:

(a) expenses necessary for school; for example, tuition, fees, and books;

(b) travel expenses;

(c) actual costs for room and board where costs are created as a necessary expense for the schooling;

(d) payments exempt from income tax liability;

(e) payments not directly related to the number of hours of training, provided the claimant is not eligible for regular employee benefits, including sick pay, vacation pay, insurance programs.

(3) Contractual Obligations.

Money or other things of monetary value paid to or received by an individual not in consideration of services performed or for the holding of himself available ordinarily are not wages. However, in contractual situations where an individual is paid for the express reason of being available to an employer, and there are either limits placed upon the individual as to how much earnings, if any, may be earned while receiving these payments, or on the time the individual must hold himself available to the employer the payment would be considered reportable wages.

R994-401-305. Income Which Is Not Reportable.

Payments which are received for reasons other than the performance of a service are not wages. Some examples are:

(1) Meals and lodging: When provided by an employer to an employee, if excluded from the definition of wages by the Internal Revenue Service as under the following conditions:

(a) Meals that are furnished:

(i) on the business premises of the employer;

(ii) for the convenience of the employer;

(iii) without charge for substantial non-compensatory business reasons, not for the purpose of additional compensation. Substantial noncompensatory business reasons will be limited to meals:

(A) to have employees available for emergency call;

(B) to have employees with restricted lunch periods;

(C) because adequate eating facilities are not otherwise available;

(iv) subject to charge:

(A) which an employee may or may not purchase;

(B) for which an employer charges an unvarying amount whether the meal is taken or not.

(b) Lodging that is furnished:

(i) on the business premises of the employer;

(ii) as a condition of employment;

(iii) for the convenience of the employer; for example, to have an employee available for call at any time.

(2) Payments from corporate stocks and bonds;

(3) Pensions: If not contributed to or maintained by base period employers or not based solely on service; for example, a disability pension from the Department of Veteran's Affairs;

(4) Public service in lieu of payment of fines: The court system in Utah does not assign monetary value to public service. Any fine assessed by the court is considered to be waived in lieu of public service. The issue of benefit payment will be decided on the basis of the rule which deals with voluntary workers, Section R994-207-107;

(5) Jury and witness fees: Fees paid for jury duty or as witness fees will be considered reimbursement for expenses;

(6) Expenses: Amounts paid specifically, either as an advance or reimbursement, for bona fide, ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer. If an accounting by the employee is not required by the employer for actual expenses, the Department shall not require itemization;

(7) Grants, public or private assistance or other support payments; Payments that are specifically identifiable as not being provided for the rendering of service will not be considered wages;

(8) Money or other considerations which are normally provided as a matter of course to immediate family members;

(9) Income from investments;

(10) Disability awards under the Workmen's Compensation Act.

R994-401-601. Notification of Eligibility Determination - General Definition.

The purpose of Sections R994-401-601 through R994-401-604 is to provide notification to employers of decisions made by the Department, so that employers who have information or concerns will have an opportunity to provide information and appeal decisions. The primary objectives of a benefit ratio tax are to increase incentives for employer participation in providing adequate information for determining eligibility, for program improvement and to make building and maintaining a solvent reserve fund the responsibility of those employers who use the system. However, since the most recent employer may not be in the base period and therefore not subject to charges, other employers should be notified of the issues that involve them.

R994-401-602. Notification to the Most Recent Employer.

"Prior to the payment of benefits" is considered to mean at the initial point of the claim before payment of any benefits is made. Therefore, when an initial claim is filed, the most recent employer will be notified of decisions made on every issue.

R994-401-603. Notification at Time of Initial Claim.

At the time an initial claim is filed, all employers from the beginning of the base period to the time of the filing of the claim are entitled to notice as provided by Section 35A-4-306(2).

R994-401-604. Notification to Involved Employers.

(1) Employers who make a written protest of payment of benefits on any grounds will be notified of the decision made with regard to that issue.

(2) Notification will be given during the course of the claim to employers who have or reasonably could be expected to have information with regard to any issue involving eligibility for benefits including issues under: Subsections 35A-4-403(3) deferrals due to employer attachment, 35A-4-405(1) voluntary separations, 35A-4-405(2) discharges, 35A-4-405(3) failure to obtain employment, 35A-4-405(4) strikes, 35A-4-403(2) school and Department approval, 35A-4-405(7) separation payments,

35A-4-405(8) reasonable assurance of continued employment for school employees, 35A-4-405(9) contractual attachment of athletes, 35A-4-405(10) eligibility of aliens. Involved employers will be notified of information reported by the claimant and the employer will be given an opportunity to provide a rebuttable or additional information prior to the rendering of a decision. Any employer who provides information will be advised of the decision and given appeal rights.

KEY: unemployment compensation, benefits

July 19, 2004	**35A-4-401(1)**
Notice of Continuation May 23, 2002	**35A-4-401(2)**
	35A-4-401(3)
	35A-4-401(6)

R994. Workforce Services, Workforce Information and Payment Services.
R994-405. Ineligibility for Benefits.
R994-405-101. Voluntary Leaving - General Information.

A separation is considered voluntary if the claimant was the moving party in ending the employment relationship. A voluntary separation includes leaving existing work or failing to return to work after a layoff, suspension, or period of absence. Failing to renew an employment contract may also constitute a voluntary separation. Two standards must be applied in voluntary separation cases: good cause and equity and good conscience. If good cause is not established, the claimant's eligibility must be considered under the equity and good conscience standard.

R994-405-102. Good Cause.

To establish good cause, a claimant must show that continuing employment would have caused an adverse effect which the claimant could not control or prevent. The claimant must show an immediate severance of the employment relationship was necessary. Good cause is also established if a claimant left work which is shown to have been illegal or to have been unsuitable new work.

(1) Adverse Effect on the Claimant.

(a) Hardship.

The separation must have been motivated by circumstances that made the continuance of the employment a hardship or matter of concern, sufficiently adverse to a reasonable person to outweigh the benefits of remaining employed. There must have been actual or potential physical, mental, economic, personal or professional harm caused or aggravated by the employment. The claimant's decision to quit must be measured against the actions of an average individual, not one who is unusually sensitive.

(b) Ability to Control or Prevent.

Even though there is evidence of an adverse effect on the claimant, good cause may not be established if the claimant:

(i) reasonably could have continued working while looking for other employment, or

(ii) had reasonable alternatives that would have made it possible to preserve the job. Examples include using approved leave, transferring, or making adjustments to personal circumstances, or,

(iii) did not give the employer notice of the circumstances causing the hardship thereby depriving the employer of an opportunity to make changes that would eliminate the need to quit. An employee with grievances must have made a good faith effort to work out the differences with the employer before quitting unless those efforts would have been futile.

(2) Illegal.

Good cause is established if the individual was required by the employer to violate state or federal law or if the individual's legal rights were violated, provided the employer was aware of the violation and refused to comply with the law.

(3) Unsuitable New Work.

Good cause may also be established if a claimant left new work which, after a short trial period, was unsuitable consistent with the requirements of the suitable work test in Subsections 35A-4-405(3)(c) and 35A-4-405(3)(e). The fact a job was accepted does not necessarily make the job suitable. The longer a job is held, the more it tends to set the standard by which suitability is measured. After a reasonable period of time a contention that the quit was motivated by unsuitability of the job is generally no longer persuasive.

R994-405-103. Equity and Good Conscience.

(1) If the good cause standard has not been met, the equity and good conscience standard must be applied in all cases except those involving a quit to accompany, follow, or join a spouse as outlined in Section R994-405-104. If there were mitigating circumstances, and a denial of benefits would be unreasonably harsh or an affront to fairness, benefits may be allowed under the provisions of the equity and good conscience standard if the following elements are satisfied:

(a) the decision is made in cooperation with the employer;

(b) the claimant acted reasonably;

(c) the claimant demonstrated a continuing attachment to the labor market.

(2) The elements of equity and good conscience are defined as follows:

(a) In Cooperation with the Employer.

A decision is made in cooperation with the employer when the Department gives the employer an opportunity to provide separation information.

(b) The Claimant Acted Reasonably.

The claimant acted reasonably if the decision to quit was logical, sensible, or practical. There must be evidence of circumstances which, although not sufficiently compelling to establish good cause, would have motivated a reasonable person to take similar action. Behaviors that may be acceptable to a particular subculture do not establish what is reasonable.

(c) Continuing Attachment to the Labor Market.

A continuing attachment to the labor market is established if the claimant took positive actions which could have resulted in employment during the first week subsequent to the separation and each week thereafter. Evidence of an attachment to the labor market may include: making contacts with prospective employers, preparing resumes, and developing job leads. An active work search should have commenced immediately subsequent to the separation whether or not the claimant received specific work search instructions from the Department. Failure to show an immediate attachment to the labor market may not be disqualifying if it was not practical for the individual to seek work. Some examples of circumstances that may interfere with an immediate work search include illness, hospitalization, incarceration, or other circumstances beyond the control of the claimant provided a work search commenced as soon as practical.

R994-405-104. Quit to Accompany, Follow or Join a Spouse.

If an individual quit work to join, accompany, or follow a spouse to a new locality, good cause is not established. Furthermore, the equity and good conscience standard is not to be applied in this circumstance. It is the intent of this provision to deny benefits even though a claimant may have faced extremely compelling circumstances including the cost of maintaining two households and the desire to keep the family intact.

R994-405-105. Evidence and Burden of Proof.

The claimant was the moving party in a voluntary separation, and is the best source of information with respect to the reasons for the quit. The claimant has the burden to establish that the elements of good cause or of equity and good conscience have been met.

R994-405-106. Quit or Discharge.

(1) Refusal to Follow Instructions.

If the claimant refused or failed to follow reasonable requests or instructions, and knew the loss of employment would result, the separation is a quit.

(2) Leaving Prior to Effective Date of Termination.

(a) If an individual leaves work prior to the date of an impending reduction in force, the separation is voluntary. Notice of an impending layoff does not establish good cause for leaving work. However, the duration of available work may be a factor in considering whether a denial of benefits would be contrary to equity and good conscience. If the claimant is not

disqualified for quitting under Subsection 35A-4-405(1)(a), benefits shall be denied for the limited period of time the claimant could have continued working, as there was a failure to accept all available work as required under Subsection 35A-4-403(1)(c).

(b) An individual may not escape a discharge disqualification under Subsection 35A-4-405(2)(a) by quitting to avoid a discharge that would result in a denial of benefits. In this circumstance the separation shall be adjudicated as a discharge.

(3) Leaving Work Because of a Disciplinary Action.

If the disciplinary action or suspension was reasonable, leaving work rather than submitting to the discipline, or failing to return to work at the end of the suspension period, is considered a voluntary quit unless the claimant was previously disqualified for a discharge under the provisions of Subsection 35A-4-405(2)(a).

(4) Leave of Absence.

If a claimant takes a leave of absence for any reason and files a claim while on such leave from the employer, the claimant will be considered unemployed even though there still may be an attachment to the employer. If a claimant fails to return to work at the end of the leave of absence, the separation is a voluntary quit.

(5) Leaving Due to a Remark or Action of the Employer or a Coworker.

If a worker hears rumors or other information suggesting that he or she is to be discharged, the worker has the responsibility to confirm, prior to leaving, that the employer intended to end the employment relationship. The claimant also has a responsibility to continue working until the date of an announced discharge. If the claimant failed to do so and if the employer did not intend to discharge the claimant, the separation is a quit.

(6) Resignation Intended.

(a) Quit.

If a worker gives notice of a future date of leaving and is paid regular wages through the announced resignation date, the separation is a quit even if the worker was relieved of work responsibilities prior to the effective date of the resignation. A separation is also a quit if a worker announces an intent to quit but agrees to continue working for an indefinite period as determined by the employer, even though the date of separation was determined by the employer. If a worker resigns, later decides to stay and attempts to remain employed, the reasonableness of the employer's refusal to continue the employment is the primary factor in determining if the claimant quit or was discharged. For example, if the employer had already hired a replacement, or taken other action because of the claimant's impending quit, it may not be practical for the employer to allow the claimant to rescind the resignation, and the separation is a quit.

(b) Discharge.

If a worker submitted a resignation to be effective at a definite future date, but was relieved of work responsibilities prior to that date, the separation is considered a discharge as the employer was the moving party in determining the final date of employment. If the claimant was not paid regular wages through the balance of the notice period, the separation is a discharge. Merely assigning vacation pay, which was not previously assigned to the notice period, does not make the separation voluntary.

R994-405-107. Examples of Reasons for Voluntary Separations.

(1) Prospects of Other Work.

Good cause is established if, at the time of separation, the claimant had a definite and immediate assurance of another job or self-employment that was reasonably expected to be full-time and permanent. Occasionally, after giving notice, but prior to leaving the first job, an individual may learn the new job will not be available when promised, permanent, full-time, or suitable. Good cause may be established in those circumstances if the claimant immediately attempted to rescind the notice, unless such an attempt would have been futile. However, if it is apparent the claimant knew, or should have known, about the unsuitability of the new work, but quit the first job and subsequently quit the new job, a disqualification shall be assessed from the time the claimant quit the first job unless the claimant has purged the disqualification through earnings received while on the new job.

(a) A definite assurance of another job means the claimant has been in contact with someone with the authority to hire, has been given a definite date to begin working and has been informed of the employment conditions.

(b) An immediate assurance of work generally means the prospective job will begin within two weeks from the last day the claimant was scheduled to work on the former job. Benefits may be denied for failure to accept all available work under the provisions of Subsection 35A-4-403(1)(c) if the claimant files during the period between the two jobs.

(2) Reduction of Hours.

The reduction of an employee's working hours generally does not establish good cause for leaving a job. However, in some cases, a reduction of hours may result in personal or financial hardship so severe that the circumstances justify leaving.

(3) Personal Circumstances.

There may be personal circumstances that are sufficiently compelling or create sufficient hardship to establish good cause for leaving work, provided the individual made a reasonable attempt to make adjustments or find alternatives prior to quitting.

(4) Leaving to Attend School.

Although leaving work to attend school may be a logical decision from the standpoint of personal advancement, it is not compelling or reasonable, within the meaning of the Act.

(5) Religious Beliefs.

To support an award of benefits following a voluntary separation due to religious beliefs, there must be evidence that continuing work would have conflicted with good faith religious convictions. If an individual was not required to violate such religious beliefs, quitting is not compelling or reasonable within the meaning of the Act. A change in the job requirements, such as requiring an employee to work on the employee's day of religious observance when such work was not agreed upon as a condition of hire, may establish good cause for leaving a job if the employer is unwilling to make adjustments.

(6) Transportation.

If a claimant quits a job due to a lack of transportation, good cause may be established if the claimant has no other reasonable transportation options available. However, an availability issue may be raised in such a circumstance. If a move resulted in an increased distance to work beyond normal commuting patterns, the reason for the move, not the distance to the work, is the primary factor to consider when adjudicating the separation.

(7) Marriage.

(a) Marriage is not considered a compelling or reasonable circumstance, within the meaning of the Act, for voluntarily leaving work. Therefore, if the claimant left work to get married, benefits shall be denied even if the new residence is beyond a reasonable commuting distance from the claimant's former place of employment.

(b) If the employer has a rule requiring the separation of an employee who marries a coworker, the separation is a discharge even if the employer allowed the couple to decide who would leave.

(8) Health or Physical Condition.

(a) Although it is not essential for the claimant to have been advised by a physician to quit, a contention that health problems required the separation must be supported by competent evidence. Even if the work caused or aggravated a health problem, if there were alternatives, such as treatment, medication, or altered working conditions to alleviate the problem, good cause for quitting is not established.

(b) If the risk to the health or safety of the claimant was shared by all those employed in the particular occupation, it must be shown the claimant was affected to a greater extent than other workers. Absent such evidence, quitting was not reasonable.

(9) Retirement and Pension.

Voluntarily leaving work solely to accept retirement benefits is not a compelling reason for quitting, within the meaning of the Act. Although it may have been reasonable for an individual to take advantage of a retirement benefit, payment of unemployment benefits in this circumstance is not consistent with the intent of the Unemployment Insurance program, and a denial of benefits is not contrary to equity and good conscience.

(10) Sexual Harassment.

(a) A claimant may have good cause for leaving if the quit was due to discriminatory and unlawful sexual harassment, provided the employer was given a chance to take necessary action to alleviate the objectionable conduct. Sexual harassment is a form of sex discrimination which is prohibited by Title VII of the United States Code and the Utah Anti-Discrimination Act.

(b) "Sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(i) submission to the conduct is either an explicit or implicit term or condition of employment, or

(ii) submission to or rejection of the conduct is used as a basis for an employment decision affecting the person, or

(iii) the conduct has a purpose or effect of substantially interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment.

(c) Inappropriate behavior which has sexual connotation but does not meet the test of sexual discrimination is insufficient to establish good cause for leaving work.

(11) Discrimination.

A claimant may have good cause for leaving if the quit was due to prohibited discrimination, provided the employer was given a chance to take necessary action to alleviate the objectionable conduct. It is a violation of federal law to discriminate against employees regarding compensation, terms, conditions, or privileges of employment, because of race, color, religion, sex, age or national origin; or to limit, segregate, or classify employees in any way which would deprive or tend to deprive them of employment opportunities or otherwise adversely affect their employment status because of the individual's race, color, religion, sex, age or national origin.

(12) Voluntary Acceptance of Layoff.

If an employer notifies employees that a layoff is going to take place and the employer gives the employees the option to volunteer for the layoff, those who do volunteer are separated due to reduction of force regardless of incentives.

R994-405-108. Effective Date of Disqualification.

A disqualification under this section technically begins with the week the separation occurred. However, to avoid any confusion which may arise when a disqualification is made for a period of time prior to the filing of a claim, the claimant shall be notified benefits are denied beginning with the effective date of the new or reopened claim. The disqualification shall continue until the claimant returns to work in bona fide covered employment and earns six times his or her weekly benefit amount. A disqualification that begins in one benefit year shall continue into a new benefit year unless purged by subsequent earnings. Severance or vacation pay may not be used to purge a disqualification.

R994-405-201. Discharge - General Definition.

A separation is a discharge if the employer was the moving party in determining the date the employment ended. Benefits shall be denied if the claimant was discharged for just cause or for an act or omission in connection with employment, not constituting a crime, which was deliberate, willful, or wanton and adverse to the employer's rightful interest. However, not every legitimate cause for discharge justifies a denial of benefits. A just cause discharge must include some fault on the part of the worker. A reduction of force is considered a discharge without just cause at the convenience of the employer.

R994-405-202. Just Cause.

To establish just cause for a discharge, each of the following three elements must be satisfied:

(1) Culpability.

The conduct causing the discharge must be so serious that continuing the employment relationship would jeopardize the employer's rightful interest. If the conduct was an isolated incident of poor judgment and there was no expectation that it would be continued or repeated, potential harm may not be shown. The claimant's prior work record is an important factor in determining whether the conduct was an isolated incident or a good faith error in judgment. A long term employee with an established pattern of complying with the employer's rules may not demonstrate by a single violation, even though harmful, that the infraction would be repeated. In this instance, depending on the seriousness of the conduct, it may not be necessary for the employer to discharge the claimant to avoid future harm.

(2) Knowledge.

The worker must have had knowledge of the conduct the employer expected. There does not need to be evidence of a deliberate intent to harm the employer; however, it must be shown that the worker should have been able to anticipate the negative effect of the conduct. Generally, knowledge may not be established unless the employer gave a clear explanation of the expected behavior or had a written policy, except in the case of a violation of a universal standard of conduct. A specific warning is one way to show the worker had knowledge of the expected conduct. After a warning the worker should have been given an opportunity to correct the objectionable conduct. If the employer had a progressive disciplinary procedure in place at the time of the separation, it generally must have been followed for knowledge to be established, except in the case of very severe infractions, including criminal actions.

(3) Control.

(a) The conduct causing the discharge must have been within the claimant's control. Isolated instances of carelessness or good faith errors in judgment are not sufficient to establish just cause for discharge. However, continued inefficiency, repeated carelessness or evidence of a lack of care expected of a reasonable person in a similar circumstance may satisfy the element of control if the claimant had the ability to perform satisfactorily.

(b) The Department recognizes that in order to maintain efficiency it may be necessary to discharge workers who do not meet performance standards. While such a circumstance may provide a basis for discharge, this does not mean benefits will be denied. To satisfy the element of control in cases involving a discharge due to unsatisfactory work performance, it must be shown that the claimant had the ability to perform the job duties in a satisfactory manner. In general, if the claimant made a good faith effort to meet the job requirements but failed to do so due to a lack of skill or ability and a discharge results, just cause is not established.

R994-405-203. Burden of Proof.

In a discharge, the employer initiates the separation, and therefore, has the burden to prove there was just cause for discharging the claimant. The failure of one party to provide information does not necessarily result in a ruling favorable to the other party. Interested parties have the right to rebut information contrary to their interests.

R994-405-204. Quit or Discharge.

The circumstances of the separation as found by the Department, determine whether it was a quit or discharge. The conclusions on the employer's records, the separation notice or the claimant's report are not controlling on the Department.

(1) Discharge Before Effective Date of Resignation.

(a) Discharge.

If an individual notifies the employer of an intent to leave work on a definite date, but is separated prior to that date, the reason the separation took place on the date that it did, is the controlling factor in determining whether the separation is a quit or discharge. If the decision to separate the worker is a result of the announced resignation to be effective at a future date, the separation is a discharge. Unless there is some other evidence of disqualifying conduct, benefits shall be awarded.

(b) Quit.

If a worker gives notice of an intent to leave work on a particular date and is paid regular wages through the announced resignation date, the separation is a quit even if the worker was relieved of work responsibilities prior to the effective date of resignation. A separation is also a quit if a worker announces an intent to quit but agrees to continue working for an indefinite period, even though the date of separation is determined by the employer. If a worker resigns, later decides to stay and announces an intent to remain employed, the reasonableness of the employer's refusal to continue the employment is the primary factor in determining whether the claimant quit or was discharged. If the employer had already hired a replacement, or had taken other action because of the claimant's impending quit, it may not be practical for the employer to allow the claimant to rescind the resignation, and it would be held the separation was a quit.

(2) Leaving in Anticipation of Discharge.

If an individual leaves work in anticipation of a possible discharge and if the reason for the discharge would not have been disqualifying, the separation is a quit. However, an individual may not escape a disqualification under the discharge provisions, Subsection 35A-4-405(2)(a), by quitting to avoid a discharge that would result in a denial of benefits. In this circumstance the separation shall be considered a discharge.

(3) Refusal to Follow Instructions (Constructive Abandonment).

If the worker refused or failed to follow reasonable requests or instructions, knowing the loss of employment would result, the separation is a quit.

R994-405-205. Disciplinary Suspension.

When an individual is placed on a disciplinary suspension, the definition of being unemployed may be satisfied. If an individual files during the suspension period, the matter shall be adjudicated as a discharge, even though the claimant may have an attachment to the employer and may expect to return to work. A suspension that is reasonable and necessary to prevent potential harm to the employer will generally result in a disqualification if the elements of knowledge and control are established. If the individual fails to return to work at the end of the suspension period, the separation is a voluntary quit and may then be adjudicated under Subsection 35A-4-405(1), if benefits had not been previously denied.

R994-405-206. Proximal Cause - Relation of the Offense to the Discharge.

(1) The cause for discharge is the conduct that motivated the employer to make the decision to discharge the worker. If a separation decision has been made, it is generally demonstrated by giving notice to the worker. Although the employer may learn of other offenses following the decision to terminate the worker's services, the reason for the discharge is limited to the conduct the employer was aware of prior to making the separation decision. If an employer discharged an individual because of preliminary evidence, but did not obtain "proof" of the conduct until after the separation notice was given, it may still be concluded the discharge was caused by the conduct the employer was investigating.

(2) If the discharge did not occur immediately after the employer became aware of an offense, a presumption arises that there were other reasons for the discharge. The relationship between the offense and the discharge must be established both as to cause and time. The presumption that a particular offense was not the cause of the discharge may be overcome by showing the delay was necessary to accommodate further investigation, arbitration or hearings related to the worker's conduct. If an individual files for benefits while a grievance or arbitration process is pending, the Department shall make a decision based on the best information available. The Department's decision is not binding on the grievance process nor is the decision of an arbitrator binding upon the Department. If an employer elects to reduce its workforce and uses a worker's prior conduct as the criteria for determining who will be laid off, the separation is a reduction of force.

R994-405-207. In Connection with Employment.

Disqualifying conduct is not limited to offenses that take place on the employer's premises or during business hours. However, it is necessary that the offense be connected to the employment in such a manner that it is a subject of legitimate and significant concern to the employer. Employers generally have the right to expect that employees shall refrain from acts detrimental to the business or that would bring dishonor to the business name or institution. Legitimate interests of employers include: goodwill, efficiency, employee morale, discipline, honesty and trust.

R994-405-208. Examples of Reasons for Discharge.

In the following examples, the basic elements of just cause must be considered in determining eligibility for benefits.

(1) Violation of Company Rules.

If an individual violates a reasonable employment rule and the three elements of culpability, knowledge and control are satisfied, benefits shall be denied.

(a) An employer has the prerogative to establish and enforce work rules that further legitimate business interests. However, rules contrary to general public policy or that infringe upon the recognized rights and privileges of individuals may not be reasonable. If a worker believes a rule is unreasonable, the worker generally has the responsibility to discuss these concerns with the employer before engaging in conduct contrary to the rule, thereby giving the employer an opportunity to address those concerns. When rules are changed, the employer must provide appropriate notice and afford workers a reasonable opportunity to comply.

(b) If an employment relationship is governed by a formal employment contract or collective bargaining agreement, just cause may only be established if the discharge is consistent with the provisions of the contract.

(c) Habitual offenses may not constitute disqualifying conduct if the acts were condoned by the employer or were so prevalent as to be customary. However, if a worker was given notice the conduct would no longer be tolerated, further violations may result in a denial of benefits.

(d) Culpability may be established if the violation of the rule did not, in and of itself, cause harm to the employer, but the lack of compliance diminished the employer's ability to maintain necessary discipline.

(e) Serious violations of universal standards of conduct may not require prior warning to support a disqualification.

(2) Attendance Violations.

(a) Attendance standards are usually necessary to maintain order, control, and productivity. It is the responsibility of a worker to be punctual and remain at work within the reasonable requirements of the employer. A discharge for unjustified absence or tardiness is disqualifying if the worker knew enforced attendance rules were being violated. A discharge for an attendance violation beyond the control of the worker is generally not disqualifying unless the worker could reasonably have given notice or obtained permission consistent with the employer's rules, but failed to do so.

(b) In cases of discharge for violations of attendance standards, the worker's recent attendance history must be reviewed to determine if the violation is an isolated incident, or if it demonstrates a pattern of unjustified absence within the worker's control. The flagrant misuse of attendance privileges may result in a denial of benefits even if the last incident is beyond the worker's control.

(3) Falsification of Work Record.

The duty of honesty is inherent in any employment relationship. An employee or potential employee has an obligation to truthfully answer material questions posed by the employer or potential employer. For purposes of this subsection, material questions are those that may expose the employer to possible loss, damage or litigation if answered falsely. If false statements were made as part of the application process, benefits may be denied even if the claimant would not have been hired if all questions were answered truthfully.

(4) Insubordination.

An employer generally has the right to expect lines of authority will be followed; reasonable instructions, given in a civil manner, will be obeyed; supervisors will be respected and their authority will not be undermined. In determining when insubordination becomes disqualifying conduct, a disregard of the employer's rightful and legitimate interests is of major importance. Protesting or expressing general dissatisfaction without an overt act is not a disregard of the employer's interests. However, provocative remarks to a superior or vulgar or profane language in response to a civil request may constitute insubordination if it disrupts routine, undermines authority or impairs efficiency. Mere incompatibility or emphatic insistence or discussion by a worker, acting in good faith, is not disqualifying conduct.

(5) Loss of License.

If the discharge is due to the loss of a required license and the claimant had control over the circumstances that resulted in the loss, the conduct is generally disqualifying. Harm is established as the employer would generally be exposed to an unacceptable degree of risk by allowing an employee to continue to work without a required license. In the example of a lost driving privilege due to driving under the influence (DUI), knowledge is established as it is understood by members of the driving public that driving under the influence of alcohol is a violation of the law and may be punishable by the loss of driving privileges. Control is established as the claimant made a decision to risk the loss of his or her license by failing to make other arrangements for transportation.

(6) Incarceration.

When an individual engages in illegal activities, it must be recognized that the possibility of arrest and detention for some period of time, exists. It is foreseeable that incarceration will result in absence from work and possible loss of employment. Generally, a discharge for failure to report to work because of incarceration due to proven or admitted criminal conduct, is disqualifying.

(7) Abuse of Drugs and Alcohol.

(a) The Legislature, under the Utah Drug and Alcohol Testing Act, Section 34-38-1 et seq., has determined the illegal use of drugs and abuse of alcohol creates an unsafe and unproductive workplace. In balancing the interests of employees, employers and the general welfare, the Legislature has determined the fair and equitable testing for drug and alcohol use is a reasonable employment policy.

(b) An employer can establish a prima facie case of ineligibility for benefits under the Employment Security Act based on testing conducted under the Drug and Alcohol Testing Act by providing the following information:

(i) A written policy on drug or alcohol testing consistent with the requirements of the Drug and Alcohol Testing Act and which was in place at the time the violation occurred.

(ii) Reasonable proof and description of the method for communicating the policy to all employees, including a statement that violation of the policy may result in discharge.

(iii) Proof of testing procedures used which would include:

(A) Documentation of sample collection, storage and transportation procedures.

(B) Documentation that the results of any screening test for drugs and alcohol were verified or confirmed by reliable testing methods.

(C) A copy of the verified or confirmed positive drug or alcohol test report.

(c) The above documentation shall be admissible as competent evidence under various exceptions to the hearsay rule, including Rule 803(6) of the Utah Rules of Evidence respecting "records of regularly conducted activity," unless determined otherwise by a court of law.

(d) A positive alcohol test result shall be considered disqualifying if it shows a blood or breath alcohol concentration of 0.08 grams or greater per 100 milliliters of blood or 210 liters of breath. A blood or breath alcohol concentration of less than 0.08 grams may also be disqualifying if the claimant worked in an occupation governed by a state or federal law that allowed or required discharge at a lower standard.

(e) Proof of a verified or confirmed positive drug or alcohol test result or refusal to provide a proper test sample is a violation of a reasonable employer rule. The claimant may be disqualified from the receipt of benefits if his separation was consistent with the employer's written drug and alcohol policy.

(f) In addition to the drug and alcohol testing provisions above, ineligibility for benefits under the Employment Security Act may be established through the introduction of other competent evidence.

R994-405-209. Effective Date of Disqualification.

The Act provides any disqualification under Subsection 35A-4-405(2) shall include "the week in which the claimant was discharged . . ." However, to avoid confusion, the denial of benefits shall begin with the Sunday of the week the claimant filed for benefits. Disqualifications assessed in a prior benefit year shall continue into the new benefit year until purged by sufficient wages earned in subsequent bona fide covered employment.

R994-405-210. Discharge for Crime - General Definition.

(1) A crime is a punishable act in violation of law, an offense against the State or the United States. Though in common usage "crime" is used to denote offenses of a more serious nature, "crime" and "misdemeanor" mean the same thing. An insignificant, although illegal act, or the taking or destruction of something that is of little or no value, or believed to have been abandoned may not be sufficient to establish that

a crime was committed for the purposes of Subsection 35A-4-405(2)(b), even if the claimant was found guilty of a violation of the law. Before a claimant may be disqualified under the provisions of Subsection 35A-4-405(2)(b), it must be established that the claimant was discharged for a crime that was:

(a) In connection with work, and

(b) Dishonest or a felony or class A misdemeanor, and

(c) Admitted or established by a conviction in a court of law.

(2) Discharges that are not disqualifying under Subsection 35A-4-405(2)(b), discharge for crime, must be adjudicated under Subsection 35A-4-405(2)(a), discharge for just cause.

R994-405-211. In Connection with Work.

Connection to the work is not limited to offenses that take place on the employer's premises or during business hours nor does the employer have to be the victim of the crime. However, the crime must have affected the employer's rightful interests. The offense must be connected to the employment in such a manner that it is a subject of legitimate and significant concern to the employer. Employers generally have the right to expect that employees shall refrain from acts detrimental to the business or that would bring dishonor to the business name or institution. Legitimate employer interests include goodwill, efficiency, business costs, employee morale, discipline, honesty, trust and loyalty.

R994-405-212. Dishonesty or Other Disqualifying Crimes.

(1) For the purposes of this Subsection, dishonesty generally means theft. Theft is defined as taking property without the owner's consent. Theft also includes swindling, embezzlement and obtaining possession of property by lawful means and thereafter converting it to the taker's own use. Theft includes:

(a) obtaining or exerting unauthorized control over property;

(b) obtaining control over property by threat or deception;

(c) obtaining control knowing the property was stolen; and,

(d) obtaining services from another by deception, threat, coercion, stealth, mechanical tampering or by use of a false token or device.

(2) Felonies and Class A misdemeanors may include assault, arson, or destruction of property. Whether the crime is a felony or misdemeanor is determined by the Court's verdict and not by the penalty imposed.

(3) A disqualification under this Subsection 35A-4-405(2)(b) may be assessed against Utah claimants based upon equivalent convictions in other states.

R994-405-213. Admission or Conviction in a Court.

(1) An admission is a voluntary statement, verbal or written, in which a claimant acknowledges committing an act in violation of the law. The admission does not necessarily have to be made to a Department representative. However, there must be sufficient information to establish that the admission was made freely and that it was not a false statement given under duress or made to obtain some concession.

(a) A disqualification under Subsection 35A-4-405(2)(b) may be assessed if the claimant makes a valid admission to a crime involving dishonesty, even if no charges have been filed and it appears the claimant will not be prosecuted. If the claimant agrees to a diversionary program as permitted by the court, there is a rebuttable presumption, for the purposes of this Subsection, that the claimant has admitted to the criminal act.

(b) If an admission is made to any other crime, not involving dishonesty, resulting in a discharge for which it appears the claimant will not be prosecuted, the Department must review the Utah criminal code to determine whether a disqualification shall be assessed under Subsection 35A-4-405(2)(b), discharge for crime, or 35A-4-405(2)(a), just cause discharge.

(2) A conviction occurs when a claimant has been found guilty by a court of committing an act in violation of the criminal code. Under Subsection 35A-4-405(2)(b), a plea of "no contest" is considered a conviction.

R994-405-214. Disqualification Period.

The 52-week disqualification period for Subsection 35A-4-405(2)(b) shall begin effective with the Sunday immediately preceding the discharge even if this date precedes the effective date of the claim. A disqualification which begins in one benefit year shall continue into a new benefit year until the 52-week disqualification has ended.

R994-405-215. Deletion of Wage Credits.

The wage credits to be deleted are those from the employer who discharged the claimant under circumstances resulting in a denial under Subsection 35A-4-405(2)(b), "Discharge for Crime." All base period and lag period wages from this employer will be unavailable for current or future claims.

R994-405-301. Failure to Apply for or Accept Suitable Work - General Definition.

(1) The primary obligation of a claimant is to become reemployed. The intent of the unemployment insurance program is to assist people during periods of unemployment when suitable work is not available. However, if suitable work is available the claimant has an obligation to properly apply for and accept offered work.

R994-405-302. Necessary Elements.

To assess a disqualification under this section of the statute, the following elements must be established:

(1) Availability of a Job.

There must be an actual job opening that the claimant could reasonably expect to obtain.

(2) Knowledge.

The claimant must have the opportunity to be informed about the job including the wage, type of work, hours, general location and conditions of the job. The claimant must understand a referral for work is being offered as opposed to a general discussion of job possibilities or labor market conditions. If a job offer is made, it must be clearly communicated as an offer of work.

(3) Control.

The failure of the claimant to obtain the employment must be the result of the claimant's:

(a) failure to accept a referral, or

(b) failure to properly apply for work, or

(c) failure to accept work when offered.

R994-405-303. Provisions for Allowance of Benefits After an Issue is Found to Exist.

Unemployment insurance benefits shall not be denied under Subsection 35A-4-405(3) if any of the following circumstances exist:

(1) The job is not suitable, or

(2) The claimant had good cause for the failure to apply for or accept the job, or

(3) A disqualification would be contrary to equity and good conscience.

R994-405-304. Failure to Accept a Referral.

(1) Definition of a Referral.

If a claimant is told by a Workforce Services representative about the requirements of a job and is given an opportunity to

accept or reject the opportunity to apply for the job, the claimant has been offered a referral.

(2) Refusal of a Referral.

A claimant fails to accept a referral when he or she refuses to contact the employer or responds in a negative manner, which prevents or discourages the interviewer from providing the necessary referral information.

(3) Failure to Respond to a Notice from Workforce Services.

Failing to respond to a notice to contact Workforce Services for the purpose of being referred to a specific job is the same as refusing a referral for possible employment. If there was a suitable job opening to which the claimant would have been referred, benefits shall be denied unless good cause is established for not responding as directed, or that the elements of equity and good conscience are established. Good cause, as it applies to Subsection 35A-4-405(3), shall generally be established if it can be shown the claimant was prevented, due to circumstances beyond the claimant's immediate control, from responding as directed. However, a card properly addressed and properly mailed is presumed to be delivered unless returned by the Postal Service to the sender.

R994-405-305. Proper Application.

A proper application for work is established if the claimant does those things normally done by applicants who are seriously and actively seeking work. Generally, the claimant must:

(1) meet with the employer at the designated time and place,

(2) report to the employer dressed and groomed in a manner appropriate for the type of work being sought, and

(3) present no unreasonable conditions or restrictions on acceptance of the available work.

R994-405-306. Failure to Accept an Offer of Work.

An offer of work may be refused by positive language, or by conduct that would prevent or discourage an offer of work. Work is refused when the claimant unnecessarily emphasizes barriers to accepting employment.

R994-405-307. Good Cause.

Good cause for failing to accept available work is established if the work is not suitable or accepting the job would cause hardship. Hardship may not be established unless accepting the employment would result in actual or potential physical, mental, economic, personal or professional harm. Good cause for not accepting a job is also established if the elements that establish good cause for quitting a job are present under Subsection 35A-4-405(1) and Section R994-405-102.

R994-405-308. Equity and Good Conscience.

A claimant shall not be denied benefits for failing to apply for or accept work if a disqualification would be contrary to equity and good conscience, even though good cause has not been established. The elements necessary to establish eligibility under the equity and good conscience standard are:

(1) Reasonableness.

Reasonableness may be established if the claimant is not overly sensitive in determining the suitability of the work and there is some justification or evidence of mitigating circumstances that resulted in the failure to apply for or accept employment. A mitigating circumstance is one that may not be sufficiently compelling to establish good cause, but would motivate a reasonable person to take similar action.

(2) Continuing Attachment to the Labor Market.

The claimant must show evidence of a genuine and continuing attachment to the labor market by making an active and consistent effort to become reemployed. The claimant must have a realistic plan for obtaining suitable employment and show evidence of employer contacts prior to, during and after the week the job in question was available.

R994-405-309. Suitability of Work.

The following elements must be considered in determining the suitability of employment: (1) risk to health and safety, (2) religious or moral convictions, (3) physical fitness, (4) prior experience, (5) prior training, (6) prior earnings, (7) length of unemployment, (8) prospects for securing work in customary occupation, (9) distance of the available work from his residence, (10) working conditions. A suitable job shall include work the claimant has done before which would utilize prior knowledge and training or work in an occupation to which the claimant's skills are adaptable. Work that requires illegal activities, that violates state or federal labor laws, or that is vacant due to a labor dispute, shall not be considered suitable.

(1) Risk to Health and Safety.

Work is not suitable if it presents a risk to a claimant's physical or mental health greater than the usual risks associated with the occupation. If a claimant would be required, as a condition of employment, to perform tasks that would cause or substantially aggravate health problems, the work is not suitable.

(2) Religious or Moral Convictions.

The work must conflict with honestly held religious or moral convictions before a conscientious objection could support a conclusion that the work was not suitable. This does not mean all personal beliefs are entitled to protection. However, beliefs need not be acceptable, logical, consistent or comprehensible to others, or shared with members of a religious or other organized group in order to show the conviction is held in good faith.

(3) Physical Fitness.

The claimant must possess the physical capacity to perform the work. Employment beyond the physical capacity of the claimant is not suitable.

(4) Prior Experience.

If an initial claim or the reopening of a claim is filed following employment at the claimant's highest skill level, work that is not expected to utilize the claimant's highest skill level is not suitable. A worker must be given a reasonable time to seek work that will preserve his or her highest skills and earning potential. However, if a claimant has no realistic expectation of obtaining employment in an occupation utilizing his or her highest skill level, work in related occupations becomes suitable.

(a) After a claimant has filed continuously for 1/3 of the weeks of entitlement, any job similar to work performed during the base period of the claim is suitable even though it may not utilize the claimant's highest skill level.

(b) After a claimant has filed continuously for 2/3 of the weeks of entitlement, any work the claimant could reasonably expect to perform based on the claimant's skills, training, and recent employment history becomes suitable.

(5) Prior Training.

The type of work performed during the claimant's base period is suitable unless there is a compelling circumstance that would prevent returning to work in that occupation. If a claimant has training that would now meet the qualifications for a new occupation, work in that occupation may also be suitable, particularly if the training was obtained, at least in part, while the claimant was receiving unemployment benefits under Department Approval, or the training was subsidized by another government program.

(6) Prior Earnings.

Work is not suitable if the wage is substantially less favorable to the individual than the prevailing wage for similar work in the area, or if it is less than the state or federal minimum wage. The claimant's prior earnings, length of unemployment

and prospects of obtaining work are the primary factors in determining whether the wage is suitable. If a claimant's former wage was earned in another area, the prevailing wage is determined by the new area. For the purposes of this subsection, the term "prevailing wage" means the market rate.

(a) At the time of filing an initial claim, work paying less than the highest wage earned by the claimant during his base period or the highest wage for that occupation paid in the area, whichever is lower, is not suitable unless the claimant has no real expectation of being able to find work at that wage. After four weeks of continuous filing, a Department representative may advise the claimant that a job paying any wage earned during the base period is suitable, if the highest wage earned during the base period is not reasonably available.

(b) After a claimant has been filing continuously for a period of time equal to 1/3 of the maximum number of weeks of entitlement, any work paying a wage earned during the base period is suitable.

(c) After filing continuously for 1/2 of the weeks of entitlement, work paying a wage 10% less than the lowest wage earned by the claimant during the base period becomes suitable if this wage is higher than the prevailing wage for that occupation. After filing continuously between 1/2 and 2/3 of the claimant's weeks of entitlement, a claimant must gradually reduce the wage demanded until it reaches the prevailing local wage for work in that occupation.

(7) Length of Unemployment.

Whether a job is suitable depends on the length of time the claimant has been unemployed. A claimant must be allowed time to seek work comparable to the most advantageous base period employment if there is a reasonable expectation of obtaining that type of work. However, as the length of unemployment increases the claimant's demands with respect to earnings, working conditions, job duties and the use of prior training must be systematically reduced unless the claimant has immediate prospects of reemployment.

(8) Prospects of Securing Work In Customary Occupation.

(a) Customary work is work similar to the work performed during the claimant's recent employment history. The Department may not require a modification of the claimant's employment restrictions and wage requirements if it can be shown:

(i) the length of unemployment is less than the time normally required to obtain employment in the claimant's customary occupation, and

(ii) there are reasonable prospects for work in that occupation.

(b) A refusal of work shall not result in a denial of benefits if the claimant has obtained a definite date to begin full-time, permanent employment elsewhere within three weeks.

(9) Distance of the Available Work from the Claimant's Residence.

To be considered suitable, the work must be within customary commuting patterns as they apply to the occupation and area. A claimant's failure to provide transportation within the normal or customary commuting pattern in the area or the failure to utilize alternative sources of transportation when available, does not establish good cause for failing to apply for or accept suitable work.

Work is not suitable if accepting the employment would require a move from the current area of residence unless that is a usual practice in the occupation.

(10) Working Conditions.

Working conditions refers to the provisions of the employment agreement whether express or implied as well as the physical conditions of the work.

(a) Prevailing Conditions.

If the working conditions are substantially less favorable than those prevailing for similar work in the area, the work is not suitable. The purpose of these conditions is to prevent the unemployment compensation system from exerting downward pressure on existing labor standards. It is not intended to increase wages or improve working conditions, but to prevent any compulsion upon workers, through a denial of benefits, to accept work under less favorable conditions than those generally available in the area for similar work.

(b) Similar Work.

The phrase "similar work" used in the statute does not mean "identical work." Similar work is work in the same occupation or a different occupation which requires essentially the same skills.

(c) Prevailing Wage.

For the purposes of this subsection, the term "prevailing wage" means the market rate for the occupation in the area.

(d) Hours of Work.

Claimants are expected to make themselves available for work during the usual hours for similar work in the area. If work periods are in violation of the law or if the hours are substantially less favorable than those prevailing for similar work in the area, the employment is not suitable. However, the hours the claimant worked during his or her base period are generally considered suitable. A claimant's preference for certain hours or shifts based on mere convenience is not good cause for failure to accept otherwise suitable employment.

(e) Labor Disputes or Law Violations.

Work is not suitable if the working conditions are in violation of any state or federal law, or the job opening is due to a strike, lockout or labor dispute. If a claimant was laid off or furloughed prior to the dispute, and an offer of employment is made after the dispute begins by the former employer, it is considered an offer of new work. The vacancy must be presumed to be the result of the labor dispute unless the claimant had a definite date of recall, or recall has historically occurred at a similar time.

R994-405-310. Examples.

(1) Attendance at School or Training Course.

Claimants are expected to seek and accept suitable full-time work even if it would interfere with school or training. Claimants attending school full-time with Department Approval are not required to seek work.

(2) Personal Circumstances.

A claimant may have good cause for failing to obtain employment due to personal circumstances if acceptance of the employment would cause a substantial hardship provided there are no reasonable alternatives. However, if a personal circumstance prevents the acceptance of suitable employment, there is a presumption the claimant is not available for work.

(3) Part-time or Temporary Work.

Part-time or temporary work may be suitable depending on the claimant's work history. If the major portion of a claimant's base period work history consists of part-time or temporary work, then any work that meets the Suitable Work Test, Section R994-405-309, would be considered suitable even if the work is part-time or temporary. If the claimant has no recent history of temporary or part-time work the work may still be considered suitable, particularly if the claimant has been unemployed for an extended period and does not have an immediate prospect of full-time work.

R994-405-311. New Work.

(1) All work is performed under a contract of employment between a worker and an employer whether written, oral or implied. The contract addresses the job duties, as well as the terms and conditions under which the work is to be performed. If the proposed duties, terms, or conditions of the work offered by an employer are not part of an existing contract, the offer is for a new contract of employment and constitutes an offer of

new work. The provisions of the Suitable Work Test, Section R994-405-309, apply to offers of new work. A request to perform different duties that are customary in the occupation and that do not result in a loss of skills, wages or benefits, does not constitute an offer of new work, even if those duties are not specified as part of the official job requirements. It may also be customary for workers to perform short term tasks involving different or new duties and when those assignments do not replace the regular duties of the worker, the contract of employment has not been changed.

(2) New Work is defined as:

(a) work offered by an employer for whom the individual has never worked;

(b) reemployment offered by an employer for whom the individual is not working at the time the offer is made, whether the conditions of employment are the same or different from the previous job;

(c) work offered by an individual's present employer involving duties, terms or conditions different from those agreed upon as part of the existing contract of employment.

R994-405-312. Burden of Proof.

(1) Before benefits may be denied, the Department must show: the job was available, the claimant had an opportunity to learn about the conditions of employment, the claimant had an opportunity to apply for or accept the job, and the claimant's action or inaction resulted in the failure to obtain the job. The statute requires that the wage, hours and other conditions of the work shall not be substantially less favorable to the individual than those prevailing for similar work in the area in order to be considered suitable work. The Department has the burden to prove that the work offered meets these minimum standards before benefits can be denied.

(2) When the Department has established the above elements, a disqualification must be assessed unless the claimant can establish that the work was not suitable, that there was good cause for failing to obtain the job, or that a disqualification would be against equity and good conscience.

R994-405-313. Period of Ineligibility.

(1) The disqualification period imposed under Subsection 35A-4-405(3) shall include the week in which the claimant's action or inaction resulted in the failure to obtain employment or the first week the work was available, whichever is later. The disqualification shall continue until the claimant has performed services in bona fide covered employment and earned wages equal to at least six times his or her weekly benefit amount.

(2) A disqualification may be assessed if the claimant refused an offer of suitable work prior to the effective date of the claim if the refusal was directly related to the claimant's unemployment. For example: If the claimant's job is eliminated or changed so substantially as to constitute new work, the separation is a layoff. However, if the new work offered by the regular employer is suitable, a disqualification may be assessed in accordance with Subsection 35A-4-405(3) of the Act.

(3) Disqualifications assessed in a prior benefit year shall continue into the new benefit year until purged by sufficient wages earned in subsequent bona fide covered employment.

R994-405-314. Notification.

In addition to notification to the claimant's most recent employer consistent with Subsection 35A-4-401(6), all employers directly involved in a claimant's failure to properly apply for or accept employment shall be notified of the determination made under Subsection 35A-4-405(3) including applicable appeal rights.

R994-405-401. Strike - General Definition.

Strikes and lockouts, except where prohibited by law, are frequently used by labor and management in the negotiation process. The purpose of Subsection 35A-4-405(4) is to prevent workers from receiving benefits when work is not being performed due to a strike.

R994-405-402. Elements Necessary for a Disqualification.

All of the following elements, as defined by this rule, must be present before a disqualification will be assessed under Subsection 35A-4-405(4):

(1) the claimant's unemployment must be the result of an ongoing strike,

(2) the strike must involve workers at the factory or establishment of the claimant's last employment,

(3) the strike must have been initiated by the workers,

(4) the employer must not have conspired, planned or agreed to foment a strike,

(5) there must be a stoppage of work,

(6) the strike must involve the claimant's grade, group or class of workers,

(7) the strike must not have been caused by the employer's failure to comply with State or Federal laws governing wages, hours or other conditions of work.

R994-405-403. Unemployment Due to a Strike.

(1) The claimant's unemployment must be the result of an ongoing strike. A strike exists when combined workers refuse to work except upon a certain contingency involving concessions either by the employer, or the bargaining unit. A strike consists of at least four components in addition to the suspended employer-employee relationship:

(a) a demand for some concession,

(b) a refusal to work with intent to bring about compliance with demands,

(c) an intention to return to work when an agreement is reached, and

(d) an intention on the part of the employer to re-employ the same employees or employees of a similar class when the demands are acceded to or withdrawn or otherwise adjusted.

(2) A strike may exist without such actions as a proclamation preceding a stoppage of work or pickets at the business or industry, announcing an intent and purpose to go out on strike. Although a strike involves a labor dispute, a labor dispute can exist without a strike and a strike can exist without a union. The party or group who first resorts to the use of economic sanctions to settle a dispute must bear the responsibility. A strike occurs when workers withhold services. A lockout occurs when the employer withholds work because of a labor dispute including: the physical closing of the place of employment, refusing to furnish available work to regular employees, or by imposing such terms on their continued employment so that the work becomes unsuitable or the employees could not reasonably be expected to continue to work.

(3) The following are examples of when unemployment is due to a strike:

(a) a strike is formally and properly announced by a union or bargaining group, and as a result of that announcement, the affected employer takes necessary defensive action to discontinue operations; or

(b) after a strike begins the employer suspends work because of possible destruction or damage to which the employer's property would not otherwise be exposed, provided the measures taken are those that are reasonably required; or

(c) if the employer is not required by contract to submit the dispute to arbitration and the workers ceased working because the employer rejects a proposal by the union or bargaining group to submit the dispute to arbitration; or

(d) upon the expiration of an existing contract, whether or not negotiations have ceased, the employer is willing to furnish

work to the employees upon the terms and conditions in force under the expired contract.

(4) The following are examples of when unemployment is not due to a strike:

(a) the claimant was separated from employment for some other reason which occurred prior to the strike, for example: a quit, discharge or a layoff even if the layoff is caused by a strike at an industry upon which the employer is dependent; or

(b) the claimant was replaced by other permanent employees; or

(c) the claimant was on a temporary lay-off, prior to the strike, with a predetermined date of recall; however, if the claimant refuses to return to his regular job when called on the predetermined date his subsequent unemployment is due to a strike; or

(d) as a result of start up delays, the claimant is not recalled to work for a period after the settlement of the strike; or

(e) the claimant is unemployed due to a lockout. The immediate cause of the work stoppage determines if it is a strike or a lockout depending on who first imposes economic sanctions. A lockout occurs when:

(i) the employer takes the first action to suspend operations resulting from a dispute with employees over wages, hours, or working conditions, or

(ii) an employer, anticipating that employees will go on strike, but prior to a positive action by the workers, curtails operations by advising employees not to report for work until further notice. (Positive action can include a walkout or formal announcement that the employees are on strike. In this case the immediate cause of the unemployment is the employer's actions, even if a strike is subsequently called.), or

(iii) upon expiration of an existing contract where the employer is seeking to obtain unreasonable wage concessions, the employees offer to work at the rate of the expired agreement and continue to bargain in good faith.

(f) the employer refuses to agree to binding arbitration when the contract provides that the dispute shall be submitted to arbitration.

R994-405-404. Workers at Factory or Establishment of the Claimant's Last Employment.

(1) "At the factory or establishment" of last employment may include any job sites where the work is performed by any members of the grade, group or class of employees involved in the labor dispute, and is not limited to the employer's business address.

(2) "Last employment" is not limited to the last work performed prior to the filing of the claim, but means the last work prior to the strike. If the claimant becomes unemployed due to a strike, the provisions of Subsection 35A-4-405(4) apply beginning with the week in which the strike began even if the claimant did not file for benefits immediately and continues until the strike ends or until the claimant establishes subsequent eligibility as required by Subsection 35A-4-405(4)(c). For example: the claimant left work for employer A due to a strike, and then obtained work for employer B where he worked for a short period of time before being laid off due to reduction of force. If he then files for unemployment benefits, and cannot qualify monetarily for benefits based solely on his employment with employer B, the provisions of Subsection 35A-4-405(4) would apply if all the other elements are present.

R994-405-405. Fomented by the Employer.

A strike will not result in a denial of benefits to claimants if the employer or any of his agents or representatives conspired, planned or agreed with any of his workers in promoting or inciting the development of the strike.

R994-405-406. Work Stoppage.

For a work stoppage to be disqualifying, it must be because of a strike, it is not necessary for the employer to be unable to continue to conduct business, however, there is generally a substantial curtailment of operations as the result of the labor dispute. For the purposes of this rule, a work stoppage exists when an employee chooses to withhold his services in concert with fellow employees.

R994-405-407. Grade, Group or Class of Worker.

(1) A claimant is a member of the grade, group or class if:

(a) the dispute affects hours, wages, or working conditions of the claimant, even if he is not a member of the group conducting the strike or not in sympathy with its purposes, or

(b) the labor dispute concerns all of the employees and causes, as a direct result, a stoppage, of their work, or

(c) the claimant is covered either by the bargaining unit or is a member of the union, or

(d) he voluntarily refuses to cross a peaceful picket line even when the picket line is being maintained by another group of workers.

(2) The burden of proof is on the claimant to show that he is not participating in any way in the strike. A claimant is not included in the grade, group or class if:

(a) he is not participating in, financing, or directly interested in the dispute or is not included in any way in the group that is participating in or directly interested in the dispute, or

(b) he was an employee of a company which has no work for him as a result of the strike, but the company is not the subject of the strike and whose employee's wages, hours or working conditions are not the subject of negotiation, or

(c) he was an employee of a company which is out of work as a result of a strike at one of the work sites of the same employer but he is not participating in the strike, will not benefit from the strike, and the constitution of the union leaves the power to join a strike with the local union, provided the governing union has not concluded that a general strike is necessary, or

(d) work continues to be available after a strike begins and the claimant reported for work and performed work after the strike began and was subsequently unemployed.

R994-405-408. Strike Caused by Employer Non-Compliance with State or Federal Laws.

If the strike was caused by the employer's failure to comply with State or Federal laws governing wages, hours, or working conditions, the provisions of Subsection 35A-4-405(4) will not apply. However, to establish that the strike was caused by unlawful practices, the issue of an unfair labor practice must be one of the grievances still subject to negotiation at the time the strike occurs. The making of such an allegation after the strike begins will not enable workers to claim that such a violation was the initiating factor in the strike.

R994-405-409. Period of Disqualification.

Subsection 35A-4-405(4) applies beginning with the week the strike begins, however, for administrative convenience, the disqualification will be assessed with the effective date of the new or reopened claim and continue as long as all the elements are present. If the claimant has other employment subsequent to the beginning of the strike which is insufficient when solely considered to qualify for a new claim, the disqualification under Subsection 35A-4-405(4) would continue to apply. It is not necessary for the employer involved in the strike to be a base period employer for a disqualification to be assessed.

R994-405-410. Wages Used to Establish Claim as Provided by Subsection 35A-4-405(4)(c).

(1) Ineligibility following a strike. A disqualification must

be assessed if the elements for disqualification are present, even if the claim is not based on employment with the employer involved in the labor dispute. Wages for an employer not involved in the strike which are concurrent with employment for an employer that is involved in the strike will not be used independently to establish a claim in order to avoid a disqualification.

(2) New claim following strike. If a claimant is ineligible due to a strike, wages used in establishing a new claim must have been earned after the strike began. The job does not have to be obtained after the strike but only those wage credits obtained after the strike may be used to establish a new claim. If the claimant has sufficient wages to qualify for a new benefit year after his unemployment due to a strike, a new claim may be established even if the claimant has a current benefit year under which benefits have been denied due to a strike.

(3) Redetermination after strike ends. No wages from the employer involved in the strike will be used to compute the new benefit amount, until after the provisions of Subsection 35A-4-405(4) no longer apply. Any such redetermination must be requested by the claimant and will be effective the beginning of the week in which the written request for a redetermination is made.

R994-405-411. Availability.

If benefits are not denied under Subsection 35A-4-405(4), the claimant's availability for work will be considered including the amount of time spent walking picket lines and working for the bargaining unit. A refusal to seek work except with employers involved in a lockout or strike is a restriction on availability which will be considered in accordance with Subsection 35A-4-405(3) and R994-403-115c. A refusal to accept work with an employer involved in a lockout or strike is not disqualifying.

R994-405-412. Suitability of Work Available Due to a Strike.

Subsection 35A-4-405(3)(b) provides that new work is not suitable and benefits shall not be denied if the position offered is vacant due directly to a strike, lockout or other labor dispute. If the claimant was laid off or furloughed prior to the strike, and an offer of employment is made after the strike begins by the former employer, it is considered an offer of new work. The vacancy must be presumed to be the result of the strike unless the claimant had a definite date of recall, or recall has historically occurred at a similar time.

R994-405-413. Strike Benefits.

Strike benefits received by a claimant which are paid contingent upon walking a picket line or for other services are reportable income which must be deducted from any weekly benefits to which the claimant is eligible in accordance with provisions of Subsection 35A-4-401(3). Money received for performance of services in behalf of a striking union may not be subject wages used as wage credits in establishing a claim. However, money received as a general donation from the union treasury which requires no personal services is not reportable income.

R994-405-501. Fraud - General Definition.

The Department relies primarily on information provided by the claimant when paying unemployment insurance benefits. Fraud penalties do not apply if the overpayment was the result of an inadvertent error. Fraud requires a willful misrepresentation or concealment of information for the purpose of obtaining unemployment benefits. The absence of an admission or direct proof of intent to defraud does not prevent a finding of fraud.

R994-405-502. Elements of Fraud.

The elements necessary to establish an intentional misrepresentation, sufficient to constitute fraud are:

(1) Materiality.

Materiality is established when a claimant makes false statements or fails to provide accurate information for the purpose of obtaining waiting week credit or any benefit payment to which he is not entitled. Benefits received by fraud may include an amount as small as $1 over the amount a claimant was entitled to receive.

(2) Knowledge.

A claimant must have known or should have known the information submitted to the Department was incorrect or that he failed to provide information required by the Department. He does NOT have to know that the information will result in a denial of benefits or a reduction in the benefit amount. Knowledge is established when a claimant recklessly makes representations knowing he has insufficient information upon which to base such representations. A claimant has an obligation to read material provided by the Department or to ask a Department representative when he has a question about what information to report.

(3) Willfulness.

A claimant must have made the false statement or deliberate omission for the purpose of obtaining benefits. Willfulness is established when a claimant files claims or other documents containing false statements, responses or deliberate omissions. If a claimant delegates the responsibility to personally provide information or allows access to his or her Personal Identification Number (PIN) so that someone else may file a telephone claim, the claimant is responsible for the information provided or omitted by the other person, even if the claimant had no advance knowledge that the information provided was false or important information was omitted.

R994-405-503. Evidence and Burden of Proof.

(1) Prior Knowledge of Ineligibility by the Department.

If the Department has sufficient evidence to assess a disqualification prior to paying benefits, a fraud disqualification shall not be assessed even if the documents submitted by the claimant contain false statements or deliberate omissions. However, non-fraud overpayments may be established under the law regarding fault and non-fault overpayments in Subsections 35A-4-406(4)(b) and 35A-4-406(5)(a), respectively.

(2) Initial Burden of Proof.

Fraud may not be presumed whenever false information has been provided or material information omitted and benefits overpaid. The Department has the burden of proof, which is the responsibility to establish all the elements of fraud.

(3) Standard of Proof.

The elements of fraud must be established by a preponderance of the evidence. There does not have to be an admission or direct proof of intent.

R994-405-504. Disqualification and Penalty.

(1) Penalty Cannot Be Modified.

The Department has no authority to reduce or otherwise modify the period of disqualification or the monetary penalties imposed by statute.

(2) Week of Fraud.

A "week of fraud" shall include each week any benefits have been paid due to fraud.

(3) Overpayment and Penalty.

For any fraud decision where the initial fraud determination was issued on or before June 30, 2004, the claimant shall repay to the division an overpayment which is equal to the amount of the benefits actually received. In addition, a claimant shall be required to repay, as a civil penalty, the amount of benefits received as a direct result of fraud.

"Benefits actually received" means the benefits paid or constructively paid by the Department. Constructively paid refers to benefits used to reduce or off-set an overpayment or used as a payment to the Office of Recovery Services for child support obligations or other payments as required by law.

(4) For all fraud decisions where the initial department determination is issued on or after July 1, 2004, the claimant shall repay to the division the overpayment and, as a civil penalty, an amount equal to the overpayment. The overpayment in this subparagraph is the amount of benefits the claimant received by direct reason of fraud.

(5) Additional Penalties.

Criminal prosecution of fraud may be pursued as provided by Subsection 35A-4-104(1) in addition to the administrative penalties.

R994-405-505. Repayment.

Overpayments established under Subsection 35A-4-405(5) will be collected in accordance with Subsection 35A-4-406(4)(b) and Section R994-406-404 or by civil action or warrant as provided by Subsections 35A-4-305(3) and 35A-4-305(5), respectively. The Department may use unemployment insurance benefits payable for weeks prior to the penalty period to reduce overpayments.

R994-405-506. Future Eligibility.

A claimant shall be ineligible for unemployment benefits or waiting week credit following a disqualification for fraud until any overpayment established in conjunction with the disqualification has been satisfied in full. Any overpayment established under Subsection 35A-4-405(5) may NOT be satisfied by deductions from benefit checks for weeks claimed after the penalty period ends, as a claimant is precluded from receiving any future benefits or waiting week credit as long as there is an outstanding fraud overpayment. However, a claimant may be permitted to file a new claim to preserve a particular benefit year. An overpayment shall be considered satisfied as of the beginning of the week during which the cash payment or credit card payment is received by the Department or in the case of payment by personal check, the beginning of the week during which the check is honored by the bank. Benefits will be allowed as of the effective date of a new claim if a claimant repays the outstanding fraud overpayment and penalty within seven days of the date the notice of the outstanding overpayment is mailed.

R994-405-507. Examples.

Depending on the issue, a disqualification could result in a denial of benefits for one week, a specific number of weeks or an indefinite number of weeks. A disqualifying separation results in an indefinite denial, continuing until the claimant has returned to work and earned six times his or her weekly benefit amount. The disqualification applicable to the reason for the underlying denial determines the amount of the fraud penalties and disqualification periods in each case.

(1) Failure to Report Reason for Separation. A claimant who was discharged for disqualifying conduct reports the separation as a layoff and receives benefits. Each benefit check received is paid due to the original false statements, even though the claimant may subsequently answer the Department's weekly questions correctly. Therefore, all benefits received would be "due to fraud." The fraud penalties and disqualification periods would, therefore, apply to all weeks benefits were received.

(2) Failure to Report Earnings.

The fraud overpayment and penalty, where the initial department fraud determination was issued on or before June 30, 2004, is calculated as in the following example: The claimant has a weekly benefit amount of $100 and reports no earnings when there was $50 in reportable earnings for the week at issue. The Act provides a claimant may earn up to 30% of his or her weekly benefit amount with no deduction. After considering the 30% factor in the present example, the claimant was overpaid in the amount of $20. If the elements of fraud were established, all benefits paid for a disqualified week would be established as an overpayment. The claimant would also be liable to repay, as a civil penalty, the $20 received by direct reason of fraud. Therefore, in this example, the claimant would be liable for a total overpayment of $120, an amount that would have to repaid in its entirety before the claimant would be eligible for any further waiting week credit or unemployment benefits. The claimant would also be subject to a 13-week penalty period. If the initial department fraud determination was issued on or after July 1, 2004, the overpayment would be $20 and the penalty would be $20 for a total due of $40.

R994-405-701. Payments Following Separation - General Definition.

The intent of Subsection 35A-4-405(7) is to withhold payment of unemployment insurance benefits to claimants during periods when they are entitled to receive remuneration from an employer in the form or vacation or severance payments. Even if vacation or severance payments do not meet the statutory definition of wages, they are still disqualifying to the extent they exceed a claimant's weekly benefit amount.

R994-405-702. Elements.

(1) Before a disqualification is assessed, the claimant must be entitled to vacation or severance pay in addition to regular wages for work performed which is attributable to weeks following the last day worked.

(a) Entitled To Receive. The claimant may not receive unemployment benefits for any week if he is eligible to receive remuneration from the employer whether the payment has already been made or will be made. However, the payments will only be deducted if the claimant is entitled to receive the payment during the benefit year. A claimant is not considered "entitled to receive" the payment if it will not be paid until a subsequent benefit year, as in the case of someone who will receive lump sum separation payments every six months for several years. The week in which the payment is actually received is not controlling in determining when the remuneration is deductible. It is not necessary for the employer to assign such remuneration to a particular week on his payroll records.

(b) Severance or Vacation Pay Which Is Subject to Negotiation. If there is a question of whether the claimant is entitled to receive a payment and the matter is being negotiated by the court, the Department of Workforce Services, a union, or the employer, it has not been established that the claimant is entitled to remuneration and therefore a disqualification cannot be assessed. However, when it is determined that the claimant is entitled to receive remuneration from the employer, a disqualification would then be assessed beginning with the week in which the agreement is made establishing the right to remuneration, provided the other elements are present. An overpayment would be established as appropriate.

(2) Vacation Pay.

Vacation pay is NOT considered earned during the period of time the claimant worked to qualify for the vacation pay, even if the amount of vacation pay is dependent upon length of service.

(3) Separation Payments.

(a) Any form of separation payment may subject the claimant to disqualification under Subsection 35A-4-405(7) if the payment would not have been made except for the severance of the employment relationship. If the payment is given at the time of the separation but would have been made even if the claimant was not separated, it is not a separation payment, but

is considered earnings assignable to the period of employment subject to the provisions of Subsection 35A-4-401(7). The controlling factor is not the method used by the employer to determine the amount of the payment, but the reason the payment is being made. The history of similar payments is indicative of whether the payment is a bonus or is being made as the result of the separation. Whether a payment is based on the number of years of service or some other factor does not determine if the payment is disqualifying. When a business changes owners and some employees are retained by the new owners, but all employees receive a similar payment from the prior owner, the payment is not made subject to the separation of the employees and therefore would be a bonus and not a separation payment. However, accrued sick leave, which is paid at the time of separation not because of an illness or injury, is not considered a separation payment and will not result in a disqualification or a reduction in benefits under Subsection 35A-4-405(7).

(b) Payments for Remaining on the Job.

When an employer offers an additional payment for remaining on the job until a job is completed, the additional remuneration will be considered an increased wage or bonus attributable to a period of time prior to the date of separation, not a severance payment.

(4) Attributable to Weeks Following the Last Day of Work.

All vacation and severance payments are attributable to a period of time following the last day worked after a permanent separation and assigned to weeks according to the following guidelines:

(a) Designated as Covering Specified Weeks. If the employer specified that the payment is for a number of weeks which is consistent with the average weekly wage, the payment is attributable to those weeks. For example, if the claimant was entitled to two weeks of vacation or severance pay at his regular wage or salary, and the last day worked was a Wednesday, his normal working days were Monday through Friday, he would be considered to have two weeks of pay beginning on the Thursday following his last day of work. His earnings for the first week, including his wages would normally exceed his weekly benefit amount; he would have a full week of pay for the second week, and he would have reportable earnings for Monday, Tuesday and Wednesday of the following week.

(b) Lump Sum Payments. A lump sum payment is assigned to a period of time by comparison to the employee's most recent rate of pay. The period of assignment following the last day of work is equivalent to the number of days during which the worker would have received a similar amount of his regular pay. For example, if the claimant received $500 in severance pay, and he last earned $10 an hour while working a 40 hour week, his customary weeks earnings were $400 a week. He would be denied for one week and must report $100 as if it were earnings on the claim for the following week.

(c) Payments Less than Weekly Benefit Amount. If dismissal or separation payments are paid out over a specific period of time and the claimant does not have the option to receive a lump sum payment, the claimant will be entitled to have benefits reduced as provided by Subsection 35A-4-401(3), pursuant to offset earnings if the amount attributed to the week is less than the weekly benefit amount.

(d) If the claimant is entitled to both vacation and separation pay, the payments are assigned consecutively, not concurrently.

(5) Temporary Separation.

A claimant is not entitled to benefits if it is established that the week claimed coincides with a week:

(a) Designated as a week of vacation. If the separation from the employer is not permanent and the claimant chooses to take his vacation pay, or he is filing during the time previously agreed to as his vacation, the vacation pay is assigned to that week. If the employer has prepaid vacation earnings and at the time of a temporary layoff the claimant may still take his vacation time after being recalled, the vacation pay is not assigned to the weeks of the layoff unless the claimant chooses to have the vacation pay assigned to those weeks, or the employer, because of contractual obligations, must pay any outstanding vacation due the claimant.

(b) Designated as a vacation shutdown. If the claimant files during a vacation shutdown, and he is entitled to vacation pay equivalent to the length of the vacation shutdown, the vacation pay is attributable to the weeks designated as a vacation shutdown, even if the claimant chooses to actually take his time off work before or after the vacation shutdown.

R994-405-703. Period of Disqualification.

Only those payments which are greater than the claimant's weekly benefit amount require a disqualification. Payments which are less than the weekly benefit amount are treated the same as earnings and deductions are made as provided by Subsection 35A-4-401(3).

R994-405-704. Disqualifying Separations.

If the claimant has been disqualified as the result of his separation under either Subsections 35A-4-405(1) or 35A-4-405(2), the vacation or separation pay cannot be used to satisfy the requirement to earn six times the weekly benefit amount in bona fide covered employment.

R994-405-705. Base Period Wages.

Vacation pay is used as base period wages. Separation payments which are attributable to weeks following the separation can be used as base period wages only if the employer verifies that he was legally required to make such payments as provided in Section 35A-4-208. The separation payments which are treated as wages will be assigned to weeks in the manner explained in Subsections R994-405-702(3). The weeks will be attributable to the quarter in which they fall.

R994-405-801. Services in Education Institutions - General Definition.

The intent of Subsection 35A-4-405(8) is to deny unemployment benefits during periods when the claimant's unemployment is due to school not being in session provided the claimant expects to return to work when school resumes. Schools have traditionally not been in session during the summer months, holidays and between terms. This circumstance is known to employees when they accept work for schools. It is for this reason that some people choose to work for schools, although many school employees routinely obtain employment during the vacation between regular school years. In extending coverage to school employees, it was intended that such coverage would only be available when the claimant is no longer attached in any way to a school and when the reason for the unemployment is not due to normal school recesses, or paid sabbatical leave.

R994-405-802. Elements Required for Denial.

(1) The disqualifying provisions of Subsection 35A-4-405(8) apply only if all of the following elements are present.

(a) The Claimant is an Employee of an Educational Institution.

The claimant's benefits are based on employment for an educational institution or a governmental agency established and operated exclusively for the purpose of providing services to an educational institution. The service performed for the educational institution may be in any capacity including professional employees teachers, researchers and principals and all non-professional employees including secretaries, lunch

workers, teacher's aides, and janitors.

(b) School is Not in Session or the Claimant is on a Paid Sabbatical Leave.

Benefits are only denied if the week for which benefits are claimed is during a period between two successive academic years or a similar period between two regular terms whether or not successive, during a period of paid sabbatical leave provided in the contract, or during holiday recesses and customary vacation periods.

(c) The claimant has a reasonable assurance of returning to work for an educational institution at the next regular year or term.

R994-405-803. Educational Institution (School).

(1) To be considered an educational institution it is not necessary that the school be non-profit or that it be funded or controlled by a school district. However, the instruction provider must be sponsored by an "institution" which meets all of the following elements.

(a) An institution in which participants, trainees, or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher.

(b) The course of study or training which it offers is academic, technical, trade, or preparation for gainful employment in an occupation.

(c) The instruction provider is approved or, licensed to operate as a school by the State Board of Education or other government agency that is authorized to issue such license or permit.

(2) Head start programs operated by community based organizations, Indian tribes, or governmental associations as a side activity in a sponsorship role do not meet the definition of educational institution and therefore are not subject to the disqualifying provisions of this rule.

R994-405-804. Employee for an Educational Institution.

(1) All employees of an educational institution, even though not directly involved in educational activities, are subject to the disqualifying provisions of Subsection 35A-4-405(8). Also employees of a state or local governmental entity are not eligible for benefits provided the entity was established and operated exclusively for the purpose of providing services to or on behalf of an educational institution. For example, if a school bus driver is employed by the city rather than the school district, he is not subject to a disqualification under Subsection 35A-4-405(8).

(2) Ineligibility under Subsection 35A-4-405(8) shall only apply if any of the benefits are based in service for an educational institution. If the claimant had sufficient non-school employment in the base period to qualify for benefits, he may establish a claim based only on the non-school employment and benefits would be payable during the period between successive school terms, provided he is otherwise eligible. If the claimant continues to be unemployed when school commences, he may be entitled to benefits based upon the combined school and non-school employment. In most cases this would result in higher weekly and maximum benefit amounts, less the benefits already received. A revision of the monetary determination will be made effective the beginning of the week in which the claimant submits a written request for a revision to include school employment.

R994-405-805. Reasonable Assurance.

(1) "Reasonable assurance" is defined as a written, oral, or implied agreement that the employee will perform service in the same or similar capacity during the ensuing academic year, term, or remainder of a term.

(2) Reasonable Assurance Presumed.

A claimant is presumed to have implied reasonable assurance of employment during the next regular school year or term with an educational institution if he worked for the educational institution during the prior school term and there has been no change in the conditions of his employment which would indicate severance of the employment relationship. Under such circumstances benefits initially must be denied.

(3) Advised on Non-Recall.

If the claimant has been advised by proper school administrative authorities that he will NOT be offered employment when the next school term begins, benefits would not be denied under Subsection 35A-4-405(8).

(4) Offer of New Work by an Educational Institution.

Reasonable assurance is not limited to the same school where the claimant was employed during the base period or the same type of work, but includes any bona fide offer of suitable work at any educational institution. Reasonable assurance exists if the terms and conditions of any new work offered in the second term are not substantially less suitable, as defined by Subsection 35A-4-405(3), than the terms and conditions of the work performed during the first term. A disqualification under Subsection 35A-4-405(8) would begin with the week the employment is offered, and a disqualification under Subsection 35A-4-405(3) may begin with the week in which the offered employment would become available. For example: if a claimant was advised that due to reduction in enrollment he will not be recalled by the school where he last worked as a teacher's aide, but he then obtains an offer of employment as a librarian from another school or another school district, a disqualification under Subsection 35A-4-405(8) would be assessed beginning with the week in which the offer of employment was made to the claimant, and a disqualification under Subsection 35A-4-405(3) would begin at the beginning of the school term if the work is not accepted.

(5) Separated Due to a Quit or Discharge.

If the employment relationship is severed either due to a quit or discharge, the provisions of Subsection 35A-4-405(8) do not apply, but Subsections 35A-4-405(1) or 35A-4-405(2) may apply and a disqualification, if assessed, would begin with the effective date of the claim even if the separation is at the end of a regular school term.

R994-405-806. Substitute Teachers.

A substitute teacher is treated the same as any other school employee. If the individual worked as a substitute teacher during the prior school term, he is presumed to have a reasonable assurance of having work under similar conditions during the next term and benefits must be denied when school is not in session. However, for any weeks that he is not called to work when school is in session, a disqualification under Subsection 35A-4-405(8) would not apply.

R994-405-807. Period of Disqualification.

The effective date of the unemployment insurance claim does not have to begin between regular school terms for a disqualification to apply, but benefits shall be denied for a week which begins during a period when school is not in session or the claimant is on a paid sabbatical leave. A disqualification under Subsection 35A-4-405(8) can only be assessed for weeks that are:

(1) between two successive academic years or terms, or

(2) during a break in school activity which is between two regular terms even if the terms are not successive, including school vacations and holidays as well as the break between academic terms, or

(3) for weeks when the claimant is on a paid sabbatical leave if the claimant worked during the prior school year and has a contract or reasonable assurance of working in any

capacity for an educational institution in the school term following the sabbatical leave. When the claimant is on an unpaid sabbatical leave benefits may be allowed provided he is otherwise eligible including the eligibility requirements of Subsection 35A-4-403(1)(c).

R994-405-808. Retroactive Payments.

Retroactive payments under Subsection 35A-4-406(2) may be made after a disqualification has been assessed only if the claimant:

(1) is NOT a professional employee in an instructional, research or administrative capacity, and

(2) was not offered an opportunity for employment for an educational institution for the second academic years or terms, and

(3) filed weekly claims in a timely manner as instructed, and

(4) benefits were denied solely by reason of Subsection 35A-4-405(8).

R994-405-1001. Aliens - General Definition.

The protection provided by the unemployment insurance program is limited to American citizens and people who are lawfully admitted to the United States. It is not the intent of this program to subsidize people who have worked unlawfully or who cannot legally accept employment. All claimants will be required, as a condition of eligibility, to sign a declaration under penalty of perjury stating whether the individual is a citizen or national of the United States, or if not, whether the individual is lawfully admitted to the United States with permission to work. A claimant who certifies to lawful admission must present documentary evidence. A denial of benefits under Subsection 35A-4-405(10) can only be made if there is a preponderance of evidence that the claimant is not legally admitted to work. Benefits must be denied to claimants who are NOT United States citizens unless they are lawfully present BOTH during the base period of the claim and while filing for benefits. In addition, to be considered "available for work," a claimant must be legally authorized to work at the time benefits are claimed.

R994-405-1002. Alien Status.

(1) An alien may establish wage credits and qualify for benefit payments if he was:

(a) Lawfully admitted for permanent residence at the time the services were performed, or

(b) Lawfully present for the purpose of performing the services, or

(c) Permanently residing in the United States under color of law at the time the services were performed, or

(d) Granted the status of "refugee" or "asylee" by the Immigration and Nationality Act, United States Code Title 8, Section 1101 et seq.

(2) The status of temporary residence or the granting of work authorization does not confer retroactive lawful presence for purposes of monetary entitlement or work authorization.

R994-405-1003. Lawfully Admitted for Permanent Residence.

An individual who is lawfully admitted for permanent residence must be given a dated employment authorization or other appropriate work permit by INS.

R994-405-1004. Lawfully Present for the Purpose of Performing Services.

These are aliens with work permits issued by INS who have received permission to work in the United States. Aliens who do not possess INS documentation have not been processed through INS procedures and are not lawfully present in the United States. Aliens permitted to reside in the United States temporarily have privileges accorded by INS which may include work authorization. The claimant's work authorization must be printed on the document or stamped on the form.

R994-405-1005. Permanently Residing in U.S. Under Color of Law.

Eligibility can be established if:

(1) The INS knows of the alien's presence and has provided the alien with written assurance that deportation is not planned, and

(2) The alien is "permanently residing" which means the INS has given the alien permission to remain in the U.S. for an indefinite period of time. Individuals who have been granted the status of refugees or have been granted asylum have been defined by the INS as individuals who are permanently residing "under color of law."

R994-405-1006. Section 1182(d)(5)(A) of the Immigration and Nationality Act.

For reference, 8 USC 1182(d)(5)(A) includes people, referred to as parolees, admitted under specific authorization given by the United States Attorney General and those paroled into the United States temporarily for emergent reasons or for reasons rooted in the public interest, including crew members refused shore leave which are admitted on parole for medical treatment. All of these individuals are issued INS forms endorsed to show work status.

R994-405-1007. Procedural Requirements.

(1) Verification of Status.

If the claimant states he is an alien, he must present documentary evidence of his alien status. Acceptable evidence includes:

(a) An alien registration document or other proof of immigration registration from INS that contains the individual's alien admission number or alien file number, or

(b) Other documents which constitute reasonable evidence indicating a satisfactory alien status such as a passport.

(2) Verification by the Department.

The Department must verify documentation referred to in Subsection R994-405-1007(1) with the INS through an automated system or other system designated by the INS. This system must protect the claimant's privacy as required by law. The Department must use the individual's alien file number or alien admission number as the basis for verifying the alien status. If the claimant provides other documents, the Department must submit a photocopy of the documents to INS for verification. Pending verification of the alien's documentation, the Department may not delay, deny, reduce or terminate the claimant's eligibility for benefits.

(3) Claimant Rights.

(a) Reasonable Opportunity to Submit Documentation.

The Department will provide the claimant with a reasonable opportunity to submit documentation establishing satisfactory alien status if such documentation is not presented at the time of filing. The Department will also provide the claimant reasonable opportunity to submit evidence of satisfactory alien status if the documentation presented is not verified by the INS. The claimant will initially be given three weeks to provide documentation or advise the Department as to any circumstances which would justify an extension of the time allowed. Failure to provide documentation or request an extension of time will result in a denial of benefits under Subsection 35A-4-403(1)(e) or Sections R994-403-122e through R994-403-128e.

(b) Disqualification Restrictions.

The Department will not delay, deny, reduce or terminate a claimant's eligibility for benefits on the basis of alien status until a reasonable opportunity has been provided for the

claimant to present required documentation or pending its verification after the claimant presents the documents. The claimant will be considered at fault in the creation of any overpayment, if benefits were paid based on the claimant's unverifiable assertion of legal admission.

(c) Notice of Disqualification.

When benefits are denied by reason of alien status, a written, appealable decision must be issued to the claimant stating the evidence upon which the denial is based, the findings of fact, and the conclusion of law.

R994-405-1008. Preponderance of Evidence.

Benefits will be denied only if the preponderance of evidence supports denial. Aliens are presumed lawfully admitted or lawfully present under the Immigration and Nationality Act until it is established by a preponderance of evidence that they are not lawfully admitted. The preponderance of evidence required to support a denial of benefits is not satisfied by a lack of evidence. Therefore, the claimant's certification as to citizenship or legal alien status should be accepted while INS is being contacted for verification.

R994-405-1009. Availability for Work.

While filing for benefits, an alien must show authorization to work to be considered available for work as required under Subsection 35A-4-403(1)(c). An alien with temporary resident status may be granted authorization to engage in employment in the United States. In such cases the alien will be provided with an "employment authorized" endorsement or other appropriate work permit. Termination of "temporary residence status" can be made by the United States Attorney General only upon a determination that the alien is deportable.

R994-405-1010. Periods of Ineligibility.

Any wages earned during a period of time when the alien was not in legal status, cannot be used in the monetary determination, and a disqualification must be assessed under Subsection 35A-4-405(10). If the claimant was in legal status during a portion of the base period, only wages earned during that portion may be used to establish a claim. If the alien did earn sufficient wage credits while in legal status, but is no longer in legal status at the time the benefits are claimed, he is ineligible under Subsection 35A-4-403(1)(c) because he cannot legally obtain employment.

KEY: unemployment compensation, employment, employee's rights, employee termination

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