

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

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

R28-1-2. Authority.

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

R28-1-3. Procedures.

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

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

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

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

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

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

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

G. The USASP Manager or designee may make an

exception to the written authorization requirement identified in paragraph A above. Exceptions must be for good cause and must consider:

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

R28-1-4. Related Party Transactions.

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

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

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

C. Owning state agencies must list any recommended purchasers on the standard form SP-1 and specify whether they are considered to be a related party.

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

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

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

3. The USASP may hold the property for a 30 day period before allowing the related party the opportunity to purchase the property, thus allowing for purchase of the property in accordance with the priorities listed below.

R28-1-5. Priorities.

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

B. Property received by the USASP that is determined to be unique, in short supply or in high demand by public agencies shall be held for a period of 30 days before being offered for sale to the general public.

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

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

D. State-owned personal property that is not purchased by or transferred to public agencies during the 30-day hold period may be offered for public sale.

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

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

R28-1-6. Accounting and Reimbursement.

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

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

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

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

R28-1-7. Payment.

A. Payment received from public purchasers may be in the form of cash and/or certified funds, authorized bank credit cards, and business or personal checks. Personal checks must be guaranteed with a bankcard and may not be accepted for amounts exceeding \$200. Personal checks that are not guaranteed with a bankcard, or 2-party checks shall not be accepted.

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

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

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

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

R28-1-8. Bad Debt Collection.

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

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

1. Prohibit the debtor from making any future purchases from the USASP until the debt is paid in full.
2. send a certified letter to the debtor stating that:
 - (a) the debtor has 15 days to pay the full amount owed with cash or certified funds, including any and all additional fees associated with the collection process, such as returned check fees; and
 - (b) If the balance is not paid within the 15 day period, the matter will be referred to the Office of State Debt Collection for formal collection proceedings.

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

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

A. State-owned surplus property may be purchased at any time by the general public, subject to any 30-day holding period that may be applicable, as described in R28-1-5.

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

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

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

KEY: state property

November 17, 2004

Notice of Continuation March 5, 2002

63A-9-801

R68. Agriculture and Food, Plant Industry.**R68-6. Utah Nursery Act.****R68-6-1. Authority.**

Promulgated under authority of Section 4-15-3.

R68-6-2. Terms Defined.

All terms used in these rules shall have the meaning set forth for such items in the Act.

R68-6-3. Labeling.

A. In order to identify nursery stock properly, whenever it is shipped, delivered, or transported to any purchaser, at least one label bearing the name, origin (state grown or propagated), size, variety, and grade (where applicable) shall be attached to each separate species or variety.

B. Whenever a grade or size designation is used or implied in labeling or in an advertisement referring to a kind of nursery stock for which grades or sizes have been established in these rules, the nursery stock so labeled or so advertised shall conform to the specifications of the particular grade or size as stated herein. Advertisements of such stock offered for sale in containers shall state plant grade or size, irrespective of the size of the container.

C. Non-established container stock shall be so identified by a water resistant tag on which the words "non-established container stock" are printed. The tags shall be not less than 2 x 4 inches in size with lettering of 24 point Gothic type. The minimum length of time the stock has been planted in the container or the date the stock was planted in the container must also be stated on the tag. The tag shall bear only the required labeling. It shall be the responsibility of the supplier of non-established container stock to adequately label such stock as provided herein.

D. All roses shall be labeled by grade for individual plants, bundles, or single lots.

R68-6-4. Condition of Nursery Stock.

A. Any nursery stock which, in the judgment of the Commissioner or his authorized agents, does not meet the following minimum indices of vitality shall be removed from sale.

1. Woody-stemmed deciduous stock, such as fruit and shade trees, rose bushes, and shrubs shall have moist tissue in the stem or stems and branches and shall have viable buds or unwilted growth sufficient to permit the nursery stock to live and grow in a form characteristic of the species when planted and given reasonable care, except that in the case of rose bushes each stem must show moist, green undamaged cambium in at least the first 8 inches above the graft. Any single stem on a rose bush not meeting this specification shall disqualify the entire plant: PROVIDED, that a bush may be pruned to comply with the specification if at least two stems meeting the specification remain and the grade designation is changed accordingly.

2. Hardy herbaceous biennials or perennial when in a wilted, rotted, or any other condition indicative of poor vitality shall not be sold or offered for sale in Utah.

3. Any bare-rooted or prepackaged woody-stemmed nursery stock having in excess of two inches of etiolated or otherwise abnormal growth from individual buds shall not be sold or offered for sale.

4. Balled and burlapped stock in a weakened condition as evidenced by dieback or dryness of earthball or foliage, or such stock having broken or loose earthballs shall not be sold or offered for sale.

5. Stock offered for sale in containers. The container shall be sufficiently rigid to hold the ball shape, protecting the root mass during shipment.

a. Container stock offered for sale shall be healthy,

vigorous, well rooted, and established in the container in which it is sold. The tops of the plants shall be of good quality and in a healthy growing condition. Sufficient new fibrous roots shall have developed so that the root mass will retain its shape and hold together when removed from the container. This shall be evidenced in each case by the earthball of such stock remaining reasonably intact upon removing it from the container.

b. Non-established container stock offered for sale shall be deciduous stock which shows good top quality and a vigorous healthy growing condition. The potting media shall be capable of sustaining satisfactory plant growth. Evergreen stock shall not be offered for sale in containers unless it is well established in the container.

R68-6-5. Standards for Nursery Stock.

Nursery stock offered for sale in Utah shall meet the grade and size standards as published by the American Association of Nurseryman (AAN), in the PUBLICATION ENTITLED: American Standards for Nursery Stock, ANSI Z60.1-1996 approved November 6, 1996 which is incorporated by reference within this rule. Buyers and sellers of nursery stock shall refer to and use common terminology that is contained in and defined by this incorporated document, in order to facilitate transactions involving nursery stock in this state.

R68-6-6. Organizational Provisional Permit.

A. Special projects held by nonprofit educational, charitable, or service organizations may be exempt from payment of fees for nursery license provided the applicant provides an application for such.

B. All funds received from sales of such plants shall be used for the benefit of the organization or for improvement or beautification projects within the local community.

C. Plant materials distributed at these special projects shall meet the standards as described in R68-6-4 and R68-6-5.

D. No special project will be in direct competition with any licensed nursery.

E. Permit will be issued for on annual activity only. No fee required, but application must be completed and approved by the department before the project begins.

KEY: nurseries (agricultural)

September 15, 2004

Notice of Continuation January 16, 2001

4-15-3

R70. Agriculture and Food, Regulatory Services.**R70-440. Egg Products Inspection.****R70-440-1. Authority.**

A. Promulgated under authority of Section 4-4-2(j).

B. Scope: This rule shall apply to all egg products sold, bought, processed, manufactured or distributed within the State of Utah. It is the purpose of this rule to provide egg products inspection at least equal to those imposed under the Federal Egg Products Inspection Act (21 U.S.C. 1031-1056).

R70-440-2. Adopt by Reference.

The Utah Department of Agriculture and Food hereby adopts and incorporates by reference the applicable provisions of the regulations issued by the United States Department of Agriculture for Egg Products, 9 CFR 590, January 1, 2003 edition.

**KEY: food inspection
November 4, 2004**

4-4-2(j)

R70. Agriculture and Food, Regulatory Services.

R70-540. Food Establishment Registration.

R70-540-1. Authority.

Promulgated under authority of Subsection 4-5-9(1)(a).

R70-540-2. Purpose.

The purpose of this rule is to set forth requirements for the registration of food establishments to protect public health and ensure a safe food supply.

R70-540-3. Scope.

(1) This rule provides procedures to register grocery stores, warehouses, and food processors and any other establishment meeting the definition of a food establishment as per Section 4-5-2(8).

(2) This rule:

(a) establishes definitions;

(b) requires an owner or operator of a food establishment to annually register with the department;

(c) categorizes food establishments;

(d) requires an inspection to determine compliance with R70-530 prior to granting a registration for new food establishments;

(e) establishes the requirements for: issuance, denial, conditional denial, revocation, suspension, and reinstatement for food establishments.

R70-540-4. Definitions.

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

(a) "Department" means the Utah Department of Agriculture and Food, Division of Regulatory Services, or its representatives.

(b) "Farmer's Market" means a temporary or seasonal event at a specified location with multiple businesses that sell raw agricultural products and packaged processed foods.

(c) "Food processing" means blending, mixing, packaging, acidifying, curing, drying or dehydrating, dry packing, thermal processing, reduced-oxygen packaging, cooking, baking, heating, grinding, churning, separating, distilling, extracting, slaughtering, cutting, fermenting, eviscerating, preserving, freezing, chilling, or otherwise manufacturing food products.

(d) "Food Processor" means an establishment that uses food processes indicated in R70-540-4(b). Examples include, but are not limited to, scratch bakery, dietary supplement manufacturer, candy factory, bottling plant, cannery, retail meat department, flour mill, ice plant, and low acid food processing establishment.

(e) "Inspection" means an on-site review of a food establishment conducted by the Utah Department of Agriculture and Food to ensure compliance with all applicable laws and rules.

(f) "Letter of Authorization" is a written document from the owner of an inspected food establishment that states that another entity, that is a separate business, is using their food establishment to process a food product. This letter of authorization is valid for one calendar year. This does not include employees of the food establishment or other businesses subcontracted by the food establishment that may temporarily use their facility for food processing activities.

(g) "Warehouse" means a business whose primary purpose is to store or hold food.

R70-540-5. Registration Categories.

(1) Each food establishment shall belong to only one of the four categories that have been established.

(2) A food establishment with multiple processing areas at the same physical address and under the same ownership will be evaluated and placed in a single category.

(3) A separate registration is required for each business owner operating under a letter of authorization.

(4) Grocery stores offering food as defined in Section 4-5-2(6) to consumers shall be categorized based on the following schedule:

TABLE I

Inspectable Square Footage	Process Areas/Employees	Category
(a) less than 1000	4 or fewer employees	small
(b) 1000-5000	limited food processing	medium
(c) 1000-50,000	2 or fewer food processing areas	large
(d) greater than 50,000	more than 2 food processing areas	super

(5) Food or beverage manufacturing, processing, or packaging plants shall be categorized based on the following schedule:

TABLE II

Inspectable Square Footage	Process Areas/Employees	Category
(a) less than 1000	4 or fewer employees	small
(b) 1000-5000	limited food processing	medium
(c) 1000-20,000	2 or fewer food processing areas	large
(d) greater than 20,000	more than 2 food processing areas	super

(6) Cold or dry storage warehouses or other types of food storage facilities shall be categorized based on the following schedule:

TABLE III

Inspectable Square Footage	Category
(a) Less than 1000	small
(b) 1000-5000	medium
(c) 1000-50,000	large
(d) greater than 50,000	super

(7) A water vending machine owner or company shall be categorized as follows:

TABLE IV

Number of Water Vending	Category
(a) ten or fewer	small
(b) eleven or more	medium

(c) as a grocery store as indicated in R70-540-5(4), Table I, (a)-(d) when their primary purpose is to vend water.

(8) For mobile vendors, each vehicle or truck that sells prepackaged, potentially hazardous food items shall be categorized as a small.

(9) A temporary or seasonal business at an individual location shall be typed as a grocery store as indicated in R70-540-5(4), Table I, (a)-(d).

(10) A farmer's market shall be typed as one grocery store as indicated in R70-540-5(4), Table I, (a)-(d).

R70-540-6. Annual Registration Period.

Annual registration applications and fees are due December 31 of each year for the upcoming calendar and all registrations expire on December 31 of each year.

R70-540-7. Registration.

(1) Registration fees are established according to Section 4-5-9. When the appropriate fee is not paid on or before December 31, the registration shall become delinquent and a penalty fee shall be added as per Section 4-1-6. Any new

facilities opening between January 1 and October 31 will be required to register appropriately. New facilities registering after November 1 will be registered for the remainder of that year and the following calendar year. This does not apply to seasonal food establishments.

(2) Fees paid are nonrefundable.

(3) When a registration is suspended or revoked, no part of the fees paid for a registration shall be returned to the owner or operator of a registered food establishment.

R70-540-8. Requirements.

(1) The prerequisites for operation are as follows:

(a) a person may not operate a food establishment without a valid registration.

(b) a new registration is required within 60 days when ownership changes.

(c) registration is non-transferable.

(d) the Department may seek administrative or judicial remedies to achieve compliance with the laws and rules if a person fails to have a valid registration to operate a food establishment.

(2) The owner or person-in-charge shall have the registration available for review upon request.

(3) The owner of a food establishment may display the current annual registration.

(4) The applicant should submit an application for a registration at least 30 calendar days before the date planned for opening a new or remodeled food establishment.

(5) The person desiring to operate a food establishment shall submit to the department a written application for a registration on a form provided by the Department.

(6) The qualifications and responsibilities of applicants are as follows:

(a) be an owner or representative of the food establishment;

(b) comply with the requirements of the Utah Food Protection Rule R70-530 and other applicable laws;

(c) agree to allow access to the food establishment during normal business hours as specified under Subsection 4-5-9(5)(a), provide required information; and

(d) pay the applicable registration fees at the time the application is submitted.

(7) The contents of the application shall include:

(a) the name, billing address, business telephone number, and signature of the person applying for the registration;

(b) the name of the food establishment, federal tax identification number, physical location address, billing address, type of establishment (i.e. retail grocery, food processor, or warehouse), number and types of food processes, square footage of the food establishment, and the number of employees;

(c) information specifying whether the food establishment is owned by an association, corporation, individual, partnership, or other legal entity;

(d) a statement signed by the applicant that attests to the accuracy of the information provided in the application and agrees to provide other information as required by the Department.

R70-540-9. Issuance.

(1) New, converted, or remodeled food establishments are required to submit plans as specified in the Utah Food Protection Rule R70-530-10, 10-2; the department shall issue a registration to the applicant after:

(a) a properly completed registration form is submitted;

(b) the required plans, specifications, and information are reviewed and approved; and

(c) a preoperational inspection shows that the establishment is built or remodeled in accordance with the approved plans and specifications and that the establishment is

in compliance with the Utah Food Protection Rule R70-530.

(2) Registration for an existing food establishment will be renewed annually as stated in Subsection 4-5-9(2).

(3) The Department shall issue a registration to a new owner of an existing food establishment after:

(a) a properly completed application is submitted, reviewed, and approved;

(b) an inspection shows that the establishment is in compliance with the Utah Food Protection Rule R70-530 and;

(c) the appropriate fees are paid.

R70-540-10. Conditional Denial of Registration.

(1) If the registration is conditionally denied, the Department shall provide the applicant with a written notification within five business days that includes:

(a) the specific reasons for the food establishment's registration denial; and

(b) the applicant's right to appeal as provided for in Section R51-2.

(2) Upon receipt of the notice of conditional denial, the applicant may:

(a) correct deficiencies and submit a description of the corrective actions; or

(b) submit written information to rebut the deficiencies described in the notice; or

(c) request an informal hearing, no later than ten business days after receipt of the notice.

(3) After receiving a written notification from the applicant stating that the deficiencies cited in the notice of conditional denial no longer exist, the Department shall:

(a) evaluate the applicant's corrective actions and supporting documentation or the written rebuttal;

(b) conduct an on-site re-inspection, if necessary, within three business days after receipt of written notification or correction;

(c) issue the registration when the corrective action or rebuttal is sufficient;

(d) deny the registration when the corrective action or rebuttal is not sufficient; or

(e) issue a written notice of denial to an applicant who fails to respond to the notice of conditional denial.

R70-540-11. Denial of Registration.

(1) If the registration is denied, the Department shall provide the applicant with a written notification that includes:

(a) the specific reasons for the food establishment's registration denial; and

(b) the applicant's right to appeal as provided for in Section R51-2.

R70-540-12. Suspension of Registration.

(1) The Commissioner may suspend a registration:

(a) whenever an inspection of the food establishment reveals that the establishment has critical or repeat violations that remain uncorrected beyond the negotiated period of time.

(b) when there exists in a food establishment an immediate and substantial hazard to public health, unless the hazard is immediately corrected. The Commissioner may temporarily suspend the registration of the food establishment without prior notice, informal hearing, and order the food establishment immediately closed by issuing an order in writing. An immediate and substantial hazard to the public health means any condition, based upon inspection findings or other evidence that:

(i) there is an imminent threat of food-borne illness or disease transmission; or

(ii) there is a hazardous condition including but not limited to critical control points without adequate control measures, contamination from wastewater, or non-potable water

supply.

(c) in the event of a natural disaster, the Commissioner has the authority to order an establishment immediately closed if, in the opinion of the Commissioner the establishment cannot operate in a safe and sanitary manner. Conditions for immediate closure can include but are not limited to the following: No water supply, no electric power, flooding, or significant damage to the establishment. The Commissioner shall decide under what conditions the establishment will be allowed to reopen.

(d) whenever an owner or operator of a food establishment denies access to authorized personnel during normal business hours and does not allow them to conduct regulatory activities.

(2) The procedures for suspending the registration are as follows:

(a) the Commissioner shall notify the holder of the registration or the designated person-in-charge, in writing, when a registration is to be suspended;

(i) the Commissioner shall state specific reasons for which the registration is to be suspended; and

(ii) the Commissioner shall offer an opportunity to a person whose registration is suspended for an informal hearing as per R51-2-6, provided a written request for an informal hearing is filed with the Commissioner by the registration holder no later than ten business days, after receipt of the notice;

(b) the establishment shall be closed and shall remain closed until the registration has been reinstated;

(c) a person whose registration has been suspended may request a re-inspection. Upon receipt of the request, the Department will conduct the inspection within three business days. The registration may be reinstated if the inspection shows the violation(s) that led to the suspension is corrected;

(3) the Department may suspend the operations for one processing area of an establishment without suspending the registration for the entire food establishment if the reason for suspension is isolated to that processing area and does not affect other areas of the establishment.

(4) if a food establishment voluntarily closes due to an immediate and substantial hazard to public health, the food establishment shall notify the Department prior to reopening.

(5) when a third administrative enforcement action is assessed against a registered establishment within any twelve-month period of time, the Department may initiate proceedings to suspend the registration.

(6) the registration shall be suspended and in effect until the conditions no longer exist or the Commissioner affirms, modifies, or rescinds the order as appropriate.

R70-540-13. Revocation.

(1) The Commissioner may revoke a registration whenever:

(a) the Commissioner is unable to conduct inspections in accordance with this chapter due to circumstances within the control of the registration holder or person-in-charge; or

(b) the registration has been suspended more than three times within a twelve-month period.

(2) The procedures for revocation are as follows:

(a) the Commissioner shall notify the holder of the registration or the designated person-in-charge, in writing, when a registration is to be revoked;

(i) the Commissioner shall state specific reasons for which the registration is to be revoked; and

(ii) the Commissioner shall offer an opportunity to a person whose registration is revoked for an informal hearing as per R51-2-6, provided a written request for an informal hearing is filed with the Commissioner by the registration holder, not later than ten business days after receipt of the notice.

(b) a person whose registration has been revoked may reapply thirty days after the date of revocation. Application fees for a new registration will apply.

**KEY: food inspection
November 16, 2004**

4-5-9(1)(a)

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, 2004, 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 as indicated in R70-630-5(4).

(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, odors, 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 water vending machine system shall have an adequate system for collecting and disposing drippage, spillage, and overflow of water to prevent creation of a nuisance.

(a) Where process waste water is collected within the processing unit for pumping or gravity flow to an outside drain, the waste water drain line shall terminate at least two inches above the top rim of the retention vessel within said unit.

(b) The waste line from the water vending machine to an approved drainage system shall be air-gapped.

(c) 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 Registration issued under Section 4-5-9. The Registration shall be renewed annually.

(6) Application for Registration 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 Registration, 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, 2004. 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 all analyses shall be available for department review upon request.

R70-630-7. Duties and Responsibilities 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 Registration 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 until such time the department determines that the conditions which caused the discontinuance of operation no longer exist.

(2) The department shall deny a Registration (procedures for Registration denial 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 the consumers is threatened or impaired, or by which or through which, directly or indirectly, disease is caused. Registration can also be denied or suspended 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 local health department authority in consultation with and approval of UDAF, determine that unique conditions exist within the county which make it more appropriate for the county to regulate the water vending machines in order to protect the health or welfare of the public.

KEY: food inspection

September 8, 2004

Notice of Continuation July 13, 2004

4-5

R70. Agriculture and Food, Regulatory Services.
R70-960. Weights and Measures Fee Registration.
R70-960-1. Authority.

Promulgated under authority of Section 4-9-15.

R70-960-2. Definitions of Terms.

A. Fuel dispenser means a liquid measuring device used in a multiple product dispenser (MPD) and other fuel dispensing applications. These devices are counted as individual grades per side, per hose of dispenser, including diesel.

B. Meter means a vehicle tank meter, rack meter, LPG meter, any measuring device that is mounted on a vehicle, devices mounted as a rack meter at a fuel bulk plant or refinery, and any meter that dispenses LPG at a retail establishment. Each individual meter is counted as a device.

C. Load receiving element means that element of a scale that is designed to receive the load to be weighed, for example: platform, deck, rail, hopper, platter, plate, or scoop.

D. Small scale means any load receiving element of a weighing device capable of measuring weight between 0 pounds to 999 pounds.

E. Large scale means any load receiving element of a weighing device capable of measuring weight from 1000 pounds and up.

F. Check-out register means any device that is commercially used in a price verification system at a check-out register. Included are those devices that use Universal Product Code (U.P.C.) scanners, Electronic Product Code (E. P. C.) readers, manual entries, or any current or future use of any device that could be used at the final point of sale as a means for pricing for commercial sales.

R70-960-3. Application.

This rule shall apply to commercially-used weighing or measuring instruments or devices at the final point of sale. This will include the following: fuel dispensers, meter, small scale, large scale, and check-out register.

R70-960-4. Device Registration.

A. Weighing or measuring devices used for commercial purposes in the State of Utah shall be registered annually.

B. Each separate physical location of a business establishment must register the devices at that location.

C. The Department of Agriculture and Food may seek administrative or judicial remedies to achieve compliance with the laws and rules of Weights and Measures Fee Registration.

D. New facilities registering after November 1, will be registered for the remainder of that year and the following calendar year.

R70-960-5. Device.

The Department of Agriculture and Food may permit the registration to be applicable to a replacement for an original device or any additional devices within the annual registration period.

R70-960-6. Annual Registration Period.

Annual registration applications and fees are due December 31 of each year. All registrations expire on December 31 of each year. Fees paid are nonrefundable.

R70-960-7. Registration Certificate Displayed.

Any owner or user of commercially used weighing and measuring devices may display the current annual registration for those instruments and devices.

R70-960-8. Registration.

A. Registration fees are established according with Section 4-9-15(1)(h)(i). When the appropriate fee is not paid on or

before January 1, the registration shall become delinquent and a penalty fee shall be added as per Section 4-1-6. Any new facilities opening between January 1 and October 31, will be required to register appropriately. New facilities registering after November 1, will be registered for the remainder of that year and the following calendar year.

B. When a registration is suspended or revoked, no part of the fees paid for a registration shall be returned to the owner or operator of a registered weights and measures establishment.

KEY: inspections
November 2, 2004

4-9-15

R156. Commerce, Occupational and Professional Licensing.**R156-31c. Nurse Licensure Compact Rules.****R156-31c-101. Title.**

These rules are known as the "Nurse Licensure Compact Rules".

R156-31c-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 31c, as used in Title 58, Chapter 31c or these rules:

(1) "Board", as used in these rules, means the party state's regulatory body responsible for issuing nurse licenses.

(2) "Current significant investigative information", as used in these rules, is defined in Section 58-31c-102.

(3) "Information system", as used in these rules, means the coordinated licensure information system as defined in Section 58-31c-102.

(4) "Primary state of residence", as used in these rules, means the state of a person's declared fixed permanent and principal home for legal purposes; domicile.

(5) "Public", as used in these rules, means any individual or entity other than designated staff or representatives of party state Boards or the National Council of State Boards of Nursing, Inc.

R156-31c-103. Authority - Purpose.

These rules are adopted by the Division under the authority of Subsection 58-1-106(1) to enable the Division to administer Title 58, Chapter 31c.

R156-31c-104. Organization - Relationship to Rule R156-1.

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

R156-31c-201. Issuing a License.

(1) A nurse applying for a license in a home party state shall produce evidence of the nurse's primary state of residence. Such evidence shall include a declaration signed by the licensee. Further evidence that may be requested may include:

- (a) driver's license with a home address;
- (b) voter registration card displaying a home address; or
- (c) federal income tax return declaring the primary state of residence.

(2) A nurse changing primary state of residence, from one party state to another party state, may continue to practice under the former home state license and multi-state privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed 30 days.

(3) The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance and the 30 day period in Subsection (2) shall be stayed until resolution of the pending investigation.

(4) The former home state license shall be expired and no longer valid upon the issuance of a new home state license.

(5) If a decision is made by the new home state denying licensure the new home state shall notify the former home state within ten business days and the former home state shall take action in accordance with that state's laws and rules.

R156-31c-302. Limitations on Multi-state Licensure Privilege.

Home state Boards shall include in all licensure disciplinary orders and stipulation agreements that limit practice or require monitoring the requirement that the licensee subject to said order or stipulation will agree to limit the licensee's practice to the home state during the pendency of the order or stipulation. This requirement may, in the alternative, allow the nurse to practice in other party states with prior written authorization from both the home state and such other party state Boards.

R156-31c-401. Information System.

(1) Levels of Access:

(a) The public shall have access to nurse licensure information limited to:

- (i) the nurse's name;
- (ii) jurisdiction(s) of licensure;
- (iii) license expiration date(s);
- (iv) licensure classification(s) and status(es);
- (v) public emergency and final disciplinary actions, as defined by the contributing state authority; and
- (vi) the status of multi-state licensure privileges.

(b) Non-party state Boards shall have access to all Information System data except current significant investigative information and other information as limited by the contributing party state authority.

(c) Party state Boards shall have access to all Information System data contributed by the party states and other information as limited by contributing non-party states' authority.

(2) The licensee may request in writing to the home state Board to review the data relating to the licensee in the Information System. In the event a licensee asserts that any data relating to him is inaccurate, the burden of proof shall be upon the licensee to provide evidence that substantiates such claim. The Board shall verify and within ten business days correct inaccurate data to the Information System.

(3) The Board shall report to the Information System within ten business days:

- (a) disciplinary action, stipulation or order requiring participation in alternative programs or which limit practice or require monitoring (except agreements relating to participation in alternative programs required to remain nonpublic by the contributing state authority);
- (b) dismissal of a complaint; and
- (c) changes in status of disciplinary action, or licensure encumbrance.

(4) Current significant investigative information shall be deleted from the Information System within ten business days upon report of disciplinary action, stipulation or order requiring participation in alternative programs or stipulations which limit practice or require monitoring or dismissal of a complaint.

(5) Changes to licensure information in the Information System shall be completed within ten business days upon notification by a Board.

KEY: nurses, licensing**February 15, 2000****Notice of Continuation November 29, 2004****58-31c-103****58-1-106(1)**

R156. Commerce, Occupational and Professional Licensing.
R156-46b. Division Utah Administrative Procedures Act Rules.

R156-46b-101. Title.

These rules are known as the "Division Utah Administrative Procedures Act Rules."

R156-46b-103. Authority - Purpose.

These rules are adopted by the division under the authority of Title 63, Chapter 46b, Subsection 58-1-108(1), and Subsection 58-1-106(1)(a). The purposes of these rules include:

- (a) classifying division adjudicative proceedings;
- (b) clarifying the identity of presiding officers at division adjudicative proceedings; and
- (c) defining procedures for division adjudicative proceedings which are consistent with the requirements of Titles 58 and 63 and Rule R151-46b.

R156-46b-201. Formal Adjudicative Proceedings.

(1) The following adjudicative proceedings initiated by a request for agency action are classified as formal adjudicative proceedings:

- (a) denial of application for renewal of licensure;
- (b) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(5);
- (c) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(6)(b);
- (d) special appeals board held in accordance with Section 58-1-402;
- (e) approval or denial of claims against the Residence Lien Recovery Fund created under Title 38, Chapter 11, in which the claimant is precluded from obtaining the required civil judgment or administrative order against the nonpaying party involved in the claim because the nonpaying party filed bankruptcy;
- (f) payment of approved claims against the Residence Lien Recovery Fund described in Subparagraph (e);
- (g) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as a formal adjudicative proceeding; and
- (h) board of appeal held in accordance with Subsection 58-56-8(3).

(2) The following adjudicative proceedings initiated by a Notice of Agency Action are classified as formal adjudicative proceedings:

- (a) disciplinary proceedings which result in the following sanctions:
 - (i) revocation of licensure;
 - (ii) suspension of licensure;
 - (iii) restricted licensure;
 - (iv) probationary licensure;
 - (v) issuance of a cease and desist order except when imposed by citation or by an order in a contested citation hearing;
 - (vi) administrative fine except when imposed by citation or by an order in a contested citation hearing; and
 - (vii) issuance of a public reprimand; and
- (b) unilateral modification of a disciplinary order.

R156-46b-202. Informal Adjudicative Proceedings.

(1) The following adjudicative proceedings initiated by a request for agency action are classified as informal adjudicative proceedings:

- (a) approval of application for initial licensure, renewal or reinstatement of licensure, or relicensure;
- (b) denial of application for initial licensure or relicensure;
- (c) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(6)(a);
- (d) denial of application for reinstatement of restricted,

suspended, or probationary licensure during the term of the restriction, suspension, or probation;

- (e) approval or denial of application for inactive or emeritus licensure status;
- (f) board of appeal under Subsection 58-56-8(3);
- (g) approval or denial of claims against the Residence Lien Recovery Fund created under Title 38, Chapter 11, except those in which the claimant is precluded from obtaining the required civil judgment or administrative order against the nonpaying party involved in the claim because the nonpaying party filed bankruptcy;
- (h) payment of approved claims against the Residence Lien Recovery Fund described in Subparagraph (g);
- (i) approval or denial of request to surrender licensure;
- (j) approval or denial of request for entry into diversion program under Section 58-1-404;
- (k) matters relating to diversion program;
- (l) contested citation hearing held in accordance with Subsection 58-55-503(4)(b);
- (m) approval or denial of request for modification of disciplinary order;

(n) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as an informal adjudicative proceeding;

- (o) approval or denial of request for correction of procedural or clerical mistakes;
- (p) approval or denial of request for correction of other than procedural or clerical mistakes; and
- (q) all other requests for agency action permitted by statute or rule governing the Division not specifically classified as formal adjudicative proceedings in Subsection R156-46b-201(1).

(2) The following adjudicative proceedings initiated by a notice of agency action or request for agency action are classified as informal adjudicative proceedings:

- (a) disciplinary proceeding seeking exclusively the issuance of a private reprimand;
- (b) nondisciplinary proceeding which results in cancellation of licensure;
- (c) disciplinary sanctions imposed in a memorandum of understanding with an applicant for licensure; and
- (d) termination of diversion agreements.

R156-46b-301. Designation.

The presiding officers for division adjudicative proceedings are as defined at Subsection 63-46b-2(h) and as specifically established by Section 58-1-109 and by Section R156-1-109.

R156-46b-401. In General.

(1) The procedures for formal division adjudicative proceedings are set forth in Sections 63-46b-6 through 63-46b-10, Rule R151-46b-1, and this rule.

(2) The procedures for informal division adjudicative proceedings are set forth in Section 63-46b-5, Rule R151-46b-1, and this rule.

R156-46b-403. Evidentiary Hearings in Informal Adjudicative Proceedings.

(1) Evidentiary hearings are not required for informal division adjudicative proceedings unless required by statute or rule, or permitted by rule and requested by a party within the time prescribed by rule.

(2) Unless otherwise provided, a request for an evidentiary hearing permitted by rule must be submitted in writing no later than 20 days following the issuance of the notice of agency action if the proceeding was initiated by the division, or together with the request for agency action if the proceeding was not

initiated by the division.

(3) Evidentiary hearings are required for the following informal proceedings:

(a) R156-46b-202(1)(l), contested citation hearing held in accordance with Subsection 58-55-503(4)(b); and

(b) R156-46b-202(1)(f), board of appeal held in accordance with Subsection 58-56-8(3).

(4) Evidentiary hearings are permitted for the following informal proceedings:

(a) R156-46b-202(1)(k), matters relating to a diversion program; and

(b) R156-46b-202(2)(a), issuance of a private reprimand.

(5) Unless otherwise agreed by the parties, no evidentiary hearing shall be held in an informal adjudicative proceeding unless timely notice of the hearing has been served upon the parties as required by Subsection 63-46b-5(1)(d). Timely notice means service of a Notice of Hearing upon all parties not later than ten days prior to any scheduled evidentiary hearing.

(6) Parties shall be permitted to testify, present evidence, and comment on the issues at an evidentiary hearing in a division informal adjudicative proceeding.

R156-46b-404. Orders in Informal Adjudicative Proceedings.

(1) Orders issued in division informal adjudicative proceedings shall comply with Subsection 63-46b-5(1)(i).

(2) Issuance of a license or approval of related requests in response to a request for agency action is sufficient to satisfy the requirements of Subsection 63-46b-5(1)(i).

(3) Issuance of a letter denying a license or related requests is sufficient to satisfy the requirements of Subsection 63-46b-5(1)(i). The letter must explain the reasons for the denial and the rights of the parties to seek agency review, including the time limits for requesting review.

(4) Unless otherwise specified by the director, the fact finder who serves as the presiding officer at an evidentiary hearing convened in division informal adjudicative proceedings shall issue a final order.

(5) Orders issued in division informal adjudicative proceedings in which an evidentiary hearing is convened shall comply with the requirements of Subsection 63-46b-10(1).

R156-46b-405. Informal Agency Advice.

(1) The division may issue an informal guidance letter in response to a request for advice unless the request specifically seeks a declaratory order.

(2) A notice shall appear in the informal guidance letter notifying the subject of the letter that the letter is an informal guidance letter only and is not intended as a formal declaratory order. The notice shall also provide the citation where the requirements which govern declaratory orders are found.

KEY: administrative procedures, government hearings, occupational licensing

November 2, 2004

Notice of Continuation June 11, 2001

63-46b-1(6)

58-1-106(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-55b. Electricians Licensing Rules.
R156-55b-101. Title.

These rules are known as the "Electricians Licensing Rules".

R156-55b-102. Definitions.

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

(1) "Electrical work" as used in Subsection 58-55-102(13)(a) and in these rules means installation, fabrication or assembly of equipment or systems included in "Premises Wiring" as defined in the edition of the National Electrical Code, as identified in Subsection R156-56-701(1)(b) which is hereby adopted and incorporated by reference. Electrical work includes installation of raceway systems used for any electrical purpose, and installation of field-assembled systems such as ice and snow melting, pipe-tracing, manufactured wiring systems, and the like. Electrical work does not include installation of factory-assembled appliances or machinery that are not part of the premises wiring unless wiring interconnections external to the equipment are required in the field, and does not include cable-type wiring that does not pose a hazard from a shock or fire initiation standpoint as defined in the National Electrical Code. Wiring covered by the National Electrical Code that does not pose a hazard as described above includes Class 2 wiring as defined in Article 725, Power-Limited circuits as defined in Article 760 and wiring methods covered by Chapter 8. Other wiring, including wiring under 50 volts is subject to licensing requirements.

(2) "Minor electrical work incidental to a mechanical or service installation" as used in Subsection 58-55-305(1)(n) means the electrical work involved in installation, replacement or repair of appliances or machinery that utilize electrical power. These installations do not include modification or repair of "Premises Wiring" as defined in the National Electrical Code. Electrical work is minor and incidental only when wiring is extended no more than ten feet in length from an outlet or disconnect provided specifically for the piece of equipment.

(3) "Residential project" as used in Subsection 58-55-302(3)(g)(ii) means electrical work performed in residential dwellings under four stories and will include single family dwellings, apartment complexes, condominium complexes and plated subdivisions.

(4) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 55, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-55b-501.

(5) "Work commonly done by unskilled labor" as used in Subsection 58-55-102(13)(b)(iii) means work such as digging, sweeping, hammering, carrying, drilling holes, or other tasks that do not directly involve the installation of raceways, conductors, cables, wiring devices, overcurrent devices, or distribution equipment. Tasks such as handling wire on large wire pulls or assisting in moving heavy electrical equipment may utilize unlicensed persons in accordance with Subsections 58-55-102(11)(b)(i) and (ii) when the task is performed in the immediate presence of and supervised by properly licensed persons. Tasks that are normally performed by the skilled labor of other trades, such as operating heavy equipment, driving, forming and pouring concrete, welding and erecting structural steel shall not be considered part of the electrical trade.

R156-55b-103. Authority.

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

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

The organization of this rule and its relationship to Rule

R156-1 is described in Section R156-1-107.

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

(1) In accordance with Subsection 58-55-302(1)(c)(i), the following examinations, each consisting of a theory section, a code section and a practical section, are approved by the division in collaboration with the board:

(a) Utah Electrical Licensing Examination for Master Electricians;

(b) Utah Electrical Licensing Examination for Master Residential Electricians;

(c) Utah Electrical Licensing Examination for Journeyman Electricians; and

(d) Utah Electrical Licensing Examination for Residential Journeyman Electricians.

(2) The minimum passing score for each section of each examination is 70%.

(3) If an applicant passes any one section of the examination and fails any one or more of the other sections, he is only required to retake the section of the examination failed. There must be a minimum of 30 days between the first test and the retake of any failed section. Test approval letters expire six months from the date of issue. Reapplication for licensure is required to obtain a new test authorization letter.

(4) Admission to the examination is permitted in the form of a letter from the Division after the applicant has completed all requirements for licensure set forth in Sections R156-55b-302b and R156-55b-302c.

(5) An examinee who fails any section of the Utah Electricians Licensing Examination two times shall not be permitted to retake the examination until:

(a) the examinee meets with the board and the board outlines a required remedial program of education or experience of up to one year in length which must be completed before the examinee may again take the examination; and

(b) upon successful completion of the required remedial program of education or experience, the examinee shall apply to the Division to retake the failed portion of the examination a maximum of two times with at least 30 days between tests. Failure to pass all required portions of the examination upon retake shall result in denial of their application for licensure. An applicant continuing to seek licensure must reapply for licensure by filing a new application with the required fee and may do so only after completing additional remedial education and experience as determined by the Division and the Board.

R156-55b-302b. Qualifications for Licensure - Education Requirements.

(1) In accordance with Subsection 58-55-302(3)(f)(i), the approved electrical training program for licensure as a residential journeyman electrician consists of:

(a) a curriculum of electrical study approved by the Utah Board of Regents or other curriculum that is deemed substantially equivalent; and

(b) at least two years of work experience as a licensed apprentice consistent with Section R156-55b-302c.

(2) In accordance with Subsection 58-55-302(3)(e)(i), the approved four year planned training program for licensure as a journeyman electrician consists of:

(a) a curriculum of electrical study approved by the Utah Board of Regents or other curriculum that is deemed substantially equivalent; and

(b) at least four years of work experience as a licensed apprentice consistent with Section R156-55b-302c.

(3) In accordance with Subsections 58-55-302(3)(c)(ii) and (iii), an approved course of study for a graduate of an electrical trade school is a curriculum of electrical study approved by the Utah Board of Regents or other curriculum that

is deemed substantially equivalent.

(4) It shall be the responsibility of the applicant to provide adequate documentation to establish equivalency.

(5) In accordance with Subsection 58-55-302(3)(c)(i), an approved college or university shall be accredited by the Engineering Accreditation Commission/Accreditation Board for Engineering and Technology or the Canadian Engineering Accrediting Board.

R156-55b-302c. Qualifications for Licensure - Work Experience.

(1) In accordance with Subsections 58-55-302(3)(c), (d), (e) and (f), the practical electrical experience, course of study, practical experience, planned training program, or electrical training program shall include on-the-job work experience in the following categories and approximate hours:

(a) approximately 3000-4800 hours residential journeyman electrician; 4000-6400 hours journeyman electrician in raceways, boxes and fittings, wire and cable to include conduit, wireways, cableways and other raceways and associated fittings, individual conductors and multiconductor cables, and nonmetallic-sheathed cable;

(b) approximately 600-1200 hours residential journeyman electrician; 800-1600 hours journeyman electrician in wire and cable to include individual conductors and multi-conductor cables;

(c) approximately 300-900 hours residential journeyman electrician; 400-1200 hours journeyman electrician in distribution and utilization equipment to include transformers, panel boards, switchboards, control panels, disconnects, motor starters, lighting fixtures, heaters, appliances, motors, and other distribution and utilizations equipment; and

(d) approximately 300-900 hours residential journeyman electrician; 400-1200 hours journeyman electrician in specialized work to include grounding, wiring of systems for sound, data, communications, alarms, automated systems, generators, batteries, computer equipment, etc.

(2) Each year of work experience shall include at least 2000 hours and may be obtained in one or more years. No more than one year of work experience may be credited for each 12 month period.

(3) No credit will be given for work experience performed illegally.

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

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

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

R156-55b-304. Continuing Education.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b), there is created a continuing education requirement as a condition for renewal or reinstatement of master, journeyman, residential master, residential journeyman and apprentice electrician licenses issued under Title 58, Chapter 55.

(2) Continuing education shall consist of 16 hours of course work in each preceding two year period of licensure or expiration of licensure.

(3) A minimum of eight hours shall be on the current edition of the National Electrical Code, as identified in Subsection R156-56-701(1)(b).

(4) The licensee is responsible for maintaining competent records of completed qualified continuing education for a period of four years after the close of the two year renewal period to which the records pertain.

(5) The standards for qualified continuing education are as

follows:

(a) the content must be relevant to the electrical trade and consistent with the laws and rules of this state;

(b) an instructor must either be currently teaching or have taught courses related to the electrical trade within the preceding two years for one of the following:

(i) a trade school, college or university whose electrical program is approved in accordance with Subsections R156-55b-302b(1)(a) and (5);

(ii) a professional association or organization representing licensed electricians whose program objectives relate to the electrical trade;

(iii) the licensing agency of another state;

(iv) a federal or other Utah agency or another state's agency; or

(v) the Division's Building Codes Education program.

(6) Electricians Licensing Board members, acting in their official capacity as a board member, may attend any continuing education course at no charge, at any time, for no credit, to monitor the quality of instruction.

R156-55b-401. Scope of Practice.

In accordance with Subsection 58-55-308(1), the following shall apply:

(1) It shall be the responsibility of the journeyman, residential journeyman, master or residential master electrician who is licensed by the division to insure that the work installed by himself, as well as by any apprentice under his supervision, is properly installed. Proper and safe installations shall be the responsibility of the supervising party or parties.

(2) An apprentice in a planned training program as set forth in Subsection 58-55-302(3)(e)(i) may be supervised as a fourth year apprentice in the fifth and sixth year of apprenticeship; however, in the seventh and succeeding years of apprenticeship, he shall be under immediate supervision as set forth in Subsection 58-55-302(3)(g)(i).

(3) All other apprentices shall be under immediate supervision as set forth in Subsection 58-55-302(3)(g).

(4) For the purposes of Subsections 58-55-102(24), 58-55-501(17) and 58-55-302(3)(g), apprentices and the licensed electricians responsible for their supervision shall be employees of the same contractor, or the employers of the supervising employees shall have a contractual responsibility for the performance of both the supervised and supervising employees. Employees of licensed professional employer organizations who provide workers under a contract with an electrical contractor shall be considered to be the employees of the electrical contractor for the purposes of this rule.

R156-55b-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failure of a licensee to carry a copy of their current license at all times when performing electrical work; and

(2) failure of an electrical contractor to certify an apprentice's hours and breakdown of work experience by category when requested by an apprentice that is or has been an employee.

KEY: occupational licensing, licensing, contractors, electricians

June 15, 2004

Notice of Continuation January 7, 2002

58-1-106(1)(a)

58-1-202(1)(a)

58-55-308(1)

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

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

R156-56-102. Definitions.

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

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

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

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

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

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

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

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

R156-56-103. Authority.

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

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

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

R156-56-105. Board of Appeals.

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

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

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

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

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

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

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

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

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

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

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

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

R156-56-106. Fees.

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

R156-56-201. Building Inspector Licensing Board.

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) the Mechanical Advisory Committee consisting of seven members; and

(g) the Electrical Advisory Committee consisting of seven members.

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

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

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

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

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

R156-56-301. Reserved.

Reserved.

R156-56-302. Licensure of Inspectors.

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

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

(a) Combination Inspector; or

(b) Limited Inspector.

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

(a) Combination Inspector.

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

(ii) Determine whether the construction, alteration,

remodeling, repair or installation of all components of any building, structure or work is in compliance with the adopted codes.

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

(b) Limited Inspector.

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

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

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

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

(c) Transitional Provisions.

(i) The state administered examinations upon which prior licenses were granted or upon which new limited inspector licenses may be granted shall be considered as current certification until March 1, 2004. Thereafter, licenses may not be granted or renewed unless the person has obtained current certificates issued by a national organization.

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

(a) Combination Inspector.

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

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

(ii) all of the following certifications:

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

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

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

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

(b) Limited Inspector.

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

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

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

Electrical Inspectors;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Application for License.

(a) An applicant for licensure shall:

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

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

(5) Code transition provisions.

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

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

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

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

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

R156-56-303. Renewal Cycle - Procedures.

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

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

R156-56-501. Reserved.

Reserved.

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

"Unprofessional conduct" includes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The coverage of the registration bond shall include

losses which may occur as the result of the factory built housing dealer's violation of the unprofessional or unlawful provisions contained in Title 58, Chapters 1 and 56.

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

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

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

(b) the 2002 edition of the National Electrical Code (NEC) promulgated by the National Fire Protection Association, to become effective January 1, 2003;

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

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

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

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

(2) In accordance with Subsection 58-56-4(4), and subject to the limitations contained in Subsection 58-56-4(5), the following codes are hereby incorporated by reference and approved for use and adoption by a compliance agency as the construction standards which may be applied to existing buildings in the regulation of building alteration, remodeling, repair, removal and rehabilitation in the state:

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

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

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

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

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

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

manufactured housing:

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

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

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

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

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

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

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

(a) the International Property Maintenance Code;

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

(c) the International Fire Code which pursuant to Section 58-3-7 authority is reserved to the Utah Fire Prevention Board; and

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

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

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

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

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

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

R156-56-703. Code Amendments.

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

- (1) All requests for amendments to any of the uniform building standards shall be submitted to the division on forms specifically prepared by the division for that purpose.
- (2) The processing of requests for code amendments shall be in accordance with division policies and procedures.

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

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

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

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

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

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

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

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

The remaining sections will be renumbered as follows:

- 109.3.6 Lath or gypsum board inspection
- 109.3.7 Fire-resistant penetrations
- 109.3.8 Energy efficiency inspections
- 109.3.9 Other inspections
- 109.3.10 Special inspections
- 109.3.11 Final inspection.

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

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

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

ASSISTED LIVING FACILITY. See Section 308.1.1.

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

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

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

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

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

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

TYPE 1 ASSISTED LIVING FACILITY. A residential facility that provides a protected living arrangement for

ambulatory, non-restrained persons who are capable of achieving mobility sufficient to exit the facility without the assistance of another person.

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

SEMI-INDEPENDENT. A person who is:

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

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

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

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

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

308.3 Group I-2. This occupancy shall include buildings and structures used for medical, surgical, psychiatric, nursing or custodial care on a 24-hour basis of more than three persons who are not capable of self-preservation. This group shall include, but not be limited to the following: hospitals, nursing homes (both intermediate care facilities and skilled nursing facilities), mental hospitals, detoxification facilities, ambulatory surgical centers with two or more operating rooms where care is less than 24 hours, outpatient medical care facilities for ambulatory patients (accommodating more than five such patients in each tenant space) which may render the patient incapable of unassisted self-preservation, and type 2 assisted living facilities. Type 2 assisted living facilities with five or fewer persons shall be classified as a Group R-4. Type 2 assisted living facilities as defined in 308.1.1 with at least six and not more than sixteen residents shall be classified as a Group I-1 facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Use is approved by the State Department of Health, as enacted under the authority of the Utah Child Care Licensing Act, UCA, Sections 26-39-101 through 26-39-110, and in any of the following categories:

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

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

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

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

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

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

403.9.1 Elevator lobby. Elevators on all floors shall open into elevator lobbies that are separated from the remainder of the building, including corridors and other means of egress by smoke partitions complying with Section 710. Elevator lobbies shall have at least one means of egress complying with Chapter 10 and other provisions within the code. Elevator lobbies shall be separated from a fire resistance rated corridor with fire

partitions complying with Section 708 and shall have walls of not less than one-hour fire resistance rating and openings shall conform to Section 715.

Exceptions:

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

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

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

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

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

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

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

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

4. See Section 403.9.1 for high rise buildings.

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

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

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

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

Exception:

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

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

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

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

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

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

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

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

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

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

in Group R-1:

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

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

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

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

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

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

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

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

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

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

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

inch (19.1 mm) but not more than 1.25 inches (32 mm) shall be provided on stairways with solid risers where the tread depth is less than 10 inches (254 mm).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Where A = Elevation above sea level at the location of the

structure (ft/1000).

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

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

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

Where

W_s = Weight of snow to be included, psf

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

P_f = Design roof snow load, psf

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

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

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

Occupancy or Use	Uniform (psf)	Concentrated (lbs)
27. Residential		
Group R-3 as applicable in Section 101.2		-
Uninhabitable attics without storage	10 ⁱ	
Uninhabitable attics with storage	20	
Habitable attics and sleeping areas	30	
All other areas except balconies and decks	40	
Hotels and multifamily dwellings		
Private rooms	40	
Public rooms and corridors serving them	100	

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

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

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

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

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

(38) Section 1608.1.1 is added as follows:

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

WHERE

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

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

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

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

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

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

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

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

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

TABLE NO. 1608.1.1(a)
STATE OF UTAH - REGIONAL SNOW LOAD FACTORS

COUNTY	P _o	S	A _o
Beaver	43	63	6.2
Box Elder	43	63	5.2
Cache	50	63	4.5
Carbon	43	63	5.2
Daggett	43	63	6.5
Davis	43	63	4.5
Duchesne	43	63	6.5
Emery	43	63	6.0
Garfield	43	63	6.0
Grand	36	63	6.5
Iron	43	63	5.8
Juab	43	63	5.2
Kane	36	63	5.7
Millard	43	63	5.3
Morgan	57	63	4.5
Piute	43	63	6.2
Rich	57	63	4.1
Salt Lake	43	63	4.5
San Juan	43	63	6.5
Sanpete	43	63	5.2
Sevier	43	63	6.0
Summit	86	63	5.0
Tooele	43	63	4.5
Uintah	43	63	7.0
Utah	43	63	4.5
Wasatch	86	63	5.0
Washington	29	63	6.0
Wayne	36	63	6.5
Weber	43	63	4.5

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

Roof Snow Load (PSF)	Ground Snow Load (PSF)		
Beaver County			
Beaver	5920 ft.	43	62
Box Elder County			
Brigham City	4300 ft.	30	43
Tremonton	4290 ft.	30	43
Cache County			
Logan	4530 ft.	35	50
Smithfield	4595 ft.	35	50
Carbon County			
Price	5550 ft.	30	43
Daggett County			
Manila	5377 ft.	30	43
Davis County			
Bountiful	4300 ft.	30	43
Farmington	4270 ft.	30	43
Layton	4400 ft.	30	43
Fruit Heights	4500 ft.	40	57
Duchesne County			
Duchesne	5510 ft.	30	43
Roosevelt	5104 ft.	30	43

Emery County			
Castledale	5660 ft.	30	43
Green River	4070 ft.	25	36
Garfield County			
Panguitch	6600 ft.	30	43
Grand County			
Moab	3965 ft.	25	36
Iron County			
Cedar City	5831 ft.	30	43
Juab County			
Nephi	5130 ft.	30	43
Kane County			
Kanab	5000 ft.	25	36
Millard County			
Millard	5000 ft.	30	43
Delta	4623 ft.	30	43
Morgan County			
Morgan	5064 ft.	40	57
Piute County			
Piute	5996 ft.	30	43
Rich County			
Woodruff	6315 ft.	40	57
Salt Lake County			
Murray	4325 ft.	30	43
Salt Lake City	4300 ft.	30	43
Sandy	4500 ft.	30	43
West Jordan	4375 ft.	30	43
West Valley	4250 ft.	30	43
San Juan County			
Blanding	6200 ft.	30	43
Monticello	6820 ft.	35	50
Sanpete County			
Fairview	6750 ft.	35	50
Mt. Pleasant	5900 ft.	30	43
Manti	5740 ft.	30	43
Ephraim	5540 ft.	30	43
Gunnison	5145 ft.	30	43
Sevier County			
Salina	5130 ft.	30	43
Richfield	5270 ft.	30	43
Summit County			
Coalville	5600 ft.	60	86
Kamas	6500 ft.	70	100
Park City	6800 ft.	100	142
Park City	8400 ft.	162	231
Summit Park	7200 ft.	90	128
Tooele County			
Tooele	5100 ft.	30	43
Uintah County			
Vernal	5280 ft.	30	43
Utah County			
American Fork	4500 ft.	30	43
Orem	4650 ft.	30	43
Pleasant Grove	5000 ft.	30	43
Provo	5000 ft.	30	43
Spanish Fork	4720 ft.	30	43
Wasatch County			
Heber	5630 ft.	60	86
Washington County			
Central	5209 ft.	25	36
Dameron	4550 ft.	25	36
Leeds	3460 ft.	20	29
Rockville	3700 ft.	25	36
Santa Clara	2850 ft.	15 (1)	21
St. George	2750 ft.	15 (1)	21
Wayne County			
Loa	7080 ft.	30	43
Hanksville	4308 ft.	25	36
Weber County			
North Ogden	4500 ft.	40	57
Ogden	4350 ft.	30	43

NOTES

- (1) The IBC requires a minimum live load - See 1607.11.2.
- (2) This table is informational only in that actual site elevations may vary. Table is only valid if site elevation is within 100 feet of the listed elevation.

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

1608.2 Ground Snow Loads. The ground snow loads to be used in determining the design snow loads for roofs in states other than Utah are given in Figure 1608.2 for the contiguous United States and Table 1608.2 for Alaska. Site-specific case studies shall be made in areas designated CS in figure 1608.2. Ground snow loads for sites at elevations above the limits indicated in Figure 1608.2 and for all sites within the CS areas

shall be approved. Ground snow load determination for such sites shall be based on an extreme value statistical analysis of data available in the vicinity of the site using a value with a 2-percent annual probability of being exceeded (50-year mean recurrence interval). Snow loads are zero for Hawaii, except in mountainous regions as approved by the building official.

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

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

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

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

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

Exceptions:

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

2. Specific detailing provisions required for a new structure are not required to be met where it can be shown an equivalent level of performance and seismic safety contemplated for a new structure is obtained. Such analysis shall consider the regularity, overstrength, redundancy and ductility of the structure within the context of the specific detailing provided. Alternatively, the building official may allow the structure to be upgraded in accordance with the latest edition of the "Guidelines for Seismic Rehabilitation of Existing Buildings" or another nationally recognized standard for retrofit of existing buildings.

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

4. Roof snow loads of 30 psf or less need not be included. Where the roof snow load exceeds 30 psf, the snow load shall be included, but may be adjusted in accordance with the following formula: $W_s = (0.20 + 0.025(A-5))P_f$

WHERE:

W_s = Weight of snow to be included in seismic calculation;
 A = Elevation above sea level at the location of the structure (ft/1000)

P_f = Design roof snow load, psf

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

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

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

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

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

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

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

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

3. Nonlinear Time-history Analysis.

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

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

1805.2.1 Frost protection. Except where otherwise protected from frost, foundation walls, piers and other permanent supports of buildings and structures shall be protected from frost by one or more of the following methods:

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

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

1. Classified in Importance Category I (see Table 1604.5), or Occupancy Group U (see Section 312);

2. Area of 1,000 square feet (93m²) or less;

3. Eave height of 10 feet (3048 mm) or less; and

4. Constructed of light-wood-framed construction.

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

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

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

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

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

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

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

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

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

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

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

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

inches (102 mm) from each end of each piece.

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

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

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

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

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

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

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

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

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

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

EXCEPTION: Group R-3 and U occupancies.

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

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

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

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

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

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

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

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

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

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

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

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

(1) City of Farmington:

Section (F)903.2.14 is adopted as follows:

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

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

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

(2) City of North Salt Lake

Section (F)903.2.14 is adopted as follows:

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

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

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

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

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

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

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

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

All new construction having three (3) or more dwelling units, including units rented or leased, and including

condominiums or other separate ownership.

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

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

All existing building within the Historic District Commercial Business zone.

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

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

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

TABLE 1505.1.1
WILDFIRE HAZARD SEVERITY SCALE

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

TABLE 1505.1.2
PROHIBITION/ALLOWANCE OF WOOD ROOFING

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

Appendix C is adopted.

(4) Sandy City

Section (F)903.2.14 is added as follows:

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

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

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

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

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

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

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

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

Backsiphonage. The backflow of potentially contaminated, polluted or used water into the potable water system as a result of the pressure in the potable water system falling below atmospheric pressure of the plumbing fixtures, pools, tanks or vats connected to the potable water distribution piping.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) Section 304.3 Meter Boxes is deleted.

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

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

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

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

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

305.8 Protection against physical damage. In concealed locations where piping, other than cast-iron or galvanized steel, is installed through holes or notches in studs, joists, rafters or similar members less than 1 1/2 inches (38 mm) from the nearest edge of the member, the pipe shall be protected by shield plates.

Protective shield plates shall be minimum of 1/16 inch-thick (1.6 mm) steel, shall cover the area of the pipe where the member is notched or bored, and shall be at least the thickness of the framing member penetrated.

(14) Section 305.10 is added as follows:

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

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

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

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

(16) Section 311.1 is deleted.

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

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

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

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

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

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

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

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

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

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

412.1 Approval. Floor drains shall be made of ABS, PVC,

cast-iron, stainless steel, brass, or other approved materials that are listed for the use.

(22) Section 412.5 is added as follows:

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

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

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

(24) Section 418.1 is deleted and replaced with the following:

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

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

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

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

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

(27) Section 504.6.2 is deleted and replaced with the following:

504.6.2 Material. Relief valve discharge piping shall be of those materials listed in Table 605.5 and meet the requirements for Section 605.5 or shall be tested, rated and approved for such use in accordance with ASME A112.4.1. Piping from safety pan drains shall meet the requirements of Section 804.1 and be constructed of those materials listed in Section 702.

(28) Section 504.7.1 is amended as follows:

The measurement of "3/4 inch" in the last sentence of the paragraph is replaced with the measurement "1 1/2 inch".

(29) Section 504.7.2 is deleted and replaced with the following:

504.7.2 Pan drain termination. The pan drain shall extend full-size and terminate over a suitably located indirect waste receptor, floor drain or extend to the exterior of the building and terminate not less than 6 inches (152 mm) and not more than 24 inches (610 mm) above the adjacent ground surface. When permitted by the administrative authority, the pan drain may be

directly connected to a soil stack, waste stack, or branch drain. The pan drain shall be individually trapped and vented as required in Section 907.1. The pan drain shall not be directly or indirectly connected to any vent. The trap shall be provided with a trap primer conforming to ASSE 1018 or ASSE 1044.

(30) A new section 504.7.3 is added as follows:

504.7.3 Pan Designation. A water heater pan shall be considered an emergency receptor designated to receive the discharge of water from the water heater only and shall not receive the discharge from any other fixtures, devices or equipment.

(31) Section 602.3 is deleted and replaced with the following:

602.3 Individual water supply. Where a potable public water supply is not available, individual sources of potable water supply shall be utilized provided that the source has been developed in accordance with Sections 73-3-1, 73-3-3, and 73-3-25, Utah Code Ann. (1953), as amended, as administered by the Department of Natural Resources, Division of Water Rights. In addition, the quality of the water shall be approved by the local health department having jurisdiction. The source shall supply sufficient quantity of water to comply with the requirements of this chapter.

(32) Sections 602.3.1, 602.3.2, 602.3.3, 602.3.4, 602.3.5 and 602.3.5.1 are deleted in their entirety.

(33) Section 604.4.1 is added as follows:

604.4.1 Metering faucets. Self closing or metering faucets shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.

(34) Section 606.5 is deleted and replaced with the following:

606.5 Water pressure booster systems. Water pressure booster systems shall be provided as required by Section 606.5.1 through 606.5.11.

(35) Section 606.5.11 is added as follows:

606.5.11 Prohibited installation. In no case shall a booster pump be allowed that will lower the pressure in the public main to less than 20 psi.

(36) In Section 608.1, the following sentence is added at the end of the paragraph:

Connection without an air gap between potable water piping and sewer-connected waste shall not exist under any condition.

(37) Table 608.1 is deleted and replaced with the following:

Assembly (applicable standard)	Degree of Hazard	Application	Installation Criteria
Air Gap (ASME A112.1.2)	High or Low	Backsiphonage	See Table 608.15.1
Reduced Pressure Principle Backflow Preventer (AWWA C511, USC-FCCCHR, ASSE 1013 CSA CNA/CSA-B64.4) and Reduced Pressure Detector Assembly (ASSE 1047, USC-FCCCHR)	High or Low	Backpressure or Backsiphonage 1/2" - 16"	a. The bottom of each RP assembly shall be a minimum of 12 inches above the ground or floor. b. RP assemblies shall NOT be installed in a pit. c. The relief valve on each RP assembly shall not be directly connected to any waste disposal line, including sanitary sewer, storm drains, or vents. d. The assembly shall be installed in a horizontal position only unless listed

			or approved for vertical installation.		e. The AVB shall be installed in a vertical position only.
Double Check Backflow Prevention Assembly (AWWA C510, USC-FCCCHR, ASSE 1015) Double Check Detector Assembly Backflow Preventer (ASSE 1048, USC-FCCCHR)	Low	Backpressure or Backsiphonage 1/2" - 16"	a. If installed in a pit, the DC assembly shall be installed with a minimum of 12 inches of clearance between all sides of the vault including the floor and roof or ceiling with adequate room for testing and maintenance. b. Shall be installed in a horizontal position unless listed or approved for vertical installation.	General Installation Criteria	The assembly owner, when necessary, shall provide devices or structures to facilitate testing, repair, and/or maintenance and to insure the safety of the backflow technician. Assemblies shall not be installed more than five feet off the floor unless a permanent platform is installed.
Pressure Vacuum Breaker Assembly (ASSE 1020, USC-FCCCHR)	High or Low	Backsiphonage 1/2" - 2"	a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions. b. Shall be installed a minimum of 12 inches above all downstream piping and the highest point of use. c. Shall not be installed below ground or in a vault or pit. d. Shall be installed in a vertical position only.		The body of the assembly shall not be closer than 12 inches to any wall, ceiling or incumbrance, and shall be accessible for testing, repair and/or maintenance. In cold climates, assemblies shall be protected from freezing by a means acceptable to the code official. Assemblies shall be maintained as an intact assembly.
Spill Resistant Vacuum Breaker (ASSE 1056, USC-FCCCHR)	High or Low	Backsiphonage 1/4" - 2"	a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions. b. Shall be installed a minimum of 12 inches above all downstream piping and the highest point of use. c. Shall not be installed below ground or in a vault or pit. d. Shall be installed in a vertical position only.		
Atmospheric Vacuum Breaker (ASSE 1001, USC-FCCCHR, CSA CAN/CSA-B64.1.1)	High or Low	Backsiphonage	a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions. b. Shall not be installed where it may be subjected to continuous pressure for more than 12 consecutive hours at any time. c. Shall be installed a minimum of six inches above all downstream piping and the highest point of use. d. Shall be installed on the discharge (downstream) side of any valves.		

(38) Table 608.1.1 is added as follows:

TABLE 608.1.1
Specialty Backflow Devices for low hazard use only

Device	Degree of Hazard	Application	Applicable Standard
Antisiphon-type Water Closet Flush Tank Ball Cock	Low	Backsiphonage	ASSE 1002 CSA CAN/ CSA-B125
Dual check valve Backflow Preventer	Low	Backsiphonage or Backpressure 1/4" - 1"	ASSE 1024
Backflow Preventer with Intermediate Atmospheric Vent	Low Residential Boiler	Backsiphonage or Backpressure 1/4" - 3/4"	ASSE 1012 CSA CAN/ CSA-B64.3
Dual check valve type Backflow Preventer for Carbonated Beverage Dispensers/Post Mix Type	Low	Backsiphonage or Backpressure 1/4" - 3/8"	ASSE 1032
Hose-connection Vacuum Breaker	Low	Backsiphonage 1/2", 3/4", 1"	ASSE 1011 CSA CAN/ CSA-B64.2
Vacuum Breaker Wall Hydrants, Frost-resistant, Automatic Draining Type	Low	Backsiphonage 3/4", 1"	ASSE 1019 CSA CAN/ CSA-B64.2.2
Laboratory Faucet Backflow Preventer	Low	Backsiphonage	ASSE 1035 CSA CAN/ CSA-B64.7
Hose Connection Backflow Preventer	Low	Backsiphonage 1/2" - 1"	ASSE 1052

Installation Guidelines: The above specialty devices shall be installed in accordance with their listing and the manufacturer's

instructions and the specific provisions of this chapter.

(39) In Section 608.3.1, the following sentence is added at the end of the paragraph:

All piping and hoses shall be installed below the atmospheric vacuum breaker.

(40) Section 608.7 is deleted in its entirety.

(41) In Section 608.8, the following sentence is added at the end of the paragraph:

In addition each nonpotable water outlet shall be labeled with the words "CAUTION: UNSAFE WATER, DO NOT DRINK".

(42) In Section 608.11, the following sentence is added at the end of the paragraph:

The coating shall conform to NSF Standard 61 and application of the coating shall comply with the manufacturers instructions.

(43) Section 608.13.3 is deleted and replaced with the following:

608.13.3 Backflow preventer with intermediate atmospheric vent. Backflow preventers with intermediate atmospheric vents shall conform to ASSE 1012 or CAS CAN/CAS-B64.3. These devices shall be permitted to be installed on residential boilers only where subject to continuous pressure conditions. The relief opening shall discharge by air gap and shall be prevented from being submerged.

(44) Section 608.13.4 is deleted in its entirety.

(45) Section 608.15.3 is deleted and replaced with the following:

608.15.3 Protection by a backflow preventer with intermediate atmospheric vent. Opening and outlets to residential boilers only shall be protected by a backflow preventer with an intermediate atmospheric vent.

(46) Section 608.15.4 is deleted and replaced with the following:

608.15.4 Protection by a vacuum breaker. Openings and outlets shall be protected by atmospheric-type or pressure-type vacuum breakers. The critical level of the atmospheric vacuum breaker shall be set a minimum of 6 inches (152 mm) above the flood level rim of the fixture or device. The critical level of the pressure vacuum breaker shall be set a minimum of 12 inches (304 mm) above the flood level rim of the fixture or device. Ball cocks shall be set in accordance with Section 425.3.1. Vacuum breakers shall not be installed under exhaust hoods or similar locations that will contain toxic fumes or vapors. Pipe-applied vacuum breakers shall be installed not less than 6 inches (152 mm) above the flood level rim of the fixture, receptor or device served. No valves shall be installed downstream of the atmospheric vacuum breaker.

(47) Section 608.15.4.2 is deleted and replaced with the following:

608.15.4.2 Hose connections. Sillcocks, hose bibbs, wall hydrants and other openings with a hose connection shall be protected by an atmospheric-type or pressure-type vacuum breaker or a permanently attached hose connection vacuum breaker. Add-on-type backflow prevention devices shall be non-removable. In climates where freezing temperatures occur, a listed self-draining frost proof hose bibb with an integral backflow preventer shall be used.

(48) In Section 608.16.2, the first sentence of the paragraph is deleted and replaced as follows:

608.16.2 The potable water supply to the residential boiler shall be equipped with a backflow preventer with an intermediate atmospheric vent complying with ASSE 1012 or CSA CAN/CSA B64.3.

(49) Section 608.16.3 is deleted and replaced with the following:

608.16.3 Heat exchangers. Heat exchangers shall be separated from potable water by double-wall construction. An air gap open to the atmosphere shall be provided between the

two walls.

Exceptions:

1. Single wall heat exchangers shall be permitted when all of the following conditions are met:

a. It utilizes a heat transfer medium of potable water or contains only substances which are recognized as safe by the United States Food and Drug Administration (FDA);

b. The pressure of the heat transfer medium is maintained less than the normal minimum operating pressure of the potable water system; and

c. The equipment is permanently labeled to indicate only additives recognized as safe by the FDA shall be used.

2. Steam systems that comply with paragraph 1 above.

3. Approved listed electrical drinking water coolers.

(50) In Section 608.16.4.1, add the following exception:

Exception: All class 1 and 2 systems containing chemical additives consisting of strictly glycerine (C.P. or U.S.P. 96.5 percent grade) or propylene glycol shall be protected against backflow with a double check valve assembly. Such systems shall include written certification of the chemical additives at the time of original installation and service or maintenance.

(51) Section 608.16.5 is deleted and replaced with the following:

608.16.5 Connections to lawn irrigation systems. The potable water supply to lawn irrigation systems shall be protected against backflow by an atmospheric-type vacuum breaker, a pressure-type vacuum breaker, a double check valve backflow preventer or a reduced pressure principle backflow preventer. A valve shall not be installed downstream from an atmospheric vacuum breaker. Where chemicals are introduced into the system, the potable water supply shall be protected against backflow by a reduced pressure principle backflow preventer.

(52) Section 608.16.7 is deleted and replaced with the following:

608.16.7 Chemical dispensers. Where chemical dispensers connect to the water distribution system, the water supply system shall be protected against backflow in accordance with Section 608.13.1, Section 608.13.2, Section 608.13.5, Section 608.13.6 or Section 608.13.8.

(53) Section 608.16.8 is deleted and replaced with the following:

608.16.8 Portable cleaning equipment. Where the portable cleaning equipment connects to the water distribution system, the water supply system shall be protected against backflow in accordance with Section 608.13.1, Section 608.13.2 or Section 608.13.8.

(54) Section 608.16.9 is deleted and replaced with the following:

608.16.9 Dental pump equipment or water syringe. Where dental pumping equipment or water syringes connects to the water distribution system, the water supply system shall be protected against backflow in accordance with Section 608.13.1, Section 608.13.2, Section 608.13.5, Section 608.13.6 or Section 608.13.8.

(55) Section 608.16.10 is added as follows:

608.16.10 Automatic and coin operated car washes. The water supply to an automatic or coin operated car wash shall be protected in accordance with Section 608.13.1 or Section 608.13.2.

(56) Section 608.17 is deleted in its entirety.

(57) Section 701.2 is deleted and replaced with the following:

701.2 Sewer required. Every building in which plumbing fixtures are installed and all premises having drainage piping shall be connected to a public sewer where the sewer is within 300 feet of the property line in accordance with Section 10-8-38, Utah Code Ann., (1953), as amended; or an approved private sewage disposal system in accordance with Rule R317-

501 through R317-513 and Rule R317-5, Utah Administrative Code, as administered by the Department of Environmental Quality, Division of Water Quality.

(58) Section 802.3.2 is deleted in its entirety and replaced with the following:

802.3.2 Open hub waste receptors. Waste receptors for clear water waste shall be permitted in the form of a hub or pipe extending not more than 1/2 inch above a water impervious floor and are not required to have a strainer.

(59) Section 904.1 is deleted and replaced with the following:

904.1 Roof extensions. All open vent pipes that extend through a roof shall be terminated at least 12 inches (304.8 mm) above the roof, except that where a roof is to be used for any purpose other than weather protection, the vent extension shall be run at least 7 feet (2134 mm) above the roof.

(60) In Section 904.6, the following sentence is added at the end of the paragraph:

Vents extending through the wall shall terminate not less than 12 inches from the wall with an elbow pointing downward.

(61) In Section 905.4, the following sentence is added at the end of the paragraph:

Horizontal dry vents below the flood level rim shall be permitted for floor drain and floor sink installations when installed in accordance with Sections 702.2, 905.2 and 905.3 and provided with a wall clean out.

(62) Section 1002.2 is deleted and replaced with the following:

1002.2 Design of traps. Fixture traps shall be self-scouring. Fixture traps shall not have interior partitions, except where such traps are integral with the fixture or where such traps are constructed of an approved material that is resistant to corrosion and degradation. Slip joints shall be made with an approved elastomeric gasket and shall only be installed on the trap inlet, trap outlet and within the trap seal. One slip joint fitting shall be allowed to be installed downstream of the trap.

(63) Section 1002.8 is deleted and replaced with the following:

1002.8 Recess for trap connection. A recess provided for connection of the underground trap, such as one serving a bathtub in slab-type construction, shall have sides and a bottom of corrosion-resistant, insect- and vermin-proof construction. The annular space between the pipe and the penetration shall not exceed 1/2 inch (12.7 mm).

(64) Section 1003.3.5 is added as follows:

1003.3.5 Grease trap restriction. Unless specifically required or permitted by the code official, no food waste grinder or dishwasher shall be connected to or discharge into any grease trap.

(65) Section 1104.2 is deleted and replaced with the following:

1104.2 Combining storm and sanitary drainage prohibited. The combining of sanitary and storm drainage systems is prohibited.

(66) Section 1108 is deleted in its entirety.

(67) Chapter 13, Referenced Standards, is amended as follows:

NSF - Standard Reference Number 61-99 - The following referenced in code section number is added: 608.11

The following reference standard is added:

TABLE

USC- FCCCHR 9th Edition Manual of Cross Connection Control	Foundation for Cross-Connection Table 608.1 Control and Hydraulic Research University of Southern California Kaprielian Hall 300 Los Angeles CA 90089-2531
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(68) Appendix C of the IPC, Gray Water Recycling Systems as amended herein shall not be adopted by any local jurisdiction until such jurisdiction has requested Appendix C as amended to be adopted as a local amendment and such local amendment has been approved as a local amendment under these rules.

(69) In jurisdictions which have adopted Appendix C as amended as a local amendment as provided herein, Section 301.3 of the IPC is deleted and replaced with the following:

301.3 Connection to the drainage system. All plumbing fixtures, drains, appurtenances and appliances used to receive or discharge liquid wastes or sewage shall be directly connected to the drainage system of the building or premises, in accordance with the requirements of this Code. This section shall not be construed to prevent indirect waste systems provided for in Chapter 8.

Exception: Bathtubs, showers, lavatories, clothes washers and laundry sinks shall not be required to discharge to the sanitary drainage system where such fixtures discharge to a gray water recycling system meeting all the requirements as specified in Appendix C as amended by these rules.

(70) Appendix C is deleted and replaced with the following, to be effective only in jurisdictions which have adopted Appendix C as amended as a local amendment under these rules:

Appendix C, Gray Water Recycling Systems, C101 Gray Water Recycling Systems

C101.1 General, recycling gray water within a building. In R1, R2 and R4 occupancies and one- and two-family dwellings, gray water recycling systems are prohibited.

In commercial occupancies, recycled gray water shall only be utilized for the flushing of water closets and urinals that are located in the same building as the gray water recycling system, provided the following conditions are met:

1. Such systems comply with Sections C101.1 through C101.14 as amended by these rules.

2. The commercial establishment demonstrates that it has and will have qualified staff to oversee the gray water recycling systems. Qualified staff is defined as level 3 waste water treatment plan operator as specified by the Department of Environmental Quality.

3. Gray water recycling systems shall only receive non hazardous waste discharge of bathtubs, showers, lavatories, clothes washers and laundry sinks such as chemicals having a pH of 6.0 to 9.0, or non flammable or non combustible liquids, liquids without objectionable odors, non-highly pigmented liquids, or other liquids that will not interfere with the operation of the sewer treatment facilities.

C101.2 Permit required. A permit for any gray water recycling system shall not be issued until complete plans prepared by a licensed engineer, with appropriate data satisfactory to the Code Official, have been submitted and approved. No changes or connections shall be made to either the gray water recycling system or the potable water system within any site containing a gray water recycling system, without prior approved by the Code Official. A permit may also be required by the local health department to monitor compliance with this appendix for system operator standards and record keeping.

C101.3 Definition. The following term shall have the meaning shown herein.

GRAY WATER. Waste water discharged from lavatories, bathtubs, showers, clothes washers and laundry sinks.

C101.4 Installation. All drain, waste and vent piping associated with gray water recycling systems shall be installed in full compliance with this code.

C101.5 Gray Water Reservoir. Gray water shall be collected in an approved reservoir construction of durable, nonabsorbent and corrosion-resistant materials. The reservoir

shall be a closed and gas-tight vessel. Gas tight access openings shall be provided to allow inspection and cleaning of the reservoir interior. The holding capacity of the reservoir shall be a minimum of twice the volume of water required to meet the daily flushing requirements of the fixtures supplied by the gray water, but not less than 50 gallons (189 L). The reservoir shall be sized to limit the retention time of gray water to 72 hours maximum.

C101.6 Filtration. Gray water entering the reservoir shall pass through an approved cartridge filter or other method approved by the Code Official.

C101.7 Disinfection. Gray water shall be disinfected by an approved method that employs one or more disinfectants such as chlorine, iodine or ozone. A minimum of 1 ppm free residual chlorine shall be maintained in the gray water recycling system reservoir. Such disinfectant shall be automatically dispensed. An alarm shall be provided to shut down the gray water recycling system if disinfectant levels are not maintained at the required levels.

C101.8 Makeup water. Potable water shall be supplied as a source of makeup water for the gray water recycling system. The potable water supply to any building with a gray water recycling system shall be protected against backflow by an RP backflow assembly installed in accordance with this code. There shall be full-open valve on the makeup water supply to the reservoir. The potable water supply to the gray water reservoir shall be protected by an air gap installed in accordance with this code.

C101.9 Overflow. The reservoir shall be equipped with an overflow pipe of the same diameter as the influent pipe for the gray water. The overflow shall be directly connected to the sanitary drainage system.

C101.10 Drain. A drain shall be located at the lowest point of the reservoir and shall be directly connected to the sanitary drainage system. The drain shall be the same diameter as the overflow pipe required by Section C101.9 and shall be provided with a full-open valve.

C101.11 Vent required. The reservoir shall be provided with a vent sized in accordance with Chapter 9 based on the size of the reservoir influent pipe.

C101.12 Coloring. The gray water shall be automatically dyed blue or green with a food grade vegetable dye before such water is supplied to the fixtures.

C101.13 Identification. All gray water distribution piping and reservoirs shall be identified as containing non-potable water. Gray water recycling system piping shall be permanently colored purple or continuously wrapped with purple-colored Mylar tape. The tape or permanently colored piping shall be imprinted in black, upper case letters with the words "CAUTION: GRAY WATER, DO NOT DRINK."

All equipment areas and rooms for gray water recycling system equipment shall have a sign posted in a conspicuous place with the following text: TO CONSERVE WATER, THIS BUILDING USES GRAY WATER TO FLUSH TOILETS AND URINALS, DO NOT CONNECT TO THE POTABLE WATER SYSTEM. The location of the signage shall be determined by the Code Official.

C101.14 Removal from service. All gray water recycling systems that are removed from service shall have all connections to the reservoir capped and routed back to the building sewer. All gray water distribution lines shall be replaced with new materials.

C201.1 Outside the building. Gray water reused outside the building shall comply with the requirements of the Department of Environmental Quality Rule R317.

R156-56-708. Statewide Amendments to the IMC.

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

R156-56-709. Statewide Amendments to the IFGC.

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

(1) Chapter 4, Section 401 General, a new section 401.9 is added as follows:

401.9 Meter protection. Gas meters shall be protected from physical damage, including falling ice and snow.

R156-56-710. Statewide Amendments to the IECC.

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

(1) In Section 504.7, the following exception is added:

Exception: Heat traps, other than the arrangement of piping and fittings, shall be prohibited unless a means of controlling thermal expansion can be ensured as required in the IPC Section 607.3.

R156-56-711. Statewide Amendments to the IRC.

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

(1) All amendments to the IBC under Section R156-56-704, local amendments under Section R156-56-705, the NEC under Section R156-56-706, the IPC under Section R156-56-707, the IMC under Section R156-56-708, the IFGC under Section R156-56-709 and the IECC under Section R156-56-710 which may be applied to detached one and two family dwellings and multiple single family dwellings shall be applicable to the corresponding provisions of the IRC. All references to the International Electrical Code are deleted and replaced with the National Electrical Code adopted under Section R156-56-701(1)(b). Should there be any conflicts between the NEC and the IRC, the NEC shall prevail.

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

R109.1.5 Weather-resistive barrier and flashing inspections. An inspection shall be made of the weather-resistive barrier as required by Section R703.1 and flashings as required by Section R703.8 to prevent water from entering the weather-resistant exterior wall envelope.

The remaining sections are renumbered as follows:

R109.1.6 Other inspections

R109.1.6.1 Fire-resistance-rated construction inspection

R109.1.7 Final inspection.

(3) Section R114.1 is deleted and replaced with the following:

R114.1 Notice to owner. Upon notice from the building official that work on any building or structured is being prosecuted contrary to the provisions of this code or other pertinent laws or ordinances or in an unsafe and dangerous manner, such work shall be immediately stopped. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent or to the person doing the work; and shall state the conditions under which work will be permitted to resume.

(4) In Section R202, the definition of "Backsiphonage" is deleted and replaced with the following:

BACKSIPHONAGE: The backflow of potentially contaminated, polluted or used water into the potable water system as a result of the pressure in the potable water system falling below atmospheric pressure of the plumbing fixtures, pools, tanks or vats connected to the potable water distribution piping.

(5) In Section R202 the following definition is added:

CERTIFIED BACKFLOW PREVENTER ASSEMBLY TESTER: A person who has shown competence to test Backflow prevention assemblies to the satisfaction of the authority having jurisdiction under Subsection 19-4-104(4), Utah Code Ann. (1953), as amended.

(6) In Section R202 the definition of "Cross Connection" is deleted and replaced with the following:

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

(7) In Section R202 the following definition is added:

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

(8) In Section R202 the definition of "Potable Water" is deleted and replaced with the following:

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

(9) In Section R202, the following definition is added:

S-Trap. A trap having it's weir installed above the inlet of the vent connection.

(10) In Section R202 the definition of "Water Heater" is deleted and replaced with the following:

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

(11) Section R301.5 is deleted and replaced with the following:

R301.5 Live Load. The minimum uniformly distributed live load shall be as provided in Table R301.5.

TABLE R301.5
MINIMUM UNIFORMLY DISTRIBUTED LIVE LOADS
(in pounds per square foot)

USE	LIVE LOAD
Attics with storage (b), (e)	20
Attics without storage (b), (e), (g)	10
Decks (f)	60
Exterior balconies	60
Fire escapes	40
Guardrails and handrails (d)	200
Guardrails in-fill components (f)	50
Passenger vehicle garages (a)	50(a)
Rooms other than sleeping rooms	40
Sleeping rooms	30
Stairs	40(c)

For SI: 1 pound per square foot = 0.0479kN/m², 1 square inch = 645 mm² 1 pound = 4.45N.

(a) Elevated garage floors shall be capable of supporting a 2,000-pound load applied over a 20-square-inch area.

(b) No storage with roof slope not over 3 units in 12 units.

(c) Individual stair treads shall be designed for the uniformly distributed live load or a 300-pound concentrated load acting over an area of 4 square inches, whichever produces the greater stresses.

(d) A single concentrated load applied in any direction at any point along the top.

(e) Attics constructed with wood trusses shall be designated in accordance with Section R802.10.1.

(f) See Section R502.2.1 for decks attached to exterior walls.

(g) This live load need not be considered as acting simultaneously with other live loads imposed upon the ceiling framing or its supporting structure.

(12) Section R304.3 is deleted and replaced with the following:

R304.3 Minimum dimensions. Habitable rooms shall not be less than 7 feet (2134 mm) in any horizontal dimension.

Exception: Kitchens shall have a clear passageway of not less than 3 feet (914 mm) between counter fronts and appliances or counter fronts and walls.

(13) Section R311.5.3 is deleted and replaced with the following:

R311.5.3 Treads and risers. The maximum riser height shall be 8 inches (203 mm) and the minimum tread depth shall be 9 inches (229 mm). The riser height shall be measured vertically between leading edges of the adjacent treads. The tread depth shall be measured horizontally between the vertical planes of the foremost projection of adjacent treads and at a right angle to the tread's leading edge. The walking surface of treads and landings of a stairway shall be sloped no steeper than one unit vertical in 48 units horizontal (2-percent slope). The greatest riser height within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm). The greatest tread depth within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm).

R311.5.3.3 Profile. The radius of curvature at the leading edge of the tread shall be no greater than 9/16 inch (14.3 mm). A nosing not less than 3/4 inch (19.1 mm) but not more than 1 1/4 inches (32 mm) shall be provided on stairways with solid risers. The greatest nosing projection shall not exceed shall not exceed the smallest nosing projection by more than 3/8 inches (9.5 mm) between two stories, including the nosing at the level of floors and landings. Beveling of nosing shall not exceed 1/2 inch (12.7 mm). Risers shall be vertical or sloped from the underside of the leading edge of the tread above at an angle not more than 30 degrees from the vertical. Open risers are permitted, provided that the opening between treads does not permit the passage of a 4-inch diameter (102 mm) sphere.

Exceptions.

1. A nosing is not required where the tread depth is a minimum of 10 inches (254 mm).

2. The opening between adjacent treads is not limited on stairs with a total rise of 30 inches (762 mm) or less.

(14) Section R311.5.6 is deleted and replaced with the following:

R311.5.6 Handrails. Handrails shall be provided on at least one side of stairways consisting of four or more risers. Handrails shall have a minimum height of 34 inches (864 mm) and a maximum height of 38 inches (965 mm) measured vertically from the nosing of the treads. All required handrails shall be continuous the full length of the stairs from a point directly above the top riser to a point directly above the lowest riser of the stairway. The ends of the handrail shall be returned into a wall or shall terminate in newel post or safety terminals. A minimum clear space of 1 1/2 inches (38 mm) shall be provided between the wall and the handrail.

Exceptions:

1. Handrails shall be permitted to be interrupted by a newel post at a turn.

2. The use of a volute, turnout or starting easing shall be allowed over the lowest tread.

(15) Section R311.5.6.3 is deleted and replaced with the following:

R311.5.6.3 Handrail grip size. The handgrip portion of handrails shall have a circular cross section of 1 1/4 inches (32mm) minimum to 2 5/8 inches (67mm) maximum. Edges shall have a minimum radius of 1/8 inch (3.2mm).

Exception: Non-circular handrails shall be permitted to have a maximum cross sectional dimension of 3.25 inches (83mm) measured 2 inches (51 mm) down from the top of the crown. Such handrail is required to have an indentation on both sides between 0.625 inch (16mm) and 1.5 inches (38mm) down from the top or crown of the cross section. The indentation shall be a minimum of 0.25 inch (6mm) deep on each side and

shall be at least 0.5 inch (13 mm) high. Edges within the handgrip shall have a minimum radius of 0.0625 inch (2 mm). The handrail surface shall be smooth with no cusps so as to avoid catching clothing or skin.

(16) Section R313 is deleted and replaced with the following:

R313.1 Single- and multiple-station smoke alarms. Single- and multiple-station smoke alarms shall be installed in the following locations:

1. In each sleeping room.
2. Outside of each separate sleeping area in the immediate vicinity of the bedrooms.

3. On each additional story of the dwelling, including basements and cellars but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

All smoke alarms shall be listed and installed in accordance with the provisions of this code and the household fire warning equipment provision of NFPA 72.

R313.2 Carbon monoxide alarms. Carbon monoxide alarms shall be installed on each habitable level of a dwelling unit equipped with fuel burning appliances. All carbon monoxide detectors shall be listed and comply with U.L. 2034 and shall be installed in accordance with provisions of this code and NFPA 720.

R313.3 Interconnection of alarms. When multiple alarms are required to be installed within an individual dwelling unit, the alarm devices shall be interconnected in such a manner that the activation of one alarm will activate all of the alarms in the individual unit. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed. Approved combination smoke- and carbon-monoxide detectors shall be permitted.

R313.4 Power source. In new construction, the required alarms shall receive their primary power from the building wiring when such wiring is served from a commercial source, and when primary power is interrupted, shall receive power from a battery. Wiring shall be permanent and without a disconnecting switch other than those required for overcurrent protection. Alarms shall be permitted to be battery operated when installed in buildings without commercial power or in buildings that undergo alterations, repairs, or additions regulated by Section R313.5

R313.5 Alterations, repairs and additions. When interior alterations, repairs or additions requiring a permit occur, or when one or more sleeping rooms are added or created in existing dwellings, the individual dwelling unit shall be provided with alarms located as required for new dwellings; the alarms shall be interconnected and hard wired.

Exceptions:

1. Alarms in existing areas shall not be required to be interconnected and hard wired where the alterations or repairs do not result in the removal of interior wall or ceiling finishes exposing the structure, unless there is an attic, crawl space, or basement available which could provide access for hard wiring and interconnection without the removal of interior finishes.

2. Repairs to the exterior surfaces of dwellings are exempt from the requirements of this section.

(17) In Section 317.3.2 Exception 1.1 is deleted and replaced with the following:

1.1 By a horizontal distance of not less than the width of a stud space regardless of stud spacing, or

(18) In Section R403.1.4.1 exception 1 is deleted and replaced with the following:

1. Freestanding accessory structures, not intended for human occupancy, with an area of 1,000 square feet (93m²) or

less, of wood framed construction, with an eave height of 10 feet (3080 mm) or less shall not be required to be protected.

(19) In Section R403.1.6 the exception is deleted and replaced with the following exceptions:

Exceptions:

1. Foundation anchor straps, spaced as required to provide equivalent anchorage to 1/2 inch diameter (12.7 mm) anchor bolts.

2. When anchor bolt spacing does not exceed 32 inches (816 mm) apart, anchor bolts may be placed with a minimum of two bolts per plate section located not less than 4 inches (102 mm) from each end of each plate section at interior bearing walls, interior braced wall lines and at all exterior walls.

(20) In Section R403.1.6.1 the following exception is added at the end of Item 2 and Item 3:

Exception: When anchor bolt spacing does not exceed 32 inches (816 mm) apart, anchor bolts may be placed with a minimum of two bolts per plate section located not less than 4 inches (102 mm) from each end of each plate section at interior bearing walls, interior braced wall lines and at all exterior walls.

(21) Section R703.6 is deleted and replaced with the following:

R703.6 Exterior plaster.

R703.6.1 Lath. All lath and lath attachments shall be of corrosion-resistant materials. Expanded metal or woven wire lath shall be attached with 1 1/2 inch-long (38 mm), 11 gage nails having 7/16 inch (11.1 mm) head, or 7/8-inch-long (22.2 mm), 16 gage staples, spaced at no more than 6 inches (152 mm), or as otherwise approved.

R703.6.2 Weather-resistant barriers. Weather-resistant barriers shall be installed as required in Section R703.2 and, where applied over wood-based sheathing, shall include a weather-resistive vapor permeable barrier with a performance at least equivalent to two layers of Grade D paper.

R703.6.3 Plaster. Plastering with portland cement plaster shall be not less than three coats when applied over metal lath or wire lath and shall be not less than two coats when applied over masonry, concrete or gypsum backing. If the plaster surface is completely covered by veneer or other facing material or is completed concealed, plaster application need be only two coats, provided the total thickness is as set forth in Table R702.1(1). On wood-frame construction with an on-grade floor slab system, exterior plaster shall be applied in such a manner as to cover, but not extend below, lath, paper and screed.

The proportion of aggregate to cementitious materials shall be as set forth in Table R702.1(3).

(22) In Section R703.8, number 8 is added as follows:

8. At the intersection of foundation to stucco, masonry, siding, or brick veneer with an approved corrosive-resistance flashing with a 1/2" drip leg extending past exterior side of the foundation.

(23) A new Section G2401.2 is added as follows:

G2401.2 Meter Protection. Gas meters shall be protected from physical damage, including falling ice and snow.

(24) Section P2602.3 is added as follows:

P2602.3 Individual water supply. Where a potable public water supply is not available, individual sources of potable water supply shall be utilized provided that the source has been developed in accordance with Sections 73-3-1 and 73-3-25, Utah Code Ann. (1953), as amended, as administered by the Department of Natural Resources, Division of Water Rights. In addition, the quality of the water shall be approved by the local health department having jurisdiction.

(25) Section P2602.4 is added as follows:

P2602.4 Sewer required. Every building in which plumbing fixtures are installed and all premises having drainage piping shall be connected to a public sewer where the sewer is within 300 feet of the property line in accordance with Section 10-8-38, Utah Code Ann. (1953), as amended; or an approved

private sewage disposal system in accordance with Rule R317-501 through R317-513 and Rule R317-5, Utah Administrative Code, as administered by the Department of Environmental Quality, Division of Water Quality.

(26) Section P2603.2.1 is deleted and replaced with the following:

P2603.2.1 Protection against physical damage. In concealed locations where piping, other than cast-iron or galvanized steel, is installed through holes or notches in studs, joists, rafters, or similar members less than 1 1/2 inch (38 mm) from the nearest edge of the member, the pipe shall be protected by shield plates. Protective shield plates shall be a minimum of 1/16 inch-thick (1.6 mm) steel, shall cover the area of the pipe where the member is notched or bored, and shall be at least the thickness of the framing member penetrated.

(27) Section P2801.2.1 is added as follows:

P2801.2.1 Water heater seismic bracing. In Seismic Design Categories C, D, and D₂, water heaters shall be anchored or strapped in the upper third of the appliance to resist a horizontal force equal to one third the operating weight of the water heater, acting in any horizontal direction, or in accordance with the appliance manufacturers recommendations.

(28) Section P2902.1.1 is added as follows:

P2902.1.1 Backflow assembly testing. The premise owner or his designee shall have backflow prevention assemblies operation tested at the time of installation, repair and relocation and at least on an annual basis thereafter, or more frequently as required by the authority having jurisdiction. Testing shall be performed by a Certified Backflow Preventer Assembly Tester. The assemblies that are subject to this paragraph are the Spill Resistant Vacuum Breaker, the Pressure Vacuum Breaker Assembly, the Double Check Backflow Prevention Assembly, the Double Check Detector Assembly Backflow Preventer, the Reduced Pressure Principle Backflow Preventer, and Reduced Pressure Detector Assembly.

(29) Section P3003.2.1 is added as follows:

Section P3003.2.1 Improper Connections. No drain, waste, or vent piping shall be drilled and tapped for the purpose of making connections.

(30) In Section P3103.6, the following sentence is added at the end of the paragraph:

Vents extending through the wall shall terminate not less than 12 inches from the wall with an elbow pointing downward.

(31) In Section P3104.4, the following sentence is added at the end of the paragraph:

Horizontal dry vents below the flood level rim shall be permitted for floor drain and floor sink installations when installed below grade in accordance with Chapter 30, and Sections P3104.2 and P3104.3. A wall cleanout shall be provided in the vertical vent.

(32) Chapter 43, Referenced Standards, is amended as follows:

The following reference standard is added:

TABLE

USC- FCCCHR 9th Edition Manual of Cross Connection Control	Foundation for Cross-Connection Control and Hydraulic Research University of Southern California Kaprielian Hall 300 Los Angeles CA 90089-2531	Section P2902
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(33) In Chapter 43, the following standard is added under NFPA as follows:

TABLE

720-98	Recommended Practice for the Installation of Household Carbon Monoxide (CO) Warning Equipment	R313.2
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R156-56-712. Local Amendments to the IRC.

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

(1) City of Farmington:

Sections R324.1 and R324.2 are added as follows:

R324.1 When required. An automatic sprinkler system shall be installed throughout every dwelling in accordance with NFPA 13-D, when any of the following conditions are present:

1. the structure is over two stories high, as defined by the building code;

2. the nearest point of structure is more than 150 feet from the public way;

3. the total floor area of all stories is over 5,000 square feet (excluding from the calculation the area of the basement and/or garage); or

4. the structure is located on a street constructed after March 1, 2000 that has a gradient over 12% and, during fire department response, access to the structure will be gained by using such street. (If the access is intended to be from a direction where the steep gradient is not used, as determined by the Chief, this criteria shall not apply).

R324.2 Installation requirements and standards. Such sprinkler system shall be installed in basements, but need not be installed in garages, under eaves or in enclosed attic spaces, unless required by the Chief. Such system shall be installed in accordance with NFPA 13-D.

(2) Morgan City Corp:

Section R105.2 Work Exempt From Permit, the following is added:

10. Structures intended to house farm animals, or for the storage of feed associated with said farm animals when all the following criteria is met:

a. The parcel of property involved is zoned for the keeping of farm animals or has grand fathered animal rights.

b. The structure is setback not less than 50 feet from the rear or side of dwellings, and not less than 10 feet from property lines and other structures.

c. The structure does not exceed 1000 square feet of floor area, and is limited to 20 feet in height. Height is measured from the average grade to the highest point of the structure.

d. Before construction, a site plan is submitted to, and approved by the building official.

Electrical, plumbing, and mechanical permits shall be required when that work is included in the structure.

(3) Morgan County:

Section R105.2 Work Exempt From Permit, the following is added:

10. Structures intended to house farm animals, or for the storage of feed associated with said farm animals when all the following criteria is met:

a. The parcel of property involved is zoned for the keeping of farm animals or has grand fathered animal rights.

b. The structure is set back not less than required by the Morgan County Zoning Ordinance for such structures, but not less than 10 feet from property lines and other structures.

c. The structure does not exceed 1000 square feet of floor area, and is limited to 20 feet in height. Height is measured from the average grade to the highest point of the structure.

d. Before construction, a Land Use Permit must be applied for, and approved, by the Morgan County Planning and Zoning Department.

Electrical, plumbing, and mechanical permits shall be required when that work is included in the structure.

(4) City of North Salt Lake:

Sections R324.1 and R324.2 are added as follows:

R324.1 When Required. An automatic sprinkler system shall be installed throughout every dwelling when the following condition is present:

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

R324.2 Installation requirements and standards. Such sprinkler system shall be installed in basements, but need not be installed in garages, under eaves, or in enclosed attic spaces, unless required by the fire chief. Such system shall be installed in accordance with NFPA 13-D.

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

Section R905.7 is deleted and replaced with the following:

R905.7 Wood shingles. The installation of wood shingles shall comply with the provisions of this section.

Wood roof covering is prohibited in areas with a combined rating of more than 11 using the following tables with a score of 9 for weather factors.

TABLE
WILDFIRE HAZARD SEVERITY SCALE

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

PROHIBITION/EXEMPTION TABLE

RATING	WOOD ROOF PROHIBITION
less than or equal to 11	wood roofs are allowed
greater than or equal to 12	wood roofs are prohibited

Section R905.8 is deleted and replaced with the following:

R905.8 Wood Shakes. The installation of wood shakes shall comply with the provisions of this section. Wood roof covering is prohibited in areas with a combined rating of more than 11 using the following tables with a score of 9 for weather factors.

TABLE
WILDFIRE HAZARD SEVERITY SCALE

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

PROHIBITION/EXEMPTION TABLE

RATING	WOOD ROOF PROHIBITION
less than or equal to 11	wood roofs are allowed
greater than or equal to 12	wood roofs are prohibited

Appendix K is adopted.

KEY: contractors, building codes, building inspection, licensing

August 17, 2004

Notice of Continuation May 16, 2002

58-1-106(1)(a)

58-1-202(1)(a)

58-56-1

58-56-4(2)

58-56-6(2)(a)

R162. Commerce, Real Estate.**R162-103. Appraisal Education Requirements.****R162-103-1. Definitions.**

103.1.1 For the purposes of this rule, "school" includes:

- (a) An accredited college, university, junior college or community college;
- (b) Any state or federal agency or commission;
- (c) A nationally or state recognized real estate appraisal or real estate related organization, society, institute, or association;
- (d) Any other school or organization as approved by the Board.

103.1.2 "School director" means an authorized individual in charge of the educational program at a school.

R162-103-2. School Certification.

103.2.1 Each school requesting certification shall make application for approval on the form prescribed by the Division, and shall submit the applicable fees. The application shall include, and the Board may consider, the following information in determining the school's eligibility for certification:

103.2.1.1 Name, phone number, and address of the school, school director and all owners of the school.

103.2.1.2 Attestation to upstanding moral character by individuals who are school directors or owners of the school, and whether any individual:

- (a) has had a license or certification to practice in the appraisal profession, or any other profession or occupation, denied, restricted, suspended, or revoked.
- (b) has been permitted to resign or surrender an appraiser license or certification, or has ever allowed an appraiser license or certification to expire while the individual was under investigation, or while action was pending against the individual by an appraiser licensing or any other agency.
- (c) has any action now pending by any appraiser licensing or other agency.
- (d) is currently under investigation for, or charged with, or has ever pled guilty or no contest to, or been convicted of, a misdemeanor or felony, excluding minor traffic offenses.
- (e) has ever been placed on probation in connection with any criminal offense or a licensing action.

103.2.1.3 A description of the type of school and a description of the school's physical facilities. All courses shall be taught in an appropriate classroom facility and not in any private residence, except for courses approved for specific home-study purposes;

103.2.1.4 A copy of the statement which shall be provided for each student outlining the days, times and locations of classes; the number of quizzes and examinations; the grading system, including methods of testing and standards of grading; the requirements for attendance; and the school's refund policy.

103.2.2 A public school may schedule its courses within the criteria of its regular schedule, for example, quarter, semester, or similar schedule. A quarter hour of college credit is the equivalent of 10 classroom hours, and a semester hour of college credit is the equivalent of 15 classroom hours.

103.2.3 Upon approval by the Board, a school will be issued certification. Until January 1, 2005, all certifications expire January 1. Beginning on January 1, 2005, a school certification will be issued for a two-year term and will expire twenty-four months from the date of issuance. School certifications may be renewed by submitting a properly completed application for renewal prior to the expiration date of the school's current certification, using the form required by the Division. Until January 1, 2005, renewed school certifications shall be issued for a term of one calendar year. Beginning on January 1, 2005, the term of a renewed school certification shall be twenty-four months. Conditions of certification include the following:

- (a) A school shall teach the approved course of study as

outlined in the State Approved Course Outline;

(b) A school shall require each student to attend the required number of hours and pass a final examination;

(c) A school shall maintain a record of each student's attendance for a minimum of five years after his enrollment;

(d) A school shall not make any misrepresentation in its advertising about any course of instruction, and shall be able to provide substantiation of any claims made. All advertising and public notices shall be free of statements or implications which do not enhance the dignity and integrity of the appraisal profession. A school shall refrain from disparaging a competitor's services or methods of operation;

(e) Within 15 calendar days after the occurrence of any material change in the school which could affect its approval, including the events listed in R162-103.2.1.2, the school shall give the Division written notice of that change; and

(f) A school will not attempt by any means to obtain or use the questions on the state licensure or certification exam unless those questions have been dropped from the current exam bank.

(g) A school shall provide to all students at the time of registration a copy of the qualifying questionnaire the student will be required by the Division to answer as part of the prelicensing or precertification examination.

R162-103-3. Course Certification.

103.3.1 Each school requesting approval of a course designed to meet the education requirements of licensure or certification shall make application for approval on a form prescribed by the Division and shall pay the applicable fee. The application shall include, and the Board may consider, the following information in determining eligibility for approval:

(a) A course outline including a description of the course, the length of time to be spent on each subject area broken into segments of no more than 30 minutes each, and three to five learning objectives for every three hours;

(b) Indication of any method of instruction other than lecture method including: a slide presentation, cassette, video tape, movie, home study, or other.

(c) A copy of the three final examinations of the course and the answer keys which are used to determine if the student has passed the course;

(d) An explanation of what the school procedure is for maintaining the security of the final exams and the answer keys;

(e) A list of the titles, authors and publishers of all required textbooks;

(f) A list of the instructors and evidence of their certification by the Division, and a list of any guest lecturers to be used and evidence of their qualifications as an instructor for a specific course; and

(g) Days, times, and location of classes.

103.3.2 Upon approval by the Board, a course will be issued certification. Until January 1, 2005, all certifications expire January 1. Beginning January 1, 2005, all original course certifications and all renewed course certifications shall be issued with an expiration date of twenty-four months after issuance.

103.3.3 Each course of study will meet the minimum standards set forth in the State Approved Course Outline provided for each approved course. The school may alter the sequence of presentation of the required topics. Specific nonappraisal courses being used to satisfy the educational requirements shall have prior approval as to their applicability.

103.3.4 All courses of study will meet the minimum hourly requirement of that course. A credit hour is defined as 50 minutes of supervised contact by a certified instructor within a 60-minute time period. A 10-minute break will be given for each 50 minutes in class. Registration or certification credit will be limited to a maximum of eight credit hours per day. The limitation applies only to the credit a student may receive and is

not intended to limit the number of classroom hours offered.

103.3.5 A public school or institution may use any faculty member to teach an approved course provided the individual demonstrates to the satisfaction of the Division and the Board academic training or appraisal experience qualifying him to teach the course.

103.3.6 Distance education is defined as any educational process based on the geographical separation of instructor and student (e.g., CD ROM, On-line learning, correspondence courses, video conferencing, etc.). Distance education courses must provide interaction between the learner and instructor and must include testing. A distance education course may be acceptable to meet the classroom hour requirement or its equivalent providing each course meets the following conditions:

103.3.6.1 The course (a) has been presented by an accredited college or university which offers distance education programs in other disciplines and where accreditation has been made by the Commission on Colleges or a regional accreditation association; or (b) has received approval for college credit by the International Distance Education Certification Center, also known as IDECC; or (c) has been approved under the AQB Course Approval Program.

(a) The learner must successfully complete a written examination personally proctored by an official approved by the college or university or by the presenting entity; and

(b) The course must meet the requirements established by the AQB and be equivalent to the minimum of 15 classroom hours.

103.3.7 A maximum of 10% of the required class time may be spent in testing, including review test and final examination. A student cannot challenge a course or any part of a course of study by taking an exam in lieu of attendance.

103.3.7.1 If a student fails a school final examination, he will not be allowed to retest for a minimum of three days. The student will not be allowed to retake the same final exam, but will be given a new exam with different questions.

103.3.7.2 If the student fails the final exam a second time, he will not be allowed to retest for a minimum of two weeks at which time he will be given an entirely new exam with completely new questions. If the student fails this third exam, he will fail the course.

103.3.8 All texts, workbooks, supplement pamphlets and any other materials shall be appropriate and current in their application to the required course outline.

103.3.9 Within 15 calendar days after the occurrence of any material change in a course which could affect approval, the school shall give the Division written notice of the change.

R162-103-4. Education Credit for Noncertified Courses.

103.4.1 Education credit will be granted towards licensure or certification for an appraisal education course which has been taken and which has not been previously certified in Utah for prelicensing education credit, and has been provided by a school which meets the criteria as outlined in 103.1.

103.4.1.1 The course content shall have met the minimum standards set forth in the Utah State Approved Course Outline.

103.4.1.2 A course must be at least 15 hours in duration, including the examination. An hour is defined as 50 minutes of supervised contact by a certified instructor within a 60-minute time period.

103.4.1.3 A final examination will be administered at the end of each course pertinent to that education offering.

103.4.2 Credit will not be granted for a course taken in which the applicant obtained credit from the course provider by challenge examination without having attended the course.

103.4.3 Credit will not be given for duplicate or highly comparable classes. Each course must represent a progression in which the appraiser's knowledge is increased.

103.4.4 There is no time limit regarding when education credit must have been obtained.

103.4.5 Hourly credit for a course taken from a professional appraisal organization will be granted based upon the Division approved list which verifies hours for these courses.

103.4.6 Credit will only be granted for a course that has been successfully completed. Successful completion of a course means that the applicant has attended a minimum of 90% of the scheduled class hours, has completed all required exercises and assignments, and has achieved a passing score on a course final examination. The final examination shall not be an open book examination.

103.4.7 Submission for Education Approval.

103.4.7.1 Courses that have not been previously certified for prelicensing credit will be reviewed by the Education Review Committee. It is the responsibility of the applicant to establish that a particular education offering will qualify to meet the education requirement for licensing or certification.

103.4.7.2 The applicant shall submit on a form provided by the Division a list of the courses that documents the course title, the name of the sponsoring organization, the number of classroom hours, and the date the course was completed.

103.4.7.3 The applicant will attest on a notarized affidavit that the courses have been completed as documented.

103.4.7.4 The applicant will support the claim for education credit if requested by the Division by providing proof of completion of the courses in the form of certificates, transcripts, report cards, letters of verification, or similar proof.

103.4.7.5 Applicants having appraisal education in categories other than those in the State Approved Course Outline may petition the Board on an individual basis for evaluation and approval of their education as being substantially equivalent to that required for licensing or certification.

R162-103-5. Instructor Application for Certification.

103.5.1 Each instructor requesting approval to be certified as an instructor to teach the education requirements of appraisal licensure or certification shall make application for approval on a form prescribed by the Division and shall submit the applicable fees. The application shall include, and the Board may consider, the following information in determining the instructor's eligibility for approval:

103.5.1.1 Attestation to upstanding moral character, including whether the individual:

(a) has had a license or certification to practice in the appraisal profession, or any other profession or occupation, denied, restricted, suspended, or revoked.

(b) has been permitted to resign or surrender an appraiser license or certification, or has ever allowed an appraiser license or certification to expire while the individual was under investigation, or while action was pending against the individual by an appraiser licensing or any other agency.

(c) has any action now pending by any appraiser licensing or other agency.

(d) is currently under investigation for, or charged with, or has ever pled guilty or no contest to, or been convicted of, a misdemeanor or felony, excluding minor traffic offenses.

(e) has ever been placed on probation in connection with any criminal offense or a licensing action.

103.5.2 The instructor will demonstrate evidence of knowledge of the subject matter by the following:

103.5.2.1 A minimum of five years active experience in appraising, or

103.5.2.2 Evidence of having completed college or other appropriate courses specific to the topic he proposes to teach, or

103.5.2.3 Evidence of other qualifications of experience, education, or credentials which are acceptable to the Board; and

103.5.2.4 Evidence of having passed an examination

designed to test knowledge of the subject matter he proposes to teach.

103.5.3 An applicant to teach the course on USPAP shall conform to all of the above criteria and in

103.5.4 Upon approval by the Board, an applicant will be issued certification. Until January 1, 2005, all certifications expire January 1 of each even numbered year. Beginning January 1, 2005, instructor certifications will be issued for a term that expires twenty-four months from the date of issuance. Conditions of renewal of certification include providing proof of the following:

103.5.4.1 Must have taught at least 20 hours of in-class instruction in a certified course during the preceding two years; and

103.5.4.2 Must have attended a real estate instructor development workshop sponsored or approved by the Division during the preceding two years.

103.5.4.3 Instructor certifications may be renewed by submitting a properly completed application for renewal prior to the expiration date of the instructor's current certification, using the form required by the Division. Renewed instructor certifications will be issued for a term of twenty-four months. If the instructor does not submit a properly completed renewal form, renewal fee, and any required documentation prior to the expiration date of the current certification, the certification shall expire. When a certification expires, the certification may be reinstated for a period of thirty days after the expiration date upon payment of a late fee in addition to completing the requirements for a timely renewal. After this thirty day period, and until three months after the expiration date, an instructor certification may be reinstated upon payment of a non-refundable late fee and submission of proof of completion of six classroom hours of education related to real estate appraisal or teaching techniques in addition to completing the requirements for a timely renewal. Following the three month period, an instructor shall be required to apply as an original applicant in order to obtain a new certification.

103.5.5 Within 15 calendar days after the occurrence of any of the events listed in Section 103.5.1, an applicant or instructor shall give written notice to the Division of that event.

R162-103-6. Education Review Committee.

103.6 A committee may be appointed by the Board to review submissions for education credit for license or certification applicants and also to review submissions for certification of appraiser courses and instructors.

103.6.1 The Education Review Committee shall:

103.6.1.1 Review all applications for adherence to the education credit required for licensure or certification and make recommendations to the Division and the Board for approval or disapproval of the education claimed.

103.6.1.2 Review all submissions requesting certification of appraiser courses and instructors for prelicensing education purposes and make recommendations to the Division and the Board for approval or disapproval.

103.6.2 The Committee shall be composed of appraisers from the following categories: residential appraisers; commercial appraisers; farm and ranch appraisers; right-of-way appraisers; and ad valorem appraisers.

103.6.2.1 The chairperson of the committee shall be appointed by the Board.

103.6.2.2 Meetings may be called upon the request of the chairperson or upon the written request of a quorum of committee members.

103.6.3 If the review of an application has been performed by the Education Review Committee, and the Board has denied the application based on insufficient education or an inability to meet the certification of education requirements, the applicant may request that the Board review the issue again by making a

request in writing to the Board within thirty days after the denial stating specific grounds upon which relief is requested. The Board shall thereafter consider the request and issue a written decision.

R162-103-7. Continuing Education Course Certification.

103.7 As a condition of renewal, all appraisers will complete the equivalent of 28 classroom hours of appraisal education during the two-year term preceding renewal. The continuing education requirement is for the purpose of maintaining and increasing the appraiser's skill, knowledge and competency in real estate appraising.

103.7.1 Continuing education credit may be granted for courses that meet the following criteria:

(a) the course has been obtained from any of the course providers designated in 103.1.

(b) the course covers appraisal topics as suggested by the AQB.

(c) the length of the educational offering is at least two classroom hours, each classroom hour is defined as 50 minutes out of each 60-minute segment, and the continuing education credit is limited to eight hours per day.

(d) the course meets the requirements for distance learning as outlined in R162-103.3.7.

103.7.2 Real estate appraisal related field trips are acceptable for continuing education credit; however, transit time to or from the field trip location should not be included when awarding credit if instruction does not occur.

103.7.3 Prelicensing education credit awarded to individuals seeking a different classification than that held, can also be used to satisfy a continuing education requirement.

103.7.4 Alternative Continuing Education Credit - continuing education credit may be granted for participation, other than as a student, in appraisal educational processes and programs.

103.7.4.1 Credit may be granted on a case by case basis for teaching, program development, authorship of textbooks, or similar activities which are determined by the Board to be equivalent to obtaining continuing education.

103.7.4.2 The Education Review Committee will review claims of equivalent education and also alternative continuing education proposed to be used for continuing education purposes.

103.7.4.3 The Board may award continuing education credit to members of the Education Review Committee, the Experience Review Committee, and the Technical Advisory Panel.

R162-103-8. Administrative Proceedings.

The Division may deny certification or renewal of certification to any course, school or instructor that does not meet the standards required by this chapter.

**KEY: real estate appraisal, education
November 24, 2004
Notice of Continuation June 3, 2002**

61-2b-8

R162. Commerce, Real Estate.**R162-104. Experience Requirement.****R162-104-1. Measuring Experience.**

104.1.1 Except for those applicants who qualify under Section 104.17, appraisal experience shall be measured in points according to the Appraisal Experience Points Schedule in Section R162-104-18 of this rule and also in time accrued.

104.1.1.1 Experience for state-licensed applicants shall have been accrued in no fewer than 12 months. Experience for the certified residential applicants shall have been accrued in no fewer than 24 months, as required by the AQB. Experience for the certified general applicants shall have been accrued in no fewer than 30 months, as required by the AQB.

104.1.1.2 Applicants for the state-licensed category shall submit proof of at least 400 points of experience. Applicants for certified residential shall submit proof of at least 100 additional points accrued after state-licensed status was obtained, for a total of 500 points of experience. Applicants for certified general shall submit proof of at least 200 additional points accrued after state-licensed status was obtained, for a total of 600 points of experience.

R162-104-2. Maximum Points Per Year.

104.2 For applicants for certification, a maximum of 400 points will be credited for any one 12-month period. For applicants for licensure, a maximum of 400 points will be credited for any one 12-month period.

R162-104-3. Time Allowed for Meeting Experience Requirement.

104.3 Credit will be given for appraisal experience earned only within five years immediately preceding the licensure or certification application.

R162-104-4. Proof of Experience.

104.4 The Division shall require the applicant to furnish the following information for each appraisal for which points are claimed: property address or legal description, date of the appraisal, type of property, and any other information deemed appropriate by the Division.

R162-104-5. Compliance with USPAP and Licensing Requirements, USPAP Limited Appraisals.

104.5 No experience credit will be given for appraisals which were performed in violation of Utah law or the law of another jurisdiction, or the administrative rules adopted by the Division and the Board.

104.5.1 No experience credit will be given for appraisals unless the appraisals were done in compliance with USPAP.

104.5.2 In order to qualify as experience credit toward certification, the additional points for certification required by Section 104.1.1.2 must have been accrued while the applicant was licensed as an appraiser in Utah, or in another state if licensure was required in that state, at the time the appraisal was performed.

104.5.3 For the purposes of this rule, limited appraisals are defined as opinions of value performed under, and resulting from, invoking the departure provision of USPAP, but do not include mass appraisals. Limited appraisals shall be granted 50% of the credit awarded an appraisal which is not a limited appraisal. Limited appraisals where only an exterior inspection of the subject property is performed shall be granted 25% of the credit awarded an appraisal which is not a limited appraisal. Not more than 25% of the total experience required for licensure or certification may be earned from limited appraisals.

R162-104-7. State-Licensed and State-Certified Applicants.

104.7.1 Except for those applicants who qualify under Section 104.17, applicants applying for licensure as State-

Licensed Appraisers shall be awarded points from either the Residential Experience Points Schedule or the General Experience Points Schedule for their experience prior to licensure only if the experience claimed was gained in compliance with Section 105.3.

104.7.2 Applicants applying for certification as State-Certified Residential Appraisers must document at least 75% of the points submitted from the Residential Experience Points Schedule. No more than 25% of the total points submitted may be from the General Experience Points Schedule.

104.7.3 Applicants applying for certification as State-Certified General Appraisers may claim points for experience from either the Residential Experience Points Schedule or the General Experience Points Schedule, so long as at least 50% of the total points has been earned from the General Experience Points Schedule.

R162-104-8. Points from Authorship.

104.8 The cumulative points from appraisal textbook and article authorship shall not exceed 50% of the cumulative points submitted.

R162-104-9. Review or Supervision of Appraisals.

104.9 Review appraisals will be awarded experience credit when the appraiser has performed technical reviews of appraisals prepared by either employees, associates or others, provided the appraiser complied with Uniform Standards of Professional Appraisal Practice Standards Rule 3 when the appraiser was required to comply with the rule. The following points shall be awarded for review or supervision of appraisals:

104.9.1 Review of appraisals which does not include a physical inspection of the property and verification of the data, commonly known as a desk review, shall be worth 20% of the points awarded to the appraisal if a separate written review appraisal report is prepared. A maximum of 100 points may be earned by desk review of appraisals.

104.9.2 Review of appraisals which includes a physical inspection of the property and verification of the data, commonly known as a field review, shall be worth 50% of the points awarded to the appraisal if a separate written review appraisal report is prepared. A maximum of 100 points may be earned by field review of appraisals.

104.9.3 Supervision of appraisers shall be worth 20% of the points awarded to the appraisal. A maximum of 100 points may be earned by supervision of appraisers.

104.9.4 Not more than 50% of the total experience required for certification may be granted under Subsections R162-104-9(104.9.1) through R162-104-9(104.9.3) and R162-104-11(104.11.1) and R162-104-11(104.11.3) combined.

R162-104-10. Condemnation Appraisals.

104.10 Condemnation appraisals shall be worth an additional 50% of the points normally awarded for the appraisal if the condemnation appraisal included a before and after appraisal because of a partial taking of the property.

R162-104-11. Preliminary Valuation Estimates, Comparative Market Analysis, Real Estate Consulting Services, and Other Real Estate Experience.

104.11.1 Preliminary valuation estimates, range of value estimates or similar studies, and other real estate related experience gained by bankers, builders, city planners and managers, or other individuals may be granted credit for up to 50% of the experience required for certification in accordance with R162-104-17 of this rule, so long as the experience demonstrates to the Board that the applicant has the ability to arrive at a fair market value of property and to properly document value conclusions.

104.11.2 Comparative market analysis by real estate

licensees may be granted up to 100% experience credit toward certification in accordance with R162-104-17 of this rule, when the analysis is prepared in conformity with USPAP Standards Rules 1 and 2 and the individual can demonstrate to the Board that he is using similar techniques as appraisers to value properties and effectively utilize the appraisal process.

104.11.3 Appraisal analysis, real estate counseling or consulting services, and feasibility analysis/study will be awarded experience credit in accordance with R162-104-17 of this rule for up to 50% of the experience required toward certification so long as the services were performed in accordance with USPAP Standards Rules 4 and 5.

104.11.4 Not more than 50% of the total experience required for certification may be granted under Subsections R162-104-11(104.11.1) and R162-104-11(104.11.3) and R162-104-9(104.9.1) through R162-104-9(104.9.3) combined.

R162-104-12. Ad Valorem Appraisal and Benchmark Appraisal.

104.12 Ad valorem appraisal and benchmark appraisal by property type will earn the same number of points as fee appraisal where the individual can demonstrate that he performed highest and best use analysis, developed the model in model specification, or developed adjustments to the model in model calibration, and where the individual can demonstrate the appraisal was performed in accordance with Standards Rule 6 of the Uniform Standards of Professional Appraisal Practice.

R162-104-13. Experience Participation.

104.13 An applicant for certification must be able to prove more than 50% participation in the data collection, verification of data, reconciliation, analysis, identification of property and property interests, compliance with USPAP standards and all Advisory Opinions of USPAP, and preparation and development of the appraisal report in order to count the appraisal for experience credit. Experience credit will be granted to only one registered or licensed appraiser per completed appraisal even though more than one may have participated in the development of the appraisal.

R162-104-14. Unacceptable Experience.

104.14 An applicant will not receive points toward satisfying the experience requirement for licensure or certification for performing the following:

- (a) Appraisals of the value of a business as distinguished from the appraisal of commercial real estate; or
- (b) Personal property appraisals.

R162-104-15. Verification of Experience.

104.15 The Board, at its discretion, may verify the claimed experience by any of the following methods: verification with the clients; submission of selected reports to the Board; and field inspection of reports identified by the applicant at the applicant's office during normal business hours.

R162-104-16. Experience Review Committee.

104.16 There may be a committee appointed by the Board to review the experience claimed by applicants for licensure or certification.

104.16.1 The Committee shall:

104.16.1.1 Review all applications for adherence to the experience required for licensure or certification;

104.16.1.2 Correspond with applicants concerning submissions, if necessary; and

104.16.1.3 Make recommendations to the Division and the Board for licensure or certification approval or disapproval.

104.16.2 Committee composition. The Committee shall be composed of appraisers from the following categories: residential appraisers; commercial appraisers; farm and ranch

appraisers; right-of-way appraisers; and ad valorem appraisers.

104.16.2.1 The chairperson of the committee shall be appointed by the Board.

104.16.2.2 Meetings may be called upon the request of the chairperson or upon the written request of a quorum of committee members.

104.16.3 New Review. If the review of an application has been performed by the Experience Review Committee, and the Board has denied the application based on insufficient experience, the applicant may request that the Board review the issue again by making a written request within thirty days after the denial stating specific grounds upon which relief is requested. The Board shall thereafter consider the request and issue a written decision.

R162-104-17. Special Circumstances.

104.17 Applicants having experience in categories other than those shown on the Appraisal Experience Points Schedule, or applicants who believe the Experience Points Schedule does not adequately reflect their experience, or applicants who believe the Experience Points Schedule does not adequately reflect the complexity or time spent on an appraisal, may petition the Board on an individual basis for evaluation and approval of their experience as being substantially equivalent to that required for licensure or certification. Upon a finding that an applicant's experience is substantially equivalent to that required for licensure or certification, the Board may waive experience points, give an applicant credit for months of experience, or both.

104.17.1 Full-time elected county assessors and any person performing an appraisal for the purpose of establishing the fair market value of real estate for the assessment roll may, as an alternative to using the Appraisal Experience Points Schedule, be awarded points as provided in Section 104.17.2, provided that they have experience in at least three of the following categories and no more than one-third of their experience comes from any one of the following categories:

104.17.1.1 Property description/identification;

104.17.1.2 Highest and best use analysis;

104.17.1.3 Land value estimates;

104.17.1.4 Cost approach;

104.17.1.5 Sales comparison;

104.17.1.6 Income capitalization approach.

104.17.2 Full-time elected county assessors may be awarded 200 points for every year of service. Any person performing an appraisal for the purposes of establishing the fair market value of real estate for the assessment roll may be awarded 200 points for every year of full-time service that is substantiated by the applicant. If the applicant requests that experience points be granted for employment in other than one-year increments, the number of points allowable under this section may be prorated in proportion to the number of months of full-time employment substantiated by the applicant.

104.17.2.1 Part-time employment. Any person performing an appraisal for the purposes of establishing the fair market value of real estate for the assessment roll may be awarded a number of points for part-time service that has been pro-rated in proportion to the average number of hours worked per week during the months for which points are claimed. For the purposes of this rule, full-time service is defined as 40 hours per week.

104.17.3 Fulltime elected county assessors and any person performing an appraisal for the purposes of establishing the fair market value of real estate for the assessment roll are not subject to the limitations in Section 105.3.

104.17.4 Fulltime investigators with the Division who perform appraisal investigations may be awarded 200 points for every 18 months of service. They are not subject to the limitations in Section 105.3.

R162-104-18. Appraisal Experience Points Schedule.

104.18 Points shall be awarded as follows:

104.18.1 Residential Experience Points Schedule. The following points shall be awarded to form appraisals. Three points may be added to the points shown if the appraisal was a narrative appraisal instead of a form appraisal.

TABLE 1

(a) One-unit dwelling, including a site	1 point
(b) Multiple one-unit dwellings in the same subdivision or condominium project which are substantially similar 1-25 dwellings	1 point per dwelling up to a maximum of 6 points
Over 25 dwellings	A total of 10 points
(c) Two- to four-unit dwelling	4 points
(d) Employee Relocation Counsel reports completed on currently accepted Employee Relocation Counsel form	2 points
(e) Residential lot, 1-4 family	1 point
(f) Multiple lots in the same subdivision which are substantially similar 1-25 lots	1 point per lot up to a maximum of 6 points
Over 25 lots	A total of 10 points
(g) Small parcel up to 5 acres	1 point
(h) Vacant land, 20-500 acres	4 points
A maximum of 50 points may be awarded for appraisal of vacant land.	
(i) Recreational, farm, or timber acreage suitable for a house site, up to 10 acres	2 points
Over 10 acres	3 points
(j) All other unusual structures or acreages, which are much larger or more complex than typical properties	1-5 points as determined by the Board
(k) Residential appraisal textbook authorship, not to exceed 20 points per year	As determined by the Board
(l) Residential appraisal articles in journals of approved national appraisal organizations, not to exceed 20 points per year	10 points

104.18.2 General Experience Points Schedule. All appraisal reports claimed must be narrative appraisal reports.

TABLE 2

(a) Apartment buildings, 5-100 units	8 points
Over 100 units	10 points
(b) Hotel or motels, 50 units or fewer	6 points
51-150 units	8 points
Over 150 units	10 points
(c) Nursing home, rest home, care facilities, Fewer than 80 beds	8 points
Over 80 beds	10 points
(d) Industrial or warehouse building, Fewer than 20,000 square feet	6 points
Over 20,000 square feet, single tenant	8 points
Over 20,000 square feet, multiple tenants	10 points
(e) Office buildings	
Fewer than 10,000 square feet	6 points
Over 10,000 square feet, single tenant	8 points
Over 10,000 square feet, multiple tenants	10 points
(f) Entire condominium projects, using income approach to value	
5- to 30-unit project	6 points
31- or more-unit project	10 points
(g) Retail buildings	
Fewer than 10,000 square feet	6 points
More than 10,000 square feet, single tenant	8 points
More than 10,000 square feet, multiple tenants	10 points
(h) Commercial, multi-family, industrial, or other nonresidential use acreage	
Fewer than 10 acres	4 points
10 acres or more	6 points
100 acres or more, income approach to value	10 points
(i) All other unusual structures or assignments which are much larger or more complex than the properties described in (a) to (h) herein.	1 to 20 points as determined by Board
(j) Textbook authorship in general appraisal topics, not to exceed 20 points per year	As determined by Board

(k) General field journal articles in journals of approved national appraisal organizations, not to exceed 20 points per year	10 points
(l) Entire Subdivisions or Planned Unit Developments (PUDs)	
1- to 25-unit subdivision or PUD	6 points
Over 25-unit subdivision or PUD	10 points
(m) Feasibility or market analysis, maximum 100 points	1 to 20 points as determined by Board

Ad Valorem appraisals	
(n) Development and implementation of multiple regression model - land valuation guide, up to 5000 parcels	20 points
For each additional 5000 parcels, add 1 point	
(o) Depreciation study and analysis	20 points
(p) Sales ratio study and implementation - physical inspection and review, maximum 50 points	10 points
(q) Development of standards of practice for assessment administration and writing of those guidelines, maximum 40 points	10-20 points as determined by Board
(r) State-assessed property - gravel pits, mines, utilities	1-20 points as determined by Board

Farm and Ranch appraisals	Form	Narrative
(s) Separate grazing privileges or permits	4 pts.	5 pts.
(t) Irrigated cropland, pasture other than rangeland, 1 to 10 acres	2 pts.	3 pts.
11-50 acres	2.5 pts.	4 pts.
51-200 acres	3 pts.	5 pts.
201-1000 acres	5 pts.	8 pts.
More than 1000 acres	8 pts.	10 pts.
(u) Dry farm, 1 to 1000 acres	3 pts.	5 pts.
More than 1000 acres	4 pts.	8 pts.
(v) Improvements on properties other than a rural residence, maximum 2 points:		

Dwelling	1 pt.	1 pt.
Sheds	0.5 pt.	0.5 pt.
(w) Cattle ranches		
0-200 head	3 pts.	4 pts.
201-500 head	5 pts.	6 pts.
501-1000 head	6 pts.	8 pts.
More than 1000 head	8 pts.	10 pts.
(x) Sheep ranches		
0-2000 head	5 pts.	6 pts.
More than 2000 head	7 pts.	9 pts.
(y) Dairies, includes all improvements except a dwelling		
1-100 head	4 pts.	5 pts.
101-300 head	5 pts.	6 pts.
More than 300 head	6 pts.	7 pts.
(z) Orchards		
5-50 acres	6 pts.	8 pts.
More than 50 acres	8 pts.	10 pts.
(aa) Rangeland/timber		
0-640 acres	4 pts.	5 pts.
More than 640 acres	6 pts.	7 pts.
(bb) Poultry		
0-100,000 birds	6 pts.	8 pts.
More than 100,000 birds	8 pts.	10 pts.
(cc) Mink		
0-5000 cages	6 pts.	7 pts.
More than 5000 cages	8 pts.	10 pts.
(dd) Fish farms	8 pts.	10 pts.
(ee) Hog farms	8 pts.	10 pts.

104.18.2.1 Appraisals on commercial or multifamily form reports shall be worth 75% of the points normally awarded for the appraisal.

**KEY: real estate appraisal, experience
November 24, 2004 61-2b-1 through 61-2b-40
Notice of Continuation March 27, 2002**

R162. Commerce, Real Estate.**R162-201. Residential Mortgage Definitions.****R162-201-1. Residential Mortgage Definitions.**

201.1 Control. As used in Section 61-2c-102(1) of the Utah Residential Mortgage Practices Act, "control" is defined as the power to directly or indirectly:

- (a) direct or exercise a controlling influence over:
 - (i) the management or policies of an entity;
 - (ii) the election of a majority of the directors, officers, managers, or managing partners of an entity;
- (b) vote 20% or more of any class of voting securities of an entity by an individual; or
- (c) vote more than 5% of any class of voting securities of an entity by another entity.

201.2 Certification. "Certification" means that the holder of a certificate is authorized by the Division to:

- (a) establish and operate a school that provides courses for prelicensing requirements;
- (b) provide courses that are approved for continuing education; or
- (c) function as an instructor for courses approved for prelicensing requirements or for continuing education.

**KEY: residential mortgage loan origination
November 3, 2004**

61-2c-103(3)

R162. Commerce, Real Estate.**R162-202. Initial Application.****R162-202-1. Licensing Examination.**

202.1 Effective January 1, 2004, an individual applying for an initial license is required to have passed the licensing examination approved by the commission before making application to the division for a license.

202.1.1 All examination results are valid for 90 days after the date of the examination. If the applicant does not submit an application for licensure within 90 days after successful completion of the examination, the examination results shall lapse and the applicant shall be required to retake and successfully pass the examination again in order to apply for a license.

R162-202-2. Form of Application.

202.2 All applications must be made in the form required by the division and shall include the following information:

202.2.1 Any name under which the individual will transact business in this state;

202.2.2 The address of the principal business location of the applicant;

202.2.3 The home street address and home telephone number of any individual applicant or control person of an entity applicant;

202.2.4 A mailing address for the applicant;

202.2.5 The date of birth and social security number of any individual applicant or control person of an entity applicant;

202.2.6 Answers to a "Licensing Questionnaire" supplying information about present or past mortgage licensure in other jurisdictions, past license sanctions or surrenders, pending disciplinary actions, pending investigations, past criminal convictions or pleas, and/or civil judgments based on fraud, misrepresentation, or deceit;

202.2.7 A "Letter of Waiver" authorizing the division to obtain the fingerprints of the applicant or control person, review past and present employment and education records, and to conduct a criminal history background check;

202.2.8 If an individual applicant or a control person of an entity applicant has been convicted of any felonies or misdemeanors involving moral turpitude within the ten years preceding application, the charging document, the judgment and sentencing document, and the case docket on each such conviction must be provided with the application; and

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

202.2.10 On or after January 1, 2005, applicants for a mortgage officer license shall submit proof in the form required by the Division of successful completion of the 20 hours of approved prelicensing education required by Section 61-2c-202(4)(a)(i)(C) taken within one year prior to application; or

202.2.11 On or after September 1, 2005, applicants for a principal lender license shall submit proof in the form required by the Division of successful completion of the 40 hours of approved prelicensing education required by Section 61-2c-206(1)(c) taken within one year prior to application.

R162-202-3. Incomplete Application.

202.3 If an applicant for a license makes a good faith attempt to submit a completed application within 90 days after passing the examination, but the application is incomplete, the Division may grant an extension of the validity of the

examination results for a period not to exceed 30 days to enable the applicant to provide the missing documents or information necessary to complete the application. Following the extension period, the application will be denied as incomplete if the applicant has not supplied the missing documents or information.

R162-202-4. Nonrefundable Fees.

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

R162-202-5. Determining Fitness for Licensure.

202.5.1 Good Moral Character. The Commission and the Division will consider information necessary to determine whether an applicant for a license or the control person of an entity that has applied for a license meets the requirement of good moral character, which may include the following in addition to whether the individual has been convicted of a felony or misdemeanor involving moral turpitude in the ten years preceding the application:

(a) The circumstances that led to any criminal convictions considered by the Commission and the Division;

(b) The amount of time that has passed since the individual's last criminal conviction;

(c) Any character testimony presented at the hearing and any character references submitted by the individual;

(d) Past acts related to honesty or moral character involving the business of residential mortgage loans;

(e) Whether the individual has been guilty of dishonest conduct in the five years preceding the application that would have been grounds under Utah law for revocation or suspension of a registration or license had the individual then been registered or licensed;

(f) Whether a civil judgment based on fraud, misrepresentation, or deceit has been entered against the individual, or whether a finding of fraud, misrepresentation or deceit by the individual has been made in a civil suit, regardless of whether related to the residential mortgage loan business, and whether any money judgment has been fully satisfied;

(g) Whether fines and restitution ordered by a court in a criminal proceeding have been fully satisfied, and whether the individual has complied with court orders in the criminal proceeding;

(h) Whether a probation agreement, plea in abeyance, or diversion agreement entered into in a criminal proceeding in the ten years preceding the application has been successfully completed;

(i) Whether any tax and child support arrearages have been paid; and

(j) Whether there has been good conduct on the part of the individual subsequent to the individual's offenses.

202.5.2 Competency to Transact the Business of Residential Mortgage Loans. The Commission and the Division will consider information necessary to determine whether an applicant for a license or the control person of an entity that has applied for a license meets the requirement of competency to transact the business of residential mortgage loans, which shall include the following:

(a) Past acts related to competency to transact the business of residential mortgage loans;

(b) Whether a civil judgment involving the business of mortgage loans has been entered against the individual, and whether the judgment has been fully satisfied, unless the judgment has been discharged in bankruptcy;

(c) The failure of any previous mortgage loan business in which the individual engaged, and the reasons for any failure;

(d) The individual's management and employment

practices in any previous mortgage loan business, including whether or not employees were paid the amounts owed to them;

(e) The individual's training and education in mortgage lending, if any was available to the applicant;

(f) The individual's training, education, and experience in the mortgage loan business or in management of a mortgage loan business, if any was available to the individual;

(g) A lack of knowledge of the Utah Residential Mortgage Practices Act on the part of the individual;

(h) A history of disregard for licensing laws;

(i) A prior history of drug or alcohol dependency within the last five years, and any subsequent period of sobriety; and

(j) Whether the individual has demonstrated competency in business subsequent to any past incompetence by the individual in the mortgage loan business.

202.5.3 Age. All applicants shall be at least 18 years old.

R162-202-6. Conversion of Existing Registrations.

202.6 In order to comply with Section 61-2c-201(1), the division shall convert all existing registrations to licenses on January 1, 2004. The licenses issued to individuals under the authority of this rule shall be issued subject to Section 61-2c-202(4)(a)(ii).

R162-202-7. Registration of Assumed Business Name.

202.7.1 An individual licensed to engage in the business of residential mortgage loans who intends to conduct business under an assumed business name instead of the individual's own name shall register the assumed business name with the Division.

202.7.2 To register an assumed business name, an individual shall pay the applicable non-refundable fee and submit proof in the form required by the Division of a current filing of that assumed business name with the Division of Corporations and Commercial Code.

202.7.3 Misleading or deceptive business names. The Division shall not register an assumed business name if there is a substantial likelihood that the public will be misled by the name into thinking that they are not dealing with an individual engaged in the residential mortgage loan business.

R162-202-8. Reciprocal Licenses.

202.8.1 An applicant who is a legal resident of a state with which the Division has entered into a written reciprocity agreement and who applies for a Utah license shall submit to the Division:

(a) An application for a reciprocal license on the form required by the Division;

(b) All applicable licensing fees and the Residential Mortgage Loan Education, Research, and Recovery Fund fee;

(c) An official license history from the licensing agency in the applicant's state of legal residence containing the dates of the applicant's licensure and any complaint or disciplinary history; and

(d) The information required by Subsections 202.2.1 through 202.2.11.

202.8.2 An applicant who is a legal resident of a state with which the Division has not entered into a written reciprocity agreement and who applies for a Utah license shall submit to the Division:

(a) An application for a reciprocal license on the form required by the Division;

(b) All applicable licensing fees and the Residential Mortgage Loan Education, Research, and Recovery Fund fee;

(c) A signed, notarized affidavit attesting that the applicant has at least five years experience in the business of residential mortgage loans;

(d) An official license history from the licensing agency in the applicant's state of legal residence, and any other state(s)in

which the experience referred to in Subsection 202.8.2(c) was obtained, that includes the dates of the applicant's licensure and any complaint or disciplinary history; and

(e) A copy of the licensing statute or rules from any jurisdiction in which residential mortgage experience is claimed that demonstrate that the jurisdiction's licensing requirements are substantially equivalent to those of Utah; and

(f) Those items required by Subsections 202.2.1 through 202.2.11.

R162-202-9. Branch Office.

202.9 A branch office shall be registered with the Division prior to operation. To register the branch office, the control person of the entity must submit to the Division, on the forms required by the Division, the location of the branch office and the names of all licensees assigned to the branch, along with the fee for registering the branch office.

KEY: residential mortgage loan origination

November 3, 2004

61-2c-103(3)

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

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

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

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

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

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

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

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

R162-203-2. Entity Affiliation.

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

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

R162-203-3. Unavailability of Licensee.

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

203.3.2 Control Person. If control person who will no longer be the control person designated by the entity is not available to properly execute the form that is required by the Division to substitute one control person for the other, the change in control person may still be made by the entity,

provided a letter advising of the change is signed by a person who is legally authorized to make staffing decisions on behalf of the entity and mailed by certified mail to the last known address of the unavailable person. A verified copy of the letter and proof of mailing by certified mail shall be attached to the form required by the Division to substitute one control person for another when the form is submitted to the Division.

R162-203-4. Inactivation.

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

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

R162-203-5. Activation.

203.5 All licensees changing to active status must submit to the Division the applicable non-refundable activation fee and a written request for activation on the form required by the Division.

KEY: residential mortgage loan origination**November 3, 2004****61-2c-205(3)**

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

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

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

R162-207-2. Renewal of Converted Licenses.

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

R162-207-3. Renewal Process.

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

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

- (a) A licensure statement in the form required by the division;
- (b) The renewal fee and the Residential Mortgage Loan Education, Research, and Recovery Fund fee;
- (c) If the applicant is an individual, proof using forms approved by the division of having completed during the two years prior to application the continuing education required by the commission under Section 61-2c-104;
- (d) The current home street address and home telephone number of any individual applicant or control person of an entity applicant;
- (e) A current mailing address for the applicant;
- (f) Answers to a "Licensing Questionnaire" supplying information about events that occurred in the preceding two years related to mortgage licensure in other jurisdictions, license sanctions or surrenders, pending disciplinary actions, pending investigations, criminal convictions or pleas, and/or civil judgments or findings based on fraud, misrepresentation, or deceit;
- (g) If, at the time of application for renewal, an individual applicant or a control person of an entity applicant is charged with, or since the last renewal has been convicted of or entered a plea to, any felony or misdemeanor, the following information must be provided on each conviction, plea, or charge: the charging document, the case docket, and the judgment and sentencing document, if applicable; and

(h) If, in the two years preceding application for renewal, an individual or entity applicant or a control person of an entity applicant has had a license or registration suspended, revoked, surrendered, canceled or denied based on misconduct in a

professional capacity that relates to good moral character or the competency to transact the business of residential mortgage loans, the applicant must provide the documents stating the sanction taken against the license or registration and the reasons therefore.

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

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

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

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

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

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

R162-207-4. Current Entity Name Registration.

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

R162-207-5. Incomplete Application.

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

R162-207-6. Nonrefundable Fees.

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

R162-207-7. Determining Fitness for Renewal.

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

R162-207-8. Applications Filed by Mail.

207.8 The Division will consider a properly completed

application for renewal that has been postmarked on or before the expiration date shown on the renewal notice to have been timely filed.

R162-207-9. Misrepresentation on an Application.

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

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

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

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

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

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

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

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

KEY: residential mortgage loan origination

November 3, 2004

**61-2c-103(3)
61-2c-202(4)(a)(ii)**

R162. Commerce, Real Estate.**R162-208. Continuing Education.****R162-208-1. Required Hours of Continuing Education.**

208.1 As authorized by Section 61-2c-104(7)(d)(ii)(A), the Utah Residential Mortgage Regulatory Commission has set the number of hours of continuing education required for renewal as follows:

208.1.1 Individuals with renewal dates on or before December 31, 2005 - zero credit hours.

208.1.2 Individuals with renewal dates after December 31, 2005 - fourteen credit hours.

R162-208-2. Proof of Continuing Education Hours.

208.2 Proof of continuing education hours must be in the form required by the Division.

R162-208-3. Credit Hours.

208.3 For the purpose of this rule, a credit hour is defined as 50 minutes of education within a 60 minute time period. A 10 minute break may be taken for every 50 minutes of education. Education credit will be limited to a maximum of 8 credit hours per day.

R162-208-4. Subject Matter.

208.4 The following subject matter is acceptable for continuing education credit:

208.4.1 Each time the licensee renews, the required 14 credit hours must include a minimum of 2 credit hours of ethics and a minimum of 3 credit hours related to compliance with Federal and State laws governing mortgage lending.

208.4.2 The balance of the credit hours required for renewal may consist of any courses related to residential mortgage principles and practices that, in the opinion of the commission, would enhance the competency and professionalism of licensees.

208.4.3 The Division will maintain and will make available to any person upon request a list of course topics that have been approved by the Division and the commission as acceptable for continuing education purposes. The Division shall also post the list of course topics on its website.

R162-208-5. Unacceptable Subject Matter.

208.5 The following topics are not acceptable for continuing education purposes:

208.5.1 Offerings in mechanical office and business skills such as typing, speed reading, memory improvement, report writing, advertising or similar offerings;

208.5.2 Offerings concerning physical well-being or personal development, such as personal motivation, stress management, time management, dress-for-success, or similar offerings; and

208.5.3 Meetings held in conjunction with the general business of the licensee and the entity for which the licensee conducts residential mortgage business, such as sales meetings, or in-house staff meetings unless the in-house staff meetings consist of training on the subjects set forth in Section 61-2c-104(7)(d)(i).

R162-208-6. Education Committee.

208.6 The commission will appoint an Education Committee, the purpose of which will be to assist the Division and the commission in approving continuing education course topics. The Education Committee will make recommendations to the Division and the commission about whether any particular course topic is sufficiently related to residential mortgage principles and practices, and whether the topic would tend to enhance the competency and professionalism of licensees, to justify placing the topic on the list of course topics that are acceptable for continuing education purposes. The Division and

the commission may accept or reject the Committee's recommendation on any course topic.

208.6.1 Any licensee or any course provider may request that the Education Committee recommend to the Division and the commission that a specific topic be approved as an acceptable topic for continuing education purposes. The request must be made in writing, addressed to the Education Committee in care of the Division, and must state specific reasons why the requester believes the topic qualifies for continuing education purposes.

208.6.2 If the Education Committee turns down a request to approve a certain topic for continuing education purposes, the party who requested that the topic be approved may petition the Division and the commission on an individual basis for evaluation and approval of the topic as being acceptable for continuing education purposes. The Petition must be made in writing, addressed to the Division and the commission in care of the Division, and must state specific reasons why the requester believes that the topic qualifies for continuing education purposes. If the Division and the commission find that the topic is acceptable for continuing education purposes, the Division shall add the topic to the list maintained by the Division of approved continuing education topics.

R162-208-7. Course Completion Certificate.

208.7 The course provider shall issue a course completion certificate in the form required by the Division to all licensees who successfully complete a course in a topic that is approved for continuing education purposes. The course completion certificate shall indicate the number of credit hours successfully completed by the student and must be signed by the student and the instructor who taught the course. The course completion certificate must include the course title, date of the course, course certificate number, and course certificate expiration date.

R162-208-8. Online Courses.

208.8 Online courses may be accepted by the Division for continuing education purposes if they comply with all of the other provisions of this rule and if: a) the student who successfully completes a course is able to print from the course provider's web site a continuing education certificate to submit to the Division that meets the requirements of Section 208.7 above; and b) the course provider has methods in place to determine whether a student has successfully completed a course and to insure that only those students who have successfully completed a course are able to print a course completion certificate.

R162-208-9. Continuing Education Instructor Certification.

208.9 All instructors of courses to be taught for continuing education purposes must apply for certification from the Division not less than 60 days prior to the anticipated date of the first class that they intend to teach.

208.9.1 Continuing education course instructor applicants shall meet the requirements set forth in Section 210.5 and Section 210.7 of these rules, and shall demonstrate knowledge of the subject matter of the course they intend to teach by submitting proof of the following:

(a) at least three years of experience in a profession, trade, or technical occupation in a field directly related to the course which the applicant intends to instruct; or

(b) a bachelors or postgraduate degree in the field of real estate, business, law, finance, or other academic area directly related to the course which applicant intends to instruct; or

(c) any combination of at least three years of full-time experience and college-level education in a field directly related to the course which the applicant intends to instruct.

208.9.2 Instructor applicants shall demonstrate evidence of the ability to communicate the subject matter by the

submission of proof of the following:

(a) a state teaching certificate or showing successful completion of appropriate college courses in the field of education; or

(b) a professional teaching designation from the National Association of Mortgage Brokers, the Real Estate Educators Association, the Mortgage Bankers Association of America, or a similar association; or

(c) evidence, such as instructor evaluation forms or letters of reference, of the ability to teach in schools, seminars, or in an equivalent setting.

208.9.3 Upon approval by the Division, an instructor shall be issued a certification to act as a continuing education instructor. A continuing education instructor certification shall expire twenty-four months after its issuance. An instructor shall apply for renewal of a continuing education instructor certification prior to the expiration of the instructor's current certification, using the form required by the Division.

208.9.3.1 To qualify for renewal of instructor certification, an instructor must provide proof of having taught a minimum of one class in each course for which renewal is sought in the year preceding application for renewal. The term of a renewed instructor certification shall be twenty-four months.

208.9.3.1.1 If the instructor has not taught during the year preceding renewal and wishes to renew certification, written explanation shall be submitted outlining the reason for not instructing the course, including documentation satisfactory to the Division as to the instructor's present level of expertise in the subject matter of the course.

208.9.4 Reinstatement of Expired Instructor Certification. If the instructor does not submit a properly completed renewal form, the renewal fee, and any required documentation prior to the expiration date of the instructor's current certification, the certification shall expire. When an instructor certification expires, the certification may be reinstated for a period of thirty days after the expiration date upon payment of a non-refundable late fee in addition to completing all of the requirements for a timely renewal. After the thirty day period, and until three months after the expiration date, an instructor certification may be reinstated upon payment of a non-refundable late fee and completion of 6 classroom hours of education related to residential mortgages or teaching techniques in addition to completing all of the requirements for a timely renewal. After the three month period, an instructor will be required to apply by following the procedure for obtaining original certification.

R162-208-10. Continuing Education Course Certification.

208.10 Continuing education course providers are required to apply to the Division for certification of any course for which continuing education credit is promised at least 60 days prior to the anticipated date of the first class.

208.10.1 Approved continuing education providers may include accredited colleges and universities, public or private vocational schools, national and state mortgage related professional societies and organizations, and proprietary schools.

208.10.2 Those continuing education providers who have been certified for continuing education courses in a minimum of three other states and have specific standards in place for development of their courses and approval of their instructors, and who will provide those criteria to the Division for a one-time approval, may be granted certification of their courses with no further application.

208.10.3 Submission of Course for Certification. The application shall include the non-refundable instructor certification fee of \$50.00 and the non-refundable \$70.00 course certification fee per course per instructor. The application shall be made on the form approved by the Division which shall include the following information:

(a) Name, phone number and address of the sponsor of the course, including the owners and the coordinator or director responsible for the offering;

(b) The title of the course offering including a description of the type of training; for example, seminar, conference, correspondence course, or similar offering;

(c) A copy of the course curriculum including a course outline of the comprehensive subject matter. Except for courses approved for specific distance education delivery, the course outline shall include the length of time to be spent on each subject area broken into segments of no more than 30 minutes each, the instructor for each segment, and the teaching technique used in each segment;

(d) A complete description of all materials to be distributed to the participants;

(e) The date, time and locations of each course;

(f) The procedure for pre-registration, the tuition or registration fee and a copy of the cancellation and refund policy;

(g) Except for courses approved for specific distance education delivery, the procedure for taking and maintaining control of attendance during class time, which procedure shall be more extensive than having the student sign a class roll;

(h) An instructor application on a form approved by the Division including the information as defined in R162-9.4;

(i) A signed statement agreeing to allow the course to be randomly audited on an unannounced basis by the Division or its representative;

(j) A statement defining how the course will meet the objectives of continuing education by providing education of a current nature and how it will improve a licensee's ability to provide greater protection of, and service to, the public;

(k) A signed statement agreeing not to perform marketing for a specific company or professional service, or to market personal sales products;

(l) A sample of the completion certificate, or the completion certificate required by the Division, if any, that will be issued which shall bear the following information:

(i) Space for the licensee's name, type of license and license number, date of course;

(ii) The name of the course provider, course title, hours of credit, certification number, and certification expiration date;

(iii) Space for the signature of the course sponsor and a space for the licensee's signature; and

(m) Signature of the course coordinator or director.

208.10.4 Distance Education. Continuing education courses in which the instruction does not take place in a traditional classroom setting, but rather through other media where teacher and student are separated by distance and sometimes by time, may be certified by the Division if the particular distance education method has been approved by the Commission and the Division. Application must be made to the Division on the form required by the Division for certification of courses that do not take place in a traditional classroom setting.

R162-208-11. Conditions of Certification.

208.11.1 Course Completion Certificates. Upon completion of the educational program the course provider shall furnish to each student a certificate of completion in the form required by the Division.

208.11.1.1 Course completion certificates may be given only to those students who have attended a minimum of 90% of the required class time of a live lecture course. Within 10 days of the end of the course, the course provider shall furnish to the Division a roster of students and their license numbers for whom certificates were issued.

208.11.2 Registration Records. A course provider shall maintain for three years a record of registration of each individual completing a course and any other information

required by the Division regarding the individual's attendance at the course, including exam results, if any.

208.11.3 Course providers shall require that a student registered for a distance education course completes the course within one year of the date the student originally registered for the course.

208.11.4 Material Changes in Courses Certified for Continuing Education Purposes. Whenever there is a material change in a certified continuing education course, including a change in curriculum, course length, instructor, or refund policy, the provider shall promptly notify the Division in writing.

208.11.5 Course Evaluation Forms. At the end of each course, course providers shall require that each student complete a standard evaluation form provided by the Division. The forms shall be collected at the end of the class, sealed in an envelope, and mailed by the course provider to the Division within 10 days of the last class.

R162-208-12. Continuing Education Course Certification and Renewal.

208.12 All course certifications shall expire two years after their issuance.

208.12.1 Application for renewal of a continuing education course certification shall be made on the form required by the Division and shall include the non-refundable renewal fee.

208.12.1.1 If the certification of a continuing education course is not renewed within three months after its expiration date, the course provider will be required to apply for a new certification for the course.

208.12.2 After a course has been renewed three times, the course provider will be required to apply for a new certification.

R162-208-13. Division Evaluation and Monitoring of Courses and Instructors.

208.13.1 The Division shall cause certified continuing education courses to be evaluated for adherence to course content and other prescribed criteria, and for the effectiveness of the instructor.

208.13.2 On a randomly selected basis, the Division may assign monitors to attend courses for the purpose of evaluating the courses and the instructors. The monitors will complete a standard evaluation form provided by the Division and return the form to the Division within 10 days after the last class.

R162-208-14. Individual Application for Continuing Education Credit.

208.14 A licensee may apply for continuing education credit for any non-certified continuing education course if the licensee believes the course will improve his ability to better protect or serve the public, provided the course was taken from a nationwide education provider. The subject matter of the course may not relate exclusively to the practice of the residential mortgage business in a state other than the State of Utah.

R162-208-15. Limitation on Multiple Use of Credit Hours.

208.15 A mortgage licensee who is also licensed by the Division as a real estate broker, real estate sales agent, or real estate appraiser may not receive credit toward renewal of a mortgage license for continuing education hours that have already been used toward renewal of a real estate broker, real estate sales agent, or real estate appraiser license.

**KEY: residential mortgage loan origination
November 3, 2004**

**61-2c-103(3)
61-2c-104(7)(d)(ii)**

R162. Commerce, Real Estate.**R162-209. Administrative Proceedings.****R162-209-1. Formal Adjudicative Proceedings.**

Any adjudicative proceeding as to the following matters shall be conducted on a formal basis:

209.1.1. A disciplinary action commenced by the Division following investigation of a complaint; and

209.1.2. Any proceedings conducted subsequent to the issuance of a cease and desist order.

R162-209-2. Informal Adjudicative Proceedings.

209.2.1. All adjudicative proceedings as to any other matters not specifically designated as formal adjudicative proceedings shall be conducted as informal adjudicative proceedings.

209.2.2. A hearing will be held in an informal adjudicative proceeding only if required or permitted by the Utah Residential Mortgage Practices Act or by these rules.

209.2.3. A party is not required to file a written answer to a notice of agency action from the Division in an informal adjudicative proceeding.

209.2.4. All proceedings on original or renewal applications for a license will be conducted as informal adjudicative proceedings. All proceedings on original or renewal applications for certification of a school, instructor, or course will be conducted as informal adjudicative proceedings.

209.2.5. Any application form which is filled out and submitted to the Division for a license or renewal of a license shall be deemed a request for agency action pursuant to the Utah Administrative Procedures Act, Section 64-46b-1, et seq.

209.2.6. Within a reasonable time after receipt of an application, the Division shall:

(a) issue and mail a license to the applicant, which shall be deemed notification that the application is granted conditionally subject to the outcome of the criminal background check;

(b) notify the applicant that the application is incomplete or that further information is needed;

(c) notify the applicant that a hearing shall be scheduled before the Utah Residential Mortgage Regulatory Commission; or

(d) notify the applicant that the application is denied, and, if the proceeding is one in which a hearing is permitted, that the applicant may request a hearing to challenge the denial.

209.2.7. Other Requests for Agency Action. All other requests for agency action shall be in writing and signed by the requestor, and shall contain the following:

(a) the names and addresses of all persons to whom a copy of the request for agency action is being sent;

(b) the agency's file number or other reference number, if known;

(c) the date of mailing of the request for agency action;

(d) a statement of the legal authority and jurisdiction under which the agency action is requested, if known;

(e) a statement of the relief or action sought from the Division; and

(f) a statement of the facts and reasons forming the basis for relief or agency action.

209.2.8. Within a reasonable time after receipt of a request for agency action other than an application for an original or renewed license, the Division shall:

(a) notify the requestor in writing that the request is granted;

(b) notify the requestor that the request is incomplete or that further information is needed before the Division is able to make a determination on the request;

(c) notify the requestor that the Division does not have the legal authority or jurisdiction to grant the relief requested or the action sought; or

(d) notify the requestor that the request is denied, and, if

the proceeding is one in which a hearing is permitted, that he may request a hearing to challenge the denial.

209.2.9. A complaint against a licensee requesting that the Division commence an investigation or a disciplinary action is not a request for agency action pursuant to the Utah Administrative Procedures Act, Section 64-46-1, et seq.

R162-209-3. Hearings Not Required.

A hearing is not required and will not be held in the following informal adjudicative proceedings:

(a) The issuance of an original or renewed license when the application has been approved by the Division;

(b) The issuance of an original or renewed school certification, instructor certification, or course certification when the application has been approved by the Division;

(c) The issuance of any interpretation of statute, rule or order, or the issuance of any written opinion or declaratory order determining the applicability of a statute, rule or order, when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the Division;

(d) The denial of an application for original or renewed license on the ground that it is incomplete;

(e) The denial of an application for original or renewed school certification, instructor certification, or course certification on the ground that it does not comply with the requirements of Sections R162-208.9, R162-210.2, R162-210.5, or R162-210.6; or

(f) All proceedings on an application for an exemption from the continuing education requirement.

R162-209-4. Hearings Permitted.

209.4.1. An informal post-revocation hearing following the revocation of a license pursuant to Utah Code Section 61-2c-202(4)(d) for the failure of a person to accurately disclose his criminal history will be held only if requested in writing by the person within 30 days from the date the Division's order revoking the license was mailed.

R162-209-5. Procedures for Hearing in Informal Adjudicative Proceedings.

209.5.1. Notice of hearing. Upon the scheduling of a hearing by the Division on an application for a license or upon receipt of a timely request for a hearing where other hearings are permitted, the Division shall mail written notice of the date, time, and place scheduled for the hearing at least ten days prior to the hearing.

209.5.2. Discovery is prohibited, but the Division may issue subpoenas or other orders to compel production of necessary evidence. All parties shall have access to the Division's files and all materials and information gathered in any investigation to the extent permitted by law.

209.5.3. Intervention is prohibited.

209.5.4. Hearings shall be open to all parties, except that a hearing on an applicant's fitness for a license shall be conducted in a closed session which is not open to the public. The parties named in the notice of agency action or the request for agency action may be represented by counsel and shall have the opportunity to testify, present witnesses and other evidence, and comment on the issues.

209.5.5. Within a reasonable time after the hearing, the presiding officer shall cause to be issued and sent to the parties a signed order based on the facts appearing in the agency's files and on the facts presented in evidence at the hearing. The order shall state the decision and the reasons therefor and a notice of the right of administrative review and judicial review available to the parties including applicable time limits.

**KEY: residential mortgage loan origination
November 3, 2004**

63-46b-4

R162. Commerce, Real Estate.**R162-210. Certification of Prelicensing Education Providers.****R162-210-1. Definitions.**

210.1.1 For the purposes of this rule, "school" includes:

(a) Any college or university accredited by a regional accrediting agency which is recognized by the United States Department of Education;

(b) Any community college, vocational-technical school, state or federal agency or commission;

(c) Any nationally recognized mortgage organization, any Utah mortgage organization, or any local mortgage organization which has been approved by the Utah Residential Mortgage Regulatory Commission; and

d) Any proprietary mortgage education school.

210.1.2 For the purposes of this rule, "applicant" shall include school directors, school owners and pending instructors.

210.1.3 "Distance Education" is defined as education in which the instruction does not take place in a traditional classroom setting, but rather through other media where teacher and student are separated by distance and sometimes by time.

R162-210-2. Application for School Certification.

210.2.1 A school offering prelicensing education must be certified by the Division of Real Estate before providing any education. Each school requesting approval of an educational program designed to meet the prelicensing education requirements must make application for approval on the form prescribed by the Division. The application must include the non-refundable application fee and the following information which will be used in determining the school's eligibility for approval:

(a) Name, phone number and address of the school, school director, and all owners of the school;

(b) A description of the type of school and a description of the school's physical facilities. All courses must be taught in an appropriate classroom facility and not in any private residence, except for courses approved for specific home-study purposes;

(c) A comprehensive course outline including a description of the course, the length of time to be spent on each subject area broken into class periods, and a minimum of three to five learning objectives for every three hours of classroom time. The curriculum must include all of the topics set forth in the Standard Curriculum approved by the Utah Residential Mortgage Regulatory Commission and the Division. A school may alter the sequence of presentation of the required topics, and may add topics in addition to those required by the Standard Curriculum;

(d) A list of each certified instructor the school intends to use and the instructor certification number which has been issued by the Division. A college or university may use any faculty member to teach an approved course provided the instructor demonstrates to the satisfaction of the Division the academic training or experience qualifying him to teach the course;

(e) An itemization of methods of instruction, including lecture method, slide presentation, cassette, videotape, movie, or other method;

(f) A list of the titles, authors and publishers of all required textbooks. All texts, workbooks, supplement pamphlets and any other materials must be appropriate and current in their application to the required course outline;

(g) A schedule of the days, times and locations of classes;

(h) A copy of the statement which shall be provided for each student outlining the days, times and locations of classes; the number of quizzes and examinations; the grading system, including methods of testing and standards of grading; the requirements for attendance; the school's evidence of notification to candidates of the qualifying questionnaire; and

the school's refund policy. The statement to the student shall state in capital letters no smaller than 1/4 inch the following language: "Any student attending the (school name) is under no obligation to affiliate with any of the mortgage entities that may be soliciting for licensees at this school;" and

(i) Any other information as the Division may require.

R162-210-3. School Certification and Renewal.

210.3.1 When a school has met all conditions of certification, and upon approval by the Division, a school will be issued certification. A school certification will expire 24 months from the date of issuance. A school shall apply for renewal for additional twenty-four month periods prior to the expiration of each current certification, using the form required by the Division.

R162-210-4. Rules of Conduct for Certified Schools.

210.4.1 A school shall teach the approved course of study as outlined in the Standard Course Outline approved by the Utah Residential Mortgage Regulatory Commission.

210.4.2 A school shall require each student to attend the required number of hours.

210.4.3 A school shall maintain a record of each student's attendance for a minimum of five years after enrollment.

210.4.4 A school shall not accept a student for a number of hours that is less than the full prelicensing curriculum without first having a written statement from the Division indicating the exact number of hours that an applicant for licensure by reciprocity is required by the Division to complete.

210.4.5 A school shall not make any misrepresentation in its advertising about any course of instruction, and shall be able to provide substantiation of any claims made in its advertising. School advertising and public notices shall not denigrate the mortgage profession and shall not make disparaging remarks about a competitor's services or methods of operation.

210.4.6 Guest Lecturers. No more than 20% of the required prelicensing education hours may be provided by guest lecturers. Guest lecturers shall be experts in the field on which they provide instruction. Prior to using any guest lecturer, a certified school shall provide to the Division the name of the guest lecturer and a resume which defines the knowledge and expertise of the guest lecturer, or other evidence of professional qualifications of the guest lecturer.

210.4.7 Minimum class time. A school shall not give a student credit for more credit hours of education than the student has actually completed. A credit hour is defined as 50 minutes of instruction within a 60 minute time period. A 10 minute break will be given for each 50 minutes of instruction.

210.4.8 Maximum class hours per day. Education credit will be limited to a maximum of eight credit hours per day.

210.4.9 Limitation on Non-lecture Methods of Instruction. Absent special approval from the Division: (a) Non-lecture methods of instruction will be limited to 50% of the total credit hours of the prelicensing curriculum; (b) Non-lecture methods of instruction will have an accompanying workbook for the student to complete during the instruction. The schools shall submit copies of the workbooks to the Division prior to using a non-lecture method of instruction; and (c) A school must have a certified instructor available to answer student questions within 48 hours after a non-lecture method of instruction has been used.

210.4.10 Proof of Course Integrity for Distance Education Courses. Distance education courses will be reviewed on a case by case basis and will be approved only if, in the opinion of the Division, assurance of the following can be provided: a) There is a method to insure that the person actually completing the course is the student who is to receive credit for the course; b) The course provides no fewer hours of actual instruction than the number of credit hours that will be granted for the course;

and c) There is a method to insure that the student comprehends the material.

210.4.11 Challenge by Examination. A student cannot challenge a course or any part of a course of study by examination in lieu of attendance at the course.

210.4.12 College Credit Hour Equivalents. A college or a university that provides Division-approved prelicensing education courses may schedule those courses within its regular quarter or semester schedule. A college quarter hour credit is the equivalent of 10 classroom hours of prelicensing education, and a college semester hour credit is the equivalent of 15 classroom hours of prelicensing education.

210.4.13 Within 15 calendar days after the occurrence of any material change in the information provided in the school's application for certification, the school shall give the Division written notice of that change.

210.4.14 A school shall not attempt by any means to obtain or to use in its educational offerings the questions from the prelicensing examination unless the questions have been dropped from the current bank of exam questions.

210.4.15 A school shall not give any valuable consideration to an individual or entity licensed with the Division under the Utah Residential Mortgage Practices Act for having referred students to the school, nor shall a school accept valuable consideration from an individual or entity licensed with the Division under the Utah Residential Mortgage Practices Act for having referred students to a licensed mortgage entity.

210.4.16 Licensed mortgage entities may be permitted by a school to solicit prospective mortgage officers at the school, provided that no solicitation may be made during the class time or the 10-minute breaks that are permitted during every hour of instruction. Such solicitation may be made only after the regularly scheduled class time has concluded. No student may be required to attend any such solicitation.

210.4.17 A school shall use only certified instructors or guest lecturers. The school shall notify the Division about which class sessions the guest lecturers will teach.

210.4.18 A school's owners and directors shall be responsible for the quality of instruction in the school and for adherence to the state laws and regulations regarding school and instructor certification.

210.4.19 School directors shall provide the instructor for each course with the required content outline for the course and shall assure that the required subject matter has been taught.

210.4.20 Disclosure Requirements Regarding Criminal History. For the purposes of this rule, criminal history is defined as any felony or misdemeanor convictions, any pleas in abeyance or diversion agreements, or any pending criminal charges.

210.4.20.1 Prior to accepting payment from a prospective student for a pre-licensing education course, a certified school shall provide a written disclosure to the prospective student stating that: a) a student with a criminal history may not qualify for a license; b) an applicant with a criminal history may be required to appear at a hearing before the Utah Residential Mortgage Regulatory Commission and the Director of the Division of Real Estate to obtain approval to license in light of the criminal history, and there is no guarantee that such an applicant will be approved; and c) all applicants for licensure will be required to submit to the Division with their applications fingerprint cards that will be used in criminal background checks.

210.4.20.2 The school shall be required to obtain the student's signature on the written disclosure required by Section 210.4.20.1 acknowledging receipt of the disclosure. The disclosure form and acknowledgment shall be retained in the school's records and made available for inspection by the Division for a minimum of two years following the date upon which the student completes the pre-licensing course.

R162-210-5. Instructor Application for Certification.

210.5.1 An instructor shall not teach a prelicensing course by himself without having been certified by the Division prior to teaching the course. Each applicant for certification as a prelicensing instructor shall make application for approval on the form required by the Division.

210.5.2 The applicant for instructor certification to teach Mortgage Officer prelicensing courses shall provide:

(a) Evidence of a minimum educational level of graduation from high school or its equivalent;

(b) Evidence of a minimum of five years of experience in the residential mortgage industry within the past ten years, or evidence of having completed appropriate college-level courses specific to the topic proposed to be taught;

(c) Evidence of a minimum of twelve months of fulltime teaching experience or an equivalent number of months of part time teaching experience, or attendance at Instructor Development Workshops totaling at least two days in length; and

(d) Evidence of having passed an examination designed to test the knowledge of the subject matter proposed to be taught.

210.5.3 Lending Manager Prelicensing Courses. In addition to the requirements of Section 210.5.2, an applicant for certification to teach the following specific Lending Manager prelicensing courses shall have experience as follows:

210.5.3.1 Management of a Residential Mortgage Loan Office. An applicant for certification to teach office management courses must have at least two years practical experience in managing an office that engaged in the business of residential mortgage loans.

210.5.3.2 Mortgage Lending Law. An applicant to teach mortgage lending law courses must be a current member of the Utah Bar Association or have graduated from an American Bar Association accredited law school, and must have at least two years practical experience in the field of real estate law.

210.5.3.3 Advanced Appraisal. An applicant to teach advanced appraisal courses must be a State-Certified appraiser and must hold an MAI designation or equivalent designation. The instructor applicant must have at least two years practical experience in appraising.

210.5.3.4 Advanced Finance. An applicant to teach advanced finance courses must have been associated with a lending institution as a loan officer or have a degree in finance. The instructor applicant must have at least two years practical experience in real estate finance.

210.5.4 Special Circumstances. Instructor applicants who cannot meet the requirements of Section 210.5.2, but who believe they are qualified to be certified as instructors, may petition the Utah Residential Mortgage Regulatory Commission on an individual basis for evaluation and approval of their qualifications as being substantially equivalent to those required for instructor certification.

R162-210-6. Instructor Certification and Renewal.

210.6.1. Upon approval by the Division, an instructor applicant will be issued a certification that expires twenty-four months following certification. An instructor shall apply for renewal for additional twenty-four month periods prior to the expiration of each current certification, using the form required by the Division.

210.6.2. As a conditions of renewal of certification, the applicant shall include the following with the application for renewal:

(a) Proof of having taught at least 20 hours of in-class instruction in a certified mortgage education course during the preceding two years;

(b) Proof of attendance at an instructor development workshop sponsored by the Division during the preceding two years; and

(c) Proof of successful completion of 12 hours of live education courses taken in real estate financing related subjects;

210.6.3 A renewed certification will be issued for two full calendar years, expiring on December 31 of the second calendar year.

210.6.4 If an application for renewal of instructor certification, including all required fees and documentation, is not received prior to the expiration date of the current instructor certification, the instructor certification shall expire.

210.6.4.1 When an instructor certification expires, the certification may be reinstated for a period of thirty days after the expiration date of the certification upon payment of a non-refundable late fee in addition to completion of the requirements for a timely renewal.

210.6.4.2 After the thirty day period, and until three months after the expiration date, an instructor certification may be reinstated upon payment of a non-refundable late fee and completion of 6 classroom hours of education related to residential mortgages or teaching techniques in addition to completing all of the requirements for a timely renewal. After the three month period, an instructor will be required to apply as for an original certification.

R162-210-7. Determining Fitness for Certification.

210.7.1 In order to qualify for school certification, all school directors and all owners of the school must meet the criteria of honesty, integrity, truthfulness, reputation, and competency. In order to qualify for instructor certification, all instructors must meet the criteria of good moral character, honesty, integrity, truthfulness, reputation, and competency.

210.7.2 The determination of whether a person possesses these qualifications will be made by the Division, with the concurrence of the Commission. In determining fitness for certification, the Division and Commission may consider various factors, including:

(a) whether the person has had a license to practice in the mortgage profession, or any other regulated profession or occupation denied, restricted, suspended, or revoked or subjected to any other disciplinary action by this or another jurisdiction;

(b) whether the person has been permitted to resign or surrender a mortgage license or any other professional license or has ever allowed a license to expire while the applicant was under investigation, or while action was pending against the applicant by a mortgage licensing or any other regulatory agency;

(c) whether any action is pending against the person by any mortgage licensing or other regulatory agency;

(d) whether the person is currently under investigation for, or charged with, or has ever been convicted of or pled guilty or no contest to, or entered a plea in abeyance to, a misdemeanor or felony;

(e) the circumstances that led to any criminal convictions;

(f) the amount of time that has passed since the individual's last criminal conviction;

(g) whether the person has ever been placed on probation or ordered to pay a fine or restitution in connection with any criminal offense or a licensing action;

(h) whether a civil judgment has ever been entered against the person based on fraud, misrepresentation or deceit, and, if the judgment awarded damages against the person, whether the judgment has been fully satisfied;

(i) whether any restitution ordered by a court in a criminal conviction has been fully satisfied;

(j) whether the probation in a criminal conviction or a licensing action has been completed and fully served;

(k) whether there has been subsequent good conduct on the part of the person;

(l) any character testimony presented at the hearing and

any character references submitted by the individual;

(m) past acts related to honesty or moral character involving the business of residential mortgage loans;

(n) whether the individual has been guilty of dishonest conduct in the five years preceding application that would have been ground under Utah law for revocation or suspension of a certification had the individual then been certified;

(o) whether any tax and child support arrearages have been paid; and

(p) whether the individual has demonstrated competency in business subsequent to any part incompetence by the individual in the mortgage loan business.

R162-210-8. Division Evaluation and Monitoring of Courses and Instructors.

210.8.1 The Division shall cause certified prelicensing education courses to be evaluated for adherence to course content and other prescribed criteria, and for the effectiveness of the instructor.

210.8.2 On a randomly selected basis, the Division may assign monitors to attend courses for the purpose of evaluating the courses and the instructors. The monitors will complete a standard evaluation form provided by the Division and return the form to the Division within 10 days after the last class.

**KEY: residential mortgage loan origination
November 3, 2004**

61-2c-103(6)

R212. Community and Economic Development, History.**R212-4. Archaeological Permits.****R212-4-1. General Authority.**

Section 9-8-201 provides for the creation and purpose of the division.

Section 9-8-203 defines the division's duties and includes the provision to mark and preserve historic sites, areas, and remains.

Section 9-8-304 specifies the Antiquities section duties and includes responsibility for the stimulation of research, study, and activities in the field of antiquities; the marking, protection, and preservation of sites; the administration of site survey and excavation records; and the cooperation with local, state, and federal agencies and all interested persons to achieve the purposes of this part and Part 4.

Section 9-8-305 provides that the division shall make rules for the issuance of permits for the survey and excavation of archaeological resources on state lands and allows for the division to enter into memoranda of agreement to issue permits for federal and Native American lands within the state.

Section 9-8-306 requires a permit to excavate a privately owned designated landmark.

Section 9-8-307 requires any person who discovers any archaeological resources on privately owned lands to promptly report the discovery to the division and discourages field investigations except by those holding a permit from the division.

Section 9-8-404 regards the issuance of a permit in consultation with the State Historic Preservation Officer.

R212-4-2. Purpose.

The primary purposes of issuing a permit are to:

- A. Ensure that survey, excavation and related work are consistently and reliably executed by qualified personnel; and,
- B. Ensure that educational, scientific, archaeological, anthropological, and historical information is recovered and preserved; and,
- C. Ensure that physical items recovered and owned by the state are not lost to the people of Utah.

R212-4-3. Applicability.

This rule applies to all those seeking a permit from the division on any lands within the State of Utah.

R212-4-4. Definitions.

- A. Terms used in this rule are defined in Section 9-8-302.
- B. In addition:
 1. "board" means the Board of State History;
 2. "division" means the Division of State History;
 3. "director" means the Director of the division;
 4. "recovery" means the scientific disturbance, removal, or study of subsurface and substantial surface archaeological resources by a qualified permit holder.
 5. "permit" means a valid approval by the division issued to professionals meeting qualifications.
 6. "section" means the Antiquities Section of the division.
 7. "surface investigation" means the study, including insubstantial surface collection and limited subsurface testing, of archaeological resources for determination of eligibility for State or National Register.

R212-4-5. Qualifications of Permit Holders.

The division shall issue a permit for the survey or excavation of archaeological resources to individuals and entities who demonstrate compliance with the following requirements:

- A. Education, Experience, and Capabilities.
 1. Archaeologists shall meet the minimum standards for education and experience set by federal regulation. The federal

regulations, codified as 43 CFR 7.8, Subtitle A (October 1, 2000 Edition) as amended, Issuance of permits are hereby incorporated by reference.

- a) Archaeologists shall be Registered Professional Archaeologists (RPA) in good standing, as recognized by the Register of Professional Archaeologists. Applicants listed on Antiquities Permits at the time this rule takes effect, but who may not meet the standards for RPA status, will not have their permit status revoked.

2. Applicants shall submit a resume or vita as proof of compliance.

3. Applicants shall provide written evidence indicating the ability to conduct surveys or the proposed excavation in a manner consistent with current professional practice, including access to proper equipment and facilities, and use of other personnel qualified to execute portions of the research design.

4. All work conducted under authority of an Antiquities Permit shall be undertaken to current standards of scientific rigor, and must conform to standards established by the Utah Professional Archaeological Council and the Register of Professional Archaeologists.

R212-4-6. Survey Permit Required for Archaeological Surveys.

A. A survey permit is issued to a qualified professional upon request. The permit holder may conduct archaeological surveys on behalf of land owners within the State of Utah.

R212-4-7. Excavation Permits.

A. The division may issue a permit for excavation on lands owned or controlled by the state and its subdivisions, and on school and institutional trust lands when permitting authority is delegated to the division, when the applicant complies with the requirements of sub-section C.

B. The division may issue a permit for excavation on other lands, including private lands, when the landowner gives permission and the applicant complies with the requirements of sub-section C.

- C. The division shall require that the applicant:
1. Provide a research design which:
 - a) explicitly states the questions to be addressed;
 - b) the reasons for conducting the work;
 - c) defines the methods to be used;
 - d) describes the analysis to be performed;
 - e) outlines the expected results and the plans for reporting;
 - f) evaluates expected contributions of the proposed archaeological work to archaeological science and the field of anthropology or related disciplines;
 - g) provides for recovery of the maximum amount of historic, scientific, archaeological, anthropological, and educational information;
 - h) provides that the physical recovery of specimens and the reporting of archaeological information meet current standards of scientific rigor and conforms to standards established by the Utah Professional Archaeological Council and the Register of Professional Archaeologists; and
 - i) provides that no specimen, site or portion of any site is removed from the state of Utah, prior to placement in a museum, repository, or curation facility, without explicit permission from the division and after consultation with landowners and any other agency managing any interest in the land.

2. Possess written proof of consultation with the appropriate Native American Tribe or Nation, if required by law.

3. Provide written proof of consultation with the Museum of Natural History, if required by law.

4. Possess written proof of consultation with other agencies that manage other legal interests in the land.

5. Provide all other information requested by the division.

R212-4-8. Permit Provisions.

All permits shall contain the following provisions:

A. A permittee shall provide reports documenting results of the work and data obtained, and deliver relevant records, site forms, and reports to the section within the time specified in the permit.

B. A permittee who discovers human remains shall cease further activity and notify the landowner, antiquities section and appropriate agencies pursuant to Section 9-9-403 and 76-9-704.

C. Duration of Permits.

1. Survey permits are issued for a period of up to two years.

2. Permits for excavation are issued for a period of time necessary to accomplish the proposed work.

a) The period of time may be extended by the division upon application of the permittee and

b) The Museum of Natural History shall be consulted by the permittee if the duration of a required excavation permit is to be modified.

D. Other provisions the division deems necessary.

R212-4-9. Application Review.

A. Application for a survey or excavation permit shall be made on a form provided by the section. Applicants shall fully complete the application form.

B. Applicants shall be notified of the acceptance or rejection of the completed application within 30 calendar days.

R212-4-10. Violations of Statute or Rule.

If the division receives information indicating a violation of statute or rule, the division shall make a good faith effort to notify the alleged violator of the legal requirements and potential penalties. The division shall also notify the landowner, and take other actions deemed necessary.

R212-4-11. Terminating Permits.

If the permittee fails to comply with any statute, rule, or the provisions of the permit, the division may terminate the permit, temporarily suspend the permit, place additional restrictions on a permit, require other conditions, refuse to issue a permit, or take other appropriate actions.

A. Before action is taken regarding a permit, the division shall notify the permittee.

1. The notification shall describe deficiencies in performance or qualifications.

2. The division shall provide the permittee a reasonable opportunity to respond.

B. The division shall take into account a permittee's timely response before taking action on a permit.

C. The division may seek a peer review as necessary.

R212-4-12. Appeal of Decision.

Any applicant desiring review of a decision concerning an application, termination, or other conditions placed on a permit may appeal the decision pursuant to R212-1.

R212-4-13. Records Access.

The division shall maintain records of archaeological sites and localities. Access to location information within these records shall be restricted to those with legitimate research interests, and those holding valid permits, landowners, or state or federal agencies in accordance with the requirements contained in 16 USC 470 Section 304, the National Historic Preservation Act of 1966, as amended, and Title 63, Chapter 2.

R212-4-14. Exceptions.

Exceptions to this rule may be granted, with landowner permission, in emergency cases requiring immediate action, if

in the best judgment of the division the intent of the law will not be compromised. The division shall require that a permit application be filed as soon as possible. The division shall notify the board of this action as soon as possible.

KEY: administrative procedure, archaeology

November 23, 2004

Notice of Continuation September 26, 2001

9-8-302

9-8-305

9-9-403

63-2

16 USC 470 Sec. 304

43 CFR 7.8 Subtitle A

R251. Corrections, Administration.**R251-113. Distribution of Reimbursement for the Felony Probation Inmate Costs Reimbursement Program/Fund.****R251-113-1. Authority and Purpose.**

(1) This rule is provided in accordance with Section 64-13c-301, et seq.

(2) As required by Subsection 64-13c-303(1)(b), the purpose of this rule is to establish procedures for the distribution of reimbursement from the program.

(3) As required by legislative intent language from the General Session 2004, Senate Bill SB-1, Jail Reimbursement, lines 322-334.

R251-113-2. Definitions.

In addition to terms defined in Section 64-13c-101,

(1) "Contract State Inmate" means an inmate who has been sentenced to the Utah Department of Corrections and at the pleasure of the Division of Institutional Operations (DIO) is selected to complete all or a portion of their court ordered incarceration in a county correctional facility under contract with the UDC.

(2) "Core inmate incarceration costs (Core Rate)" means the county correctional facility's jails direct costs of incarcerating an inmate, including housing, feeding, clothing, and programming. This is also the "single-reimbursement-rate" as provided in Section 64-13c-302. This does not include costs of inmate transportation services or medical care; nor programming for felony probationers.

(3) "Credit for Time Served" means time served in jail prior to judgement, sentence, and commitment.

(4) "Current expenses" means the actual costs of jail salaries, benefits, food, clothing, maintenance, and utilities expended during the most recent budget year.

(5) "Fund" means the monies allocated by the legislature for the Felony Probation Inmate costs (Inmate Costs Reimbursement Program for the current fiscal year.

(6) "Felony Probation Inmate" means a person who may serve a period of time, not to exceed one year in a county jail designated by the department, after considering any recommendation by the court as to which jail the court finds most appropriate, as provided in 77-18-1-(8)(v) Felony Probationer.

(7) "Transportation cost" means mileage rate, salary and benefit costs of the transporting officer(s) expended during the most recent budget year.

R251-113-3. Reimbursement Rates - General.

Pursuant to Section 64-13c-302:

(1) the procedures for setting the rate will be followed as written in the statute; the meeting of the committee will take place prior to July 1 of each year and after the information is gathered from the counties.

(2) the Rate Setting Committee as outlined in 64-13c-302 shall negotiate a single reimbursement rate, applicable to all counties, which shall consist of daily core inmate incarceration costs and shall be called the "Core Rate";

(3) each county shall negotiate directly with the Department to establish appropriate reimbursement rates for the providing of transportation services and medical care for inmates housed under Section 64-13c-201, including Felony Probationers committed to a county jail;

(4) the three parts of the setting reimbursement rate are:

- (a) the core rate;
- (b) county medical costs; and
- (c) county transportation costs.

R251-113-4. County Information Requirement.

(1) On or before the first Friday in March, each county shall provide the Department with budget expenditure

information covering the most recent full County Fiscal Year ending on December 31st of each year:

(a) the full costs and expenses required to operate the jail for the current year;

(b) the cost of medical care provided to all inmates housed in the jail for the current year;

(c) the cost of transportation services provided during the current year; and

(d) the number of inmates and number of "inmate-days" for:

(i) the number of state-contract inmates;

(ii) the condition-of-probation inmates;

(iii) the number of all other county inmates, including all other inmates within the facility not already listed;

(iv) the number of federal inmates;

(v) the number of electronically monitored inmates; and

(vi) the number of total inmates.

(2) The Department may audit the information received by each county as necessary.

R251-113-5. Computation of Reimbursement Rates.

(1) A single core rate shall be used as the basis for all counties as the rate for cost-recovery of housing state inmates.

(a) It will be computed by taking a list of the total information received from all counties, categorized as total inmate days and total current expenses; and then taking

(b) total current expenses, which shall then be divided by the total inmate days, resulting in a computed core rate.

(c) This computed core rate shall be used as the single reimbursement rate for all counties housing contract state prison inmates during the year whether the inmate is a Contract State Inmate or Felony Probation Inmate.

(2) In addition, a separate county rate shall be calculated to reflect medical and transportation expenses incurred by each county. This separate county rate will be computed by:

(a) taking the total medical costs for each county and dividing that total by the inmate days of each county, minus any contract prisoner; and

(b) taking the total transportation cost for each county and dividing that total by the inmate days for each county minus any contract prisoners.

R251-113-6. Payment for Condition of Probation Inmates.

(1) The fund may reimburse each county at seventy percent of the core reimbursement rate established by the Rate Setting Committee and approved by the Legislature.

(2) If funds permit it is the intent of the Legislature for the Department to reimburse county rates related to transportation and/or medical care of felony probation inmates sentenced to a county jail from the fund up to the rate of seventy percent. The medical and transportation rate for each county may be calculated and reimbursed at different rates.

(3) "Credit for Time Served" is not eligible for reimbursement. Reimbursement can only be made beginning on the first day of incarceration after sentencing.

(4) Counties shall not be eligible for reimbursement for housing felony probation inmates who have been ordered by the court to reimburse the county for the cost associated with their incarceration.

R251-113-7. Notice of Fund Shortfall.

(1) Should it be projected that the appropriated fund will be spent prior to the end of the fiscal year, the Department shall notify the Legislative Fiscal Analyst Office in writing. The report will explain the factors used to determine the shortfall.

(2) The Department shall also notify each participating county jail that the fund will be short.

(3) If the fund falls short of being able to cover the core rate the department shall collect all billings against the fund and

hold until the end of the fiscal year. At that time, the remaining funds shall be dispersed at an equal percentage across all participating counties.

**KEY: county jails, reimbursement
November 9, 2004**

64-13-303

R277. Education, Administration.**R277-451. The State School Building Program.****R277-451-1. Definitions.**

A. "Accounts receivable" means any amount due the Board from a school district for which payment has not been received by the Board.

B. "ADM" means Average Daily Membership of students.

C. "Assessed valuation" means the assessed value of real property certified by the State Tax Commission to the Board each year.

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

E. "Capital Outlay Foundation Program" means a program that provides a minimum dollar generation guarantee, per ADM, for every school district willing to levy a tax of .002400 per dollar of taxable value on real property.

F. "Derived assessed valuation" means current collections of tax levy (no prior year penalties or redemptions) divided by the same year tax rates.

G. "Enrollment Growth Program" means a program that provides additional support to those school districts which are experiencing the most pressing needs for school facilities due to rapid growth.

H. "Fiscal year (FY)" means the twelve month period from July 1 through June 30 during which state funds are distributed.

I. "Foundation level" means the guaranteed pro-rated amount per ADM to the extent of funds available distributed to school districts by the Board.

J. "Loan" means a transaction which takes money from a Board account and places it in a school district account with the full legal intention by a school district that it be repaid to the account from which it was taken.

K. "Superintendent" means the State Superintendent of Public Instruction.

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

R277-451-2. 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-21-103 which requires that the Board to adopt rules regarding qualifications for participation in the foundation program and distribution of funds for the program, Section 53A-21-103.5 which requires the Board to adopt rules regarding qualifications for participation in the Enrollment Growth Program and for distribution of funds for the program, 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 specify the eligibility requirements and the procedures for distributing funds appropriated for the capital outlay foundation program and enrollment growth program as well as for providing short-term loans to school districts for capital outlay projects in school building construction and renovation.

R277-451-3. Capital Outlay Foundation Program.

A. A school district may receive state school building funds under the capital outlay foundation program established in Section 53A-21-102(1) if the amount raised by levying a tax rate of .002400 does not generate revenues above the foundation level established per ADM when the legislative appropriation is entered into the formula.

B. To qualify to receive 100 percent of the capital outlay foundation funds available to a school district, a school district shall levy a property tax rate of at least 0.002400 designated specifically for capital outlay and debt service:

(1) school districts levying less than the full 0.002400 tax rate for capital outlay and debt service shall receive proportional funding under the capital foundation program based upon the percentage of the 0.002400 tax rate levied by the school district;

(2) the amount of capital foundation funds to which a

school district would otherwise be entitled under the Capital Outlay Foundation program may not be reduced as a consequence of changes in the certified tax rate under Section 59-2-924 due to changes in property valuation for a period of two tax years from the effective date of any such change in the certified tax rate.

C. The USOE shall support the foundation program to assist the qualifying school district in reaching the foundation level.

R277-451-4. Enrollment Growth Program.

A. A school district may receive enrollment growth program funds under Section 53A-21-103.5 for the following purposes:

(1) to fund general obligation bond principal and interest costs;

(2) to fund construction;

(3) to fund facilities renovation; and

(4) to fund other capital project needs as approved.

B. In order to qualify for monies under the Enrollment Growth Program, a school district shall be a recipient of monies distributed under the Capital Outlay Foundation Program and shall have had an average net increase in student enrollment over the previous three years from the year in which money is requested under the Enrollment Growth Program.

C. If a school district was or is not a recipient of Capital Outlay Foundation Program monies in FY 2003-04 or FY 2004-05, the school district may qualify for monies under the Enrollment Growth Program if the school district received Capital Outlay Foundation Program monies in FY 2002-03.

D. School districts receive Enrollment Growth Program monies in the same proportion that the school district's three-year average net increased enrollment bears to the total three-year net increased enrollment of all the school districts which qualify to receive funds under the Enrollment Growth Program.

R277-451-5. When Funds are Distributed.

Capital Outlay Foundation and Enrollment Growth Program funds shall be distributed through the monthly electronic bank transfer to school districts as early as possible after the data elements are received from school districts and entered into the formulae, typically before the February bank transfer.

R277-451-6. Capital Outlay Loan Program.

A. A school district may receive capital outlay loan program funds under Section 53A-21-102 which establishes a capital outlay loan program to provide short-term assistance to school districts, for a period not to exceed five years, for school building construction and renovation.

B. To be a priority qualifier for the capital outlay loan program, a school district shall satisfy all of the following criteria:

(1) demonstrate an ability and commitment as demonstrated by a local board vote to set the levy at the rate needed to repay the loan within the time period prescribed by the loan agreement; and

(2) levy a tax rate for capital outlay and debt service above the state average; and

(3) demonstrate a school district need that is better met through the loan fund than through more traditional means for providing school building construction or renovation or both.

C. If a school district does not meet the criteria for a priority qualifier and the needs of the priority qualifiers are met, the loan application of school districts not meeting this criteria may be considered, if the school district commits to levying at or above the state average for the next tax year. In the case of a natural disaster or other compelling emergency, this requirement may be waived by the Superintendent.

D. A school district applying for a short term loan under this rule shall make a formal application which includes:

- (1) the emergency condition or the condition that exists that would be better met through the loan fund rather than through more traditional means for providing school building construction or renovation or both;
- (2) the amount of loan sought;
- (3) the proposed repayment schedule, not to exceed five years;
- (4) the history of the last five years of loans or special supplementary funds received by the school district from the USOE;
- (5) minutes of the local board meeting recording the affirmative vote to levy the needed tax; and
- (6) a signed agreement that if the school district should default on a loan payment, the Superintendent may deduct the loan payment and added interest from the calculated per school district state distribution after 90 days.

E. The loan request and repayment conditions shall be approved by the Superintendent after receiving recommendations from a loan approval committee, including representatives from state and local education entities.

F. If the loan approval committee recommends approval of the loan application, the committee's recommendations shall include:

- (1) the recommendation amount of the loan;
- (2) the repayment schedule; and
- (3) the interest rate to be charged. It is the intent of the Board that the interest rate be based upon the Delphis Hanover Corp. triple A interest rate less 1/2 percent, as quoted 30 days before the loan date and dependent upon the term of the loan.

KEY: educational facilities, education finance

November 2, 2004

Notice of Continuation September 7, 2004

Art X Sec 3

53A-21-103

53A-21-103.5

53A-1-401(3)

59-2-924

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 to review nonresident educator applications may exceed the cost to review resident applications due to the following:

(1) The review is necessary to ensure that nonresident applicants' training satisfies Utah's course and curriculum standards.

(2) The review of nonresident licensing applications is time consuming and potentially labor intensive;

(3) Differentiated fees shall be set consistent with the time and resources required to adequately review all applicants for educator licenses.

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.**R277-607. Truancy Prevention.****R277-607-1. Definitions.**

A. "Absence" means a student's non-attendance at school for one school day or part of one school day.

B. "Certified mail" means notification sent through the U.S. Post Office, that requires a signature of acceptance for the letter. A signed receipt notifies the sender that the letter was accepted.

C. "Excused absence" means a student's absence from school for a reason identified by the school or district as reasonable such as:

- (1) illness;
- (2) medical appointments;
- (3) family emergencies;
- (4) death of family member or close friend;
- (5) family activity or travel, consistent with district/school policy.

D. "Habitual truant" means a school-aged minor who has received more than two truancy citations within one school year from the school in which the minor is or should be enrolled and eight absences without a legitimate or valid excuse or who, in defiance of efforts on the part of school authorities to resolve a student's attendance problems as required under Section 53A-11-103, refuses to regularly attend school or any scheduled period of the school day.

E. "IEP team" means an local education agency representative, a parent, a regular and special education educator, and person qualified to interpret evaluation results, in accordance with the Individuals with Disabilities Education Act (IDEA).

F. "Truancy citation" is a ticket issued in the truant's name under R277-609 or Section 53A-11-105(1). A truancy citation is issued by school designated individuals and may provide for administrative penalties, strict attendance by the student and monitoring by the school, or may be payable to the school or school district. Penalties or requirements that may result from a truancy citation shall be clearly stated in the school or district truancy policy.

G. "Truancy fee schedule" means a uniform payment schedule set by a local school board consistent with R277-609-5.

H. "Unexcused absence" means a student's absence from school for reasons other than those authorized under the school or district policy.

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

R277-607-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and Sections 53A-11-101 through 53A-11-105 which direct educational entities and designated agencies working on behalf of children to encourage compliance with the compulsory education law and regular school attendance for all students.

B. The purpose of this rule is to establish consistent procedures for school districts in informing parents about compulsory education laws, encouraging and monitoring school attendance consistent with the law, and providing firm consequences for noncompliance. This rule encourages meaningful incentives for parental responsibility and directs districts to establish ongoing truancy prevention procedures in schools especially for students in grades 1-8.

R277-607-3. General Provisions.

A. Local school boards shall develop a truancy policy consistent with this rule and 53A-11-101 through 53A-11-105 and shall review the policy annually.

B. The local school board truancy policy shall be available for review by parents or interested parties upon request.

C. Truancy citation fees are not subject to fee waivers provisions because truancy citations are similar to repayment for destruction of school property. Also, schools or districts shall provide reasonable and specific options in lieu of payment for truancy citations at parent/school meetings.

D. If a student moves from one Utah school district to another Utah school district, truancy citations issued consistent with this rule may follow the student at the receiving school district's discretion.

E. A truancy citation issued by law enforcement under Section 53A-11-105(1) may be viewed as a truancy citation in designating a student a habitual truant. If a district does so, the parent shall be notified of receipt of the citation, including a copy of the citation, in a timely manner.

F. Districts shall prepare an annual fiscal year-end report to be submitted to the USOE that includes:

- (1) copy of the district truancy policy required under Section R277-607-3A;
- (2) total number of students designated as habitual truants;
- (3) total number of students tracked or disciplined under the district's attendance/truancy policy;
- (4) total amount of funds collected, if any, by school from truancy citations; and
- (5) summary of program effectiveness.

R277-607-4. Procedures Toward the Designation of Habitual Truant Status.

A. Prior to or no later than school registration, the parent(s) of all students in grades 1-12 shall be provided written notice from the school or district informing parents of Compulsory Education attendance laws and encouraging parental cooperation.

(1) A student registering in the school district during the school year shall be provided written notice explaining the school and school district's compulsory education policy.

(2) A student moving from one school to another within the same district may be provided written notice explaining the school and school district's compulsory education policy.

B. Following two unexcused absences in a six week period, the individual designated by the school shall counsel the parent(s)/student as to the importance of school attendance and the legal implications of truancy.

C. Following four additional unexcused or six excused absences in a subsequent six week period, the individual designated by the school shall contact the parent(s) and arrange for a meeting at the school or elsewhere to discuss the student's attendance problem.

D. Following the seventh unexcused absence within a total 12 week period, a certified letter shall be sent requesting again the support of the parent(s) in resolving the attendance problems and outlining the requirements of Section 53A-11-103.

E. The school shall continue to monitor school attendance following the first truancy citation. If appropriate, the student's curriculum or schedule may be adjusted.

F. If there is an eighth unexcused absence within a total 14 week period, a second truancy citation shall be issued. Following the second truancy citation, prior to the referral to court, in a final attempt to prevent habitual truancy, the school shall schedule a pre-court hearing meeting with the second truancy citation for the parent and student. At the meeting, school personnel shall present final alternatives to court referral.

G. Following the ninth unexcused absence, a third truancy citation shall be issued and the parent/student shall be notified that the student is a habitual truant. Referral to the appropriate County or District Attorney or Juvenile Court consistent with Section 53A-11-104(6) shall be made by the individual designated by the school/district.

H. The school district may work with appropriate courts and personnel to develop procedures to track students and encourage school attendance.

I. If students with disabilities under the Individuals with Disabilities Education Act (IDEA) or students protected under Section 504/ADA of the Rehabilitation Act have excessive absences and fall within the criteria of this rule, the student's IEP team (IDEA) or school team (Section 504) shall ensure that the procedures of this rule apply consistent with state and federal law and regulations.

J. The parent shall have the right to appeal a truancy citation consistent with district administrative policy and time limits established by the district policy and legal due process.

R277-607-5. Documentation and Variances.

A. When a student is referred to court as a habitual truant, the school/district shall make a recommended disposition to the court which shall include:

- (1) documentation of attendance and academic achievement;
- (2) documentation of school efforts to improve attendance;
- (3) copies of truancy citations, including all mailing certificates; and
- (4) student background as requested by the prosecuting agency.

B. Copies of truancy citations shall be retained in the student's permanent record.

C. A school district may develop a truancy policy that varies from this rule, but that is consistent with Section 53A-11-101 through 105 and the intent of the law and this rule.

(1) Timelines and numbers of absences between citations may vary, but basic due process requirements of notice to parents of the policy, notice as discipline or consequences progress and an opportunity to appeal disciplinary measures, as appropriate, shall be provided for in the policy.

(2) Districts may have different policies for elementary, middle/junior high and high schools so long as basic due process requirements are satisfied.

KEY: compulsory education, truancy

March 3, 2000

Notice of Continuation November 5, 2004

Art X Sec 3

53A-1-401(3)

53A-11-101 through 53A-11-105

R277. Education, Administration.

R277-746. Driver Education Programs for Utah Schools.

R277-746-1. Definitions.

- A. "Board" means the Utah State Board of Education.
- B. "USOE" means the Utah State Office of Education.

R277-746-2. 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-13-201(4) which directs the Board to prescribe rules for driver education classes in the public schools 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 standards and procedures for local school districts conducting automobile driver education.

R277-746-3. Standards and Procedures.

A. Local school boards and school districts shall comply with DRIVER EDUCATION FOR UTAH HIGH SCHOOLS, Revised, May, 2004, as required by R277-100-5C, and available from the USOE Driver Education Specialist and at all school district offices.

B. The Board shall act in accordance with DRIVER EDUCATION FOR UTAH HIGH SCHOOLS, Utah State Office of Education, Revised, May, 2004, to determine and evaluate standards and operating procedures for automobile driver education programs conducted by local school districts.

KEY: driver education

November 2, 2004

Notice of Continuation March 12, 2003

53A-13-201(4)

53A-1-401(3)

R280. Education, Rehabilitation.**R280-203. Certification Requirements for Interpreters for the Hearing Impaired.****R280-203-1. Definitions.**

A. "Advisory board" means the Interpreters Certification Board created to assist the Board created by and with the responsibilities of 53A-26a-201 and 202.

B. "Certification of deaf interpreters" means the written approval of the Board required of individuals seeking payment for facilitating effective communication between hearing and hearing impaired persons.

C. "Signed English, cued speech, American Sign Language (ASL), and oral interpreting" are types of alternative communications for the purposes of this Rule.

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

E. "USOR" means the Utah State Office of Rehabilitation.

R280-203-2. Authority and Purpose.

A. This rule is authorized by 53A-24-103 which places the USOR under the policy direction of the Board. The Board is authorized under 53A-1-401(3) to adopt rules and policies in accordance with its responsibilities.

B. The purpose of this rule is to satisfy the directives of 53A-26a-202(2) including:

(1) certification qualifications provided in the UTAH STATE BOARD OF EDUCATION INTERPRETERS AND TRANSLITERATORS FOR THE DEAF CERTIFICATION POLICY AND PROCEDURE MANUAL ("INTERPRETERS/TRANSLITERATORS MANUAL"), December 2002;

(2) procedures governing applications for certification;

(3) provisions for a fair and impartial method of examination of applicants;

(4) procedures for determining unprofessional conduct; and

(5) conditions and procedures for reinstatement and renewal of certification.

R280-203-3. Certification Qualifications.

A. Candidates for certification shall be at least 18 years old.

B. Candidates shall pass written and performance evaluations provided by the Division of Services to the Deaf.

C. Candidates shall meet the criteria of 53A-26a-302.

R280-203-4. Examination of Applicants for Certification.

Individuals applying for interpreter certification shall be tested and rated by the Division of Services for the Deaf and Hard of Hearing Interpreters Certification Panel according to procedures established in the INTERPRETERS/TRANSLITERATORS MANUAL.

R280-203-5. Unprofessional Conduct.

A. The definition of "unprofessional conduct" provided in 53A-26a-502 shall be supplemented with the definition applied to educators in R277-514-3 and provided in the INTERPRETERS/TRANSLITERATORS MANUAL.

B. A complaint alleging unprofessional conduct by a certified interpreter may be filed under the procedure of R277-514. The procedure is provided in the INTERPRETERS/TRANSLITERATORS MANUAL.

C. The complaint shall be reviewed by the Commission as provided for in R277-514-4.

D. A member of the advisory board shall assist the Board in reviewing the recommendation of the Commission, as provided in 53A-26a-202(3).

R280-203-6. Renewal and Reinstatement.

A. An individual holding an interpreter's certificate is

eligible to have that certificate renewed as provided in the INTERPRETERS/TRANSLITERATORS MANUAL.

B. An individual whose interpreter's certificate has been suspended or revoked for unlawful or unprofessional conduct may apply for reinstatement to the Board. The Board may require the applicant for reinstatement to complete the procedure for certification or may, upon consultation with the advisory board, designate the areas of the application process in which the applicant shall be reviewed.

KEY: certification, interpreters**2003****Notice of Continuation November 5, 2004****53A-24-103****53A-1-401(3)****53A-26a-201****53A-26a-202**

R307. Environmental Quality, Air Quality.**R307-110. General Requirements: State Implementation Plan.****R307-110-1. Incorporation by Reference.**

To meet requirements of the Federal Clean Air Act, the Utah State Implementation Plan must be incorporated by reference into these rules. Copies of the Utah State Implementation Plan are available at the Utah Department of Environmental Quality, Division of Air Quality.

R307-110-2. Section I, Legal Authority.

The Utah State Implementation Plan, Section I, Legal Authority, as most recently amended by the Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-3. Section II, Review of New and Modified Air Pollution Sources.

The Utah State Implementation Plan, Section II, Review of New and Modified Air Pollution Sources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-4. Section III, Source Surveillance.

The Utah State Implementation Plan, Section III, Source Surveillance, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-5. Section IV, Ambient Air Monitoring Program.

The Utah State Implementation Plan, Section IV, Ambient Air Monitoring Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-6. Section V, Resources.

The Utah State Implementation Plan, Section V, Resources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-7. Section VI, Intergovernmental Cooperation.

The Utah State Implementation Plan, Section VI, Intergovernmental Cooperation, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-8. Section VII, Prevention of Air Pollution Emergency Episodes.

The Utah State Implementation Plan, Section VII, Prevention of Air Pollution Emergency Episodes, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-9. Section VIII, Prevention of Significant Deterioration.

The Utah State Implementation Plan, Section VIII, Prevention of Significant Deterioration, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-10. Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter.

The Utah State Implementation Plan, Section IX, Control

Measures for Area and Point Sources, Part A, Fine Particulate Matter, as most recently amended by the Utah Air Quality Board on July 3, 2002, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-11. Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-12. Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide, as most recently amended by the Utah Air Quality Board on March 31, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-13. Section IX, Control Measures for Area and Point Sources, Part D, Ozone.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part D, Ozone, as most recently amended by the Utah Air Quality Board on September 9, 1998, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-14. Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-15. Section IX, Control Measures for Area and Point Sources, Part F, Lead.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part F, Lead, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-16. (Reserved.)

Reserved.

R307-110-17. Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits, as most recently amended by the Utah Air Quality Board on June 5, 2002, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-18. Reserved.

Reserved.

R307-110-19. Section XI, Other Control Measures for Mobile Sources.

The Utah State Implementation Plan, Section XI, Other Control Measures for Mobile Sources, as most recently amended by the Utah Air Quality Board on February 9, 2000, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-20. Section XII, Involvement.

The Utah State Implementation Plan, Section XII,

Involvement, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-21. Section XIII, Analysis of Plan Impact.

The Utah State Implementation Plan, Section XIII, Analysis of Plan Impact, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-22. Section XIV, Comprehensive Emission Inventory.

The Utah State Implementation Plan, Section XIV, Comprehensive Emission Inventory, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-23. Section XV, Utah Code Title 19, Chapter 2, Air Conservation Act.

Section XV of the Utah State Implementation Plan contains Utah Code Title 19, Chapter 2, Air Conservation Act.

R307-110-24. Section XVI, Public Notification.

The Utah State Implementation Plan, Section XVI, Public Notification, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-25. Section XVII, Visibility Protection.

The Utah State Implementation Plan, Section XVII, Visibility Protection, as most recently amended by the Utah Air Quality Board on March 26, 1993, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-26. R307-110-26 Section XVIII, Demonstration of GEP Stack Height.

The Utah State Implementation Plan, Section XVIII, Demonstration of GEP Stack Height, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-27. Section XIX, Small Business Assistance Program.

The Utah State Implementation Plan, Section XIX, Small Business Assistance Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-28. Regional Haze.

The Utah State Implementation Plan, Section XX, Regional Haze, as most recently amended by the Utah Air Quality Board on May 5, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-29. Section XXI, Diesel Inspection and Maintenance Program.

The Utah State Implementation Plan, Section XXI, Diesel Inspection and Maintenance Program, as most recently amended by the Utah Air Quality Board on July 12, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-30. Section XXII, General Conformity.

The Utah State Implementation Plan, Section XXII,

General Conformity, as adopted by the Utah Air Quality Board on October 4, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-31. Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability, as most recently amended by the Utah Air Quality Board on March 31, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-32. Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County, as most recently amended by the Utah Air Quality Board on February 5, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-33. Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County, as most recently amended by the Utah Air Quality Board on October 6, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-34. Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County, as most recently amended by the Utah Air Quality Board on March 31, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-35. Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County, as most recently amended by the Utah Air Quality Board on November 3, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**KEY: air pollution, particulate matter, ozone
November 4, 2004 19-2-104(3)(e)
Notice of Continuation March 27, 2002**

R307. Environmental Quality, Air Quality.**R307-326. Davis and Salt Lake Counties and Ozone Nonattainment Areas: Control of Hydrocarbon Emissions in Refineries.****R307-326-1. Applicability and Definitions.**

(1) R307-325 establishes applicability and general requirements for R307-326.

(2) The following additional definitions apply to R307-326:

"Accumulator" means the reservoir of a condensing unit receiving the condensate from the condenser.

"Condensor" means any device which removes condensable vapors by a reduction in the temperature of the captured gases.

"Control System" means any number of control devices, including condensers, which are designed and operated to reduce the quantity of VOC emitted to the atmosphere.

"Hot Well" means the reservoir of a condensing unit receiving the warm condensate consisting primarily of water from the condenser.

"Petroleum Refinery Complex" means any source or installation engaged in producing gasoline, aromatics, kerosene, distillate fuel oils, residual fuel oils, lubricants, asphalt, or other products through distillation of petroleum or through redistillation, cracking, rearrangement, or reforming of unfinished petroleum derivatives.

"Process Drain" means any drain used in a refinery complex on equipment which processes, transfers a volatile organic compound or mixture of volatile organic compounds.

"Process Unit Turnaround" means the procedure of shutting a refinery unit down after a run to do necessary maintenance and repair work and putting the unit back in operation.

"Vacuum Producing System" means any reciprocating, rotary, or centrifugal blower or compressor, or any jet ejector or device that takes suction from a pressure below atmospheric and discharges against atmospheric pressure.

R307-326-2. Vacuum Producing Systems.

The emission of noncondensable volatile organic compounds from the condensers, hot wells, or accumulators of vacuum producing systems shall be controlled by:

(1) piping the noncondensable vapors to a firebox or incinerator, or

(2) compressing the vapors and adding them to the refinery fuel gas, or

(3) other equally effective means provided the design and effectiveness of such means are documented and submitted to and approved by the executive secretary.

R307-326-3. Wastewater (Oil/Water) Systems.

Any wastewater separator handling volatile organic compounds shall be equipped with:

(1) covers and seals approved by the executive secretary on all separators and forebays,

(2) lids or seals on all openings in covers, separators, and forebays. Such lids or seals shall be in the closed position at all times except when in actual use.

R307-326-4. Process Unit Turnaround.

The owner or operator of a petroleum refinery shall insure that a minimum of volatile organic compounds (VOC) are emitted to the atmosphere during process unit turnarounds. The owner or operator shall develop and submit to the executive secretary for approval a procedure for minimizing VOC emissions during turnarounds. The procedure shall be submitted by April 1, 1990. As a minimum the procedure shall provide for:

(1) venting of the process unit or vessel during depressurization and purging to a vapor recovery system, flare

or firebox, and

(2) preventing discharge to the atmosphere of emissions of volatile organic compounds from a process unit or vessel until its internal pressure is 136 kPa (19.7 psia) or less; or

(3) an equally effective system provided the design and effectiveness of such system are documented and submitted to and approved by the executive secretary.

(4) keeping records of the following items:

(a) every date that each process unit or vessel is shut down;

(b) the approximate vessel VOC concentration when the VOCs were first discharged to the atmosphere; and

(c) the approximate total quantity of VOCs emitted to the atmosphere.

(5) maintaining records. The records required in (4) above shall be kept for at least two years and shall be made available for review by the executive secretary or his representative.

R307-326-5. Catalytic Cracking Units.

Flue gas produced by catalytic cracker catalyst regeneration units shall be vented to a waste heat boiler, a process heater firebox, incinerated, or controlled by other methods provided the design and effectiveness of such methods are documented and submitted to and approved by the executive secretary.

R307-326-6. Safety Pressure Relief Valves.

All safety pressure relief valves handling organic material shall be vented to a flare, firebox, or vapor recovery system, or controlled by the inspection, monitoring, and repair requirements described in R307-326-7.

R307-326-7. Leaks from Petroleum Refinery Equipment.

(1) The owner or operator of a petroleum refinery complex shall develop and conduct a VOC monitoring program and shall follow the recording, reporting, and operating requirements consistent with R307-326-7. The monitoring program shall be submitted 30 days prior to start up of the petroleum refinery complex or as determined necessary by the executive secretary.

(2) Any affected component within a petroleum refinery complex found to be leaking shall be repaired and retested as soon as practicable, but not later than fifteen (15) days after the leak is detected. A leaking component is defined as one which has a VOC concentration exceeding 10,000 parts per million by volume (ppmv) when tested by a VOC detection instrument at the leak source in the manner described in 40 CFR 60, Appendix A, Reference Method 21, using methane or hexane as calibration gas. Components not subject to New Source Performance Standards Subpart GGG shall use methane or hexane as calibration gas, provided a relative response factor for each individual instrument is determined for the calibration gas used. Those leaks that cannot be repaired until the unit is shut down for turnaround shall be identified with a tag and recorded as per (6) below and shall be reported as required by (7) below. The executive secretary, in coordination with the refinery owner or operator, may require early unit turnaround based on the number and severity of tagged leaks awaiting turnaround.

(3) Monitoring Requirements.

(a) In order to ensure that all existing VOC leaks are identified and that new VOC leaks are located as soon as practicable, the refinery owner or operator shall perform necessary monitoring using visual observations when specified or the method described in 40 CFR 60, Appendix A, Reference Method 21, as follows:

(i) Monitor at least one time per year (annually) all pump seals, valves in liquid service, and process drains;

(ii) monitor four times per year (quarterly) all compressor seals, valves in gaseous service, and pressure relief valves in gaseous service.

(iii) Monitor visually 52 times per year (weekly) all pump

seals;

(iv) Monitor within 24 hours (with a portable VOC detection device) or repair within 15 days any pump seal from which liquids are observed dripping;

(v) Monitor any relief valve within 24 hours after it has been vented to the atmosphere;

(vi) Monitor immediately after repair any component that was found leaking;

(vii) for all other valves considered "unsafe-to-monitor" or inaccessible during an annual inspection, the owner/operator shall document to the executive secretary the number of valves considered "unsafe-to-monitor" or inaccessible, the dangers involved or reasons for inaccessibility, the location of these valves, and the procedures that the owner/operator shall follow to ensure that the valves do not leak. At a minimum, the inaccessible valves shall be monitored at least once per year (annually). This documentation shall be submitted for approval to the executive secretary 15 days after the last day of each calendar year.

(b) For the purpose of R307-326, gaseous service for pipeline valves and pressure relief valves is defined as the VOC being gaseous at conditions that prevail in the components during normal operations. Pipeline valves and pressure relief valves in gaseous service and other components subject to leaks shall be noted or marked so that their location within the refinery complex is obvious to the refinery operator performing the monitoring and to the State of Utah, Division of Air Quality.

(4) Exemptions. The following are exempt from the monitoring requirements of (3) above:

(a) Pressure relief devices which are connected to an operating flare header, firebox, or vapor recovery devices, storage tank valves, and valves that are not externally regulated; and

(b) Refinery equipment containing a stream composition less than 10 percent by weight VOC; and

(c) Refinery equipment containing natural gas supplied by a public utility as defined by the Utah Public Service Commission.

(5) Alternative Monitoring Methods and Requirements.

(a) If at any time after two complete liquid service inspections and five complete gaseous service inspections, the owner or operator of a petroleum refinery can demonstrate that modifications to (3) above are in order, he may apply in writing to the Air Quality Board for a variance from the requirements of (3) above.

(b) This submittal shall include data that have been developed to justify the modification to (3) above. As a minimum, the submittal should contain the following information:

(i) the name and address of the company;

(ii) the name and telephone number of the responsible company representative;

(iii) a description of the proposed alternative monitoring procedures; and

(iv) a description of the proposed alternative operational or equipment controls.

(6) Recording Requirements. Identified leaks shall be noted and affixed with a readily visible and weatherproof tag bearing the identification of the leak and the date the leak was detected. The tag shall remain in place until the leaking component is repaired. The presence of the leak shall also be noted in a log maintained by the operator or owner of the refinery. The log shall contain, at a minimum, the name of the process unit where the component is located, the type of component, the tag number, the date the leak was detected, the date repaired, and the date and instrument reading when the recheck of the component is made. The log should also indicate those leaks which cannot be repaired until turnaround, and summarize the total number of components found leaking. The

operator or owner of the refinery complex shall retain the leak detection log for two years after the leak has been repaired and shall make the log available to the executive secretary upon request.

(7) Reporting Requirements. The operator or owner of a petroleum refinery complex shall submit a report to the executive secretary by the 15th day of January, April, July, and October of each year listing the total number of components inspected, all leaks that have been located during the previous 3 calendar months but not repaired within 15 days, all leaking components awaiting unit turnaround and the total number of components found leaking. In addition, the refinery operator or owner shall submit a signed statement with each report that all monitoring has been performed as stipulated in R307-326-7.

(8) Additional Requirements. Any time a valve, with the exception of safety pressure relief valves, is located at the end of a pipe or line containing VOC, the end of the line shall be sealed with one of the following: a second valve, a blind flange, a plug or a cap. This sealing device shall only be removed when the line is in use for sampling.

**KEY: air pollution, refinery, gasoline, ozone
September 15, 1998
Notice of Continuation August 1, 2003**

**19-2-101
19-2-104**

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, electro dialysis 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	
Bromate	0.01
Chloramine (as Cl ₂)	4
Chlorine (as Cl ₂)	4
Chlorine Dioxide	0.8
Chlorite	1.0
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	
Antimony	0.006
Asbestos (fibers/l and > 10 microns in length)	7.0x10 ⁶
Arsenic	0.05
Barium	2.0
Beryllium	0.004
Cadmium	0.005
Chromium	0.1
Copper	1.3
Lead	0.015
Mercury	0.002
Selenium	0.05
Silver	0.1

Thallium	0.002
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
Dalapon (sodium salt)	0.2
Dibromochloropropane (DBCP)	0.0002
2, 4-D	0.07
Dichlorophenoxyacetic acid (2, 4-) (2,4D)	0.07
Dinoseb	0.007
Diquat	0.02
Endothall	0.1
Endrin	0.002
Ethylene Dibromide (EDB)	0.00005
Glyphosate	0.7
Heptachlor	0.0004
Heptachlor epoxide	0.0002
Lindane	0.0002
Methoxychlor	0.04
Oxamyl (Vydate)	0.2
Pentachlorophenol	0.001
Picloram	0.5
Polychlorinated Biphenyls	0.0005
Simazine	0.004
Toxaphene	0.003
2, 4, 5-TP (Silvex)	0.05
VOLATILE ORGANIC CHEMICALS	
Benzene	0.005
Benzo (a) pyrene (PAH)	0.0002
Carbon tetrachloride	0.005
1, 2 - Dichloroethane	0.005
1, 1 - Dichloroethylene	0.007
1, 1, 1-Trichloroethane	0.200
Dichloromethane	0.005
Di (2-ethylhexyl) adipate	0.4
Di (2-ethylhexyl) phthalate	0.006
Dioxin (2,3,7,8-TCDD)	0.0000003
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
Hexachlorobenzene	0.001
Hexachlorocyclopentadiene	0.05
Monochlorobenzene	0.1
Styrene	0.1
Tetrachloroethylene	0.005
Toluene	1
Trichlorobenzene (1,2,4-)	0.07
Trichloroethane (1,1,1-)	0.2
Trichloroethane (1,1,2-)	0.005
Trichloroethylene	0.005
Vinyl chloride	0.002
Xylenes (Total)	10
OTHER ORGANIC CHEMICALS	
Five Haloacetic Acids (HAA5) (Monochloroacetic acid) (Dichloroacetic acid) (Trichloroacetic acid) (Bromoacetic acid) (Dibromoacetic acid)	0.06
Total Trihalomethanes (TTHM)	0.08
RADIONUCLIDES	
The following are the maximum contaminant levels for Radium-226 and Radium-228, and gross alpha particle radioactivity, beta particle radioactivity, photon radioactivity, and uranium concentration:	
Combined Radium-226 and Radium-228	5pCi/l
Gross alpha particle activity, including Radium-226 but excluding Radon and Uranium	15pCi/l
Uranium	0.030 mg/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.

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 greater of 1.25 times the background or background plus two standard deviations.

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 1.25 times the background concentration, 0.25 times the ground water quality standard, or background plus two standard deviations; 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 2000mg/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 the greater of 1.25 times the background value or background plus two standard deviations.

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, 0.25 times the ground water quality standard, or background plus two standard deviations; 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 the greater of 1.25 times the background concentration level or background plus two standard deviations.

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 or background plus two standard deviations; 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 (DOG M). 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 R309-600, 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, 2000 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, 2000 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, R317-6-6.2.B. 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, Drinking Water source protection zones, 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. Identify any applicable Drinking Water source protection ordinances and their impacts on the proposed permit.

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. A proposed sampling and analysis monitoring plan which conforms to EPA Guidance for Quality Assurance Project Plans, EPA QA/G-5 (EPA/600/R-98/018, February 1998) and 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 where applicable to the Handbook of Suggested Practices for Design and Installation of Ground-Water Monitoring Wells (EPA/600/4-89/034, March 1991), ASTM Standards on Ground Water and Vadose Investigations (1996), Practical Guide for Ground Water Sampling EPA/600/2-85/104, (November 1985) and RCRA Ground Water Monitoring Technical Enforcement Guidance Document (1986), unless otherwise specified by the Executive Secretary;
7. description and justification of parameters to be monitored;
8. quality assurance and control provisions for monitoring data.

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 in addition to the information specified in the above item I 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, twentieth edition, 1998; Library of Congress catalogue number: ISBN: 0-87553-235-7.
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, (1998); Book 9.
4. Monitoring requirements in 40 CFR parts 141 and 142, 2000 ed., Primary Drinking Water Regulations and 40 CFR parts 264 and 270, 2000 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.

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.

S. A closure and post closure management plan demonstrating measures to prevent ground water contamination during the closure and post closure phases of an operation.

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 contaminant 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 value of a single analysis of any compliance parameter 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. Immediately initiate monthly sampling if the value exceeds both the background concentration of the pollutant by two standard deviations and an applicable permit limit, 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. The value for two consecutive samples from a compliance monitoring point exceeds:
 - a. one or more permit limits; and
 - b. the background concentration for that pollutant by two standard deviations (the standard deviation and background (mean) being calculated using values for the ground water pollutant at that compliance monitoring point) unless the existing permit limit was derived from the background pollutant concentration plus two standard deviations; 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 and supplemental guidance in Guidance For Data Quality Assessment (EPA/600/R-96/084 January

1998).

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

August 20, 2004

Notice of Continuation October 17, 2002

19-5

R365. Governor, Planning and Budget, Chief Information Officer.**R365-10. Standards, Best Practices, and Institutional Knowledge Requirements for Executive Branch Agencies.****R365-10-1. Purpose.**

The purpose of this rule is to:

(a) Implement the best public policies, standards, best practices, and retention of institutional knowledge within agencies of the State of Utah in the field of information technology by each state entity/organization, and

(b) To enhance the ability of state Executive Branch Agencies to complete each project at lower costs, improved quality, reduced risk, improved security, and in a more timely manner while maximizing uniformity throughout state government.

R365-10-2. Authority.

This rule is issued by the Chief Information Officer under the authority of Section 63D-1a-305 of the Information Technology Act, and Section 63-46a-3 of the Utah Rulemaking Act, Utah Code Annotated.

R365-10-3. Scope of Application.

(a) All agencies of the executive branch of state government including its administrative sub-units, except the State Board of Education, the Board of Regents, and institutions of higher education, are included within the scope of this rule.

(b) This rule provides requirements for the implementing of standards by state agencies.

R365-10-4. Definitions.

(a) "IT Council" means a group of agency personnel, chaired by the CIO or designee, consisting of IT representatives within Executive Branch Agencies.

(b) "Bid Team" means a group chaired by an Information Technology Council representative, consisting of process and industry experts within Executive Branch Agencies. A bid-team may be formed as needed to review current industry directions, standards, processes, and products. The bid team so formed shall also assist in the development of procurement documents and review vendor proposals for compliance to standards.

(c) "Standards Committee" means a standing committee assigned by the state's IT Council for managing the standards process and reporting standards recommendations.

(d) "Standard" means a policy or procedure to be adhered to by all Executive Branch Agencies.

(e) "Best Practice" means the adoption, as identified and adopted by the IT Council, of standards and procedures which exemplify the most effective or efficient methodology within the IT industry, Government, and the State of Utah.

(f) "Institutional Knowledge" means such policies, best practices, standards, industry product information, and other resources made available to all Executive Branch Agencies for use in decision making and identifying agency implementation options.

R365-10-5. Information Technology (IT) Council -- Responsibilities and Authorities.

An IT Council shall be established and organized under the authority and direction of the Chief Information Officer (CIO); having the following duties and responsibilities:

(a) Develop and maintain IT operational standards and best practices;

(b) Recommend to the State CIO any IT policies, standards, or processes it believes should be considered by the CIO for implementation as administrative rules;

(c) Identify and review any information technology project that has been included within an agency IT Plan, which utilizes data, programs, or platforms that may be shared beneficially,

and have common applicability across Executive Branch Agencies;

(d) Implement a database for tracking standards, best practices, and institutional knowledge;

(e) Establish sub-committees or teams when needed, or in response to an agency request, to direct the development of statewide bids and requests for proposals documents, on its own initiative, or in cooperation with "bid-teams";

(f) Establish a standards and best practices committee or team;

(g) Establish other teams or sub-committees as needed to assist the Council in carrying out its duties and responsibilities as defined under this rule.

R365-10-6. Council Membership and Organization.

(a) The CIO or designee shall chair the Council.

(b) The Council shall meet monthly or as determined by the Chair.

(c) The Council shall be composed of the highest ranking IT representatives who have direct operational responsibility for overseeing information technology within their Executive Branch Agency.

R365-10-7. Teams and Committees of the Council.

(a) The Bid or RFP review teams shall:

(i) Be chaired by the requesting agency;

(ii) Consist of agency experts and interested parties in the technology area being reviewed and proposed for bid;

(iii) Remain in force until project objectives have been completed and all additions or changes to standards are approved by the Council;

(iv) Meet reasonable timeframe requirements of the requesting agency for issuance and review of procurement bids or requests for proposals.

(b) The standards committee shall have no less than seven, and no more than eleven members.

(i) The members shall serve one-year terms with an option for re-appointment if approved by the Council;

(ii) Bid Teams and Committee recommendations shall be submitted to the IT Council by the team/committee chair.

R365-10-8. Rule Compliance Management.

(1) A state executive branch agency's executive director, or designee, upon becoming aware of a violation, shall institute measures designed to enforce this rule. The CIO may, where appropriate, monitor compliance and report to an agency's executive director any findings or violations of this rule.

KEY: IT standards council, IT bid committee, technology best practices, repository
November 8, 2004

63D-1a-305
63-46a-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-7A. Medicaid Certification of New Nursing Facilities.****R414-7A-1. Introduction and Authority.**

(1) The purpose of this rule is to control the supply of Medicaid nursing facility programs. The oversupply of nursing facility programs in the state has adversely affected the Utah Medicaid program and the health of the people within the state. This rule continues the prohibition against certification of new nursing facility programs that has been in place since January 13, 1989. This rule clarifies that prohibition and sets up policy to deal with the possible future need for additional Medicaid nursing facility programs in a service area. The July 1990 Report of the Governor's Task Force on Long Term Care recommended continuation of this prohibition. The Task Force concluded that "Market entry into the nursing home industry should be regulated to allow supply to come more in line with demand". This rule also supports the policy of the department to direct new resources into community based alternatives.

(2) Authority for this rule is found in Sections 26-18-2.3, 26-1-5, 26-1-30(2)(a), (b), and (w), and 26-18-3.

R414-7A-2. Definitions.

For purposes of this rule the definitions in R414-1-1 apply. In addition:

(1) "Certified program" means a nursing facility program with Medicaid certification.

(2) "Critical Care Access Hospital" means a hospital that meets the criteria set forth in 42 U.S.C. 1395i-4(c)(2)(1998).

(3) "Medicaid certification" means the right to Medicaid reimbursement as a provider of a nursing facility program shown by a valid federal Health Care Financing Administration (HCFA) Form 1539 (7-84).

(4) "Nursing facility" means any Medicaid participating NF, SNF, ICF, ICF/MR, 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).

(5) "Nursing facility program" means the personnel, licenses, services, contracts, and all other requirements that must be present for a nursing facility to be eligible for Medicaid certification as detailed in 42 CFR 442.1 through .119, 483.1 through .480, and 488.1 through .64 (1993), which are adopted and incorporated by reference.

(6) "Physical facility" means the building(s) or other physical structure(s) where a nursing facility program is operated.

(7) "Service area" means the boundaries of the distinct geographical area served by a type of certified program, the department to determine the exact area, based on fostering price competition and maintaining economy and efficiency in the Medicaid program.

R414-7A-3. Prohibition Against Medicaid Certification of Nursing Facility Programs.

The department finds that it is in the best interests of the state to prohibit Medicaid certification of nursing facility programs, except as authorized by this rule.

(1) Medicaid reimbursement of nursing facility programs is limited to certified programs as of January 13, 1989.

(2) The department shall not process initial applications for Medicaid certification or execute initial provider agreements with nursing facility programs, except as authorized by R414-7A-4 or R414-7A-5.

(3) The department shall not reinstate Medicaid certification for a previously certified provider whose Medicaid certification expires, or is terminated by action of the federal or state government, except as authorized by R414-7A-4 or R414-7A-5.

(4) The department shall not execute a Medicaid provider

agreement with a certified program that moves its nursing facility program to a different physical facility, except as authorized by R414-7A-4 or R414-7A-5.

R414-7A-4. Authorization to Renew, Assign, or Transfer Medicaid Certification.

(1) The department may renew Medicaid certification of a certified program if the program, without any lapse in service to Medicaid recipients, has its nursing facility program certified by the department at the same physical facility.

(2) The department may certify a new nursing facility program if a certified program transfers all of its right to Medicaid certification to the new nursing facility program, and the new program meets all of the following conditions:

(a) The new nursing facility program operates at the same physical facility as the previous certified program.

(b) The new nursing facility program complies with 42 CFR 442.14 (1993).

(c) The new nursing facility program receives Medicaid certification within one year of the date the previously certified program ceased to provide medical assistance to a Medicaid recipient.

(3) The department may certify a previously certified program that moves to a different physical facility and meets all of the following conditions:

(a) On the last day that the certified program provided medical assistance to a Medicaid recipient in the original physical facility, it meets all applicable requirements to be a certified program.

(b) The different physical facility is in the same service area.

(c) The time between which the certified program ceases to operate in the original physical facility and begins to operate in the different physical facility is not more than three years.

(d) The provider operating the certified program gives written assurances satisfactory to the executive director or his designee that:

(i) no third party has a legitimate claim to operate a certified program at the previous physical facility;

(ii) the certified program agrees to defend and indemnify the department against any claims made by third parties who may assert a right to operate a certified program at the previous physical facility; and

(iii) if a third party is found, by a final agency action of the department after exhaustion of all administrative and judicial appeal rights, to be entitled to operate a certified program at the original physical facility, the certified program shall voluntarily comply with R414-7A-4(4).

(4) Upon a finding being made as set forth in R414-7A-4(3)(d)(iii), the certified program shall immediately surrender its Medicaid certification, cease billing Medicaid for all services to Medicaid recipients, and arrange for the orderly discharge of Medicaid recipients to a facility satisfactory to the department. If the third party found to be entitled to operate a certified program at the original physical facility requests Medicaid certification, and the previously certified program has surrendered its Medicaid certification, the department shall treat the request as a transfer of all its rights under R414-7A-4(2).

R414-7A-5. Certification of Additional Nursing Facility Programs.

The department may certify additional nursing facility programs if the executive director or his designee determines that there is insufficient capacity at certified programs in a service area to meet the public need.

(1) The department may certify an additional nursing facility program only if:

(a) after 30-day notice to the Department of Human Services of the department's finding that there is insufficient

capacity at certified programs in a service area to meet the public need, the Department of Human Services cannot demonstrate that community-based services can meet the public need; and

(b) after the close of the 30-day notice to the Department of Human Services and a separate 30-day notice to all certified programs operating in the service area, the certified programs operating in the service area cannot demonstrate that they have tangible plans to add additional capacity to their nursing facility programs to meet the public need.

(2) If community-based services and existing certified programs operating in the service area cannot demonstrate that they can meet the public need, the department may select an additional nursing facility program through a request-for-proposal process.

(a) Each proposal must include sufficient information to allow the department to evaluate and rank it among all proposals according to the criteria in R414-7A-5(2)(b), as well as other information that the department solicits in its request-for-proposals. The department shall reject all proposals that offer to operate for a reimbursement rate higher than that paid to similar certified programs.

(b) The department shall evaluate and select from among the proposals based on maintaining price competition, economy, and efficiency in the Medicaid program; the ability of the proposed nursing facility program to deliver quality care; and how quickly the proposed nursing facility program can begin to operate.

(3) If a nursing facility program that the department selected under the request-for-proposal process fails to undertake the necessary steps to become Medicaid certified or fails to begin to provide medical assistance to Medicaid recipients as represented in its proposal, the department may reject that nursing facility program, and either select the next ranked nursing facility program or solicit new proposals without again complying with the requirements of R414-7A-5(1).

(4) If, after certifying an additional nursing facility program, the executive director or his designee determines that there is sufficient capacity at certified programs in a service area to meet the public need, the limitations set out in R414-7A-5(1) through (3) control the certification of nursing facility programs.

(5) The department hereby determines that there is insufficient capacity to meet the public need wherever a critical care access hospital is located and may certify a new nursing facility program that is directly related to the operation of a critical care access hospital, without the need to meet the requirements of subsections (1) to (4) above.

(6) The department hereby determines that there is insufficient capacity to meet the public need for those eligible for placement at the Utah State Veterans Nursing Home and may certify the Utah State Veterans Nursing Home, without the need to meet the requirements of subsections (1) to (4) above.

KEY: Medicaid

July 14, 2003

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26-1-5

26-18-1

26-18-2.3

26-1-30(2)(a), (b), (w)

26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-7B. Nurse Aide Training and Competency Evaluation Program.****R414-7B-0. Authority and Purpose.****A. Authority**

The nurse aide training and competency evaluation program is authorized by the Omnibus Budget Reconciliation Act (OBRA) of 1987, P.L. 100-203, Section 4211(b)(5)(A-G),(e)(2)(1-2),(f)(2)(A-B), which is hereby adopted and incorporated by reference.

B. The purpose of the nurse aide training and competency evaluation program is to provide quality services to residents of nursing facilities by nurse aides who are able to assist residents in maintaining independence, demonstrate sensitivity to residents' needs, and demonstrate observational and documenting skills that are needed in the assessment of residents' health, physical condition, and well-being.

R414-7B-1. Definitions as used in this chapter:

A. "Nurse aide" means any individual providing nursing or nursing-related services to residents in a nursing facility, but does not include an individual who is a licensed health professional or who volunteers to provide such services without monetary consideration.

B. "Licensed health professional" means a physician; physician assistant; nurse practitioner; physical, speech, or occupational therapist; registered professional nurse; licensed practical nurse; or licensed or certified social worker.

C. "Nursing facility" means an institution licensed and certified to provide long-term care, and includes those facilities previously or currently licensed and Medicaid-certified as an Intermediate Care Facility (ICF) or a Skilled Nursing Facility. An intermediate care facility for the mentally retarded (ICF/MR) is not included in this definition.

D. "Resident" means an individual residing in and receiving medical long-term nursing services in a Medicaid-certified nursing facility.

E. "Train-the-trainer program" means a state-approved program which consists of formal instructions to potential instructors on how to train adults through demonstrations and lectures.

F. "Retraining" means required training for those nurse aides who have not performed paid services for a continuous period of 24 months since the most recent completion of a training and competency evaluation program.

G. "Competency evaluation" means a written or oral examination which addresses each requirement of OBRA 1987 for nurse aides, and a demonstration of the tasks the aide will be expected to perform as part of his function as a nurse aide.

H. "Testing out or challenging the test" means that those individuals acting as nurse aides in nursing facilities as of July 1, 1989, may be determined competent by taking the competency evaluation without enrolling in the approved nurse aide training course.

I. "Deemed competency" means that those individuals who, prior to January 1, 1989, completed a nurse aide training program that met the State's requirements at the time it was offered, may be determined to have completed a training and competency evaluation program and be certified as competent.

J. "State survey agency" means the Bureau of Facility Review in the Division of Health Care Financing, which is responsible for certification of nursing facilities and for conducting surveys to determine compliance with Medicaid requirements.

R414-7B-2. Procedures for Achieving Certification.

A. All nurse aides employed by a nursing facility after July 1, 1989, shall complete the nurse aide training approved by the

State Office of Vocational Education, and pass the nurse aide competency evaluation or be enrolled in the nurse aide training program by January 1, 1990.

B. A nursing facility must make the necessary provision for the individual to participate in and complete the competency evaluation by January 1, 1990.

C. Deemed competency

1. Individuals who were certified as nurse aides by the State Office of Vocational Education before January 1, 1989, shall be deemed to have met the OBRA requirement upon completion of the approved in-service training on mental retardation and mental illness.

2. It shall be the responsibility of the nursing facility to provide this in-service training on mental retardation and mental illness and to notify the State Office of Vocational Education when it is completed.

D. Testing out

Those aides employed by a nursing facility on or before July 1, 1989, who have not been deemed certified, if they elect to test out, shall be determined competent by:

1. successfully testing out on the competency evaluation, including the written and skills components of the evaluation, provided by the State Office of Vocational Education or a State Office of Vocational Education-approved program which meets federal requirements; and

2. presenting proof of employment at a nursing facility.

E. Nurse aides certified in other states

Nurse aides certified in other states before July 1, 1989, may be deemed as certified nurse aides in Utah if they complete the approved in-service training on mental retardation and mental illness provided by the nursing facility. After July 1, 1989, they may be deemed as certified nurse aides in Utah if they have documentation of certification in another state.

R414-7B-3. Competency Evaluation.**A. Administration of the competency evaluation**

1. Vocational centers and community colleges are approved by the State Office of Vocational Education to provide competency evaluations to nurse aides, using both written or oral examinations and demonstration of skills.

a. The written examination shall be administered by the vocational centers and community colleges approved by the State Office of Vocational Education with the following exception. Nursing facility personnel may proctor the written examination when the State Office of Vocational Education is confident that the competency evaluation program is secure from tampering, is standardized and scored by a testing, education or other organization approved by the State Office of Vocational Education, and requires no actual administration or scoring by facility personnel.

b. The skills demonstration component shall be performed in a facility or laboratory setting comparable to the setting in which the individual will function as a nurse aide, and must be administered and evaluated by a registered nurse with at least one year's experience in providing care for the elderly or the chronically ill of any age. The skills demonstration shall be administered only by the State Office of Vocational Education.

2. If the individual fails to satisfactorily complete the evaluation, the individual must be advised of the areas in which he was inadequate, and that he may take the evaluation a maximum of three times.

3. Any individual who takes the competency evaluation must be advised in advance that a record of the successful completion of the evaluation shall be included in the nurse aide registry, and shall be required to sign a Release of Information form which indicates the nurse aide's understanding of information that is required to be entered into the nurse aide registry.

4. The State Office of Vocational Education shall

periodically update and validate the competency evaluation.

B. Content of the Competency Evaluation

1. Written or oral examination

The State Office of Vocational Education shall establish a written or oral examination (in the case of individuals with limited literacy in English) that addresses each requirement as prescribed in OBRA 1987. The questions shall be developed from a pool of test questions, only a portion of which shall be used in any one evaluation, under a system which maintains the integrity of both the pool of questions and the individual evaluations.

2. Demonstration of skills

The competency evaluation must include demonstration of the tasks the aide will be expected to perform as part of his function as a nurse aide.

C. Requirements for the skills training component

1. For the skills training component of the evaluation, a performance record shall be developed for each nurse aide training program of major duties and skills taught which consist of, at a minimum:

- a. a listing of the duties and skills expected to be learned in the program;
- b. a record documenting when the aide performs this duty or skill;
- c. documentation of satisfactory or unsatisfactory performance;
- d. the date of the performance;
- e. the instructor supervising the performance.

2. At the completion of the nurse aide training program, the nurse aide and his employer shall receive a copy of this record. If the individual did not successfully perform all the duties and skills on this performance record, he shall receive supervision for all duties and skills not satisfactorily performed until such satisfactory performance is confirmed.

3. The demonstration aspect of the skills training portion of the competency evaluation consists of a minimum performance of five tasks, all of which are included in the performance record. These five tasks are selected for each aide from a pool of evaluation items ranked according to degree of difficulty. A random selection of tasks shall be made with at least one task from each degree of difficulty.

R414-7B-4. Nurse Aide Training Program.

A. Administration

1. Training and competency evaluation programs shall be administered through the State Office of Vocational Education in accordance with a contract between the Division of Health Care Financing and the Department of Education.

2. All agencies conducting nurse aide training programs shall be approved by the State Office of Vocational Education.

3. Each area vocational center, community college, or nursing facility that conducts nurse aide training programs shall designate a qualified registered nurse to oversee training and instruction.

B. Training program approval and review

1. Process

a. The State Office of Vocational Education shall review and render a determination regarding approval or disapproval of any nurse aide training when requested to do so by a Medicare or Medicaid-participating nursing facility. The State Office of Vocational Education, at its option, may also agree to review and render approval or disapproval of any nurse aide training program when requested to do so by another entity.

b. The State Office of Vocational Education must, within 30 days of the date of an acceptable request, either advise the requestor of the State Office of Vocational Education's determination, or must seek additional information from the requesting entity with respect to the program for which it is seeking approval.

c. Nursing facilities may apply for approval of a nurse aide training program by completing an application provided by the State Office of Vocational Education.

2. Requirements

a. The State Office of Vocational Education shall approve any nurse aide training program which meets the criteria specified in OBRA 1987, the federal Health Care Financing Administration's guidelines, and guidelines designated by the State Division of Health Care Financing.

b. Minimal content requirements must be met for the nurse aide training program to be approved by the State Office of Vocational Education. The nurse aide training program must consist of no less than 80 hours of training. The curriculum of the nurse aide training program must include at least the following subjects:

1) at least 16 hours of training in the following areas prior to any direct contact with a resident:

- a) communication and interpersonal skills;
- b) infection control, including AIDS;
- c) safety and emergency procedures;
- d) promoting residents' independence;
- e) respecting residents' rights;
- f) basic nursing skills.

2) The skills training of at least 16 hours shall ensure that each nurse aide, at a minimum, demonstrates competencies in the following areas:

a) Basic nursing skills:

- (1) caring for residents when death is imminent;
- (2) taking and recording vital signs;
- (3) measuring and recording height;
- (4) caring for residents' environment;
- (5) recognizing abnormal signs and symptoms of common diseases and conditions.

b) Personal care skills, including, but not limited to:

- (1) bathing, including mouth care;
- (2) grooming;
- (3) dressing;
- (4) toileting;
- (5) assisting with eating and hydration;
- (6) proper feeding techniques; and
- (7) skin care.

c) Basic restorative services:

(1) use of assistive devices in ambulation, eating, and dressing;

- (2) maintenance of range of motion;
- (3) proper turning and positioning in bed and chair;
- (4) bowel and bladder training;
- (5) care and use of prosthetic and orthotic devices; and
- (6) transfer techniques;

d) Mental health and social service skills:

(1) modifying his own behavior in response to the resident's behavior;

(2) identifying developmental tasks associated with the aging process;

(3) training the resident in self-care according to the resident's ability;

(4) behavior management by reinforcing appropriate resident behavior and reducing or eliminating inappropriate behavior;

(5) allowing the resident to make personal choices, providing and reinforcing other behavior consistent with resident's dignity; and

(6) using the resident's family as a source of emotional support.

e) Residents' rights:

(1) providing privacy and maintaining confidentiality;

(2) promoting the residents' rights to make personal choices to accommodate their needs;

(3) giving assistance in solving grievances;

(4) providing needed assistance in getting to, and participating in, resident and family groups and other activities;

(5) maintaining care and security of residents' personal possessions;

(6) providing care which maintains residents free from abuse, mistreatment, or neglect; reporting any instances of such poor care to appropriate facility staff; and

(7) maintaining the residents' environment and care through appropriate nurse aide behavior so as to minimize the need for physical and chemical restraints.

c. Qualifications of instructors:

1) Non-nursing facility-based programs:

Nurse aide training and competency evaluation programs must have a program coordinator or primary instructor who is a registered nurse with at least two years of experience in caring for the elderly or chronically ill of any age.

2) Nursing facility-based programs:

a) The program coordinator in a nursing facility-based program may be the director of nursing for the facility as long as the facility remains in full compliance with OBRA 1987, Section 4211, requirements.

b) The primary instructor must be a licensed nurse with at least one year of experience in a nursing facility.

3) The program coordinator or primary instructor must have successfully completed a "train-the-trainer" type program approved by the State Office of Vocational Education or have demonstrated competence to teach adult learners as defined by the State Office of Vocational Education.

4) Qualified personnel from the health professions may supplement the program coordinator or primary instructor in the case of non-facility programs, or the program instructor in the case of facility-based programs, and as program trainers in both facility-based and non-facility-based programs;

5) Program trainers may include: registered nurses, licensed practical or vocational nurses, pharmacists, dietitians, social workers, sanitarians, fire safety experts, nursing home administrators, gerontologists, psychologists, physical and occupational therapists, activities specialists, speech or language therapists, and any other appropriate and duly qualified personnel.

6) To function as program trainers, these health professionals must have a minimum of one year of current experience in the care of the elderly or chronically ill of any age, or have equivalent experience, and must be currently licensed, registered or certified in their field.

7) Licensed practical nurses, under the general supervision of the primary instructor, may provide classroom and skills training instruction and supervision if they have at least two years of experience in caring for the elderly or chronically ill of any age, or have equivalent experience.

8) Instructor-to-student ratio

A student-to-instructor ratio of 15:1 for clinical instruction and 30:1 for theory instruction shall not be exceeded.

9) Facilities

A classroom must be provided that has the following:

- a) adequate space and furniture for the number of students;
- b) adequate lighting and ventilation;
- c) comfortable temperature;
- d) appropriate audio-visual equipment;
- e) skills lab equipment to simulate a resident's unit;
- f) clean and safe environment;
- g) appropriate textbooks and reference materials.

C. Compliance reviews

1. Initial post-approval and ongoing reviews

After the initial approval of a training and competency evaluation program, an initial one-year post-approval review shall be done by the State Office of Vocational Education to determine the program's compliance with the OBRA 1987 requirements.

2. After the one-year review, an on-site review shall be completed at least every two years by the State Office of Vocational Education.

3. A self-evaluation shall be submitted by the program provider to the State Office of Vocational Education each year that an on-site review is not scheduled.

4. Minimum program review standards

The training and evaluation program review must include:

- a. skills training experience;
- b. maintenance of qualified faculty members for both classroom and skills portions of the training and competency evaluation programs;
- c. maintenance of the security of the competency evaluation examinations;
- d. a record of complaints received about the program;
- e. a record that each nursing facility has provided certified nurse aides with six hours of staff development training per quarter with compensation for the training;
- f. curriculum content that meets federal and state requirements; and
- g. classroom facilities that meet federal requirements for nurse aide training programs.

5. Division of Health Care Financing shall enforce the standards for nurse aide training and competency evaluation described in OBRA 1987, Section 4211, which are hereby adopted and incorporated by reference.

6. In addition to the required nurse aide training, all nurse aides shall receive an orientation program from the nursing facility where they are employed, which is not included in the required 80 hours of training. This orientation phase shall include, but is not limited to, an explanation of:

- 1) the organizational structure of the facility;
- 2) the facility policies and procedures;
- 3) the philosophy of care of the facility;
- 4) the description of the resident population; and
- 5) the employee rules.

R414-7B-5. Nurse Aide Registry.

A. A central nurse aide registry has been developed and shall be maintained under the direction of the State Office of Vocational Education. This registry must include identification of individuals who have successfully completed and passed the nurse aide training and competency evaluation program with a passing score of 75 percent or above.

B. Any organization responsible for the nurse aide competency evaluation program must report to the nurse aide registry within 30 days the names of all individuals who have satisfactorily completed the nurse aide training and competency evaluation program.

C. The registry shall also document substantiated allegations of resident neglect, abuse, or misappropriation of resident property by a nurse aide in a nursing facility, including an accurate summary of the findings. If the nurse aide disputes the findings, this information shall also be entered into the registry.

D. The Division of Health Care Financing's Bureau of Facility Review shall investigate such complaints. A nurse aide shall be entitled to a hearing, to be conducted through the Division of Health Care Financing, before a substantiated claim can be entered against the nurse aide.

E. The Division of Health Care Financing shall enforce the standards for the nurse aide registry described in OBRA 1987, Sections 4211 and 4212, which are hereby adopted and incorporated by reference.

R414-7B-6. Limitations.

A. The State Office of Vocational Education may not approve a facility-based nurse aide training program if, in the prior two years, the facility's participation in the Medicare and

Medicaid programs has been terminated.

B. Nurse aide training programs must be reviewed and reapproved at least every two years.

C. The competency evaluation, both written and skills components, may not be administered by a skilled nursing facility which participates in Medicare nor a nursing facility which participates in Medicaid.

D. After January 1, 1990, nursing facilities may not use nurse aides for more than four months unless they have completed the nurse aide training and competency evaluation program.

E. After January 1, 1990, a nursing facility may not permit an individual to work as a nurse aide for monetary compensation unless the facility has checked the credentials of the nurse aide through the nurse aide registry.

F. Upon review of program performance standards, those programs not meeting minimum requirements and which do not provide an acceptable plan for correcting deficiencies shall be terminated from the program.

G. Retraining

Nurse aides who have not performed paid services for a continuous period of 24 months since the most recent completion of a training and competency evaluation program shall be required to undergo necessary retraining.

KEY: medicaid

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26-1-5

26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-11. Podiatry Services.****R414-11-0. Policy Statement.**

A. Podiatry services are available to eligible Medicaid recipients, and may be performed by a physician, osteopath or podiatrist as specified by the respective professional license.

B. Podiatric services include the examination, diagnosis and treatment of the human foot through medical, mechanical or surgical means. Podiatric service may be provided to Medicaid recipients when the recipient has a foot problem that causes:

1. difficulty walking or inability to walk;
2. painful or distressing impairment which limits independent function; or
3. crippling.

C. Reasonable and necessary diagnosis and treatment of symptomatic conditions such as osteoarthritis, bursitis (including bunions), tendinitis, and other related conditions, that result from, or are associated with, partial displacement of foot structures are covered services.

D. Surgical correction in the subluxated foot structure that is an integral part of the treatment of a foot injury is a benefit of the Medicaid program. Surgical correction undertaken to improve the function of the foot or to alleviate an associated symptomatic condition is also a covered service.

R414-11-1. Authority and Purpose.

A. Authority. Medicaid podiatry services are authorized under the provisions of 42 CFR 440.225 and 42 CFR 440.60. The Medicaid program is designed to provide services within financial limitations.

B. Purpose. The purpose of the program is to increase the functioning ability of the Medicaid patient.

R414-11-2. Definitions.

A. The "practice of podiatry" means the examination, diagnosis, or treatment medically, mechanically or surgically of the ailments of the human foot.

B. The medical term "subluxation" means a partial or complete dislocation.

C. The medical term "pes planus" means flatfoot.

D. "Retroactive eligibility" means that if payment for past medical expenses is requested, and eligibility exists, retroactive medical assistance may be approved.

R414-11-3. Eligibility Requirements/Coverage.

A. Podiatry services are available to children age 20 and younger and to pregnant adults. A more limited scope of services is available to adults age 21 and older as described in the Utah Medicaid Provider Manual.

B. Retroactive eligibility (See R414-11-8(D) below).

R414-11-4. Program Access Requirements.

The podiatry services are available to children age 20 and younger and pregnant adults. A more limited scope of services is available to adults age 21 and older as described in the Utah Medicaid Provider Manual.

R414-11-5. Service Coverage.

A. Procedures determined to be appropriate for the podiatry program are identified by CPT-4 codes found in the Health Common Procedure Coding System (HCPCS). These procedures include:

1. foot incision;
2. foot excision;
3. repair, revision or reconstruction;
4. surgery;
5. nail treatment;
6. laboratory procedures; and

7. radiology.

B. Laboratory procedures necessary for diagnosis and treatment of the patient may be performed by the podiatrist in the office when appropriate equipment is available. Laboratory services provided by an independent laboratory or hospital outpatient laboratory, on the order of a podiatrist, must be billed directly by the laboratory.

C. Treatment of a fungal (mycotic) infection of the toenail is a Medicaid benefit in the following circumstances:

1. There is clinical evidence of mycosis demonstrated by:
 - a. inflammation;
 - b. infection;
 - c. Erythema (redness of the skin due to congestion of capillaries); or
 - d. there is marked limitation of ambulation.

D. Nursing Home Care:

Medicaid recipients who reside in a nursing home may receive benefits from the podiatry program. Some of the benefits include:

1. excision of nail or nail matrix;
2. removal of partial or complete ingrown or deformed nails;
3. surgical procedures;
4. radiology procedures;
5. laboratory procedures;
6. the cutting or removal of corns, warts, callouses or nails of patients who are at risk due to complications from certain diseases such as diabetes, arteriosclerosis, or Buerger's Disease;

7. reasonable and necessary diagnosis and treatment of symptomatic conditions such as osteoarthritis, bursitis (including bunions), tendinitis, which result from or are associated with partial displacement of foot structures; or

8. surgical correction in the subluxated foot structure which is an integral part of the treatment of a foot injury, or if it is undertaken to improve the function of the foot or to alleviate an associated symptomatic condition.

E. Medical Supplies

1. Shoes are a Medicaid benefit only when:
 - a. attached to a brace or prosthesis; or
 - b. especially constructed to provide for a totally or partially missing foot.
2. Supplies and materials used by the podiatrist over and above those usually included for the surgery procedure may be billed separately. The materials provided must be listed.
3. Supplies for surgery performed in the office rather than a surgical center or outpatient hospital are a benefit of this service.

R414-11-6. Standards of Care.

A. The services must be considered under accepted standards of medical practice to be a specific and effective treatment for the recipient's condition.

B. The services must be:

1. of a level of complexity and sophistication, or the condition of the recipient must be such that services required can be safely and effectively performed only by a qualified podiatrist. To constitute podiatry, a service must, among other things, be reasonable and necessary to the treatment of the patient's illness. If the patient's expected health benefit would be insignificant in relation to the extent and duration of the patient's podiatry service, it would not be considered reasonable and necessary.
2. reasonable with regard to the amount, frequency and duration of services.

R414-11-7. Limitations.

A. General Limitation

1. Limitations which apply to the physicians program will also apply to the services provided by a podiatrist. If prior

approval is required for a procedure performed by a physician, although it relates to the foot or foot structure, it requires prior authorization in the podiatry program.

2. Podiatric services are limited to examination, diagnosis, and treatment described in service coverage R414-11-5 above.

3. A person licensed to practice podiatry may not administer general anesthesia, and may not amputate the foot.

4. Palliative care must include the specific service and must be billed by the specific service and not by using an office call procedure code.

B. Specific Limitations

1. Routine Foot Care

a. The preventive maintenance care of the type ordinarily within the realm of self care or nursing home care considered to be routine, is not covered as a podiatry service. This includes:

(1) the cutting or removal of corns, warts or callouses, unless a danger to the patient exists (for example: diabetes, arteriosclerosis or Buerger's disease);

(2) the trimming of nails (including mycotic nails), except as specifically identified in R414-11-5, Service Coverage above;

(3) the cleaning and soaking of the feet;

(4) the use of massage or skin creams;

(5) any services performed in the absence of localized illness or injury;

(6) any application of topical medication or

(7) any treatment of fungal (mycotic) infection of the toenail, except as specifically documented.

2. Nursing Home Foot Care

a. Nursing home patient foot care is limited to one visit every two months. Services in excess of this standard require prior authorization and must be documented in sufficient detail to reasonably justify the necessity of the service.

b. Foot care which may be performed for a nursing home recipient by a nursing home employee is not a Medicaid benefit.

c. The debridement of mycotic toenails is limited to once every 60 days. Exceptions will be authorized if medical necessity is documented by the patient's physician and attached to the request for prior authorization.

3. Subluxation or Pes Planus:

Further services excluded from coverage are defined as:

1. The treatment, including evaluation, of subluxations of the feet. These are structural misalignments, or partial dislocation (other than fractures or complete dislocations) of the joints of the feet which require treatment only by nonsurgical methods regardless of underlying pathology.

2. The treatment, including evaluations and the prescriptions of supporting devices, of the local condition of flattened arches (pes planus) regardless of the underlying pathology.

C. Prosthetic Devices/Shoes/Orthotics

1. A "prosthetic device" means a replacement, corrective or supportive device prescribed by a physician or other licensed practitioner of the healing arts within the scope of his practice as defined by State law to:

a. artificially replace a missing portion of the body;

b. prevent or correct physical deformity or malfunctions (including promotion of adaptive functioning); or

c. support a weak or deformed portion of the body.

2. Orthotics, metatarsal head appliances, arch supports, are not benefits of Medicaid although they may generally fit the description of a prosthetic device.

D. Additional Limitations

The following services are excluded from coverage as a Medicaid benefit:

1. shoes, orthopedic shoes or other supportive devices for the feet, except when shoes are integral parts of leg braces or a prosthesis.

2. special shoes such as:

a. mismatched shoes (unless attached to a brace);

b. shoes to support an overweight individual;

c. trade name or brand name shoes considered "orthopedic" or "corrective";

d. "athletic" or "walking" shoes;

3. shoe repair except as it relates to external modification of an existing shoe to meet a medical need, i.e., leg length discrepancy requiring a shoe build up of one inch or more;

4. internal modifications of a shoe;

5. arch supports, foot pads, metatarsal head appliances or foot supports;

6. personal comfort items and services. Comfort items include, but are not limited to arch supports, foot pads, "cookies" or other accessories, shoes for comfort or athletic shoes;

7. manufacture, dispensing or services related to orthotics of the feet;

8. devices which do not artificially replace a missing portion of the body;

9. devices which do not prevent or correct physical deformity or malfunction;

10. devices which do not support a weak or deformed portion of the body;

11. office calls, house calls, nursing home calls, billed in addition to a service. Post payment claims review will be performed.

12. Services to adults age 21 and older are more limited as described in the Utah Medicaid Provider Manual.

R414-11-8. Prior Authorization.

A. "Prior authorization" means that degree of agency approval for payment of services required to be obtained by a provider. Such approval must be obtained precedent to service being provided. Services requiring prior authorization performed in life threatening or justifiable emergency situations are an exception. Approval of emergency service can be obtained after the fact with appropriate documentation.

1. Unlisted Services

a. All procedure codes which end in 99 and some which end in 49 have the nomenclature "unlisted service or procedure." These procedures require a prior authorization. They also require a "Special Report."

b. A special report is required because the procedure is rarely provided, unusual, variable or new. The special report must include:

(1) medical appropriateness;

(2) information covering need for the procedure;

(3) time, effort, equipment necessary;

(4) complexity of symptoms;

(5) final diagnosis;

(6) pertinent physical findings;

(7) diagnostic and therapeutic procedures previously completed or expected;

(8) concurrent problems;

(9) follow-up care.

2. Service to Nursing Home Patients:

a. Prior authorization is not necessary for the following procedures in behalf of a nursing home patient:

(1) excision of nail and/or nail matrix;

(2) excision of ingrown or deformed nail for permanent removal.

b. Surgical procedures in behalf of Medicaid recipients who reside in a nursing home will be subject to post payment review and recovery if not appropriate.

c. Prior authorization is required for the debridement of mycotic toenails in excess of once every 60 days.

d. Prior authorization is required if trimming corns, warts, callouses or nails is performed for any patient with diabetes, arteriosclerosis, or Buerger's Disease, more frequently than every 60 days.

B. Criteria for Approval of Requests

Prior approval for treatment or surgery that requires prior authorization will be reviewed and approved or denied based on the following criteria:

1. Services are for treatment of medical disorders or disabilities.
2. Services are provided for those disorders that are incapacitating for the patient and are reasonable and necessary for treatment of specific medical disorders or disabilities. Removing bunions for a bedfast patient would be disallowed.
3. Services are provided with the expectation that the condition under treatment will improve in a reasonable and generally predictable time.
4. Services are professionally appropriate under the standard in the field, utilizing professionally appropriate methods and materials in a professionally appropriate environment.
5. Services that are requested are justified with sufficient information for approval.

C. Request for Prior Authorization Form:

This form must include the following information:

1. the diagnosis and the severity of the condition;
2. the prognosis;
3. the expected independence of the recipient or benefit of the procedures;
4. the procedure code(s);
5. the patient x-rays (if applicable);
6. adequate clinical assessment of patient needs.

All requests for prior approval must be made before the surgery or service is performed, except for recipients made retroactively eligible for Medicaid.

D. Retroactive Eligibility

When a patient is made retroactively eligible for Medicaid and services have already been rendered which require prior approval, the following procedures must be followed:

1. The recipient must present a Medicaid Identification Card (ID Card), or an Interim Verification of Eligibility Form (695) which verifies the eligibility status of the recipient and the inclusive dates of eligibility.
2. The Request for Prior Approval Form must be completed.
3. The retroactive eligibility status of the recipient and appropriate documentation of the medical need for the procedure must be stated on the Request for Prior Approval Form.
4. The date of surgery or service must be within the dates of eligibility.

E. Out-of State

1. Any Medicaid request for out-of-state medical services or travel other than those listed below, must have prior authorization from the Division of Health Care Financing. There are four areas in which a Medicaid recipient may live (adjacent to the state line) and may go to another state, as stipulated, for medical services.

2. The following border towns have been identified by the Department of Social Services, Office of Assistance Payments, and entered into the Medicaid Provider File:

- a. Rich County residents may go to Evanston, Wyoming; Riverton, Wyoming; Preston, Idaho; Paris, Idaho or Montpelier, Idaho.
- b. San Juan County residents may go to Cortez, Del Norte, Dolores, Durango, Grand Junction and Montrose, Colorado; or to Shiprock or Farmington, New Mexico.
- c. Residents of the Snake Valley area in Millard County, (Garrison, Gandy, Burbank and Eskdale), may go to Ely, Nevada and East Ely, Nevada.

R414-11-9. Reimbursement for Podiatry Service.**A. Introduction**

There are numerous procedure codes listed in the Podiatrist Provider Manual for Medicaid services. Only the listed procedure codes are reimbursable by the Medicaid Medical Information System (MMIS).

B. Office Calls

Office calls are not designated by the time involved but by the service provided. The CPT identifies the elements and services included in each level of office call or house call. Utilizing these designations, the appropriate codes are identified in the podiatry index.

C. Nursing Home Patients

All surgical procedures provided for a nursing home recipient must be medically necessary and appropriate, and may be subject to post payment review.

D. Injection Procedures

Procedure codes with the J prefix are for injections. The J codes specifically identified for podiatric use are in the Podiatry Provider Manual.

E. Laboratory Procedures

Only those laboratory procedures for which the podiatrist or physician has the appropriate office equipment may be billed to Medicaid. Reimbursable laboratory procedure codes are listed in the Podiatry Provider Manual.

R414-11-10. Co-payment Policy.

This section establishes co-payment policy for podiatrist services for Medicaid clients who are not in any of the federal categories exempted from co-payment requirements. The rule is authorized by 42 CFR 447.15 and 447.50, Oct. 1, 2001 ed., which are adopted and incorporated by reference.

(1) The Department shall impose a co-payment in the amount of \$2 for each podiatrist visit when a non-exempt Medicaid client, as designated on his Medicaid card, receives that podiatrist service. The Department shall limit the out-of-pocket expense of the Medicaid client to \$100 annually. (Co-payments for pharmacy services will continue to be limited to \$5 per month.)

(2) The Department shall deduct \$2 from the reimbursement paid to the provider for each podiatrist visit, limited to one per day.

(3) The provider should collect the co-payment amount from the Medicaid client for each podiatrist visit, limited to one per day.

(4) Medicaid clients in the following categories are exempt from co-payment requirements:

- (a) children;
- (b) pregnant women;
- (c) institutionalized individuals;
- (d) individuals whose total gross income, before exclusions or deductions, is below the Temporary Assistance to Needy Families (TANF) standard payment allowance. These individuals must indicate their income status to their eligibility case worker on a monthly basis to maintain their exemption from the co-pay requirements.

KEY: Medicaid**October 2, 2002****Notice of Continuation November 3, 2004****26-1-5****26-18-3**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-36. Services by Community Mental Health Centers.****R414-36-1. Introduction and Authority.**

(1) This rule outlines the diagnostic and rehabilitative mental health services provided to Medicaid clients by community mental health centers.

(2) This rule is authorized under UCA 26-18-3 and governs the services allowed under 42 CFR 440.130, Oct. 2003 ed., and implements waivers authorized under federal waiver authority in subsections 1902(a)(1), 1915(b)(3) and 1915(b)(4) of the Social Security Act.

R414-36-2. Definitions.

In this rule:

"Diagnostic services" means any medical procedure recommended by a physician or other licensed mental health therapist to enable him to identify the existence, nature, or extent of a mental health disorder in a client.

"Prepaid Mental Health Plan" means the prepaid, capitated program through which the Department pays contracted community mental health centers to provide all needed inpatient and outpatient mental health services to residents of the community mental health center's catchment area who are enrolled in the plan.

"Rehabilitative services" means any medical or remedial services recommended by a physician or other licensed mental health therapist for maximum reduction of a client's mental health disorder and restoration of the client to his best possible functional level.

R414-36-3. Client Eligibility Requirements.

Diagnostic and rehabilitative mental health services are available to any Categorically or Medically Needy Medicaid client, except that

(1) Medicaid clients who reside at the Utah State Hospital and the Utah Developmental Center are not covered under the Prepaid Mental Health Plan;

(2) children in State custody are enrolled in the Prepaid Mental Health Plan only for inpatient mental health services;

(3) Medicaid clients who enroll in the UNI HOME Program are disenrolled from the Prepaid Mental Health Plan;

(4) state subsidized adoptive children who have been exempted from the Prepaid Mental Health Plan by parent request are enrolled in the Prepaid Mental Health Plan only for inpatient mental health services.

R414-36-4. Program Access Requirements.

(1) Diagnostic and rehabilitative mental health services must be provided by or through a community mental health center that is under contract with or directly operated by a local county mental health authority.

(2) The community mental health center must evaluate the client to determine if the client has a mental health disorder that requires mental health services.

R414-36-5. Service Coverage.

(1) Services must be recommended by a licensed mental health therapist.

(2) The scope of diagnostic and rehabilitative mental health services includes:

- (a) psychiatric diagnostic interview examination;
- (b) mental health assessment by non-physician;
- (c) psychological testing;
- (d) individual psychotherapy;
- (e) group psychotherapy;
- (f) individual psychotherapy with medical evaluation and management services;
- (g) family psychotherapy with patient present;

(h) family psychotherapy without patient present;

(i) therapeutic behavioral services;

(j) pharmacologic management;

(k) individual skills training and development;

(l) psychosocial rehabilitative services; and

(m) intensive psychosocial rehabilitative services for children ages 0 through the month of their 13th birthday.

(3) Medicaid clients who reside in counties covered by a Prepaid Mental Health Plan contractor are automatically enrolled in the Prepaid Mental Health Plan for that county. A Medicaid client covered by a Prepaid Mental Health Plan may receive additional services approved by CMS under the Social Security Act section 1915(b)(3) waiver authority.

(4) Medicaid adult recipients ages 19 and over in the TANF and Medically Needy eligibility categories who are enrolled in the Non-Traditional Medicaid Plan have the following service limitations:

(a) inpatient mental health care is limited to a maximum of 30 days per year;

(b) outpatient mental health services are limited to a maximum of 30 outpatient mental health treatment services or visits per year

(c) targeted case management services under R414-33A for the chronically mentally ill also count toward the maximum of 30 outpatient mental health services.

(4) Medicaid clients enrolled in the Non-Traditional Medicaid Plan also have the following service exclusions:

(a) services for conditions without manifest psychiatric diagnoses;

(b) hypnosis, occupational, or recreational therapy; and

(c) office calls in conjunction with medication management for repetitive therapeutic injections.

(4) Psychiatric diagnosis interview examinations for legal purposes only, such as for custodial or visitation rights are excluded from coverage for all Medicaid clients.

R414-36-6. Qualified Providers.

(1) Diagnostic and rehabilitative services must be provided by an individual, as limited by the scope of his license, who is:

(a) a licensed physician, a licensed psychologist, a licensed clinical social worker, a licensed certified social worker, a licensed social service worker, a licensed advanced practice registered nurse specializing in mental health nursing, a licensed registered nurse, a licensed professional counselor, or a licensed marriage and family counselor; or

(b) an individual working toward licensure in one of the professions identified in subsection (a); or

(c) a licensed practical nurse or other trained staff working under the supervision of one of the individuals identified in subsection (1)(a) or (b).

R414-36-7. Reimbursement Methodology.

(1) Two community mental health centers are not under contract with the Department as Prepaid Mental Health Plan contractors. The Department reimburses these two community mental health centers on a fee-for-service basis. The Department pays the lower of the amount billed or the Medicaid fee schedule. The fee schedule was initially established after consultation with provider representatives. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private pay clients.

(2) The Department pays Prepaid Mental Health Plan contractors a capitated monthly premium to cover all inpatient and outpatient mental health services needed by Medicaid clients. The premiums are developed and certified as actuarially sound by independent actuaries who meet the qualification standards established by the American Academy of Actuaries.

KEY: Medicaid

November 3, 2004

26-18-3

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
Notice of Continuation November 12, 2004

26-1-5
26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-50. Dental, Oral and Maxillofacial Surgeons.****R414-50-1. Introduction and Authority.**

(1) The Medicaid Oral and Maxillofacial Surgery Program provides a scope of oral and maxillofacial surgery services to meet the basic needs of Medicaid clients. This includes services by both oral and maxillofacial surgeons and general dentists if surgery is performed by a general dentist in an emergency situation and an oral and maxillofacial surgeon is not available.

(2) Oral and maxillofacial surgery services are authorized by 42 USC 1396d(a)(5), which is adopted and incorporated by reference.

R414-50-2. Definitions.

Definitions for this rule are found in R414-1-1. In addition:

(1) "Oral and Maxillofacial Surgeons" means those individuals who have completed a post-graduate curriculum from an accredited institution of higher learning and are board-certified or board-eligible in oral and maxillofacial surgery.

(2) "Oral and maxillofacial surgery" means that part of dental practice which deals with the diagnosis and surgical and adjunctive treatment of diseases, injuries, and defects of the oral and maxillofacial regions.

R414-50-3. Client Eligibility Requirements.

Oral and maxillofacial surgery service is available to categorically and medically needy clients who are ages 20 and younger or who are pregnant. Dental services to non-pregnant adults ages 21 and older are limited to emergency services only.

R414-50-4. Program Access Requirements.

Oral and maxillofacial surgery services are available only from an oral and maxillofacial surgeon who is a Medicaid provider. These services are available from a dentist provider if an oral and maxillofacial surgeon is unavailable.

R414-50-5. Service Coverage.

(1) Emergency services are covered services. Emergency services provided by a dentist in areas where an oral and maxillofacial surgeon is unavailable are covered services.

(2) Appropriate general anesthesia necessary for optimal management of the emergency is a covered service.

(3) Hospitalization of patients for dental surgery may be a covered service if a patient's physician, at the time of the proposed hospitalization, verifies that the patient's general health status dictates that hospitalization is necessary for the health and welfare of the patient.

(4) Treatment of temporomandibular joint fractures is a covered service. All other temporomandibular joint treatments are not covered services.

(5) For procedures requiring prior approval, Medicaid shall deny payment if the services are rendered before prior approval is obtained. Exceptions may be made for emergency services, or for recipients who obtain retroactive eligibility. The provider must apply for approval as soon as is practicable after the service is provided.

(6) Extraction of primary teeth at or near the time of exfoliation, as evidenced by mobility or loosening of the teeth, is not a covered service.

R414-50-6. Reimbursement.

(1) Fees for services for which the Department will pay dentists are established from the physician's fees for CPT codes as described in the State Plan, Attachment 4.19-B, Section D Physicians. 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.

(2) The Department pays the lower of the amount billed and the rate on the schedule. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private-pay patients.

KEY: Medicaid**January 28, 2004****Notice of Continuation November 3, 2004****26-1-4.1****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;

(e) temporary credentialing and privileging of staff in emergency or disaster situations; and

(f) 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. During an emergency or disaster situation a member of the credentialed and privileged staff must supervise temporary credentialed practitioners.

(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.

(10) During an emergency or disaster situation the hospital shall orient each temporary practitioner to the practitioner's assigned area of the hospital.

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 patient's 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 Health 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 bassinets 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 bassinets and four feet between bassinets for Continuing Care nurseries;

(c) Level III Sub-specialty: Newborn Intensive Care Nursery 100 square feet per bassinets 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 Fahrenheit 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

November 10, 2004

Notice of Continuation October 16, 2002

26-21-5

26-21-2.1

26-21-20

R432. Health, Health Systems Improvement, Licensing.**R432-150. Nursing Care Facility.****R432-150-1. Legal Authority.**

This rule is adopted pursuant to Title 26, Chapter 21.

R432-150-2. Purpose.

The purpose of R432-150 is to establish health and safety standards to provide for the physical and psycho-social well being of individuals receiving services in nursing care facilities.

R432-150-3. Construction Standard.

Nursing Care Facilities shall be constructed and maintained in accordance with R432-5, Nursing Facility Construction.

R432-150-4. Definitions.

- (1) The definitions found in R432-1-3 apply to this rule.
- (2) The following definitions apply to nursing care facilities.
 - (a) "Skilled Nursing Care" means a level of care that provides 24 hour inpatient care to residents who need licensed nursing supervision. The complexity of the prescribed services must be performed by or under the close supervision of licensed health care personnel.
 - (b) "Intermediate Care" means a level of care that provides 24-hour inpatient care to residents who need licensed supervision and supportive care, but do not require continuous nursing care.
 - (c) "Medically-related Social Services" means assistance provided by the facility licensed social worker to maintain or improve each resident's ability to control everyday physical, mental and psycho-social needs.
 - (d) "Nurse's Aide" means any individual, other than an individual licensed in another category, providing nursing or nurse related services to residents in a facility. This definition does not include an individual who volunteers to provide such services without pay.
 - (e) "Unnecessary Drug" means any drug when used in excessive dose, for excessive duration, without adequate monitoring, without adequate indications for its use, in the presence of adverse consequences which indicate the dose should be reduced or discontinued, or any combinations of these reasons.
 - (f) "Chemical Restraint" means any medication administered to a resident to control or restrict the resident's physical, emotional, or behavioral functioning for the convenience of staff, for punishment or discipline, or as a substitute for direct resident care.
 - (g) "Physical Restraint" means any physical method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily which restricts the resident's freedom of movement or normal access to his own body.
 - (h) "Significant Change" means a major change in a resident's status that impacts on more than one area of the resident's health status.
 - (i) "Therapeutic Leave" means leave pertaining to medical treatment planned and implemented to attain an objective that is specified in the individual plan of care.
 - (j) "Licensed Practitioner" means a health care practitioner whose license allows assessment, treatment, or prescribing practices within the scope of the license and established protocols.
 - (k) "Governing Body" means the board of trustees, owner, person or persons designated by the owner with the legal authority and ultimate responsibility for the management, control, conduct and functioning of the health care facility or agency.
 - (l) "Nursing Staff" means nurses aides that are in the process of becoming certified, certified nurses aides, and those

individuals that are licensed (e.g. licensed practical nurses and registered nurses) to provide nursing care in the State of Utah.

(m) "Licensed Practical Nurse" as defined in the Nurse Practice Act, Title 58, Chapter 31, Section 2(11).

(n) "Registered Nurse" as defined in the Nurse Practice Act, Title 58, Chapter 31, Section 2(12).

(o) "Palatable" means food that has a pleasant and agreeable taste and is acceptable to eat.

R432-150-5. Scope of Services.

(1) An intermediate level of care facility must provide 24-hour licensed nursing services.

(a) The facility shall ensure that nursing staff are present on the premises at all times to meet the needs of residents.

(b) The facility shall provide at least one registered nurse either by direct employ or by contract to provide direction to nursing services.

(c) The facility may employ a licensed practical nurse to act as the health services supervisor in lieu of a director of nursing provided that a registered nurse consultant meets regularly with the health services supervisor.

(d) The facility shall provide at least the following:

- (i) medical supervision;
- (ii) dietary services;
- (iii) social services; and
- (iv) recreational therapy.

(e) The following services shall be provided as required in the resident care plan:

- (i) physical therapy;
- (ii) occupational therapy;
- (iii) speech therapy;
- (iv) respiratory therapy; and
- (v) other therapies.

(2) A skilled level of care facility must provide 24-hour licensed nursing services.

(a) The facility shall ensure that nursing staff are present on the premises at all times to meet the needs of residents.

A licensed nurse shall serve as charge nurse on each shift.

(b) The facility shall employ a registered nurse for at least eight consecutive hours a day, seven days a week.

(c) The facility shall designate a registered nurse to serve as the director of nursing on a full-time basis. A person may not concurrently serve as the director of nursing and as a charge nurse.

(d) A skilled level of care facility shall provide services to residents that preserve current capabilities and prevent further deterioration including the following:

- (i) medical supervision;
- (ii) dietary services;
- (iii) physical therapy;
- (iv) social services;
- (v) recreation therapy;
- (vi) dental services; and
- (vii) pharmacy services;

(e) The facility shall provide the following services as required by the resident care plan:

- (i) respiratory therapy,
- (ii) occupational therapy, and
- (iii) speech therapy.

(3) Respite services may be provided in nursing care facilities.

(a) The purpose of respite is to provide intermittent, time-limited care to give primary caretakers relief from the demands of caring for a person.

(b) Respite services may be provided at an hourly rate or daily rate, but shall not exceed 14-days for any single respite stay. A respite stay which exceeds 14 days is a nursing facility admission subject to the requirements of this rule applicable to non-respite residents.

(c) The facility shall coordinate the delivery of respite services with the recipient of services, the case manager, if one exists, and the family member or primary caretaker.

(d) The facility shall document the person's response to the respite placement and coordinate with all provider agencies to ensure an uninterrupted service delivery program.

(e) The facility must complete the following:

(i) a Level 1 Preadmission Screening upon the persons admission for respite services; and

(ii) a service agreement to serve as the plan of care, which shall identify the prescribed medications, physician treatment orders, need for assistance with activities of daily living, and diet orders.

(f) The facility must have written respite care policies and procedures that are available to staff. Respite care policies and procedures must address:

(i) medication administration;

(ii) notification of a responsible party in the case of an emergency;

(iii) service agreement and admission criteria;

(iv) behavior management interventions;

(v) philosophy of respite services;

(vi) post-service summary;

(vii) training and in-service requirement for employees;

and

(viii) handling personal funds.

(g) Persons receiving respite services must receive a copy of the Resident Rights documents upon admission.

(h) The facility must maintain a record for each person receiving respite services. The record shall contain the following:

(i) the service agreement;

(ii) resident demographic information;

(iii) nursing notes;

(iv) physician treatment orders;

(v) daily staff notes;

(vi) accident and injury reports,

(vii) a post service summary, and

(viii) an advanced directive, if available.

(i) Retention and storage of respite records shall comply with R432-150-25(3).

(j) Confidentiality and release of information shall comply with R432-150-25(4).

(4) Hospice care may only be arranged and provided by a licensed hospice agency in accordance with R432-750. The facility shall be licensed as a hospice if it provides hospice care.

(5) A nursing care facility may provide terminal care.

R432-150-6. Adult Day Care Services.

(1) Nursing Care Facilities may offer adult day care and are not required to obtain a license from Utah Department of Human Services. If a facility provides adult day care, it shall submit policies and procedures for Department approval.

(2) In this section:

(a) "Adult Day Care" means nonresidential care and supervision for at least four but less than 24 hours per day, that meets the needs of functionally impaired adults through a comprehensive program that provides a variety of health, social, recreational, and related support services in a protective setting.

(b) "Consumer" means a functionally impaired adult admitted to or being evaluated for admission in a facility offering adult day care.

(3) The governing board shall designate a qualified Director to be responsible for the day-to-day program operation.

(4) The Director shall maintain written records on-site for each consumer and staff person, which shall include the following:

(a.) demographic information;

(b.) an emergency contact with name, address and

telephone number;

(c.) consumer health records, including the following:

(i) record of medication including dosage and administration;

(ii) a current health assessment, signed by a licensed practitioner; and

(iii) level of care assessment.

(d.) signed consumer agreement and service plan.

(e) employment file for each staff person which includes:

(i) health history;

(ii) background clearance consent and release form;

(iii) orientation completion, and

(iv) in-service requirements.

(5) The facility shall have a written eligibility, admission, and discharge policy that includes the following:

(a) intake process;

(b) notification of responsible party;

(c) reasons for admission refusal, including the Director's written, signed statement;

(d) resident rights notification; and

(e) reason for discharge or dismissal.

(6) Before a facility admits a consumer, it must first assess, in writing, the consumer's current health and medical history, immunizations, legal status, and social psychological factors to determine whether the consumer may be placed in the program.

(7) The Director or designee, the responsible party, and the consumer if competent shall develop a written, signed consumer agreement. The agreement shall include:

(a) rules of the program;

(b) services to be provided and cost of service, including refund policy; and

(c) arrangements regarding absenteeism, visits, vacations, mail, gifts and telephone calls.

(8) Within three days of admission to the program, the Director or designee, shall develop an individual consumer service plan that the facility shall implement for the consumer. The service plan shall include the specification of daily activities and services. The Director or designees shall reevaluate, and modify if necessary, the consumer's service plan at least every six months.

(9) The facility shall make written incident and injury reports to document consumer death, injuries, elopement, fights or physical confrontations, situations which require the use of passive physical restraint, suspected abuse or neglect, and other situations or circumstances affecting the health, safety or well-being of a consumer while in care. The facility shall document the actions taken, including actions taken to avoid future incident or injury, and keep the reports on file. The Director shall notify and review the incident or injury report with the responsible party no later than when the consumer is picked up at the end of the day.

(10) The facility shall post and implement a daily activity schedule.

(11) Consumers shall receive direct supervision at all times and be encouraged to participate in activities.

(12) There shall be a minimum of 50 square feet of indoor floor space, excluding hallways, office, storage, kitchens, and bathrooms, per consumer designated for adult day care during program operational hours.

(13) All indoor and outdoor areas shall be maintained in a clean, secure and safe condition.

(14) There shall be at least one bathroom designated for consumers use during business hours. For facilities serving more than 10 consumers, there shall be separate male and female bathrooms designated for consumer use.

(15) Staff supervision shall be provided continually when consumers are present.

(a) When eight or fewer consumers are present, one staff member shall provide continuous, direct supervision.

(b) For each eight additional consumers, or fraction thereof, the facility shall provide an additional staff member to provide continuous, direct supervision. For example, ten consumers require two staff members.

(c) If one-half or more of the consumers is diagnosed by a physician's assessment with Alzheimer's or other dementia, the ratio shall be one staff for each six consumers, or fraction thereof.

R432-150-7. Governing Body.

The facility must have a governing body, or designated persons functioning as a governing body.

(1) The governing body must establish and implement policies regarding the management and operation of the facility.

(2) The governing body shall institute bylaws, policies and procedures relative to the general operation of all facility services including the health care of the residents and the protection of resident rights.

(3) The governing body must appoint the administrator in writing.

R432-150-8. Administrator.

(1) The administrator must comply with the following requirements.

(a) The administrator must be licensed as a health facility administrator by the Utah Department of Commerce pursuant to Title 58, Chapter 15.

(b) The administrator's license shall be posted in a place readily visible to the public.

(c) The administrator may supervise no more than one nursing care facility.

(d) The administrator shall have sufficient freedom from other responsibilities to permit attention to the management and administration of the facility.

(e) The administrator shall designate, in writing, the name and title of the person who shall act as administrator in any temporary absence of the administrator. This person shall have the authority and freedom to act in the best interests of resident safety and well-being. It is not the intent of this paragraph to permit an unlicensed de facto administrator to supplant or replace the designated, licensed administrator.

(2) The administrator's responsibilities must be defined in a written job description on file in the facility. The job description shall include at least the following responsibilities:

(a) complete, submit, and file all records and reports required by the Department;

(b) act as a liaison between the licensee, medical and nursing staffs, and other supervisory staff of the facility;

(c) respond to recommendations made by the quality assurance committee;

(d) implement policies and procedures governing the operation of all functions of the facility; and

(e) review all incident and accident reports and document the action taken or reason for no action.

(3) The administrator shall ensure that facility policies and procedures reflect current facility practice, and are revised and updated as needed.

(4) The administrator shall secure and update contracts for required professional services not provided directly by the facility.

(a) Contracts shall document the following:

(i) the effective and expiration date of contract;

(ii) a description of goods or services provided by the contractor to the facility;

(iii) a statement that the contractor shall conform to the standards required by Utah law or rules;

(iv) a provision to terminate the contract with advance notice;

(v) the financial terms of the contract;

(vi) a copy of the business or professional license of the contractor; and

(vii) a provision to report findings, observations, and recommendations to the administrator on a regular basis.

(b) Contracts shall be signed, dated and maintained for review by the Department.

(5) The administrator shall maintain a written transfer agreement with one or more hospitals to facilitate the transfer of residents and essential resident information. The transfer agreement must include:

(a) criteria for transfer;

(b) method of transfer;

(c) transfer of information needed for proper care and treatment of the resident transferred;

(d) security and accountability of personal property of the resident transferred;

(e) proper notification of hospital and responsible person before transfer;

(f) the facility responsible for resident care during the transfer; and

(g) resident confidentiality.

R432-150-9. Medical Director.

(1) The administrator must retain by formal agreement a licensed physician to serve as medical director or advisory physician according to resident and facility needs.

(2) The medical director or advisory physician shall:

(a) be responsible for the development of resident care policies and procedures including the delineation of responsibilities of attending physicians;

(b) review current resident care policies and procedures with the administrator;

(c) serve as a liaison between resident physicians and the administrator;

(d) review incident and accident reports at the request of the administrator to identify health hazards to residents and employees and;

(e) act as consultant to the director of nursing or the health services supervisor in matters relating to resident care policies.

R432-150-10. Staff and Personnel.

(1) The administrator shall employ personnel who are able and competent to perform their respective duties, services, and functions.

(a) The administrator, director of nursing or health services supervisor, and department supervisors shall develop job descriptions for each position including job title, job summary, responsibilities, qualifications, required skills and licenses, and physical requirements.

(b) All personnel must have access to facility policy and procedure manuals and other information necessary to effectively perform duties and carry out responsibilities.

(c) All personnel must be licensed, certified or registered as required by the Utah Department of Commerce. A copy of the license, certification or registration shall be maintained for Department review.

(2) The facility shall maintain staffing records, including employee performance evaluations, for the preceding 12 months.

(3) The facility shall establish a personnel health program through written personnel health policies and procedures.

(4) The facility shall complete a health evaluation and inventory for each employee upon hire.

(a) The health inventory shall obtain at least the employee's history of the following:

(i) conditions that predispose the employee to acquiring or transmitting infectious diseases; and

(ii) conditions which may prevent the employee from performing certain assigned duties satisfactorily.

(b) The health inventory shall include health screening and immunization components of the employee's personnel health program.

(c) Infection control shall include staff immunization as necessary to prevent the spread of disease.

(d) Employee skin testing and follow up for tuberculosis shall be done in accordance with R388-804. Tuberculosis Control Rule.

(e) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-2.

(5) The facility shall plan and document in-service training for all personnel.

(a) The following topics shall be addressed at least annually:

(i) fire prevention;

(ii) review and drill of emergency procedures and evacuation plan;

(iii) the reporting of resident abuse, neglect or exploitation to the proper authorities;

(iv) prevention and control of infections;

(v) accident prevention and safety procedures including instruction in body mechanics for all employees required to lift, turn, position, or ambulate residents; and proper safety precautions when floors are wet or waxed;

(vi) training in Cardiopulmonary Resuscitation (CPR) for licensed nursing personnel and others as appropriate;

(vii) proper use and documentation of restraints;

(viii) resident rights;

(ix) A basic understanding of the various types of mental illness, including symptoms, expected behaviors and intervention approaches; and

(x) confidentiality of resident information.

(6) Any person who provides nursing care, including nurse aides and orderlies, must work under the supervision of an RN or LPN and shall demonstrate competency and dependability in resident care.

(a) A facility may not have an employee working in the facility as a nurse aide for more than four months, on full-time, temporary, per diem, or other basis, unless that individual has successfully completed a State Department of Education-approved training and testing program.

(b) The facility shall verify through the nurse aide registry prior to employment that nurse aide applicants do not have a verified report of abuse, neglect, or exploitation. If such a verified report exists, the facility may not hire the applicant.

(c) If an individual has not performed paid nursing or nursing related services for a continuous period of 24 consecutive months since the most recent completion of a training and competency evaluation program, the facility shall require the individual to complete a new training and competency evaluation program.

(d) The facility shall conduct regular performance reviews and regular in-service education to ensure that individuals used as nurse aides are competent to perform services as nurse aides.

(7) The facility may utilize volunteers in the daily activities of the facility provided that volunteers are not included in the facility's staffing plan in lieu of facility employees.

(a) Volunteers shall be supervised and familiar with resident's rights and the facility's policies and procedures.

(b) Volunteers who provide personal care to residents shall be screened according to facility policy and under the direct supervision of a qualified employee.

(8) An employee who reports suspected abuse, neglect, or exploitation shall not be subject to retaliation, disciplinary action, or termination by the facility for making the report.

R432-150-11. Quality Assurance.

(1) The administrator must implement a well-defined

quality assurance plan designed to improve resident care. The plan must:

(a) include a system for the collection of data indicators;

(b) include an incident reporting system to identify problems, concerns, and opportunities for improvement of resident care;

(c) implement a system to assess identified problems, concerns and opportunities for improvement; and

(d) implement actions that are designed to eliminate identified problems and improve resident care.

(2) The plan must include a quality assurance committee that functions as follows:

(a) documents committee meeting minutes including all corrective actions and results;

(b) conducts quarterly meetings and reports findings, concerns and actions to the administrator and governing body; and

(c) coordinates input of data indicators from all provided services and other departments as determined by the resident plan of care and facility scope of services.

(3) Incident and accident reports shall:

(a) be available for Department review;

(b) be numbered and logged in a manner to account for all filed reports; and

(c) have space for written comments by the administrator or medical director.

(4) Infection reporting must be integrated into the quality assurance plan and must be reported to the Department in accordance with R386-702, Communicable Disease Rule.

R432-150-12. Resident Rights.

(1) The facility shall establish written residents' rights.

(2) The facility shall post resident rights in areas accessible to residents. A copy of the residents' rights document shall be available to the residents, the residents' guardian or responsible person, and to the public and the Department upon request.

(3) The facility shall ensure that each resident admitted to the facility has the right to:

(a) be informed, prior to or at the time of admission and for the duration of stay, of resident rights and of all rules and regulations governing resident conduct.

(b) be informed, prior to or at the time of admission and for the duration of stay, of services available in the facility and of related charges, including any charges for services not covered by the facility's basic per diem rate or not covered under Titles XVIII or XIX of the Social Security Act.

(c) be informed by a licensed practitioner of current total health status, including current medical condition, unless medically contraindicated, the right to refuse treatment, and the right to formulate an advance directive in accordance with UCA Section 75-2-1101;

(d) be transferred or discharged only for medical reasons, for personal welfare or that of other residents, or for nonpayment for the stay, and to be given reasonable advance notice to ensure orderly transfer or discharge;

(e) be encouraged and assisted throughout the period of stay to exercise all rights as a resident and as a citizen, and to voice grievances and recommend changes in policies and services to facility staff and outside representatives of personal choice, free from restraint, interference, coercion, discrimination, or reprisal;

(f) manage personal financial affairs or to be given at least a quarterly accounting of financial transactions made on his behalf should the facility accept his written delegation of this responsibility;

(g) be free from mental and physical abuse, and from chemical and physical restraints;

(h) be assured confidential treatment of personal and

medical records, including photographs, and to approve or refuse their release to any individual outside the facility, except in the case of transfer to another health facility, or as required by law or third party payment contract;

(i) be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs;

(j) not be required to perform services for the facility that are not included for therapeutic purposes in the plan of care;

(k) associate and communicate privately with persons of the resident's choice, and to send and receive personal mail unopened;

(l) meet with social, religious, and community groups and participate in activities provided that the activities do not interfere with the rights of other residents in the facility;

(m) retain and use personal clothing and possessions as space permits, unless to do so would infringe upon rights of other residents;

(n) if married, to be assured privacy for visits by the spouse; and if both are residents in the facility, to be permitted to share a room;

(o) have members of the clergy admitted at the request of the resident or responsible person at any time;

(p) allow relatives or responsible persons to visit critically ill residents at any time;

(q) be allowed privacy for visits with family, friends, clergy, social workers or for professional or business purposes;

(r) have confidential access to telephones for both free local calls and for accommodation of long distance calls according to facility policy;

(s) have access to the State Long Term Care Ombudsman Program or representatives of the Long Term Care Ombudsman Program;

(t) choose activities, schedules, and health care consistent with individual interests, assessments and care plan;

(u) interact with members of the community both inside and outside the facility; and

(v) make choices about all aspects of life in the facility that are significant to the resident.

(4) A resident has the right to organize and participate in resident and family groups in the facility.

(a) A resident's family has the right to meet in the facility with the families of other residents in the facility.

(b) The facility shall provide a resident or family group, if one exists, with private space.

(c) Staff or visitors may attend meetings at the group's invitation.

(d) The facility shall designate a staff person responsible for providing assistance and responding to written requests that result from group meetings.

(e) If a resident or family group exists, the facility shall listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the facility.

(5) The facility must accommodate resident needs and preferences, except when the health and safety of the individual or other residents may be endangered. A resident must be given at least a 24-hour notice before an involuntary room move is made in the facility.

(a) In an emergency when there is actual or threatened harm to others, property or self, the 24 hour notice requirement for an involuntary room move may be waived. The circumstances requiring the emergency room change must be documented for Department review.

(b) The facility must make and document efforts to accommodate the resident's adjustment and choices regarding room and roommate changes.

(6) If a facility is entrusted with residents' monies or

valuables, the facility shall comply with the following:

(a) The licensee or facility staff may not use residents' monies or valuables as his own or mingle them with his own. Residents' monies and valuables shall be separate, intact and free from any liability that the licensee incurs in the use of his own or the institution's funds and valuables.

(b) The facility shall maintain adequate safeguards and accurate records of residents' monies and valuables entrusted to the licensee's care.

(i) Records of residents' monies which are maintained as a drawing account must include a control account for all receipts and expenditures, an account for each resident, and supporting vouchers filed in chronological order.

(ii) Each account shall be kept current with columns for debits, credits, and balance.

(iii) Records of residents' monies and other valuables entrusted to the licensee for safekeeping must include a copy of the receipt furnished to the resident or to the person responsible for the resident.

(c) The facility must deposit residents' monies not kept in the facility within five days of receipt of such funds in an interest-bearing account in a local bank or savings and loan association authorized to do business in Utah, the deposits of which shall be insured.

(d) A person, firm, partnership, association or corporation which is licensed to operate more than one health facility shall maintain a separate account for each such facility and shall not commingle resident funds from one facility with another.

(e) If the amount of residents' money entrusted to a licensee exceeds \$100, the facility must deposit all money in excess of \$100 in an interest-bearing account.

(f) Upon annual license renewal, the facility shall provide evidence of the purchase a surety bond or other equivalent assurance to secure all resident funds.

(g) When a resident is discharged, all money and valuables of that resident which have been entrusted to the licensee must be surrendered to the resident in exchange for a signed receipt. Money and valuables kept within the facility shall be surrendered upon demand and those kept in an interest-bearing account shall be made available within three working days.

(h) Within 30 days following the death of a resident, except in a medical examiner case, the facility must surrender all money and valuables of that resident which have been entrusted to the licensee to the person responsible for the resident or to the executor or the administrator of the estate in exchange for a signed receipt. If a resident dies without a representative or known heirs, the facility must immediately notify in writing the local probate court and the Department. (7) Facility smoking policies must comply with the Utah Indoor Clean Air Act, R392-510, 1995 and the rules adopted there under and Section 31-4.4 of the 1994 Life Safety Code.

R432-150-13. Resident Assessment.

(1) The facility shall upon admission obtain physician orders for the resident's immediate care.

(2) The facility must complete a comprehensive assessment of each resident's needs including a description of the resident's capability to perform daily life functions and significant impairments in functional capacity.

(a) The comprehensive assessment must include at least the following information:

(i) medically defined conditions and prior medical history;

(ii) medical status measurement;

(iii) physical and mental functional status;

(iv) sensory and physical impairments;

(v) nutritional status and requirements;

(vi) special treatments or procedures;

(vii) mental and psycho social status;

(viii) discharge potential;

- (ix) dental condition;
- (x) activities potential;
- (xi) rehabilitation potential;
- (xii) cognitive status; and
- (xiii) drug therapy.

(b) The facility must complete the initial assessment within 14 calendar days of admission and any revisions to the initial assessment within 21 calendar days of admission.

(c) A significant change in a resident's physical or mental condition requires an interdisciplinary team review and may require the facility to complete a new assessment within 14 calendar days of the condition change.

(d) At a minimum, the facility must complete three quarterly reviews and one full assessment in each 12 month period.

(e) The facility shall use the results of the assessment to develop, review, and revise the resident's comprehensive care plan.

(3) Each individual who completes a portion of the assessment must sign and certify the accuracy of that portion of the assessment.

(4) The facility must develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing, and mental and psycho-social needs as identified in the comprehensive assessment.

(a) The comprehensive care plan shall be:

(i) developed within seven days after completion of the comprehensive assessment;

(ii) prepared with input from an interdisciplinary team that includes the attending physician, the registered nurse having responsibility for the resident, and other appropriate staff in disciplines determined by the resident's needs, and with the participation of the resident, and the resident's family or guardian, to the extent practicable; and

(iii) periodically reviewed and revised by a team of qualified persons at least after each assessment and as the resident's condition changes.

(b) The services provided or arranged by the facility shall meet professional standards of quality and be provided by qualified persons in accordance with the resident's written care plan.

(5) The facility must prepare at the time of discharge a final summary of the resident's status to include items in R432-150-13(2)(a). The final summary shall be available for release to authorized persons and agencies, with the consent of the resident or representative.

(a) The final summary must include a post-discharge care plan developed with the participation of the resident and resident's family or guardian.

(b) If the discharge of the resident is based on the inability of the facility to meet the resident's needs, the final summary must contain a detailed explanation of why the resident's needs could not be met.

R432-150-14. Restraint Policy.

(1) Each resident has the right to be free from physical restraints imposed for purposes of discipline or convenience, or not required to treat the resident's medical symptoms.

(2) The facility must have written policies and procedures regarding the proper use of restraints.

(a) Physical and chemical restraints may only be used to assist residents to attain and maintain optimum levels of physical and emotional functioning.

(b) Physical and chemical restraints must not be used as substitutes for direct resident care, activities, or other services.

(c) Restraints must not unduly hinder evacuation of the resident in the event of fire or other emergency.

(d) If use of a physical or a chemical restraint is

implemented, the facility must inform the resident, next of kin, and the legally designated representative of the reasons for the restraint, the circumstances under which the restraint shall be discontinued, and the hazards of the restraint, including potential physical side effects.

(3) The facility must develop and implement policies and procedures that govern the use of physical and chemical restraints. These policies shall promote optimal resident function in a safe, therapeutic manner and minimize adverse consequences of restraint use.

(4) Physical and chemical restraint policies must incorporate and address at least the following:

(a) resident assessment criteria which includes:

(i) appropriateness of use;

(ii) procedures for use;

(iii) purpose and nature of the restraint;

(iv) less restrictive alternatives prior to the use of more restrictive measures; and

(v) behavior management and modification protocols including possible alterations to the physical environment;

(b) examples of the types of restraints and safety devices that are acceptable for the use indicated and possible resident conditions for which the restraint may be used; and

(c) physical restraint guidelines for periodic release and position change or exercise, with instructions for documentation of this action.

(5) Emergency use of physical and chemical restraints must comply with the following:

(a) A physician, a licensed health practitioner, the director of nursing, or the health services supervisor must authorize the emergency use of restraints.

(b) The facility must notify the attending physician as soon as possible, but at least within 24 hours of the application of the restraints.

(c) The facility must notify the director of nursing or health services supervisor no later than the beginning of the next day shift of the application of the restraints.

(d) The facility must document in the resident's record the circumstances necessitating emergency use of the restraint and the resident's response.

(6) Physical restraints must be authorized in writing by a licensed practitioner and incorporated into the resident's plan of care.

(a) The interdisciplinary team must review and document the use of physical restraints, including simple safety devices, during each resident care conference, and upon receipt of renewal orders from the licensed practitioner.

(b) The resident care plan must indicate the type of physical restraint or safety device, the length of time to be used, the frequency of release, and the type of exercise or ambulation to be provided.

(c) Staff application of physical restraints must ensure minimal discomfort to the resident and allow sufficient body movement for proper circulation.

(d) Staff application of physical restraints must not cause injury or allow a potential for injury.

(e) Leather restraints, straight jackets, or locked restraints are prohibited.

(7) Chemical restraints must be authorized in writing by a licensed practitioner and incorporated into the resident's plan of care in conjunction with an individualized behavior management program.

(a) The interdisciplinary team must review and document the use of chemical restraints during each resident care conference and upon receipt of renewal orders from the licensed practitioner.

(b) The facility must monitor each resident receiving chemical restraints for adverse effects that significantly hinder verbal, emotional, or physical abilities.

(c) Any medication given to a resident must be administered according to the requirements of professional and ethical practice and according to the policies and procedures of the facility.

(d) The facility must initiate drug holidays in accordance with R432-150-15(13)(b).

(8) Facility policy must include criteria for admission and retention of residents who require behavior management programs.

R432-150-15. Quality of Care.

(1) The facility must provide to each resident, the necessary care and services to attain or maintain the highest practicable physical, mental, and psycho-social well-being, in accordance with the comprehensive assessment and care plan.

(a) Necessary care and services include the resident's ability to:

- (i) bathe, dress, and groom;
- (ii) transfer and ambulate;
- (iii) use the toilet;
- (iv) eat; and

(v) use speech, language, or other functional communication systems.

(b) Based on the resident's comprehensive assessment, the facility must ensure that:

(i) each resident's abilities in activities of daily living do not diminish unless circumstances of the individual's clinical condition demonstrates that diminution was unavoidable;

(ii) each resident is given the treatment and services to maintain or improve his abilities; and

(iii) a resident who is unable to carry out these functions receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene.

(2) The facility must assist residents in scheduling appointments and arranging transportation for vision and hearing care as needed.

(3) The facility's comprehensive assessment of a resident must include an assessment of pressure sores. The facility must ensure that:

(a) a resident who enters the facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that they were unavoidable; and

(b) a resident having pressure sores receives the necessary treatment and services to promote healing, prevent infection, and prevent new sores from developing.

(4) The facility's comprehensive assessment of the resident must include an assessment of incontinence. The facility must ensure that:

(a) a resident who is incontinent of either bowel or bladder, or both, receives the treatment and services to restore as much normal functioning as possible;

(b) a resident who enters the facility without an indwelling catheter is not catheterized unless the resident's clinical condition demonstrates that catheterization is necessary;

(c) a resident who is incontinent of bladder receives appropriate treatment and services to prevent urinary tract infections; and

(d) a licensed nurse must complete a written assessment to determine the resident's ability to participate in a bowel and bladder management program.

(5) The facility must assess each resident to ensure that:

(a) a resident who enters the facility without a limited range of motion does not experience reduction in range of motion unless the resident's clinical condition demonstrates that a reduction in range of motion is unavoidable; and

(b) a resident with a limited range of motion receives treatment and services to increase range of motion or to prevent further decrease in range of motion.

(6) The facility must ensure that the psycho-social function

of the resident remains at or above the level at the time of admission, unless the individual's clinical condition demonstrates that a reduction in psycho-social function was unavoidable. The facility shall ensure that:

(a) a resident who displays psycho-social adjustment difficulty receives treatment and services to achieve as much re-motivation and reorientation as possible; and

(b) a resident whose assessment does not reveal a psycho-social adjustment difficulty does not display a pattern of decreased social interaction, increased withdrawn anger, or depressive behaviors, unless the resident's clinical condition demonstrates that such a pattern is unavoidable.

(7) The facility must assess alternative feeding methods to ensure that:

(a) a resident who has been able to eat enough alone or with assistance is not fed by naso-gastric tube unless the resident's clinical condition demonstrates that use of a naso-gastric tube is unavoidable; and

(b) a resident who is fed by a naso-gastric or gastrostomy tube receives the treatment and services to prevent aspiration pneumonia, diarrhea, vomiting, dehydration, metabolic abnormalities, and nasal-pharyngeal ulcers and to restore, if possible, normal feeding function.

(8) The facility must maintain the resident environment to be as free of accident hazards as is possible.

(9) The facility must provide each resident with adequate supervision and assistive devices to prevent accidents.

(10) Each resident's comprehensive assessment must include an assessment on nutritional status. The facility must ensure that each resident:

(a) maintains acceptable nutritional status parameters, such as body weight and protein levels, unless the resident's clinical condition demonstrates that this is not possible; and

(b) receives a therapeutic diet when there is a nutritional problem.

(11) The facility must provide each resident with sufficient fluid intake to maintain proper hydration and health.

(12) The facility must ensure that residents receive proper treatment and care for the following special services:

- (a) injections;
- (b) parenteral and enteral fluids;
- (c) colostomy, ureterostomy, or ileostomy care;
- (d) tracheostomy care;
- (e) tracheal suctioning;
- (f) respiratory care;
- (g) foot care; and
- (h) prostheses care.

(13) Each resident's drug regimen must be free from unnecessary drugs and the facility shall ensure that:

(a) residents who have not used anti-psychotic drugs are not given these drugs unless anti-psychotic drug therapy is necessary to treat a specific condition as diagnosed and documented in the clinical record; and

(b) residents who use anti-psychotic drugs receive gradual dose reductions and behavioral interventions, unless clinically contraindicated in an effort to discontinue these drugs.

(14) The quality assurance committee must monitor medication errors to ensure that:

- (a) the facility does not have medication error rates of five percent or greater;
- (b) residents are free of any significant medication errors.

R432-150-16. Physician Services.

(1) A physician must personally approve in writing a recommendation that an individual be admitted to a nursing care facility.

(a) Each resident must remain under the care of a physician licensed in Utah to deliver the scope of services required by the resident.

(b) Nurse practitioners or physician assistants, working under the direction of a licensed physician may initiate admission to a nursing care facility pending personal review by the physician.

(2) The facility must provide supervision to ensure that the medical care of each resident is supervised by a physician. When a resident's attending physician is unavailable, another qualified physician must supervise the medical care of the resident.

(3) The physician must:

(a) review the resident's total program of care, including medications and treatments, at each visit;

(b) write, sign, and date progress notes at each visit;

(c) indicate, in writing, direction and supervision of health care provided to residents by nurse practitioners or physician assistants; and

(d) sign all orders.

(4) Physician visits must conform to the following:

(a) The physician shall notify the facility of the name of the nurse practitioner or physician assistant who is providing care to the resident at the facility.

(b) Each resident must be seen by a physician at least once every 30 days for the first 90 days after admission, and at least every 60 days thereafter.

(c) Physician visits must be completed within ten days of the date the visit is required.

(d) Except as required by R432-150-16(4)(f), all required physician visits must be made by the physician.

(e) At the option of the physician, required visits after the initial visit may alternate between personal visits by the physician and visits by a physician assistant or nurse practitioner.

(5) The facility must provide or arrange for the provision of physician services 24 hours a day in case of an emergency.

R432-150-17. Social Services.

Each nursing care facility must provide or arrange for medical social services sufficient to meet the needs of the residents. Social services must be under the direction of a therapist licensed in accordance with Title 58 Chapter 60 of the Mental Health Practice Act.

R432-150-18. Laboratory Services.

(1) The facility must provide laboratory services in accordance with the size and needs of the facility.

(2) Laboratory services must comply with the requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA). CLIA inspection reports shall be available for Department review.

R432-150-19. Pharmacy Services.

(1) The facility must provide or obtain by contract routine and emergency drugs, biologicals, and pharmaceutical services to meet resident needs.

(2) The facility must employ or obtain the services of a licensed pharmacist who:

(a) provides consultation on all aspects of pharmacy services in the facility;

(b) establishes a system of records of receipt and disposition of all controlled substances which documents an accurate reconciliation; and

(c) determines that drug records are in order and that an account of all controlled substances is maintained and reconciled monthly.

(3) The drug regimen of each resident must be reviewed at least once a month by a licensed pharmacist.

(a) The pharmacist must report any irregularities to the attending physician and the director of nursing or health services supervisor.

(b) The physician and the director of Nursing or health

services supervisor must indicate acceptance or rejection of the report and document any action taken.

(4) Pharmacy personnel must ensure that labels on drugs and biologicals are in accordance with currently accepted professional principles, and include the appropriate accessory and cautionary instructions, and the expiration date.

(5) The facility must store all drugs and biologicals in locked compartments under proper temperature controls according to R432-150-19 (6)(e), and permit only authorized personnel to have access to the keys.

(a) The facility must provide separately locked, permanently affixed compartments for storage of controlled substances listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1976 and other drugs subject to abuse, except when the facility uses single unit dose package drug distribution systems in which the quantity stored is minimal and a missing dose can be readily detected.

(b) Non-medication materials that are poisonous or caustic may not be stored with medications.

(c) Containers must be clearly labeled.

(d) Medication intended for internal use shall be stored separately from medication intended for external use.

(e) Medications stored at room temperature shall be maintained within 59 and 80 degrees F.

(f) Refrigerated medications shall be maintained within 36 and 46 degrees F.

(6) The facility must maintain an emergency drug supply.

(a) Emergency drug containers shall be sealed to prevent unauthorized use.

(b) Contents of the emergency drug supply must be listed on the outside of the container and the use of contents shall be documented by the nursing staff.

(c) The emergency drug supply shall be stored and located for access by the nursing staff.

(d) The pharmacist must inventory the emergency drug supply monthly.

(e) Used or outdated items shall be replaced within 72 hours by the pharmacist.

(7) The pharmacy must dispense and the facility must ensure that necessary drugs and biologicals are provided on a timely basis.

(8) The facility must limit the duration of a drug order in the absence of the prescriber's specific instructions.

(9) Drug references must be available for all drugs used in the facility. References shall include generic and brand names, available strength and dosage forms, indications and side effects, and other pharmacological data.

(10) Drugs may be sent with the resident upon discharge if so ordered by the discharging physician provided that:

(a) such drugs are released in compliance R156-17a-619; and

(b) a record of the drugs sent with the resident is documented in the resident's health record.

(11) Disposal of controlled substances must be in accordance with the Pharmacy Practice Act.

R432-150-20. Recreation Therapy.

(1) The facility shall provide for an ongoing program of individual and group activities and therapeutic interventions designed to meet the interests, and attain or maintain the highest practicable physical, mental, and psycho-social well-being of each resident in accordance with the comprehensive assessment.

(a) Recreation therapy shall be provided in accordance with Title 58, Chapter 40, Recreational Therapy Practice Act.

(b) The recreation therapy staff must:

(i) develop monthly activity calendars for residents activities; and

(ii) post the calendar in a prominent location to be available to residents, staff, and visitors.

(2) Each facility must provide sufficient space and a variety of supplies and resource equipment to meet the recreational needs and interests of the residents.

(3) Storage must be provided for recreational equipment and supplies. Locked storage must be provided for potentially dangerous items such as scissors, knives, and toxic materials.

R432-150-21. Pet Policy.

(1) Each facility must develop a written policy regarding pets in accordance with local ordinances.

(2) The administrator or designee must determine which pets may be brought into the facility. Family members may bring resident's pets to visit provided they have approval from the administrator and offer assurance that the pets are clean, disease free, and vaccinated.

(3) Pets are not permitted in food preparation or storage areas. Pets are not permitted in any area where their presence would create a health or safety risk.

R432-150-22. Admission, Transfer, and Discharge.

(1) Each facility must develop written admission, transfer and discharge policies and make these policies available to the public upon request. The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless:

(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(b) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(c) The safety of individuals in the facility is endangered;

(d) The health of individuals in the facility is endangered;

(e) The resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility; or

(f) The facility ceases to operate.

(2) The facility must document resident transfers or discharges under any of the circumstances specified in R432-150-22(1)(a) through (f), in the resident's medical record. The transfer or discharge documentation must be made by:

(a) the resident's physician if transfer or discharge is necessary under R432-150-22(1)(a) and (b);

(b) a physician if transfer or discharge is necessary under R432-150-22(1)(c) and (d).

(3) Prior to the transfer or discharge of a resident, the facility must:

(a) provide written notification of the transfer or discharge and the reasons for the transfer or discharge to the resident, in a language and manner the resident understands, and, if known, to a family member or legal representative of the resident;

(b) record the reasons in the resident's clinical record; and

(c) include in the notice the items described in R432-150-22(5).

(4) Except when specified in R432-150-22(4)(a), the notice of transfer or discharge required under R432-150-22(2), must be made by the facility at least 30 days before the resident is transferred or discharged.

(5) Notice may be made as soon as practicable before transfer or discharge if:

(a) the safety or health of individuals in the facility would be endangered if the resident is not transferred or discharged sooner;

(b) the resident's health improves sufficiently to allow a more immediate transfer or discharge;

(c) an immediate transfer or discharge is required by the resident's urgent medical needs; or

(d) a resident has not resided in the facility for 30 days.

(6) The contents of the written transfer or discharge notice must include the following:

(a) the reason for transfer or discharge;

(b) the effective date of transfer or discharge;

(c) the location to which the resident is transferred or discharged; and

(d) the name, address, and telephone number of the State and local Long Term Care Ombudsman programs.

(e) For nursing facility residents with developmental disabilities, the notice must contain the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act.

(f) For nursing facility residents who are mentally ill, the notice must contain the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

(7) The facility must provide discharge planning to prepare and orient a resident to ensure safe and orderly transfer or discharge from the facility.

(8) Notice of resident bed-hold policy, transfer and re-admission must be documented in the resident file.

(a) Before a facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the facility must provide written notification and information to the resident and a family member or legal representative that specifies:

(i) the facility's policies regarding bed-hold periods permitting a resident to return; and

(ii) the duration of the bed-hold policy, if any, during which the resident is permitted to return and resume residence in the facility.

(b) At the time of transfer of a resident to a hospital or for therapeutic leave, the facility must provide written notice to the resident and a family member or legal representative, which specifies the duration of the bed-hold policy.

(c) If transfers necessitated by medical emergencies preclude notification at the time of transfer, notification shall take place as soon as possible after transfer.

(d) The facility must establish and follow a written policy under which a resident whose hospitalization or therapeutic leave exceeds the bed-hold period is readmitted to the facility.

(9) The facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services for all individuals regardless of pay source.

(10) The facility must have in effect a written transfer agreement with one or more hospitals to ensure that:

(a) residents are transferred from the facility to the hospital and ensured of timely admission to the hospital when transfer is medically necessary as determined by the attending physician;

(b) medical and other information needed for care and treatment of residents is exchanged between facilities including documentation of reasons for a less expensive setting; and

(c) security and accountability of personal property of the individual transferred is maintained.

R432-150-23. Ancillary Health Services.

(1) If the nursing care facility provides its own radiology services, these facility must comply with R432-100-21, Radiology Services, in the General Acute Hospital Rule.

(2) A facility that provides specialized rehabilitative services may offer these services either directly or through agreements with outside agencies or qualified therapists. If provided, these services must meet the needs of the residents.

(a) The facility must provide space and equipment for specialized rehabilitative services in accordance with the needs of the residents.

(b) Specialized rehabilitative services may only be provided by therapists licensed in accordance with Utah law.

(c) All therapy assistants must work under the direct supervision of the licensed therapist at all times.

(d) Speech pathologists must have a "Certificate of Clinical Compliance" from the American Speech and Hearing Association.

(e) Specialized rehabilitative services may be provided only if ordered by the attending physician.

(i) The plan of treatment must be initiated by an attending physician and developed by the therapist in consultation with the nursing staff.

(ii) An initial progress report must be submitted to the attending physician two weeks after treatment is begun or as specified by the physician.

(iii) The physician and therapist must review and evaluate the plan of treatment monthly unless the physician recommends an alternate schedule in writing.

(f) The facility must document the delivery of rehabilitative services in the resident record.

(3) The facility must provide or arrange for regular and emergency dental care for residents.

(a) Dental care provisions shall include:

(b) development of oral hygiene policies and procedures with input from dentists;

(c) presentation of oral hygiene in-service programs by knowledgeable persons;

(d) development of referral service for those residents who do not have a personal dentist; and

(e) arrangement for transportation to and from the dentist's office.

R432-150-24. Food Services.

(1) The facility must provide each resident with a safe, palatable, well-balanced diet that meets the daily nutritional and special dietary needs of each resident.

(2) There must be adequate staff employed by the facility to meet the dietary needs of the residents.

(a) The facility must employ a dietitian either full-time, part-time, or on a consultant basis.

(b) The dietitian must be certified in accordance with Title 58, Chapter 49, Dietitian Certification Act.

(c) If a dietitian is not employed full-time, the administrator must designate a full-time person to serve as the dietetic supervisor.

(d) If the dietetic supervisor is not a certified dietitian, the facility must document at least monthly consultation by a certified dietitian according to the needs of the residents.

(e) The dietetic supervisor shall be available when the consulting dietitian visits the facility.

(3) The facility must develop menus that meet the nutritional needs of residents to the extent medically possible.

(a) Menus shall be:

(i) prepared in advance;

(ii) followed;

(iii) different each day;

(iv) posted for each day of the week;

(v) approved and signed by a certified dietitian and;

(vi) cycled no less than every three weeks.

(b) The facility must retain documentation for at least three months of all served substitutions to the menu.

(4) The facility must make available for Department review all food sanitation inspection reports of State or local health department inspections.

(5) The attending physician must prescribe in writing all therapeutic diets.

(6) There must be no more than a 14-hour interval between the evening meal and breakfast, unless a substantial snack is served in the evening.

(7) The facility must provide special eating equipment and assistive devices for residents who need them.

(8) The facility's food service must comply with the Utah Department of Health Food Service Sanitation Regulations

R392-100.

(9) The facility must maintain a one-week supply of nonperishable staple foods and a three-day supply of perishable foods to complete the established menu for three meals per day, per resident.

R432-150-25. Medical Records.

(1) The facility must implement a medical records system to ensure complete and accurate retrieval and compilation of information.

(2) The administrator must designate an employee to be responsible and accountable for the processing of medical records.

(a) The medical records department must be under the direction of a registered record administrator, RRA, or an accredited record technician, ART.

(b) If an RRA or ART is not employed at least part time, the facility must consult with an RRA or ART according to the needs of the facility, but not less than semi-annually.

(3) The resident medical record and its contents must be retained, stored and safeguarded from loss, defacement, tampering, and damage from fires and floods.

(a) Medical records must be protected against access by unauthorized individuals.

(b) Medical records must be retained for at least seven years. Medical records of minors must be kept until the age of eighteen plus four years, but in no case less than seven years.

(4) The facility must maintain an individual medical record for each resident. The medical record must contain written documentation of the following:

(a) records made by staff regarding daily care of the resident;

(b) informative progress notes by staff to record changes in the resident's condition and response to care and treatment in accordance with the care plan;

(c) a pre-admission screening;

(d) an admission record with demographic information and resident identification data;

(e) a history and physical examination up-to-date at the time of the resident's admission;

(f) written and signed informed consent;

(g) orders by clinical staff members;

(h) a record of assessments, including the comprehensive resident assessment, care plan, and services provided;

(i) nursing notes;

(j) monthly nursing summaries;

(k) quarterly resident assessments;

(l) a record of medications and treatments administered;

(m) laboratory and radiology reports;

(n) a discharge summary for the resident to include a note of condition, instructions given, and referral as appropriate;

(o) a service agreement if respite services are provided;

(p) physician treatment orders; and

(q) information pertaining to incidents, accidents and injuries.

(r) If a resident has an advanced directive, the resident's record must contain a copy of the advanced directive.

(5) All entries into the medical record must be authenticated including date, name or identifier initials, and title of the person making the entries

(6) Resident respite records must be maintained within the facility.

R432-150-26. Housekeeping Services.

(1) The facility must provide a safe, clean, comfortable environment, allowing the resident to use personal belongings to create a homelike environment.

(a) Cleaning agents, bleaches, insecticides, poisonous, dangerous, or flammable materials must be stored in a locked

area to prevent unauthorized access.

(b) The facility must provide adequate housekeeping services and sufficient personnel to maintain a clean and sanitary environment.

(i) Personnel engaged in housekeeping or laundry services cannot be engaged concurrently in food service or resident care.

(ii) If housekeeping personnel also work in food services or direct patient care services, the facility must develop and implement employee hygiene and infection control measures to maintain a safe, sanitary environment.

R432-150-27. Laundry Services.

(1) The administrator must designate a person to direct the facility's laundry service. The designee must have experience, training, or knowledge of the following:

- (a) proper use of chemicals in the laundry;
- (b) proper laundry procedures;
- (c) proper use of laundry equipment;
- (d) facility policies and procedures; and
- (e) federal, state and local rules and regulations.

(2) The facility must provide clean linens, towels and wash cloths for resident use.

(3) If the facility contracts for laundry services, there must be a signed, dated agreement that details all services provided.

(4) The facility must inform the resident and family of facility laundry policy for personal clothing.

(5) The facility must ensure that each resident's personal laundry is marked for identification.

(6) There must be enough clean linen, towels and washcloths for at least three complete changes of the facility's licensed bed capacity.

(7) There must be a bed spread for each resident bed.

(8) Clean linen must be handled and stored in a manner to minimize contamination from surface contact or airborne deposition.

(9) Soiled linen must be handled, stored, and processed in a manner to prevent contamination and the spread of infections.

(10) Soiled linen must be sorted in a separate room by methods affording protection from contamination.

(11) The laundry area must be separate from any room where food is stored, prepared, or served.

R432-150-28. Maintenance Services.

(1) The facility must ensure that buildings, 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 residents, staff, and visitors.

(a) The administrator shall employ a person qualified by experience and training to be in charge of facility maintenance.

(b) If the facility contracts for maintenance services, there must be a signed, dated agreement that details all services provided. The maintenance service must meet all requirements of this section.

(c) The facility must develop and implement a written maintenance program (including preventive maintenance) to ensure the continued operation of the facility and sanitary practices throughout the facility.

(2) The facility must ensure that the premises is free from vermin and rodents.

(3) Entrances, exits, steps, ramps, and outside walkways must be maintained in a safe condition with regard to snow, ice and other hazards.

(4) Facilities which provide care for residents who cannot be relocated in an emergency must make provision for emergency lighting and heat to meet the needs of residents.

(5) Functional flashlights shall be available for emergency use by staff.

(6) All facility equipment must be tested, calibrated and maintained in accordance with manufacturer specifications.

(a) Testing frequency and calibration documentation shall be available for Department review.

(b) Documentation of testing or calibration conducted by an outside agency must be available for Department review.

(7) All spaces within buildings which house people, machinery, equipment, approaches to buildings, and parking lots must have lighting.

(8) Heating, air conditioning, and ventilating systems must be maintained to provide comfortable temperatures.

(9) Back-flow prevention devices must be maintained in operating condition and tested according to manufacturer specifications.

(10) Hot water temperature controls must automatically regulate temperatures of hot water delivered to plumbing fixtures used by residents. Hot water must be delivered to public and resident care areas at temperatures between 105-115 degrees F.

(11) Disposable and single use items must be properly disposed of after use.

(12) Nursing equipment and supplies must be available as determined by facility policy in accordance with the needs of the residents.

(13) The facility must have at least one first aid kit and a first aid manual available at a specified location in the facility. The first aid manual must be a current edition of a basic first aid manual approved by the American Red Cross or the American Medical Association.

(14) The facility must have at least one OSHA-approved spill or clean-up kit for blood-borne pathogens.

(15) Vehicles used to transport residents must be:

(a) licensed with a current vehicle registration and safety inspection;

(b) equipped with individual, size-appropriate safety restraints such as seat belts which are defined in the federal motor vehicle safety standards contained in the Code of Federal Regulations, Title 49, Section 571.213, and are installed and used in accordance with manufacturer specifications;

(c) equipped with a first aid kit as specified in R432-150-28(13); and

(d) equipped with a spill or clean-up kit as specified in R432-150-28(14).

R432-150-29. Emergency Response and Preparedness Plan.

(1) The facility must ensure the safety and well-being of residents and make provisions for a safe environment in the event of an emergency or disaster. An emergency or disaster may include utility interruption, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic, and injury.

(2) The facility must develop an emergency and disaster plan that is approved by the governing board.

(a) The facility'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) individuals who shall be notified in an emergency in order of priority; and

(vi) methods of transporting and evacuating residents and staff to other locations.

(b) The facility must have available at each nursing station emergency telephone numbers including responsible staff persons in the order of priority.

(c) The facility must document resident emergencies and responses, emergency events and responses, and the location of

residents and staff evacuated from the facility during an emergency.

(d) The facility must conduct and document simulated disaster drills semi-annually.

(3) The administrator must develop a written fire emergency and evacuation plan in consultation with qualified fire safety personnel.

(a) The evacuation plan must delineate evacuation routes, location of fire alarm boxes, fire extinguishers, and emergency telephone numbers of the local fire department.

(b) The facility must post the evacuation plan in prominent locations in exit access ways throughout the building.

(c) The written fire or emergency plan must include fire containment procedures and how to use the facility alarm systems and signals.

(d) Fire drills and fire drill documentation must be in accordance with the State of Utah Fire Prevention Board, R710-4.

R432-150-30. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in Section 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

KEY: health facilities

November 10, 2004

26-21-5

Notice of Continuation October 9, 2002

26-21-16

R523. Human Services, Substance Abuse and Mental Health.**R523-20. Division Rules of Administration.****R523-20-1. Allocation of Substance Abuse Purchase-of-Service Money.**

1. The Board of Substance Abuse and Mental Health is granted authority pursuant to Section 62A-15-108 Utah Code to establish a funding formula that allocates funds to the Local Substance Abuse Authorities. The funding formula adopted by the State Board of Substance Abuse and Mental Health (Board) is as follows:

a. Up to 15% of the purchase of service funds may be allocated by the State Division of Substance Abuse and Mental Health for statewide services; the remaining 85% of these funds will be allocated to the Local Substance Abuse Authorities as follows:

i. Rural counties (all counties in the state except Utah, Salt Lake, Davis, and Weber) shall be allocated a rural differential of \$11,600;

ii. Sixty percent of the remaining funds will be allocated to each county based on the need factor derived from the Incidence and Prevalence Studies;

iii. The remaining forty percent of the funds will be allocated to each county based on the county's percent of the General Population as estimated by the Utah Office of Planning and Budget;

2. Cost of Living Adjustments shall be determined by the State Division of Substance Abuse and Mental Health in accordance with legislative appropriations.

3. Funds approved for a local authority, based on the funding formula, belong to that authority. In the event that there is an unexpended amount at the end of the year, the local authority will be allowed to carry these unexpended funds over into the next contract period, provided that the Division can carry the funds over. The only exception to this carryover authority will be that if the unexpended funds cause the state to not meet the statewide set-aside requirements. The division will contract these unexpended funds to other local authorities who can provide the services to fulfill the set-aside requirements. The division shall monitor the fund balances and the set-aside spending throughout the year. The decision to transfer funds will be negotiated in March of each year with any local authority that will not expend all of their funds.

R523-20-2. Providers' Application for Funding - Fee Collection Policy.

1. All programs receiving funds allocated by the Division of Substance Abuse and Mental Health shall prepare, as part of their application for funding, a fee collection policy. Fees collected by programs shall remain in their program and be used only in providing alcohol and drug services. Upon request by the Division each program shall submit a report to the Division which will include the total dollar amount of fees collected and services provided by the expenditure of these funds. Fees collected shall not be a reason to reduce federal and/or state funding.

R523-20-3. Training Priorities and Responsibilities.

1. The Division of Substance Abuse and Mental Health shall make State staff training the number one training priority. Statewide training shall be limited to the Fall Conference, Networking Conference, Governor's Youth Conference, and joint conferences with the State Office of Education. Local programs shall have the primary responsibility to assure training is available for their staff. The Division assists the local programs by being the central clearing point for training needs and educational opportunities.

R523-20-4. Research/Evaluation Priorities and**Responsibilities.**

1. The Division of Substance Abuse and Mental Health shall have, as a primary focus under research and evaluation, the following areas:

- a. Evaluation of needs;
- b. Evaluation of program outcomes;
- c. Evaluation of community impact; and
- d. Evaluation of cost benefit.

2. The Division of Substance Abuse and Mental Health shall:

- a. Provide the State Board of Substance Abuse with evaluation or other research findings to be considered in the formulation of program policy and contracting for services;
- b. Assist parties in obtaining funding for evaluation or other research activities pertaining to substance abuse;
- c. Review and disseminate evaluation or other research findings to the Board, service providers and the general public;
- d. Whenever feasible, consider contracting as a means of conducting evaluation or other research projects;
- e. Notify the Utah Behavioral Health Care Network and the Board of Substance Abuse and Mental Health of the proposed research activity and before beginning any research activity obtain approval of the proposed research activity from the Board at its next regularly scheduled meeting;
- f. The Division shall establish with the Board an evaluation process in consultation with the providers.

R523-20-5. Continuum of Services.

1. Prevention means a proactive comprehensive program which provides a broad array of activities and services designed to discourage the use of alcohol, tobacco and other drugs directed at individuals who have not been identified to be in need of treatment. These activities and services must be provided in a variety of settings for both the general population as well as targeted subgroups who are at high risk for substance abuse.

2. Treatment means those services which target individuals or families who are functionally impaired psychologically, physically, or socially in association with the patterned abuse of or dependence on alcohol, tobacco, or other drugs. This includes only those individuals upon whom a written consumer record, as defined in licensing standards (Rule R501-2-5B) as adopted by the Board of Substance Abuse and Mental Health, is maintained.

R523-20-6. Funding of Medical Detoxification Programs.

Medical detoxification programs shall not be funded by the Division on an ongoing basis.

R523-20-7. Competition - Contracting/Subcontracting.

1. It is the policy of the Board of Substance Abuse and Mental Health to accept the September 1985 recommendation on contracting/subcontracting made by the Role Review Committee.

- a. The Division is responsible for:
 - i. Defining the continuum of services that must be provided within and across the district(s).
 - ii. Establishing and assisting in the establishment of contracts that specifically identify the districts' responsibilities in regard to bidding, technical assistance, MIS reporting, deadlines, local match, etc.
 - iii. Requiring that each district submit its district plan for review and acceptance by the Division and/or Board prior to funding being authorized.
 - iv. The establishment of monitoring and evaluation procedures which will insure:
 - A. That state or local procurement policies are followed on all bids.
 - B. That MIS data is accurate, reported as required and on

time.

C. That costs accurately reflect the actual costs of providing the service.

D. That district programming is in compliance with its objectives and those required by the Division.

v. Continued direct contracting and monitoring of all programs operated in/by State institutions.

vi. The Division will also continue to contract directly with other agencies/institutions, on a competitive bid basis, for research and demonstration projects when necessary. The criteria the Division will use when deciding to directly contract-out for these services, rather than apportioning the money across districts, will reflect the need to keep the limited resources intact to accomplish the designated task. These projects are typically time limited rather than ongoing.

vii. A multi-region provider of services will continue to directly contract with and receive reimbursement from the Division within the following guidelines. The local authority will write the State subcontractors' program into its district plan of continuum of services. The local authority will participate with the Division in monitoring and evaluating the program.

viii. It is required that any program receiving state funds be included in the district plan.

ix. All bids let by the Division will be in compliance with the State of Utah Procurement Act.

x. Every agency/program in the state using funds appropriated to the Division by the State legislature shall have the goal of total abstinence for anyone under the age of twenty-one years.

R523-20-8. Maintenance of Effort.

1. The Board of the Division of Substance Abuse and Mental Health pursuant to Section 62A-15-108 has required the Local Substance Abuse Authorities to provide a consistent funding base for substance abuse services. This requirement will become effective beginning July 1, 1993.

For the state fiscal year 1994, each Local Substance Abuse Authority shall provide an amount not less than half the sum of the county tax revenues contributed toward substance abuse services during the 1991 and 1992 state fiscal years.

For subsequent state fiscal years, each Local Substance Abuse Authority shall provide an amount of county tax revenue not less than the average computed by dividing by two the sum of Local Substance Abuse Authority county tax revenue contributed toward substance abuse services for the two most recently completed fiscal years.

R523-20-9. Distribution of Fee-On-Fine (DUI) Funds.

1. The Fee-On-Fine funds collected by the court system under the criminal surcharge law and remitted to the State Treasurer will be allocated to the Local Substance Abuse Authorities based upon each county's percent of the total state population as determined at the time of the funding formula as described in R523-20-1.

Unless notified in writing by the local authority's governing board to send the funds to the local service provider, the Division of Substance Abuse and Mental Health shall authorize quarterly releases of these funds to the county commission of each county for which they are allocated.

R523-20-10. 20% Match Required to Be County Tax Revenue.

1. The Board of Substance Abuse and Mental Health under the authority granted to it in Section 62A-15-105 has determined that the funds required by Subsection 17-43-301(4)(k) (normally called the 20% match requirement) shall be paid from tax revenues assessed by the county legislative body and collected by the County Clerk.

2. Failure by any county to meet its obligations under this

requirement, or Rule R523-20-8, shall result in the amount of State General Funds allocated to that county by formula as described in R523-20-1 being lowered by the percent by which the county undermatches these funds.

3. This rule shall take effect for the State Fiscal Year starting June 1, 1995 and shall remain in effect until changed or repealed by the Board of Substance Abuse and Mental Health or its successor.

R523-20-11. Use of Standard Criteria.

1. The Board of Substance Abuse and Mental Health under authority granted by 62A-15-105 has determined (a) the assessment instrument that all contractors and subcontractors must use to determine the degree of severity of a substance abuse problem will be the Addiction Severity Index, (ASI); (b) that the placement decisions for all patients treated in programs funded by or contracting with the Division of Substance Abuse and Mental Health or subcontracted to any local authority shall be based upon the placement criteria developed by the American Society of Additive Medicine (ASAM) as adapted for use in Utah Behavioral Health Network; (c) documentation of the use of this placement criteria must be included in each patient's record.

2. At least one staff member for each contractor and subcontractor shall be trained in the proper use of the ASI and ASAM instruments. This training must be documented in individual personnel files.

KEY: substance abuse, financing of programs

November 5, 1997

Notice of Continuation June 5, 2002

62A-15-105

R523. Human Services, Substance Abuse and Mental Health.**R523-21. Division of Substance Abuse and Mental Health Rules.****R523-21-1. Rules Governing Methadone Providers.**

1. The Board of Substance Abuse and Mental Health under the authority granted to it by Section 62A-15-105, establishes the following standards for providers of methadone and Levo-Alpha-Acetyl-Methadol (LAAM) services:

a. All Substance Abuse providers, contractors or licensed persons who dispense methadone or LAAM shall:

i. Comply with all Federal regulations, including 21 CFR part 291.501 and 505, April 1, 1995 edition, which is incorporated by reference within this rule;

ii. Comply with all State, and Local requirements regulating licensing for the purchasing, possession, distribution, and dispensing of methadone or LAAM;

iii. Comply with all rules in Section R523-20-2 through R523-20-12 as required of any licensed or certified substance abuse treatment program;

iv. Comply with the requirements of the March 18, 1996 revision of the Utah Department of Human Services "Provider Code of Conduct".

b. Failure to comply with these provisions shall constitute grounds for revocation of licensure or contracts with the division.

R523-21-2. Establishment and Maintenance of Methadone Data Collection System.

1. The Division of Substance Abuse and Mental Health, in consultation with, and receiving input from the licensed methadone and LAAM providers in the state, shall:

a. establish and maintain a methadone data-collection-system for methadone or LAAM clients to ensure that duplication of methadone or LAAM dosing does not occur; and

b. present an annual report to the Board of the data-collection-system and the data obtained.

KEY: methadone programs

July 19, 1996

Notice of Continuation April 30, 2001

62A-15-105

R523. Human Services, Substance Abuse and Mental Health.**R523-22. Utah Standards for Approval of Alcohol and Drug Educational Programs for Court-Referred DUI Offenders.****R523-22-1. Purpose and Statutory Authority.**

1. Purpose. These rules prescribe standards for approval of programs and certification of instructors for providing alcohol and drug education to court-referred offenders convicted of a Driving Under the Influence (DUI) violation of Sections 41-6-43, 41-6-44, 41-6-45, and 73-18-12 through 73-18-12.2.

2. Statutory Authority. These standards are promulgated by the Utah Department of Human Services through the Division of Substance Abuse and Mental Health (hereinafter referred to as "Division") as authorized by Sections 41-6-44, 62A-15-103, 62A-15-105, 17-43-201 62A-15-501-503 and 76-5-207.

3. Intent. The objective of the DUI Educational Program is to: (a) eliminate alcohol and other drug-related traffic offenses by helping the offender examine the behavior which resulted in his arrest, (b) assist him in implementing behavior changes to cope with problems associated with alcohol and other drug use, and (c) impress upon him the severity of the DUI offense.

R523-22-2. Definitions as Used in These Standards.

1. "DUI Educational Program" herein referred to as program is an instructional series operated by a licensed substance abuse treatment program which satisfies the standards established by the Division.

2. "DUI" is driving or being in actual physical control of a vehicle while under the influence of alcohol or any drug or the combined influence of alcohol and any drug to a degree, which renders the person incapable of safely driving a vehicle. In these standards, "DUI" shall refer to individuals convicted of violating Sections 41-6-43, 41-6-44, 41-6-45, and 73-18-12 through 73-18-12.2.

3. "Certificate" is a written authorization issued by the Division to indicate that the Program has been found to be in compliance with these Division standards.

4. "Offender" is an individual convicted of violating Section 41-6-43, 41-6-44, 41-6-45, or 73-18-12 through 73-18-12.2.

5. "Screening" is a process using the SASSI (Substance Abuse Subtle Screening Inventory) or other Division approved screening tool in order to identify the need for additional assessment.

6. "Instructor" is a person who has been certified by the Division to instruct in educational programs for court-referred offenders convicted of DUI.

R523-22-3. Certification Requirements for DUI Educational Programs.

1. In order to operate, a DUI Educational Program shall make application to the Division at least 60 days prior to the planned effective date. The Division will provide the application form.

2. Application for certification will require that the program provide, among other things:

a. a brief description and purpose of program, plus explanation of program's relationship with other components of the local DUI system, i.e., Local Substance Abuse Authorities, local courts, police, Probation and Parole, Alcoholics or Narcotics Anonymous, etc.;

b. the geographical area to be served;

c. the ownership and person or group responsible for program operation;

d. the location and time that DUI classes are normally held;

e. a list of instructors employed by the program; and

f. a copy of their substance abuse treatment license.

3. A DUI Educational Program shall also:

a. ensure that offenders receive no less than 16 hours of face-to-face instruction using the Division's approved curriculum with no more than 4 hours of instruction occurring in any calendar day;

b. allow no more than 25 persons, including offenders and others to a class;

c. follow the recommendations of the screening which has been provided;

d. ensure that screenings are conducted by staff from a licensed treatment program who have been trained in administering the screening tool;

e. report the number of offenders completing the DUI Educational Program to the Division;

f. have policies ensuring confidentiality of information maintained on offenders that conform to the requirements in 42 Code of Federal Regulations Chapter 1 Part 2;

g. ensure that instructors follow the Division-approved curriculum;

h. have available for review a copy of the program's charter, constitution, or bylaws;

i. outline the eligibility criteria for admission to the program, including the screening tool used;

j. ensure that all instructors employed by the program have completed the Division required DUI training/certification; and

k. comply with all applicable local, state and federal laws and regulations.

4. An offender's participation in the DUI Educational Program shall not be a substitute for treatment required by the courts.

5. The Division shall issue the program a certificate after determination has been made that the applicant is in compliance with these standards.

6. The Division Director has the authority to grant exceptions to any of the certification requirements.

R523-22-4. On-site Survey of Program.

1. After a review of the application, a site review will be scheduled by a designated representative of the Division. With each initial application and application for renewal the applicant agrees, as a condition of program certification, to permit representative(s) of the, Division, and/or the local substance abuse authority as authorized by the Division to enter and survey the physical facility, program operation, client records and to interview staff for determining compliance with applicable laws.

2. The DUI Educational Program also agrees to allow representatives from the Division and from the local substance abuse authority as authorized by the Division to attend the classes held. Such visits may be announced or unannounced.

3. Review Procedures. Within 30 days after completion of the on-site survey, the Division shall notify the applicant of action taken: approval, denial, or request for further information.

R523-22-5. Instructor Certification.

1. By this rule the Division hereby establishes certification requirements for Instructors, which consist of the following:

a. All instructors employed by any DUI Educational Program shall be certified by the Division prior to instructing the state approved DUI curriculum for any DUI Educational Program.

b. All instructors shall attend and complete the requirements of the instructor training sponsored by the Division.

c. Requirements in A and B above shall be complete and verifiable.

d. The instructor agrees, as a condition of certification, to use only the Division-approved curriculum when conducting a

DUI Educational Program.

e. The instructors must agree to attend all required DUI training sessions sponsored or approved by the Division.

Notice of Continuation June 24, 2002

62A-15-201
17-43-301
73-18-12.1-2

R523-22-6. Recertification of Instructors.

1. An instructor must recertify every twenty-four months by: annually, on a calendar year basis attending and completing the requirements of any Division-sponsored or approved DUI training sessions. The instructor must sign a register at those training sessions which have been set aside for DUI instructor recertification.

2. It is the responsibility of the instructor to notify the Division immediately of any address change.

3. The Division Director or designee has the authority to grant exceptions to any of the certification requirements.

R523-22-7. Corrective Action for a Program or an Instructor.

1. If the Division becomes aware that a DUI education program or an instructor is in violation of these standards, it shall proceed with the following steps:

a. Within 30 days of becoming aware of the violation, the Division shall notify the program or the instructor in writing of the area(s) of noncompliance.

b. Within 30 days of receiving notification of violation, the program or the instructor shall submit a written plan to the Division for achieving compliance.

c. If the written plan is not accepted as satisfactory by the Division within 30 days the program or the instructor shall be notified that they have been suspended until compliance is achieved.

d. A program or an instructor must cease conducting any DUI Educational Program until the suspension is lifted.

e. If the Division does not receive written evidence of compliance within 30 days of notification of suspension, the Division shall revoke the program or instructor's certification.

R523-22-8. Revocation of a Program's or an Instructor's Certification.

1. The Division shall revoke the certification of a program or an instructor for the following reasons:

a. If the program or the instructor fails to provide the Division by certified mail with written evidence of compliance within 30 days of notification of suspension.

b. If the program or the instructor continues to conduct any DUI Educational Program during the period of suspension, or

c. If any program or instructor receives more than two notices of noncompliance with these standards in a one-year period.

2. If any program or instructor's certification is revoked, they may not reapply for recertification for a period of six months.

R523-22-9. Redress Procedures for Programs or Instructors.

1. Any program or instructor whose certification has been revoked may request in writing an informal hearing with the Division Director or his designee within ten days of receiving notice of revocation. Within ten days following the close of the hearing, the Division shall inform the program or the instructor in writing of the decision as required under UCA Section 63-46b-5 and UACA R503-2-1 through R503-2-21.

2. If they so choose, the program or the instructor may appeal in writing the decision of the Division Director by requesting a reconsideration hearing with the Office of Administrative Hearings as provided for under UCA Section 63-46b-5.

**KEY: DUI programs, certification of instructors
July 3, 2001**

41-6-44

R523. Human Services, Substance Abuse and Mental Health.**R523-23. Alcohol Training and Education Seminar Rules of Administration.****R523-23-1. Authority, Intent, and Scope.**

1. These rules are adopted under the authority of Section 62A-15-401 authorizing the Division of Substance Abuse and Mental Health to administer the Alcohol Training and Education Seminar Program.

2. The intent of statute and rules is to require every person to complete the Seminar who sells or furnishes alcoholic beverages to the public for on premise consumption in the scope of the person's employment.

3. These rules include:

- a. certification of providers;
- b. approval of the Seminar curriculum;
- c. the ongoing activities of providers;
- d. the process for approval, denial, suspension and revocation of provider certification.

R523-23-2. Definitions.

1. "Approved Curriculum" means a provider's curriculum which has been approved by the Division in accordance with these rules.

2. "Certification" means written approval from the Division stating a person has met the requirements to become a seminar provider.

3. "Director" means the Director of the Division of Substance Abuse and Mental Health.

4. "Division" means the Division of Substance Abuse and Mental Health.

5. "Manager" means a person chosen or appointed to manage, direct, or administer the operations at the premises of a licensee. A manager may also be a supervisor.

6. "On-premise consumption" means the consumption of alcoholic products by a person within any building, enclosure, room, or designated area which has been legally licensed to allow consumption of alcohol.

7. "Seminar" means the Alcohol Training and Education Seminar.

8. "Server" is an employee who actually makes available, serves to, or provides a drink or drinks to a customer for consumption on the premises of the licensee.

9. "Supervisor" means an employee who, under the direction of a manager as defined above if the business establishment employs a manager, or under the direction of the owner or president of the corporation if no manager is hired, directs or has the responsibility to direct, transfer, or assign duties to employees who actually provide alcoholic beverages to customers on the premises of the licensee.

R523-23-3. Provider Certification Application Procedure.

1. A provider seeking first-time certification shall make application to the Division at least 30 days prior to the first scheduled seminar date. A provider seeking recertification to administer the seminar shall make application to the Division at least 30 days prior to expiration of the current certification.

2. Any seminar conducted by a noncertified provider is void and shall not meet the server training requirements authorized under Section 62A-15-401.

3. All application forms shall be reviewed by the Division. The Division shall determine if the application is complete and in compliance with Section 62A-15-401 and these rules. If the Division approves the application, the curriculum and determines the provider has met all other requirements, the Division shall certify the provider.

4. Within 30 days after the Division has taken action, the Division shall officially notify the applicant of the action taken: denial, approval, or request for further information. Notification

of the action taken shall be forwarded in writing to the applicant.

R523-23-4. Provider Responsibilities.

1. For each person completing the seminar, the provider shall submit to the Division the name, social security number, expiration date and test results indicating pass or fail, and the required fee, within 30 days of the completion of the seminar.

2. Each person who has completed the seminar and passed the provider-administered and Division-approved examination shall be approved as a server for a period which begins at the completion of the seminar and expires three years from this date.

3. The provider shall issue a certification card to the server. The card shall contain at least the name of the server and the expiration date. The provider shall be responsible for issuing any duplicates for lost cards.

4. If a provider certifies servers outside of Utah the provider shall also make available and administer the Utah alcohol laws portion of the examination to any server entering this state. The provider shall administer the examination upon request of the server. No server may be certified beyond the original three-year expiration date on the certification card without completing a new seminar.

R523-23-5. Server Responsibilities.

1. A server who has completed the seminar in another state by a provider who is certified in Utah shall not be required to complete the seminar if the current certification is in force. A server is required within 30 days of employment to pass the portion of the examination which applies to Utah alcohol laws.

R523-23-6. Division Responsibilities.

1. The Division shall maintain the list of servers who have completed the seminar and provide this information to licensing agencies and licensees.

R523-23-7. Approved Curriculum.

1. Each provider must have a curriculum approved by the Division. This curriculum must provide at least three hours of classroom instruction both for original certification and for any and all recertifications. The contents of an approved curriculum shall include the following components:

a. Alcohol as a drug and its effect on the body and behavior.

b. Facts about alcohol.

c. What is alcohol?

d. Alcohol's path through the body.

e. Factors influencing the effect of alcohol:

(i) Food and digestive factors;

(ii) Weight, physical fitness and gender factors;

(iii) Psychological factors;

(iv) Tolerance;

(v) Alcohol used in combination with other drugs.

f. Recognizing drinking levels:

(i) Explanation of behavioral signs and indications of impairment;

(ii) Classification of behavioral signs;

(iii) Defining intoxication.

g. Recognizing the problem drinker and techniques for servers to help control consumption:

(i) Use of classification system;

(ii) Use of alcohol facts;

(iii) Continuity of service;

(iv) Drink counting.

h. Overview of state alcohol laws:

(i) Utah liquor distribution and control;

(ii) Legal age;

(iii) Prohibited sales;

- (iv) Third party liability and the Dram Shop Law;
- (v) Legal definition of intoxication;
- (vi) Legal responsibilities of servers.
- i. Techniques for dealing with the problem customer including rehearsal or practice of these techniques.
- j. Intervention techniques:
 - (i) Slowing down service;
 - (ii) Offering food or nonalcoholic beverages;
 - (iii) Serving water with drinks;
 - (iv) Not encouraging reorders;
 - (v) Cutting off service.
- k. Establishing house rules for regulating alcoholic beverages:
 - (i) Management and co-workers' support;
 - (ii) Dealing with minors and
- l. Alternative means of transportation and getting the customer home safely:
 - (i) Ask customer to arrange alternative transportation;
 - (ii) Call a taxi for transportation service;
 - (iii) Accommodations for the night;
 - (iv) Telephone the police.

R523-23-8. Examination.

1. The examination shall include questions concerning alcohol as a drug and its effect on the body and behavior, recognizing and dealing with the problem drinker, Utah alcohol laws, terminating service, and alternative means of transportation to get the customer safely home. The portion of the exam concerning Utah's alcohol laws shall be uniform questions approved by the Commission or as updated and approved by the Division.

R523-23-9. Alcohol Training and Education Seminar Provider Standards.

1. The Division may certify an applicant who:
- a. Has a program course that:
 - (i) does not have a history of liquor law violations or any convictions showing disregard for laws related to being a responsible liquor provider;
 - (ii) identifies all program instructors and instructor trainers and certifies in writing that they have been trained to present the course material and that they have never been convicted of a felony or of any violation of the laws or ordinances concerning alcoholic beverages, or involving moral turpitude;
 - (iii) agrees to notify the Division in writing of any changes in instructors and submit the authorization called for in item (2) for all new instructors;
 - (iv) Can show adequate facilities, instructional equipment and materials, personnel, and financial resources to provide a successful program for the length of time the license is in effect;
 - (v) will establish and maintain course completion records.

R523-23-10. Grounds For Denial, Corrective Action, Suspension, and Revocation.

1. The Division may deny, suspend or revoke certification if:
- a. the provider or applicant violates these rules, Section 62A-15-401, or;
 - b. If the applicant fails to correctly complete all required steps of the application process as determined by these rules or other rules or statutes referenced in these rules.
 - c. If a provider whose certification has been previously denied, suspended or revoked has reapplied without taking the previously required corrective action.

R523-23-11. Corrective Action.

1. If the Division becomes aware that a provider is in violation of these rules or other rules or statutes referenced in these rules:

a. Within 30 days after becoming aware of the violation, the Division shall identify in writing the specific areas in which the provider is not in compliance and send written notice to the provider.

b. Within 30 days of notification of noncompliance, the provider shall submit a written plan for achieving compliance. The provider may be granted an extension.

R523-12-12. Suspension and Revocation.

1. The Director or designee may suspend the certification of a provider as follows:

a. When a provider fails to respond in writing to areas of noncompliance identified in writing by the Division within the defined period. The defined period is 30-days plus any extensions granted by the Division.

b. When a provider fails to take corrective action as agreed upon in its written response to the Division.

c. When a provider fails to allow the Division access to information or records necessary to determine the provider's compliance under these rules and referenced rules and statutes.

2. The director or designee may revoke certification of a provider as follows:

a. A provider or its authorized instructors continue to provide the seminar while the provider is under a suspended certification.

b. A provider fails to comply with corrective action while under a suspension.

c. A program has committed a second violation which constitutes grounds for suspension when a previous violation resulted in a suspension during the last 24 months.

R523-23-13. Procedure for Denial, Suspension, or Revocation.

1. If the Division has grounds for action under these rules, referenced rules, or as required by law, and intends to deny, suspend or revoke certification of a provider, the steps governing the action are as follows:

a. The Division shall notify the applicant or provider by personal service or by certified mail, return receipt requested, of the action to be taken. The notice shall contain reasons for the action, to include all statutory or rule violations, and a date when the action shall become effective.

b. The provider may request an informal hearing with the director within ten calendar days. The request shall be in writing. Within ten days following the close of the hearing, the Director shall inform the provider or applicant in writing as required under Section 63-46b-5. The provider may appeal to the Department of Human Services Office of Administrative Hearing as provided for under UAPA 63-46b-5.

**KEY: substance abuse, server training
June 26, 2001
Notice of Continuation June 24, 2002**

62A-15-401

R527. Human Services, Recovery Services.**R527-201. Medical Support Services.****R527-201-1. Federal Requirements.**

The Office of Recovery Services/Child Support Services, (ORS/CSS), adopts the federal regulations as published in 45 CFR 303.30 and 303.31 (2000), and 45 CFR 303.32 which are incorporated by reference in this rule.

R527-201-2. Definition.

1. The National Medical Support Notice (NMSN) is the federally approved form that ORS/CSS shall use, when appropriate, to notify an employer to enroll dependent children in an employment-related group health insurance plan in accordance with a child support order.

R527-201-3. Limitation of Services.

ORS/CSS shall not:

1. pursue establishment of specific amounts for ongoing medical support,
2. initiate an action to obtain a judgment for uninsured medical expenses, or
3. collect and disburse premium payments to insurance companies.

R527-201-4. Conditions Under Which Non-IV-A Medicaid Recipients May Decline Support Services.

ORS/CSS shall provide child and spousal support services; however, a Non-IV-A Medicaid recipient may decline child and spousal support services if paternity is not an issue and there is an order for the non-custodial parent to provide medical support.

R527-201-5. Securing a Medical Support Provision in the Support Order.

1. Notice to potentially obligated parents: The notice to potentially obligated parents shall include a provision that an administrative or judicial proceeding will occur to determine whether either parent should be ordered to purchase and maintain appropriate medical insurance for the children. This notification shall be provided when either of the following conditions is met:

- a. the state initiates an action to establish a final support order or to adjust an existing child support order; or
- b. the state joins a divorce or modification action initiated by either the custodial or the non-custodial parent.

2. If a judicial support order does not include a medical support provision, ORS/CSS shall commence judicial action to modify the order to include a medical support provision.

R527-201-6. Reasonable Cost of Insurance Premiums.

Employment-related or other group coverage that does not exceed 5% of the obligated parent's monthly gross income is generally considered reasonable in cost. However, an employer may not withhold more than the lesser of the amount allowed under the Consumer Credit Protection Act, the amount allowed by the state of the employee's principal place of employment, or the amount allowed for health insurance premiums by the child support order. If the combined child support and medical support obligations exceed the allowable deduction amount, the employer shall withhold according to the law, if any, of the state of the employee's principal place of employment requiring prioritization between child support and medical support. If the employer's principal place of employment is in Utah, the employer shall deduct current child support before deducting amounts for health insurance coverage. If the amount necessary to cover the health insurance premiums cannot be deducted due to prioritization or limitations on withholding, the employer shall notify ORS/CSS.

R527-201-7. Credit for Premium Payments and Effect of**Changes to the Premium Amount Subsequent to the Order.**

1. If the order or underlying worksheet gives credit of a specific amount for the children's portion of the premium and the amount of the premium decreases, ORS/CSS may reduce the amount of the credit without seeking a modification of the order.

2. If the order or underlying worksheet does not mention a specific credit for insurance premiums, ORS/CSS shall give credit for the child(ren)'s portion of the insurance premium when the obligated parent provides the necessary verification coverage.

3. ORS/CSS shall notify both parents in writing whenever the credit is changed.

R527-201-8. Establishing Costs for Pregnancy and Confinement.

1. When establishing a judgment for medical costs for pregnancy and confinement in IV-A and Non-IV-A Medicaid paternity and separation cases, ORS/CSS shall research the exact pregnancy and confinement costs which have accumulated to date.

2. When establishing a judgment for medical costs for pregnancy and confinement in Non-IV-A Non-Medicaid Cases, ORS/CSS shall consult with the mother to determine the amount of the uninsured pregnancy and confinement expenses.

3. When establishing any judgment for medical costs for pregnancy and confinement, one half of the uninsured pregnancy and confinement costs shall be charged to the non-custodial parent.

R527-201-9. Enforcement of Obligation to Maintain Medical and Dental Insurance.

1. In Non-IV-A cases and in IV-A Medicaid cases, appropriate steps shall be taken to ensure compliance with orders which require the obligated parent to maintain insurance. Obligated parents shall demonstrate compliance by providing ORS/CSS with policy numbers and the insurance provider name for the dependent children for whom the medical support is ordered.

2. In Non-IV-A cases and in IV-A Medicaid cases, if an obligated parent has been ordered to maintain employer-based medical insurance and insurance is available at a reasonable cost according to R527-201-7 through an employment-related group health plan, ORS/CSS shall use the NMSN to transfer notice of the insurance provision to the obligated parent's employer unless ORS/CSS is notified pursuant to Section 62A-11-326.1 that the children are already enrolled in an insurance plan in accordance with the order.

3. When appropriate, ORS/CSS shall send the NMSN to the obligated parent's employer within two business days after the name of the obligated parent has been entered into the registry of the State Directory of New Hires, matched with ORS/CSS records, and reported to ORS/CSS in accordance with Subsection 35A-7-105(2).

4. The employer shall transfer the NMSN to the appropriate group health plan for which the children are eligible within twenty business days of the date of the NMSN if all of the following criteria are met:

- a. the obligated parent is still employed by the employer;
- b. the employer maintains or contributes to plans providing dependent or family health coverage;
- c. the obligated parent is eligible for the coverage available through the employer; and
- d. state or federal withholding limitations, prioritization, or both, do not prevent withholding the amount required to obtain coverage.

5. If more than one coverage option is available under a group insurance plan and the obligated parent is not already enrolled, ORS/CSS in consultation with the custodial parent

may select the least expensive option if the option complies with the child support order and benefits the children. The insurer shall enroll the children in the plan's default option or least expensive option in accordance with Subsection 62A-11-326.2(1)(b) unless another option is specified by ORS/CSS.

6. The employer shall determine if the necessary employee contributions for the insurance coverage are available. If the amounts necessary are available, the employer shall begin withholding when appropriate and remit directly to the plan.

7. In accordance with Subsections 62A-11-326.1(2) and (3), the obligated parent may contest withholding insurance premiums based on a mistake of fact. The employer shall continue withholding under the NMSN until notified by ORS/CSS to terminate withholding insurance premiums.

8. If a parent successfully contests the action to enroll the children in a group health plan based on a mistake of fact, ORS/CSS shall notify the employer to discontinue enrollment and withholding insurance premiums for the children.

9. In accordance with Subsection 62A-11-406(9), the employer shall promptly notify ORS/CSS when the obligated parent's employment is terminated.

10. ORS/CSS shall promptly notify the employer when a current order for medical support is no longer in effect for which ORS/CSS is responsible.

R527-201-10. Obligated Parent Receiving Medicaid.

1. If an obligated parent is receiving Medicaid or was receiving Medicaid at the time the medical debt was incurred, ORS/CSS shall not enforce payment of the medical debt regardless of medical support provisions in the order.

2. In an unestablished paternity case, if the father's income was taken into consideration when determining the household's eligibility for Medicaid, ORS/CSS shall not enforce payment of medical expenses regardless of the medical support provisions in the order, but shall enforce the health insurance provision.

KEY: child support, health insurance, Medicaid

November 30, 2004

Notice of Continuation January 30, 2002

63-46b-1 et seq.

62A-11-326.1

62A-11-326.2

62A-11-326.3

62A-11-406(9)

78-45-7.15

35A-7-105(2)

R527. Human Services, Recovery Services.**R527-300. Income Withholding.****R527-300-1. Income Withholding.**

1. Income withholding is defined as withholding child support from an obligor's income. The payor of income forwards the amount withheld to the Office of Recovery Services/Child Support Services (ORS/CSS).

2. Income withholding may be initiated in a IV-D case, with concurrent notice to the obligor:

a. in a case which has an order issued prior to October 13, 1990, which has not been modified since October 13, 1990, even though the obligor is not delinquent as defined in Section 62A-11-401(5) or R527-300-2, if the obligor and the obligee have signed a subsequent agreement which the obligor has failed to meet; for example, while the order does not require payment by a specific date, there is a written agreement that payment will be made on the first day of each month, or

b. in a case which has an order issued or modified after October 13, 1990, which found a demonstration of good cause or entered a written agreement that immediate income withholding is not required, if the obligor and the obligee have signed a subsequent agreement which the obligor has failed to meet; for example, while the order does not require payment by a specific date, there is a written agreement that payment will be made on the first day of each month.

R527-300-2. Determining Delinquency.

1. If current support has been ordered but is not presently in effect; for example, the children are 18 years old, the children have been adopted, custody has changed, or the obligor is paying current support to the obligee; delinquency has occurred when the obligor has accrued a debt in an amount equal to or greater than the previously ordered current support for one month.

2. If there was not a previous current support order but there is a judgment for arrears, delinquency has occurred when the obligor fails to pay as agreed, provided the judgment was for at least one month's current support amount used to compute the judgment for arrears. If the judgment was by default and the judgment amount was for at least one month's current support amount used to compute the judgment, income withholding may begin immediately upon entry of the judgment.

3. A delinquency could be the result of an underpayment for several months that totals at least one month's current support.

4. A delinquency can occur prior to the end of the month if the obligor was ordered to pay on specific days of the month and failed to do so.

R527-300-3. Affidavit of Delinquency.

The Non-IV-A applicant prepares a month-by-month computation of the support debt, which is referred to as a statement of arrears. The statement of arrears is part of the application packet. As part of the statement of arrears, the applicant attests that the statement is true and accurate to the best knowledge and belief of the applicant. This signed statement shall satisfy the verified statement requirement of Section 62A-11-405.

R527-300-4. Administrative Review.

1. Section 62A-11-405(2)(b)(ii)(B) requires the obligor to file a written request for review with the office within 15 days to contest withholding. This written request for review shall state the obligor's basis for contesting the withholding.

2. If an administrative review is conducted pursuant to Section 62A-11-405(3), the notice of decision required may be mailed or delivered to the obligor in the ordinary course of business.

R527-300-5. Income Subject To Withholding.

Section 62A-11-406 limits the total amount of the income withheld for child support to the maximum permitted under Section 303(b) of the Consumer Credit Protection Act 15 U.S.C. Section 1673(b). In general, income withholding will be limited to withholding 50% of the obligor's disposable income. However, if 50% does not result in withholding enough to cover the current support obligation, the office may review an obligor's circumstances under the provisions of the Consumer Credit Protection Act to determine whether a higher percentage is permitted.

R527-300-6. Modification of Withholding Amounts.

1. Once a Notice to Withhold Income for Child Support has been sent to the obligor's payor of income, any changes to the withholding amount will be made by sending the payor a modified Notice to Withhold Income for Child Support. The obligor will be provided concurrent notice of any changes.

2. If the obligor changes from one payor of income to another payor of income, a new Notice to Withhold Income for Child Support must be sent to the new payor in accordance with ORS/CSS assessment procedures.

R527-300-7. Income Withholding Termination.

1. Income withholding should be terminated if:

a. the obligor no longer has an obligation for current child support, and no longer has a debt to Utah or another state on whose behalf Utah is acting or to a Non-IV-A obligee on whose behalf Utah is acting;

b. the Non-IV-A obligee terminates the ORS/CSS case, income withholding was administratively implemented and the obligor no longer owes child support to Utah or other state on whose behalf Utah is acting, and the obligee does not want withholding to continue;

c. the obligor successfully contests the withholding which is currently in effect through the court or administrative review process. If income withholding was terminated based on a court or administrative order and the obligor later becomes delinquent, income withholding will be reinstated.

R527-300-8. Contesting an Income Withholding Order Issued by Another State.

The Obligor may contest the validity or enforcement of an income-withholding order issued by another state in this state by registering and filing a contest to that order in the appropriate Utah court.

KEY: child support, income, wages

November 30, 2004

Notice of Continuation September 11, 2002

62A-11-401

62A-11-405

62A-11-406

62A-11-413

62A-11-414

78-45f-506

R590. Insurance, Administration.**R590-83. Unfair Discrimination on the Basis of Sex or Marital Status.****R590-83-1. Authority.**

This rule is promulgated pursuant to Subsection 31A-2-201(3)(a), which empowers the Commissioner to enforce Title 31A and to make rules to implement its provisions, and Subsection 31A-23a-402(8), which empowers the commissioner to define and prohibit unfair marketing practices.

R590-83-2. Purpose.

The purpose of this rule is to identify and define certain practices which the commissioner finds are unfair and discriminatory.

R590-83-3. Scope.

This rule applies to all new or renewal insurance contracts offered for sale in Utah.

R590-83-4. Availability Requirements and Prohibited Transactions.

Availability of any insurance contract may not be denied to an insured or prospective insured on the basis of sex or marital status of the insured or prospective insured. The amount of benefits payable, or any term, condition or type of coverage may not be restricted, modified, excluded or reduced on the basis of the sex or marital status of the insured or prospective insured, except marital status may be considered for the purpose of defining eligibility for dependent or family coverage. An insurer may treat a polygamous relationship differently than a monogamous relationship for purposes of defining or providing dependent or family coverage provided that the treatment reflects reasonable treatment of the interests of the affected parties and safeguards the economic interests of the insurer and other policyholders or prospective policyholders. Any insurer or representative of an insurer acting in contravention of this rule shall be deemed to have engaged in an unfair or deceptive act or practice as provided by Chapter 23, Title 31A. Examples of the practices prohibited by this section include:

- (a) denying, canceling or refusing to renew coverage, or providing coverage on different terms, because the insured or prospective insured is residing with another person not related by blood or marriage;
- (b) offering coverage to males gainfully employed at home, employed part-time or employed by relatives while denying or offering reduced coverage to females similarly employed;
- (c) reducing disability benefits for females who become disabled while not gainfully employed full-time outside the home when a similar reduction is not applied to males;
- (d) denying females waiver of premium provisions that are available to males or offering the provisions to females only for contact limits that are lower than those available to males;
- (e) refusing to offer maternity benefits to insureds or prospective insureds purchasing individual contracts when comparable family coverage contracts offer maternity benefits;
- (f) denying, under group contracts, dependents coverage to husbands of female employees when dependent's coverage is available to wives of male employees;
- (g) offering coverage to males in certain occupations while denying coverage or offering more limited coverage to females in the same occupational categories;
- (h) offering males higher benefit levels or longer benefit periods, or both, than are offered to females in the same classifications;
- (i) offering contracts containing different definitions of disability for females and males in the same classifications;
- (j) offering contracts containing different waiting and elimination periods for females and males;

(k) requiring female applicants to submit to medical examinations while not requiring males to submit to the examinations for the same coverage;

(l) establishing different benefit options for females and males;

(m) denying to divorced or single persons coverage available to married persons;

(n) limiting the amount of coverage available to an insured or prospective insured based upon the person's marital status;

(o) denying employees of one sex insurance benefits that are offered to dependents who are of the same sex as the employees;

(p) denying a married or separated female the right to obtain or continue coverage in her own name when the same does not apply to males;

(q) establishing different issue age requirements for females and males;

(r) establishing different occupational classifications for females and males;

(s) denying coverage to unwed persons or their dependents, or both;

R590-83-5. Class Rating Differentials.

The establishment of reasonable and consistently applied class rating differentials does not constitute a practice prohibited by Section 4. This rule may not be deemed to prohibit charging different premium rates on the basis of sex.

R590-83-6. Severability.

If any provision of this rule is held invalid, it may not affect the provisions of this rule that can be given effect, and to that extent, the provisions of this rule are declared to be severable.

KEY: insurance law**1989****Notice of Continuation September 28, 2004****31A-23a-402****31A-2-201**

R590. Insurance, Administration.**R590-129. Unfair Discrimination Based Solely Upon Blindness or Physical or Mental Impairment.****R590-129-1. Authority.**

This rule is promulgated pursuant to Subsection 31A-2-201(3)(a), which empowers the commissioner to enforce Title 31A and to make rules to implement its provisions, and Subsection 31A-23a-402(8), which empowers the commissioner to define and prohibit unfair marketing practices.

R590-129-2. Purpose.

The purpose of this rule is to identify and define certain practices which the commissioner finds are unfair and discriminatory.

R590-129-3. Scope.

This rule applies to all new or renewal insurance contracts offered for sale in Utah.

R590-129-4. Prohibited Acts and Practices.

The following acts and practices are prohibited:

1. refusing to insure or refusing to continue to insure;
2. limiting the amount, extent, or kind of coverage available to an individual; or
3. charging a higher rate for the same coverage solely because of blindness, partial blindness, or physical or mental impairment except where the refusal, limitation, or rate differential is based upon sound actuarial principles or reasonably anticipated loss experience.

Refusal to insure includes denial by an insurer of disability insurance coverage on the basis that the policy defines "disability" as being presumed in the event that the insured suffers the loss of sight. It is not a violation of this rule to exclude from coverage any disability consisting of blindness, partial blindness, physical or mental impairment when the condition existed at the time the policy was issued.

KEY: insurance companies

1989

31A-2-201

Notice of Continuation September 28, 2004 31A-23a-402

R590. Insurance, Administration.**R590-167. Individual, Small Employer, and Group Health Benefit Plan Rule.****R590-167-1. Authority, Purpose and Scope.**

(1) Authority.

This rule is intended to implement the provisions of Chapter 30, Title 31A, the Individual and Small Employer Health Insurance Act, referred to in this rule as the Act. The commissioner's authority to enforce this rule is provided under Subsections 31A-2-201(3)(a) and 31A-30-106(1)(k).

(2) Purpose.

(a) The general purposes of the Act and this rule are:

(i) to enhance the availability of health insurance coverage to individuals and small employers;

(ii) to regulate and prevent abuse in insurer rating practices and establish limits on differences in rates between health benefit plans;

(iii) to ensure renewability of coverage;

(iv) to establish limitations on the use of preexisting condition exclusions;

(v) to provide for portability; and

(vi) to improve the overall fairness and efficiency of the individual and small employer health insurance market.

(b) The Act and this rule are intended to:

(i) promote broader spreading of risk in the individual and small employer marketplace; and

(ii) regulate rating practices for all health benefit plans sold to individuals and small employers, whether sold directly or through associations or other groupings of individuals and small employers.

(3) Scope.

Carriers that provide health benefit plans to individuals and small employers are intended to be subject to all of the provisions of this rule.

R590-167-2. Definitions.

In addition to the definitions in Sections 31A-1-301 and 31A-30-103, the following definitions shall apply for the purposes of this rule:

(1) "Associate member of an employee organization" means any individual who participates in an employee benefit plan, as defined in 29 U.S.C. Section 1002(1), that is a multi-employer plan, as defined in 29 U.S.C. Section 1002(37A), other than the following:

(a) an individual, or the beneficiary of such individual, who is employed by a participating employer within a bargaining unit covered by at least one of the collective bargaining agreements under or pursuant to which the employee benefit plan is established or maintained; or

(b) an individual who is a present or former employee, or a beneficiary of such employee, of the sponsoring employee organization, of an employer who is or was a party to at least one of the collective bargaining agreements under or pursuant to which the employee benefit plan is established or maintained, or of the employee benefit plan, or of a related plan.

(2) "Change in a Rating Factor" means the cumulative change with respect to such factor considered over a 12 month period. If a covered carrier changes rating factors with respect to more than one case characteristic in a 12 month period, the carrier shall consider the cumulative effect of all such changes in applying the 10% test.

(3) "Change in Rating Method" means:

(a) a change in the number of case characteristics used by a covered carrier to determine premium rates for health benefit plans in a class of business;

(b) a change in the manner or procedures by which insureds are assigned into categories for the purpose of applying a case characteristic to determine premium rates for health benefit plans in a class of business;

(c) a change in the method of allocating expenses among health benefit plans in a class of business; or

(d) a change in a rating factor with respect to any case characteristic if the change would produce a change in premium for any individual or small employer that exceeds 10%.

(4) "New entrant" means an eligible employee, or the dependent of an eligible employee, who becomes part of an employer group after the initial period for enrollment in a health benefit plan.

(5) "Risk characteristic" means the health status, claims experience, duration of coverage, or any similar characteristic related to the health status or experience of an individual, a small employer or of any member of a small employer.

(6) "Risk load" means the percentage above the applicable base premium rate that is charged by a covered carrier to a covered insured to reflect the risk characteristics of the covered individuals.

R590-167-3. Applicability and Scope.

(1) This rule shall apply to any health benefit plan which:

(a) meets one or more of the conditions set forth in Subsections 31A-30-104(1) and (2);

(b) provides coverage to a covered insured located in this state, without regard to whether the policy or certificate was issued in this state; and

(c) is in effect on or after the effective date of this rule.

(2)(a) If a small employer has employees in more than one state, the provisions of the Act and this rule shall apply to a health benefit plan issued to the small employer if:

(i) the majority of eligible employees of such small employer are employed in this state; or

(ii) if no state contains a majority of the eligible employees of the small employer, the primary business location of the small employer is in this state.

(b) In determining whether the laws of this state or another state apply to a health benefit plan issued to a small employer described in Subsection R590-167-3(2)(a), the provisions of the subsection shall be applied as of the date the health benefit plan was issued to the small employer for the period that the health benefit plan remains in effect.

(c) If a health benefit plan is subject to the Act and this rule, the provisions of the Act and this rule shall apply to all individuals covered under the health benefit plan, whether they reside in this state or in another state.

(3) A carrier that is not operating as a covered carrier in this state may not become subject to the provisions of the Act and this rule solely because an individual or a small employer that was issued a health benefit plan in another state by that carrier moves to this state.

R590-167-4. Establishment of Classes of Business.

(1) A covered carrier that establishes more than one class of business pursuant to the provisions of Section 31A-30-105 shall maintain on file for inspection by the commissioner the following information with respect to each class of business so established:

(a) a description of each criterion employed by the carrier, or any of its agents, for determining membership in the class of business;

(b) a statement describing the justification for establishing the class as a separate class of business and documentation that the establishment of the class of business is intended to reflect substantial differences in expected claims experience or administrative costs related to the reasons set forth in Section 31A-30-105; and

(c) a statement disclosing which, if any, health benefit plans are currently available for purchase in the class and any significant limitations related to the purchase of such plans.

(2) A carrier may not directly or indirectly use group size

as a criterion for establishing eligibility for a class of business.

R590-167-5. Transition for Assumptions of Business from Another Carrier.

(1)(a) A covered carrier may not transfer or assume the entire insurance obligation, risk, or both of a health benefit plan covering an individual or a small employer in this state unless:

(i) the transaction has been approved by the commissioner of the state of domicile of the assuming carrier;

(ii) the transaction has been approved by the commissioner of the state of domicile of the ceding carrier; and

(iii) the transaction otherwise meets the requirements of this section.

(b) A carrier domiciled in this state that proposes to assume or cede the entire insurance obligation, risk, or both of one or more health benefit plans covering covered individuals from or to another carrier shall make a filing for approval with the commissioner at least 60 days prior to the date of the proposed assumption. The commissioner may approve the transaction, if the commissioner finds that the transaction is in the best interests of the individuals insured under the health benefit plans to be transferred and is consistent with the purposes of the Act and this rule. The commissioner may not approve the transaction until at least 30 days after the date of the filing; except that, if the carrier is in hazardous financial condition, the commissioner may approve the transaction as soon as the commissioner deems reasonable after the filing.

(c)(i) The filing required under Subsection R590-167-5(1)(b) shall:

(A) describe the class of business, including any eligibility requirements, of the ceding carrier from which the health benefit plans will be ceded;

(B) describe whether the assuming carrier will maintain the assumed health benefit plans as a separate class of business, pursuant to Subsection R590-167-5(3), or will incorporate them into an existing class of business, pursuant to Subsection R590-167-5(4). If the assumed health benefit plans will be incorporated into an existing class of business, the filing shall describe the class of business of the assuming carrier into which the health benefit plans will be incorporated;

(C) describe whether the health benefit plans being assumed are currently available for purchase by individuals or small employers;

(D) describe the potential effect of the assumption, if any, on the benefits provided by the health benefit plans to be assumed;

(E) describe the potential effect of the assumption, if any, on the premiums for the health benefit plans to be assumed;

(F) describe any other potential material effects of the assumption on the coverage provided to the individuals and small employers covered by the health benefit plans to be assumed; and

(G) include any other information required by the commissioner.

(ii) A covered carrier required to make a filing under Subsection R590-167-5(1)(b) shall also make an informational filing with the commissioner of each state in which there are individual or small employer health benefit plans that would be included in the transaction. The informational filing to each state shall be made concurrently with the filing made under Subsection R590-167-5(1)(b) and shall include at least the information specified in Subsection R590-167-5(1)(b)(ii) for the individual or small employer health benefit plans in that state.

(d) A covered carrier may not transfer or assume the entire insurance obligation and/or risk of a health benefit plan covering an individual or a small employer in this state unless it complies with the following provisions:

(i) The carrier has provided notice to the commissioner at least 60 days prior to the date of the proposed assumption. The

notice shall contain the information specified in Subsection R590-167-5(1)(c) for the health benefit plans covering individuals and small employers in this state.

(ii) If the assumption of a class of business would result in the assuming covered carrier being out of compliance with the limitations related to premium rates contained in Section 31A-30-106, the assuming carrier shall make a filing with the commissioner pursuant to Subsection 31A-30-105(3) seeking an extended transition period.

(iii) An assuming carrier seeking an extended transition period may not complete the assumption of health benefit plans covering individuals or small employers in this state unless the commissioner grants the extended transition period requested pursuant to Subsection R590-167-5(1)(d)(ii).

(iv) Unless a different period is approved by the commissioner, an extended transition period shall, with respect to an assumed class of business, be for no more than 15 months and, with respect to each individual small employer, shall last only until the anniversary date of such employer's coverage, except that the period with respect to an individual small employer may be extended beyond its first anniversary date for a period of up to 12 months if the anniversary date occurs within three months of the date of assumption of the class of business.

(2)(a) Except as provided in Subsection R590-167-5(2)(b), a covered carrier may not cede or assume the entire insurance obligation, risk, or both for an individual or small employer health benefit plan unless the transaction includes the ceding to the assuming carrier of the entire class of business which includes such health benefit plan.

(b) A covered carrier may cede less than an entire class of business to an assuming carrier if:

(i) one or more individuals or small employers in the class have exercised their right under contract or state law to reject, either directly or by implication, the ceding of their health benefit plans to another carrier. In that instance, the transaction shall include each health benefit plan in the class of business except those health benefit plans for which an individual or a small employer has rejected the proposed cession; or

(ii) after a written request from the transferring carrier, the commissioner determines that the transfer of less than the entire class of business is in the best interests of the individual or small employers insured in that class of business.

(3) Except as provided in Subsection R590-167-5(4), a covered carrier that assumes one or more health benefit plans from another carrier shall maintain such health benefit plans as a separate class of business.

(4) A covered carrier that assumes one or more health benefit plans from another carrier may exceed the limitation contained in Section 31A-30-105 relating to the maximum number of classes of business a carrier may establish, due solely to such assumption for a period of up to 15 months after the date of the assumption, provided that the carrier complies with the following provisions:

(a) Upon assumption of the health benefit plans, such health benefit plans shall be maintained as a separate class of business. During the 15-month period following the assumption, each of the assumed individual or small employer health benefit plans shall be transferred by the assuming covered carrier into a single class of business operated by the assuming covered carrier. The assuming covered carrier shall select the class of business into which the assumed health benefit plans will be transferred in a manner such that the transfer results in the least possible change to the benefits and rating method of the assumed health benefit plans.

(b) The transfers authorized in Subsection R590-167-5(4)(a) shall occur with respect to each individual or small employer on the anniversary date of the individual's or small employer's coverage, except that the period with respect to an

individual small employer may be extended beyond its first anniversary date for a period of up to 12 months if the anniversary date occurs within three months of the date of assumption of the class of business.

(c) A covered carrier making a transfer pursuant to Subsection R590-167-5(4)(a) may alter the benefits of the assumed health benefit plans to conform to the benefits currently offered by the carrier in the class of business into which the health benefit plans have been transferred.

(d) The premium rate for an assumed individual or small employer health benefit plan may not be modified by the assuming covered carrier until the health benefit plan is transferred pursuant to Subsection R590-167-5(4)(a). Upon transfer, the assuming covered carrier shall calculate a new premium rate for the health benefit plan from the rate manual established for the class of business into which the health benefit plan is transferred. In making such calculation, the risk load applied to the health benefit plan shall be no higher than the risk load applicable to such health benefit plan prior to the assumption.

(e) During the 15 month period provided in this subsection, the transfer of individual or small employer health benefit plans from the assumed class of business in accordance with this subsection may not be considered a violation of the first sentence of Subsection 31A-30-106(2).

(5) An assuming carrier may not apply eligibility requirements, including minimum participation and contribution requirements, with respect to an assumed health benefit plan, or with respect to any health benefit plan subsequently offered to an individual or small employer covered by such an assumed health benefit plan, that are more stringent than the requirements applicable to such health benefit plan prior to the assumption.

(6) The commissioner may approve a longer period of transition upon application of a covered carrier. The application shall be made within 60 days after the date of assumption of the class of business and shall clearly state the justification for a longer transition period.

(7) Nothing in this section or in the Act is intended to:

(a) reduce or diminish any legal or contractual obligation or requirement, including any obligation provided in Section 31A-14-213, of the ceding or assuming carrier related to the transaction;

(b) authorize a carrier that is not admitted to transact the business of insurance in this state to offer or insure health benefit plans in this state; or

(c) reduce or diminish the protections related to an assumption reinsurance transaction provided in Section 31A-14-213 or otherwise provided by law.

R590-167-6. Restrictions Relating to Premium Rates.

(1) A covered carrier shall develop a separate rate manual for each class of business. Base premium rates and new business premium rates charged to individuals and small employers by the covered carrier shall be computed solely from the applicable rate manual developed pursuant to this subsection. To the extent that a portion of the premium rates charged by a covered carrier is based on the carrier's discretion, the manual shall specify the criteria and factors considered by the carrier in exercising such discretion.

(2)(a) A covered carrier may not modify the rating method, as defined in Section R590-167-2, used in the rate manual for a class of business until the change has been approved as provided in this subsection. The commissioner may approve a change to a rating method if the commissioner finds that the change is reasonable, actuarially appropriate, and consistent with the purposes of the Act and this rule.

(b) A carrier may modify the rating method for a class of business only after filing an actuarial certification. The filing shall clearly request approval for a change in rating method and

contain at least the following information:

(i) the reasons the change in rating method is being requested;

(ii) a complete description of each of the proposed modifications to the rating method;

(iii) a description of how the change in rating method would affect the premium rates currently charged to individuals and small employers in the class of business, including an estimate from a qualified actuary of the number of groups or individuals, and a description of the types of groups or individuals, whose premium rates may change by more than 10% due to the proposed change in rating method, not including general increases in premium rates applicable to all individuals and small employers in a health benefit plan;

(iv) a certification from a qualified actuary that the new rating method would be based on objective and credible data and would be actuarially sound and appropriate; and

(v) a certification from a qualified actuary that the proposed change in rating method would not produce premium rates for individuals and small employers that would be in violation of Sections 31A-30-106 and 31A-30-106.5.

(3) The rate manual developed pursuant to Subsections 31A-30-106(4) and R590-167-6(1) shall specify the case characteristics and rate factors to be applied by the covered carrier in establishing premium rates for the class of business.

(a) A covered carrier may not use case characteristics other than those specified in Subsection 31A-30-106(1)(h) without the prior approval of the commissioner. A covered carrier seeking such an approval shall make a filing with the commissioner for a change in rating method under Subsection R590-167-6(2)(b). Tobacco use is not an allowable case characteristic. Tobacco use is an allowable risk characteristic when utilized in compliance with Section 31A-30-106(1)(b).

(b) A covered carrier shall use the same case characteristics in establishing premium rates for each health benefit plan in a class of business and shall apply them in the same manner in establishing premium rates for each such health benefit plan. Case characteristics shall be applied without regard to the risk characteristics of an individual or small employer.

(c) The rate manual shall clearly illustrate the relationship among the base premium rates charged for each health benefit plan in the class of business. If the new business premium rate is different than the base premium rate for a health benefit plan, the rate manual shall illustrate the difference.

(d) Differences among base premium rates for health benefit plans shall be based solely on the reasonable and objective differences in the design and benefits of the health benefit plans and may not be based in any way on the nature of an individual or small employer that choose or are expected to choose a particular health benefit plan. A covered carrier shall apply case characteristics and rate factors within a class of business in a manner that assures that premium differences among health benefit plans for identical individuals or small employers vary only due to reasonable and objective differences in the design and benefits of the health benefit plans and are not due to the nature of the individuals or small employers that choose or are expected to choose a particular health benefit plan.

(e) The rate manual shall provide for premium rates to be developed in a two step process.

(i) In the first step, a base premium rate shall be developed for the individual or small employer without regard to any risk characteristics.

(ii) In the second step, the resulting base premium rate may be adjusted by a risk load, subject to the provisions of Sections 31A-30-106 and 31A-30-106.5, to reflect the risk characteristics.

(f) Each rate manual developed pursuant to Subsection R590-167-6(1) shall be maintained by the carrier for a period of

six years. Updates and changes to the manual shall be maintained with the manual.

(4)(a) Except as provided in Subsection R590-167-6(4)(b), a premium charged to an individual or small employer for a health benefit plan may not include a separate application fee, underwriting fee, or any other separate fee or charge.

(b) A carrier may charge a separate fee with respect to an individual or small employer health benefit plan, but only one fee with respect to such plan, provided the fee is no more than \$5 per month per individual or employee and is applied in a uniform manner to each health benefit plan in a class of business.

(5) If group size is used as a case characteristic by a covered carrier, the highest rate factor associated with a group size classification may not exceed the lowest rate factor associated with such a classification by more than 20% without prior approval of the commissioner.

(6) The restrictions related to changes in premium rates in Subsections 31A-30-106(1)(c) and 31A-30-106(1)(f) shall be applied as follows:

(a) A covered carrier shall revise its rate manual each rating period to reflect changes in base premium rates and changes in new business premium rates.

(b)(i) If, for any health benefit plan with respect to any rating period, the percentage change in the new business premium rate is less than or the same as the percentage change in the base premium rate, the change in the new business premium rate shall be deemed to be the change in the base premium rate for the purposes of Subsections 31A-30-106(1)(c) and 31A-30-106(1)(f).

(ii) If, for any health benefit plan with respect to any rating period, the percentage change in the new business premium rate exceeds the percentage change in the base premium rate, the health benefit plan shall be considered a health benefit plan into which the covered carrier is no longer enrolling new individuals or small employers for the purposes of Subsections 31A-30-106(1)(c) and 31A-30-106(1)(f).

(c) If, for any rating period, the change in the new business premium rate for a health benefit plan differs from the change in the new business premium rate for any other health benefit plan in the same class of business by more than 20%, the carrier shall make a filing with the commissioner containing a complete explanation of how the respective changes in new business premium rates were established and the reason for the difference. The filing shall be made 30 days before the beginning of the rating period.

(d) A covered carrier shall keep on file for a period of at least six years the calculations used to determine the change in base premium rates and new business premium rates for each health benefit plan for each rating period.

(7)(a) Except as provided in Subsection R590-167-6(7)(b), a change in premium rate for an individual or small employer shall produce a revised premium rate that is no more than the following:

(i) the base premium rate for the individual or small employer, as shown in the rate manual as revised for the rating period, multiplied by:

(ii) one plus the sum of:

(iii) the risk load applicable to the individual or small employer during the previous rating period; and

(iv) 15% prorated for periods of less than one year.

(b) In the case of a health benefit plan into which a covered carrier is no longer enrolling new individuals or small employers, a change in premium rate for an individual or small employer shall produce a revised premium rate that is no more than the following:

(i) the base premium rate for the individual or small employer, given its present composition and as shown in the rate manual in effect for the individual or small employer at the

beginning of the previous rating period, multiplied by:

(ii) one plus the lesser of:

(A) the change in the base rate; or

(B) the percentage change in the new business premium for the most similar health benefit plan into which the covered carrier is enrolling new individuals or small employers, multiplied by:

(iii) one plus the sum of:

(A) the risk load applicable to the individual or small employer during the previous rating period; and

(B) 15%, prorated for periods of less than one year.

(c) Notwithstanding the provisions of Subsections R590-167-6(7)(a) and (b), a change in premium rate for an individual or small employer may not produce a revised premium rate that would exceed the limitations on rates provided in Subsection 31A-30-106(1)(b).

(8)(a) A representative of a Taft Hartley trust, including a carrier upon the written request of such a trust, may file in writing with the commissioner a request for the waiver of application of the provisions of Subsection 31A-30-106(1) with respect to such trust.

(b) A request made under Subsection R590-167-6(8)(a) shall identify the provisions for which the trust is seeking the waiver and shall describe, with respect to each provision, the extent to which application of such provision would:

(i) adversely affect the participants and beneficiaries of the trust; and

(ii) require modifications to one or more of the collective bargaining agreements under or pursuant to which the trust was or is established or maintained.

(c) A waiver granted under Subsection 31A-30-104(5) shall not apply to an individual who participates in the trust because the individual is an associate member of an employee organization or the beneficiary of such an individual.

R590-167-7. Application to Reenter State.

(1) A carrier that has been prohibited from writing coverage for individuals or small employers in this state pursuant to Subsection 31A-30-107.3 may not resume offering health benefit plans to individuals or small employers in this state until the carrier has made a petition to the commissioner to be reinstated as a covered carrier and the petition has been approved by the commissioner. In reviewing a petition, the commissioner may ask for such information and assurances as the commissioner finds reasonable and appropriate.

(2) In the case of a covered carrier doing business in only one established geographic service area of the state, if the covered carrier elects to nonrenew a health benefit plan under Subsections 31A-30-107(3)(e) or 107.1(3)(e), the covered carrier shall be prohibited from offering health benefit plans to individuals or small employers in any part of the service area for a period of five years. In addition, the covered carrier may not offer health benefit plans to individuals or small employers in any other geographic area of the state without the prior approval of the commissioner. In considering whether to grant approval, the commissioner may ask for such information and assurances as the commissioner finds reasonable and appropriate.

R590-167-8. Qualifying Previous Coverage.

A covered carrier shall not deny, exclude, or limit benefits because of a preexisting condition without first ascertaining the existence and source of previous coverage. The covered carrier shall have the responsibility to contact the source of such previous coverage to resolve any questions about the benefits or limitations related to such previous coverage. Previous coverage may be coverage that continues after the issuance of the new health benefit plan. The previous carrier shall fully cooperate in furnishing the needed information required by this section.

R590-167-9. Restrictive Riders.

A restrictive rider, endorsement or other provision that violates the provisions of Subsection 31A-30-107.5 may not remain in force. A covered carrier shall immediately provide written notice to those individuals or small employers whose coverage will be changed pursuant to this section.

R590-167-10. Status of Carriers as Covered Carriers.

(1) Prior to marketing a health benefit plan, a carrier shall make a filing with the commissioner indicating whether the carrier intends to operate as a covered carrier in this state under the terms of the Act and of this rule. Such filing will indicate if the covered carrier intends to market to individuals, small employers or both, and be signed by an officer of the company.

(2) Except as provided by Subsection R590-167-10(3), a carrier may not offer health benefit plans to individuals, small employers, or continue to provide coverage under health benefit plans previously issued to individuals or small employers in this state, unless the filing provided pursuant to Subsection R590-167-10(1) indicates that the carrier intends to operate as a covered carrier in this state.

(3) If a carrier does not intend to operate as a covered carrier in this state, the carrier may continue to provide coverage under health benefit plans previously issued to individuals and small employers in this state only if the carrier complies with the following provisions:

(a) the carrier complies with the requirements of the Act with respect to each of the health benefit plans previously issued to individuals and small employers by the carrier;

(b) the carrier provides coverage to each new entrant to a health benefit plan previously issued to an individual or small employer by the carrier;

(c) the carrier complies with the requirements of Section 31A-30-106 and this rule as they apply to individuals and small employers whose coverage has been terminated by the carrier and to individuals and small employers whose coverage has been limited or restricted by the carrier; and

(d) the carrier files a letter of intent indicating the carrier does not intend to operate as a covered carrier in this state and will maintain the business in compliance with the Act and this rule.

(4) If the filing made pursuant Subsection R590-167-10(3) indicates that a carrier does not intend to operate as a covered carrier in this state, the carrier shall be precluded from operating as a covered carrier in this state, except as provided for in Subsection R590-167-10(3), for a period of five years from the date of the filing. Upon a written request from such a carrier, the commissioner may reduce the period provided for in the previous sentence if the commissioner finds that permitting the carrier to operate as a covered carrier would be in the best interests of the individuals and small employers in the state.

R590-167-11. Actuarial Certification and Additional Filing Requirements.

(1) Actuarial Certification.

(a) An actuarial certification shall be filed annually and meet the requirements of Section 31A-30-106(4)(b) and the following:

(i) the actuarial certification shall be a written statement that meets the requirements of Title 31A Chapter 30, R590-167, and the applicable standards of practice as promulgated by the Actuarial Standards Board;

(ii) the actuary must state that he or she meets the qualifications of Subsection 31A-30-103(1);

(iii) the actuarial certification shall contain the following statement: "I, (name), certify that (name of covered carrier) is in compliance with the provisions of Title 31A Chapter 30, and R590-167, based upon the examination of (name of covered carrier), including review of the appropriate records and of the

actuarial assumptions and methods utilized by (name of covered carrier) in establishing premium rates for applicable health benefit plans;" and

(iv) the actuarial certification shall list and describe each written demonstration used by the actuary to establish compliance with Title 31A Chapter 30 and R590-167.

(b) The actuarial certification shall be filed no later than April 1 of each year.

(2) Rating Manual.

(a) For every health benefit plan subject to the Act and this rule, the carrier shall file with the commissioner a copy of the applicable rating manual, for both new business and renewal rates, which includes:

(i) signed certification by an actuary that to the best of the actuary's knowledge and judgment the rate filing is in compliance with the applicable laws and rules of the State of Utah;

(ii) a complete and detailed description of how the final premium, including any fees, is calculated from the rating manual;

(iii) all changes and updates, which includes a complete and detailed description of how the final premium, including any fees, is calculated from the rating manual; and

(iv) a description of the carrier's classes of business as described in Subsection R590-167-4(1).

(b) The rate manual shall be filed:

(i) with an initial product filing; or

(ii) within 30 days prior to use for an existing health benefit plan

(3) Index Premium Rates.

(a) A small employer carrier shall file annually the index premium rate information required by Section 31A-29-117(2). The report shall include:

(i) the small employer index premium rate as of March 1 of the previous year;

(ii) the small employer index premium rate as of March 1 of the current year; and

(iii) the average percentage change in the index premium rate as of March 1 of the current and preceding year.

(b) The information described in Subsection R590-167-11(3)(a) shall be filed no later than April 1 of each year.

R590-167-12. Records.

Records submitted to the commissioner under this rule shall be maintained by the commissioner as protected records under Title 63, Chapter 2, Government Records Access and Management Act.

R590-167-13. Penalties.

A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-167-14. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 45 days from the rule's effective date.

R590-167-15. Severability.

If any provision of this rule or the application of it to any person or circumstance is, for any reason, held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances will not be affected by the invalid provision.

KEY: health insurance

October 7, 2004

Notice of Continuation September 28, 2004

31A-30-106

R590. Insurance, Administration.
R590-175. Basic Health Care Plan Rule.
R590-175-1. Authority.

This rule is issued pursuant to the general rulemaking authority vested in the commissioner by Section 31A-2-201. Section 31A-22-613.5(2)(a) requires that the commissioner adopt a Basic Health Care Plan.

R590-175-2. Statement of Purpose and Scope.

The purpose of the rule is to set standards for the Basic Health Care Plan which will be offered under the open enrollment provisions of Chapter 30. The commissioner has adopted the Basic Health Care Plan pursuant to Subsection 31A-22-613.5(2)(a) to be offered under those provisions. This rule applies to all insurers marketing health insurance policies subject to the open enrollment provisions of Chapter 30.

R590-175-3. General Requirements.

A. Each insurer who is required to offer a health care plan under the open enrollment provisions of Chapter 30 shall file with the department at least one health plan which is specified by the insurer as complying with the provisions of this rule and which must be offered for sale to anyone qualifying for open enrollment under Chapter 30.

B. The specified plan may offer additional services or provide a greater level of benefits than the Basic Health Care Plan. However, the specified plan must contain at least those benefits set forth in the Basic Health Care Plan.

C. The specified plan shall not be designed or marketed in a manner which may tend to discourage its purchase by anyone purchasing under the open enrollment provisions of Chapter 30.

D. A plan having actuarial equivalence may be considered, at the sole discretion of the commissioner.

E. Each insurer must use the language in this rule to present covered services, limitations and exclusions; however, any plan offered in compliance with the open enrollment provisions of Chapter 30 must contain at least the benefits set forth in the Basic Health Care Plan as adopted by the commissioner. The specified plan is to be offered as a package, in its entirety, and is mutually exclusive of and not comparable on a line by line basis to a carrier's other plans.

F. When the specified plan is offered by a preferred provider organization, PPO, the benefit levels shown in the Basic Health Care Plan are for contracting providers; benefit levels for non-contracting providers' services may be reduced in accordance with Section 31A-22-617.

G. Each insurer is to include its usual contracting provisions in its specified plan including submission of claims, coordination of benefits, eligibility and coverage termination, grievance procedures general terms and conditions, etc.

H. The form to follow for the Basic Health Care Plan is as follows:

TABLE
 BASIC HEALTH CARE PLAN

1. MAXIMUM BENEFIT. The maximum benefit per person for the entire period for which coverage is in effect shall not be less than \$1,000,000.
2. ANNUAL MAXIMUM BENEFIT. The maximum annual benefit per person shall not be less than \$250,000.
3. PREEXISTING CONDITION LIMITATION. Any preexisting condition limitation shall be in compliance with Utah Code 31A-30-107(5); the waiting period shall not exceed 12 months with credit for prior coverage when applicable.
4. COST-SHARING. Cost-sharing shall be based on eligible expenses. The cost-sharing features of the plan shall be one of the following, at the option of the carrier:
 - (a)(i) Deductible. An annual deductible may not be greater than \$1,000 per person and only two deductibles per family unit. However, when the person has a medical savings account, the deductible amount may be greater than \$1,000.
 - (ii) Copayment. See paragraph 6 for benefits applicable to

- prescription drugs.
- (iii) Coinsurance. For all covered services other than mental illness/substance abuse services and prescriptions, the person shall pay not more than 20% coinsurance to an annual maximum of \$3,000 per person, \$6,000 per family unit.
- (b)(i) Deductible. An annual deductible may not be greater than \$1,000 per person and only two deductibles per family unit. However, when the person has a medical savings account, the deductible amount may be greater than \$1,000. Preventive services under a managed care plan; e.g., HMO, PPO, are not subject to the deductible.
- (ii) Copayment. A copayment is not to exceed \$15 per visit for office, including preventive care, services. When a copayment is required, no coinsurance may be charged for the same service. See paragraph 6 for benefits applicable to prescription drugs.
- (iii) Coinsurance. For all covered services other than mental illness/substance abuse services and prescriptions, the person shall pay not more than 20% coinsurance to an annual maximum of \$3,000 per person, \$6,000 per family unit.
- (c)(i) Deductible. None.
- (ii) Copayment. A copayment is not to exceed \$20 per visit for office, including preventive care, services. When a copayment is required, no coinsurance may be charged for the same service. See paragraph 6 for benefits applicable to prescription drugs.
- (iii) Coinsurance. For all covered services other than mental illness/substance abuse services and prescriptions, the person shall pay not more than 30% coinsurance to an annual maximum of \$3,000 per person, \$6,000 per family unit.
5. PREVENTIVE SERVICES. Preventive services covered under a managed care plan shall not be subject to the annual deductible. Preventive services under an indemnity or fee-for-service plan may be subject to the annual deductible. Covered preventive services shall consist of at least the following:
 - (a) childhood immunizations in accordance with guidelines as recommended by the Centers for Disease Control, as modified from time to time;
 - (b) well-baby care through age five in accordance with guidelines recommended by the American Academy of Pediatrics, as modified from time to time;
 - (c) for adults and adolescents, age, sex and risk appropriate preventive and screening services in accordance with guidelines recommended by the U.S. Preventive Services Task Force, as modified from time to time.
6. PRESCRIPTION DRUGS. Benefits for prescription drugs, other than self injectable drugs, except insulin, shall be subject to either:
 - (a) a copayment of not more than \$15 for generic, \$25 for brand-name formulary prescription drugs, and \$35 for non-formulary prescription drugs; or
 - (b) at the option of the carrier, benefits may be subject to a 30% maximum coinsurance.
 Carriers may use formularies and may choose to not apply out-of-pocket costs of prescription drugs to out-of-pocket maximums.
7. OUTPATIENT REHABILITATION SERVICES. Benefits for outpatient rehabilitation services (e.g., physical therapy, occupational therapy, and speech therapy) shall be limited to not less than 10 visits for each illness or injury.
8. MENTAL ILLNESS AND/OR SUBSTANCE ABUSE SERVICES. Benefits for mental illness and/or substance abuse services may be subject to a deductible. Coinsurance may not exceed 50% of eligible expenses and may not apply toward the maximum. Benefits shall be one of the following, at the option of the carrier:
 - (a) benefits for inpatient services shall be limited to not less than ten days annually per person; benefits for outpatient services shall be limited to not less than 20 visits annually per person;
 - (b) mental health and/or substance abuse services for group policies will be subject to 31A-22-625 and 31A-22-720.
9. HOME HEALTH CARE. Benefits for home health care shall be limited to not less than 30 days in any 12 month period and shall consist of services provided, in accordance with a plan of care, in the home by a licensed community home health agency or an approved hospital program for home health care when the person is physically unable to obtain necessary medical care on an outpatient basis, would otherwise be confined as an inpatient, and is under the care of a physician. A "plan of care" means a written plan that:
 - (a) is approved by the physician prior to commencement of treatment;
 - (b) is based on the assessment data or physician orders; and
 - (c) identifies the patient's needs, who will provide needed services, how often, treatment goals, and anticipated outcomes.
 Covered services shall not include health aide services furnished when the person is not receiving professional services of a registered nurse (RN), licensed practical nurse (LPN), or licensed vocational nurse (LVN), nor shall it include housekeeping services.
10. DURABLE MEDICAL EQUIPMENT. Benefits for durable medical equipment, rental or purchase, at the option of the carrier. Prosthetics and orthotics shall be limited to not less than \$5,000 per person for the entire period for which coverage is in effect.
11. COVERED SERVICES. Subject to medical necessity, provider network, and prior approval criteria established by the carrier,

and subject to the limitations and exclusions and other terms and conditions of the policy, the following shall be covered services under the basic health care plan:

- (a) inpatient hospital services:
 - (i) semi-private room accommodations;
 - (ii) ICU;
 - (iii) hospital services and supplies;
- (b) ambulatory service facility services:
 - (i) birthing center services, when maternity care is covered;
 - (ii) surgical facility services;
- (c) office preventive services;
- (d) office medical services:
 - (i) diagnostic services; e.g., x-ray, lab tests;
 - (ii) therapeutic services; e.g., injection of medication;
- (e) outpatient hospital services:
 - (i) emergency room services;
 - (ii) diagnostic services;
 - (iii) therapeutic services; e.g., chemotherapy, radiation therapy;
 - (iv) surgical facility services;
 - (f) inpatient medical services; e.g., physician visits;
 - (g) surgery;
 - (h) assistant-at-surgery;
 - (i) anesthesia, including children's general anesthesia for dental, if necessary;
 - (j) consultation;
 - (k) dental care for accidental injury to sound natural teeth;
 - (l) limited home health care;
 - (m) emergency ambulance transportation;
 - (n) prescription drugs;
 - (o) durable medical equipment, prosthetics and orthotics, as limited; and medical supplies;
 - (p) maternity services:
 - (i) for employer groups maternity benefits are provided on the same basis as benefits for sickness;
 - (ii) for individuals there are no maternity benefits;
 - (iii) benefits for complications of pregnancy are provided on the same basis as benefits for sickness. Complications of pregnancy will not be excluded solely because the pregnancy is a preexisting condition. "Complications of pregnancy" means an illness, distinct from pregnancy, affecting the mother and occurring during pregnancy and requiring separate and specific medical or surgical services for which separate and additional charges are incurred. In no event will the presence of complications of pregnancy result in benefits being provided for services normal to care and treatment of pregnancy and childbirth. Such normal services include but are not limited to hospitalization for childbirth or termination of pregnancy by any means, anesthesia services, ultrasound examinations, prenatal diagnostic laboratory services, antepartum and postpartum care, vaginal or cesarean delivery, threatened premature termination, premature termination, and routine nursery care of the newborn;
 - (iv) newborn and maternity inpatient time limits will conform to 31A-22-610.2. For conversion plans, maternity will be covered with the lesser of benefits originally on plan prior to conversion or the basic benefit plan. This coverage benefit is only for existing pregnancies, known or unknown at the time of conversion. Additional premium for pregnancy is not allowed;
 - (q) limited outpatient rehabilitation services;
 - (r) limited mental illness/substance abuse services;
 - (s) diabetes as required by 31A-22-626.
 - (t) inborn metabolic errors, PKU, nutritional benefits as required by 31A-22-623; and
 - (u) mastectomy as required by 31A-22-630 and 31A-22-719.

12. EXCLUSIONS. Benefits will not be provided for any of the following:

- (a) services, supplies, or treatment provided prior to the effective date or after the termination date of coverage;
- (b) charges in connection with a work-related injury or sickness for which coverage is provided under any state or federal worker's compensation, employer's liability, or occupational disease law;
- (c) services, supplies, or treatment for which coverage is provided under any motor vehicle no-fault plan. When the person is required by law to have no-fault insurance in effect, this exclusion applies to charges up to the minimum coverage required by law whether or not such coverage is in effect;
- (d) services, supplies, or treatment for injury or sickness resulting from war or any act of war whether declared or undeclared;
- (e) services, supplies, or treatment for injury or sickness resulting from service in the military of any country;
- (f) services, supplies, or treatment for which benefits are provided under Medicare or any other government program except Medicaid;
- (g) services, supplies, or treatment for which no charge is made or for which the person is not required to pay;
- (h) services or supplies not incident to or necessary for the treatment of injury or sickness or which are not medically necessary, as determined by the carrier;
- (i) treatment or prevention of an injury or sickness, including

mental illness, by means of treatments, procedures, techniques, or therapy outside generally accepted health care practice;

- (j) services, supplies, or treatment required as a result of an injury or sickness sustained while committing a felony or engaging in an illegal occupation;
- (k) services to the extent benefits are provided by any governmental unit except as required by federal law for treatment of veterans in Veterans Administration or armed forces facilities for non-service related medical conditions;
- (l) examinations, reports, or appearances in connection with legal proceedings; and services, supplies, or accommodations pursuant to a court order, whether or not injury or sickness is involved;
- (m) investigative/experimental technology, treatment, procedure, facility, equipment, drug, device or supply, "technology," which does not, as determined by the carrier on a case by case basis, meet all of the following criteria:
 - (i) the technology must have final approval from appropriate governmental regulatory bodies, if applicable;
 - (ii) the technology must be available in significant number outside the clinical trial or research setting;
 - (iii) the available research regarding the technology must be substantial. For purposes of this definition, "substantial" means sufficient to allow the carrier to conclude that:

- (A) the technology is both medically necessary and appropriate for the person's treatment;
- (B) the technology is safe and efficacious; and
- (C) more likely than not, the technology will be beneficial to the person's health;

- (iv) the regional medical community as a whole must generally recognize the technology as appropriate;
- (n) services in connection with any transplant of any whole organ or part thereof, live or cadaver, bone marrow, either as donor or recipient, or any artificial organ, except for the following:

- (i) cornea transplants;
- (ii) kidney transplants;
- (iii) liver transplants for children under age 18 years;
- (iv) bone marrow transplants for children under age 18 years; and
- (v) evaluation, treatment and therapy involving the use of myeloablative chemotherapy with autologous hematopoietic stem cell and/or colony stimulating factor support for children under age 18 years;

- (o) custodial care. "Custodial care" means:
 - (i) institutional care, consisting mainly of room and board, which is for the primary purpose of controlling the person's environment; and

- (ii) professional or personal care, consisting mainly of non-skilled nursing services with or without medical supervision, which is for the primary purpose of managing the person's disability or maintaining the person's degree of recovery already attained without reasonable expectation of significant further recovery.

"Custodial care" does not mean outpatient palliative and supportive care provided by a hospice program to a person who is terminally ill with a life expectancy of not more than six months and is in lieu of institutional or inpatient hospital care;

- (p) services, supplies, or treatment in connection with cosmetic or reconstructive procedures which alter appearance but do not restore or improve impaired physical function or which are performed for psychological or emotional purposes, except when performed while a person is covered under this policy for the following:

- (i) repair of defects resulting from an accident occurring within 90 days of the effective date of this policy under creditable coverage or occurring during this policy;
- (ii) replacement of diseased tissue surgically removed for illness occurring within 90 days of this policy under creditable coverage or occurring during this policy;

- (iii) treatment of a birth defect in a child who has met the pre-existing conditions requirement since birth or date of placement for adoption; and
- (iv) mastectomy reconstruction as required by 31A-22-630 and 31A-22-719;

- (q) dental services. This exclusion will not apply if dental services are required as a result of an accidental injury which occurs while coverage is in force, dental services are received within two years following the accidental injury, and the person has been continuously covered from the date of the accidental injury through the date the dental services are provided;
- (r) eyeglasses, contact lenses and/or servicing of eyeglasses and/or contact lenses. This exclusion does not apply to contact lenses in the case of keratoconus or post-cataract surgery when the contact lenses are medically necessary in the treatment of the condition;

- (s) medical, non-surgical, care of weak, strained, flat, unstable or unbalanced feet routine foot care. The exclusion of routine foot care does not apply to cutting or removal of corns, calluses, or nails when provided to a person who has a systemic disease, such as diabetes with peripheral neuropathy or circulatory insufficiency, of such severity that unskilled performance of the procedure would be hazardous;

(t) orthopedic or corrective shoes, foot orthotics, or any other supportive devices for the feet;

(u) drugs and medicines which do not bear the legend "Caution - federal law prohibits dispensing without a prescription" and/or which are not dispensed by a licensed pharmacist;

(v) charges in connection with jaw realignment procedures including, but not limited to, osteotomy, upper or lower jaw augmentation or reduction procedures, and orthognathic surgery; charges in connection with treatment of temporomandibular joint (TMJ) dysfunction, including surgical procedures and injections of the TMJ, physical therapy, splints, and orthodontic appliances. This exclusion will not apply to:

(i) the initial diagnostic evaluation of TMJ dysfunction;

(ii) surgical correction of the TMJ required as a result of an accidental injury which occurs while this coverage is in force; and

(iii) physical therapy services related to and subsequent to covered TMJ surgery;

(w) treatment of obesity by means of surgical, medical or medication services and regardless of associated medical, emotional, or psychological conditions;

(x) services or supplies in connection with genetic studies;

(y) implantable contraceptives (hormonal or other);

(z) reversal of a sterilization procedure;

(aa) any treatment for or diagnosis of infertility, artificial insemination, in vitro fertilization, and any other male or female dysfunction;

(bb) vision testing, vision training;

(cc) radial keratotomy, laser and any surgical correction of errors of refraction;

(dd) educational service or counseling, including weight control clinics, stop smoking clinics, cholesterol counseling, exercise programs or other types of physical fitness training, except for those benefits required by 31A-22-626;

(ee) marriage counseling; family counseling; counseling for educational, social, occupational, religious, or other similar maladjustment; behavior modification, biofeedback, or rest cures as treatment for mental disorders; sensitivity or stress-management training; self-help training; and residential treatment;

(ff) treatment for mental disorders which are irreversible or for which there is little or no reasonable expectation for improvement, including mental retardation, personality disorders, and chronic organic brain disease. This exclusion does not apply to the initial assessment for diagnosis of the condition;

(gg) psychotherapy, counseling, or other services in connection with learning disabilities, disruptive behavior disorders, conduct disorders, psychosexual disorders, or transexualism. This exclusion does not apply to the initial assessment for diagnosis of the condition;

(hh) vitamins, special formulas, special diets, and food supplements except as provided by a hospital or skilled nursing facility during a confinement for which benefits are available, except as outlined in 31A-22-623;

(ii) any devices used to aid hearing, including cochlear implants, the fitting of such devices and any routine hearing tests;

(jj) acupuncture or acupressure;

(kk) speech therapy for psychosocial speech delays;

(ll) all shipping, handling, or postage charges except as incidentally provided, without a separate charge, in connection with covered services or supplies;

(mm) interest or finance charges except as specifically required by law;

(nn) charges for missed appointments, telephone consultations, and clerical services for completion of special reports or claim forms;

(oo) travel expenses, whether or not prescribed;

(pp) care, except urgent or emergency care, rendered outside the United States;

(qq) services provided by a member of the person's immediate family or household; and

(rr) autopsy procedures.

I. The specified plan is to be filed with the department before use.

J. Conversion coverage provided pursuant to Section 31A-22-708, may provide additional benefits in addition to the Basic Health Care Plan.

R590-175-4. Severability.

If a provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of these provisions shall not be affected.

**KEY: insurance
August 23, 2001**

31A-22-613.5

Notice of Continuation December 15, 2000

R590. Insurance, Administration.**R590-194. Coverage of Dietary Products for Inborn Errors of Amino Acid or Urea Cycle Metabolism.****R590-194-1. Authority.**

This rule is promulgated pursuant to Subsections 31A-2-201(1) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. The authority to set minimum standards by rule for coverage of dietary products for inborn errors of amino acid or urea cycle metabolism is provided by Subsection 31A-22-623(2).

R590-194-2. Purpose.

The purpose of this rule is to establish minimum standards of coverage for dietary products, including formulas and low protein modified food products, used for the treatment of inborn errors of amino acid or urea cycle metabolism. This coverage will be provided at levels consistent with the major medical benefit provided under a disability insurance policy. This entails the identification of a uniform billing code standard to be used by health insurers for the processing of claims covering dietary formulas in conjunction with the treatment of these specific inborn metabolic errors.

R590-194-3. Definitions.

For purposes of this rule the commissioner adopts the definitions as particularly set forth in Section 31A-1-301 and Subsection 31A-22-623(1).

R590-194-4. Applicability and Scope.

(1) This rule applies to all disability insurance policies sold in Utah which contain major medical benefits.

(2) This rule does not prohibit an insurer from requesting additional information required to determine eligibility of the claim under the terms of the policy, certificate or both, as issued to the claimant.

R590-194-5. Minimum Standards and General Provisions.

(1) Dietary products used for the treatment of inborn errors of amino acid or urea cycle metabolism must be used under the direction of a physician.

(2) Preauthorization for dietary products may be required if the preauthorization requirement is stated in the policy.

(3) Each insurer will provide direct access to a designated person familiar with the pertinent information in this rule, in order to facilitate the processing of claims for medical foods and low protein modified food products.

(4) For the purpose of this rule, dietary products will be paid under the major medical benefit, not under any limited benefit, such as Durable Medical Equipment (DME). The dietary product benefit is subject only to the major medical benefit limit.

(5) The uniform billing code Standard Number 27-4010, "Coverage for Metabolic Dietary Products," published by the Utah Health Information Network, implemented February 12, 1999, is incorporated in this rule by reference. This uniform billing standard is adopted under 31A-22-614.5, and shall be accepted and utilized for the billing and processing of claims for medical food and low protein modified food products coverage. This standard is available at the Utah Insurance Department upon request.

R590-194-6. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such validity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance law**December 1, 1999****Notice of Continuation November 9, 2004****31A-2-201****31A-22-614.5****31A-22-623**

R623. Lieutenant Governor, Elections.**R623-1. Lieutenant Governor's Procedure for Regulation of Lobbyist Activities.****R623-1-1. Purpose.**

Pursuant to Utah Code Section 36-11-404 this rule provides procedures for the lieutenant governor's office to:

- A. Issue lobbyist licenses;
- B. Disapprove lobbyist applications;
- C. Suspend and revoke lobbyist licenses;
- D. Reinstate lobbyist licenses; and
- E. Appoint administrative law judges.

R623-1-2. Authority.

This rule is required by Utah Code Section 36-11-404.

R623-1-3. Definitions.

In addition to the terms defined in Utah Code Section 36-11-102, the following definitions apply:

- A. "Director" means the director of the state elections office.
- B. "Register" means the process of obtaining a lobbying license as required by Sections 36-11-103 and 36-11-105.
- C. "Report" means any report required under Sections 36-11-201.

R623-1-4. Registration/License Application Procedure.

A. In order to register and obtain a license, a lobbyist shall:

1. Pay the \$25 registration fee.
2. File a registration/license application statement in compliance with the provisions of Section 36-11-103. The lieutenant governor's office shall make available forms that comply with Section 36-11-103. The lobbyist may either:
 - (a) Submit the completed form to the lieutenant governor's office; or
 - (b) File the lobbyist registration/license application by completing the electronic form available on the Utah Lobbyist Online system; and submit the completed signature authorization form to the lieutenant governor's office.

B. Upon receipt of a completed lobbyist registration/license application form the lieutenant governor's office shall:

1. Review the registration form for accuracy, completeness and compliance with the law;
2. Approve or disapprove the registration/license application; and
3. Notify the lobbyist in writing within 30 days of approval or disapproval.

C. An applicant who has not been convicted of any of the offenses listed in Section 36-11-103(4)(a)(i), and who has not had a civil penalty imposed as described in Section 36-11-103(4)(a)(ii), may commence lobbying activities upon filing of a completed registration/license application form with the lieutenant governor's office and payment of the registration fee.

D. By applying for a license, the lobbyist certifies that the lobbyist intends to engage in lobbying activities under the circumstances stated in the application or supplements filed with the lieutenant governor's office during the time the registration and license are valid.

1. If a lobbyist intends to cease all lobbying activities for the remainder of the period of licensure, the lobbyist shall notify the lieutenant governor's office in writing and surrender the license.

2. If the lobbyist has a change in circumstances that affects the lobbyist's activities, the lobbyist shall notify the lieutenant governor's office in writing.

3. If a lobbyist has surrendered the license and then decides to reengage in lobbying activities, a reissued license without a fee may be requested, if it is within the 2-year period

of the original registration.

4. The lobbyist must submit a written request to the lieutenant governor's office in order to have the license reissued.

5. A reissued license expires on December 31 of each even numbered year in accordance with Section 36-11-103(3)(b).

E. A lobbyist may add and delete principals and provide other notices electronically as prescribed by the lieutenant governor's office.

R623-1-5. Disapproval of Application.

A. A lobbyist who is convicted of violation of any of the offenses listed in Utah Code Section 36-11-103, shall have his application for license disapproved by the lieutenant governor's office and a license will not be issued.

B. The lobbyist will receive written notice of the license disapproval from the lieutenant governor's office within 30 days.

R623-1-6. Suspensions, Revocations and Fines.

A. Registration and reporting violations.

1. In addition to any fines imposed under 36-11-401, a lobbyist license may be suspended for any of the following willful and knowing violations of Section 36-11-103, Sections 36-11-201:

- a. Failure to register;
- b. Failure to file a year end or supplemental report on or before the statutory due date;
- c. Failure to file a year end or supplemental report;
- d. Filing a report or other document that contains materially false information or the omission of material information; including, but not limited to, the failure to list all principals for which the lobbyist works or is hired as an independent contractor;
- e. Failure to update a registration when a lobbyist accepts a new client for lobbying; or
- f. Otherwise violating Sections 36-11-103, 36-11-201.

2. If a fine or other penalty is imposed more than once under the immediately preceding section, suspension or permanent revocation of the lobbyist license shall be imposed.

3. The determination of the penalty to be imposed will be made by following the procedures as provided by Section R623-1-7.

B. Illegal Activities of lobbyists.

1. If the lieutenant governor's office discovers or receives evidence of a possible violation of Sections 36-11-301 to 305, the evidence will be sent to the appropriate county attorney or district attorney's office for prosecution.

2. If a lobbyist is convicted of a violation of Sections 36-11-103, 36-11-201, 36-11-301, 36-11-302, 36-11-303, 36-11-304, 36-11-305 or 36-11-403, the lieutenant governor shall revoke the lobbyist license for one year as required by Subsection 36-11-401(1) and give the lobbyist notice of the same, together with notice of the lobbyist's right to request a hearing under Section R623-1-9.

3. If the county or district attorney does not prosecute a possible violation under Sections 36-11-302 or 36-11-303, the lieutenant governor's office shall review the evidence to determine if a civil fine or suspension may be appropriate following the procedures for civil enforcement set forth in Section R623-1-7.

4. If a lobbyist is convicted of a violation of any of the Title 76 Criminal Code Sections referenced in Subsection 36-11-401(4), suspension of up to three years or permanent revocation of the lobbyist license shall be imposed, but no civil fine may be imposed. The determination of whether to revoke or suspend a lobbyist license and for what length of time shall be made following the procedures for civil enforcement as provided by Section R623-1-7.

R623-1-7. Enforcement.

A. Any person with evidence of a possible violation of the Lobbyist Disclosure and Regulation Act may provide such evidence to the director in the lieutenant governor's office or may file a complaint with such officer. If the evidence is of a criminal violation, the person may report the information directly to the appropriate county attorney or district attorney.

B. If the director discovers or receives evidence of a criminal violation, such evidence shall be provided to the appropriate county or district attorney and any civil enforcement actions will proceed as set forth in Subsection R623-1-6(B).

C. If the director discovers or receives evidence of a violation of a civil provision, the director will investigate the alleged violation and make a determination regarding what fine and/or suspension or revocation should be imposed, if any.

D. The director shall give notice of the recommended penalty to the lobbyist, and if a complaint was filed, to the complainant.

E. If either the lobbyist or the complainant desire to contest the recommended penalty, they or either of them may do so by requesting a hearing within fifteen (15) days of receipt of the notice of the recommended penalty. If neither file a request for a hearing within the fifteen day period, the recommended penalty will be the penalty imposed for the violation. The notice of recommended penalty shall include a notice of hearing rights.

F. The administrative law judge for the hearing is not bound by the recommended penalty and may impose a penalty greater or less than the recommended penalty, as seems justified by the evidence.

G. If a lobbyist license is suspended or revoked, the lieutenant governor's office shall remove the lobbyist's name from the official list and notify the following of such:

1. The speaker of the house of representatives;
2. The president of the senate; and
3. The governor.

R623-1-8. Hearings, Appointment of Administrative Law Judges.

A. Hearings will be conducted as informal adjudicative proceedings under the Administrative Procedures Act.

B. The lieutenant governor's office shall appoint administrative law judges from state agencies to act as presiding officers over adjudicative proceedings.

R623-1-9. Reinstatement of a Lobbyist License.

A. A lobbyist whose license is suspended or revoked may apply for reinstatement.

B. The lieutenant governor's office shall not reinstate any lobbyist license until the lobbyist pays any fines that have been imposed.

KEY: lobbyist
October 19, 2004

36-11-404

Notice of Continuation November 4, 2004

R623. Lieutenant Governor, Elections.**R623-3. Utah State Plan on Election Reform.****R623-3-1. Purpose.**

The purpose of this rule is to incorporate by reference the policies and procedures of the Utah State Plan on Election Reform adopted by the State Plan Committee on November 8, 2004.

R623-3-2. Authority.

This rule is authorized by 42 USC 15404; 42 USC 15403(e); Utah Code Subsection 67-1a-2(2); and Utah Constitution Article VII, Sections 1, 5 and 14.

R623-3-3. Incorporation of the Utah State Plan on Election Reform.

The State Elections Office incorporates by reference the Utah State Plan on Election Reform adopted on November 8, 2004. The Utah State Plan on Election Reform originally adopted on September 25, 2003, was published in the Federal Register (69 FR14002) on March 24, 2004.

KEY: elections, state plan, federal election reform**June 16, 2004** **Article VII, Sections 1, 5, and 14****67-1a-2(2)****42 U.S.C. 15404****42 U.S.C. 15403(e)**

R651. Natural Resources, Parks and Recreation.**R651-620. Protection of Resources Park System Property.****R651-620-1. Applicability of Criminal Code.**

Offenses against capital improvements, natural and cultural resources will normally be handled through the Utah Criminal Code.

R651-620-2. Trespass.

(1) A person may be found guilty of a class B misdemeanor, as stated in Utah Code Annotated, Section 63-11-17.3, if that person engages in activities within a park area without specific written authorization by the division. These activities include: (a) construction, or causing to construct, any structure, including buildings, fences water control devices, roads, utility lines or towers, or any other improvements; (b) removal, extraction, use, consumption, possession or destruction of any natural or cultural resource; (c) grazing of livestock, except as provided in Utah Code Annotated, Section 72-3-112. A cause of action for the trespass of livestock may be initiated in accordance with 78-12-26 (2); (d) use or occupation of park area property for more than 30 days after the cancellation or expiration of permit, lease, or concession agreement; or (e) any use or occupation in violation of division rules.

(2) The provisions of this section do not apply to division employees in the performance of their duties.

(3) Violations described in section (1) are subject to penalties as provided in Utah Code Annotated, Section 76-3-204 and Section 76-3-301.

R651-620-3. Tossing, Throwing, or Rolling of Rocks and other Materials.

The tossing, throwing, or rolling of rocks or other materials into valleys or canyons or down hills and mountains is prohibited.

R651-620-4. Firewood.

Collecting or cutting of firewood is prohibited without a permit.

R651-620-5. Glass Containers.

Use or possession of glass containers is prohibited in posted areas.

R651-620-6. Metal Detecting.

Metal detecting is prohibited without a permit.

KEY: parks, trespass**November 16, 2004****Notice of Continuation October 23, 2003****63-11-17**

R710. Public Safety, Fire Marshal.**R710-3. Assisted Living Facilities.****R710-3-1. Introduction.**

Pursuant to Title 53, Chapter 7, Section 204, of the Utah Code Annotated 1953, the Utah Fire Prevention Board adopts for the purpose of establishing minimum standards for prevention of fire and for the protection of life and property against fire and panic in assisted living facilities.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 International Fire Code (IFC), 2003 edition, as published by the International Code Council, Inc. (ICC), except as amended by provisions listed in R710-3-3, et seq.

1.2 International Building Code (IBC), 2003 edition, as published by the International Code Council, Inc. (ICC), and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.

1.3 Copies of the above code are on file in the Office of Administrative Rules and the State Fire Marshal.

R710-3-2. Definitions.

2.1 "Ambulatory" means a person who is capable of achieving mobility sufficient to exit without the physical assistance of another person. An equivalency to "Ambulatory" may be approved under the conditions stated in Sections 3.2.9, 3.3.8 or 3.4.9.

2.2 "Assisted Living Facility" means:

2.2.1 a Type 1 Assisted Living Facility, which is a residential facility licensed by the Utah Department of Health, that provides a protected living arrangement for ambulatory, non-restrained persons who are capable of achieving mobility sufficient to exit the facility without the physical assistance of another person.

2.2.2 a Type 2 Assisted Living Facility, which is a residential facility licensed by the Utah Department of Health, that provides an array of coordinated supportive personal and health care services to residents who meet the definition of semi-independent.

2.2.3 a Residential Treatment Assisted Living Facility, which creates a group living environment for four or more residents licensed by the Utah Department of Human Services, and provides a protected living arrangement for ambulatory, non-restrained persons who are capable of achieving mobility sufficient to exit the facility without the physical assistance of another person.

2.2.4 Assisted Living Facilities shall be classified by size as follows:

2.2.4.1 "Type 1, 2, and Residential Treatment Limited Capacity Facility" means an assisted living facility accommodating five or less residents, excluding staff.

2.2.4.2 "Type 1, 2, and Residential Treatment Small Facility" means an assisted living facility accommodating at least six and not more than 16 residents, excluding staff.

2.2.4.3 "Type 1, 2, and Residential Treatment Large Facility" means an assisted living facility accommodating more than sixteen residents, excluding staff.

2.3 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his duly authorized deputies, or the local fire enforcement authority.

2.4 "Board" means Utah Fire Prevention Board.

2.5 "IBC" means International Building Code.

2.6 "ICC" means International Code Council, Inc.

2.7 "IFC" means International Fire Code.

2.8 "Licensing Authority" means the Utah Department of Health or the Utah Department of Human Services.

2.9 "Semi-independent" means a person who is:

2.9.1 physically disabled but able to direct his or her own care; or

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

2.10 "SFM" means State Fire Marshal.

R710-3-3. Amendments and Additions.

3.1 General Requirements

3.1.1 All facilities shall be inspected annually and obtain a certificate of fire clearance signed by the AHJ.

3.1.2 All facility administrators shall develop emergency plans and preparedness as required in IFC, Chapter 4.

3.1.3 IFC, Chapter 9, Sections 907.3.1.2 and 907.3.1.8 is deleted.

3.2 Type 1 Assisted Living Facilities

3.2.1 Type 1 Limited Capacity Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-3, and maintained in accordance with the IBC and IFC.

3.2.2 Type 1 Limited Capacity Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

3.2.3 Residents in Type 1 Limited Capacity Assisted Living Facilities shall be housed on the first story only, unless an approved outside exit leading to the ground level is provided from any upper or lower level. Split entry/split level type homes in which stairs to the lower and upper level are equal or nearly equal, may have residents housed on both levels when approved by the AHJ.

3.2.4 In Type 1 Limited Capacity Assisted Living Facilities, resident rooms on the ground level, shall have escape or rescue windows as required in IFC, Chapter 10, Section 1025.

3.2.5 In Type 1 Limited Capacity Assisted Living Facilities an approved independent smoke detector shall be installed in each sleeping room and access hallway.

3.2.6 Type 1 Small Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-4, and maintained in accordance with the IBC and IFC.

3.2.6.1 An automatic fire sprinkler system shall be provided throughout buildings listed as Group R-4 that contain more than eight occupants. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas. 3.2.7 Type 1 Small Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

3.2.8 Type 1 Large Assisted Living Facilities shall be constructed in accordance with IBC, Institutional Group I-1, and maintained in accordance with the IBC and IFC.

3.2.8.1 An automatic fire sprinkler system shall be provided throughout buildings classified as Group I. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

3.2.9 In a Type 1 Assisted Living Facility, non-ambulatory persons are permitted after receiving approval for a variance from the Utah Department of Health as allowed in Utah Administrative Code, R432-2-18.

3.3 Type 2 Assisted Living Facilities

3.3.1 Type 2 Limited Capacity Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-4, and maintained in accordance with the IBC and IFC.

3.3.1.1 An automatic fire sprinkler system shall be provided throughout buildings classified as Group R-4 that contain more than eight occupants. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

3.3.2 Type 2 Limited Capacity Assisted Living Facilities

shall have an approved automatic fire extinguishing system installed in compliance with the IBC and IFC, or provide a staff to a resident ratio of one to one on a 24 hour basis.

3.3.3 Type 2 Small Assisted Living Facilities shall be constructed in accordance with IBC, Institutional Group I-1, and maintained in accordance with the IBC and IFC.

3.3.3.1 An automatic fire sprinkler system shall be provided throughout buildings classified as Group I. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

3.3.4 Type 2 Small Assisted Living Facilities shall have a minimum corridor width of six feet.

3.3.4.1 Type 2 Small Assisted Living Facilities in existence before November 16, 2004, shall have a minimum corridor width of six feet or a path of egress that is acceptable to the AHJ.

3.3.5 Type 2 Large Assisted Living Facilities shall be constructed in accordance with IBC, Institutional Group I-2, and maintained in accordance with the IBC and IFC.

3.3.5.1 An automatic fire sprinkler system shall be provided throughout buildings classified as Group I. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

3.3.6 In Type II Assisted Living Facilities, where the clinical needs of the patients require specialized security, approved access controlled egress doors may be installed when all of the following are met:

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

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

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

3.3.7 In Type II Assisted Living Facilities, where the clinical needs of the patients require approved, listed delayed egress locks, they shall be installed on doors as allowed in IBC, Section 1008.1.8.6. Section 1008.1.8.6(3) is deleted.

3.3.8 In a Type II Assisted Living Facility, non-ambulatory persons are permitted after receiving approval for a variance from the Utah Department of Health as allowed in Utah Administrative Code, R432-2-18.

3.4 Residential Treatment Assisted Living Facilities

3.4.1 Residential Treatment Limited Capacity Assisted Living Facility shall be constructed in accordance with IBC, Residential Group R-3, and maintained in accordance with the IBC and IFC.

3.4.2 Residential Treatment Limited Capacity Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

3.4.3 Residents in Residential Treatment Limited Capacity Assisted Living Facilities shall be housed on the first story only, unless an approved outside exit leading to the ground level is provided from any upper or lower level. Split entry/split level type homes in which stairs to the lower and upper level are equal or nearly equal, may have residents housed on both levels when approved by the AHJ.

3.4.4 In Residential Treatment Limited Capacity Assisted Living Facilities, resident rooms on the ground level, shall have escape or rescue windows as required in IBC, Chapter 10, Section 1009.

3.4.5 In Residential Treatment Limited Capacity Assisted Living Facilities an approved independent smoke detector shall be installed in each sleeping room and access hallway.

3.4.6 Residential Treatment Small Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-4, and maintained in accordance with the

IBC and IFC.

3.4.7 Residential Treatment Small Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

3.4.8 Residential Treatment Large Assisted Living Facilities shall be constructed in accordance with IBC, Institutional Group I-1, and maintained in accordance with the IBC and IFC.

3.4.8.1 An automatic fire sprinkler system shall be provided throughout buildings classified as Group I. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

3.4.9 In a Residential Treatment Assisted Living Facility, non-ambulatory persons are permitted after meeting the requirements listed in Utah Administrative Code, R501-2-11, and receiving approval from the Office of Licensing, Utah Department of Human Services.

R710-3-4. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-3-5. Validity.

The Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or the codes adopted, be declared invalid, it is the intent of the Board that it would have passed all other portions of this action, independent of the elimination of any portions as may be declared invalid.

R710-3-6. Conflicts.

In the event where separate requirements pertain to the same situation in the adopted codes, the more restrictive requirement shall govern, as determined by the AHJ.

R710-3-7. Adjudicative Proceedings.

7.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

7.2 A person may request a hearing on a decision made by the AHJ by filing an appeal to the Board within 20 days after receiving final decision from the AHJ.

7.3 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

7.4 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

7.5 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

7.6 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

7.7 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

KEY: assisted living facilities

November 16, 2004

Notice of Continuation June 19, 2002

53-7-204

R710. Public Safety, Fire Marshal.**R710-8. Day Care Rules.****R710-8-1. Adoption of Codes.**

Pursuant to Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum standards for the prevention of fire and for the protection of life and property against fire and panic in any day care facility or children's home.

There is further adopted as part of these rules the following codes which are incorporated by reference:

1.1 International Fire Code (IFC), 2003 edition, as published by the International Code Council, Inc. (ICC), except as amended by provisions listed in R710-8-3, et seq.

1.2 International Building Code (IBC), 2003 edition, as published by the International Code Council, Inc. (ICC), and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.

1.3 Copies of the above codes are on file in the Office of Administrative Rules and the Office of the State Fire Marshal.

R710-8-2. Definitions.

2.1 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his duly authorized deputies, or the local fire enforcement authority.

2.2 "Board" means Utah Fire Prevention Board.

2.3 "Client" means a child or adult receiving care from other than a parent, guardian, relative by blood, marriage or adoption.

2.4 "Day Care Facility" means any building or structure occupied by clients of any age who receive custodial care for less than 24 hours by individuals other than parents, guardians, relatives by blood, marriage or adoption.

2.5 "Day Care Center" means providing care for five or more clients in a place other than the home of the person cared for. This would also include Child Care Centers or Hourly Child Care Centers licensed by the Department of Health.

2.6 "Family Day Care" means providing care for clients listed in the following two groups:

2.6.1 Type 1 - Services provided for five to eight clients in a home. This would also include a home that is certified by the Department of Health as Residential Certificate Child Care or licensed as Family Child Care.

2.6.2 Type 2 - Services provided for nine to sixteen clients in a home with sufficient staffing. This would also include a home that is licensed by the Department of Health as Family Child Care.

2.7 "IBC" means International Building Code.

2.8 "ICC" means International Code Council, Inc.

2.9 "IFC" means International Fire Code.

2.10 "SFM" means State Fire Marshal.

R710-8-3. Amendments and Additions.**3.1 Exemptions**

3.1.1 Places of religious worship shall not be required to meet the provisions of this rule in order to operate a nursery or day care while religious services are being held in the building.

3.2 Fire Code Amendments

3.2.1 IFC, Chapter 2, Section 202, Educational E, Day Care is amended as follows: On line three delete the word "five" and replace it with the word "four".

3.2.2 IFC, Chapter 2, Section 202, Institutional Group I-4, day care facilities, Child care facility is amended as follows: On line three delete the word "five" and replace it with the word "four". Also on line two of the Exception delete the word "five" and replace it with the word "four".

3.2.3 IFC, Chapter 9, Sections 907.3.1.1 Group E is deleted.

3.3 Family Day Care

3.3.1 Family Day Care units shall have on each floor occupied by clients, two separate means of egress, arranged so that if one is blocked the other will be available.

3.3.2 Family Day Care units that are located in the basement or on the second story shall be provided with two means of egress, one of which shall discharge directly to the outside.

3.3.2.1 Type 1 Family Day Care units, located on the ground level or in a basement, may use an emergency escape or rescue window as allowed in IFC, Chapter 10, Section 1009.

3.3.3 Family Day Care units shall not be located above the second story.

3.3.4 In Family Day Care units, clients under the age of two shall not be located above or below the first story.

3.3.4.1 Clients under the age of two may be housed above or below the first story where there is at least one exit that leads directly to the outside and complies with IFC, Section 1003.3.3 or Section 1003.3.4.

3.3.5 Family Day Care units located in split entry/split level type homes in which stairs to the lower level and upper level are equal or nearly equal, may have clients housed on both levels when approved by the AHJ.

3.3.6 Family Day Care units shall have a portable fire extinguisher on each level occupied by clients, which shall have a classification of not less than 2A:10BC, and shall be serviced in accordance with NFPA, Standard 10.

3.3.7 Family Day Care units shall have single station smoke detectors in good operating condition on each level occupied by clients. Battery operated smoke detectors shall be permitted if the facility demonstrates testing, maintenance, and battery replacement to insure continued operation of the smoke detectors.

3.3.8 Rooms in Family Day Care units that are provided for clients to sleep or nap, shall have at least one window or door approved for emergency escape.

3.3.9 Fire drills shall be conducted in Family Day Care units monthly and shall include the complete evacuation from the building of all clients and staff. At least quarterly, in Type I Family Day Care units, the fire drill shall include the actual evacuation using the escape or rescue window, if one is used as a substitute for one of the required means of egress.

3.4 Day Care Centers

3.4.1 Day Care Centers shall comply with either I-4 requirements or E requirements of the IBC, whichever is applicable for the type of Day Care Center.

3.4.2 Fire Drills shall be completed as required in IFC, Chapter 4, Section 405.

3.5 Requirements for all Day Care

3.5.1 Heating equipment in spaces occupied by children shall be provided with partitions, screens, or other means to protect children from hot surfaces and open flames.

3.5.2 A fire escape plan shall be completed and posted in a conspicuous place. All staff shall be trained on the fire escape plan and procedure.

3.5.3 The AHJ shall insure at each inspection there is sufficient adult staff to client ratios to allow safe and orderly evacuation in case of fire.

3.5.3.1 For Day Care involving children, the AHJ may use the care giver to children ratios established in rule by the Department of Health as an established guideline.

R710-8-4. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-8-5. Validity.

The Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the

codes hereby adopted, be declared invalid, it is the intent of the Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

R710-8-6. Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes as adopted, the more restrictive requirement shall govern, as determined by the AHJ.

R710-8-7. Adjudicative Proceedings.

7.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

7.2 A person may request a hearing on a decision made by the AHJ by filing an appeal to the Board within 20 days after receiving the final decision from the AHJ.

7.3 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

7.4 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

7.5 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

7.6 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

7.7 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

KEY: fire prevention, day care
November 16, 2004
Notice of Continuation April 23, 2002

53-7-204

R994. Workforce Services, Workforce Information and Payment Services.**R994-201. Definition of Terms in Employment Security Act. R994-201-101. General Definitions and Acronyms.**

These definitions are in addition to those defined in Section 35A-4-201.

(1) "Act" means the Utah Employment Security Act, and amendments thereto.

(2) "ALJ" means Administrative Law Judge.

(3) "Appeals Unit" means the Division of Adjudication.

(4) "Board" means the Workforce Appeals Board.

(5) Bona Fide Employment.

"Bona fide employment" is work that was an authentic employer-employee relationship entered into in good faith without fraud or deceit rather than an arrangement or report of non-existent work calculated to overcome a disqualification.

(6) Burden of Proof.

The person or party with the burden of proof has the initial responsibility to show that the fact at issue is worthy of belief. Burden of proof requires proof by a preponderance of the evidence.

(7) Calendar Quarter.

"Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(8) Claimant.

"Claimant" is an individual who has filed the necessary documents to apply for unemployment insurance benefits.

(9) Covered Employment.

"Covered employment" is employment subject to a state or federal unemployment insurance laws, including laws pertaining to railroad unemployment and active military duty, which can be used to establish monetary eligibility for unemployment insurance benefits. Active military duty in a full time branch of the US military service can be used, even if the duty was for less than 90 days, if the claimant was released under honorable conditions. National Guard or Reserve wages may be used only if the claimant has completed 90 consecutive days of active duty and if the claimant was released under honorable conditions.

(10) Department.

"Department" means the Department of Workforce Services.

(11) Employment Center.

"Employment Center" means an office operated by the Department of Workforce Services.

(12) Itinerant Service.

"Itinerant service" means a service maintained by the Department of Workforce Services at specified intervals and at designated outlying points within the jurisdiction of an Employment Center.

(13) Local Office.

"Local office" means the Employment Center of any geographical area.

(14) MBA means maximum benefit amount.

(15) Person.

"Person" includes any governmental entity, individual, corporation, partnership, or association,

(16) Preponderance of Evidence.

A "preponderance of evidence" is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it, more convincing to the mind, evidence that best accords with reason or probability. Preponderance means more than weight; it denotes a superiority of reliability. Opportunity for knowledge, information possessed and manner of testifying determines the weight of testimony.

(17) Separation.

"Separation" means curtailment of employment to the extent that the individual meets the definition of "unemployed"

as stated in Subsection 35A-4-207(1) with respect to any week.

(18) Transitional Claim.

A claim that is filed effective the day after the prior claim ends provided an eligible weekly claim was filed for the last week of the prior claim.

(19) WBA means weekly benefit amount.

**KEY: unemployment compensation, definitions
November 16, 2004**

35A-4-201

Notice of Continuation May 23, 2003

R994. Workforce Services, Workforce Information and Payment Services.**R994-401. Payment of Benefits.****R994-401-101. Payment of Benefits.**

Eligibility is established and benefits are paid on a weekly basis. The week starts on Sunday and ends on Saturday. Benefits do not become due until the end of the week for which benefits are claimed.

R994-401-201. Weekly Benefit Amount (WBA), Maximum Benefit Amount (MBA), and Monetary Determination.

(1) The formulas for determining the WBA and the MBA are found in Section 35A-4-401.

(2) The wages used to determine the WBA and the MBA 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 in the initial claim. If an employer does not report wages and the claimant can verify wages from that employer, those wages may be included.

(3) The Department will send the claimant a "Notice of Monetary Determination." The notice will inform the claimant of the WBA, MBA, and the wages used to determine the claimant's monetary eligibility. The notice will also inform the claimant of his or her right to appeal the monetary determination. The claimant must notify the Department of any errors in the monetary determination. The time limit for notifying the Department of any errors or for appealing a monetary determination is the same as filing an appeal from an initial Department determination and is governed by rules R994-508-102 through R994-508-104.

(4) The monetary determination is based on the wages actually paid during the base period regardless of when the work was performed.

(5) To be monetarily eligible, a claimant must have earned base period wages of 1 and 1/2 times the high quarter wages and also meet a minimum dollar amount as established by the monetary base period wage requirement as defined in Section 35A-4-201.

(6) If a claimant is not monetarily eligible under the 1 and 1/2 times requirement in paragraph (5) of this section, but meets the monetary base period wage requirement, the claimant can still be eligible under this section if the claimant had earnings of at least five percent of the "monetary base period requirement for insured work," as defined in Subsection 35A-4-201(17), in each of at least 20 weeks during the base period. The earnings must be for work performed during each of the 20 weeks, all of which must fall within the base period, regardless of when the claimant received payment for the work. The requirement that the claimant show work and earnings in 20 weeks is only met if the claimant was paid wages as defined by the definition of "wages paid" in R994-401-202.

(7) The dollar amount for each of the 20 weeks required to establish eligibility will be determined by the monetary base period requirement for insured work in effect for the calendar year in which the initial claim is filed even if some or all of the 20 weeks are in a different calendar year.

(8) If the claimant is determined monetarily ineligible under the 1 and 1/2 times standard, it is the claimant's responsibility to show 20 weeks of covered employment which meet the minimum dollar amount. Acceptable proof of covered employment includes:

- (a) appropriately dated check stubs issued by the employer;
- (b) a written statement from the employer showing dates of employment and the amount of earnings for each week;
- (c) time cards;
- (d) canceled payroll checks; or
- (e) personal or business records kept in the normal course of employment that would substantiate work and earnings.

(9) An employer's potential liability is based on its proportion of the claimant's base period wages. Employers will be informed of the wages used in determining a claimant's monetary entitlement, the employer's potential liability for benefits costs, and the right to and time limitation for requesting relief of charges or a correction to wages. A contributory employer is given a notice of all benefit costs each quarter and has the opportunity to report any errors or omissions to the Department at that time as well. The quarterly notices give the employer 30 days to advise the Department of any corrections, as provided in Subsection 35A-4-306(3).

(10) A party failing to file a timely appeal or protest may lose its right to have the monetary determination corrected. An untimely appeal or protest may be considered if the party had good cause, as defined in R994-508-104.

(11) The Department may revise the monetary determination after the expiration of the appeal time if there has been a mistake as to the facts or the revision would be substantial and required by fairness for a party who did not have access to the information and therefore could not have reasonably filed a timely appeal. The decision to revise a monetary determination after the appeal time has expired is discretionary with the Department.

R994-401-202. Wages Used to Determine Monetary Eligibility.

(1) "Wages paid" include those wages actually received by the worker and wages constructively paid, provided the employer's liability for payment has become unconditionally established. Wages are considered constructively paid, for the purposes of this section, 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.

(2) Quarterly wages are all wages paid or constructively paid during a quarter regardless of when those wages are earned. Bonus or lump sum payments which do not meet the definition of vacation and severance pay in R994-405-701 et seq, 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 request is made by the claimant for apportionment to the calendar quarters in which the remuneration was earned. Any such request must be received by the Department within ten days of the issuance of the monetary determination as provided by Subsection 35A-4-401(7).

R994-401-203. Retirement or Disability Retirement Income.

(1) A claimant's WBA is reduced by 100 percent 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 percent 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 WBA Payments from workers' 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 Subsection 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 WBA. 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 WBA 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 MBA in the event a claimant begins receiving retirement income after the beginning of the benefit year is found in Subsection 35A-4-401(2)(d).

R994-401-301. Partial Payments - General Definition.

(1) A claimant's earnings that are equal to or less than 30 percent of the WBA will not result in a reduction of the WBA. The claimant's gross weekly earnings over 30 percent of the WBA will be deducted dollar for dollar from the WBA in the week in which it was earned. A claimant who earns less than the WBA and files a claim may be credited with a waiting week, or paid a partial payment. A claimant who earns equal to or more than the WBA will not be credited with a waiting week nor be eligible for any partial payment for that week.

(2) All work and earnings must be reported on a weekly basis. For example, when an otherwise eligible claimant is required to report income from a farm, and is paid one day of holiday pay and then accepts a one-day temporary job, the work and earnings from all three sources must be reported.

(3) Earnings are reportable in the week the work is performed which may be different from the week payment is received. If a claimant receives payment for commission sales, or other periodic earnings, the income must be attributed to, and reported in, the week when the work was performed.

(4) Reportable earnings which a claimant must report on the weekly claim include 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 the base period and is separated from one or more of these employers, but continues in the regular part-time work with a reimbursable employer, that nonseparating employer will not be liable for benefit costs provided;

(a) the claimant earned wages from a nonseparating employer within seven days prior to the date when the claim was filed,

(b) the claimant is not working on an "on call" basis,

(c) the number of hours of work have not been reduced, and

(d) the employer makes a request that it not be held liable for benefit costs within ten days of the first notification of the employer's potential liability.

(2) The claimant's WBA will be determined on the basis of the total base period employment and earnings, however, earnings from the part-time reimbursable employer will be excluded from the calculation of the MBA.

(3) If the claimant is later separated from this employer within the benefit year or the claimant's hours of work are reduced below the customary 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 new monetary determination can also 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 The Claimant must Report While Receiving Unemployment Benefits.

(1) All payments whether an hourly wage, salary, or commission paid for the performance of any service shall be reportable unless specifically identified as an exception in R994-401-304 or R994-401-305.

(2) Gratuities or tips paid directly to an employee by a customer or the employer for a service provided are reportable.

R994-401-304. Income Which May Be Reportable Under Certain Circumstances.

(1) A bonus paid as a direct result of past performance of service for a specific period prior to the separation is not reportable with respect to any week after the separation. A bonus is a payment given to an employee in addition to usual wages. If the payment is made contingent upon termination it will be considered a severance payment. Payments given at the time of separation that are based on years of service will also be considered severance payments. Severance payments are reportable in accordance with Subsection 35A-4-405(7).

(2) If a claimant is hired to start working on a certain day and the work is not available as of that date but the employer puts the claimant on the payroll as of that date, the claimant is considered employed and those wages are reportable.

(3) Any payment made in consideration of training that is required by the employer is considered to be reportable income 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; and

(d) the payments are exempt from income tax liability.

(3) If a claimant is being paid under a contract for the express purpose of being available to an employer, and there are limits placed upon the individual either 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 is considered reportable income.

(4) Any payments in kind are reportable, including the cash value for meals, lodging, or other payment unless the meals and lodging are 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 which are provided:

- (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.

(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.

(5) Pensions that do not meet the criteria in R994-401-203 are not reportable income.

R994-401-305. Income a Claimant is not Required to Report While Receiving Unemployment Benefits.

Payments which are received for reasons other than the performance of a service are not reportable income. Some examples are:

- (1) Payments from corporate stocks and bonds;
- (2) Public service in lieu of payment of fines;
- (3) Fees paid for jury duty or as witness fees will be considered reimbursement for expenses;
- (4) 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;
- (5) Payments specifically identifiable as not being provided for the rendering of service will not be considered wages including grants, public or private assistance or other support payments;
- (6) Money or other considerations which are normally provided as a matter of course to immediate family members;
- (7) Income from investments;
- (8) Disability or permanent impairment awards under the Workers' Compensation Act; and,
- (9) Payment attributable to the value of any equipment owned by the claimant and necessary for the performance of the job. If there is no contract of hire or the contract does not delineate what portion is payable for the equipment, the Department will determine the claimant's wages based on the prevailing wage for similar work under comparable conditions.

KEY: unemployment compensation, benefits

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Notice of Continuation May 23, 2002

35A-4-401(1)

35A-4-401(2)

35A-4-401(3)

35A-4-401(6)

R994. Workforce Services, Workforce Information and Payment Services.**R994-403. Claim for Benefits.****R994-403-101a. Filing a New Claim.**

(1) A new claim for unemployment benefits is made by filing with the Department of Workforce Services Claims Center. A new claim can be filed by telephone, completing an application at the Department's web site, or as otherwise instructed by the Department.

(2) The effective date of a new claim for benefits is the Sunday immediately preceding the date the claim is filed, provided the claimant did not work full-time during that week, or is not entitled to earnings equal to or in excess of the WBA for that week. A claim for benefits can only be made effective for a prior week if the claimant can establish good cause for late filing in accordance with R994-403-106a.

(3) When a claimant files a new claim during the last week of a quarter and has worked less than full-time for that week, the Department will make the claim effective that week if it is advantageous to the claimant, even if the claimant has earnings for that week that are equal to or in excess of the WBA.

(4) Wages used to establish eligibility for a claim cannot be used on a subsequent claim.

R994-403-102a. Cancellation of Claim.

(1) Once a weekly claim has been filed and the claimant has been deemed monetarily eligible, the claim is considered to have been established, even if no payment has been made or waiting week credit granted. The claim then remains established for 52 weeks during which time another regular claim may not be filed against the state of Utah unless the claim is canceled.

(2) A claim may be canceled if the claimant requests that the claim be canceled and one of the following circumstances can be shown:

(a) no weekly claims have been filed;

(b) cancellation is requested prior to the issuance of the monetary determination;

(c) the request is made within the same time period permitted for an appeal of the monetary determination and the claimant returns any benefits that have been paid;

(d) the claimant had earnings, severance, or vacation payments equal to or greater than the WBA applicable to all weeks for which claims were filed;

(e) the claimant meets the eligibility requirements for filing a new claim following a disqualification due to a strike in accordance with the requalifying provisions of Subsection 35A-4-405(4)(c);

(f) the claimant meets the requirements for cancellation established under the provisions for combined wage claims in R994-106-107; or

(g) the claimant has filed an unemployment compensation for ex-military (UCX) claim, and it is determined the claimant does not have wage credits under Title 5, chapter 85, U.S. Code.

R994-403-103a. Reopening a Claim.

(1) A claim for benefits is considered "closed" when a claimant reports four consecutive weeks of earnings equal to or in excess of the WBA or does not file a weekly claim within 27 days from the last week filed. In those circumstances, the claimant must reopen the claim before benefits can be paid.

(2) A claimant may reopen the claim any time during the 52-week period after first filing by contacting the Claims Center. The effective date of the reopened claim will be the Sunday immediately preceding the date the claimant requests reopening unless good cause is established for failure to request reopening during a prior week in accordance with R994-403-106a.

R994-403-104g. Using Unused Wages for a Subsequent Claim.

(1) A claimant may have sufficient wage credits to monetarily qualify for a subsequent claim without intervening employment.

(2) Before payment can be made on a subsequent claim using those unused wages, each of the following elements must be satisfied:

(a) the claimant must have performed work in covered employment after the effective date of the original claim, but not necessarily during the benefit year of the original claim;

(b) actual services must have been performed. Vacation, severance pay, or a bonus cannot be used to requalify;

(c) the claimant must have earnings from covered employment, as defined in R994-201-101(9), equal to at least six times the WBA of the original or subsequent claim, whichever is lower;

(d) the claimant must have actually received benefits during the preceding benefit year; and

(e) benefits will not be paid under Subsection 35A-4-403(1)(g) from the effective date of the claim and continuing until the week the claimant provides proof of covered employment equal to at least six times the WBA.

R994-403-105a. Filing Weekly Claims.

(1) Claims must be filed on a weekly basis. For unemployment benefit purposes, the week begins at 12:01 a.m. on Sunday and ends at midnight on Saturday. The claimant is the only person who is authorized to file weekly claims. The responsibility for filing weekly claims cannot be delegated to another person.

(2) Each weekly claim should be filed as soon as possible after the Saturday week ending date. If the claim has not been closed, the Department will allow 20 days after the week ending date to file a timely claim. A weekly claim filed 21 or more calendar days after the week ending date will be denied unless good cause for late filing is established in accordance with R994-403-106a.

R994-403-106a. Good Cause for Late Filing.

(1) Claims must be filed timely to insure prompt, accurate payment of benefits. Untimely claims are susceptible to errors and deprive the Department of its responsibility to monitor eligibility. Benefits may be paid if it is determined that the claimant had good cause for not filing in a timely manner.

(2) The claimant has the burden to establish good cause by competent evidence. Good cause is limited to circumstances where it is shown that the reasons for the delay in filing were due to circumstances beyond the claimant's control or were compelling and reasonable. Some reasons for good cause for late filing may raise other eligibility issues. Some examples that may establish good cause for late filing are:

(a) a crisis of several days duration that interrupts the normal routine during the time the claim should be filed;

(b) hospitalization or incarceration; or

(c) coercion or intimidation exercised by the employer to prevent the prompt filing of a claim.

(3) The Department is the only acceptable source of information about unemployment benefits. Relying on inaccurate advice from friends, relatives, other claimants or similar sources does not constitute good cause.

(4) Good cause for late filing cannot extend beyond 65 weeks from the filing date of the initial claim.

R994-403-107b. Registration, Workshops, Deferrals - General Definition.

(1) A claimant must register for work with the Department, unless, at the discretion of the Department, registration is waived or deferred.

(2) The Department may require attendance at workshops designed to assist claimants in obtaining employment.

(3) Failure, without good cause, to comply with the requirements of Subsections (1) and (2) of this section may result in a denial of benefits. The claimant has the burden to establish good cause through competent evidence. Good cause is limited to circumstances where it is shown that the failure to comply was due to circumstances beyond the control of the claimant or which were compelling and reasonable. The proof of inability to register or report may raise an able or available issue.

(4) The denial of benefits begins with the week the claimant failed to comply and ends with the week the claimant contacts the Department and complies by either registering for work, reporting as required, or scheduling an appointment to attend the next available workshop or conference. The denial can be waived if the Department determines the claimant complied within a reasonable amount of time.

R994-403-108b. Deferral of Work Registration and Work Search.

(1) The Department may elect to defer the work registration and work search requirements. A claimant placed in a deferred status is not required to actively seek work but must meet all other availability requirements of the act. Deferrals are generally limited to the following circumstances:

(a) Labor Disputes.

A claimant who is unemployed due to a labor dispute may be deferred while an eligibility determination under Subsection 35A-4-405(4) is pending. If benefits are allowed, the claimant must register for work immediately.

(b) Union Attachment.

A claimant who is a union member in good standing, is on the out-of-work list, or is otherwise eligible for a job referral by the union, and has earned at least half of his or her base period earnings through the union, may be eligible for a deferral. If a deferral is granted to a union member, it shall not be extended beyond the mid-point of the claim unless the claimant can demonstrate a reasonable expectation of obtaining employment through the union.

(c) Employer Attachment.

A claimant who has an attachment to a prior employer and a date of recall within ten weeks of filing or reopening a claim may have the work registration requirement deferred to the expected date of recall. The deferral should not extend longer than ten weeks.

(d) Three Week Deferral.

A claimant who accepts a definite offer of full-time work to begin within three weeks, shall be deferred for that period.

(e) Seasonal.

A claimant may be deferred when, due to seasonal factors, work is not available in the claimant's primary base period occupation and other suitable work is not available in the area.

(2) Deferrals cannot be granted if prohibited by state or federal law for certain benefit programs.

R994-403-109b. Profiled Claimants.

(1) The Department will identify individuals who are likely to exhaust unemployment benefits through a profiling system and require that they participate in reemployment services. These services may include job search workshops, job placement services, counseling, testing, and assessment.

(2) In order to avoid disqualification for failure to participate in reemployment services, the claimant must show good cause for nonparticipation. Good cause for nonparticipation is established if the claimant can show:

(a) completion of equivalent services within the 12 month period immediately preceding the date the claimant is scheduled for reemployment services; or

(b) that the failure to participate was reasonable or beyond the claimant's control.

(3) Failure to participate in reemployment services without good cause will result in a denial of benefits beginning with the week the claimant refuses or fails to attend scheduled services and continuing until the week the claimant contacts the Employment Center to arrange participation in the required reemployment service.

(4) Some reasons for good cause for nonparticipation may raise other eligibility issues.

R994-403-110c. Able and Available - General Definition.

(1) The primary obligation of the claimant is to become reemployed. A claimant may meet all of the other eligibility criteria but, if the claimant cannot demonstrate ability, availability, and an active good faith effort to obtain work, benefits cannot be allowed.

(2) A claimant must be attached to the labor force, which means the claimant can have no encumbrances to the immediate acceptance of full-time work. The claimant must:

(a) be actively engaged in a good faith effort to obtain employment; and

(b) have the necessary means to become employed including tools, transportation, licenses, and childcare if necessary.

(3) The continued unemployment must be due to the lack of suitable job opportunities.

(4) The only exception to the requirement that a claimant actively seek work is if the Department has approved schooling under Section 35A-4-403(2) and the claimant meets the requirements of R994-403-107b.

(5) The only exception to the requirements that the claimant be able to work and actively seeking full-time work are that the claimant meets the requirements of R994-403-111c(5).

R994-403-111c. Able.

(1) The claimant must have no physical or mental health limitation which would preclude immediate acceptance of full-time work. A recent history of employment is one indication of a claimant's ability to work. If there has been a change in the claimant's physical or mental capacity since his or her last employment, there is a presumption of inability to work which the claimant must overcome by competent evidence. The claimant must show that there is a reasonable likelihood that jobs exist which the claimant is capable of performing before unemployment insurance benefits can be allowed. Pregnancy is treated the same as other physical limitations.

(2) For purposes of determining weekly eligibility for benefits, it is presumed a claimant who is not able to work more than one-half the normal workweek will be considered not able to perform full-time work. The normal workweek means the normal workweek in the claimant's occupation. A claimant will be denied under this section for any week in which the claimant refuses suitable work due to an inability to work, regardless of the length of time the claimant is unable to work.

(a) Past Work History.

Benefits will not be denied solely on the basis of a physical or mental health limitation if the claimant earned base period wages while working with the limitation and is:

(i) willing to accept any work within his or her ability;

(ii) actively seeking work consistent with the limitation; and

(iii) otherwise eligible.

Under these circumstances, the unemployment is considered to be due to a lack of employment opportunities and not due to an inability to work.

(b) Medical Verification.

When an individual has a physical or mental health limitation, medical information from a competent health care provider is one form of evidence used to determine the claimant's ability to work. The provider's opinion is presumed

to be an accurate reflection of the claimant's ability to work, however, the provider's opinion may be overcome by other competent evidence. The Department will determine if medical verification is required.

(3) Temporary Disability.

(a) Employer Attached.

A claimant is not eligible for benefits if the claimant is not able to work at his or her regular job due to a temporary disability and the employer has agreed to allow the claimant to return to the job when he or she is able to work. In this case, the claimant's unemployment is due to an inability to work rather than lack of available work. The claimant is not eligible for benefits even if there is other work the claimant is capable of performing with the disability. If a claimant is precluded from working due to Federal Aviation Administration regulations because of pregnancy, and the employer has agreed to allow the claimant to return to the job, the claimant is considered to be on a medical leave of absence and is not eligible for benefits.

(b) No Employer Attachment.

If the claimant has been separated from employment with no expectation of being allowed to return when he or she is again able to work, or the temporary disability occurred after becoming unemployed, benefits may be allowed even though the claimant cannot work in his or her regular occupation if the claimant can show there is work the claimant is capable of performing and for which the claimant reasonably could be hired. The claimant must also meet other eligibility requirements including making an active work search.

(3) Hospitalization.

A claimant is unable to work if hospitalized unless the hospitalization is on an out-patient basis or the claimant is in a rehabilitation center or care facility and there is independent verification that the claimant is not restricted from immediately working full-time. Immediately following hospitalization, a rebuttable presumption of physical inability continues to exist for the period of time needed for recuperation.

(4) Workers' Compensation.

(a) Compensation for Lost Wages.

A claimant is not eligible for unemployment benefits while receiving temporary total disability workers' compensation benefits.

(b) Subsequent Awards.

The Department may require that a claimant who is receiving permanent partial disability benefits from workers' compensation show that he or she is able and available for full-time work and can reasonably expect to obtain full-time work even with the disability.

(c) Workers' compensation disability payments are not reportable as wages.

(5) Physical or Mental Health Limitation.

(a) A claimant who is not able to work full-time due to a physical or mental health limitation, may be considered eligible under this rule if:

(i) the claimant's base period employment was limited to part-time because of the claimant's physical or mental health limitations;

(ii) the claimant's prior part-time work was substantial. Substantial is defined as at least 50 percent of the hours customarily worked in the claimant's occupation;

(iii) the claimant is able to work at least as many hours as he or she worked prior to becoming unemployed;

(iv) there is work available which the claimant is capable of performing; and

(v) the claimant is making an active work search.

(b) The Department may require that the claimant establish ability by competent evidence.

R994-403-112c. Available.

(1) General Requirement.

The claimant must be available for full-time work. Any restrictions on availability, such as lack of transportation, domestic problems, school attendance, military obligations, church or civic activities, whether self-imposed or beyond the control of the claimant, lessen the claimant's opportunities to obtain suitable full-time work.

(2) Activities Which Affect Availability.

It is not the intent of the act to subsidize activities which interfere with immediate reemployment. A claimant is not considered available for work if the claimant is involved in any activity which cannot be immediately abandoned or interrupted so that the claimant can seek and accept full-time work.

(a) Activities Which May Result in a Denial of Benefits.

For purposes of establishing weekly eligibility for benefits, a claimant who is engaged in an activity for more than half the normal workweek that would prevent the claimant from working, is presumed to be unavailable and therefore ineligible for benefits. The normal workweek means the normal workweek in the claimant's occupation. This presumption can be overcome by a showing that the activity did not preclude the immediate acceptance of full-time work, referrals to work, contacts from the Department, or an active search for work. When a claimant is away from his or her residence but has made arrangements to be contacted and can return quickly enough to respond to any opportunity for work, the presumption of unavailability may be overcome. The conclusion of unavailability can also be overcome in the following circumstances:

(i) Travel Which is Necessary to Seek Work.

(A) Benefits will not be denied if the claimant is required to travel to seek, apply for, or accept work within the United States or in a foreign country where the claimant has authorization to work and where there is a reciprocal agreement. The trip itself must be for the purpose of obtaining work. There is a rebuttable presumption that the claimant is not available for work when the trip is extended to accommodate the claimant's personal needs or interests, and the extension is for more than one-half of the workweek.

(B) Unemployment benefits cannot be paid to a claimant located in a foreign country unless the claimant has authorization to work there and there is a reciprocal agreement concerning the payment of unemployment benefits with that foreign country. An exception to this general rule is that a claimant who travels to a foreign country for the express purpose of applying for employment and is out of the United States for two consecutive weeks or less is eligible for those weeks provided the claimant can prove he or she has a legal right to work in that country. A claimant who is out of the United States for more than two weeks is not eligible for benefits for any of the weeks.

(ii) Definite Offer of Work or Recall.

If the claimant has accepted a definite offer of full-time employment or has a date of recall to begin within three weeks, the claimant does not have to demonstrate further availability and is not required to seek other work. Because the statute requires that a claimant be able to work, if a claimant is unable to work for more than one-half of any week due to illness or hospitalization, benefits will be denied.

(iii) Jury Duty or Court Attendance.

Jury duty or court attendance is a public duty required by law and a claimant will not be denied benefits if he or she is unavailable because of a lawfully issued summons to appear as a witness or to serve on a jury unless the claimant:

(A) is a party to the action;

(B) had employment which he or she was unable to continue or accept because of the court service; or

(C) refused or delayed an offer of suitable employment because of the court service.

The time spent in court service is not a personal service

performed under a contract of hire and therefore is not considered employment.

(b) Activities Which Will Result in a Denial of Benefits.

(i) Refusal of Work.

When a claimant refuses any suitable work, the claimant is considered unavailable. Even though the claimant had valid reasons for not accepting the work, benefits will not be allowed for the week or weeks in which the work was available. Benefits are also denied when a claimant fails to be available for job referrals or a call to return to work under reasonable conditions consistent with a previously established work relationship. This includes referral attempts from a temporary employment service, a school district for substitute teaching, or any other employer for which work is "on-call."

(ii) Failure to Perform All Work During the Week of Separation.

(A) Benefits will be denied for the week in which separation from employment occurs if the claimant's unemployment was caused because the claimant was not able or available to do his or her work. In this circumstance, there is a presumption of continued inability or unavailability and an indefinite disqualification will be assessed until there is proof of a change in the conditions or circumstances.

(B) If the claimant was absent from work during the last week of employment and the claimant was not paid for the day or days of absence, benefits will be denied for that week. The claimant will be denied benefits under this section regardless of the length of the absence.

(3) Hours of Availability.

(a) Full-Time.

Except as provided in R994-403-111c(5), in order to meet the availability requirement, a claimant must be ready and willing to immediately accept full-time work. Full-time work generally means 40 hours a week but may vary due to customary practices in an occupation. If the claimant was last employed less than full-time, there is a rebuttable presumption that the claimant continues to be available for only part-time work.

(b) Other Than Normal Work Hours.

If the claimant worked other than normal work hours and the work schedule was adjusted to accommodate the claimant, the claimant cannot continue to limit his or her hours of availability even if the claimant was working 40 hours or more. The claimant must be available for full-time work during normal work hours as is customary for the industry.

(4) Wage Restrictions.

(a) No claimant will be expected, as a condition of eligibility, to accept a wage that is less than the state or federal minimum wage, whichever is applicable, or a wage that is substantially less favorable to the claimant than prevailing wages for similar work in the locality. Benefits cannot be allowed if the claimant is restricting himself or herself to a wage that is not available.

(b) A claimant must be given a reasonable time to seek work that will preserve his or her earning potential. At the time of filing an initial claim, or at the time of reopening a claim following a period of employment, the claimant may restrict his or her wage requirement to the highest wage earned during or subsequent to the base period and prior to filing the claim or the highest wage available in the locality for the claimant's occupation, whichever is lower, but only if there is a reasonable expectation that work can be obtained at that wage.

(i) After a claimant has received 1/3 of the maximum benefit amount (MBA) for his or her regular claim, the claimant must accept any wage that is equal to or greater than the lowest wage earned during the base period, as long as that wage is consistent with the prevailing wage standard.

(ii) After a claimant has received 2/3 of the MBA for his or her regular claim, the claimant must be willing to accept the prevailing wage in the locality for work in any base period

occupation.

(c) Exception for Deferred Claimants.

The provisions of this section do not apply to those claimants who qualify for deferrals under Subsection 35A-4-403(1)(b) and R994-403-202 during the period of deferral.

(5) Type of Work.

(a) One of the purposes of the unemployment insurance program is to help a claimant preserve his or her highest skill by providing unemployment benefits so the claimant can find work similar to what the claimant had prior to becoming unemployed. A skill is defined as a marketable ability developed over an extended period of time by training or experience which could be lost if not used. It is not the intent of the program to subsidize individuals who are limiting their availability because of a desire to improve their employment status.

(i) At the time of filing an initial claim or reopening a claim following a period of employment, a claimant may restrict availability to the highest skilled employment performed during or subsequent to the base period provided the claimant has a reasonable expectation of obtaining that type of work. A claimant who is not willing to accept employment consistent with work performed during or subsequent to the base period must show a compelling reason for that restriction in order to be considered available for work.

(ii) After the claimant has received 1/3 of the MBA for his or her regular claim, the claimant must be willing to accept work in any of the occupations in which the claimant worked during the base period.

(iii) After the claimant has received 2/3 of the MBA for his or her regular claim, the claimant must be willing to accept any work that he or she can reasonably perform consistent with the claimant's past experience, training, and skills.

(b) Contract Obligation.

If a claimant is restricted due to a contractual obligation from competing with a former employer or accepting employment in the claimant's regular occupation, the claimant is not eligible for benefits unless the claimant can show that he or she:

(i) is actively seeking work outside the restrictions of the noncompete contract;

(ii) has the skills and/or training necessary to obtain that work; and

(iii) can reasonably expect to obtain that employment.

(6) Employer/Occupational Requirements.

If the claimant does not have the license or special equipment required for the type of work the claimant wants to obtain, the claimant cannot be considered available for work unless the claimant is actively seeking other types of work and has a reasonable expectation of obtaining that work.

(7) Temporary Availability.

When an individual is limited to temporary work because of anticipated military service, school attendance, travel, church service, relocation, a reasonable expectation of recall to a former employer for which the claimant is not in deferral status, or any other anticipated restriction on the claimant's future availability, availability is only established if the claimant is willing to accept and is actively seeking temporary work. The claimant must also show there is a realistic expectation that there is temporary work in the claimant's occupation, otherwise the claimant may be required to accept temporary work in another occupation. Evidence of a genuine desire to obtain temporary work may be shown by registration with and willingness to accept work with temporary employment services.

(8) Distance to Work.

(a) Customary Commuting Patterns.

A claimant must show reasonable access to public or private transportation, and a willingness to commute within customary commuting patterns for the occupation and community.

(b) Removal to a Locality of Limited Work Opportunities.

A claimant who moves from an area where there are substantial work opportunities to an area of limited work opportunities must demonstrate that the new locale has work for which the claimant is qualified and which the claimant is willing to perform. If the work is so limited in the new locale that there is little expectation the claimant will become reemployed, the continued unemployment is the result of the move and not the failure of the labor market to provide employment opportunities. In that case, the claimant is considered to have removed himself or herself from the labor market and is no longer eligible for benefits.

(9) School.

(a) A claimant attending school who has not been granted Department approval for a deferral must still meet all requirements of being able and available for work and be actively seeking work. Areas that need to be examined when making an eligibility determination with respect to a student include reviewing a claimant's work history while attending school, coupled with his or her efforts to secure full-time work. If the hours of school attendance conflict with the claimant's established work schedule or with the customary work schedule for the occupation in which the claimant is seeking work, a rebuttable presumption is established that the claimant is not available for full-time work and benefits will generally be denied. An announced willingness on the part of a claimant to discontinue school attendance or change his or her school schedule, if necessary, to accept work must be weighed against the time already spent in school as well as the financial loss the claimant may incur if he or she were to withdraw.

(b) A presumption of unavailability may also be raised if a claimant moves, for the purpose of attending school, from an area with substantial labor market to a labor market with more limited opportunities. In order to overcome this presumption, the claimant must demonstrate there is full-time work available in the new area which the claimant could reasonably expect to obtain.

(10) Employment of Youth.

Title 34, Chapter 23 of the Utah Code imposes limitations on the number of hours youth under the age of 16 may work. The following limitations do not apply if the individual has received a high school diploma or is married. Claimants under the age of 16 who do not provide proof of meeting one of these exceptions are under the following limitations whether or not in student status because they have a legal obligation to attend school. Youth under the age of 16 may not work:

- (a) during school hours except as authorized by the proper school authorities;
- (b) before or after school in excess of 4 hours a day;
- (c) before 5:00 a.m. or after 9:30 p.m. on days preceding school days;
- (d) in excess of 8 hours in any 24-hour period; or
- (e) more than 40 hours in any week.

(11) Domestic Obligations.

When a claimant has an obligation to care for children or other dependents, the claimant must show that arrangements for the care of those individuals have been made for all hours that are normally worked in the claimant's occupation and must show a good faith, active work search effort.

R994-403-113c. Work Search.

(1) General Requirements.

A claimant must make an active, good faith effort to secure employment each and every week for which benefits are claimed. Efforts to find work must be judged by the standards of the occupation and the community.

(2) Active.

An active effort to look for work is generally interpreted to mean that each week a claimant should contact a minimum of

two employers not previously contacted unless the claimant is otherwise directed by the Department. Those contacts should be made with employers that hire people in the claimant's occupation or occupations for which the claimant has work experience or would otherwise be qualified and willing to accept employment. Failure of a claimant to make at least the minimum number of contacts creates a rebuttable presumption that the claimant is not making an active work search. The claimant may overcome this presumption by showing that he or she has pursued a job development plan likely to result in employment. A claimant's job development activities for a specific week should be considered in relation to the claimant's overall work search efforts and the length of the claimant's unemployment. Creating a job development plan and/or writing resumes may be reasonable and acceptable activities during the first few weeks of a claim, but may be insufficient after the claimant has been unemployed for several weeks.

(3) Good Faith.

Good faith efforts are defined as those methods which a reasonable person, anxious to return to work, would make if desirous of obtaining employment. A good faith effort is not necessarily established simply by making a specific number of contacts to satisfy the Department requirement.

(4) Union Attachment.

(a) Union attachment is sufficient to meet the requirements of an active work search if the claimant is eligible for a deferral as established under Subsection 35A-4-403(1)(b).

(b) If the claimant is not in deferred status because the claimant did not earn at least 50 percent of his or her base period wage credits in employment as a union member, or the deferral has ended, the claimant must meet the requirements of an active, good faith work search by contacting employers in addition to contacts with the union. This work search is required even though unions may have regulations and rules which penalize members for making independent contacts to try to find work or for accepting nonunion employment.

R994-403-114c. Claimant's Obligation to Prove Weekly Eligibility.

The claimant:

- (1) has the burden of proving that he or she is able, available, and actively seeking full-time work;
- (2) must report any information that might affect eligibility;
- (3) must provide any information requested by the Department which is required to establish eligibility; and
- (4) must keep a detailed record of the employers contacted, as well as other activities that are likely to result in employment for each week benefits are claimed.

R994-403-115c. Period of Ineligibility.

(1) Eligibility for benefits is established on a weekly basis. If the Department has determined that the claimant is not able or available for work, and it appears the circumstances will likely continue, an indefinite disqualification will be assessed, and the claimant must requalify by showing that he or she is able and available for work.

(2) If the Department has reason to believe a claimant has not made a good faith effort to seek work, or the Department is performing a routine audit of a claim, the Department can only require that the claimant provide proof of work search activities for the four weeks immediately preceding the Department's request. However, if the claimant admits he or she did not complete the work search activities required under this rule, the Department can disqualify a claimant for more than four weeks.

(3) The claimant will be disqualified for all weeks in which it is discovered that the claimant was not able or available to accept work without regard to the four-week limitation.

R994-403-116e. Eligibility Determinations: Obligation to Provide Information.

(1) The Department cannot make proper determinations regarding eligibility unless the claimant and the employer provide correct information in a timely manner. Claimants and employers therefore have a continuing obligation to provide any and all information and verification which may affect eligibility.

(2) Providing incomplete or incorrect information will be treated the same as a failure to provide information if the incorrect or insufficient information results in an improper decision with regard to the claimant's eligibility.

R994-403-117e. Claimant's Responsibility.

(1) The claimant must provide all of the following:

(a) his or her correct name, social security number, citizenship or alien status, address and date of birth;

(b) the correct business name and address for each base period employer and for each employer subsequent to the base period;

(c) information necessary to determine eligibility or continuing eligibility as requested on the initial claim form, or on any other Department form including work search information. This includes information requested through the use of an interactive voice response system or the Internet;

(d) the reasons for the job separation from base period and subsequent employers when filing a new claim, requalifying for a claim, or any time the claimant is separated from employment during the benefit year. The Department may require a complete statement of the circumstances precipitating the separation; and

(e) any other information requested by the Department. This includes requests for documentary evidence, written statements, or oral requests. Claimants are required to return telephone calls when requested to do so by Department employees.

(2) Claimants are also required to report, at the time and place designated, for an in-person interview with a Department representative if so requested.

(3) By filing a claim for benefits, the claimant has given consent to the employer to release to the Department all information necessary to determine eligibility even if the information is confidential.

R994-403-118e. Disqualification Periods if a Claimant Fails to Provide Information.

(1) A claimant is not eligible for benefits if the Department does not have sufficient information to determine eligibility. A claimant who fails to provide necessary information without good cause is disqualified from the receipt of unemployment benefits until the information is received by the Department.

(2) If insufficient or incorrect information is provided when the initial claim is filed, the disqualification will begin with the effective date of the claim.

(3) If a potentially disqualifying issue is identified as part of the weekly certification process and the claimant fails to provide the information requested by the Department, the disqualification will begin with the Sunday of the week for which eligibility could not be determined.

(4) If insufficient or incorrect information is provided as part of a review of payments already made, the disqualification will begin with the week in which the response to the Department's request for information is due.

(5) The disqualification will continue through the Saturday prior to the week in which the claimant provides the information.

R994-403-119e. Overpayments Resulting from a Failure to Provide Information.

(1) Any overpayment resulting from the claimant's failure to provide information, or based on incorrect information

provided by the claimant, will be assessed as a fault overpayment in accordance with Subsection 35A-4-406(4) or as a fraud overpayment in accordance with Subsection 35A-4-405(5).

(2) Any overpayment resulting from the employer's failure to provide information will be assessed as a nonfault overpayment in accordance with Subsection 35A-4-406(5).

(3) If more than one party was at fault in the creation of an overpayment, the overpayment will be assessed as:

(a) a fraud or fault overpayment if the claimant was more at fault than the other parties; or

(b) a nonfault overpayment if the employer and/or the Department was more at fault, or if the parties were equally at fault.

R994-403-120e. Employer's Responsibility.

Employers must provide wage, employment, and separation information and complete all forms and reports as requested by the Department. The employer also must return telephone calls from Department employees in a timely manner and answer all questions regarding wages, employment, and separations.

R994-403-121e. Penalty for the Employer's Failure to Comply.

(1) A claimant has the right to have a claim for benefits resolved quickly and accurately. An employer's failure to provide information in a timely manner results in additional expense and unnecessary delay.

(2) If an employer fails to provide information in a timely manner without good cause, the ALJ will determine on appeal that the employer has relinquished its rights with regard to the affected claim and is no longer a party in interest. The employer's appeal will be dismissed and the employer is liable for benefits paid.

(3) The ALJ may, in his or her discretion, choose to exercise continuing jurisdiction with respect to the case and subpoena or call the employer and claimant as witnesses to determine the claimant's eligibility. If, after reaching the merits, the ALJ determines to reverse the initial decision and deny benefits, the employer is not eligible for relief of charges resulting from benefits overpaid to the claimant prior to the date of the ALJ's decision.

(4) In determining whether to exercise discretion and reach the merits, the ALJ may take into consideration:

(a) the flagrancy of the refusal or failure to provide complete and accurate information. An employer's refusal to provide information at the time of the initial Department determination on the grounds that it wants to wait and present its case before an ALJ, for instance, will be subject to the most severe penalty;

(b) whether or not the employer has failed to provide complete and accurate information in the past or on more than one case; and

(c) whether the employer is represented by counsel or a professional representative. Counsel and professional representatives are responsible for knowing Department rules and are therefore held to a higher standard.

R994-403-122e. Good Cause for Failure to Comply.

(1) If the employer or claimant has good cause for failing to provide the information in the time frame requested, no disqualification or penalty will be assessed. Good cause, as it applies to this section of the rule, may be established if the claimant or employer:

(a) made reasonable attempts to provide the information within the time frame requested, or

(b) was prevented from complying due to circumstances which were compelling or beyond their control.

R994-403-201. Department Approval for School Attendance - General Definition.

(1) Unemployment insurance is not intended to subsidize schooling. However, it is recognized that training may be a practical way to reduce chronic and persistent unemployment due to a lack of work skills, job obsolescence or foreign competition. Even though the claimant is granted Department approval, the claimant must still be able to work. With Department approval, a claimant meets the availability requirement based on his or her school attendance and successful performance. With the exception of very short-term training, Department approval is intended for classroom training as opposed to on-the-job training. Department approval is to be used selectively and judiciously. It is not to be used as a substitute for selective placement, job development, on-the-job training, or other available programs.

(2) If a claimant is ineligible under 35A-4-403(1)(c) due to school attendance, Department approval will be considered.

(3) Department approval will be granted when required by state or federal law for specific training programs.

R994-403-202. Qualifying Elements for Approval of Training.

All of the following eight elements must be satisfied for a claimant to qualify for Department approval of training. Some of these elements will be waived or modified when required by state or federal law for specific training programs.

(1) The claimant's unemployment is chronic or persistent, or likely to be chronic or persistent, due to any one of the following three circumstances:

(a) A lack of basic work skills. A lack of basic work skills may not be established unless a claimant:

(i) has a history of repeated unemployment attributable to lack of skills;

(ii) has no recent history of employment earning a wage substantially above the federal minimum wage;

(iii) has had no formal training in occupational skills;

(iv) does not have skills developed over an extended period of time by training or experience; and

(v) does not have a marketable degree from an institution of higher learning; or

(b) a change in the marketability of the claimant's skills has resulted due to new technology, or major reductions within an industry; or

(c) inability to continue working in occupations using the claimant's skills due to a verifiable, permanent physical or emotional disability,

(2) a claimant must have a reasonable expectation for success as demonstrated by:

(a) an aptitude for and interest in the work the claimant is being trained to perform, or course of study the claimant is pursuing; and

(b) sufficient time and financial resources to complete the training.

(3) The training is provided by an institution approved by the Department.

(4) The training is not available except in school. For example, on-the-job training is not available to the claimant.

(5) The length of time required to complete the training should generally not extend beyond 18 months.

(6) The training should generally be vocationally oriented unless the claimant has no more than two terms, quarters, semesters, or similar periods of academic training necessary to obtain a degree.

(7) There is a reasonable expectation of employment following completion of the training. Reasonable expectation means the claimant will find a job using the skills and education acquired while in training pursuant to a fair and objective projection of job market conditions expected to exist at the time

of completion of the training.

(8) A claimant did not leave work to attend school even if the employer required the training for advancement or as a condition of continuing employment.

(9) The schooling is full-time, as defined by the training facility.

R994-403-203. Extensions of Department Approval.

Initial approval shall be granted, for the school term beginning with the week in which the attendance began, or the effective date of the claim, whichever is later. The Department may extend the approval if the claimant establishes proof of:

(1) satisfactory attendance;

(2) passing grades;

(3) continuance of the same course of study and classes originally approved; and

(4) compliance with all other qualifying elements.

R994-403-204. Availability Requirements When Approval is Granted.

If Department approval is granted, the claimant will be placed in deferred status once the training begins and will not be required to register for work or to seek and accept work. The deferral also applies to break periods between successive terms as long as the break period is four weeks or less. A claimant must make a work search prior to the onset of training, even if the claimant has been advised that the training has been approved. Benefits will not be denied when work is refused as satisfactory attendance and progress in school serves as a substitute for the availability requirements of the act.

(2) Absences from school will not necessarily result in a denial of benefits during those weeks the claimant can demonstrate he or she is making up any missed school work and is still making satisfactory progress in school. Satisfactory progress is defined as passing all classes with a grade level sufficient to qualify for graduation, licensing, or certification, as appropriate.

(3) A disqualification will be effective with the week the claimant knew or should have known he or she was not going to receive a passing grade in any of his or her classes or was otherwise not making satisfactory progress in school. It is the claimant's responsibility to immediately report any information that may indicate a failure to maintain satisfactory progress.

(4) The claimant must attend school full-time as defined by the educational institution. If a claimant discontinues school attendance, drops or changes any classes before the end of the term, Department approval may be terminated immediately. However, discontinuing a class that does not reduce the school credits below full-time status will not result in the termination of Department approval. Department approval may be reinstated during any week a claimant demonstrates, through appropriate verification, the claimant is again attending class regularly and making satisfactory progress.

(5) Notwithstanding any other provisions of this section, if the claimant was absent from school for more than one-half of the workweek due to illness or hospitalization, the claimant is considered to be unable to work and unemployment benefits will be denied for that week. A claimant has the responsibility to report any sickness, injury, or other circumstances that prevented him or her from attending school.

(6) A claimant is ineligible for Department approval if the claimant is retaking a class that was originally taken while receiving benefits under Department approval. However, if Department approval was denied during the time the course was originally in progress, approval may be reinstated to cover that portion of the course not previously subsidized if the claimant can demonstrate satisfactory progress.

R994-403-205. Short-Term Training.

Department approval may be granted even though a claimant has marketable skills and does not meet the requirements for Department approval as defined in R994-403-202 if the entire course of training is no longer than eight weeks and will enhance the claimant's employment prospects. A claimant will not be granted a waiver for training that is longer than eight weeks even if the claimant needs only eight weeks or less to complete the training. This is intended as a one-time approval per benefit year and may not be extended beyond eight weeks.

R994-403-301. Requirements for Special Benefits.

Some benefit programs, including Extended Benefits, have different availability and work search requirements. The rule governing work search for Extended Benefits is R994-402. Other special programs are governed by the act or federal law.

**KEY: filing deadlines, registration, student eligibility,
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R994. Workforce Services, Workforce Information and Payment Services.**R994-405. Ineligibility for Benefits.****R994-405-101. Voluntary Leaving (Quit) - General Information.**

(1) 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) an employer attached layoff which meets the requirements for a deferral under R994-403-108b(1)(c),
- (b) a suspension, or
- (c) a period of absence initiated by the claimant.

(2) Failing to renew an employment contract may also constitute a voluntary separation.

(3) 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.

(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.

(2) A claimant will not be disqualified for failing to apply for or accept suitable work unless all of the following elements are established:

- (a) Availability of a Job.

There must be an actual job opening the claimant could reasonably expect to obtain.

- (b) Knowledge.

It must be shown that the claimant knew, or should have known, 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.

- (c) Control.

The failure of the claimant to obtain the employment must be the result of the claimant's own actions or behavior in failing to:

- (i) accept a referral, or
- (ii) properly apply for work, or
- (iii) accept work when offered.

(3) If the elements of Subsection (2) above have been met, benefits will be denied under Subsection 35A-4-405(3) unless:

- (a) the job is not suitable;
- (b) the claimant had good cause for refusing a referral, the failure to apply for or accept the job; or
- (c) a denial of benefits would be contrary to equity and good conscience.

R994-405-302. Failure to Accept a Referral.

(1) Definition of a Referral. A referral is when the department provides information about a job opening to the

claimant and the claimant is given the opportunity to apply. The information must meet the requirements of R994-405-301(2)(b).

(2) Failure to Accept a Referral. A claimant fails to accept a referral when he or she prevents or discourages the Department from providing the necessary referral information. Failing to respond to a notice to contact the Department for the purpose of being referred to a specific job is the same as refusing a referral for possible employment.

(3) If there was a suitable job opening to which the claimant would have been referred, benefits will be denied unless good cause is established for not responding as directed, or the elements of equity and good conscience are established.

R994-405-303. Proper Application for Work.

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.

R994-405-304. Failure to Accept an Offer of Work.

It will be considered to be a refusal of new work if the claimant engages in conduct which discourages an offer of work, places unreasonable barriers to employment, or accepts an offer of new work but imposes unreasonable conditions which causes the offer to be rescinded. A refusal of work will not result in a denial of benefits if the claimant has accepted a definite offer of full-time employment which is expected to start within three weeks or has a date of recall to full-time work expected to begin within three weeks.

R994-405-305. Suitability of Work.

(1) 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.

(2) The unemployment compensation system is not intended to exert downward pressure on existing labor standards, nor is it intended to allow claimants to restrict availability to jobs with increased wages or improved working conditions.

(3) Workers should not feel compelled, through a threatened or potential denial of benefits, to accept work under less favorable conditions than those generally available in the area for similar work. The phrase "similar work" does not mean "identical work." Similar work is work in the same occupation or a different occupation which requires essentially the same skills.

R994-405-306. Elements to Consider in Determining Suitability.

A claimant is not required to accept an offer of new work unless the work is suitable. Whether a job is suitable depends on the length of time the claimant has been unemployed. 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. The following elements must be considered in determining the suitability of employment:

(1) Prior Earnings.

Work is not suitable if the wage is less than the state or federal minimum wage, whichever is applicable, or the wage is substantially less favorable to the claimant than prevailing wages for similar work in the locality.

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 geographical area, the prevailing wage is determined by the new area.

(a) During the first one-third of the claim, work paying at least the highest wage earned during or subsequent to the base period, or the highest wage available in the locality for the claimant's occupation, whichever is lower is suitable, but only if there is a reasonable expectation that work can be obtained at that wage.

(b) After a claimant has received one-third of the MBA for his or her regular claim, any work paying a wage that is equal to or greater than the lowest wage earned during the base period is suitable, as long as that wage is consistent with the prevailing wage standard.

(c) After a claimant has received two-thirds of the MBA for his or her regular claim, any work paying the prevailing wage in the locality for work in any base period occupation is suitable.

(2) 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 the claimant has received one-third of the MBA for his or her regular claim, work in any of the occupations in which the claimant worked during the base period is considered suitable.

(b) After the claimant has received two-thirds of the MBA for his or her regular claim, any work that he or she can reasonably perform consistent with the claimant's past experience, training and skills is considered suitable.

(3) 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. If the working conditions are substantially less favorable than those prevailing for similar work in the area, the work is not suitable. Working conditions include the following:

(a) 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.

(b) Benefits in Addition to Wages.

Work is not suitable if "fringe benefits" such as life and group health insurance; paid sick, vacation, and annual leave; provisions for leaves of absence and holiday leave; pensions, annuities, and retirement provisions; or severance pay are substantially less favorable than benefits received by the claimant during the base period or than those prevailing for similar work in the area, whichever is lower.

(c) 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 labor dispute, and the former employer makes an offer of employment after the dispute begins, 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.

(4) 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.

(5) 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.

(6) Physical Fitness.

The claimant must be physically capable of performing the work. Employment beyond the claimant's physical capacity is not suitable.

(7) 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 his or her own transportation within the normal or customary commuting pattern in the area, or 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.

(8) Religious or Moral Convictions.

The work must conflict with sincerely 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.

(9) 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 which is otherwise suitable 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.

R994-405-307. 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. A substantial change in the duties, terms, or conditions of the work, not authorized by the existing employment contract, is in effect a termination of the existing contract and the offer of a new contract and constitutes a separation and an offer of new work.

(2) The provisions of R994-405-310 are used to determine if the new contract constitutes suitable 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 a new work, even if those duties are not specified as part of the official job requirements. The contract of employment has not changed if it is customary for workers to perform short-term tasks involving different or new duties and those assignments do not replace the regular duties of the worker. It is not considered to be a termination of the existing contract and an offer of new work if the claimant fails to return after a vacation, with or without pay, or a short-term layoff for a definite period. A short-term layoff must meet the requirements for a deferral under R994-403-108b(1)(c).

(3) New work is defined as:

(a) work offered by an employer for whom the individual has never worked;

(b) work offered by an individual's current employer involving duties, terms, or conditions substantially different from those agreed upon as part of the existing contract of employment; or

(c) 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.

R994-405-308. Burden of Proof.

(1) 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. Before benefits may be denied, the Department must show:

(a) the job was available,

(b) the claimant had an opportunity to learn about the conditions of employment,

(c) the claimant had an opportunity to apply for or accept the job, and

(d) the claimant's action or inaction resulted in the failure to obtain the job.

(2) When the Department has established all of the elements in paragraph (1) of this subsection, a disqualification must be assessed unless it can be established that the work was not suitable, that there was good cause for failing to obtain the job, or the claimant or the Department can show that a disqualification would be against equity and good conscience.

(3) The Department has the option, but not the obligation, to review Department records concerning the claimant's wages and work history to determine suitability in cases where the claimant has not provided a reason for refusing the job, or the claimant's stated reason for refusing the job was for a reason other than suitability. In these cases, department intervention would only be appropriate if the available information establishes that a denial would be an affront to fairness.

R994-405-309. 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 WBA.

(2) A disqualification will be assessed as of the effective date of a new claim if the claimant refused an offer of suitable work after his or her last job ended and prior to the effective date of the claim. A disqualification will also be assessed as of the reopening date, if the claimant refused an offer of suitable work after his or her last job ended and prior to the reopening date.

(3) Disqualifications assessed in a prior benefit year shall

continue into the new benefit year and until the claimant has earned six times his or her WBA in subsequent bona fide covered employment.

R994-405-310. Good Cause.

(1) Good cause for failing to accept available work is established if the work is not suitable or accepting the job would cause hardship which the claimant was unable to overcome. Hardship can only be established if the claimant can show that the employment would result in actual or potential physical, mental, economic, personal, or professional harm.

(2) Good cause is limited to circumstances which were beyond the claimant's control or were compelling and reasonable.

(3) 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 and there are no reasonable alternatives. However, if a personal circumstance prevents the acceptance of suitable employment, there is a presumption the claimant is not able or available for work.

(4) Good cause is not established if a claimant refuses suitable work because the work will interfere with school or training. Claimants attending school full-time with Department approval are not required to seek work.

R994-405-311. Equity and Good Conscience.

A claimant will not be denied benefits for failing to apply for or accept work if it would be contrary to equity and good conscience, even though good cause has not been established. If there were mitigating circumstances and a denial of benefits would be unreasonably harsh or an affront to fairness, benefits may be allowed. 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. In order to establish eligibility under the equity and good conscience standard the following elements must be shown:

(1) Reasonableness.

The claimant must have acted reasonably and the refusal of work was logical, sensible, or practical.

(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.

R994-405-401. 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 be repaid in its entirety before the claimant would be eligible for any further waiting week credit or unemployment benefits. The claimant would also be subject to a 13-week penalty period. 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 of 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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35A-4-405

R994. Workforce Services, Workforce Information and Payment Services.**R994-406. Fraud and Fault.****R994-406-205. Obligation of Department Employees.**

Employees of the Department are obligated, regardless of when the information is discovered, to bring to the attention of the proper Department representatives any information that may affect an individual's eligibility for unemployment insurance benefits or information affecting the employer's contributions.

R994-406-401. Fault Overpayments - General Definition.

Subsection 35A-4-406(4) identifies the repayment requirements of individuals who have been overpaid due to fraud, or due to claimant fault not constituting fraud.

R994-406-402. Fraud.

(1) When the Department has evidence of an overpayment resulting from the claimant's failure to properly report material information, the claimant will be notified of the issue, given an opportunity to provide information concerning the issue, and told that payments are being held pending a decision. In such circumstances, payment of benefits for claims currently in process may be held for up to two weeks pending the issuance of a fraud or overpayment decision. Benefit payments which have not been paid for eligible weeks prior to the disqualification period under Subsection 35A-4-405(5), shall be used to reduce such an overpayment. 100% of the benefit check to which he is entitled will be used to reduce the overpayment.

(2) The overpayment and penalties for fraud are established only when benefits have been denied under Subsection 35A-4-405(5). The repayment amount is determined by Subsection 35A-4-405(5) and, following a decision, repayment must be made in cash before the claimant will be eligible to establish a waiting week credit or receive future benefit payments. Therefore, the overpayment and penalties cannot be offset.

R994-406-403. Claimant Fault.**(1) Elements of Fault.**

Fault is established if all three of the following elements are present. If one or more element cannot be established, the overpayment does not fall under the provisions of Subsection 35A-4-405(5).

(a) Materiality.

Benefits were paid to which the claimant was not entitled.

(b) Control.

Benefits were paid based on incorrect information or an absence of information which the claimant reasonably could have provided.

(c) Knowledge.

The claimant had sufficient notice that the information might be reportable.

(2) Claimant Responsibility.

The claimant is responsible for providing all of the information requested of him in written documents regarding his Unemployment Insurance claim, as well as any verbal instructions given by a Department representative. Before certifying that he is eligible for benefits, he is under obligation to make proper inquiry if he has any questions to determine definitely what is required. Therefore, when a claimant has knowledge that certain information may affect his claim, but makes his own determination that the information is not material or if he ignores it, he is at fault.

(3) Receipt of Settlement or Back-Pay.

(a) A claimant is "at fault" for an overpayment created if he fails to advise the Department that grievance procedures are being pursued which may result in payment of wages for weeks he claims benefits.

(b) When the claimant advises the Department prior to

receiving a settlement that he has filed a grievance with his employer, and he makes an assignment directing the employer to pay to the Department that portion of the settlement equivalent to the amount of unemployment compensation he receives, he will not be "at fault" if an overpayment is created due to payment of wages attributable to weeks for which he receives benefits. If the grievance is resolved in favor of the claimant and the employer was properly notified of the wage assignment, the employer is liable to immediately reimburse the Unemployment Insurance Fund upon settlement of the grievance. If reimbursement is not made to the Department consistent with the provisions of the Assignment, collection procedures will be initiated against the employer.

(c) If the claimant refuses to make an assignment of the wages he is claiming in a grievance proceeding, benefits will be withheld on the basis that he is not unemployed because he anticipates receipt of wages. In this case, the claimant should file weekly claims and if he does not receive back wages when the grievance is resolved, benefits will be paid for weeks properly claimed provided he is otherwise eligible.

R994-406-404. Method of Repayment of Fault Overpayments.

(1) When the claimant has been determined to be "at fault" in the creation of an overpayment, the overpayment must be repaid. If payment is made by personal check, no benefit checks will be released until the personal check has been honored by the bank. If the claimant is otherwise eligible and files for additional benefits during the same or any subsequent benefit year, 50% of the benefit check to which he is entitled will be used to reduce the overpayment.

(2) Discretion for Repayment.

(a) Full restitution is required of all overpayments established under Subsection 35A-4-405(5). At the discretion of the Department, however, the claimant may not be required to make payments and legal collection proceedings may be held in abeyance. The overpayment will be deducted from future benefits payable during the current or subsequent benefit years. Discretion may be exercised:

(i) if the Department or the employer share fault in the creation of the overpayment, or

(ii) if installment payments would impose unreasonable hardship such as in the case of an individual with an income which does not provide for additional money beyond minimum living requirements.

(b) The Department cannot exercise repayment discretion for fraud overpayments and these amounts are subject to all collection procedures.

(3) Installment Payments.

(a) If repayment in full has not been made within 90 days of the first billing the Department shall enter into an agreement with the claimant whereby repayment of the money owed is collectible by monthly installments. The Department shall notify the claimant in writing of the minimum installment payment which the claimant is required to make. If the claimant is unable to make the minimum installment payments, he may request a review within ten days of the date written notice is mailed or delivered.

(b) Installment agreements shall be established as follows:

Overpayments Equaling Minimum Monthly Payment	Entitlement
\$3,000 or less 50% of claimant's weekly benefit entitlement	3,001 to 5,000 100% of claimant's weekly benefit entitlement
5,001 to 10,000	125% of claimant's weekly benefit entitlement
10,001 or more	150% of claimant's weekly benefit entitlement

(c) Installment agreements will not be approved in amounts less than those established above except in cases of

extreme hardship. An ability to make a minimal payment is presumed if the claimant has a household income which is in excess of the poverty level guidelines as established by the federal government and used to grant waivers of overpayments under Subsection 35A-4-406(5). The installment agreement will be reviewed periodically and adjustments made based upon changes in the claimant's income or circumstance. A due date will be established for each installment agreement which is mutually agreed upon by the claimant and the Department.

(4) Collection Procedures.

(a) Billings are sent to claimants with overpayments on a monthly basis. After 30 days, if payment is not made, the account is considered delinquent. If no payment has been received in 90 days the individual is notified that a warrant will be filed unless a payment is received within 10 days. However, there may be other circumstances under which a warrant may be filed on any outstanding overpayment. A warrant attaches a lien to any personal or real property and establishes a judgment that is collectible under Utah Rules of Civil Procedure.

(b) All outstanding overpayments are reported to the State Auditor for collection whereby any refunds due to the individual from State income tax or any such rebates, refunds, or other amounts owed by the state and subject to legal attachment may be applied against the overpayment.

(5) Offset In Time.

Offset in time occurs when the claimant files valid weekly claims to replace weeks of benefits which were overpaid. When an overpayment is established after the claimant has exhausted all benefits, the claimant may file claims for additional weeks during the same benefit year provided he is otherwise eligible. Offset in time will be allowed on claims that have expired if a written request is made within 30 days of the notification of the overpayment. No offset in time will be allowed on overpayments established under Subsection 35A-4-405(5). One hundred percent (100%) of the weekly benefit amount for the weeks claimed will be credited against the established overpayment up to the amount of the balance owed to the Department. No penalty for late filing will be assessed when a claimant is otherwise eligible to file claims to offset in time.

R994-406-501. Non-Fault Overpayments - General Definition.

Subsection 35A-4-406(5) identifies the repayment requirements of individuals who have received an overpayment of benefits through no fault of their own. Such overpayments are referred to as "accounts not receivable" (ANR).

R994-406-502. Responsibility.

(1) The claimant is responsible for providing all of the information requested in written documents as well as any verbal request from a Department representative. If the claimant has provided such information, and then receives benefits to which he is not entitled through an error of the Department or an employer, he is not at fault for the overpayment.

(2) "Through no fault of his own" does not mean the claimant can shift responsibility for providing correct information to another person such as a spouse, parent, or friend. The claimant is responsible for all information required on his claim.

R994-406-503. Method of Repayment.

Even though the claimant is without fault in the creation of the overpayment, 50 percent of the claimant's weekly benefit amount will be deducted from any future benefits payable to him until the overpayment is repaid. No billings will be made and no collection procedures will be initiated.

R994-406-504. Waiver of Recovery of Overpayment.

(1) If waiver of recovery of overpayment is granted under

Subsection 35A-4-406(5), the amount of the overpayment owing at the time the request is granted is withdrawn, forgiven or forgotten and the claimant has no further repayment obligation. Granting of a waiver will not be retroactive for any of the overpayment which has already been offset except if the offset was made pending a decision on a timely waiver request.

(a) Time Limitation for Requesting Waiver.

A waiver must be requested within 10 days of the notification of opportunity to request a waiver or within 10 days of the first offset of benefits following a reopening or upon a showing of a significant change of the claimant's financial circumstances. Good cause will be considered if the claimant can show the failure to request a waiver within these time limitations was due to circumstances which were reasonable or beyond his control.

(b) Basic Needs of Survival.

The claimant may be granted a waiver of the overpayment if recovery by 50 percent offset would create an inability to pay for the basic needs of survival for the immediate family, dependents and other household members. In making this waiver determination, the Department shall take into consideration all the potential resources of the claimant, the claimant's family, dependents and other household members. The claimant will be required to provide documentation of claimed resources. The claimant must also provide social security numbers of family members, dependents and household members. "Economically disadvantaged" for federal programs is defined as 70 percent of the Lower Living Standard Income Level (LLSIL). "Inability to meet the basic needs of survival" is defined consistent with "economically disadvantaged." Therefore, if the claimant's total family resources in relation to family size are not in excess of 70 percent of the LLSIL, the waiver will be granted provided the economic circumstances are not expected to change within an indefinite period of time. Individual expenses will not be considered.

(c) Indefinite Period.

An indefinite period of time is defined as the current month and at least the next two months. Therefore, the duration of the financial hardship must be expected to last at least three months. If the claimant or household members expect to return to work within the three months the anticipated income will be included in determining if he lacks basic needs of survival for an indefinite period of time. Available resources will be averaged for the three months.

KEY: appellate procedures, jurisdiction, overpayments, unemployment compensation

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