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

Promulgated under authority of Section 4-14-6.

R68-7-2. Registration of Products.

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

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

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

(b) The name of the pesticide.

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

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

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

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

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

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

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

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

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

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

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

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

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

R68-7-3. Product Labeling.

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

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

R68-7-4. Classification of Pesticides.

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

R68-7-5. Classification of Pesticide Applicators.

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

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

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

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

R68-7-6. Categorization of Pesticide Applicators.

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

(1) Agricultural Pest Control.

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

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

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

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

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

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

(5) Aquatic Pest Control.

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

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

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

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

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

(9) Regulatory Pest Control.

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

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

(10) Demonstration, Consultation and Research Pest Control.

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

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

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

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

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

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

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

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

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

(1) Commercial and Non-Commercial Applicators.

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

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

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

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

(2) Aerial Application. Additional Standards.

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

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

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

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

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

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

R68-7-8. Certification Procedures.

(A) Commercial Applicators.

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

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

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

(4) License Renewal, Recertification.

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

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

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

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

(d)Recertification options:

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

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

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

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

(a) Name and address of property owner;

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

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

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

(e) Purpose of application;

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

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

(6) Exemption.

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

(B) Non-Commercial Applicators.

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

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

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

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

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

Recertification options are:

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

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

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

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

(a) Name and address of property owner;

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

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

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

(e) Purpose of application;

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

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

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

(C) Private Applicators.

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

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

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

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

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

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

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

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

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

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

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

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

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

R68-7-9. Dealer Licensing.

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

(1) License Required.

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

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

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

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

(a) The name and address of the purchaser.

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

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

(d) Month, day and year of purchase.

(e) Quantity purchased.

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

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

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

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

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

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

R68-7-11. Unlawful Acts.

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

(1) Made false or fraudulent claims through any media

misrepresenting the effect of pesticides or methods to be utilized;

(2) Applied known ineffective or improper pesticides;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

KEY: inspections
July 25, 2006 **4-14-6**
Notice of Continuation March 16, 2006

R156. Commerce, Occupational and Professional Licensing.
R156-22. Professional Engineers and Professional Land Surveyors Licensing Act Rules.
R156-22-101. Title.

These rules are known as the "Professional Engineers and Professional Land Surveyors Licensing Act Rules".

R156-22-102. Definitions.

In addition to the definitions in Title 58, Chapters 1, 3a and 22, as used in Title 58, Chapters 1, 3a and 22, or these rules:

(1) "Complete and final" as used in Section 58-22-603 means "complete construction plans" as defined in Subsection 58-22-102(3).

(2) "Direct supervision" as used in Subsection 58-22-102(10) means "supervision" as defined in Subsection 58-22-102(16).

(3) "Employee, subordinate, associate, or drafter of a licensee" as used in Subsections 58-22-102(16), 58-22-603(1)(b) and these rules means one or more individuals not licensed under this chapter, who are working for, with, or providing professional engineering, professional structural engineering, or professional land surveying services directly to and under the supervision of a person licensed under this chapter.

(4) "Engineering surveys" as used in Subsection 58-22-102(9) include all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects, but exclude the surveying of real property for the establishment of land boundaries, rights-of-way, easements, alignment of streets, and the dependent or independent surveys or resurveys of the public land survey system.

(5) "Incidental practice" means "architecture work as is incidental to the practice of engineering" as used in Subsection 58-22-102(9) and "engineering work as is incidental to the practice of architecture" as used in Subsection 58-3a-102(6), which:

(a) can be safely and competently performed by the licensee without jeopardizing the life, health, property and welfare of the public;

(b) is in an area where the licensee has demonstrated competence by adequate education, training and experience;

(c) arises from, and is directly related to, work performed in the licensed profession;

(d) is substantially less in scope and magnitude when compared to the work performed or to be performed by the licensee in the licensed profession; and

(e) is work in which the licensee is fully responsible for the incidental practice performed as provided in Subsections 58-3a-603(1) or 58-22-603(1).

(6) "Recognized jurisdiction" as used in Subsection 58-22-302(4)(d)(i), for licensure by endorsement, means any state, district or territory of the United States, or any foreign country who issues licenses for professional engineers, professional structural engineers, or professional land surveyors, and whose licensure requirements include:

(a) Professional Engineer.

(i) a bachelors or post graduate degree in engineering or equivalent education as determined by the Engineering Credentials Evaluation International (ECEI) and four years of full time engineering experience under supervision of one or more licensed engineers; and

(ii) passing the NCEES Principles and Practice of Engineering Examination (PE).

(b) Professional Structural Engineer.

(i) a bachelors or post graduate degree in engineering or equivalent education as determined by the Engineering Credentials Evaluation International (ECEI) and four years of full time engineering experience under supervision of one or more licensed engineers;

(ii) passing the NCEES Structural I and II Examination; and

(iii) three years of licensed experience in professional structural engineering.

(c) Professional Land Surveyor.

(i) a two or four year degree in land surveying or equivalent education as determined by the Engineering Credentials Evaluation International (ECEI) and four years of full time land surveying experience under supervision of one or more licensed professional land surveyors; or eight years of full time land surveying experience under supervision of one or more licensed professional land surveyors; and

(ii) passing the NCEES Principles and Practice of Land Surveying Examination (PLS) or passing a professional land surveying examination that is substantially equivalent to the NCEES Principles and Practice of Land Surveying Examination.

(7) "Responsible charge" by a principal as used in Subsection 58-22-102(7) means that the licensee is assigned to and is personally accountable for the production of specified professional engineering, professional structural engineering or professional land surveying projects within an organization.

(8) "TAC/ABET" means Technology Accreditation Commission/Accreditation Board for Engineering and Technology.

(9) "Under the direction of the licensee" as used in Subsection 58-22-102(16), as part of the definition of "supervision of an employee, subordinate, associate, or drafter of a licensee", means that the unlicensed employee, subordinate, associate, or drafter of a person licensed under this chapter engages in the practice of professional engineering, professional structural engineering, or professional land surveying only on work initiated by a person licensed under this chapter, and only under the administration, charge, control, command, authority, oversight, guidance, jurisdiction, regulation, management, and authorization of a person licensed under this chapter.

(10) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 22, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-22-502.

R156-22-103. Authority - Purpose.

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 22.

R156-22-104. Organization - Relationship to Rule R156-1.

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

R156-22-302b. Qualifications for Licensure - Education Requirements.

(1) Education requirements - Professional Engineer.

In accordance with Subsections 58-22-302(1)(d) and 58-22-302(2)(d), the engineering program criteria is established as one of the following:

(a) The bachelors or post graduate engineering program shall be accredited by EAC/ABET or the Canadian Engineering Accrediting Board (CEAB).

(b) The post graduate engineering degree, when not accredited by EAC/ABET or CEAB, shall be earned from an institution which offers a bachelors or masters degree in an engineering program accredited by EAC/ABET or CEAB in the same specific engineering discipline as the earned post graduate degree and the applicant is responsible to demonstrate that the combined engineering related coursework taken (both undergraduate and post graduate) included coursework that meets or exceeds the engineering related coursework required for the EAC/ABET accreditation for the bachelor degree

program.

(c) If the degree was earned in a foreign country, the engineering curriculum shall be determined to be equivalent to a EAC/ABET accredited program by the Engineering Credentials Evaluation International. Only deficiencies in course work in the humanities, social sciences and liberal arts and no more than five semester hours in math, science or engineering, not to exceed a total of 10 semester hours noted by the credentials evaluation may be satisfied by successfully completing the deficiencies in course work at a recognized college or university approved by the division in collaboration with the board. Engineering course work deficiencies must be completed at an EAC/ABET approved program.

(d) A TAC/ABET accredited degree is not acceptable to meet the qualifications for licensure as a professional engineer.

(2) Education requirements - Professional Land Surveyor.

In accordance with Subsection 58-22-302(3)(d), an equivalent land surveying program for licensure as a professional land surveyor is defined as an earned bachelors or masters degree from a curriculum related to land surveying and completion of a minimum of 22 semester hours or 32 quarter hours of course work in land surveying which shall include the following courses:

(a) successful completion of a minimum of one course in each of the following content areas:

(i) boundary law;

(ii) writing legal descriptions;

(iii) public land survey system;

(iv) surveying field techniques; and

(b) the remainder of the 22 semester hours or 32 quarter hours may be made up of successful completion of courses from the following content areas:

(i) photogrammetry;

(ii) studies in land records or land record systems;

(iii) survey instrumentation;

(iv) global positioning systems;

(v) geodesy;

(vi) control systems;

(vii) land development;

(viii) drafting, not to exceed six semester hours or eight quarter hours;

(ix) algebra, geometry, trigonometry, not to exceed six semester hours or eight quarter hours;

(x) geographic information systems.

R156-22-302c. Qualifications for Licensure - Experience Requirements.

(1) Experience Requirements - Professional Engineer.

(a) In accordance with Subsection 58-22-302(1)(e), an applicant for licensure as a professional engineer shall complete the following qualifying experience requirements:

(i) Submit verification of qualifying experience, obtained while under the supervision of one or more licensed professional engineers, which experience has been certified by the licensed professional who provided the supervision documenting completion of a minimum of four calendar years of qualifying experience in professional engineering approved by the division in collaboration with the board in accordance with the following:

(A) The qualifying experience must be obtained after meeting the education requirements.

(B) A maximum of three of the four years of qualifying experience may be approved by the board as follows:

(I) A maximum of three years of qualifying experience may be granted for teaching advanced engineering subjects in a college or university offering an engineering curriculum accredited by EAC\ABET.

(II) A maximum of three years of qualifying experience may be granted for conducting research in a college or university offering an engineering curriculum accredited by EAC/ABET provided the research is under the supervision of a licensed professional and is directly related to the practice of engineering.

(III) A maximum of one year of qualifying experience may be granted for completion of a masters degree in engineering provided that both the earned bachelors and masters degree in engineering meet the program criteria set forth in Subsection R156-22-302b(1).

(IV) A maximum of two years of qualifying experience may be granted for completion of a doctorate degree in engineering provided that both the earned bachelors or masters degree and doctorate degree in engineering meet the program criteria set forth in Subsection R156-22-302b(1).

(ii) The supervisor shall provide to the applicant the certificate of qualifying experience in a sealed envelope with the supervisor's engineer seal stamped across the seal flap of the envelope, which the applicant shall submit with the application for licensure.

(iii) In the event the supervisor is unavailable or refuses to provide a certification of qualifying experience, the applicant shall submit a complete explanation of why the supervisor is unavailable and submit verification of the experience by alternative means acceptable to the board which shall demonstrate that the work was engineering related work and was competently performed and the accumulated experience is sufficient for the applicant to be granted a license without jeopardy to the public health, safety or welfare.

(iv) The supervisor shall be engaged in a work setting in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised.

(v) The applicant shall submit at least one additional verification of the qualifying experience from persons other than the supervisor, which must be from a licensed engineer who has personal knowledge of the applicant's knowledge, ability and competence to practice professional engineering.

(b) The performance or supervision of construction work as a contractor, foreman or superintendent is not qualifying experience for licensure as a professional engineer.

(c) Full or part time employment, research, or teaching for periods of time less than ten weeks in length will not be considered as qualifying experience.

(2) Experience Requirements - Professional Structural Engineer.

(a) In accordance with Subsection 58-22-302(2)(e), each applicant shall submit verification of three years of professional structural engineering experience obtained while under the supervision of one or more licensed professional structural engineers, which experience is certified by the licensed structural engineer supervisor and is in addition to the qualifying experience required for licensure as a professional engineer.

(b) Professional structural engineering experience shall include responsible charge of structural design in one or more of the following areas:

(i) structural design of any building or structure two stories and more, or 45 feet in height, located in a region of moderate or high seismic risk designed in accordance with current codes adopted pursuant to Section 58-56-4;

(ii) structural design for a major seismic retrofit/rehabilitation of an existing building or structure located in a region of moderate or high seismic risk; or

(iii) structural design of any other structure of comparable structural complexity.

(c) Professional structural engineering experience shall include structural design in all of the following areas:

(i) use of three of the following four materials as they

relate to the design, rehabilitation or investigation of buildings or structures:

(A) steel;

(B) concrete;

(C) wood; or

(D) masonry;

(ii) selection of framing systems including the consideration of alternatives and the selection of an appropriate system for the interaction of structural components to support vertical and lateral loads;

(iii) selection of foundation systems including the consideration of alternatives and the selection of an appropriate type of foundation system to support the structure;

(iv) design and detailing for the transfer of forces between stories in multi-story buildings or structures;

(v) application of lateral design in the design of the buildings or structures in addition to any wind design requirements; and

(vi) application of the local, state and federal code requirements as they relate to design loads, materials, and detailing.

(d) The supervisor shall provide to the applicant the certificate of qualifying experience in a sealed envelope with the supervisor's engineer seal stamped across the seal flap of the envelope, which the applicant shall submit with the application for licensure.

(e) In the event the supervisor is unavailable or refuses to provide a certification of qualifying experience, the applicant shall submit a complete explanation of why the supervisor is unavailable and submit verification of the experience by alternative means acceptable to the board which shall demonstrate that the work was engineering related work and was competently performed and the accumulated experience is sufficient for the applicant to be granted a license without jeopardy to the public health, safety or welfare.

(f) The supervisor shall be engaged in a work setting in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised

(g) The applicant shall submit at least one additional verification of the qualifying experience from persons other than the supervisor, which must be from a licensed professional structural engineer who has personal knowledge of the applicant's knowledge, ability and competence to practice professional structural engineering.

(3) Experience Requirements - Professional Land Surveyor.

(a) In accordance with Subsections 58-22-302(3)(d), an applicant for licensure as a professional land surveyor shall complete the following qualifying experience requirements:

(i) Submit verification of qualifying experience obtained under the supervision of one or more licensed professional land surveyors who have provided supervision, which experience is certified by the licensed professional land surveyor supervisor and is in accordance with the following:

(A) Applicants who have met the education requirements in Subsection 58-22-302(3)(d)(i) shall document four years of qualifying experience in land surveying which experience may be obtained before, during or after completing the education requirements for licensure.

(B) Prior to January 1, 2007, applicants who did not complete the education requirements in Subsection 58-22-302(3)(d)(i) shall document eight years of qualifying experience in land surveying.

(b) The four years of qualifying experience required in R156-22-302c(3)(a)(i)(A) and four of the eight years required in R156-22-302c(3)(a)(i)(B) shall comply with the following:

(i) Two years of experience should be specific to field surveying with actual "hands on" surveying, including all of the following:

(A) operation of various instrumentation;

(B) review and understanding of plan and plat data;

(C) public land survey systems;

(D) calculations;

(E) traverse;

(F) staking procedures;

(G) field notes and manipulation of various forms of data encountered in horizontal and vertical studies; and

(ii) Two years of experience should be specific to office surveying, including all of the following:

(A) drafting (includes computer plots and layout);

(B) reduction of notes and field survey data;

(C) research of public records;

(D) preparation and evaluation of legal descriptions; and

(E) preparation of survey related drawings, plats and record of survey maps.

(c) The remaining qualifying experience required in R156-22-302c(3)(a)(i)(B) shall include any aspects of the practice of land surveying under the supervision of a licensed professional land surveyor in accordance with Subsection 58-22-102(16).

(d) Full or part time employment for periods of time less than ten weeks in length will not be considered as qualifying experience.

(e) The supervisor shall provide to the applicant the certificate of qualifying experience in a sealed envelope with the supervisor's land surveyor seal stamped across the seal flap of the envelope, which the applicant shall submit with the application for licensure.

(f) In the event the supervisor is unavailable or refuses to provide a certification of qualifying experience, the applicant shall submit a complete explanation of why the supervisor is unavailable and submit verification of the experience by alternative means acceptable to the board which shall demonstrate that the work was land surveying related work and was competently performed and the accumulated experience is sufficient for the applicant to be granted a license without jeopardy to the public health, safety or welfare.

(g) The supervisor shall be engaged in a work setting in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised

(h) The applicant shall submit at least one additional verification of the qualifying experience from persons other than the supervisor, which must be from a licensed professional land surveyor who has personal knowledge of the applicant's knowledge, ability and competence to practice professional land surveying.

R156-22-302d. Qualifications for Licensure - Examination Requirements.

(1) Examination Requirements - Professional Engineer.

(a) In accordance with Subsection 58-22-302(1)(f), the examination requirements for licensure as a professional engineer are defined, clarified or established as the following:

(i) the NCEES Fundamentals of Engineering (FE) Examination with a passing score as established by the NCEES except that an applicant who has completed an undergraduate degree from an EAC/ABET accredited program and has completed a Ph.D. or doctorate in engineering from an institution that offers EAC/ABET undergraduate programs in the Ph.D. field of engineering is not required to take the FE examination;

(ii) the NCEES Principles and Practice of Engineering (PE) Examination other than Structural II with a passing score as established by the NCEES; and

(iii) pass all questions on the open book, take home Utah Law and Rules Examination, which is included as part of the

application for licensure forms.

(b) If an applicant was approved by the Utah Division of Occupational and Professional Licensing to take the examinations required for licensure as an engineer under prior Utah statutes and rules and did take and pass all examinations required under such prior rules, the prior examinations will be acceptable to qualify for reinstatement of licensure rather than the examinations specified under Subsection R156-22-302d(1)(a).

(c) Prior to submitting an application for pre-approval to sit for the NCEES PE examination, an applicant must have successfully completed the qualifying experience requirements set forth in Subsection R156-22-302c(1), and have successfully completed the education requirements set forth in Subsection R156-22-302b(1).

(d) The admission criteria to sit for the NCEES FE examination is set forth in Section 58-22-306.

(2) Examination Requirements - Professional Structural Engineer.

(a) In accordance with Subsection 58-22-302(2)(f), the examination requirements for licensure as a professional structural engineer are defined, clarified, or established as the following:

(i) the NCEES Fundamentals of Engineering Examination (FE) with a passing score as established by the NCEES;

(ii) the NCEES Structural I and Structural II Examinations with a passing score as established by the NCEES; and

(iii) as part of the application for license, pass all questions on the open book, take home Utah Law and Rules Examination.

(b) Prior to submitting an application for pre-approval to sit for the NCEES Structural II examination, an applicant must have successfully completed the experience requirements set forth in Subsection R156-22-302c(2).

(3) Examination Requirements - Professional Land Surveyor.

(a) In accordance with Subsection 58-22-302(3)(g), the examination requirements for licensure as a professional land surveyor are established as the following:

(i) the NCEES Fundamentals of Land Surveying (FLS) Examination with a passing score as established by the NCEES;

(ii) the NCEES Principles and Practice of Land Surveying (PLS) Examination with a passing score as established by the NCEES; and

(iii) the Utah Local Practice Examination with a passing score of at least 75.

(b) Prior to submitting an application for pre-approval to sit for the NCEES PLS examination, an applicant must have successfully completed the education and qualifying experience requirements set forth in Subsections R156-22-302b(2) and 302c(3).

(4) Examination Requirements for Licensure by Endorsement.

In accordance with Subsection 58-22-302(4)(d)(ii), the examination requirements for licensure by endorsement are established as follows:

(a) Professional Engineer: An applicant for licensure as a professional engineer by endorsement shall comply with the examination requirements in Subsection R156-22-302d(1) except that the board may waive one or more of the following examinations under the following conditions:

(i) the NCEES FE Examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed;

(ii) the NCEES PE Examination for an applicant who is a principal for five of the last seven years preceding the date of the license application, who has been licensed for 20 years preceding the date of the license application, and who was not required to pass the NCEES PE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(b) Professional Structural Engineer: An applicant for licensure as a professional structural engineer by endorsement shall comply with the examination requirements in Subsection R156-22-302d(2) except that the board may waive the NCEES FE Examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(c) Professional Land Surveyor: An applicant for licensure as a professional land surveyor by endorsement shall comply with the examination requirements in Subsection R156-22-302d(3) except that the board may waive either the NCEES FLS Examination or the NCEES PLS Examination or both to an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FLS Examination or the PLS Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

R156-22-304. Continuing Education for Professional Engineers, Professional Structural Engineers and Professional Land Surveyors.

In accordance with Subsection 58-22-303(2) and Section 58-22-304, the qualifying continuing professional education standards for professional engineers, professional structural engineers and professional land surveyors are established as follows:

(1) During each two year period ending on December 31 of each even numbered year, a licensed professional engineer, professional structural engineer and professional land surveyor shall be required to complete not less than 24 hours of qualified professional education directly related to the licensee's professional practice.

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

(3) Qualified continuing professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a professional engineer, professional structural engineer, or professional land surveyor;

(b) be relevant to the licensee's professional practice;

(c) be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training and experience; and

(e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration and completion are available for review.

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

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

(b) a maximum of 12 hours per two year period may be recognized for teaching in a college or university or for teaching qualified continuing professional education courses in the field of professional engineering, professional structural engineering or professional land surveying, provided it is the first time the

material has been taught during the preceding 12 months;

(c) a maximum of four hours per two year period may be recognized for preparation of papers, articles, or books directly related to the practice of professional engineering, professional structural engineering or professional land surveying and submitted for publication; and

(d) a maximum of eight hours per two year period may be recognized at the rate of one hour for each hour served on committees or in leadership roles in any state, national or international organization for the development and improvement of the profession of professional engineering, professional structural engineering or professional land surveying but no more than four of the eight hours may be obtained from such activity in any one organization;

(e) unlimited hours may be recognized for continuing education that is provided via Internet or through home study courses provided the course verifies registration and participation in the course by means of a test which demonstrates that the participant has learned the material presented.

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

(6) If a licensee exceeds the 24 hours of qualified continuing professional education during the two year period, the licensee may carry forward a maximum of 12 hours of qualified continuing professional education into the next two year period.

(7) A licensee who documents they are engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing professional education requirements established under this section may be excused from the requirement for a period of up to three years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

(8) Any licensee who fails to timely complete the continuing education required by this rule shall be required to complete double the number of hours missed to be eligible for renewal or reinstatement of licensure.

(9) Any applicant for reinstatement who was not in compliance with the continuing education requirement at the time of the expiration of licensure shall be required to complete 24 hours of continuing education complying with these rules within two years prior to the date of application for reinstatement of licensure.

R156-22-305. Inactive Status.

(1) A person currently licensed and in good standing as a professional engineer, professional structural engineer or professional land surveyor may apply for a transfer of that license to inactive status if:

(a)(i) the licensee is at least 60 years of age;

(ii) the licensee is disabled; or

(iii) the division finds other good cause for believing that the licensee will not return to the practice as a professional engineer, professional structural engineer or professional land surveyor;

(b) the licensee makes application for transfer of status and registration and pays a registration fee determined by the department under Section 63-38-3.2; and

(c) the licensee, on application for transfer, certifies that he will not engage in the practice for which a license is required while on inactive status.

(2) Each inactive license shall be issued in accordance with the two-year renewal cycle established by Section R156-1-308a.

(3) Inactive status licensees may not engage in practice for which a license is required.

(4) Inactive status licensees are not required to fulfill the continuing professional education under these rules.

(5) Each inactive status licensee is responsible for renewing his inactive license according to division procedures.

(6) An inactive status licensee may reinstate his license to active status by:

(a) submitting an application in a form prescribed by the division;

(b) paying a fee determined by the department under Section 63-38-3.2; and

(c) showing evidence of having completed the continuing professional education requirement established in Subsection R156-22-304(9).

R156-22-501. Administrative Penalties - Unlawful Conduct.

In accordance with Subsections 58-1-501, 58-1-501(1)(a) through (d), 58-22-501 and 58-22-503, unless otherwise ordered by the presiding officer, the following fine schedule shall apply.

(1) Engaging in unlicensed practice or using any title that would cause a reasonable person to believe the user of the title is licensed under this chapter.

First Offense: $800

Second Offense: $1,600

(2) Engaging in, or representing oneself as engaged in the practice of professional engineering or land surveying as a corporation, proprietorship, partnership, or limited liability company unless exempted from licensure.

First Offense: $800

Second Offense: $1,600

(3) Impersonating another licensee or engaging in practice under this chapter using a false or assumed name, unless permitted by law.

First Offense: $1,000

Second Offense: $2,000

(4) Knowingly employing any person to practice under this chapter who is not licensed to do so.

First Offense: $1,000

Second Offense: $2,000

(5) Knowingly permits any person to use his or her license except as permitted by law.

First Offense: $1,000

Second Offense: $2,000

(6) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-22-503(1)(i).

(7) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(8) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(9) In all cases the presiding officer shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount based upon the evidence reviewed.

R156-22-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) submitting an incomplete final plan, specification, report or set of construction plans to:

(a) a client, when the licensee represents, or could reasonably expect the client to consider the plan, specification, report or set of construction plans to be complete and final; or

(b) to a building official for the purpose of obtaining a

building permit;

(2) failing as a principal to exercise responsible charge;

(3) failing as a supervisor to exercise supervision of an employee, subordinate, associate or drafter; or

(4) failing to conform to the accepted and recognized standards and ethics of the profession including those stated in the "Model Rules of Professional Conduct" of the National Council of Examiners for Engineering and Surveying (NCEES), 1997, which is hereby incorporated by reference.

R156-22-601. Seal Requirements.

(1) In accordance with Section 58-22-601, all final plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats prepared by the licensee or prepared under the supervision of the licensee, shall be sealed in accordance with the following:

(a) Each seal shall be a circular seal, 1-1/2 inches minimum diameter.

(b) Each seal shall include the licensee's name, license number, "State of Utah", and "Professional Engineer", "Professional Structural Engineer", or "Professional Land Surveyor" as appropriate.

(c) Each seal shall be signed and dated with the signature and date appearing across the face of each seal imprint.

(d) Each original set of final plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats, as a minimum, shall have the original seal imprint, original signature and date placed on the cover or title sheet.

(e) A seal may be a wet stamp, embossed, or electronically produced.

(f) Copies of the original set of plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats which contain the original seal, original signature and date is permitted, if the seal, signature and date is clearly recognizable.

(2) A person who qualifies for and uses the title of professional engineer intern is not permitted to use a seal.

KEY: engineers, surveyors, professional land surveyors, professional engineers

July 25, 2006	**58-22-101**
Notice of Continuation January 13, 2003	**58-1-106(1)(a)**
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-40. Recreational Therapy Practice Act Rules.
R156-40-101. Title.

These rules are known as the "Recreational Therapy Practice Act Rules".

R156-40-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 40, as used in Title 58, Chapters 1 and 40 or these rules:

(1) "Approved graduate degree in recreation therapy or a graduate degree with an approved emphasis in recreation therapy", as used in Subsection 58-40-5(1)(a)(i), means an earned graduate degree which includes a minimum of nine semester hours or 12 quarter hours of upper division or graduate level course work in recreation therapy.

(2) "CTRS" means a person certified as a Certified Therapeutic Recreation Specialist by the National Council for Therapeutic Recreation Certification.

(3) "Full-time, on-site", as used in Subsections 58-40-5(3)(c), 58-40-6(3)(a)(i) and (3)(b)(i), means an individual who is employed on the premises with the hiring agency for a minimum of 30 hours per week.

(4) "Maintain the on-going documentation", as used in Subsection 58-40-6(3)(b), means:

(a) collecting data for the assessment process;

(b) documenting the on-going treatment or intervention provided to clients according to the treatment plan; and

(c) providing periodic review of client status according to agency regulations.

(5) "MTRS" means a person licensed as a master therapeutic recreation specialist.

(6) "NCTRC" means the National Council for Therapeutic Recreation Certification.

(7) "Supervision", as used in Subsections 58-40-5(3)(c), 58-40-6(1)(a), (2)(b), (3)(a)(i) and (3)(b)(i), means full-time, on-site oversight by a MTRS or TRS of the recreation therapy services offered.

(8) "Supervision of a temporary TRS", as used in Subsection R156-40-302e(d), means that the MTRS or TRS supervisor is responsible for the recreation therapy activities performed by the temporary TRS and will review and approve the treatment plans as well as any modifications to the treatment plans as evidenced by the signature of the MTRS or TRS in the treatment plan.

(9) "TRS" means a person licensed as a therapeutic recreation specialist.

(10) "TRT" means a person licensed as a therapeutic recreation technician.

(11) "Unprofessional conduct" is defined in Title 58, Chapters 1 and 40.

R156-40-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 40.

R156-40-104. 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.

R156-40-302a. Qualifications for Licensure - Education Requirements.

In accordance with Section 58-40-5, the educational requirements for licensure include:

(1) A MTRS applicant shall:

(a) have a current NCTRC certification as a CTRS or a current license as a TRS; and

(b) document completion of the education and 4000 hours of paid experience while nationally certified as a CTRS or licensed as a TRS.

(2) A TRS applicant shall:

(a) have a current NCTRC certification as a CTRS; and

(b) document completion of the education and practicum requirements for licensure as a TRS.

(3) A TRT applicant shall:

(a) have an approved educational course in therapeutic recreation taught by a MTRS, as required by Subsection 58-40-5(3)(b)(i), which shall consist of 90 hours of structured education under the instruction and direction of a licensed MTRS, or if completed out of state, under the direction of a nationally certified CTRS, which includes:

(i) theories and concepts of recreation therapy;

(ii) the therapeutic recreation process;

(iii) characteristics of illness and disability and their effects on leisure;

(iv) medical and psychiatric terminology including psychiatric, pharmacology and abbreviations;

(v) ethics;

(vi) role and function of other health and human service professionals, including: agencies, medical specialists and allied health professionals; and

(vii) health and safety.

R156-40-302b. Qualifications for Licensure - Experience Requirements.

In accordance with Section 58-40-5, the experience requirements for licensure include:

(1) A MTRS is required to complete 4000 hours of paid experience, as required by Subsection 58-40-5(1)(a)(ii), which means an individual must work as a TRS in Utah in a paid position practicing recreation therapy and/or work outside of Utah as a CTRS in a paid position practicing recreation therapy as defined in Subsection 58-40-2(4)(a) and (b) for 4000 hours.

(2) A TRS is required to complete an approved practicum, as required by Subsection 58-40-5(2)(b), which means a practicum verified on the degree transcript.

(3) A TRT is required to complete an approved practicum, as required by Subsection 58-40-5(3)(c), which means 125 hours of field work experience to be completed over a duration of not more than nine months under the direction of a licensed MTRS or TRS supervisor, that includes:

(a) a minimum of ten hours of face to face supervision by the MTRS or TRS supervisor;

(b) training in the therapeutic recreation process as defined in Subsections 58-40-2(4)(a) and (b);

(c) interdisciplinary contact;

(d) administration contact; and

(e) community relations.

R156-40-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-40-5(1)(e), 58-40-5(2)(f) and 58-40-5(3)(e), applicants for licensure shall pass the following examinations:

(1) Applicants for licensure as a MTRS, TRS or TRT shall pass the Utah Recreation Therapy Law and Rule Examination with a minimum passing score of 75%.

(2) Applicants for licensure as a MTRS or TRS shall pass the NCTRC certification examination as evidenced by a current NCTRC certification as a CTRS.

(3) Applicants for licensure as a TRT shall pass the Utah Recreation Therapy Theory Examination for TRT with a minimum passing score of 70%.

R156-40-302d. Qualifications for Supervision.

"Supervision of a therapeutic recreation technician", as used in Subsection 58-40-6(3)(a)(i) and (3)(b)(i), means that the MTRS or TRS supervisor is responsible for:

(1) providing on-site training, observation, direction and evaluation, as defined in Subsection 58-40-2(4)(b), to include:

(a) reviewing the recreation therapy intervention performed by the TRT as defined by the treatment plan;

(b) demonstrating periodic review and evaluation of ongoing documentation;

(c) reviewing the recreation therapy program according to administrative and governing regulations; and

(d) reviewing and evaluating adherence to the standards of the profession.

R156-40-302e. Qualifications for Temporary License as a TRS - Supervision Required.

(1) In accordance with Section 58-1-303, an applicant for temporary licensure as a TRS shall:

(a) submit an application for temporary license in the form prescribed by the division which includes a verification that the applicant has registered and been approved to take the next available NCTRC examination;

(b) pay a fee determined by the department under Section 63-38-3.2;

(c) meet all the requirements for licensure, except passing the NCTRC examination; and

(d) practice recreation therapy under the supervision of a Utah licensed TRS or MTRS as defined in Subsection R156-40-102(8).

(2) The temporary license will not be issued for a period greater than ten months.

(3) The temporary license will not be renewed or extended for any purpose.

R156-40-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 40 is established by rule in Section R156-1-308.

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

KEY: licensing, recreational therapy, recreation therapy

June 22, 2006	**58-40-1**
Notice of Continuation November 6, 2001	**58-1-106(1)(a)**
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-46a. Hearing Instrument Specialist Licensing Act Rules.
R156-46a-101. Title.

These rules are known as the "Hearing Instrument Specialist Licensing Act Rules."

R156-46a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 46a, as used in Title 58, Chapters 1 and 46a or these rules:

(1) "Analog" means a continuous variable physical signal.

(2) "Digital" means using or involving numerical digits, expressed in a scale of notation to represent discreetly all variables occurring.

(3) "Programmable" means the electronic technology in the hearing instrument can be modified independently.

(4) "Unprofessional conduct," as defined in Title 58 Chapters 1 and 46a, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-46a-502.

R156-46a-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58 Chapter 46a.

R156-46a-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.

R156-46a-302a. Qualifications for Licensure - Hearing Instrument Specialist Certification Requirement.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), an applicant shall submit a notarized copy of his current certificate documenting National Board for Certification in Hearing Instrument Sciences (NBC-HIS) to satisfy the certification requirement for licensure as a hearing instrument specialist in Subsection 58-46a-302(1)(e).

R156-46a-302b. Qualifications for Licensure - Hearing Instrument Specialist Experience Requirement.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the experience requirement for licensure as a hearing instrument specialist in Subsection 58-46a-302(1)(d) is defined and clarified as follows.

An applicant shall document successful completion of 4000 hours of acceptable practice as a hearing instrument intern by submitting a notarized Completion of Internship form provided by the division.

R156-46a-302c. Qualifications for Licensure - Passing Score for Utah Law and Rules Examination.

In order to pass the Utah Law and Rules Examination for Hearing Instrument Specialists, an applicant as a hearing instrument specialist or hearing instrument intern shall achieve a score of at least 75%.

R156-46a-302d. Qualifications for Licensure - Internship Supervision Requirements.

In accordance with Subsections 58-46a-102(7) and 58-1-203(1)(b), the requirements for supervision of a hearing instrument intern are defined and clarified as follows. The hearing instrument intern supervisor shall:

(1) not have been disciplined for any unprofessional or unlawful conduct within five years of the start of any internship program;

(2) supervise no more than one hearing instrument intern on direct supervision;

(3) supervise no more than two hearing instrument interns at one time;

(4) not begin an internship program until:

(a) the hearing instrument intern is properly licensed as a hearing instrument intern; and

(b) the supervisor is approved by the Division in collaboration with the Board;

(5) keep a daily record on forms available from the Division, during the direct supervision period, which shall include the hours of instruction, the duties assigned, the total hours worked each week and the type of services performed;

(6) make available to the Division, upon request, upon completion of direct supervision and upon completion of the internship, the intern's training records;

(7) notify the Division immediately when the intern has completed direct supervision on forms available from the Division; and

(8) notify the Division within ten working days if the internship program is terminated.

R156-46a-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 46a is established by rule in Section R156-1-308.

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

R156-46a-304. Continuing Education.

In accordance with Subsection 58-46a-304, the continuing education requirement for renewal of licensure as a hearing instrument specialist is defined and clarified as follows:

(1) Continuing education courses shall be offered in the following areas:

(a) acoustics;

(b) nature of the ear (normal ear, hearing process, disorders of hearing);

(c) hearing measurement;

(d) hearing aid technology;

(e) selection of hearing aids;

(f) marketing and customer relations;

(g) client counseling;

(h) ethical practice;

(i) state laws and regulations regarding the dispensing of hearing aids; and

(j) other areas deemed appropriate by the Division in collaboration with the Board.

(2) Only contact hours from the American Speech-Language-Hearing Association (ASHA) or the International Hearing Society (IHS) shall be applied towards meeting the minimum requirements set forth in Subsection R156-46a-304(4).

(3) As verification of contact hours earned, the Division will accept copies of transcripts or certificates of completion from continuing education courses approved by ASHA or IHS.

(4) A minimum of 20 contact hours shall be obtained by a hearing instrument specialist in order to have the license renewed every two years.

R156-46a-502a. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) violating any state or federal law applicable to persons practicing as a hearing instrument specialist or hearing instrument intern;

(2) failure to perform the minimum components of an evaluation for a hearing aid as set forth in Section R156-46a-502b;

(3) aiding or abetting any person other than a Utah licensed hearing instrument specialist, a licensed hearing instrument intern, a licensed audiologist, or a licensed physician to perform a hearing aid examination;

(4) dispensing a hearing aid without the purchaser having:

(a) received a medical evaluation by a licensed physician within the preceding six months prior to the purchase of a hearing aid; or

(b) a document signed by the purchaser being a fully informed adult waiving the medical evaluation in accordance with Food and Drug Administration (FDA) required disclosures, except a person under the age of 18 years may not waive the medical evaluation;

(5) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or other representation, however disseminated or published, which is misleading, deceiving, or untruthful;

(6) quoting prices of competitive hearing instruments or devices without disclosing that they are not the current prices or to show, demonstrate, or represent competitive models as being current when such is not the fact;

(7) using the word digital in any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia or other representation when the hearing instrument circuit is less than 100% digital, unless the word digital is accompanied by the word analog, as in "digitally programmable analog hearing aid";

(8) failure to perform a prepurchase hearing evaluation;

(9) supervising more than two hearing instrument interns at one time; and

(10) failing as a hearing instrument intern supervisor to comply with any of the requirements of Section R156-46a-302d.

R156-46a-502b. Minimum Components of an Evaluation for a Hearing Aid and Dispensing of a Hearing Aid.

(1) The minimum components of a hearing aid examination are the following:

(a) air conduction tests at frequencies of 250, 500, 1000, 2000, and 4000 Hertz;

(b) appropriate masking if the air conduction threshold at any one frequency differs from the bone conduction threshold of the contralateral or nontest ear by 40 decibels at the same frequency;

(c) bone conduction tests at 500, 1000, and 2000 Hertz on every client with proper masking;

(d) speech audiometry by live voice or recorded voice, including speech discrimination testing, most comfortable loudness (MCL) measurements and measurements of uncomfortable levels of loudness (UCL); and

(e) recording and interpretation of audiograms and speech audiometry and other appropriate tests for the sole purpose of determining proper selection and adaptation of a hearing aid.

(2) Only when the above procedures are clearly impractical may the selection of the best instrument to compensate for the loss be made by trial of one or more instruments.

(3) Tests performed by a physician specializing in diseases of the ear, a clinical audiologist or another licensed hearing instrument specialist shall be accepted if they were performed within six months prior to the dispensing of the hearing aid.

R156-46a-502c. Calibration of Technical Instruments.

The requirement in Subsection 58-46a-303(3)(c) for calibration of all appropriate technical instruments used in practice is defined, clarified, and established as follows:

(1) any audiometer used in the fitting of hearing aids shall be calibrated when necessary, but not less than annually;

(2) the calibration shall include to ANSI standards calibration of frequency accuracy, acoustic output, attenuator linearity, and harmonic distortion; and

(3) calibration shall be accomplished by the manufacturer, or a properly trained person, or an institution of higher learning equipped with proper instruments for calibration of an audiometer.

KEY: licensing, hearing aids, hearing instrument specialist, hearing instrument intern

July 11, 2006	**58-1-106(1)(a)**
Notice of Continuation June 24, 2004	**58-1-202(1)(a)**
	58-46a-101
	58-46a-304

R156. Commerce, Occupational and Professional Licensing.
R156-47b. Massage Therapy Practice Act Rules.
R156-47b-101. Title.

These rules are known as the "Massage Therapy Practice Act Rules."

R156-47b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 47b, as used in Title 58, Chapters 1 and 47b, or these rules:

(1) "COMTA" means the Commission on Massage Therapy Accreditation.

(2) "Direct supervision" as used in Subsection 58-47b-302(3)(d) means that the apprentice supervisor is in the facility where massage is being performed and is immediately available to the apprentice for advice, direction and consultation while the apprentice is engaged in performing massage.

(3) "Lymphatic massage" as used in Subsections 58-47b-302(4) and 58-47b-304(1)(i) means a method using light pressure applied by the hands to the skin in specific maneuvers to promote drainage of the lymphatic fluid from the tissue.

(4) "NCBTMB" means the National Certification Board for Therapeutic Massage and Bodywork.

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 47b, is further defined, in accordance with Subsection 58-1-203(5) in Section R156-47b-502.

R156-47b-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 47b.

R156-47b-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.

R156-47b-202. Massage Therapy Education Peer Committee.

(1) There is created under Subsection 58-1-203(1)(f), the Massage Therapy Education Peer Committee.

(a) The Education Peer Committee shall:

(i) advise the Utah Board of Massage Therapy regarding massage therapy educational issues;

(ii) recommend to the Board standards for massage school curricula, apprenticeship curricula, and animal massage training; and

(iii) periodically review the current curriculum requirements.

(b) The composition of this committee shall be:

(i) two individuals who are instructors in massage therapy;

(ii) two individuals, one who represents a professional massage therapy association, and one who represents the Utah Committee of Bodywork Schools; and

(iii) one individual from the Utah State Office of Education.

R156-47b-302a. Qualifications for Licensure as a Massage Therapist - Massage School Curriculum Standards - Equivalent Education and Training.

(1) In accordance with Subsection 58-47b-302(2)(e)(i)(A), an applicant must graduate from a school of massage with a curriculum, which at the time of graduation, meets the following standards:

(a) Curricula must be registered with the Utah Department of Commerce, Division of Consumer Protection or an accrediting agency recognized by the United States Department of Education.

(b) Curricula shall be a minimum of 600 hours and shall include the following:

(i) anatomy, physiology and pathology - 150 hours;

(ii) massage theory including the five basic strokes - 300 hours;

(iii) professional standards, ethics and business practices - 35 hours;

(iv) safety and sanitation - 15 hours;

(v) clinic or practicum - 100 hours; and

(vi) other related massage subjects as approved by the Division in collaboration with the Board.

(c) In addition to the curriculum requirements of Subsection R156-47b-302a(1)(b), new curricula shall include the major content areas, but are not required to meet the percentage weights of the National Certification Board of Therapeutic Massage and Bodywork (NCBTMB), National Certification Examination Content Outline, published July 2003, which is adopted and incorporated by reference.

(2) In accordance with Subsection 58-47b-302(2)(e)(i)(B), an applicant who completes equivalent education and training must document that the education and training was approved by NCBTMB as evidenced by current NCBTMB certification.

R156-47b-302b. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-47b-302(2)(f) and 58-47b-302(3)(f), the examination requirements for licensure are defined, clarified, or established as follows:

(1) Applicants for licensure as a massage therapist shall:

(a) pass the Utah Massage Law and Rule Examination; and

(b) pass one of the following examinations:

(i) the National Certification Examination for Therapeutic Massage and Bodywork (NCETMB); or

(ii) the National Certification Examination for Therapeutic Massage (NCETM).

(2) Applicants for licensure as a massage therapist who have completed a "Utah Massage Apprenticeship" must:

(a) pass the Utah Massage Theory Exam.

(3) Applicants for licensure as a massage apprentice shall:

(a) pass the Utah Massage Law and Rule Examination.

R156-47b-302c. Apprenticeship Standards for a Supervisor.

In accordance with Subsection 58-47b-302(2)(e)(ii), an apprentice supervisor shall:

(1) not begin an apprenticeship program until:

(a) the apprentice is licensed; and

(b) the supervisor is approved by the division;

(2) not begin a new apprenticeship program until:

(a) the apprentice being supervised passes the Massage Theory examination and becomes licensed as a massage therapist, unless otherwise approved by the division in collaboration with the board; and

(b) the supervisor complies with subsection (1);

(3) if an apprentice being supervised fails the Massage Theory examination three times:

(a) together with the apprentice being supervised, meet with the Board at the next appropriate Board meeting;

(b) explain to the Board why the apprentice is not able to pass the examination;

(c) provide to the Board a plan of study in the appropriate subject matter to assist the apprentice in passing the examination; and

(d) upon successful completion of the review as provided in Subsection (3)(c), the apprentice shall again be eligible to take the Massage Theory examination;

(4) supervise not more than two apprentices at one time, unless otherwise approved by the division in collaboration with the board;

(5) train the massage apprentice in the areas of:

(a) massage theory - 50 hours;

(b) massage client service - 300 hours;

(c) hands on instruction - 325 hours;
(d) massage techniques - 120 hours;
(e) anatomy, physiology and pathology - 150 hours;
(f) business practices - 25 hours;
(g) ethics - 15 hours; and
(h) safety and sanitation - 15 hours;

(6) submit a curriculum content outline with the apprentice application, including a list of the resource materials to be used;

(7) display a conspicuous sign near the work station of the apprentice stating "Apprentice in Training";

(8) keep a daily record which shall include the hours of instruction and training completed, the hours of client services performed, and the number of hours of training completed;

(9) make available to the division upon request, the apprentice's training records;

(10) verify the completion of the apprenticeship program on forms available from the division;

(11) notify the division within ten working days if the apprenticeship program is terminated;

(12) must not have been disciplined for any unprofessional or unlawful conduct within five years of the start of any apprenticeship program; and

(13) ensure that the massage client services required in Subsection (5)(b) only be performed on the public; all other hands on practice must be performed by an apprentice on an apprentice or supervisor.

R156-47b-302d. Good Moral Character - Disqualifying Convictions.

(1) When reviewing an application to determine the good moral character of an applicant as set forth in Subsection 58-47b-302(2)(c) and whether the applicant has been involved in unprofessional conduct as set forth in Subsections 58-1-501(2)(c), the Division and the Board shall consider the applicant's criminal record as follows:

(a) a criminal conviction for a sex offense as defined in Title 76, Chapter 5, Part 4 and Chapter 5a, and Title 76, Chapter 10, Part 12 and 13, shall disqualify an applicant from becoming licensed; or

(b) a criminal conviction for the following crimes may disqualify an applicant for becoming licensed:

(i) crimes against a person as defined in Title 76, Chapter 5, Parts 1, 2 and 3;

(ii) crimes against property as defined in Title 76, Chapter 6, Parts 1 through 6;

(iii) any offense involving controlled dangerous substances; or

(iv) conspiracy to commit or any attempt to commit any of the above offenses.

(2) An applicant who has a criminal conviction for a felony crime of violence may be considered ineligible for licensure for a period of seven years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(3) An applicant who has a criminal conviction for a felony involving a controlled substance may be considered ineligible for licensure for a period of five years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(4) An applicant who has a criminal conviction for any misdemeanor crime of violence or the use of a controlled substance may be considered ineligible for licensure for a period of three years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(5) Each application for licensure or renewal of licensure shall be considered in accordance with the requirements of Section R156-1-302.

R156-47b-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1)(a), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 47b is established by rule in Section R156-1-308a.

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

R156-47b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) engaging in any lewd, indecent, obscene or unlawful behavior while acting as a massage therapist;

(2) as an apprentice supervisor, failing to provide direct supervision to a massage apprentice;

(3) as an apprentice supervisor, failing to provide and document adequate instruction or training as applicable;

(4) as an apprentice supervisor, advising, directing or instructing an apprentice in any instruction or behavior that is inconsistent, contrary or contradictory to established professional or ethical standards of the profession;

(5) failing to notify a client of any health condition the licensee may have that could present a hazard to the client;

(6) failure to use appropriate draping procedures to protect the client's personal privacy; and

(7) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the Utah Chapter of the American Massage Therapy Association "Utah Code of Ethics and Standards of Practice", September 17, 2005 edition, which is hereby incorporated by reference.

R156-47b-601. Standards for Animal Massage Training.

In accordance with Subsection 58-28-8(12)(c), a massage therapist practicing animal massage shall have received 60 hours of training in the following areas:

(1) quadruped anatomy;
(2) the theory of quadruped massage; and
(3) supervised quadruped massage experience.

KEY: licensing, massage therapy

July 31, 2006	**58-1-106(1)(a)**
Notice of Continuation January 31, 2006	**58-1-202(1)(a)**
	58-47b-101

R156. Commerce, Occupational and Professional Licensing.
R156-54. Radiology Technologist and Radiology Practical Technician Licensing Act Rules.
R156-54-101. Title.

These rules are known as the "Radiology Technologist and Radiology Practical Technician Licensing Act Rules."

R156-54-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 54, as used in Title 58, Chapters 1 and 54 or these rules:

(1) "ARRT" means the American Registry of Radiologic Technologists.

(2) "Practice as a radiology practical technician" means using radiological equipment limited to specific radiographic procedures on specific parts of the human anatomy as contained in the American Registry of Radiologic Technologists (ARRT) "Content Specifications for the Examination for the Limited Scope of Practice in Radiography", effective January 2006, which is hereby incorporated by reference.

(3) "Supervision", "general supervision" or "direct supervision" as used in Subsections 58-54-2(5), (6) and (7) and Section 58-54-8 means that the supervising radiologist or radiology practitioner shall be available for consultation while the radiology technologist or the radiology practical technician is performing any radiographic procedures. Consultation may be in person, by telephone, by radio or any other means of direct verbal communication. The supervising radiologist or radiology practitioner shall be responsible for the radiographic procedures performed by the radiology technologist or the radiology practical technician.

(4) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 54, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-54-502.

R156-54-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 54.

R156-54-104. 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.

R156-54-301. Equivalent Education Requirements for Licensure as a Radiology Technologist.

In accordance with Subsection 58-54-5(2)(a), a four year bachelors of science degree in radiology is an equivalent radiological educational program approved for licensure as a radiology technologist.

R156-54-302a. Examination Requirements - Radiology Technologist.

In accordance with Subsection 58-54-5(2)(b), the examination requirement for licensure as a radiology technologist requires passing:

(1) an applicable American Registry of Radiologic Technologists (ARRT) Examination in Radiology Technology. The exams are:

(a) Radiography;

(b) Nuclear Medicine Technology;

(c) Radiation Therapy Technology; or

(2) the Nuclear Medicine Technology Certification Board Examination.

R156-54-302b. Examination Requirements - Radiology Practical Technician.

In accordance with Subsection 58-54-5(3), the examination requirement for licensure as a radiology practical technician requires passing:

(1) the ARRT Limited Scope of Practice in Radiography Examination with a minimum score of 65% for the following:

(a) core; and

(b) one or more of the following sections:

(i) chest;

(ii) extremities;

(iii) skull/sinuses;

(iv) spine; and

(v) podiatric; or

(2) the ARRT Bone Densitometry Equipment Operators Examination (BDEO) with a minimum score of 59%.

R156-54-303. 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 54 is established by rule in Section R156-1-308.

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

R156-54-304. Professional Education.

(1) In accordance with Subsection 58-54-6(2), each licensee shall be required to complete a program of professional education during each two year period commencing June of each odd numbered year.

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

(3) Qualified professional education under this section shall:

(a) be relevant to the licensee's professional practice;

(b) be prepared and presented by individuals who are qualified by education, training and experience; and

(c) have a method of verification of attendance.

(4) Unlimited hours of professional education shall be recognized for professional education completed in blocks of time not less than 50 minutes in formally established classroom courses, seminars, lectures, labs, training sessions or conferences which are approved by or conducted under the sponsorship of:

(a) an accredited institution of higher education;

(b) American Society of Radiologic Technologists or other similar professional organizations;

(c) an acute care hospital or medical treatment facility; or

(d) a professional association representing one of the licensed professions regularly engaged in radiologic procedures.

(5) Ten hours of professional education shall be recognized on a one time basis for passing the Utah Radiology Technologist and Radiology Practical Technician Law and Rule Examination if the exam was not required at the time of licensure.

(6) Each licensee shall be responsible for keeping documentation of his professional education hours for a period of four years after close of the two year period to which the records pertain.

(7) A licensee who has a serious health condition or has left the United States for an extended period of time which prevent the licensee from meeting the professional education requirements established under this section may be excused from the requirement for that period of time. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

R156-54-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) performing mammography when not in compliance with the Utah State Department of Health, Bureau of Health

Facility Licensure, Mammography Quality Assurance Rules, R432-950;

(2) performing a radiological procedure without having first passed the appropriate qualifying examination;

(3) performing a radiological procedure when not supervised in accordance with Section R156-54-102(2); and

(4) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the ARRT "Standards of Ethics", July 1, 2005 edition, which is hereby incorporated by reference.

KEY: licensing, radiology technologists, radiology practical technicians

July 31, 2006	**58-54-1**
Notice of Continuation April 8, 2002	**58-1-106(1)(a)**
	58-1-202(1)(a)

R199. Community and Culture, Housing and Community Development.
R199-11. Community Development Block Grants (CDBG).
R199-11-1. Purpose and Authority.

This rule incorporates by reference 24 CFR 570 (1996) as authorized by Section 9-4-202.

R199-11-2. State and Regional Funding Processes.

(1) CDBG funds are to be distributed based on regional prioritization of projects by utilizing a rating and ranking system developed and applied by the regional review committees (RRC). The role of each RRC is to receive, review and to prioritize the CDBG applications in its region.

(2) The RRC shall develop a rating and ranking system prior to the receipt of grant application. Upon completion of the rating and ranking process, each RRC shall present to the state a list of:

(a) all projects submitted to them for ranking,

(b) copies of ranking result sheets,

(c) the rationale for not ranking any submitted projects, and

(d) a summary of all final ranking results.

R199-11-3. Eligible Grant Applicants, National Objectives and Eligible Projects.

(1) Eligible applicants for the State CDBG Program are:

(a) incorporated cities and towns with populations of less than 50,000, except Clearfield and jurisdictions located in Salt Lake County;

(b) all of Utah's counties except Salt Lake County;

(c) units of local government recognized by the Secretary of The Department of Housing and Urban Development (HUD).

(2) National Objective Compliance Pursuant to 24 CFR 570.208.

(a) The national objective may be met in three possible ways:

(i) activities that benefit low and moderate income individuals, families and communities.

(ii) activities aiding in the prevention or elimination of slums or blight.

(iii) activities that address urgent health and welfare needs.

(3) Inclusive Federal Compliance Requirements.

(a) applicants shall comply with all regulations in 24 CFR part 570 and all applicable federal and state regulations, laws and overlay statutes.

(b) additional federal overlay statutes and regulations may apply to the state program if directed by HUD and Congress.

(4) Eligible activities are those defined by Section 105 of the Housing and Community Development Act of 1974, as amended.

R199-11-4. Responsibilities of Grantee, Regions and State.

(1) Grantee Responsibilities

(a) Grantees are allowed to take up to 10% of the contract amount for administration purposes. Administrative cost must be broken out from the rest of the project costs when the application and contract budget are prepared.

(b) The formal contract with the state must include an environmental review, federal labor standards and civil rights.

(2) Regional Responsibilities.

(a) Prioritization - Each RRC shall rate and rank all applications based on a set of criteria available to the public for comment.

(b) Public participation - Each RRC is required to hold at least one public hearing yearly to assist applicants and obtain comments and suggestions regarding the CDBG process.

(c) Application completion - Each RRC has the responsibility to assure that applications are completed in full prior to submission to the state.

(d) Administrative Capacity - The RRC will assess the ability of each applicant to administer a CDBG grant.

(3) State Responsibilities.

(a) Public Participation - The state is required to hold at least one public hearing yearly to notify the public, explain the community development program and to receive comments.

(b) Review of Applications - Upon receipt of the CDBG prioritized applications from the regions, the state staff shall begin a review process.

(c) Timely Distribution of Funds - The state is required by HUD to ensure that CDBG funds are allocated and distributed in a timely manner.

(i) Application - Each applicant shall make their final application decision prior to submitting it to the RRC.

(A) Contracts will be sent out in April and Grantees will have until June 1, to sign and return all copies of the contract to DCC (The Department of Community and Culture);

(B) On a case by case basis, RRCs may allow a one month extension to grantees experiencing unavoidable delays. Grantees must notify their RRC prior to the deadline;

(C) Funds from all contracts not returned to DCC by July 1, will be returned to the appropriate RRC for reallocation;

(D) Any funds not reallocated by the RRC by August 1, will be returned to the State. The State will reallocate the funds to an approved project;

Grantees may not delay the processing of the current application based on the possibility of receiving an allocation in the following year.

(d) Five Percent Withholding - The state reserves the right to withhold five percent of the CDBG grant amount pending a satisfactory final programmatic financial monitoring review of all projects.

(e) Cost Overruns - The state may authorize the funding of project cost overruns requested by the RRC.

(f) Fund Leveraging - One of the state's roles in the CDBG funding process is to provide assistance to grantees in leveraging other available financial resources.

(g) Program Monitoring - During the course of each CDBG contract the state must monitor all grantees.

(h) Grant Close Out - A grant close out packet will be submitted to the state at the completion of each CDBG-funded activity.

R199-11-5. Threshold Requirements.

Minimum threshold requirements are those defined by Section 105(e) of the Housing and Community Development Act of 1974, as amended and as stipulated in section 4 of the State CDBG Application Guide available from DCC.

(1) The determination of eligibility for recipients and activities shall be made by the RRC and State CDBG staff under state and federal criteria and regulations contained in 24 CFR part 500 and the State CDBG Application Guide available by contacting DCC at 324 S. State Street, Salt Lake City, UT 84111 or calling (801)538-8700.

(2) Each grant application must clearly demonstrate that the project will meet one of the three National Objectives identified in R199-1-3.

(3) Each grant applicant must demonstrate consistency with the Consolidated Plan, available from the Department of Community and Culture, Division of Housing and Community Development, 324 S. State Street, Salt Lake City, UT 84114.

(4) Each grant application may contain more than one activity addressing identified needs; however, these activities must be interrelated.

(5) All costs incorporated with the grant must be realistic given the nature and type of activities to be performed.

(6) Program income generated as a result of CDBG activities may be retained by the grantee when income is applied to continue the activity from which the income was derived, or

when used for other community development projects eligible under Section 105 of the Housing and Community Development Act of 1974, as amended, and after the preparation of a plan, approved by the state, specifying the proposed activity and stating the method that will be employed for its use.

R199-11-6. Length of Contract and Type of Grants.

(1) All grantees shall have 18 months depending upon contract execution, or until October 31, of the following year to complete their project.

(2) There are two types of grants: Single year and multi-year.

R199-11-7. Adjudicative Proceedings to Appeal Decisions of RRC.

(1) Classification of Actions. Adjudicative proceeding to appeal decisions of RRC by CDBG applicant agencies shall be conducted in accordance with section 63-46b-5.

(2) Commencement of Appeals Procedure. An applicant agency requesting an appeal hearing from DCC, DHCD (The Division of Housing and Community Development), shall submit a request:

(a) in writing;

(b) signed by the chief elected official; and

(c) include the following information:

(i) the names and addresses of all persons to whom a copy of the request for a hearing is being sent;

(ii) the RRC file number;

(iii) the name of the adjudicative proceeding;

(iv) the date the request for an appeals hearing was mailed;

(v) a statement of the legal authority and jurisdiction under which CDBG action is requested;

(vi) a statement of relief sought from DHCD; and

(vii) a statement of facts and reasons forming the basis for relief.

(d) The request for an appeals hearing must be submitted within ten days following the notice of decision by the RRC. At this point it shall be necessary for DHCD to place a hold on processing any contracts from the region in which the dispute has occurred until the matter is settled.

(3) Notification of interested parties.

(a) The CDBG applicant agency that requests an appeals hearing shall file the request with the Director of DHCD and shall send a copy by mail to each person known to have a direct interest in the requested hearing.

(b) The Director of DHCD, or a hearing officer appointed by the Director of DHCD, will within five working days after the appeals request, set the time and date for an appeals hearing. The Director of DHCD or the hearing officer shall promptly give notice by mail to all parties, stating the following:

(i) DHCD and RRC file number;

(ii) the name of the proceeding;

(iii) a statement indicating that the proceeding is to be conducted informally and according to the provisions of rules enacted under Sections 63-46b-5 authorizing informal proceedings.

(iv) the time and place of the scheduled appeals hearing, the purpose of the hearing, and that a party may be held in default if failing to attend or participate in the hearing.

(v) the name, title, mailing address and telephone number of the director of DHCD or the hearing officer.

(vi) Hearing Procedures

(a) hearing shall be held only after notice to interested parties is given in conformance with R199-7-1C;

(b) no answer or other pleading responsive to the request for a hearing need be filed.

(c) the following issues shall be reviewed at the appeals hearing:

(i) whether reasonable and equitable criteria are established for reviewing CDBG applications by the RRC

(ii) whether the priority ranking process is fair to all applicants;

(iii) whether the criteria and process were applied equitably and consistently to all applicants.

(d) in the appeals hearing, the parties named in the request for a hearing shall be permitted to testify, present evidence, and comment on the issues.

(e) discovery is prohibited, and DHCD may not issue subpoenas or other discovery orders.

(f) all parties shall have access to information contained in DHCD's files and to all materials and information gathered by any investigation to the extent permitted by law.

(g) any intervention is prohibited.

(h) all hearings shall be open to all parties.

(i) within 21 days after the close of the hearing, the Director of DHCD shall issue a signed order in writing that states:

(i) the decision;

(ii) the reason for the decision;

(iii) a notice of any right for administrative or judicial review available to the parties; and

(iv) the time limits for filing a request for reconsideration or judicial review.

(j) the Director of DHCD's order shall be based on the facts appearing in DHCD's files and on the facts presented in evidence at the appeals hearing.

(k) a copy of the Director of DHCD's order shall be promptly mailed to the parties.

(l) all hearings shall be recorded at the expense of DHCD. Any party, at his own expense, may have a reporter approved by DHCD prepare a transcript from DHCD's record of the hearing.

(5) Default

(a) the Director of DHCD may enter an order of default against a party if a party fails to participate in the adjudicative proceeding.

(b) the order shall include a statement of the grounds of default and shall be mailed to all parties.

(c) a defaulted party may seek to have DHCD set aside the default order according to procedures outlined in the Utah Rules of Civil Procedure.

(d) after issuing the order of default, the Director of DHCD will conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and will determine all issues in the adjudicative proceeding, including those affecting the defaulted party.

(6) Reconsideration by DHCD. Within ten days after the date that a final order is issued by the Director of DHCD, any party may file a written request for reconsideration in accordance with the provisions of the Administrative Procedures Act, Section 63-46b-13. Upon receipt of the request, the disposition by the Director of DHCD of that written request shall be in accordance with Section 63-46b-13(3). With the exception of reconsideration, all orders issued by the Director of DHCD shall be final. There shall be no other review except for judicial review as provided below.

(7) Judicial Review. An aggrieved party may also obtain judicial review of final DHCD orders by filing a petition for judicial review of that order in compliance with the provisions and requirements of the Utah Administrative Procedures Act, Sections 63-46b-14 and 63-46b-15.

KEY: community development, grants
July 25, 2006 **9-4-202(2) et seq.**
Notice of Continuation April 19, 2006

R212. Community and Culture, History.
R212-3. Memberships, Sales, Gifts, Bequests, Endowments.
R212-3-1. Scope and Applicability.

Purpose: To establish rules for handling disposition of proceeds and membership dues and make adjustments to prices of various publications.

R212-3-2. Definitions.

1. "board" means the Board of State History which acts as the Board of the Utah State Historical Society;
2. "society" means the Utah State Historical Society;
3. "division" means the Division of State History;
4. "historical magazine" means the Utah Historical Quarterly and Beehive History; and
5. "director" means the director of the Division of State History.

R212-3-3. Sales.

1. Prices for the sale of the historical magazine, books published by the division, microfilm, photos, and other published or facsimile documents shall be established annually by the director in consultation with the board.
2. Proceeds and earned interest from sales shall be deposited with the treasurer of the state as restricted interest bearing, nonlapsing revenue of the Society in accordance with Sections 9-8-206 and 9-8-207.
3. The disposition of the proceeds and earned interest shall be determined by the director in accordance with policy established by the board or in consultation with the board.

R212-3-4. Donations.

1. The society is authorized to receive gifts, grants, donations, bequests devises and endowments of money or property. These monies shall be used in accordance with directions provided by the donor and shall be kept in a separate line account as nonlapsing funds of the society together with earned interest.
2. If the donor makes no indication of the direction or use of the gifts, bequests, donations, devices, and endowments, these funds and interest on these funds shall be retained in a separate line account of the society as nonlapsing funds. Disbursement shall be made by the director in accordance with policy established by the board or in consultation with the board.
3. The board may review, or establish a policy of review and is authorized to receive, any gift, grant, donation, bequest, devise or endowment of money or property but need not.

R212-3-5. Memberships.

1. Membership dues shall be established annually by the director in consultation with the board according to Section 9-8-207(1).
2. Proceeds from memberships shall be kept in a separate line account as nonlapsing funds of the society together with earned interest.
3. Disbursement shall be made by the director in accordance with policy established by the board or in consultation with the board.

KEY: administrative procedures, historical society

1992	**9-8-206**
Notice of Continuation July 27, 2006	**9-8-207**

R212. Community and Culture, 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 elegibility 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 Statue 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 procedures, archaeology
November 23, 2004 9-8-302
Notice of Continuation August 1, 2006 9-8-305
9-9-403
63-2
16 USC 470 Sec. 304
43 CFR 7.8 Subtitle A

R212. Community and Culture, History.
R212-6. State Register for Historic Resources and Archaeological Sites.
R212-6-1. Scope and Applicability.

Purpose: To establish compatibility between the State and National Register. To establish standards for state landmarks consistent with Sections 9-8-306, 9-8-401, 9-8-402 and 9-8-403.

R212-6-2. Definitions.

A. Terms used in this rule are defined in Sections 9-8-302 and 9-8-402(1).

B. In addition:

1. "division" means the Division of State History;

2. "director" means the director of the Division of State History;

3. "board" means the Board of State History.

R212-6-3. State Register for Historic Resources and Archaeological Sites.

1. The State Register for properties and sites incorporates by reference, within this rule, 36 CFR 60.4, 1996 Edition for the selecting of properties and sites as historical places within Utah.

2. Properties or sites recommended for National Register consideration shall automatically be listed on the State Register after they have been recommended by the Board of State History for National Register listing and after the State Historic Preservation Officer has nominated them for listing on the National Register.

3. Should a property or site be found to be ineligible for the National Register by the Keeper of the National Register, National Park Service, that property may be reviewed for removal from the State Register.

4. Properties or sites may be removed from Century and State Registers only after notification to the owner and a hearing by the board, unless they have been entirely demolished, in which case they may be removed administratively by division staff following state procedures for removal.

R212-6-4. State Landmark Listing for Archaeological and Anthropological Sites and Localities.

Archaeological and anthropological sites and localities listed on the State Register may be listed as "State Landmarks" after nomination by the property owners and review and acceptance by the Board of State History.

KEY: historic sites, national register, state register

February 21, 2002	**9-8-302**
Notice of Continuation August 1, 2006	**9-8-306**
	9-8-401
	9-8-402
	9-8-403
	63-46b-1

R212. Community and Culture, History.
R212-8. Preservation Easements.
R212-8-1. Scope and Applicability.

Purpose: to insure the adequate handling of preservation easements and their proper recording in accordance with Sections 9-8-503 and 9-8-504.

R212-8-2. Definitions.

Terms used in this rule are defined as:

1. "historical value" means a property on the State or National Register of Historic Places; and

2. "division" means the Division of State History or the Utah State Historical Society.

R212-8-3. Granting of an Easement to the Division.

A. The division may accept easements under the following conditions:

1. the property is on the National Register or State Register of Historic Places;

2. the easement will be recorded with the proper county recorder's office;

3. the preservation easement will prohibit demolition or alteration not in conformance with the Secretary of Interior's Standards for Rehabilitation;

4. the easement shall be in place for as long as the owner specifies but for no less than that required by IRS rule, if any;

5. the division shall acknowledge within 30 days acceptance or rejection of the easement.

KEY: historic preservation, historic sites

1992	**9-8-503**
Notice of Continuation July 27, 2006	**9-8-504**

R212. Community and Culture, History.
R212-9. Board of State History as the Cultural Sites Review Committee Review Board.
R212-9-1. Scope and Applicability.

Rules for the Board of State History, those federal regulations regarding activities of the Cultural Sites Review Committee, Review Board as established by Section 9-8-205(d).

R212-9-2. Definitions.

1. "board" means the Board of State History, which functions as the committee;

2. "committee" means the Cultural Sites Review Committee,Review Board which is established for the state to comply with the requirements of the National Historic Preservation Act of 1966 as amended and the appropriate Code of Federal Regulations as now constituted.

R212-9-3. Applicable Federal Regulations.

The committee shall comply with appropriate federal laws including 16 USC 470 the National Historic Preservation Act of 1966 as amended and the appropriate Code of Federal Regulations including 36 CFR 61.4 and 36 CFR 60 which are herein incorporated by reference.

R212-9-4. Policy Exceptions.

The National Park Service as the responsible federal agency for regulation regarding the committee may authorize exceptions consistent with their requirements regarding regulations relating to functions of the committee described in 36 CFR 61.4 and 36 CFR 60 as amended July 1, 1996.

KEY: historic preservation

1992	**9-8-205**
Notice of Continuation July 27, 2006	**9-8-205(d)**
	16 USC 470

R251. Corrections, Administration.
R251-111. Government Records Access and Management.
R251-111-1. Authority and Purpose.

(1) This rule is authorized by the Government Records and Management Act (GRAMA), Sections 63-2-201 (12), 63-2-204 and 63-2-904; 64-13-27; and Sections 46-4-501 and 46-4-502.

(2) The purpose of this rule is to provide procedures for access to government records of the Department of Corrections and to facilitate intergovernmental, crossboundry intercooperation.

R251-111-2. Definitions.

(1) "Director of Records" means the individual whose responsibility is to oversee all GRAMA requests and responses for the Department.

(2) "Department" means the Department of Corrections.

(3) "GRAMA" means Government Records Access and Management Act, Title 63, Chapter 2, Utah Code Annotated.

(4) "Individual" means a human being.

(5) "Person" means any individual, nonprofit or profit corporation, partnership, sole proprietorship, or other type of business organization.

(6) "Division Primary Records Officer" means the records officer designated by each division director to coordinate and implement GRAMA within their respective divisions.

(7) "Records Manager" is an assistant to the Director of Records for GRAMA purposes.

(8) "Records Officer" means any Department member properly designated to process records requests.

(9) "Requester" means the person making a request for records.

R251-111-3. Standards and Procedures.

The Department shall:

(1) provide the public with access to information relating to the Department's conduct of public business;

(2) provide individuals with access to requested information that the Department has on file about them when required by law;

(3) prevent disclosure of information about an individual that the Department has in its files to persons who do not have the right to receive this information;

(4) protect information about Departmental operations that is protected by law from disclosure; and

(5) provide information to other government entities as allowed by law.

R251-111-4. Requests for Access.

(1) Requests for access to records shall be directed as follows:

(a) All records requests by an inmate or offender under the jurisdiction of the Department shall be directed to:

(i) For all inmates in Utah State Prison Facilities: Institutional Operations Division, Primary Records Officer, Administration Building, P.O. Box 250, Draper, Utah 84020; or

(ii) For all probationers, parolees and early release inmates: Adult Probation and Parole Division, Primary Records Officer, Administration, 14717 S. Minuteman Drive, Draper, Utah 84020.

(b) All records requests by persons to obtain information for a story or report for publication or broadcast to the general public shall be directed to the Public Information Officer, 14717 S. Minuteman Drive, Draper, Utah 84020.

(c) All requests for access to records by persons other than those specified in subparagraphs (i) and (ii) above, shall be directed to the Records Bureau, 14717 S. Minuteman Drive, Draper, Utah 84020.

(d) All requests from governmental agencies shall be directed to the appropriate unit of the Utah Department of Corrections, as approved by the Records Bureau or specified in Departmental policy.

(2) The time limits dictated by GRAMA Section 63-2-204 for response to requests shall be calculated based on receipt of a valid request at the office specified in this rule.

R251-111-5. Submission Requirements -- Forms.

(1) All records requests from inmates shall be on a form supplied by the Department. Other requests shall be in writing and shall contain name, mailing address, daytime telephone number (if available), and a reasonably specific description of the records requested.

(2) Evidence of the requester's identity may be required. In accordance with Section 63-2-202(6) the Department shall obtain evidence of the requester's identity before releasing a private, controlled, or protected record.

(3) Unless the request is made in writing, contains the information listed in R251-111-5 (1) above and satisfactory identification is presented, when required, the Department shall return the request with instructions regarding proper submission.

(4) Written requests may be submitted electronically. Evidence of identity, where required, shall be based upon accepted State standards for electronic identification.

R251-111-6. Fees.

(1) Reasonable fees may be charged to cover the Department's actual cost of duplicating a record or compiling a record requested as authorized by GRAMA Section 63-2-203.

(2) Information on fees may be obtained by:

(a) contacting division Primary Records Officers by calling:

(i) Institutional Operations Division - (801) 576-7452.

(ii) Adult Probation and Parole Division - (801) 545-5905.

(b) contacting the Records Bureau by calling (801) 545-5700.

(c) making a personal inquiry at the Records Bureau, 14717 S Minuteman Drive, Draper, Utah 84020.

(3) The Department may require prepayment of fees as per statute if the total amount of the fees exceeds or is expected to exceed $50.00. If the requester has not paid for a previous request, prepayment and payment of any balance not paid for previous requests may be required.

(4) Records requests by inmates at the Utah State Prison must be accompanied by a Money Transfer Form which authorizes a deduction for fees from the inmate's account or a proper request for a waiver of fees.

R251-111-7. Waiver of Fees.

(1) Fees for duplication and compilation of a record may be waived under certain circumstances described in GRAMA, Section 63-2-203(3).

(a) Requests for waiver of a fee may be made in the records request and should be supported with substantial justification.

(b) Inmates requesting a fee waiver because of a claimed indigent status, or other reason, shall state the claim on the request form.

(2) Waiver of fees is permissive and at the discretion of the Department. For the purpose of records requests under GRAMA, waiver of fees for inmates or offenders under the jurisdiction of the Department will not be granted on the sole basis that the requester has been determined impecunious or indigent for another purpose.

R251-111-8. Response to Requests.

The response by the Utah Department of Corrections for any type of record request may be made partially or fully by electronic means.

R251-111-9. Appeal.

Any person may appeal access determinations to the Department Executive Director, or his designee, under the procedures of GRAMA, Section 63-2-401.

KEY: criminal records, security measures, government records

August 1, 2006 63-2-204

Notice of Continuation May 4, 2006 63-2-904

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

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

R270-1-2. Funeral and Burial Award.

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

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

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

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

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

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

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

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

R270-1-4. Counseling Awards.

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

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

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

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

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

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

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

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

7. Inpatient hospitalization, residential and day treatment shall be reviewed by the CVR Board or contracting agency who will make recommendations to the Reparation Officers regarding treatment. The CVR Board or contracting agency will review all levels of care and assign a reimbursement percentage based on the crime. All cases having less than a $1000 balance may be determined by the Reparation Officer. Outpatient cases shall be reviewed at the same rate as inpatient reviews.

8. In-patient hospitalization shall only be considered when the treatment has been recommended by a licensed therapist in life-threatening situations. A direct relationship to the crime needs to be established. Acute in-patient hospitalization shall not exceed $600 per day, which includes all ancillary expenses, and will be considered payment in full to the provider. Inpatient psychiatric visits will be limited to one visit per day with payment for the visit made to the institution at the highest rate of the individuals providing therapy as set by rule. Reimbursement for testing costs may also be allowed. Parents, children and siblings of homicide victims shall be considered at the same rate as primary victims for inpatient hospitalization. All other secondary victims of other crime types are excluded.

9. Residential and day treatment shall only be considered when the treatment has been recommended by a licensed therapist to stabilize the victim's behavior and symptoms. Only facilities with 24 hour nursing care or 24 hour on call nursing care will be compensated for residential and day treatment. Residential and day treatment shall not be used for extended care of dysfunctional families and containment placements. A direct relationship to the crime needs to be established. Residential treatment shall not exceed $300 per day and will be considered payment in full to the provider. Residential treatment shall be limited to 30 days, unless there are extenuating circumstances requiring extended care. All residential clients shall receive routine assessments from a psychiatrist and/or APRN at least once a week for medication management. Day treatment shall not exceed $200 per day and will be capped at $10,000. These charges will be considered payment in full to the provider. Parents, children and siblings of homicide victims shall be considered at the same rate as primary victims for residential and day treatment. All other secondary victims of other crime types are excluded.

10. Wilderness programs shall not be covered as an appropriate treatment modality when considering inpatient hospitalization, residential or day treatment.

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

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

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

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

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

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

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

towards a license and supervised by a licensed therapist;

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

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

R270-1-5. Attorney Fees.

Pursuant to Subsection 63-25a-424(2) attorney fees shall be made within the reparation award and not in addition to the award. If an award is paid in a lump sum, the attorney's fee shall not exceed 15% of the total award; if payments are awarded on an on going basis, attorney fees will be paid when warrants are generated but not to exceed 15%. When appeal hearing denials are overturned, attorney fees shall be calculated only on the appealed reparation issue.

R270-1-6. Reparation Awards.

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

R270-1-7. Abortion.

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

R270-1-8. Emergency Awards.

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

R270-1-9. Loss of Earnings.

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

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

R270-1-10. Moving, Transportation Expenses.

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

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

R270-1-11. Collateral Source.

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

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

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

R270-1-12. Record Retention.

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

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

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

R270-1-13. Awards.

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

R270-1-14. Essential Personal Property.

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

R270-1-15. Subrogation.

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

R270-1-16. Unjust Enrichment.

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

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

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

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

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

5. Factors to be considered in determining whether enrichment is substantial or inconsequential include the amount of the award and whether a substantial portion of the compensation award will be used directly by or on behalf of the

offender. If the offender has direct access to a cash award and/or if a substantial portion of it will be used to pay for his living expenses, that portion of the award that will substantially benefit the offender may be reduced or denied. When enrichment is inconsequential or minimal, the award shall not be reduced or denied.

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

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

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

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

R270-1-18. Peer Review Committee.

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

R270-1-19. Medical Awards.

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

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

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

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

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

5. Child endangerment examinations for children that have been exposed to drugs shall be paid for when the health and safety of the child is at risk and no other collateral source is available. The cost of the exam needs to be an expense incurred by the victim. The writing of evidentiary reports and any form of lab testing shall not be covered as part of the examination.

R270-1-20. Misconduct.

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

R270-1-21. Three Year Limitation.

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

R270-1-22. Sexual Assault Forensic Examinations.

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

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

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

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

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

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

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

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

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

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

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

c. itemize services and fees for services.

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

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

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

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

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

i. history;

ii. physical;

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

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

b. Emergency department services to include:

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

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

iii. serum blood test for pregnancy; and

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

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

R270-1-23. Loss of Support Awards.

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

R270-1-24. Rent Awards.

A. Pursuant to Subsection 63-25a-411(4)(a), victims of domestic violence or child abuse may be awarded a one time only rental award for actual rent expenses of $1800 for a maximum of three months if the following conditions apply:

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

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

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

R270-1-25. Secondary Victim.

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

R270-1-26. Victim Services.

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

R270-1-27. Nontraditional Cultural Services.

Cultural services rendered in accordance with recognized spiritual or religious methods of healing, legally available in the state of Utah, may be considered for payment. Since a reasonable and customary schedule of charges has not been established, the reparation officer may require the following: a written itemized description of each procedure, function and/or activity performed and an explanation of its benefit to the victim; the location and time involved to perform such services; and a summary of qualifications and experience which allows the service provider to perform the services. Services shall be requested in lieu of traditional treatment methods. Awards shall be deducted from the claimant's outpatient mental health award and shall remain within the allowed limits set upon that benefit. The fund will not pay for intoxicating or psychotropic substances unless prescribed by a medical practitioner licensed to do so. Claim will be denied if no healing benefit can be identified.

KEY: victim compensation, victims of crimes
January 4, 2006 63-25a-401 et seq.
Notice of Continuation July 3, 2006

R270. Crime Victim Reparations, Administration.
R270-2. Crime Victim Reparations Adjudicative Proceedings.
R270-2-1. Contested Determinations.

A. Pursuant to Section 63-25a-415(1), the Director shall review contested determinations by a reparation officer or designate the CVR Board to review the contested determination. The Director will keep the CVR Board apprised of all contested determinations. The decision of the Director or the CVR Board is final and may not be appealed.

KEY: appellate procedures, administrative procedures
September 15, 2000 63-46a
Notice of Continuation July 3, 2006

R277. Education, Administration.
R277-478. Block Grant Funding.
R277-478-1. Definitions.

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

B. "Core Curriculum (Core)" means minimum academic standards provided through courses as established by the Board which shall be mastered by all students K-12 as a requisite for graduation from Utah's secondary schools.

C. "Fiscal Year (FY)" means the twelve month period from July 1 through June 30 during which state funds are distributed.

D. "Limited English proficient (LEP)" means a student who:

(1) is aged 3 through 21;

(2) was not born in the United States or whose native language is a language other than English and comes from an environment where a language other than English is dominant; or

(3) is a Native American or Alaska Native or who is a native resident of the outlying areas and comes from an environment where a language other than English has had a significant impact on such individual's level of English language proficiency; or

(4) is migratory and whose native language is other than English and comes from an environment where a language other than English is dominant; and

(5) has sufficient difficulty speaking, reading, writing, or understanding the English language and whose difficulties may deny such individual the opportunity to learn successfully in classrooms where the language of instruction is English or to participate fully in our society.

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

R277-478-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution, Article X, Section 3, which vests general control and supervision of public education in the Board, 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 establish criteria and procedures for distributing block grant funds and to provide for appropriate monitoring, reporting, and accountability.

R277-478-3. Local Discretionary Block Grant Programs.

A. Districts and charter schools shall use Local Discretionary Block Grant funds for:

(1) maintenance and operation costs;

(2) capital outlay; and

(3) debt service.

B. Local Discretionary Block Grant funds shall be distributed using the following formula:

(1) Eight percent of the total local discretionary block grant appropriation shall be divided into 41 equal shares.

(2) Each district shall receive one share.

(3) One share shall be divided equally among all charter schools except charter schools which were once existing district schools.

(4) The remaining portion of the local discretionary block grant appropriation (ninety two percent)shall be divided among the districts and charters based upon their total WPUs in K-12, and the necessarily existent small schools portion of the Minimum School Basic program.

C. Local discretionary program expenditures shall:

(1) meet criteria and accountability standards consistent with the purposes of this rule.

(2) be reported to the Board in annual budget and financial reports.

R277-478-4. Interventions for Student Success Block Grant.

A. Districts and charter schools shall use Interventions for Student Success Block Grant funds to improve student academic success, with priority given to interventions on behalf of students not performing to standards as determined by U-PASS test results.

B. Each school district and charter school governing board shall develop a plan for the expenditure of Interventions for Student Success Block Grant funds. In developing the plan, districts should consider involving educators from Core areas identified in R277-700.

C. The plan shall specify anticipated results; it may include continuing existing programs to improve students' academic success for which funds were appropriated before FY 2003.

D. Each local school board and charter school governing board shall approve its plan for the expenditure of the block grant funds in an open public meeting under Sections 52-4-1 through 10 before the funds are designated for specific programs.

E. By September 1 of each year, each local school board and charter school governing board shall submit a copy of its plan, a letter of assurance to the Board that its plan was approved in an open and public meeting, and a copy of the local board minutes of the meeting in which the plan was approved.

F. If a local school board or charter school governing board fails to submit the documents specified in R277-478-4E to the Board by September 1, the Board shall withhold the distribution of Interventions for Student Success Block Grant funds until documentation required under this rule is provided.

G. Interventions for Student Success Block Grant funds shall be distributed using the following formula:

(1) Seventy seven percent of the total student success block grant appropriation shall be allocated using the Local Discretionary Block Grant formula as outlined in R277-478-3B.

(2) The remaining portion of the Interventions for Student Success Block Grant funds (twenty three percent) shall be allocated on the basis of the number of LEP students as determined by Title IX, Part A, Section 9101(25) in each district or charter school for the prior fiscal year.

R277-478-5. Quality Teaching Block Grant.

A. Districts and charter schools shall use Quality Teaching Block Grant funds to implement school and school district comprehensive, long-term professional development plans required under Section 53A-3-701.

B. Each local school board shall, as provided by Section 53A-3-701, review and either approve or recommend modifications for each school's comprehensive, long-term professional development plan within the district so that each school's plan is compatible with the district's comprehensive, long-term professional development plan.

C. Each local school board and charter school governing board shall approve in an open public meeting a plan to spend Quality Teaching Block Grant funds to implement the school district's or charter school's comprehensive, long-term professional development plan. In developing the plan, districts and charter schools should consider involving educators from every core area.

D. By September 1 of each year, the local school board and charter school governing board shall submit a copy of its plan, a letter of assurance to the Board that the plan was approved in an open and public meeting, and a copy of the local board minutes of the meeting in which the plan was approved.

E. If a local school board or charter school governing board fails to submit the documents specified in R277-478-5D to the Board by September 1, the Board shall withhold the distribution of Quality Teaching Block Grant funds until documentation required under this rule is provided.

F. Career Ladder Programs

(1) Districts and charter schools may choose to implement

a career ladder program of their own design with money received under the Quality Teaching Block Grant.

(2) If a career ladder program is funded, districts and charter schools shall ensure that their school and district professional development plans are consistent with Section 53A-3-701(2)(iv).

(3) Districts and charters shall also report to the Board how the career ladder funds were spent consistent with Section 53A-9-106.

G. Quality Teaching Block Grant funds shall be distributed using the following formula: thirty percent of the total Quality Teaching Block Grant funds shall be distributed on the basis of the number of full-time equivalent teachers employed by the district or charter school for the immediately previous school year. The remaining seventy percent of the funds shall be distributed on the basis of the number of WPUs in the basic programs of the Minimum School Program for the immediately previous school year.

KEY: educational expenditures, block grant funding
September 4, 2002 Art X Sec 3
Notice of Continuation July 3, 2006 53A-1-401(3)

R277. Education Administration.
R277-479. Expenditure of Appropriation for District Services.
R277-479-1. Definitions.

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

B. "District Services" means the following programs: Regional Service Centers, Contingency Fund, Reading Improvement Scholarship Program, and Board Staff Development Funding.

C. "Regional Service Centers" means the four area centers designated to serve school districts in cooperative projects such as purchasing, media services, in-service, and special education. These centers service small and rural districts or both in the northeast, southeast, southwest, and central areas of Utah.

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

R277-479-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution, which places general control and supervision of the public schools under the Board, Section 53A-1-402(1)(f) which directs the Board to adopt rules regarding the minimum school program, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify the amount of funds to be spent by the USOE for the programs designated as District Services.

R277-479-3. Regional Service Centers.

A. The USOE shall designate a sum from the amount appropriated for District Services for the Regional Service Centers.

B. Each Regional Service Center shall receive an equal amount of the total funds allocated by the USOE.

C. Funds shall be distributed to an agent district designated by each Regional Service Center.

D. Regional Service Centers shall follow accounting and reporting procedures established by the Board.

R277-479-4. Contingency Fund.

A. The USOE shall designate a sum from the amount appropriated for District Services as a contingency fund for any or all of the following:

(1) to stabilize the value of the weighted pupil unit;

(2) to maintain program levels in districts that may experience unanticipated and unforeseen losses of students;

(3) to equalize programs in districts where a strict application of the law provides inequity;

(4) to pay the added costs when Utah students attend school out of state;

(5) to assist in the operation of the laboratory school at Utah State University, through the allocation of monies for a teacher career ladder program at the school; or

(6) other uses as approved by the Board.

R277-479-5. Reading Improvement Scholarship Program.

The USOE shall designate a sum from the amount appropriated for District Services to implement the Reading Improvement Scholarship Program as outlined in R277-476, Incentives for Elementary Reading Program.

R277-479-6. Staff Development.

A. The USOE shall designate a sum from the amount appropriated for District Services for Staff Development for school teachers, including instruction in methods which incorporate the Core Curriculum, with emphasis on language arts/reading, mathematics, science, and other areas, the use of technology as an instructional tool, and the development of teacher skills in the use of new assessment tools that demonstrate student competency.

B. The office shall use the appropriation to improve access to schooling for all students by training teachers to provide a personalized education plan to meet the needs of each child.

KEY: educational expenditures, school district services*
August 1, 2001 **Art X Sec 3**
Notice of Continuation July 3, 2006 **53A-1-402(1)(f)**
53A-1-401(3)

R277. Education, Administration.
R277-506. School Psychologists and School Social Workers Licenses and Programs.
R277-506-1. Definitions.

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

B. "Career information delivery systems" means the state approved computer software program which provides specific occupation and career planning information, scholarship information, and information about postsecondary institutions.

C. "Consultation" means consulting with parents, teachers, other educators, and community agencies regarding strategies to help students.

D. "Guidance curriculum planning" means structured, developmental experiences presented systematically through classroom and group activities which are organized in areas of self-knowledge, education and occupational exploration, and career planning directed toward meeting the Board approved student competencies.

E. "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.

F. "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.

G. "Practicum" means a practical, usually simulated, application of previously studied theory, monitored by a professional in the field. The experience shall include at least the following subject matter: student assessment and interpretation, guidance curriculum planning, individual and group counseling, individual education and occupational planning, and use of career information delivery systems.

H. "Temporary license" means a designation that an applicant has met all requirements of Section 3A(1), below.

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

R277-506-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Sections 53A-1-402(1)(a) which requires the Board to make rules regarding the qualification and certification of educators and ancillary personnel who provide direct student services, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify:

(1) the standards for obtaining licenses issued by the Board for employment in the public schools as school psychologists, and school social workers; and

(2) the standards which shall be met by a post-secondary institution in order to receive Board approval of its program for school psychologists and school social workers.

R277-506-3. School Psychologist.

A. An applicant for the Level 1 School Psychologist License area of concentration shall have:

(1) completed at least an approved masters degree or equivalent certification program consisting of a minimum of 60 semester (90 quarter) hours in school psychology at an accredited institution;

(2) demonstrated competence in the following:

(a) understanding the organization, administration, and operation of schools, the major roles of personnel employed in schools, and curriculum development;

(b) directing psychological and psycho-educational assessments and intervention including all areas of exceptionality;

(c) individual and group intervention and remediation techniques, including consulting, behavioral methods, counseling, and primary prevention;

(d) understanding the ethical and professional practice and legal issues related to the work of school psychologists;

(e) social psychology, including interpersonal relations, communications and consultation with students, parents, and professional personnel;

(f) coordinating and working with community-school relations and multicultural education programs and assessment; and

(g) using and evaluating tests and measurements, developmental psychology, affective and cognitive processes, social and biological bases of behavior, personality, and psychopathology;

(3) completed a one school year internship or its equivalent with a minimum of 1200 clock hours in school psychology. At least 600 of the 1200 clock hours shall be in a school setting or a setting with an educational component; and

(4) been recommended by an institution whose program of preparation for school psychologists has been approved by the Board.

B. Current certification as a nationally certified school psychologist by the National School Psychology Certification Board shall be accepted in lieu of requirements for the Level 1 License.

C. An applicant for the Level 2 School Psychologist License area of concentration shall:

(1) satisfy requirements for the Level 1 school psychologist License;

(2) have completed at least two years of successful experience as a school psychologist under a Level 1 School Psychologist License area of concentration or its equivalent; and

(3) have been recommended by the employing school district with consultation from a teacher education institution.

D. The school psychologist preparation program of an institution may be approved by the Board if it meets the standards prescribed in the Standards for State Approval of Teacher Education for school psychologists. These standards were developed by school psychologists in Utah schools and recommended to the Board by SACTE and are available from the USOE.

R277-506-4. School Social Workers.

A. An applicant for the Level 1 School Social Worker License area of concentration shall have:

(1) completed a Board approved program for the preparation of school social workers including a Master of Social Work degree from an accredited institution;

(2) demonstrated competence in the following:

(a) articulating the role and function of the school social worker including relationships with other professional school and community personnel, organizations, and agencies;

(b) understanding the organization, administration, and evaluation of a school social work program;

(c) social work practice with individuals, families, and groups;

(d) developing and interpreting a social history and psycho-social assessment of the individual and the family system;

(e) analyzing family dynamics and experience in counseling and conflict management and resolution;

(f) communication and consulting skills in working with the client, the family, the school staff, and community and social agencies;

(g) understanding the teaching/learning environment;

(h) analyzing school law and child welfare issues;

(i) using social work methods to facilitate the affective domain of education and the learning process; and

(j) understanding knowledge pertaining to the cause and effects of social forces, cultural changes, stress, disability, disease, deprivation, neglect, and abuse on learning and on human behavior and development, and the effect of these forces on minorities of race, ethnicity, and class.

(3) completed an approved school social work internship in a school setting or in an agency which includes a substantial amount of experience with children and contact with schools; and

(4) been recommended by an institution whose program of preparation for social workers has been approved by the Board.

B. An applicant for the Level 2-Standard School Social Worker License area of concentration shall have:

(1) completed at least three years of successful experience as a school social worker under a Level 1 School Social Worker License area of concentration or its equivalent; and

(2) been recommended by the employing school district with consultation from a teacher education institution.

C. The social worker program of an institution may be approved by the Board if it meets the standards prescribed in the Standards for State Approval of Teacher Education for school social workers, developed and available as provided in R277-506-3D.

KEY: educational program evaluations, professional competency, educator licensing
July 11, 2006 Art X Sec 3
Notice of Continuation September 12, 2002 53A-1-402(1)(a)
53A-6-103
53A-1-401(3)

R277. Education, Administration.
R277-602. Special Needs Scholarships - Funding and Procedures.
R277-602-1. Definitions.

A. "Agreed upon procedure" for purposes of this rule means the agreed upon procedure as provided for under Section 53A-1a-705(1)(b)(i)(B).

B. "Annual assessment" for purposes of this rule means a formal testing procedure carried out under prescribed and uniform conditions that measures students' academic progress, consistent with Section 53A-1a-705(1)(f).

C. "Appeal" for purposes of the rule means an opportunity to discuss/contest a final administrative decision consistent with and expressly limited to the procedures of this rule.

D. "Assessment team" means the individuals designated under Section 53A-1a-703(1).

E. "Audit of a private school" for purposes of this rule means a financial audit provided by an independent certified public accountant, as provided under Section 53A-1a-705(1)(b).

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

G. "Days" means school days unless specifically designated otherwise in this rule.

H. "Disclosure to parents" for purposes of this rule means the express acknowledgments and acceptance required under Section 53A-1a-704(5) as part of parent application available through schools districts.

I. "Eligible student" for purposes of this rule means:

(1) the student's parent resides in Utah;

(2) the student has a disability as designated in 53A-1a-704(2)(b); and

(3) the student is school age.

(4) Eligible student also means that the student was enrolled in a public school in the school year prior to the school year in which the student will be enrolled in a private school, has an IEP and has obtained acceptance for admission to an eligible private school; and

(5) The requirement to be enrolled in a public school in the year prior and have an IEP does not apply if:

(a) the student is enrolled or has obtained acceptance for admission to an eligible private school that has previously served students with disabilities; and

(b) an assessment team is able to readily determine with reasonable certainty that the student has a disability and would qualify for special education services if enrolled in a public school and the appropriate level of special education services which would be provided were the student enrolled in a public school.

J. "Enrollment" for purposes of this rule means that the student has completed the school enrollment process, the school maintains required student enrollment information and documentation of age eligibility, the student is scheduled to receive services at the school, the student attends regularly, and has been accepted consistent with R277-419 and the student's IEP.

K. "Final administrative action" for purposes of this rule means the concluding action under Section 53A-1a-701 through 53A-1a-710 and this rule.

L. "Individual education program (IEP)" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with Board Special Education Rules and Part B of the Individuals with Disabilities Education Act (IDEA).

M. "Private school that has previously served students with disabilities" means a school that:

(1) has enrolled students within the last three years under the special needs scholarship program;

(2) has enrolled students within the last three years who have received special education services under Individual Services Plans (ISP from the school district where the school is geographically located; or

(3) can provide other evidence to the Board that is determinative of having enrolled students with disabilities within the last three years.

N. "Special Needs Scholarship Appeals Committee (Appeals Committee)" means a committee comprised of:

(1) the special needs scholarship coordinator;

(2) the USOE Special Education Director; and

(3) a Board-designated special education advocate.

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

P. "Warrant" means payment by check to a private school.

R277-602-2. 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, Section 53A-1a-706(5)(b) which provides for Board rules to establish timelines for payments to private schools, Section 53A-3-410(6)(b)(i)(c) which provides for criminal background checks for employees and volunteers, Section 53A-1a-707 which provides for Board rules about eligibility of students for scholarships and the application process for students to participate in the scholarship program, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to outline responsibilities for parents/students, public schools, school districts or charter schools, and eligible private schools that accept scholarships from special needs students and the State Board of Education in providing choice for parents of special needs students who choose to have their children served in private schools and in providing accountability for the citizenry in the administration and distribution of the scholarship funds.

R277-602-3. Parent/Guardian Responsibilities.

A. If the student is enrolled in a public school or was enrolled in a public school in the year previous to the year in which the scholarship is sought, the parent/guardian shall submit an application, available from the USOE or online at www.usoe.org, to the school district or charter school within which the parent/guardian resides.

(1) The parent shall complete all required information on the application and submit the following documentation with the application form:

(a) documentation that the parent/guardian is a resident of the state of Utah;

(b) documentation that the student is at least five years of age before September 2 of the year of enrollment, consistent with Section 53A-3-402(6);

(c) documentation that the student is not more than 21 years of age and has not graduated from high school consistent with Section 53A-15-301(1)(a);

(d) documentation that the student has satisfied R277-702-3A or B; and

(e) documentation that the student has official acceptance at an eligible private school, as defined under Section 53A-1a-705;

(2) The parent shall sign the acknowledgments and refusal to consent to services on the application form consistent with Section 53A-1a-704.

(3) Any intentional falsification, misinformation, or incomplete information provided on the application may result in the cancellation of the scholarship to the student and non-payment to the private school.

B. If the student was not enrolled in a public school in the year previous to the year in which the scholarship is sought, the parent/guardian shall submit an application to the school district in which the private school is geographically located (school district responsible for child find under IDEA, Sec. 612(a)(3)).

(1) The parent shall complete all required information on

the application and submit the following documentation with application form:

(a) documentation that the parent/guardian is a resident of the state of Utah;

(b) documentation that the student is at least five years of age, before September 2 of the year of enrollment;

(c) documentation that the student is not more than 21 years of age and has not graduated from high school consistent with Section 53A-15-301(1)(a);

(d) documentation that the student has satisfied R277-602-3A or B; and

(e) documentation that the student has official acceptance at an eligible private school, as defined under Section 53A-1a-705.

(2) The parent shall sign the acknowledgments and refusal to consent to services on the application form consistent with Section 53A-1a-704.

(3) The parent shall provide documentation of student's enrollment in an eligible private school as defined under Section 53A-1a-705;

(4) The parent shall participate in an assessment team meeting to determine if a student would qualify for special education services and the level of services for which the student would be eligible if enrolled in a public school.

C. Payment provisions

(1) The parent of a special needs scholarship student whose application is received on or before July 1 shall be eligible for quarterly scholarship payments equal to no more than the amount established in Section 53A-1a-706(2), with payments beginning on September 1.

(2) The parent of a special needs scholarship student whose application is received after July 1, but on or before September 1 that shall be eligible for quarterly scholarship payments equal to no more than three-fourths of the amount established in Section 53A-1a-706(2), with payments beginning on November 1.

(3) The parent of a special needs scholarship student whose application is received after September 1, but on or before November 1 shall be eligible for quarterly scholarship payments equal to no more than one-half of the amount established in Section 53A-1a-706(2), with payments beginning on February 1.

(4) The parent of a special needs scholarship student whose application is received on or before February 15 shall be eligible for quarterly scholarship payments equal to no more than one-fourth of the amount established in Section 53A-1a-706(2), with payments beginning on April 15.

D. A special needs scholarship shall be effective for three years subject to renewal under Section 53A-1a-704(6).

E. The parent shall, consistent with Section 53A-1a-706(8), endorse the warrant received by the private school from the USOE no more than 15 school days after the private school's receipt of the warrant.

F. The parent shall notify the Board in writing within five days if:

(1) the student does not continue in enrollment in an eligible private school for any reason including parent/student choice, suspension or expulsion of the student; or

(2) the student misses more than 10 consecutive days at which point the Board may modify the payment to the private school consistent with R277-419-1J.

G. The parent shall cooperate and respond within 10 days to an enrollment cross-checking request from the Board.

H. The parent shall notify the Board in writing by July 1 in the second and third year to indicate the student's continued enrollment.

R277-602-4. School District or Charter School Responsibilities.

A. The school district or charter school that receives the student's scholarship application consistent with Section 53A-1a-704(4) shall forward applications to the Board no more than 10 days following receipt of the application.

B. The school district or charter school that received the student's scholarship application shall:

(1) receive applications from students/parents;

(2) verify enrollment of the student seeking a scholarship in previous school year within a reasonable time following contact by the Board;

(3) verify the existence of the student's IEP and level of service to the USOE within a reasonable time;

(4) provide personnel to participate on an assessment team to determine:

(a) if a student who was previously enrolled in a private school that has previously served students with disabilities would qualify for special education services if enrolled in a public school and the appropriate level of special education services which would be provided were the child enrolled in a public school for purposes of determining the scholarship amount consistent with Section 53A-1a-706(2);

(b) if a student previously receiving a special needs scholarship is entitled to receive the scholarship during the subsequent eligibility period.

C. Special needs scholarship students shall not be enrolled in public or charter schools for dual enrollment or extracurricular activities, consistent with the parents'/guardians' assumption of full responsibility for students' services under Section 53A-1a-704(5).

D. School districts and charter schools shall cooperate with the Board in cross-checking special needs scholarship student enrollment information, as requested by the Board.

E. School districts and charter schools shall provide written notice to parents or guardians of students who have an IEP of the availability of a scholarship to attend a private school through the Special Needs Scholarship Program. The written notice shall consist of the following statement: School districts and charter schools are required by Utah law, 53A-1a-704(10), to inform parents of students with IEPs enrolled in public schools, of the availability of a scholarship to attend a private school through the Carson Smith Scholarship Program. Further information is available at www.schools.utah.gov/admin/specialneeds.htm.

R277-602-5. State Board of Education Responsibilities.

A. The Board shall provide applications, containing acknowledgments required under Section 53A-1a-704(5), for parents seeking a special needs scholarship online, at the Board offices, at school district or charter school offices, and at charter schools no later than April 1 prior to the school year in which admission is sought.

B. The Board shall provide a determination that a private school meets the eligibility requirements of Section 53A-1a-705 as soon as possible but no more than 30 days after the private school submits an application and completed documentation of eligibility. The Board may:

(1) provide reasonable timelines within the application for satisfaction of private school requirements;

(2) issue letters of warning, require the school to take corrective action within a time frame set by the Board, suspend the school from the program consistent with Section 53A-1a-708, or impose such other penalties as the Board determines appropriate under the circumstances.

(3) establish appropriate consequences or penalties for private schools that:

(a) fail to provide affidavits under Section 53A-1a-708;

(b) fail to administer assessments, fail to report assessments to parents or fail to report assessments to assessment team under Section 53a-1a-705(1)(f);

(c) fail to employ teachers with credentials required under Section 53A-1a-705(g);

(d) fail to provide to parents relevant credentials of teachers under Section 53A-1a-705(h);

(e) fail to require completed criminal background checks under Section 53A-3-410(2) and take appropriate action consistent with information received.

(4) initiate complaints and hold administrative hearings, as appropriate, and consistent with R277-602.

C. The Board shall make a list of eligible private schools updated annually and available no later than May 30 of each year.

D. Information about approved scholarships and availability and level of funding shall be provided to scholarship applicant parents/guardians no later than July 30 of each year.

E. The Board shall mail scholarships directly to private schools as soon as reasonably possible consistent with Section 53A-1a-706(8).

F. Beginning with the 2006-07 school year, the Board may begin scholarship payments to eligible private schools no earlier than July 1 but before payment dates established by Section 53A-1a-706(5)(a) if the parent/guardian negotiates a payment date with the USOE, provides reasonable advance notice to the USOE and assumes responsibility for transmission of the payment from the USOE to the private school.

G. If an annual legislative appropriation is inadequate to cover all scholarship applicants and documented levels of service, the Board shall establish by rule a lottery system for determining the scholarship recipients, with preference provided for under Section 53A-1a-706(1)(c)(i).

H. The Board shall verify and cross-check with school districts or charter school special needs scholarship student enrollment information consistent with Section 53A-1a-706(7).

R277-602-6. Responsibilities of Private Schools that Receive Special Needs Scholarships.

A. Private schools shall submit applications by May 1 prior to the school year in which it intends to enroll scholarship students.

B. Applications and appropriate documentation from private schools for eligibility to receive special needs scholarship students shall be provided to the USOE consistent with Section 53A-1a-705(3).

C. Private schools shall satisfy criminal background check requirements for employees and volunteers consistent with Section 53A-3-410.

D. Private schools that seek to enroll special needs scholarship students shall, in concert with the parent seeking a special needs scholarship for a student, initiate the assessment team meetings required under Sections 53A-1a-704(3) and 53A-1a-704(6).

(1) Meetings shall be scheduled at times and locations mutually acceptable to private schools, applicant parents and participating public school personnel.

(2) Designated private school and public school personnel shall maintain documentation of the meetings and the decisions made for the students.

(3) Documentation regarding required assessment team meetings, including documentation of meetings for students denied scholarships or services and students admitted into private schools and their levels of service, shall be maintained confidentially by the private and public schools, except the information shall be provided to the USOE for purposes of determining student scholarship eligibility, or for verification of compliance upon request by the USOE.

E. Private schools receiving scholarship payments under this rule shall provide complete student records in a timely manner to other private schools or public schools requesting student records if parents have transferred students under Section 53A-1a-704(7).

F. Private schools shall notify the Board within five days if:

(1) the student does not continue in enrollment in an eligible private school for any reason including parent/student choice, suspension or expulsion of the student; or

(2) the student misses more than 10 consecutive days of school.

G. Private schools shall satisfy health and safety laws and codes under Section 53A-1a-705(1)(d) including:

(1) the adoption of emergency preparedness response plans that include training for school personnel and parent notification for fire drills, natural disasters, and school safety emergencies and

(2) compliance with R392-200, Design, Construction, Operation, Sanitation, and Safety of Schools.

R277-602-7. Special Needs Scholarship Appeals.

A. A parent or legal guardian of an eligible student or a parent or legal guardian of a prospective eligible student may appeal any final administrative decision under this rule.

B. The Appeals Committee may not grant an appeal contrary to the statutory provisions of Section 53A-1a-701 through 53A-1a-710.

C. An appeal shall be submitted in writing to the USOE Special Needs Scholarship Coordinator at: Utah State Office of Education, 250 East 500 South, P.O. Box 144200, Salt Lake City, UT 84114-4200.

(1) The appeal opportunity is expressly limited to a written appeal.

(2) Appellants have no right to additional elements of due process beyond the specific provisions of this rule.

(3) Nothing in the appeals process established under R277-602-8 shall be construed to limit, replace or adversely affect parental appeal rights available under IDEA.

D. Appeals shall be made within 15 days of written notification of the final administrative decision.

E. Appeals shall be considered by the Appeals Committee within 15 days of receipt of the written appeal.

F. The decision of the Appeals Committee shall be transmitted to parents no more than ten days following consideration by the Appeals Committee.

G. Appeals shall be finalized as expeditiously as possible in the joint interest of schools and students involved.

H. The Appeals Committee's decision is the final administrative action.

KEY: special needs students, scholarships

July 11, 2006 **Art X Sec 3**
53A-1a-706(5)(b)
53A-3-410(6)(i)(c)
53A-1a-707
53A-1-401(3)

R277. Education, Administration.
R277-603. Basic Skills Education Program.
R277-603-1. Definitions.

A. "Accredited public or private educational institution" means an institution accredited by the Northwest Association of Accredited Schools or a regional accrediting association as a high school, a K-12 school, a special purpose school, a supplementary education school, or a distance education school.

B. "Basic Skills Education Program (BSEP)" means a program created to provide students who have not passed the UBSCT supplemental instruction in the skills and knowledge necessary to pass the test.

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

D. "Charter schools" means schools acknowledged as charter schools by local boards of education under Section 53A-1a-515 and this rule or by the Board under Section 53A-1a-505.

E. "Disclosure to parents" means the express acknowledgments and acceptance required for parents or legal guardians under Sections 53A-1-612(10)(b)(ii) and 53A-1-612(12)(c) and this rule.

F. "Distance basic skills education provider" means a Utah-based on-line or correspondence program provided by a public school/school district, the USOE, or an institution of higher education that satisfies the requirements of R277-603-1H.

G. "Enrolled full time" means the student is registered and attending the number of courses a school or school district requires for full-time enrollment for funding purposes. Notwithstanding school district/school policies, a student shall be enrolled in a minimum of five courses for credit to be enrolled full time.

H. "Other basic skills provider" means an education program that:

(1) has a current business license;

(2) meets the requirements of Section 53A-3-410 regarding criminal background checks; and

(3) agrees not to discriminate against stipend recipients on the basis of race, color, national origin, gender, economic status, language proficiency or disability;

(4) submits evidence of expertise and capacity to provide basic skills education which may include most employees providing education services have educator licenses, employees have more than three years of teaching experience in public or private schools, evidence of specific skills or training, accreditation by Northwest or a regional accrediting association, and evidence of curriculum materials aligned to the Core and the UBSCT; and

(5) agrees, if the basic skills provider is an individual employed by a school district or charter school, to abide by all rules pertaining to conflict of interest of educators working in their own fields, consistent with Section 53A-1-402.5 and R277-107, Educational Services Outside of Educator's Regular Employment.

I. "Passing UBSCT results" means a scaled score that is in the sufficient or substantial range that is obtained by a stipend recipient student in either October or February administration of the UBSCT of the student's senior year.

J. "Qualified basic skills education provider" means a school district, a charter school, an accredited public or private educational program, or other entity that has met the following criteria:

(1) The program has a physical location in Utah where students and stipend recipients attend classes and have direct contact with the program's teachers;

(2) the program has applied for eligibility to and been approved by the USOE to enroll BSEP stipend recipients;

(3) the program has provided an affidavit to the USOE affirming its willingness and intention to comply with the requirements and rules of the BSEP; and

(4) satisfies all other requirements of the law and this rule.

K. "Qualifying UBSCT result" means a scaled score that falls into one of the following ranges:

(1) below the midpoint of the partial mastery range but above the minimal mastery range;

(2) below the partial mastery range but above or at the midpoint of the minimal master range; or

(3) below the midpoint of the minimal mastery range.

L. "School district" means a Utah public school district.

M. "Spring of the junior year" means the point in time when the student's class has had three attempts to pass the UBSCT, and the results have been reported to those students who attempted the UBSCT on the third administration.

N. "Stipend" means the amount that a student's parent/guardian may receive to be applied to charges for basic skills education from a qualified provider. A stipend has no value unless assigned to a basic skills education provider, and is only collectible upon the submission of a claim for payment pursuant to the provisions of Section 53A-1-612, and R277-603-4 and 5.

O. "Stipend recipient" means a student who:

(1) meets the qualifications of Section 53A-1-612(4); and

(2) has participated in a minimum of two UBSCT attempts or as many attempts as possible while enrolled in a Utah public school.

O. "Utah Basic Skills Competency Test (UBSCT)" means a test to be administered to Utah students beginning in the tenth grade to include components in English, language arts, reading and mathematics. Utah students shall satisfy the requirements of the UBSCT in addition to state and district graduation requirements prior to receiving a high school diploma indicating a passing score on all UBSCT subtests.

P. "Voucher" means a copy of a students UBSCT results and a statement signed by the student's parent/legal guardian assigning the student's stipend to a BSEP provider. The statement to accompany UBSCT results that assigns the stipend to a BSEP provider shall be provided by the Board and shall contain the following information:

(1) student name;

(2) student birthdate;

(3) parent/guardian name, address, phone number, and other contact information;

(4) student social security number or student identification;

(5) UBSCT results for each failed UBSCT attempt;

(6) required parent and student acknowledgments under Section 53A-1-612 and this rule; and

(7) parent and student signatures.

R277-603-2. 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, Section 53A-1-612 which requires the Board to make rules to initiate, manage and monitor the BSEP, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide necessary standards and procedures for the Basic Skills Education Program as directed by the Legislature to assist students in passing the Utah Basic Skills Competency Test.

R277-603-3. State Board of Education Responsibilities.

A. The Board shall provide school districts and charter schools with a copy of this rule, required forms, templates, and model procedures.

B. The Board shall provide applications annually to Basic Skills Education providers no later than May 1 prior to the year in which eligibility to serve BSEP stipend recipients is sought (June 1 for the 2006-2007 school year).

C. The Board shall provide a determination that an applicant meets the requirements of R277-603 and Section 53A-1-612(1)(b) to be a BSEP provider as soon as possible but no more than 30 days after the applicant submits the required application and materials. The Board may:

(1) provide reasonable timelines for satisfaction of eligibility requirements;

(2) issue letters of warning, require a provider to take corrective action within a time frame set by the Board, suspend a provider from BSEP participation or eligibility, or impose such other penalties as the Board determines appropriate under the circumstances;

(3) make available acknowledgment forms required under Section 53A-1-612(12)(c);

(4) establish appropriate consequences or penalties for providers that:

(a) fail to provide services to eligible students;

(b) fails to act in accordance with provisions of the law and this rule.

D. The Board shall make a list of qualified providers updated annually and available no later than May 30 of each year (June 30 for the 2006-2007 school year).

E. The Board shall honor only requests for payments made with all necessary documentation received consistent with R277-603-4E.

F. The Board shall mail stipend payments directly to qualified providers upon their timely submission to the Board of payment request that complete the requirements of Section 53A-1-612(9) and R277-603-4D and R277-603-5C.

G. If an annual appropriation is inadequate to cover all stipend payments submitted from qualified providers, the Board shall pay stipends on a first submitted/first paid basis or on a proportional basis as circumstances dictate.

H. The Board may verify student UBSCT results and other program information as necessary or warranted with reasonable notice to assure compliance by a stipend recipient/BSEP provider with the provisions of Section 53A-1-602 and this rule.

R277-603-4. School Districts and Charter School Responsibilities.

A. School districts and charter schools shall provide students who have qualifying UBSCT results after the spring of their junior year with voucher applications for BSEP stipends.

B. School districts and charter schools that intend to be qualified providers shall notify the Board of their intention and provide the Board with the following information:

(1) a brief description of the BSEP that shall be available to stipend recipients.

(2) a description of amounts, if any, that stipend recipients will be charged in addition to the amount paid by the Board.

(3) a statement of additional charges will be accompanied by an explanation to parents/students or the district's policies consistent with Section 53A-13-104.

(4) a statement that all those who provide BSEP instruction shall be employees of the school district or charter school.

C. School districts and charter schools may not make any charge or refund of a charge contingent upon a student's passing or failing a test. Charges relative to the BSEP are subject to the provisions of Section 53A-12-103(1)(b), and it is presumed that the student will be responsible for any fees associated with a remediation program with exceptions provided for in Section 53A-13-104.

D. School districts and charter schools shall submit request for payment of vouchers in the amount of the stipend, if, on a subsequent administration of the UBSCT, the stipend recipient passes the subtest corresponding to the basic skills education provided by the school district or charter school.

E. Request for payment shall be submitted after the October administration for students who have passed the UBSCT by no later than January 15, and after the February administration for students who have passed no later than April 15.

F. Requests for payments shall only be made for students who were stipend recipients and who received basic skills education from the school district or charter school.

G. School districts and charter schools shall provide to the Board a list of all school district or charter school students who are qualified for stipends.

H. School districts/charter schools shall provide to the Board a list of those students who have assigned their stipends to the school district in such form/format as the Board may determine.

R277-603-5. Accredited Public and Private Providers and Other Provider Responsibilities.

A. Accredited public and private providers and other providers that intend to participate in the BSEP shall notify the Board of their intention and provide the following information/materials to the Board to be used to determine eligibility:

(1) a brief description of the BSEP services that will be provided to stipend recipients by the provider;

(2) a description of amounts (if any) that stipend recipients shall be charged in addition to amounts paid by the Board;

(3) a statement that private providers shall not make any charge or refund contingent on a student passing or failing a test; and

(4) a statement that all employees of a BSEP who will be providing remediation services to public school students have had criminal background checks and results have been reviewed and approved by the applicant BSEP.

B. Upon a stipend recipient's presentation to the provider of a voucher, the provider shall notify the Board within 10 days of the commencement of service of its possession of the voucher. This notification shall be submitted to the Board in such form/format as the Board may determine.

C. Accredited public and private providers and other providers shall submit request for payment of vouchers in the amount of the stipend, if, on a subsequent administration of the UBSCT, the stipend recipient passes the subtest corresponding to the basic skills education provided by the school district or charter school.

D. Request for payment shall be submitted after the October administration for students who have passed the UBSCT, by no later than January 15, and after the February administration for students who have passed, no later than April 15.

E. Requests for payments shall only be made for students who were stipend recipients and who received basic skills education from accredited public and private providers and other providers.

R277-603-6. Parent and Student Responsibilities.

A. Students with UBSCT results in the ranges in Section 53A-1-612(5) shall qualify for stipends upon a parent/guardian signing a statement assigning the BSEP stipend to a qualified BSEP provider and giving the provider a copy of the student's UBSCT results for every UBSCT attempt made by the student. The statement and UBSCT results constitute a BSEP voucher.

B. A parent may not give a voucher to more than one BSEP provider. Violation of this part may result in invalidation of the voucher and disqualification from further BSEP participation.

C. Parents are entirely responsible for the choice of a BSEP provider from among those listed as qualified by the Board.

D. Parents are responsible for payment of any amounts

providers may charge stipend recipients in addition to that paid by the Board.

E. Stipend recipients shall attempt the UBSCT at every available administration after presentation of a voucher to a BSEP provider.

R277-603-7. Miscellaneous Provisions.

Educators who are employed by Utah public and charter schools may qualify as BSEP providers consistent with Section 53A-1-402.5 and R277-107.

KEY: basic skills competency, stipends
July 11, 2006 **Art X Sec 3**
53A-1-612(12)
53A-1-401(3)

R277. Education, Administration.
R277-717. Mathematics, Engineering, Science Achievement (MESA).
R277-717-1. Definitions.

A. "Annual report" means information and data identified under R277-717-3E provided by funding recipients to the Utah State Office of Education by June 30 of each year as a requirement for continued funding of the school or school district program.

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

C. "Mathematics, Engineering, Science Achievement (MESA)" program means a course or courses offered during the regular school day or a club or activities held after school that involves identified students and addresses identified school district/charter school objectives with underserved ethnic minority and all female students consistent with funding purposes and the purposes of this rule. MESA programs, activities, and courses or classes may be offered at all grade levels. Programs should be coordinated among secondary schools/charter schools and their feeder schools.

D. "MESA Public Education Funding Application Review Committee (Committee)" means a funding advisory committee to the Board composed of nine members as follows: four Coalition of Minorities Advisory Committee (CMAC) representatives who are not employed by applicant districts, three school districts/charter schools representatives, including only representatives of districts that are not applying for MESA funding during the current grant cycle, two higher education representatives with expertise in mathematics, engineering, science or technology. USOE staff shall facilitate the funding application review process but shall not vote in any Committee decisions.

E. "Minority Students" means African American students, Asian students, American Indian students, Alaskan Native students, Native Hawaiian students, Hispanic students, Latino students, Pacific Islander students or other underserved ethnic minority students as proposed by the applicant.

F. "School District/Charter School or School Proposal" means a written proposal, including budget and evaluation components, developed by each school district/charter school applying for MESA funding or, if so determined by the district, by each recipient school.

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

R277-717-2. 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-4-205 which assigns to the Board the responsibility for developing standards and administering funds for programs promoting educational excellence, Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-121 which appropriates funding for programs for at-risk youth. The USOE shall provide statewide supervision of the program and budget and shall recommend funding for MESA programs based on MESA objectives and Board funding priorities.

B. This rule establishes standards and procedures to direct recipient public school districts/traditional schools or charter schools to develop proposals that encourage the participation of underserved ethnic minority and all female students who traditionally have not participated in mathematics, engineering, and science classes and programs proportionately to white males.

R277-717-3. Proposal Criteria.

A. School district/traditional school or charter school proposals shall identify objectives and activities to address MESA and Board objectives.

B. The objectives of the MESA program are:

(1) to increase the number of underserved ethnic minority and all female students who pursue course work, advanced study and possible careers in mathematics, engineering, and science areas, including teaching of mathematics and science;

(2) to provide a program and activities designed to motivate underserved ethnic minority and all female students to take better advantage of all existing educational opportunities;

(3) to facilitate an increase in high school graduation rates of MESA-involved students;

(4) to strengthen the confidence of underserved ethnic minority and all female students relating to their success in mathematics and science courses, and to provide them with skills and opportunities to become successful role models for other students;

(5) to provide underserved ethnic minority and all female students the opportunity to relate to and associate with successful role models;

(6) to coordinate the efforts of public schools, colleges and universities, the USOE, industries, professional and community groups, and others in the development and maintenance of academic support programs to increase the participation of underserved ethnic minority and all female students in academic and career pursuits in mathematics and science; and

(7) to provide more information about MESA opportunities and participation criteria to parents of minority students and to actively involve minority students' parents in school activities and programs.

C. Courses shall include secondary courses that place underserved ethnic minority and all female students on a college preparation track for post high school opportunities in mathematics and science. MESA courses may include:

(1) CTE classes;

(2) community school classes;

(3) concurrent enrollment;

(4) advanced placement classes; or

(5) classes offered through higher education institutions.

D. MESA activities may include:

(1) regularly scheduled after-school guest presenters;

(2) tutoring sessions, particularly in mathematics and science, including study aids;

(3) field trips;

(4) practical activities designed to introduce students to career possibilities, curriculum options or additional courses of study;

(5) meaningful experiences and opportunities to discuss career opportunities in mathematics, engineering, and science, including teaching in these fields as a potential career;

(6) academic service learning designed to address school interest and attendance issues as well as to introduce underserved ethnic minority and all female students to mathematics, engineering-related businesses/activities, science and opportunities for high school and post-secondary classes and the future;

(7) internships or work experiences in identified areas which may be encouraged by student stipends or academic credit or both;

(8) science fairs;

(9) math competitions; and

(10) extracurricular math/science activities.

E. A school district or school/charter school proposal shall include a report of the previous year's courses and activities from the funding cycle.

(1) The proposal shall also include:

(a) a program narrative;

(b) a plan to coordinate program activities with MESA objectives;

(c) a projected budget; and

(d) an evaluation plan.

(2) The annual report shall include:

(a) an accounting of MESA funds spent in the previous year consistent with objectives identified in the proposal;

(b) descriptions and examples of materials or activities that encouraged participation of underserved ethnic minority and all female students in MESA-funded courses and activities;

(c) specific numbers or examples of increased participation or success in mathematics, science, engineering courses/activities by underserved ethnic minority and all female students;

(d) the number of ethnic minority teachers added to math/science departments;

(e) data on the course taking patterns of ethnic minority and female students;

(f) number of MESA participants who began college programs; and

(g) number of MESA participants who took the ACT/SAT exams.

R277-717-4. Budget.

A. Proposed expenditures shall be specific to program objectives.

B. The budget may include payments to compensate schools for school fees directly related to participation by underserved ethnic minority and all female students in identified MESA courses or activities.

C. School districts or schools are encouraged to consider additional and creative course alternatives for identified students.

R277-717-5. Board Funding Priorities.

The Board shall fund school district or school programs based on priorities and criteria including:

A. programs that clearly address all MESA objectives;

B. programs that provide matching funds from school districts or federal sources, or both;

C. programs that show an increase in MESA participants over the previous year;

D. increased participation of MESA students in college preparation classes;

E. increased rate of graduation among MESA students;

F. innovative and effective counseling and tutoring models; and

G. total number of targeted students in the school district or school's population.

R277-717-6. Proposal Applications and Timeline.

A. Proposals shall be submitted tri-annually beginning June 15, 2006 by school districts or schools/charter schools with approval of their governing board to the Committee no later than June 30 of each designated year together with the required program report(s).

B. The USOE may request more information, additional data or budget information if annual reports or student assessments indicate that MESA funding is being used ineffectively, for ineligible students, or inconsistently with the school district/school/charter school plan or the intent of this rule.

C. Proposals shall be submitted to the USOE on forms provided by the USOE and consistent with state and federal laws and USOE timelines.

D. State funding may require matching funding from local or federal sources. Applications may require identification of matching funds.

E. The Funding Committee may seek additional information from applicants and may assist applicants to align proposed expenditures with MESA objectives.

F. The Funding Committee shall make final recommendations to the USOE no later than July 31.

G. The USOE shall make recommendations to the Board for final approval of program funding.

KEY: minority education, mathematics, engineering, science
April 3, 2006 Art X Sec 3
Notice of Continuation July 3, 2006 53A-1-401(3)
53A-4-205

R313. Environmental Quality, Radiation Control.
R313-12. General Provisions.
R313-12-1. Authority.

The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(8) and Section 63-38-3.2.

R313-12-2. Purpose and Scope.

It is the purpose of these rules to state such requirements as shall be applied in the use of radiation, radiation machines, and radioactive materials to ensure the maximum protection of the public health and safety to all persons at, or in the vicinity of, the place of use, storage, or disposal. These rules are intended to be consistent with the proper use of radiation machines and radioactive materials. Except as otherwise specifically provided, these rules apply to all persons who receive, possess, use, transfer, own or acquire any source of radiation, provided, however, that nothing in these rules shall apply to any person to the extent such person is subject to regulation by the U.S. Nuclear Regulatory Commission. See also Section R313-12-55.

R313-12-3. Definitions.

As used in these rules, these terms shall have the definitions set forth below. Additional definitions used only in a certain rule will be found in that rule.

"A1" means the maximum activity of special form radioactive material permitted in a Type A package.

"A2" means the maximum activity of radioactive material, other than special form radioactive material, low specific activity, and surface contaminated object material permitted in a Type A package. These values are either listed in 10 CFR 71, Appendix A, which is incorporated by reference in Section R313-19-100 or may be derived in accordance with the procedures prescribed in 10 CFR 71, Appendix A, which is incorporated by reference in Section R313-19-100.

"Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

"Accelerator produced material" means a material made radioactive by a particle accelerator.

"Act" means Utah Radiation Control Act, Title 19, Chapter 3.

"Activity" means the rate of disintegration or transformation or decay of radioactive material. The units of activity are the becquerel (Bq) and the curie (Ci).

"Adult" means an individual 18 or more years of age.

"Address of use" means the building or buildings that are identified on the license and where radioactive material may be received, used or stored.

"Advanced practice registered nurse" means an individual licensed by this state to engage in the practice of advanced practice registered nursing. See Sections 58-31b-101 through 58-31b-801, Nurse Practice Act.

"Agreement State" means a state with which the United States Nuclear Regulatory Commission or the Atomic Energy Commission has entered into an effective agreement under Section 274 b. of the Atomic Energy Act of 1954, as amended (73 Stat. 689).

"Airborne radioactive material" means a radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

"Airborne radioactivity area" means: a room, enclosure, or area in which airborne radioactive material exists in concentrations:

(a) In excess of the derived air concentrations (DACs), specified in Rule R313-15, or

(b) To such a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI), or 12 DAC hours.

"As low as reasonably achievable" (ALARA) means making every reasonable effort to maintain exposures to radiation as far below the dose limits as is practical, consistent with the purpose for which the licensed or registered activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of nuclear energy and licensed or registered sources of radiation in the public interest.

"Area of use" means a portion of an address of use that has been set aside for the purpose of receiving, using, or storing radioactive material.

"Background radiation" means radiation from cosmic sources; naturally occurring radioactive materials, including radon, except as a decay product of source or special nuclear material, and including global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include sources of radiation from radioactive materials regulated by the Department under the Radiation Control Act or Rules.

"Becquerel" (Bq) means the SI unit of activity. One becquerel is equal to one disintegration or transformation per second.

"Bioassay" means the determination of kinds, quantities or concentrations, and in some cases, the locations of radioactive material in the human body, whether by direct measurement, in vivo counting, or by analysis and evaluation of materials excreted or removed from the human body. For purposes of these rules, "radiobioassay" is an equivalent term.

"Board" means the Radiation Control Board created under Section 19-1-106.

"Byproduct material" means:

(a) a radioactive material, with the exception of special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; and

(b) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium or thorium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute "byproduct material" within this definition.

"Calendar quarter" means not less than 12 consecutive weeks nor more than 14 consecutive weeks. The first calendar quarter of the year shall begin in January, and subsequent calendar quarters shall be arranged so that no day is included in more than one calendar quarter and no day in any one year is omitted from inclusion within a calendar quarter. The method observed by the licensee or registrant for determining calendar quarters shall only be changed at the beginning of a year.

"Calibration" means the determination of:

(a) the response or reading of an instrument relative to a series of known radiation values over the range of the instrument; or

(b) the strength of a source of radiation relative to a standard.

"CFR" means Code of Federal Regulations.

"Chelating agent" means a chemical ligand that can form coordination compounds in which the ligand occupies more than one coordination position. The agents include beta diketones, certain proteins, amine polycarboxylic acids, hydroxycarboxylic acids, gluconic acid, and polycarboxylic acids.

"Chiropractor" means an individual licensed by this state to engage in the practice of chiropractic. See Sections 58-73-101 through 58-73-701, Chiropractic Physician Practice Act.

"Collective dose" means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

"Commission" means the U.S. Nuclear Regulatory Commission.

"Committed dose equivalent" (HT,50), means the dose equivalent to organs or tissues of reference (T), that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

"Committed effective dose equivalent" (HE,50), is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues.

"Controlled area" means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee or registrant for any reason.

"Critical group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

"Curie" means a unit of measurement of activity. One curie (Ci) is that quantity of radioactive material which decays at the rate of 3.7 x 1010 disintegrations or transformations per second (dps or tps).

"Decommission" means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits:

(a) release of property for unrestricted use and termination of the license; or

(b) release of the property under restricted conditions and termination of the license.

"Deep dose equivalent" (H_d), which applies to external whole body exposure, means the dose equivalent at a tissue depth of one centimeter (1000 mg/cm^2).

"Dentist" means an individual licensed by this state to engage in the practice of dentistry. See sections 58-69-101 through 58-69-805, Dentist and Dental Hygienist Practice Act.

"Department" means the Utah State Department of Environmental Quality.

"Depleted uranium" means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

"Distinguishable from background" means that the detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

"Dose" is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, or total effective dose equivalent. For purposes of these rules, "radiation dose" is an equivalent term.

"Dose equivalent" (H_T), means the product of the absorbed dose in tissue, quality factor, and other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem.

"Dose limits" means the permissible upper bounds of radiation doses established in accordance with these rules. For purpose of these rules, "limits" is an equivalent term.

"Effective dose equivalent" (H_E), means the sum of the products of the dose equivalent to each organ or tissue (H_T), and the weighting factor (w_T,) applicable to each of the body organs or tissues that are irradiated.

"Embryo/fetus" means the developing human organism from conception until the time of birth.

"Entrance or access point" means an opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed or registered radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.

"Executive Secretary" means the executive secretary of the board.

"Explosive material" means a chemical compound, mixture, or device which produces a substantial instantaneous release of gas and heat spontaneously or by contact with sparks or flame.

"EXPOSURE" when capitalized, means the quotient of dQ by dm where "dQ" is the absolute value of the total charge of the ions of one sign produced in air when all the electrons, both negatrons and positrons, liberated by photons in a volume element of air having a mass of "dm" are completely stopped in air. The special unit of EXPOSURE is the roentgen (R). See Section R313-12-20 Units of exposure and dose for the SI equivalent. For purposes of these rules, this term is used as a noun.

"Exposure" when not capitalized as the above term, means being exposed to ionizing radiation or to radioactive material. For purposes of these rules, this term is used as a verb.

"EXPOSURE rate" means the EXPOSURE per unit of time, such as roentgen per minute and milliroentgen per hour.

"External dose" means that portion of the dose equivalent received from a source of radiation outside the body.

"Extremity" means hand, elbow, arm below the elbow, foot, knee, and leg below the knee.

"Facility" means the location within one building, vehicle, or under one roof and under the same administrative control

(a) at which the use, processing or storage of radioactive material is or was authorized; or

(b) at which one or more radiation-producing machines or radioactivity-inducing machines are installed or located.

"Former United States Atomic Energy Commission (AEC) or United States Nuclear Regulatory Commission (NRC) licensed facilities" means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

"Generally applicable environmental radiation standards" means standards issued by the U.S. Environmental Protection Agency under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

"Gray" (Gy) means the SI unit of absorbed dose. One gray is equal to an absorbed dose of one joule per kilogram.

"Hazardous waste" means those wastes designated as hazardous by the U.S. Environmental Protection Agency rules in 40 CFR Part 261.

"Healing arts" means the disciplines of medicine, dentistry, osteopathy, chiropractic, and podiatry.

"High radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of one mSv (0.1 rem), in one hour at 30 centimeters from the source of radiation or from a surface that the radiation penetrates. For purposes of these rules, rooms or areas in which diagnostic x-ray systems are used for healing arts purposes are not considered high radiation areas.

"Human use" means the intentional internal or external administration of radiation or radioactive material to human beings.

"Individual" means a human being.

"Individual monitoring" means the assessment of:

(a) dose equivalent, by the use of individual monitoring

devices or, by the use of survey data; or

(b) committed effective dose equivalent by bioassay or by determination of the time weighted air concentrations to which an individual has been exposed, that is, DAC-hours.

"Individual monitoring devices" means devices designed to be worn by a single individual for the assessment of dose equivalent. For purposes of these rules, individual monitoring equipment and personnel monitoring equipment are equivalent terms. Examples of individual monitoring devices are film badges, thermoluminescence dosimeters (TLD's), pocket ionization chambers, and personal air sampling devices.

"Inspection" means an official examination or observation including, but not limited to, tests, surveys, and monitoring to determine compliance with rules, orders, requirements and conditions applicable to radiation sources.

"Interlock" means a device arranged or connected requiring the occurrence of an event or condition before a second condition can occur or continue to occur.

"Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.

"Lens dose equivalent" (LDE) applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm^2).

"License" means a license issued by the Executive Secretary in accordance with the rules adopted by the Board.

"Licensee" means a person who is licensed by the Department in accordance with these rules and the Act.

"Licensed or registered material" means radioactive material, received, possessed, used or transferred or disposed of under a general or specific license issued by the Executive Secretary.

"Licensing state" means a state which has been provisionally or finally designated as such by the Conference of Radiation Control Program Directors, Inc., which reviews state regulations to establish equivalency with the Suggested State Regulations and ascertains whether a State has an effective program for control of natural occurring or accelerator produced radioactive material (NARM). The Conference will designate as Licensing States those states with regulations for control of radiation relating to, and an effective program for, the regulatory control of NARM.

"Limits". See "Dose limits".

"Lost or missing source of radiation" means licensed or registered sources of radiation whose location is unknown. This definition includes, but is not limited to, radioactive material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

"Major processor" means a user processing, handling, or manufacturing radioactive material exceeding Type A quantities as unsealed sources or material, or exceeding four times Type B quantities as sealed sources, but does not include nuclear medicine programs, universities, industrial radiographers, or small industrial programs. Type A and B quantities are defined in 10 CFR 71.4.

"Member of the public" means an individual except when that individual is receiving an occupational dose.

"Minor" means an individual less than 18 years of age.

"Monitoring" means the measurement of radiation, radioactive material concentrations, surface area activities or quantities of radioactive material, and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of these rules, radiation monitoring and radiation protection monitoring are equivalent terms.

"NARM" means a naturally occurring or accelerator-produced radioactive material. It does not include byproduct, source or special nuclear material.

"NORM" means a naturally occurring radioactive material.

"Natural radioactivity" means radioactivity of naturally occurring nuclides.

"Nuclear Regulatory Commission" (NRC) means the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

"Occupational dose" means the dose received by an individual in the course of employment in which the individual's assigned duties for the licensee or registrant involve exposure to sources of radiation, whether or not the sources of radiation are in the possession of the licensee, registrant, or other person. Occupational dose does not include doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with Rule R313-32, from voluntary participation in medical research programs, or as a member of the public.

"Package" means the packaging together with its radioactive contents as presented for transport.

"Particle accelerator" means a machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of one MeV.

"Permit" means a permit issued by the Executive Secretary in accordance with the rules adopted by the Board.

"Permitee" means a person who is permitted by the Department in accordance with these rules and the Act.

"Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, or another state or political subdivision or agency thereof, and a legal successor, representative, agent or agency of the foregoing.

"Personnel monitoring equipment," see individual monitoring devices.

"Pharmacist" means an individual licensed by this state to engage in the practice of pharmacy. See Sections 58-17a-101 through 58-17a-801, Pharmacy Practice Act.

"Physician" means both physicians and surgeons licensed under Section 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under Section 58-68-301, Utah Osteopathic Medical Practice Act.

"Physician assistant" means an individual licensed by this state to engage in practice as a physician assistant. See Sections 58-70a-101 through 58-70a-504, Physician Assistant Act.

"Podiatrist" means an individual licensed by this state to engage in the practice of podiatry. See Sections 58-5a-101 through 58-5a-501, Podiatric Physician Licensing Act.

"Practitioner" means an individual licensed by this state in the practice of a healing art. For these rules, only the following are considered to be a practitioner: physician, dentist, podiatrist, chiropractor, physician assistant, and advanced practice registered nurse.

"Protective apron" means an apron made of radiation-attenuating materials used to reduce exposure to radiation.

"Public dose" means the dose received by a member of the public from exposure to radiation or to radioactive materials released by a licensee,or to any other source of radiation under the control of a licensee or registrant. Public dose does not include occupational dose or doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with Rule R313-32, or from voluntary participation in medical research programs.

"Pyrophoric material" means any liquid that ignites spontaneously in dry or moist air at or below 130 degrees Fahrenheit (54.4 degrees Celsius) or any solid material, other than one classed as an explosive, which under normal conditions is liable to cause fires through friction, retained heat from manufacturing or processing, or which can be ignited and, when ignited, burns so vigorously and persistently as to create

a serious transportation, handling, or disposal hazard. Included are spontaneously combustible and water-reactive materials.

"Quality factor" (Q) means the modifying factor, listed in Tables 1 and 2 of Section R313-12-20 that is used to derive dose equivalent from absorbed dose.

"Rad" means the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 erg per gram or 0.01 joule per kilogram

"Radiation" means alpha particles, beta particles, gamma rays, x-rays, neutrons, high speed electrons, high speed protons, and other particles capable of producing ions. For purposes of these rules, ionizing radiation is an equivalent term. Radiation, as used in these rules, does not include non-ionizing radiation, like radiowaves or microwaves, visible, infrared, or ultraviolet light.

"Radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.05 mSv (0.005 rem), in one hour at 30 centimeters from the source of radiation or from a surface that the radiation penetrates.

"Radiation machine" means a device capable of producing radiation except those devices with radioactive material as the only source of radiation.

"Radiation safety officer" means an individual who has the knowledge and responsibility to apply appropriate radiation protection rules and has been assigned such responsibility by the licensee or registrant. For a licensee authorized to use radioactive materials in accordance with the requirements of Rule R313-32,

(1) the individual named as the "Radiation Safety Officer" must meet the training requirements for a Radiation Safety Officer as stated in Rule R313-32; or

(2) the individual must be identified as a "Radiation Safety Officer" on

(a) a specific license issued by the Executive Secretary, the U.S. Nuclear Regulatory Commission, or an Agreement State that authorizes the medical use of radioactive materials; or

(b) a medical use permit issued by a U.S. Nuclear Regulatory Commission master material licensee.

"Radiation source". See "Source of radiation."

"Radioactive material" means a solid, liquid, or gas which emits radiation spontaneously.

"Radioactivity" means the transformation of unstable atomic nuclei by the emission of radiation.

"Radiobioassay". See "Bioassay".

"Registrant" means any person who is registered with respect to radioactive materials or radiation machines with the Executive Secretary or is legally obligated to register with the Executive Secretary pursuant to these rules and the Act.

"Registration" means registration with the Department in accordance with the rules adopted by the Board.

"Regulations of the U.S. Department of Transportation" means 49 CFR 100 through 189.

"Rem" means the special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor. One rem equals 0.01 sievert (Sv).

"Research and development" means:

(a) theoretical analysis, exploration, or experimentation; or

(b) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. Research and development does not include the internal or external administration of radiation or radioactive material to human beings.

"Residual radioactivity" means radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of Rule R313-15.

"Restricted area" means an area, access to which is limited by the licensee or registrant for the purpose of protecting individuals against undue risks from exposure to sources of radiation. A "Restricted area" does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

"Roentgen" (R) means the special unit of EXPOSURE. One roentgen equals 2.58 x 10-4 coulombs per kilogram of air. See EXPOSURE.

"Sealed source" means radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions which are likely to be encountered in normal use and handling.

"Shallow dose equivalent" (Hs) which applies to the external exposure of the skin of the whole body or the skin of an extremity, is taken as the dose equivalent at a tissue depth of 0.007 centimeter (seven mg per cm2).

"SI" means an abbreviation of the International System of Units.

"Sievert" (Sv) means the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor. One Sv equals 100 rem.

"Site boundary" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.

"Source container" means a device in which sealed sources are transported or stored.

"Source material" means:

(a) uranium or thorium, or any combination thereof, in any physical or chemical form, or

(b) ores that contain by weight one-twentieth of one percent (0.05 percent), or more of, uranium, thorium, or any combination of uranium and thorium. Source material does not include special nuclear material.

"Source material milling" means any activity that results in the production of byproduct material as defined by (b) of "byproduct material".

"Source of radiation" means any radioactive material, or a device or equipment emitting or capable of producing ionizing radiation.

"Special form radioactive material" means radioactive material which satisfies the following conditions:

(a) it is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(b) the piece or capsule has at least one dimension not less than five millimeters (0.197 inch); and

(c) it satisfies the test requirements specified by the U.S. Nuclear Regulatory Commission in 10 CFR 71.75. A special form encapsulation designed in accordance with the U.S. Nuclear Regulatory Commission requirements in effect on June 30, 1983, and constructed prior to July 1, 1985, may continue to be used. A special form encapsulation designed in accordance with the requirements of Section 71.4 in effect on March 31, 1996, (see 10 CFR 71 revised January 1, 1983), and constructed before April 1, 1998, may continue to be used. Any other special form encapsulation must meet the specifications of this definition.

"Special nuclear material" means:

(a) plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and other material that the

U.S. Nuclear Regulatory Commission, pursuant to the provisions of section 51 of the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, but does not include source material; or

(b) any material artificially enriched by any of the foregoing but does not include source material.

"Special nuclear material in quantities not sufficient to form a critical mass" means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams or a combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed one. For example, the following quantities in combination would not exceed the limitation and are within the formula:

((175(Grams contained U-235)/350) + (50(Grams U-233/200) + (50(Grams Pu)/200)) is equal to one.

"Survey" means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of sources of radiation. When appropriate, such evaluation includes, but is not limited to, tests, physical examinations and measurements of levels of radiation or concentrations of radioactive material present.

"Test" means the process of verifying compliance with an applicable rule.

"These rules" means "Utah Radiation Control Rules".

"Total effective dose equivalent" (TEDE) means the sum of the deep dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

"Total organ dose equivalent" (TODE) means the sum of the deep dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in Subsection R313-15-1107(1)(f).

"U.S. Department of Energy" means the Department of Energy established by Public Law 95-91, August 4, 1977, 91 Stat. 565, 42 U.S.C. 7101 et seq., to the extent that the Department exercises functions formerly vested in the U.S. Atomic Energy Commission, its Chairman, members, officers and components and transferred to the U.S. Energy Research and Development Administration and to the Administrator thereof pursuant to sections 104(b), (c), and (d) of Public Law 93-438, October 11, 1974, 88 Stat. 1233 at 1237, effective January 19, 1975 known as the Energy Reorganization Act of 1974, and retransferred to the Secretary of Energy pursuant to section 301(a) of Public Law 95-91, August 14, 1977, 91 Stat. 565 at 577-578, 42 U.S.C. 7151, effective October 1, 1977 known as the Department of Energy Organization Act.

"Unrefined and unprocessed ore" means ore in its natural form prior to processing, like grinding, roasting, beneficiating or refining.

"Unrestricted area" means an area, to which access is neither limited nor controlled by the licensee or registrant. For purposes of these rules, "uncontrolled area" is an equivalent term.

"Waste" means those low-level radioactive wastes that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level waste has the same meaning as in the Low-Level Radioactive Waste Policy Act, P.L. 96-573, as amended by P.L. 99-240, effective January 15, 1986; that is, radioactive waste:

(a) not classified as high-level radioactive waste, spent nuclear fuel, or byproduct material as defined in Section 11e.(2) of the Atomic Energy Act (uranium or thorium tailings and waste) and

(b) classified by the U.S. Nuclear Regulatory Commission as low-level radioactive waste consistent with existing law and in accordance with (a) above.

"Waste collector licensees" means persons licensed to receive and store radioactive wastes prior to disposal or persons licensed to dispose of radioactive waste.

"Week" means seven consecutive days starting on Sunday.

"Whole body" means, for purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knees.

"Worker" means an individual engaged in work under a license or registration issued by the Executive Secretary and controlled by a licensee or registrant, but does not include the licensee or registrant.

"Working level" (WL), means any combination of short-lived radon daughters in one liter of air that will result in the ultimate emission of 1.3×10^5 MeV of potential alpha particle energy. The short-lived radon daughters are, for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon 220: polonium-216, lead-212, bismuth-212, and polonium-212.

"Working level month" (WLM), means an exposure to one working level for 170 hours. 2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month.

"Year" means the period of time beginning in January used to determine compliance with the provisions of these rules. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the decision to make the change is made not later than December 31 of the previous year. If a licensee or registrant changes in a year, the licensee or registrant shall assure that no day is omitted or duplicated in consecutive years.

R313-12-20. Units of Exposure and Dose.

(1) As used in these rules, the unit of EXPOSURE is the coulomb per kilogram (C per kg). One roentgen is equal to 2.58×10^{-4} coulomb per kilogram of air.

(2) As used in these rules, the units of dose are:

(a) Gray (Gy) is the SI unit of absorbed dose. One gray is equal to an absorbed dose of one joule per kilogram. One gray equals 100 rad.

(b) Rad is the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 erg per gram or 0.01 joule per kilogram. One rad equals 0.01 Gy.

(c) Rem is the special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor. One rem equals 0.01 Sv.

(d) Sievert (Sv) is the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor. One Sv equals 100 rem.

(3) As used in these rules, the quality factors for converting absorbed dose to dose equivalent are shown in Table 1.

TABLE 1

Quality Factors and Absorbed Dose Equivalencies

Type of Radiation	Quality Factor (Q)	Absorbed Dose Equal to a Unit Dose Equivalent
X, gamma, or beta radiation and high-speed electrons	1	1
Alpha particles, multiple-charged particles, fission fragments and heavy particles of unknown charge	20	0.05
Neutrons of unknown energy	10	0.1
High energy protons	10	0.1

For the column in Table 1 labeled "Absorbed Dose Equal to a Unit Dose Equivalent", the absorbed dose in rad is equal to one rem or the absorbed dose in gray is equal to one Sv.

(4) If it is more convenient to measure the neutron fluence rate than to determine the neutron dose equivalent rate in sievert per hour or rem per hour, as provided in Subsection R313-12-20(3), 0.01 Sv of neutron radiation of unknown energies may, for purposes of these rules, be assumed to result from a total fluence of 25 million neutrons per square centimeter incident upon the body. If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee or registrant may use the fluence rate per unit dose equivalent or the appropriate Q value from Table 2 to convert a measured tissue dose in gray or rad to dose equivalent in sievert or rem.

TABLE 2

Mean Quality Factors, Q, and Fluence Per Unit Dose Equivalent for Monoenergetic Neutrons

	Neutron Energy Mev	Quality Factor Q	Fluence per Unit Dose Equivalent neutrons cm^{-2} rem^{-1}	Fluence per Unit Dose Equivalent neutrons cm^{-2} Sv^{-1}
thermal	2.5×10^{-8}	2	980×10^6	980×10^8
	1×10^{-7}	2	980×10^6	980×10^8
	1×10^{-6}	2	810×10^6	810×10^8
	1×10^{-5}	2	810×10^6	810×10^8
	1×10^{-4}	2	840×10^6	840×10^8
	1×10^{-3}	2	980×10^6	980×10^8
	1×10^{-2}	2.5	1010×10^6	1010×10^8
	1×10^{-1}	7.5	170×10^6	170×10^8
	5×10^{-1}	11	39×10^6	39×10^8
	1	11	27×10^6	27×10^8
	2.5	9	29×10^6	29×10^8
	5	8	23×10^6	23×10^8
	7	7	24×10^6	24×10^8
	10	6.5	24×10^6	24×10^8
	14	7.5	17×10^6	17×10^8
	20	8	16×10^6	16×10^8
	40	7	14×10^6	14×10^8
	60	5.5	16×10^6	16×10^8
	1×10^2	4	20×10^6	20×10^8
	2×10^2	3.5	19×10^6	19×10^8
	3×10^2	3.5	16×10^6	16×10^8
	4×10^2	3.5	14×10^6	14×10^8

For the column in Table 2 labeled "Quality Factor", the values of Q are at the point where the dose equivalent is maximum in a 30 cm diameter cylinder tissue-equivalent phantom.

For the columns in Table 2 labeled "Fluence per Unit Dose Equivalent", the values are for monoenergetic neutrons incident normally on a 30 cm diameter cylinder tissue equivalent phantom.

R313-12-40. Units of Radioactivity.

For purposes of these rules, activity is expressed in the SI unit of becquerel (Bq), or in the special unit of curie (Ci), or their multiples, or disintegrations or transformations per unit of time.

(1) One becquerel (Bq) equals one disintegration or transformation per second.

(2) One curie (Ci) equals 3.7×10^{10} disintegrations or transformations per second, which equals 3.7×10^{10} becquerel, which equals 2.22×10^{12} disintegrations or transformations per minute.

R313-12-51. Records.

(1) A licensee or registrant shall maintain records showing the receipt, transfer, and disposal of all sources of radiation.

(2) Prior to license termination, each licensee authorized to possess radioactive material with a half-life greater than 120 days, in an unsealed form, may forward the following records to the Executive Secretary:

(a) records of disposal of licensed material made under Sections R313-15-1002 (including burials authorized before January 28, 1981), R313-15-1003, R313-15-1004, and R313-15-1005; and

(b) records required by Subsection R313-15-1103(2)(d).

NOTE: 10 CFR 20.304 permitted burial of small quantities of licensed materials in soil before January 28, 1981, without specific U.S. Nuclear Regulatory Commission authorization. See 20.304 contained in the 10 CFR, parts 0 to 199, edition revised as of January 1, 1981.

(3) If licensed activities are transferred or assigned in accordance with Subsection R313-19-34(2), each licensee authorized to possess radioactive material, with a half-life greater than 120 days, in an unsealed form, shall transfer the following records to the new licensee and the new licensee will be responsible for maintaining these records until the license is terminated:

(a) records of disposal of licensed material made under Sections R313-15-1002 (including burials authorized before January 28, 1981), R313-15-1003, R313-15-1004, and R313-15-1005; and

(b) records required by Subsection R313-15-1103(2)(d).

(4) Prior to license termination, each licensee may forward the records required by Subsection R313-22-35(7) to the Executive Secretary.

(5) Additional records requirements are specified elsewhere in these rules.

R313-12-52. Inspections.

(1) A licensee or registrant shall afford representatives of the Executive Secretary, at reasonable times, opportunity to inspect sources of radiation and the premises and facilities wherein those sources of radiation are used or stored.

(2) A licensee or registrant shall make available to representatives of the Executive Secretary for inspection, at any reasonable time, records maintained pursuant to these rules.

R313-12-53. Tests.

(1) A licensee or registrant shall perform upon instructions from a representative of the Board or the Executive Secretary or shall permit the representative to perform reasonable tests as the representative deems appropriate or necessary including, but not limited to, tests of:

(a) sources of radiation;

(b) facilities wherein sources of radiation are used or stored;

(c) radiation detection and monitoring instruments; and

(d) other equipment and devices used in connection with utilization or storage of licensed or registered sources of radiation.

R313-12-54. Additional Requirements.

The Board may, by rule, or order, impose upon a licensee or registrant requirements in addition to those established in these rules that it deems appropriate or necessary to minimize any danger to public health and safety or the environment.

R313-12-55. Exemptions.

(1) The Board may, upon application or upon its own initiative, grant exemptions or exceptions from the requirements of these rules as it determines are authorized by law and will not result in undue hazard to public health and safety or the environment.

(2) U.S. Department of Energy contractors or subcontractors and U.S. Nuclear Regulatory Commission contractors or subcontractors operating within this state are exempt from these rules to the extent that the contractor or subcontractor under his contract receives, possesses, uses, transfers, or acquires sources of radiation. The following contractor categories are included:

(a) prime contractors performing work for the U.S. Department of Energy at U.S. Government-owned or controlled

sites, including the transportation of sources of radiation to or from the sites and the performance of contract services during temporary interruptions of the transportation;

(b) prime contractors of the U.S. Department of Energy performing research in, or development, manufacture, storage, testing or transportation of, atomic weapons or components thereof;

(c) prime contractors of the U.S. Department of Energy using or operating nuclear reactors or other nuclear devices in a United States Government-owned vehicle or vessel; and

(d) any other prime contractor or subcontractor of the U.S. Department of Energy or of the U.S. Nuclear Regulatory Commission when the state and the U.S. Nuclear Regulatory Commission jointly determine (i) that the exemption of the prime contractor or subcontractor is authorized by law; and (ii) that under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety.

R313-12-70. Impounding.

Sources of radiation shall be subject to impounding pursuant to Section 19-3-111. Persons who have a source of radiation impounded are subject to fees established in accordance with the Legislative Appropriations Act for the actual cost of the management and oversight activities performed by representatives of the Executive Secretary.

R313-12-100. Prohibited Uses.

(1) A hand-held fluoroscopic screen using x-ray equipment shall not be used unless it has been listed in the Registry of Sealed Source and Devices or accepted for certification by the U.S. Food and Drug Administration, Center for Devices and Radiological Health.

(2) A shoe-fitting fluoroscopic device shall not be used.

R313-12-110. Communications.

All communications and reports concerning these rules, and applications filed thereunder, should be addressed to the Division of Radiation Control, P.O. Box 144850, 168 North 1950 West, Salt Lake City, Utah 84114-4850.

KEY: definitions, units, inspections, exemptions
May 13, 2005 19-3-104
Notice of Continuation July 10, 2006 19-3-108

R313. Environmental Quality, Radiation Control.
R313-14. Violations and Escalated Enforcement.
R313-14-1. Introduction and Purpose.

(1) The purpose of the radiation control inspection and compliance program is to assure the radiological safety of the public, radiation workers, and the environment by:

(a) ensuring compliance with Utah Radiation Control rules or license conditions;

(b) obtaining prompt correction of violations;

(c) deterring future violations; and

(d) encouraging improvement of licensee, permittee or registrant performance, including the prompt identification, reporting, and correction of potential safety problems.

(2) Consistent with the purpose of the radiation control inspection and compliance program, prompt and vigorous enforcement action shall be taken when dealing with licensees, permittees or registrants who fail to demonstrate adherence to these rules. Enforcement action is dependent on the circumstances of the case and may require that discretion be exercised after consideration of these standards. Sanctions have been designed to ensure that a licensee, permittee or registrant does not deliberately profit from violations of the Utah Radiation Control rules.

R313-14-2. Responsibilities.

(1) The Board has authorized the Executive Secretary to:

(a) enforce rules through the issuance of orders and assess penalties in accordance with Section 19-3-109; and

(b) impound radioactive material in accordance with Section 19-3-111.

(2) The Executive Secretary is authorized to issue Notices of Violations.

R313-14-3. Definitions.

As used in R313-14, the following definitions apply:

(1) "Material False Statement" means a statement that is false by omission or commission and is relevant to the regulatory process.

(2) "Requirement" means a legally binding requirement such as a statute, rule, license condition, permit, registration, technical specification, or order.

(3) "Similar" means those violations which could have been reasonably expected to have been prevented by the licensee's, permittee's or registrant's corrective action for a previous violation.

(4) "Willfulness" means the deliberate intent to violate or falsify, and includes careless disregard for requirements. Acts which do not rise to the level of careless disregard are not included in this definition.

R313-14-10. Severity of Violations.

(1) Violations are placed in one of two major categories. These categories are:

(a) electronically produced radiation operations; or

(b) radioactive materials operations.

(2) Regulatory requirements vary in public health and environmental safety significance. Therefore, it is essential that the relative importance of violations be identified as the first step in the enforcement process. Based upon their relative hazard, violations are assigned to one of five levels of severity.

(3) Severity Level I is assigned to violations that are the most significant and Severity Level V violations are the least significant. In general, violations that are included in Severity Levels I and II involve actual or high potential impact on the public. Severity Level III violations are cause for significant concern. Severity Level IV violations are less serious but are of more than minor concern, however, if left uncorrected, they could lead to a more serious concern. Severity Level V violations are of minor safety or environmental concern.

(4) The severity of a violation shall be characterized at the level best suited to the significance of the particular violation. A severity level may be increased if the circumstances surrounding the violation involve careless disregard of requirements, deception, or other indications of willfulness. In determining the specific severity level of a violation involving willfulness, consideration will be given to factors like the position of the person involved in the violation, the significance of an underlying violation, the intent of the violator and the economic advantage gained by the violation. The relative weight given to these factors in arriving at the appropriate severity level is dependent on the circumstances of the violation.

(5) The severity level assigned to material false statements may be Severity Level I, II or III, depending on the circumstances surrounding the statement. In determining the specific severity level of a violation involving material false statements or falsification of records, consideration is given to factors like the position of the person involved in the violation, for example, a first line supervisor as opposed to a senior manager, the significance of the information involved, and the intent of the violator. Negligence not amounting to careless disregard would be weighted differently than careless disregard or deliberateness. The relative weight given to these factors in arriving at the appropriate severity level is dependent on the circumstances of the violation.

R313-14-15. Enforcement Actions.

This Section describes the enforcement sanctions available to the Executive Secretary and specifies the conditions under which they are to be used.

(1) Notice of Violation

(a) A Notice of Violation is a written notice setting forth one or more violations of a legally binding requirement. The notice normally requires the licensee, permittee or registrant to provide a written statement describing:

(i) corrective steps which have been taken by the licensee, permittee or registrant and the results achieved;

(ii) corrective steps which shall be taken to prevent recurrence; and

(iii) the date when full compliance will be achieved.

(b) The Executive Secretary may require responses to Notices of Violation to be under oath. Normally, responses under oath may be required only in connection with civil penalties and orders.

(c) A Notice of Violation is used by the Executive Secretary as the method for formalizing the existence of a violation. The Notice may be the only enforcement action taken or it may be used as a basis for other enforcement actions. Licensee, permittee or registrant initiative for self-identification and correction of problems is encouraged. The Executive Secretary shall not generally issue Notices of Violation for a violation that meets the five following tests:

(i) it was identified by the licensee, permittee or registrant;

(ii) it fits in Severity Level IV or V;

(iii) it was reported, in writing, to the Executive Secretary;

(iv) it was or will be corrected, including measures to prevent recurrence, within a reasonable time; and

(v) it was not a violation that could reasonably be expected to have been prevented by the licensee's, permittee's or registrant's corrective action for a previous violation.

(d) Licensees, permittees or registrants are not ordinarily cited for violations resulting from matters outside of their control, like equipment failures that were not avoidable by reasonable quality assurance measures or management controls. Generally however, licensees, permittees and registrants are held responsible for the acts of their employees. Accordingly, the rules should not be construed to excuse personal errors.

(2) Civil Penalty.

(a) A civil penalty is a monetary penalty that may be

imposed for violation of Utah Radiation Control Rules or lawful orders issued by the Executive Secretary. Civil penalties are designed to emphasize the need for lasting remedial action and to deter future violations. Generally, civil penalties are imposed for Severity Level I violations, are imposed for Severity Level II violations, in the absence of mitigating circumstances, are considered for Severity Level III violations, and may be imposed for Severity Level IV and V violations that are similar to previous violations for which the licensee, permittee or registrant failed to take effective corrective action.

(b) The level of a civil penalty is established so that a penalty does not exceed $5,000 per violation. Except as modified by provision of the next paragraphs, the base civil penalties are as follows:

TABLE

Severity Level I Violations	$5,000
Severity Level II Violations	$4,000
Severity Level III Violations	$2,500
Severity Level IV Violations	$ 750
Severity Level V Violations	$ 250

(i) Comprehensive licensee, permittee or registrant programs for detection, correction and reporting of problems that may constitute, or lead to, violation of regulatory requirements are important and consideration may be given for effective internal audit programs. When licensees, permittees or registrants find, report, and correct a violation expeditiously and effectively, the Executive Secretary may apply adjustment factors to reduce or eliminate a civil penalty.

(ii) Ineffective licensee, permittee or registrant programs for problem identification or correction are unacceptable. In cases involving willfulness, flagrant violations, repeated poor performance in an area of concern, or serious breakdown in management controls, the Executive Secretary may apply the full enforcement authority.

(iii) The Executive Secretary may review the proposed civil penalty case on its own merits and adjust the civil penalty upward or downward appropriately. After considering the relevant circumstances, adjustments to these values may be made for the factors identified below:

(A) Reduction of the civil penalty may be given when a licensee, permittee or registrant identifies the violation and promptly reports, in writing, the violation to the Executive Secretary. No consideration will be given to this factor if the licensee, permittee or registrant does not take immediate action to correct the problem upon discovery.

(B) Recognizing that corrective action is always required to meet regulatory requirements, the promptness and extent to which the licensee, permittee or registrant takes corrective action, including actions to prevent recurrence, may be considered in modifying the civil penalty to be assessed.

(C) Reduction of the civil penalty may be given for prior good performance in the general area of concern.

(D) The civil penalty may be increased as much as 50% for cases where the licensee, permittee or registrant had prior knowledge of a problem as a result of an internal audit, or specific Executive Secretary or industry notification, and had failed to take effective preventive steps.

(E) The civil penalty may be increased as much as 50% where multiple examples of a particular violation are identified during the inspection period.

(c) A violation of a continuing nature shall, for the purposes of calculating the proposed civil penalty, be considered a separate violation for each day of its continuance. A continuing violation is not considered a repeat violation. In the event a violation is repeated within five years, the scheduled amount of the civil penalty may be increased 25%; and for repeat violations of Severity Levels II and III, the penalty may not be avoided by compliance. Other rights and procedures are not affected by the repeat violation.

(d) Payment of civil penalties shall be made within 30 working days of receipt of a Notice of Violation and Notice of Proposed Imposition of a Civil Penalty. An extension may be given when extenuating circumstances are shown to exist. Payment shall be made by check, payable to the Division of Radiation Control and mailed to the Division at the address shown with the Notice of Violation.

(3) Orders.

(a) An Order is a written directive to modify, suspend, or revoke a license, permit or registration; to cease and desist from a given practice or activity; or to take other action that may be necessary.

(b) Modification Orders are issued when some change in licensee, permittee or registrant equipment, procedures or management control is necessary.

(c) Suspension Orders may be used:

(i) to remove a threat to the public health and safety or the environment;

(ii) when the licensee, permittee or registrant has not responded adequately to other enforcement action;

(iii) when the licensee, permittee or registrant interferes with the conduct of an inspection; or

(iv) for a reason not mentioned above for which license, permit or registration revocation is authorized.

(v) Suspensions may apply to all or part of the regulated activity. Ordinarily, an activity is not suspended, nor is a suspension prolonged for failure to comply with requirements when the failure is not willful or when adequate corrective actions have been taken.

(d) Revocation Orders may be used:

(i) when a licensee, permittee or registrant is unable or unwilling to comply with these rules;

(ii) when a licensee, permittee or registrant refuses to correct a violation;

(iii) when a licensee, permittee or registrant does not respond to a Notice of Violation;

(iv) when a licensee, permittee or registrant does not pay a fee required by the Department; or

(v) for any other reason for which revocation is authorized.

(e) Cease and Desist Orders are used to stop unauthorized activity that has continued despite notification by the Executive Secretary that the activity is unauthorized.

(f) Orders may be made effective immediately, without prior opportunity for hearing, whenever it is determined that the public health, interest, or safety so requires, or when the Order is responding to a violation involving willfulness. Otherwise, a prior opportunity for a hearing is afforded. For cases in which a basis could reasonably exist for not taking the action as proposed, the licensee, permittee or registrant shall be afforded an opportunity to show cause why the Order should not be issued in the proposed manner.

(4) Escalation of Enforcement Sanctions.

(a) In accordance with the provisions of Section 19-3-111 the radioactive material of a person may be impounded. Administrative procedures will be conducted as provided by R313-14-20, prior to disposal of impounded radioactive materials.

(b) Violations of Severity Levels I, II or III are considered to be very serious. If repetitive very serious violations occur, the Executive Secretary may issue Orders in conjunction with other enforcement actions to achieve immediate corrective actions and to deter their recurrence. In accordance with the criteria contained in this section, the Executive Secretary shall carefully consider the circumstances of cases when selecting and applying the appropriate sanctions.

(c) The progression of enforcement actions for repetitive violations may be based on violations under a single license,

permit or registration. The actual progression to be used in a particular case may depend on the circumstances. When more than one facility is covered by a single license, permit or registration, the normal progression may be based on repetitive violations under the same license, permit or registration. It should be noted that under some circumstances, for example, where there is common control over some facet of facility operations, repetitive violations may be charged even though the second violation occurred at a different facility or under a different license, permit or registration.

(5) Related Administrative Actions.

(a) In addition to the formal enforcement mechanisms of Notices of Violation and Orders, the Executive Secretary may use administrative mechanisms, like enforcement conferences, bulletins, circulars, information notices, generic letters, and confirmatory action letters as part of the enforcement and regulatory program. Licensees, permittees and registrants are expected to adhere to obligations and commitments resulting from these processes and the Executive Secretary shall, if necessary, issue appropriate orders to make sure that expectation is realized.

(b) Enforcement Conferences are meetings held by the Executive Secretary with licensee, permittee or registrant management to discuss safety, public health, or environmental problems, compliance with regulatory requirements, proposed corrective measures, including schedules for implementation, and enforcement options available to the Executive Secretary.

(c) Bulletins, Circulars, Information Notices, and Generic Letters are written notifications to groups of licensees, permittees or registrants identifying specific problems and calling for or recommending specific actions on their part. Responses to these notifications may be required.

(d) Confirmatory Action Letters are letters confirming a licensee's, permittee's or registrant's agreement to take certain actions to remove significant concerns about health and safety, or the environment.

R313-14-25. Public Disclosure of Enforcement Actions.

Enforcement actions and responses are publicly available for inspection. In addition, press releases are generally issued for Notices of Proposed Imposition of a Civil Penalty and Orders. In the case of orders and civil penalties related to violations at Severity Level I, II or III, press releases may be issued at the time of the Order or the Notice of Proposed Imposition of the Civil Penalty. Press releases are not normally issued for Notices of Violation.

KEY: violations, penalties, enforcement
June 8, 2001 19-3-109
Notice of Continuation July 10, 2006 19-3-111

R313. Environmental Quality, Radiation Control.
R313-16. General Requirements Applicable to the Installation, Registration, Inspection, and Use of Radiation Machines.
R313-16-200. Purpose and Authority.

(1) The purpose of this rule is to prescribe requirements governing the installation, registration, inspection, and use of sources of electronically produced ionizing radiation. This rule provides for the registration of individuals providing inspection services to a facility where one or more radiation machines are installed or located.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(3)and 19-3-104(8)(a).

R313-16-215. Definitions.

"Qualified expert" means an individual having the knowledge and training to measure regulatory parameters on radiation machines, to evaluate radiation safety programs, to evaluate radiation levels, and to give advice on radiation protection needs while conducting inspections of radiation machine facilities registered with the Department. Qualified experts are not considered employees or representatives of the Division of Radiation Control or the State.

"Sorting Center" means a facility in which radiation machines are in storage until they are shipped out of state.

"Storage" means a condition in which a radiation machine is not being used for an extended period of time, and has been made inoperable.

R313-16-220. Exemptions.

(1) Electronic equipment that produces radiation incidental to its operation for other purposes is exempt from the registration and notification requirements of Rule R313-16, providing the dose equivalent rate averaged over an area of ten square centimeters does not exceed 0.5 mrem (5.0 uSv) per hour at five centimeters from accessible surfaces of the equipment.

(2) Radiation machines while in transit are exempt from the requirements of Section R313-16-230. See Section R313-16-250 for other applicable requirements.

(3) Television receivers are exempt from the requirements of Rule R313-16.

(4) Radiation machines while in the possession of a manufacturer, assembler, or a sorting center are exempt from the requirements of Section R313-16-230.

(5) Radiation machines owned by an agency of the Federal Government are exempt from the requirements of Rule R313-16.

R313-16-225. Responsibility for Radiation Safety Program.

(1) The registrant shall be ultimately responsible for radiation safety, but may designate another person to implement the radiation safety program. When, in the Executive Secretary's opinion, neither the registrant nor the registrant's designee is sufficiently qualified to insure safe use of the machine; the Executive Secretary may order the registrant to designate another individual who has adequate qualifications.

(2) The registrant or the registrant's designee shall:

(a) develop a detailed program of radiation safety that assures compliance with the applicable requirements of these rules, including Section R313-15-101;

(b) have instructions given concerning radiation hazards and radiation safety practices to individuals who may be occupationally exposed;

(c) have surveys made and other procedures carried out as required by these rules; and

(d) keep a copy of all reports, records, and written policies and procedures required by these rules.

R313-16-230. Registration of Radiation Machines.

(1) Ionizing radiation producing machines not exempted by Section R313-16-220 shall be registered with the Executive Secretary.

(2) Registration renewal shall be required annually. The registration interval is July 1 through June 30 of the following year. The annual registration anniversary date shall be July 1. Renewal application will be considered late and late fees may be assessed if not received by the last day of August.

(3) Registration for the facility is achieved when the Executive Secretary receives the following:

(a) a current and complete application form DRC-10 for registration of radiation machines; and

(b) annual registration fees.

(4) Registration for the current fiscal year shall be acknowledged by the Executive Secretary through receipts for the remittance of the registration fee.

R313-16-231. Additional Requirements for the Issuance of a Registration for Particle Accelerators Excluding Therapeutic Radiation Machines (See Rule R313-30).

(1) In addition to the requirements of Section R313-16-230, a registrant who proposes to use a particle accelerator shall submit an application to the Executive Secretary containing the following:

(a) information demonstrating that the applicant, by reason of training and experience, is qualified to use the accelerator in question for the purpose requested in a manner that will minimize danger to public health and safety or the environment;

(b) a discussion which demonstrates that the applicant's equipment, facilities, and operating and emergency procedures are adequate to protect health and minimize danger to public health and safety or the environment;

(c) the name and qualifications of the individual, appointed by the applicant, to serve as radiation safety officer pursuant to Section R313-35-140;

(d) a description of the applicant's or the staff's experience in the use of particle accelerators and radiation safety training; and

(e) a description of the radiation safety training the applicant will provide to particle accelerator operators.

(2) Registrants who possess and use a particle accelerator that has been registered with the Department prior to January 1, 1999 shall submit a registration application that contains the information in Subsections R313-16-231(1)(a) through (e). The application shall be submitted by July 1, 1999.

R313-16-233. Notification of Intent to Provide Servicing and Services.

(1) Persons engaged in the business of installing or offering to install radiation machines or engaged in the business of furnishing or offering to furnish radiation machine servicing or services in this State shall notify the Executive Secretary of the intent to provide these services within 30 days following the effective date of this rule or, thereafter, prior to furnishing or offering to furnish these services.

(2) The notification shall specify:

(a) that the applicable requirements of these rules have been read and understood;

(b) the services which will be provided;

(c) the training and experience that qualify for the discharge of the services; and

(d) the type of measurement instrument to be used, frequency of calibration, and source of calibration.

(3) For the purpose of Section R313-16-233, services may include but shall not be limited to:

(a) installation or servicing of radiation machines and associated radiation machine components; and

(b) calibration of radiation machines or radiation measurement instruments or devices.

(4) Individuals shall not perform the services listed in

Subsection R313-16-233(3) unless they are specifically stated for that individual on the notification of intent required in Subsection R313-16-233(1) and the complete information required by Subsection R313-16-233(2) has been received by the Executive Secretary.

R313-16-235. Designation of Registrant.

The owner or lessee of a radiation machine is the registrant. The registrant shall be responsible for penalties imposed under the Executive Secretary's escalated enforcement authority, see Rule R313-14.

R313-16-240. Reciprocal Recognition of Registration or License.

Radiation machines from jurisdictions other than the State of Utah may be operated in this state for a period of less than 30 days providing that the requirements of Section R313-16-280 have been met and providing they are properly registered or licensed with the State Agency having jurisdiction over the office directing the activities of the individuals operating the radiation machines. Radiation machines operating under reciprocity may be inspected pursuant to Section R313-16-290.

R313-16-250. Report of Changes.

The registrant shall send written notification within 14 working days to the Executive Secretary when:

(1) there are changes in location or ownership of a radiation machine;

(2) radiation machines are retired from service;

(3) radiation machines are put in storage or returned to service from storage; or

(4) modifications in facility or equipment are made that might reasonably be expected to effect compliance under the terms of these rules.

R313-16-260. Approval Not Implied.

Registration does not constitute approval of activities performed under the registration and no person shall state or imply that activities under the registration have been approved by the Executive Secretary.

R313-16-270. Transferor, Assembler, or Installer Obligation.

(1) Persons who sell, lease, transfer, lend, dispose, assemble, or install a radiation machine in this state shall notify the Executive Secretary within 14 working days of the following:

(a) the name and address of the person who received the machine and also the name and address of the new registrant of the machine if not the same;

(b) the manufacturer, model, and serial number of the master control of the radiation machine and the number of x-ray tubes transferred; and

(c) the date of transfer of the radiation machine.

(2) Radiation machine equipment or accessories shall not be installed if the equipment will not meet the requirements of these rules when installation is completed.

(3) Reporting Compliance. Assemblers who install one or more components into a radiation machine system or subsystem, shall certify that the equipment meets the standards of these rules. A copy of this certification shall be transmitted to the purchaser and to the Executive Secretary within 14 working days following the completion of the installation.

(4) Certification can be accomplished by providing the following in conjunction with the information required by Section R313-16-250 and Subsection R313-16-270(1):

(a) the full name and address of the assembler and the date of assembly or installation;

(b) a statement as to whether the equipment is a replacement for other equipment, in addition to other equipment, or new equipment in a new facility;

(c) an affirmation that the applicable rules have been met;

(d) a statement of the type and intended use of the radiation machine system or subsystem, for example "radiographic-stationary general purpose x-ray;" and

(e) a list of the components which were assembled or installed into the radiation machine system or subsystem, identifying the components by type, manufacturer, model number, and serial number.

R313-16-275. Obligation of Equipment Registrant or Recipient of New Equipment.

The registrant of a radiation machine shall not allow the equipment to be put into operation until it has been determined that the facility in which it is installed meets the shielding and design requirements of Rule R313-28; see Sections R313-28-32, R313-28-200 and R313-28-450.

R313-16-280. Out-of-State Radiation Machines.

(1) Whenever a radiation machine is to be brought into the state, for either temporary or extended use, the person proposing to bring the machine into the state shall give written notice to the Executive Secretary at least three working days before the machine is to be used in the state. The notice shall include the type of radiation machine; the manufacturer model and serial number of the master control; the nature, duration, and scope of use; and the exact location where the radiation machine is to be used. If, for a specific case, the three working-day period would impose an undue hardship, the person may, upon application to the Executive Secretary, obtain permission to proceed sooner.

(2) In addition, the out-of-state person shall:

(a) comply with the applicable portions of these rules;

(b) supply the Executive Secretary other information as the Executive Secretary requests.

R313-16-290. Inspection of Radiation Machines and Facilities.

(1) Registrants shall assure that radiation machines registered pursuant to Section R313-16-230 are compliant with these rules. Radiation machines, facilities, and radiation safety programs are subject to inspection to assure compliance with these rules and to assist in lowering radiation exposure to as low as reasonably achievable levels, see Section R313-15-101. Inspections may be performed by representatives of the Executive Secretary or by independent qualified experts.

(2) Inspections may, at the Executive Secretary's discretion, be done after the installation of equipment, or after a change in the facility or equipment which might cause a significant change in radiation output or hazards. Inspections may be completed in accordance with the schedule as defined in Table I.

TABLE I

FACILITY TYPE	MAXIMUM TIME BETWEEN INSPECTIONS
Hospital or Radiation Therapy Facility	one year
Medical Facility using Fluoroscopic or Computed Tomography (CT) Units	one year
Medical Facility Using General Radiographic Devices	two years
Chiropractic	two years
Dental	five years
Podiatry	five years
Veterinary	five years
Industrial Facility with High or Very High Radiation Areas Accessible to Individuals	one year
Industrial Facility Using Cabinet X-Ray Units or Units Designed for Other Industrial Purposes	five years
Other	one to five years

(3) The registrant, in a timely manner, shall pay the appropriate inspection fee after completion of the inspection.

(4) Ionizing radiation producing machines which have been officially placed in storage are exempt from inspection fees but are subject to visual verification of their status by representatives of the Executive Secretary.

R313-16-291. Inspection Services.

Registrants shall only utilize qualified experts who have been registered by the Executive Secretary in accordance with Section R313-16-293. Registrants may also utilize inspectors from the Division of Radiation Control in lieu of registered qualified experts.

R313-16-292. Minimum Qualifications for Registration of Inspection Services.

A qualified expert who is engaged in the business of furnishing or offering to furnish inspection services at facilities shall meet the training and experience criteria developed by the Department. At a minimum, the training and experience shall include:

(1) Bachelor's degree in health physics, chemistry, biology, physical or environmental science plus one year full-time paid professional related experience, such as performing radiation safety evaluations in a hospital.

(a) An advanced degree in a related field may be substituted for one year of required experience; or

(2) Five years full-time paid professional, directly related work experience.

R313-16-293. Application for Registration of Inspection Services.

(1) Each qualified expert who is providing or offering to provide inspection services at facilities registered with the Executive Secretary shall complete an application for registration on a form prescribed by the Executive Secretary and shall submit all information required by the Executive Secretary as indicated on the form. A qualified expert must complete the registration process prior to providing services.

(2) Individuals applying for registration under Section R313-16-293 shall personally sign and submit to the Executive Secretary an attestation statement:

(a) that they have read and understand the requirements of these rules; and

(b) that they will document inspection items defined by the Executive Secretary on a form prescribed by the Executive Secretary; and

(c) that they will follow guidelines for the evaluation of x-ray equipment defined by the Executive Secretary; and

(d) that, except for those facilities where a registered qualified expert is a full-time employee, they will limit inspections to facilities with which they have no direct conflict of interest; and

(e) that radiation exposure measurements and peak tube potential measurements will be made with instruments which have been calibrated biennially by the manufacturer of the instrument or by a calibration laboratory accredited in x-ray calibration procedures by the American Association of Physicians in Medicine, American Association for Laboratory Accreditation, Conference of Radiation Control Program Directors, Health Physics Society or the National Voluntary Laboratory Accreditation Program; and

(f) that the calibration of radiation exposure measuring and peak tube potential measuring instruments used to evaluate compliance of x-ray systems with the requirements of these rules will include at least secondary level traceability to a National Institute of Standards and Technology, or similar international agency, transfer standard instrument or transfer standard source; and

(g) that they will make available to representatives of the Executive Secretary documents concerning the calibration of any radiation exposure measuring or peak tube potential measuring instrument used to evaluate compliance of x-ray systems; and

(h) that they or the registrant will submit to the Executive Secretary, within 30 calendar days after completion of an inspection, a written report of compliance or noncompliance; and

(i) that reports of items of noncompliance will include:

(i) the name of the facility inspected, and

(ii) the date of the inspection, and

(iii) the manufacturer, model number, and serial number or Utah identification number of the control unit for the radiation machine, and

(iv) the requirements of the rule where compliance was not achieved, and

(v) the manner in which the facility or radiation machine failed to meet the requirements, and

(vi) a signed commitment from the registrant of the radiation machine facility that the problem will be fixed within 30 days of the date the written report of noncompliance is submitted to the Executive Secretary; and

(vii) that all reports of compliance or noncompliance will contain a statement signed by the qualified expert acknowledging under penalties of law that all information contained in the report is truthful, accurate, and complete; and

(viii) that they acknowledge that they are subject to the provisions of Section R313-16-300.

(3) Individuals applying for registration under Section R313-16-293 shall attach to their application a copy of two inspection reports that demonstrate their work product follows the evaluation guidelines defined by the Executive Secretary pursuant to Subsection R313-16-293(2)(c). The inspection reports shall pertain to inspections performed within the last two years.

R313-16-294. Issuance of Registration Certificate for Inspection Services.

Upon a determination that an applicant meets the requirements of these rules, the Executive Secretary shall issue a registration certificate for inspection services.

R313-16-295. Expiration of Registration Certificates for Inspection Services.

A registration certificate for inspection services shall expire at the end of the day on the date stated therein.

R313-16-296. Renewal of Registration Certificate for Inspection Services.

(1) Timely renewal of a registration certificate for inspection services is possible when:

(a) the qualified expert files an application for renewal of a registration certificate for inspection services 30 days in advance of the registration certificate expiration date and in accordance with Section R313-16-293, and

(b) the qualified expert attaches to the application documentation that they performed a minimum of two inspections in Utah under these rules each year the previous registration certificate was in effect. An applicant who did not complete the minimum number of inspections in Utah may, as an alternative, attach to the application documentation that they performed four inspections at facilities in other states. These four inspections shall demonstrate their work product follows the evaluation guidelines defined by the Executive Secretary pursuant to Subsection R313-16-293(2)(c).

(2) A registered qualified expert who allows a registration certificate to expire is no longer a qualified expert and may not perform inspection services that will be accepted by the

Executive Secretary. Reapplication may be accomplished pursuant to Section R313-16-293.

R313-16-297. Revocation of Registration Certificate for Inspection Services.

A registration certificate for inspection services may be revoked by the Executive Secretary for any matter of deliberate misconduct pursuant to Section R313-16-300 or for misfeasance, malfeasance or nonfeasance.

R313-16-300. Deliberate Misconduct.

(1) Any registrant, applicant for registration, employee of a registrant or applicant; or any contractor, including a supplier or consultant, subcontractor, employee of a contractor or subcontractor of any registrant or applicant for registration, who knowingly provides to any registrant, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a registrant's, or applicant's activities in these rules, may not:

(a) Engage in deliberate misconduct that causes or would have caused, if not detected, a registrant or applicant to be in violation of any rule or order; or any term, condition, or limitation of any registration issued by the Executive Secretary; or

(b) Deliberately submit to the Executive Secretary, a registrant, an applicant, or a registrant's or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the Executive Secretary.

(2) A person who violates Subsections R313-16-300(1)(a) or (b) may be subject to enforcement action in accordance with Rule R313-14.

(3) For the purposes of Subsection R313-16-300(1)(a), deliberate misconduct by a person means an intentional act or omission that the person knows:

(a) Would cause a registrant or applicant to be in violation of any rule or order; or any term, condition, or limitation, of any registration issued by the Executive Secretary; or

(b) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a registrant, applicant, contractor, or subcontractor.

KEY: x-ray, inspection
August 12, 2005 **19-3-104**
Notice of Continuation July 10, 2006

R313. Environmental Quality, Radiation.
R313-17. Administrative Procedures.
R313-17-1. Application of Rule.

This rule applies to proceedings under Title 19, Chapter 3 (Radiation Control Act).

R313-17-2. Public Notice and Public Comment Period.

(1) The Executive Secretary shall give public notice of, and an opportunity to comment on the following actions:

(a) Proposed licensing action for license categories 2b and c, 4a, b, c, d and 6 identified in R313-70-7 or a proposed approval or denial of a significant radioactive materials license, license amendment, or license renewal.

(b) The initial proposed registration of an ionizing radiation producing machine which operates at a kilovoltage potential (kVp) greater than 200 in an open beam configuration. R313-17-2(1)(b) does not apply to use in the healing arts.

(c) Board activities that may have significant public interest and the Board requests the Executive Secretary to take public comment on those proposed activities.

(2) Public notice shall allow at least 30 days for public comment.

(3) Public notice may describe more than one action listed in R313-17-2(1) and may combine notice of a public hearing with notice of the proposed action.

(4) Public notice shall be given by publication in a newspaper of general circulation in the area affected by the proposed action. Notice shall also be given to persons on a mailing list developed by the Executive Secretary and those who request in writing to be notified.

R313-17-3. Public Comments, Response to Comments and Requests for Public Hearings.

(1) During the public comment period provided under R313-17-2, any interested person may submit written comments on the proposed action and may request a public hearing, if no hearing has already been scheduled.

(2) A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing.

(3) Comments received during the public comment period and during any hearing shall be considered in making the final decision.

(4) At the time of the final decision, the Executive Secretary shall issue a response to comments, which shall include:

(a) Specific provisions, if any, that have been changed in the final action and the reasons for the change; and

(b) A brief description and response to all significant comments raised during the public comment period or during any hearing.

(5) The Executive Secretary's response to public comments shall be available to the public.

R313-17-4. Public Hearings.

(1) This section applies to hearings for public comment on proposed actions specified in R313-17-2. This section does not govern adjudicative proceedings.

(2) The Executive Secretary shall hold a public hearing whenever he finds, on the basis of requests, a significant degree of public interest in the proposed action.

(3) The Executive Secretary may also hold a public hearing at his discretion, whenever, for instance, a hearing might clarify one or more issues involved in the proposed action.

(4) The Executive Secretary shall hold a public hearing whenever he receives written notice of opposition to a proposed action and a request for a hearing within 30 days of public notice under R313-17-2.

(5)(a) Public notice of the hearing shall be given as specified in R313-17-2.

(b) The public comment period under R313-17-2 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(c) Whenever possible the Executive Secretary shall schedule a hearing under this section at a time and location convenient to the parties involved.

(d) Any person at the hearing may submit oral or written statements and data concerning the proposed action. Reasonable limits may be set upon the time allowed for oral statements and the submission of statements in writing may be required.

(e) A tape recording or written transcript of the hearing shall be made available to the public.

R313-17-5. Administrative Procedures General Provisions.

(1) PURPOSE AND SCOPE

R313-17-5 through R313-17-13 set out procedures for conducting formal adjudicative proceedings in accordance with the Utah Administrative Procedures Act (UAPA), Section 63-46b-1 et seq. and govern:

(a) the contest of the validity of initial order or notice of violation as described in R313-17-5(2);

(b) the contest of proposed imposition of civil penalties under Section 19-3-109; and

(c) other formal adjudicative proceedings before the Radiation Control Board.

(2) INITIAL PROCEEDINGS EXEMPT FROM UAPA

Proceedings that culminate in the issuance of an initial order or a notice of violation under the Utah Radiation Control Act are not governed by UAPA as specified in Section 63-46b-1(2)(k). This includes, but is not limited to, initial proceedings regarding:

(a) approval, amendment, denial, termination, transfer, revocation, or renewal of licenses;

(b) requests for variances, exemptions, and other approvals;

(c) notices of violation and orders associated with notices of violation;

(d) orders to comply and orders to cease and desist;

(e) impoundment of radioactive material;

(f) orders for decommissioning;

(g) declaratory orders; and

(h) orders for surveying, monitoring, sampling, or information;

(3) DESIGNATION OF PROCEEDINGS

(a) Contest of an initial order or notice of violation or proposed imposition of civil penalties shall be conducted as a formal proceeding.

(b) The Board in accordance with Section 63-46b-4(3) may convert proceedings which are designated to be formal to informal, and proceedings which are designated as informal to formal if conversion is in the public interest and rights of all parties are not unfairly prejudiced.

(c) Unless otherwise stated in R313, informal adjudicative proceedings shall be conducted in accordance with Section 63-46b-5.

(4) APPEARANCES AND REPRESENTATION

(a) An individual who is a participant to a proceeding, or an officer designated by a partnership, corporation, association, or governmental entity which is a participant to a proceeding, may represent his, her, or its interest in the proceeding.

(b) Any participant may be represented by legal counsel.

(5) COMPUTATION OF TIME

Time shall be computed as provided in Rule 6(a) of the Utah Rules of Civil Procedure except that no additional time shall be allowed for service by mail.

R313-17-6. Commencing a Formal Adjudicative Proceeding.

(1) Except as otherwise permitted by emergency orders as described in Section 63-46b-20, all adjudicative proceedings shall be commenced by either:

(a) a Notice of Agency Action in accordance with Section 63-46b-3, if proceedings are commenced by the Board; or

(b) a Request for Agency Action in accordance with R313-17-6(2), if proceedings are commenced by a person other than the Board.

(2)(a) The validity of initial orders, notices of violation and proposed imposition of civil penalties, as described in R313-17-5(1) and (2), may be contested by filing a written Request for Agency Action with the Board and submitted to:

Executive Secretary, Utah Radiation Control Board
Division of Radiation Control
168 North 1950 West
PO Box 144850
Salt Lake City, Utah 84114-4850.

(b) Any such request is governed by and shall comply with the requirements of Section 63-46b-3(3) and shall be received for filing within 30 days of the issuance of the Executive Secretary's order or notice of violation.

(c)(i) All initial orders or notices of violation are effective upon issuance and shall become final if not contested within 30 days after the date issued.

(ii) Issuance of such orders or notices of violation means the time a signed order is mailed by certified mail to the recipient's most current address or hand delivered to the recipient.

(iii) If delivery by certified mail is refused, the issued order or notice shall be sent by regular first class mail.

(d) Failure to timely contest an initial order or notice of violation waives any right of administrative contest, reconsideration, review or judicial appeal.

(3) RESPONSE TO REQUEST FOR AGENCY ACTION

In accordance with Section 63-46b-3(3)(d) and (e), notice of the time and place for a hearing shall be provided in the response to a request for agency action, or shall be provided promptly after the hearing is scheduled.

(4) PRE-HEARING RECORD

The Executive Secretary shall compile an administrative record prior to a scheduled hearing and give any party the opportunity to supplement the record. The pre-hearing record shall also consist of pleadings or other documents filed prior to the hearing.

R313-17-7. Parties and Intervention.

(1) DETERMINATION OF A PARTY.

The following persons are Parties to a formal proceeding governed by these rules:

(a) The person to whom an initial order or notice of violation is directed, such as a person who submitted a license application that was approved or disapproved by order of the Executive Secretary;

(b) The Executive Secretary of the Radiation Control Board; and

(c) All persons whose legal rights or interests are substantially affected by the proceeding, who have standing to participate in the proceeding, and to whom the Board has granted intervention under R313-17-7(2).

(2) INTERVENTION

A petition for intervention may be filed by a petitioner to commence an adjudicative proceeding in accordance with R313-17-6(2) or to intervene after a notice of agency action or request for agency action has been filed. A petitioner for intervention shall meet the following requirements:

(a)(i) The request for agency action is timely filed in accordance with R313-17-6(2); or

(ii) The Petition to Intervene in a proceeding commenced by a party other than the Petitioner for Intervention is filed with the Board, with a copy to all parties, within 20 days from the date of the Notice of Agency Action or Request for Agency Action.

(b) The Petition to Intervene:

(i) Identifies the proceedings in which intervention is sought;

(ii) Contains a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceeding and the petitioner qualifies as an Intervenor under Section 63-46b-9; and

(iii) Includes a statement of relief sought from the Board, including the basis thereof.

(c) Unless modified by the Presiding Officer, any party may respond to a Petition for Intervention during the period allowed for responsive pleadings under Section 63-46b-6. The Chair of the Radiation Control Board may act as Presiding Officer for purposes of this paragraph.

(d) Intervention may only be granted by order of the Board to a petitioner who meets the requirements of R313-17-7(2)(a) and (b).

(3) DESIGNATION OF PARTIES

Unless otherwise designed by the Hearing Officer:

(a) The person filing a Request for Agency Action shall be the Petitioner and the Executive Secretary shall be the Respondent.

(b) In a proceeding requested by a Petitioner for Intervention, the person granted Intervenor status shall be the Petitioner. The Executive Secretary and the person to whom the challenged order or notice is directed shall be the Respondents.

(4) AMICUS CURIAE (Friend of the Court)

Persons may be permitted by the Presiding Officer(s) to enter an appearance as Amicus Curiae (Friend of the Court), subject to conditions established by the Presiding Officer(s).

R313-17-8. Conduct of Proceedings.

(1) ROLE OF BOARD

(a) The Board is the "agency head" as that term is used in Section 63-46b. The Board is also the "presiding officer," as that term is used in Section 63-46b, except:

(i) The Chair of the Board shall be considered the Presiding Officer to the extent that these rules allow; and

(ii) The Board may by order appoint one or more Presiding Officers to preside over all or a portion of the proceedings.

(b) The Chair of the Board may delegate his or her authority as specified in this Rule to another Board member.

(2) APPOINTED PRESIDING OFFICERS

Unless otherwise explicitly provided in an order of appointment, any appointment of a Presiding Officer shall be for the purpose of conducting all aspects of an adjudicative proceeding, except grant of intervention, stays of orders and issuance of the final order. As used in these rules, the term Presiding Officer shall mean Presiding Officers if more than one Presiding Officer is appointed by the Board.

(3) PRE-HEARING CONFERENCES

The Presiding Officer may direct the Parties to appear at a specified time and place for pre-hearing conferences for the purposes of clarifying the issues, simplifying the evidence, facilitating discovery, expediting proceedings, or encouraging settlement.

(4) BRIEFS

(a) Unless otherwise directed by the Presiding Officer, parties to the proceeding may submit a pre-hearing brief at least five business days before the hearing. Post-hearing briefs will be allowed only as authorized by the Presiding Officer.

(b) Response briefs may not be filed unless permitted by the Presiding Officer.

(5) SCHEDULES

(a) The Presiding Officer shall establish schedules for discovery and other pre-hearing proceedings, for the hearing, and for any post-hearing proceedings.

(b) The parties are encouraged to prepare a joint proposed schedule. If the parties cannot agree on a joint proposed schedule, the Presiding Officer may consider proposals by any party.

(6) EXTENSIONS OF TIME

Except as otherwise provided by statute, the Presiding Officer may approve extensions of time limits established by this rule, and may extend time limits adopted in schedules established under R313-17-8(5). The Presiding Officer may also postpone hearings. The Chair of the Board may act as Presiding Officer for purposes of this paragraph.

(7) MOTIONS

All motions shall be filed a minimum of 12 days before a scheduled hearing, unless otherwise directed by the Presiding Officer. A memorandum in opposition to a motion may be filed within ten days of the filing of the motion, or at least one day before any scheduled hearing, whichever is earlier. Memoranda in support of or in opposition to motions may not exceed 15 pages unless otherwise provided by the Presiding Officer.

(8) FILING AND COPIES OF SUBMISSIONS

The original of any motion, brief, petition for intervention, or other submission shall be filed with the Executive Secretary. In addition, the submitter shall provide a copy to each Presiding Officer and to all parties or their counsel of record.

R313-17-9. Hearings.

(1) CONDUCT OF HEARING

The Presiding Officer shall govern the conduct of a hearing, and may establish reasonable limits on the length of witness testimony, cross-examination, oral arguments or opening and closing statements.

(2) ORDER OF PRESENTATION

Unless otherwise directed by the Presiding Officer, the Executive Secretary shall present its case first, followed by the Petitioner and any other party, then the Executive Secretary, and other parties if appropriate, shall have the opportunity for rebuttal.

R313-17-10. Orders.

(1) PROPOSED ORDERS BY PARTIES

Unless otherwise directed by the Presiding Officer, each party may provide proposed orders for the Presiding Officer within ten days of the conclusion of the hearing.

(2) DRAFT ORDERS OF APPOINTED PRESIDING OFFICERS

(a) The appointed Officer presiding over the adjudicative proceeding shall prepare a recommended order, provide a copy of the order to the Board and mail a copy of the order to all parties or their counsel of record.

(b) The Board shall review the recommended order and hearing record.

(c) The Board may give each party the opportunity to make a presentation to the Board specific to the recommended order.

(d) After deliberation, the Board shall determine whether to accept, reject or modify the recommended order. The Board may remand part or all of the matter to the Presiding Officer for further proceedings.

(e) The Board may modify this procedure with notice to all parties.

(3) FINAL ORDERS

The Board shall issue a final order which shall include the information required by Sections 63-46b-10 or 63-46b-5(1)(i).

R313-17-11. Stays of Orders.

(1) STAY OF ORDERS PENDING ADMINISTRATIVE ADJUDICATION

(a) A party seeking a stay of a challenged order during an adjudicative proceeding shall file a motion with the Board. If granted, a stay would suspend the challenged Order for the period as directed by the Board.

(b) The Board may order a stay of the Order that is the subject of the formal adjudicative proceeding if the party seeking the Stay demonstrates the following:

(i) The party seeking the Stay will suffer irreparable harm unless the stay issues;

(ii) The threatened injury to the party seeking the Stay outweighs whatever damage the proposed stay is likely to cause the party restrained or enjoined;

(iii) The Stay, if issued, would not be adverse to the public interest; and

(iv) There is substantial likelihood that the party seeking the Stay will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further adjudication.

(2) STAY OF THE ORDER PENDING JUDICIAL REVIEW

(a) A party seeking a stay of the Board's final order during judicial review shall file a motion with the Board.

(b) The Board as Presiding Officer may grant a stay of its order during the pendency of judicial review if the standards of R317-17-11(1)(b) are met.

R313-17-12. Reconsideration.

No agency review under Section 63-46b-12 is available. A party may request reconsideration of an order of the Presiding Officer as provided in Section 63-46b-13.

R313-17-13. Disqualification of Presiding Officer(s).

(1) DISQUALIFICATION OF PRESIDING OFFICER

(a) A member of the Board or other Presiding Officer shall disqualify himself or herself from performing the functions of the Presiding Officer regarding any matter in which he or she, or his or her spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Has acted as an attorney in the proceeding or served as an attorney for, or otherwise represented a party concerning the matter in controversy;

(iii) Knows that he or she has an financial interest, either individually or as a fiduciary, in the subject matter in controversy or in a party to the proceeding;

(iv) Knows that he or she has any other interest that could be substantially affected by the outcome of the proceeding; or

(v) Is likely to be a material witness in the proceeding.

(b) A member of the Board or other Presiding Officer is also subject to disqualification under principles of due process and administrative law.

(2) MOTIONS FOR DISQUALIFICATION

A motion for disqualification shall be made first to the Presiding Officer. If the Presiding Officer is appointed, any determination of the Presiding Officer upon a motion for disqualification may be appealed to the Board.

R313-17-14. Other Forms of Address.

Nothing in these rules shall prevent any person from requesting an opportunity to address the Board as a member of the public, rather than as a party. An opportunity to address the Board shall be granted at the discretion of the Board. However, addressing the Board in this manner does not constitute a request for agency action under R313-17-6.

R313-17-15. Requests for Records.

Requests for records under the Utah Government Record Access and Management Act, Title 63, Chapter 2, Utah Code

Ann., are not governed by R313. See R305-1.

KEY: administrative procedures, public comment, public hearings, orders
September 12, 2002 19-3-103.5
Notice of Continuation July 10, 2006 19-3-104

R313. Environmental Quality, Radiation Control.
R313-18. Notices, Instructions and Reports to Workers by Licensees or Registrants--Inspections.
R313-18-1. Purpose and Authority.

(1) The purpose of this rule is to establish requirements for notices, instructions and reports by licensees or registrants to individuals engaged in work under a license or registration and options available to such individuals in connection with inspections of licensees or registrants.

(2) The rules set forth herein are adopted pursuant to the provisions of Sections 19-3-104(3) and 19-3-104(6).

R313-18-2. General.

The rules of R313-18 shall apply to all persons who receive, possess, use, own or transfer a source of radiation licensed by or registered with the Department pursuant to the rules in R313-16, R313-19 or R313-22.

R313-18-11. Posting of Notices to Workers.

(1) Licensees or registrants shall post current copies of the following documents:

(a) the rules in R313-15 and R313-18;

(b) the license, certificate of registration, conditions or documents incorporated into the license by reference and amendments thereto;

(c) the operating procedures applicable to work under the license or registration; and

(d) a notice of violation involving radiological working conditions, proposed imposition of civil penalty, order issued pursuant to R313-14, or any response from the licensee or registrant.

(2) If posting of a document specified in R313-18-11(1)(a), (b), or (c) is not practicable, the licensee or registrant may post a notice which describes the document and states where it may be examined.

(3) DRC-04 "Notice to Employees," shall be posted by licensees or registrants wherever individuals work in or frequent a portion of a restricted area.

(4) Documents from the Executive Secretary which are posted pursuant to R313-18-11(1)(d) shall be posted within five working days after receipt of the documents from the Executive Secretary; the licensee's or registrant's response, if there is one, shall be posted for a minimum of five working days after dispatch from the licensee or registrant. The documents shall remain posted for a minimum of five working days or until action correcting the violation has been competed, whichever is later.

(5) Documents, notices or forms posted pursuant to R313-18-11 shall appear in a sufficient number of places to permit individuals engaged in work under the license or registration to observe them on the way to or from any particular work location to which the document applies, shall be conspicuous, and shall be replaced if defaced or altered.

R313-18-12. Instructions to Workers.

(1) All individuals who in the course of employment are likely to receive in a year an occupational dose in excess of 1.0 mSv (100 mrem):

(a) shall be kept informed of the storage, transfer, or use of sources of radiation in the licensee's or registrant's workplace;

(b) shall be instructed in the health protection considerations associated with exposure to radiation or radioactive material to the individual and potential offspring, in precautions or procedures to minimize exposure, and in the purposes and functions of protective devices employed;

(c) shall be instructed in, and instructed to observe, to the extent within the worker's control, the applicable provisions of these rules and licenses for the protection of personnel from exposure to radiation or radioactive material;

(d) shall be instructed as to their responsibility to report promptly to the licensee or registrant a condition which may constitute, lead to, or cause a violation of the Act, these rules, or a condition of the licensee's license or unnecessary exposure to radiation or radioactive material;

(e) shall be instructed in the appropriate response to warnings made in the event of an unusual occurrence or malfunction that may involve exposure to radiation or radioactive material; and

(f) shall be advised as to the radiation exposure reports which workers shall be furnished pursuant to R313-18-13.

(2) In determining those individuals subject to the requirements of R313-18-12(1), licensees must take into consideration assigned activities during normal and abnormal situations involving exposure to radiation or radioactive material which can reasonably be expected to occur during the life of a licensed facility. The extent of these instructions shall be commensurate with potential radiological health protection considerations for the workplace.

R313-18-13. Notifications and Reports to Individuals.

(1) Radiation exposure data for an individual and the results of measurements, analyses, and calculations of radioactive material deposited or retained in the body of an individual shall be reported to the individual as specified in R313-18-13. The information reported shall include data and results obtained pursuant to these rules, orders, or license conditions, as shown in records maintained by the licensee or registrant pursuant to R313-15-1107. Notifications and reports shall:

(a) be in writing;

(b) include appropriate identifying data such as the name of the licensee or registrant, the name of the individual, and the individual's identification number, preferably social security number;

(c) include the individual's exposure information; and

(d) contain the following statement:

"This report is furnished to you under the provisions of the Utah Administrative Code Section R313-18-13. You should preserve this report for further reference."

(2) Licensees or registrants shall furnish to each worker annually a written report of the worker's dose as shown in records maintained by the licensee or registrant pursuant to R313-15-1107.

(3) Licensees or registrants shall furnish a written report of the worker's exposure to sources of radiation at the request of a worker formerly engaged in activities controlled by the licensee or registrant. The report shall include the dose record for each year the worker was required to be monitored pursuant to R313-15-502. The report shall be furnished within 30 days from the date of the request, or within 30 days after the dose of the individual has been determined by the licensee or registrant, whichever is later. The report shall cover the period of time that the worker's activities involved exposure to sources of radiation and shall include the dates and locations of work under the license or registration in which the worker participated during this period.

(4) When a licensee or registrant is required pursuant to R313-15-1202, R313-15-1203, or R313-15-1204 to report to the Executive Secretary an exposure of an individual to sources of radiation, the licensee or the registrant shall also provide the individual a written report on the exposure data included therein. Reports shall be transmitted at a time not later than the transmittal to the Executive Secretary.

(5) At the request of a worker who is terminating employment with the licensee or registrant in work involving exposure to radiation or radioactive material, during the current year, the licensee or registrant shall provide at termination to the worker, or to the worker's designee, a written report regarding

the radiation dose received by that worker from operations of the licensee or registrant during the current year or fraction thereof. If the most recent individual monitoring results are not available at that time, a written estimate of the dose shall be provided together with a clear indication that this is an estimate.

R313-18-14. Presence of Representatives of Licensees or Registrants and Workers During Inspection.

(1) Licensees or registrants shall afford representatives of the Board or the Executive Secretary, at reasonable times, the opportunity to inspect materials, machines, activities, facilities, premises, and records pursuant to these rules.

(2) During an inspection, representatives of the Board or the Executive Secretary may consult privately with workers as specified in R313-18-15. The licensee or registrant may accompany representatives during other phases of an inspection.

(3) If, at the time of inspection, an individual has been authorized by the workers to represent them during Department inspections, the licensee or registrant shall notify the representatives of the Board or the Executive Secretary of the authorization and shall give the workers' representative an opportunity to accompany the representatives during the inspection of physical working conditions.

(4) The workers' representative shall be routinely engaged in work under control of the licensee or registrant and shall have received instructions as specified in R313-18-12.

(5) Different representatives of licensees or registrants and workers may accompany the representatives of the Board or the Executive Secretary during different phases of an inspection if there is no resulting interference with the conduct of the inspection. However, only one workers' representative at a time may accompany the representatives of the Board or the Executive Secretary.

(6) With the approval of the licensee or registrant and the workers' representative, an individual who is not routinely engaged in work under control of the licensee or registrant, for example, a consultant to the licensee or registrant or to the workers' representative, shall be afforded the opportunity to accompany representatives of the Board or the Executive Secretary during the inspection of physical working conditions.

(7) Notwithstanding the other provisions of R313-18-14, representatives of the Board or the Executive Secretary are authorized to refuse to permit accompaniment by an individual who deliberately interferes with a fair and orderly inspection. With regard to areas containing information classified by an Agency of the U.S. Government in the interest of national security, an individual who accompanies an inspector may have access to such information only if authorized to do so. With regard to areas containing proprietary information, the workers' representative for that area shall be an individual previously authorized by the licensee or registrant to enter that area.

R313-18-15. Consultation with Workers During Inspections.

(1) Representatives of the Board or the Executive Secretary may consult privately with workers concerning matters of occupational radiation protection and other matters related to applicable provisions of these rules and licenses to the extent the representatives deem necessary for the conduct of an effective and thorough inspection.

(2) During the course of an inspection, workers may bring privately to the attention of the representatives of the Board or the Executive Secretary, either orally or in writing, a past or present condition which the worker has reason to believe may have contributed to or caused a violation of the Act, these rules, or license condition, or an unnecessary exposure of an individual to sources of radiation under the licensee's or registrant's control. A notice in writing shall comply with the requirements of R313-18-16(1).

(3) The provisions of R313-18-15(2) shall not be interpreted as authorization to disregard instructions pursuant to R313-18-12.

R313-18-16. Request by Workers for Inspections.

(1) A worker or representative of workers believing that a violation of the Act, these rules, or license conditions exists or has occurred in work under a license or registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by giving notice of the alleged violation to the Executive Secretary. The notice shall be in writing, shall set forth the specific grounds for the notice, and shall be signed by the worker or representative of the workers. A copy shall be provided to the licensee or registrant by representatives of the Board or the Executive Secretary no later than at the time of inspection except that, upon the request of the worker giving the notice, his name and the name of individuals referred to therein shall not appear in a copy or on a record published, released, or made available by the Department except for good cause shown.

(2) If, upon receipt of the notice, representatives of the Board or the Executive Secretary, determine that the complaint meets the requirements set forth in R313-18-16(1), and that there are reasonable grounds to believe that the alleged violation exists or has occurred, an inspection shall be made as soon as practicable to determine if the alleged violation exists or has occurred. Inspections pursuant to R313-18-16 need not be limited to matters referred to in the complaint.

(3) A licensee, registrant or contractor or subcontractor of a licensee or registrant shall not discharge or discriminate against a worker because that worker has filed a complaint or instituted or caused to be instituted a proceeding under these rules or has testified or is about to testify in a proceeding or because of the exercise by the worker on behalf of the worker or others of an option afforded by R313-18.

R313-18-17. Inspections Not Warranted -- Informal Review.

(1)(a) If the representatives of the Board or the Executive Secretary determine, with respect to a complaint under Section R313-18-16, that an inspection is not warranted because there are no reasonable grounds to believe that a violation exists or has occurred, the Executive Secretary shall notify the complainant in writing of that determination. The complainant may obtain review of the determination by submitting a written statement of position with the Executive Secretary. The Executive Secretary will provide the licensee or registrant with a copy of the statement by certified mail, excluding, at the request of the complainant, the name of the complainant. The licensee or registrant may submit an opposing written statement of position with the Executive Secretary. The Executive Secretary will provide the complainant with a copy of the statement by certified mail.

(b) Upon the request of the complainant, the Board may hold an informal conference in which the complainant and the licensee or registrant may orally present their views. An informal conference may also be held at the request of the licensee or registrant, but disclosure of the identity of the complainant will be made only following receipt of written authorization from the complainant. After considering written and oral views presented, the Board shall affirm, modify, or reverse the determination of the representatives of the Board or the Executive Secretary and furnish the complainant and the licensee or registrant a written notification of the decision and the reason therefor.

(2) If the Executive Secretary determines that an inspection is not warranted because the requirements of R313-18-16(1) have not been met, the complainant shall be notified in writing of the determination. The determination shall be without prejudice to the filing of a new complaint meeting the requirements of R313-18-16(1).

KEY: radioactive material, inspection, radiation safety, licensing
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R317. Environmental Quality, Water Quality.
R317-7. Underground Injection Control (UIC) Program.
R317-7-0. Effective Date and Applicability of Rules.

The effective date of these rules is January 19, 1983 (40 C.F.R. 147.2250). Class II wells are administered by the Division of Oil, Gas and Mining, whose primacy became effective October 8, 1982 (40 C.F.R. 147.2251).

R317-7-1. Incorporation By Reference.

1.1 Underground Injection Control Program - 40 C.F.R. 144.7, 144.13(d), 144.14, 144.16, 144.23(c), 144.32, 144.34, 144.36, 144.38, 144.39, 144.40, 144.41, 144.51(a)-(o) and (q), 144.52, 144.53, 144.54, 144.55, 144.60, 144.61, 144.62, 144.63, 144.64, 144.65, 144.66, 144.70, and 144.87, July 1, 2003 ed., are adopted and incorporated by reference with the following exceptions:

A. "Director" is hereby replaced with "Executive Secretary".

B. "one quarter mile" is hereby replaced with "two miles".

1.2 Underground Injection Control Program - Criteria and Standards - 40 C.F.R. 146.4, 146.6, 146.7, 146.8, 146.12, 146.13(d), 146.14, 146.32, 146.34, 146.61,146.62, 146.63, 146.64, 146.65, 146.66, 146.67, 146.68, 146.69, 146.70, 146.71, 146.72, and 146.73, July 1, 2003 ed., are adopted and incorporated by reference with the following exceptions:

A. "Director" is hereby replaced with "Executive Secretary";

B. "one quarter (1/4) mile" and "one-fourth (1/4) mile" are each hereby replaced with "two miles".

1.3 Hazardous Waste Injection Restrictions - 40 C.F.R. Part 148, July 1, 2003 ed., is adopted and incorporated by reference with the exception that "Director" is hereby replaced with "Executive Secretary".

1.4 Identification and Listing of Hazardous Waste - 40 C.F.R. Part 261, July 1, 2003 ed., is adopted and incorporated by reference.

1.5 National Primary Drinking Water Regulations - 40 C.F.R. Part 141, July 1, 2003 ed., is adopted and incorporated by reference.

1.6 Guidelines Establishing Test Procedures for the Analysis of Pollutants - 40 C.F.R. Part 136 Table 1B, July 1, 2003 ed., is adopted and incorporated by reference.

1.7 Nuclear Regulatory Commission - Standards for Protection Against Radiation - 10 C.F.R. Part 20 Appendix B, Table 2 Column 2, January 1, 2003 ed., is adopted and incorporated by reference.

1.8 Procedures for Decision Making - 40 C.F.R. 124.3(a); 124.5(a), (c), (d) and (f); 124.6(a), (c), (d) and (e); 124.8; 124.10(a)(1)ii, iii, and (a)(1)(V); 124.10(b), (c), (d), and (e); 124.11; 124.12(a); and 124.17(a) and (c), July 1, 2003 ed., are adopted and incorporated by reference with the exception that "Director" is hereby replaced by "Executive Secretary".

R317-7-2. Definitions.

2.1 "Abandoned Well" means a well whose use has been permanently discontinued or which is in a state of disrepair such that it cannot be used for its intended purpose or for observation purposes.

2.2 "Application" means standard forms for applying for a permit, including any additions, revisions or modifications.

2.3 "Aquifer" means a geologic formation or any part thereof that is capable of yielding significant water to a well or spring.

2.4 "Area of Review" means the zone of endangering influence or fixed area radius determined in accordance with the provisions of 40 C.F.R. 146.6.

2.5 "Background Data" means the constituents or parameters and the concentrations or measurements which describe water quality and water quality variability prior to surface or subsurface discharge.

2.6 "Barrel" means 42 (U.S.) gallons at 60 degrees F and atmospheric pressure.

2.7 "Casing" means a pipe or tubing of appropriate material, of varying diameter and weight, lowered into a borehole during or after drilling in order to support the sides of the hole and thus prevent the walls from caving, to prevent loss of drilling mud into porous ground, or to prevent water, gas, or other fluid from entering or leaving the hole.

2.8 "Casing Pressure" means the pressure within the casing or between the casing and tubing at the wellhead.

2.9 "Catastrophic Collapse" means the sudden and utter failure of overlying "strata" caused by removal of underlying materials.

2.10 "Cementing" means the operation whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing.

2.11 "Cesspool" means a "drywell" that receives untreated sanitary waste containing human excreta, and which sometimes has an open bottom and/or perforated sides.

2.12 "Confining Bed" means a body of impermeable or distinctly less permeable material stratigraphically adjacent to one or more aquifers.

2.13 "Confining Zone" means a geological formation, group of formations, or part of a formation that is capable of limiting fluid movement above an injection zone.

2.14 "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

2.15 "Conventional Mine" means an open pit or underground excavation for the production of minerals.

2.16 "Disposal Well" means a well used for the disposal of fluids into a subsurface stratum.

2.17 "Drilling Mud" means mud of not less than 36 viscosity (A.P.I. Full Funnel Method) and a weight of not less than nine pounds per gallon.

2.18 "Drywell" means a well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids.

2.19 "Exempted Aquifer" means an aquifer or its portion that meets the criteria in the definition of "underground source of drinking water" but which has been exempted according to the procedures of 40 C.F.R. 144.7.

2.20 "Existing Injection Well" means an "injection well" other than a "new injection well."

2.21 "Experimental Technology" means a technology which has not been proven feasible under the conditions in which it is being tested.

2.22 "Fault" means a surface or zone of rock fracture along which there has been a displacement.

2.23 "Flow Rate" means the volume per time unit given to the flow of gases or other fluid substance which emerges from an orifice, pump, turbine or passes along a conduit or channel.

2.24 "Fluid" means material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

2.25 "Formation" means a body of rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

2.26 "Formation Fluid" means "fluid" present in a "formation" under natural conditions as opposed to introduced fluids, such as drilling mud.

2.27 "Generator" means any person, by site location, whose act or process produces hazardous waste identified or listed in 40 C.F.R. Part 261.

2.28 "Groundwater" means water below the ground surface in a zone of saturation.

2.29 "Ground water protection area" refers to the drinking

water source protection zones for ground water sources delineated by the Utah Division of Drinking Water according to Utah Administrative Code R309-600 - Drinking Water Source Protection For Ground-Water Sources.

2.30 "Hazardous Waste" means a hazardous waste as defined in R315-2-3.

2.31 "Hazardous Waste Management Facility" means all contiguous land, structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combination of them).

2.32 "Improved sinkhole" means a naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface.

2.33 "Injection Well" means a well into which fluids are being injected for subsurface emplacement of the fluids.

2.34 "Injection Zone" means a geological "formation," group of formations, or part of a formation receiving fluids through a well.

2.35 "Lithology" means the description of rocks on the basis of their physical and chemical characteristics.

2.36 "Monitoring Well" means a well used to measure groundwater levels and to obtain water samples for water quality analysis.

2.37 "New Injection Well" means an injection well which began injection after January 19, 1983.

2.38 "Packer" means a device lowered into a well to produce a fluid-tight seal within the casing.

2.39 "Plugging" means the act or process of stopping the flow of water, oil, or gas into or out of a formation through a borehole or well penetrating that formation.

2.40 "Plugging Record" means a systematic listing of permanent or temporary abandonment of water, oil, gas, test, exploration and waste injection wells, and may contain a well log, description of amounts and types of plugging material used, the method employed for plugging, a description of formations which are sealed and a graphic log of the well showing formation location, formation thickness, and location of plugging structures.

2.41 "Point of injection" means the last accessible sampling point prior to waste fluids being released into the subsurface environment through a Class V injection well. For example, the point of injection of a Class V septic system might be the distribution box - the last accessible sampling point before the waste fluids drain into the underlying soils. For a dry well, it is likely to be the well bore itself.

2.42 "Pressure" means the total load or force per unit area acting on a surface.

2.43 "Project" means a group of wells in a single operation.

2.44 "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 R156-22).

2.45 "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).

2.46 "Radioactive Waste" means any waste which contains radioactive material in concentrations which exceed those listed in 10 C.F.R. Part 20, Appendix B, Table II Column 2.

2.47 "Sanitary waste" means liquid or solid wastes originating solely from humans and human activities, such as wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned. Sources of these wastes may include single or multiple residences, hotels and motels, restaurants, bunkhouses, schools, ranger stations, crew quarters, guard stations, campgrounds, picnic grounds, day-use recreation areas, other commercial facilities, and industrial facilities provided the waste is not mixed with industrial waste.

2.48 "Septic system" means a "well" that is used to emplace sanitary waste below the surface and is typically comprised of a septic tank and subsurface fluid distribution system or disposal system.

2.49 "Stratum" (plural strata) means a single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material.

2.50 "Subsidence" means the lowering of the natural land surface in response to earth movements; lowering of fluid pressure; removal of underlying supporting material by mining or solution of solids, either artificially or from natural causes; compaction due to wetting (Hydrocompaction); oxidation of organic matter in soils; or added load on the land surface.

2.51 "Subsurface fluid distribution system" means an assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground.

2.52 "Surface Casing" means the first string of well casing to be installed in the well.

2.53 "Total Dissolved Solids (TDS)" means the total residue (filterable) as determined by use of the method specified in 40 C.F.R. Part 136 Table 1B.

2.54 "Transferee" means the owner or operator receiving ownership and/or operational control of the well.

2.55 "Transferor" means the owner or operator transferring ownership and/or operational control of the well.

2.56 "Underground Injection" means a "well injection".

2.57 "Underground Sources of Drinking Water (USDW)" means an aquifer or its portion which:

A. Supplies any public water system, or which contains a sufficient quantity of ground water to supply a public water system; and

1. currently supplies drinking water for human consumption; or

2. contains fewer than 10,000 mg/l total dissolved solids (TDS); and

B. is not an exempted aquifer. (See Section 7-4).

2.58 "Well" means a bored, drilled or driven shaft whose depth is greater than the largest surface dimension; or a dug hole whose depth is greater than the largest surface dimension; or an improved sinkhole; or a subsurface fluid distribution system.

2.59 "Well Injection" means the subsurface emplacement of fluids through a well.

2.60 "Well Monitoring" means the measurement, by on-site instruments or laboratory methods, of the quality of water in a well.

2.61 "Well Plug" means a watertight and gas-tight seal installed in a borehole or well to prevent movement of fluids.

2.62 "Well Stimulation" means several processes used to clean the well bore, enlarge channels, and increase pore space in the interval to be injected thus making it possible for wastewater to move more readily into the formation, and includes:

(1) surging;
(2) jetting;
(3) blasting;
(4) acidizing; and
(5) hydraulic fracturing.

R317-7-3. Classification of Injection Wells.

Injection wells are classified as follows:

3.1 Class I

A. Hazardous Waste Injection Wells: wells used by generators of hazardous wastes or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation containing, within two miles of the well bore, an underground source of drinking water;

B. Nonhazardous Injection Wells: other industrial and municipal waste disposal wells which inject nonhazardous fluids beneath the lowermost formation containing, within two miles of the well bore, an underground source of drinking water; this category includes disposal wells operated in conjunction with uranium mining activities.

C. Radioactive waste disposal wells which inject fluids below the lowermost formation containing an underground source of drinking water within two miles of the well bore.

3.2 Class II. Wells which inject fluids:

A. which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with wastewaters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection;

B. for enhanced recovery of oil or natural gas; and

C. for storage of hydrocarbons which are liquid at standard temperature and pressure.

Class II injection wells are regulated by the Division of Oil, Gas and Mining under Oil and Gas Conservation General Rules, R649-5.

3.3 Class III. Wells which inject for extraction of minerals, including:

A. mining of sulfur by the Frasch process;

B. in situ production of uranium or other metals. This category includes only in situ production from ore bodies which have not been conventionally mined. Solution mining of conventional mines such as stopes leaching is included in Class V; and

C. solution mining of salts or potash.

3.4 Class IV

A. Wells used by generators of hazardous wastes or of radioactive wastes, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous wastes or radioactive wastes into a formation which, within two miles of the well, contains an underground source of drinking water;

B. wells used by generators of hazardous wastes or of radioactive wastes, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous wastes or radioactive wastes above a formation which, within two miles of the well, contains an underground source of drinking water;

C. wells used by generators of hazardous wastes or by owners or operators of hazardous waste management facilities, to dispose of hazardous wastes which cannot be classified under Section 7-3.1(A) or 7-3.4(A) and (B) of these rules (e.g. wells used to dispose of hazardous wastes into or above a formation which contains an aquifer which has been exempted).

3.5 Class V. Injection wells not included in Classes I, II, III, or IV. Class V wells include:

A. air conditioning return flow wells used to return to the supply aquifer the water used for heating or cooling in a heat pump;

B. large capacity cesspools, including multiple dwelling, community or regional cesspools, or other devices that receive sanitary wastes, containing human excreta, which have an open bottom and sometimes have perforated sides. The UIC requirements do not apply to single family residential cesspools nor to non-residential cesspools which receive solely sanitary wastes and have the capacity to serve fewer than 20 persons per day;

C. cooling water return flow wells used to inject water previously used for cooling;

D. drainage wells used to drain surface fluid, primarily storm runoff, into a subsurface formation;

E. dry wells used for the injection of wastes into a subsurface formation;

F. recharge wells used to replenish the water in an aquifer;

G. salt water intrusion barrier wells used to inject water into a fresh water aquifer to prevent the intrusion of salt water into the fresh water;

H. sand backfill and other backfill wells used to inject a mixture of water and sand, mill tailings or other solids into mined out portions of subsurface mines, whether what is injected is radioactive waste or not;

I. septic systems used to inject the waste or effluent from a multiple dwelling, business establishment, community, or regional business establishment septic tank. The UIC requirements do not apply to single family residential septic system wells, nor to non-residential septic system wells which are used solely for the disposal of sanitary waste and have the capacity to serve fewer than 20 persons per day;

J. subsidence control wells (not used for the purpose of oil or natural gas production) used to inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water;

K. stopes leaching, geothermal and experimental wells;

L. brine disposal wells for halogen recovery processes;

M. injection wells associated with the recovery of geothermal energy for heating, aquaculture and production of electric power; and

N. injection wells used for in situ recovery of lignite, coal, tar sands, and oil shale.

O. motor vehicle waste disposal wells that receive or have received fluids from vehicular repair or maintenance activities, such as an auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shop (e.g., transmission and muffler repair shop), or any facility that does any vehicular repair work. Fluids disposed in these wells may contain organic and inorganic chemicals in concentrations that exceed the maximum contaminant levels (MCLs) established by the primary drinking water regulations (see 40 CFR Part 141 and Utah Primary Drinking Water Standards R309-200-5). These fluids also may include waste petroleum products and may contain contaminants, such as heavy metals and volatile organic compounds, which pose risks to human health.

R317-7-4. Identification of USDW'S and Exempted Aquifers.

The Executive Secretary shall identify USDW's and exempt aquifers following the procedures and based on the requirements outlined in 40 C.F.R. 144.7 and 40 C.F.R. 146.4.

R317-7-5. Prohibition of Unauthorized Injection.

5.1 Any underground injection is prohibited except as authorized by permit or as allowed under these rules.

5.2 No authorization by permit or by these rules for underground injection shall be construed to authorize or permit any underground injection which endangers a drinking water source.

5.3 Underground injections are prohibited which would allow movement of fluid containing any contaminant into underground sources of drinking water if the presence of that contaminant may cause a violation of any primary drinking water regulation (40 C.F.R. Part 141 and Utah Primary Drinking Water Standards R309-200-5), or which may adversely affect the health of persons. Underground injections shall not be authorized if they may cause a violation of any ground water quality rules that may be promulgated by the Utah Water Quality Board. Any applicant for a permit shall have the burden of showing that the requirements of this paragraph are met.

5.4 For Class I and III wells, if any monitoring indicates the movement of injection or formation fluids into underground sources of drinking water, the Executive Secretary shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting, including closure of the injection well, as are necessary to prevent such movement. In the case of wells authorized by permit, these additional requirements shall be imposed by modifying the permit or the permit may be terminated, or appropriate enforcement action may be taken if the permit has been violated.

5.5 For Class V wells, if at any time the Executive Secretary determines that a Class V well may cause a violation of primary drinking water rules under R309-200, the Executive Secretary shall:

A. require the injector to obtain an individual permit;

B. order the injector to take such actions, including closure of the injection well, as may be necessary to prevent the violation; or

C. take appropriate enforcement action.

5.6 Whenever the Executive Secretary determines that a Class V well may be otherwise adversely affecting the health of persons, the Executive Secretary may require such actions as may be necessary to prevent the adverse effect.

5.7 Class IV Wells

A. Prohibitions. The construction, operation or maintenance of any Class IV well is prohibited except as specified in 40 C.F.R. 144.13 (c) and 144.23(c) as limited by the definition of Class IV wells in Section 7-3.4 of these rules.

B. Plugging and abandonment requirements. Prior to abandoning a Class IV well, the owner or operator shall close the well in a manner acceptable to the Executive Secretary. At least 30 days prior to abandoning a Class IV well, the owner or operator shall notify the Executive Secretary of the intent to abandon the well.

5.8 Notwithstanding any other provision of this section, the Executive Secretary may take emergency action upon receipt of information that a contaminant which is present in, or is likely to enter a public water system, may present an imminent and substantial endangerment to the health of persons.

5.9 Records. The Executive Secretary may require, by written notice on a selective well-by-well basis, an owner or operator of an injection well to establish and maintain records, make reports, conduct monitoring, and provide other information as is deemed necessary to determine whether the owner or operator has acted or is acting in compliance with these rules.

R317-7-6. Permit and Compliance Requirements - New and Existing Wells.

6.1 The owner or operator of any new injection well is required to obtain a permit from the Executive Secretary prior to construction unless excepted by R317-7-6.3. Compliance with construction plans and standards is required prior to commencing injection operations. Changes in construction plans require approval of the Executive Secretary.

6.2 Owners or operators of existing underground injection wells are required to obtain a permit from the Executive Secretary unless specifically excepted by Section 7-6.3 of these rules.

6.3

A. Existing and new Class V injection wells are authorized by rule, subject to the conditions in Section 7-6.5 of these rules.

B. Well authorization under this Section 7-6.3 expires upon the effective date of a permit issued in accordance with these rules or upon proper closure of the well.

C. An owner or operator of a well which is authorized by rule under this Section 7-6.3 is prohibited from injecting into the well:

1. Upon the effective date of a permit denial.

2. Upon failure to submit a permit application in a timely manner if requested by the Executive Secretary under Section 7-6.4 of these rules.

3. Upon failure to submit inventory information in a timely manner in accordance with Section 7-6.4(C) of these rules.

6.4

A. The Executive Secretary may require any owner or operator of a Class I, III or V well authorized under Section 7-6.3 to apply for and obtain an individual or area permit. Cases where permits may be required include:

1. The injection well is not in compliance with the applicable rules.

2. The injection well is not or no longer is within the category of wells and types of well operations authorized by Section 7-6.3.

3. Protection of an USDW.

B. Any owner or operator authorized under Section 7-6.3 may request a permit and hence be excluded from coverage under Section 7-6.3.

C. Owners or operators of all injection wells regulated by Section 7-6.3 shall submit the following inventory information to the Executive Secretary:

1. facility name and location;
2. name and address of legal contact;
3. ownership of facility;
4. nature and type of injection wells; and
5. operating status of injection wells.

Inventory information shall be submitted no later than January 19, 1984 for existing injection wells and before injection begins for new injection wells.

6.5 Additional requirements for large-capacity cesspools and motor vehicle waste disposal wells (see Class V well descriptions in Sections 7-3.5(B) and 7-3.5(O), respectively).

A. All existing large-capacity cesspools (operational or under construction by April 5, 2000) must close by April 5, 2005. See closure requirements in Section 7-6.6.

B. All new or converted large-capacity cesspools (construction not started before April 5, 2000) are prohibited.

C. All existing motor vehicle waste disposal wells (operational or under construction by April 5, 2000) must either be closed or their owners or operators must obtain a UIC permit.

1. For those wells located within a ground water protection area as designated by the Utah Division of Drinking Water (DDW), closure or permit application submittal must take place within one year of completion of DDW's ground water protection area assessment for the pertinent area.

2. All motor vehicle waste disposal wells statewide located outside a ground water protection area must either be closed or their owners or operators must submit a UIC permit application by January 1, 2007.

3. If well closure is the option chosen, the closure requirements in Section 7-6.6 must be followed. The closure deadline may be extended by the Executive Secretary for up to one year under certain conditions, such as intent to connect to a sanitary sewer.

4. If obtaining a UIC permit is the option chosen, Utah Drinking Water Maximum Contaminant Levels (MCL's), Utah Ground Water Quality Standards, and EPA Adult Lifetime Health Advisories must be met at the point of injection while the permit application is under review. These standards must also be met at the point of injection under the terms of the permit, when issued. Utah Ground Water Protection Levels may be required to be met at downgradient ground water monitoring wells, if required to be installed. Such a permit may require pretreatment of the wastewater, and will require adherence to best management practices and monitoring of the quality of the injectate and any sludge generated.

D. All new or converted motor vehicle waste disposal wells (construction not started before April 5, 2000) are

prohibited.

6.6 Class V well plugging and abandonment requirements.

A. Prior to abandoning a Class V well, the owner or operator shall close the well in a manner that prevents the movement of fluid containing any contaminant into an underground source of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR Part 141 or Utah Primary Drinking Water Standards R309-200-5, or may otherwise adversely affect the health of persons.

B. The owner or operator shall dispose of or otherwise manage any soil, gravel, sludge, liquids, or other materials removed from or adjacent to the well in accordance with all applicable Federal, State, and local regulations and requirements.

C. The owner or operator must notify the Executive Secretary of intent to close the well at least 30 days prior to closure.

6.7 Conversion of motor vehicle waste disposal wells. In limited cases, the Executive Secretary may authorize the conversion (reclassification) of a motor vehicle waste disposal well to another type of Class V well. Motor vehicle wells may only be converted if: all motor vehicle fluids are segregated by physical barriers and are not allowed to enter the well; and, injection of motor vehicle waste is unlikely based on a facility's compliance history and records showing proper waste disposal. The use of a semi-permanent plug as the means to segregate waste is not sufficient to convert a motor vehicle waste disposal well to another type of Class V well.

6.8 Time for Application for Permit. Any person who performs or proposes an underground injection for which a permit is or will be required shall submit a complete application to the Executive Secretary in accordance with Section 7-9 a reasonable time before construction is expected to begin, except for new wells covered by an existing area permit.

6.9 All applications for a Utah UIC permit, including any required Technical Report that addresses the technical requirements of R317-7-10 or R317-7-11, any technical information necessary for the adequate evaluation of any permit application, or any permit renewal applications and Technical Reports that are significantly different from the original permit application, must be prepared by or under the direction, and bear the seal, of a professional geologist or professional engineer.

R317-7-7. Area Permits.

A. The Executive Secretary may issue a permit on an area basis, rather than for each well individually, provided that the permit is for injection wells:

1. described and identified by location in permit application, if they are existing wells, except that the Executive Secretary may accept a single description of wells with substantially the same characteristics;

2. within the same well field, facility site, reservoir, project, or similar unit in the State;

3. operated by a single owner or operator; and

4. used to inject other than hazardous waste.

B. Area permits shall specify:

1. the area within which underground injections are authorized; and

2. the requirements for construction, monitoring, reporting, operation, and abandonment, for all wells authorized by the permit.

C. The area permit may authorize the permittee to construct and operate, convert, or plug and abandon injection wells within the permit area provided that:

1. the permittee notifies the Executive Secretary at such time as the permit requires, when and where the new well has been or will be located;

2. the additional well meets the area permit criteria; and

3. the cumulative effects of drilling and operation of additional injection wells are considered by the Executive Secretary during evaluation of the area permit application and are acceptable to the Executive Secretary.

D. If the Executive Secretary determines that any additional well does not meet the area permit requirements, the Executive Secretary may modify or terminate the permit or take appropriate enforcement action.

E. If the Executive Secretary determines the cumulative effects are unacceptable, the permit may be modified.

F. The requirements of R317-7-6.9 apply to area permits.

R317-7-8. Emergency Permits.

A. Notwithstanding any provision in this Part 7, the Executive Secretary is authorized to issue emergency permits for specific underground injections provided the conditions and requirements of 40 C.F.R. 144.34 are met.

B. The requirements of R317-7-6.9 apply to emergency permits.

R317-7-9. Permitting Procedures and Conditions.

9.1 Application for a Permit

A. Any person who is required to have a permit shall complete, sign and submit an application to the Executive Secretary.

B. When the owner and operator are different, it is the operator's duty to obtain a permit.

C. The application must be complete before the permit is issued.

D. All applicants shall provide the following information:

1. activities conducted by the applicant which require a permit;

2. name, mailing address and location of facility;

3. up to four Standard Industrial Code (SIC) codes which best reflect the principal products or services provided;

4. operator's name, address, telephone number, ownership status, and status as Federal, State, private, public or other entity;

5. whether the facility is located on Indian lands;

6. list of State and Federal environmental permits or construction approvals received or applied for and other relevant environmental permits;

7. topographic map (or other map if the topographic map is unavailable) extending one mile beyond the property boundary; depicting the facility and its intake and discharge structures, any hazardous waste, treatment, storage and disposal facilities; each injection well; and wells, springs, surface water bodies, and drinking water wells listed in public records or otherwise known;

8. a brief description of the nature of the business;

9. a map showing the injection well for which a permit is sought and the applicable area of review. Within the area of review, the map must show a number, or name, and location of all producing wells, injection wells, abandoned wells, dry holes, surface bodies of water, springs, mines, (surface and subsurface), quarries, water wells and other pertinent surface features including residences and roads. The map should also show faults, if known or suspected. Only information of public record is required to be included on this map;

10. a tabulation of data on all wells within the area of review which penetrates into the proposed injection zone. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and/or completion, any available water quality data, and any additional information the Executive Secretary may require;

11. maps and cross sections indicating the vertical limits of all underground sources of drinking water within the area of review, their position relative to the injection formation and the direction of water movement, where known, in each

underground source of drinking water which may be affected by the proposed injection;

12. maps and cross sections detailing the geologic structure and lithology of the local area;

13. generalized maps and cross sections illustrating the regional geologic and hydrologic setting;

14. proposed operating data:

(a) average and maximum daily rate and volume of the fluid to be injected;

(b) average and maximum injection pressure; and

(c) source and an appropriate analysis of the chemical, physical, radiological and biological characteristics of injection fluids;

15. proposed formation testing program to obtain an analysis of the chemical, physical and radiological characteristics of and other information on the receiving formation;

16. proposed stimulation program;

17. proposed injection procedure;

18. schematic or other appropriate drawings of the surface and subsurface construction details of the system;

19. contingency plans to cope with all shut-ins or well failures to prevent migration of fluids into any underground source of drinking water;

20. plans (including maps) for meeting the monitoring requirements;

21. for wells within the area of review which penetrate the injection zone but are not properly completed or plugged, the corrective action proposed to be taken;

22. construction procedures, as follows:

(a) For Class I Nonhazardous Wells: a cementing and casing program, logging procedures, deviation checks, and a drilling, testing, and coring program, which comply with Section 7-10.1(A) or 40 C.F.R. 146.12;

(b) For Class I Hazardous Waste Wells: cementing and casing program, well materials specifications and their life expectancy, logging procedures, deviation checks, and a drilling, testing and coring program, which comply with 40 C.F.R. 146.65 and 146.66;

(c) For Class III wells: cementing and casing program, logging procedures, deviation checks, and a drilling, testing, and coring program, which comply with section 7-10.1(B) or 40 C.F.R. 146.32.

23. A plan for plugging and abandoning the well, as follows:

(a) Class I Nonhazardous Well plans shall include information required by 40 C.F.R. 146.14(c) and Section 7-10.5 of these rules;

(b) Class I Hazardous Waste Well plans shall include information required by 40 C.F.R. 146.71(a)(4) and 146.72(a);

(c) Class III well plans shall include information required by 40 C.F.R. 146.34(c) and Section 7-10.5 of these rules.

24. A certificate that the applicant has assured, through a performance bond or other appropriate means, the resources necessary to close, plug or abandon the well. Class I Hazardous Waste wells shall also demonstrate financial responsibility pursuant to 40 C.F.R. 144.60 through 144.70;

25. such other information as may be required by the Executive Secretary.

9.2 Applicants shall keep records of all data used to complete permit applications and supplemental information for at least three years from the date of permit approval.

9.3 Permit applications and reports required under these regulations shall be signed in accordance with 40 C.F.R. Section 144.32.

9.4 Permit Provisions, Conditions and Schedules of Compliance.

Any permit issued by the Executive Secretary is subject to the conditions and requirements and shall be issued in accordance with the procedures outlined in 40 C.F.R. 144.51 (a)-(o) and (q), 144.52, 144.53, 144.54, 144.55 and 146.7, and 40 C.F.R. 124.3(a), 124.5(a),(c),(d) and (f), 124.6(a),(c),(d) and (e), 124.8, 124.10(a)(1)ii, and iii, (a)(1)(v), 124.10(b),(c),(d) and (e), 124.11, 124.12(a) and 124.17(a) and (c). The permit may specify schedules of compliance which require compliance not later than three years after the effective date of the permit.

9.5 Duration of Permits. Permits for Class I and Class V wells shall be effective for a fixed term not to exceed ten years. Permits for Class III wells shall be issued for a period up to the operating life of the facility. Each issued Class III well permit shall be reviewed by the Executive Secretary at least once every five years to determine whether it should be modified, revoked and reissued, or terminated. The Executive Secretary may issue any permit for a duration that is less than the full allowable term under this section.

9.6 Transfer, Modification, and Termination. Permits may be transferred, modified, revoked, reissued, or terminated by the Executive Secretary under the conditions and following the procedures outlined in 40 C.F.R. 144.36, 144.38, 144.39, 144.40, and 144.41.

9.7 Confidentiality of Information. The following information when submitted as required by these rules cannot be claimed confidential:

A. name and address of permit applicant or permittee; and

B. information which deals with the existence, absence or level of contaminants in drinking water.

9.8 Waivers of Requirements

A. The Executive Secretary may waive the requirements of these rules only under the conditions and circumstances outlined in 40 C.F.R. Section 144.16.

B. The "two mile" distance provisions in Sections 7-3.1(B), 7-3.4, 7-10.1(A)(1), and 7-11 of these rules may be reduced by the Board on a case-by-case basis to less than two miles but in no event to less than 1/4 mile upon a finding by the Board that the distance reduction will not pose a threat to any USDW. The burden shall be on the applicant to demonstrate that hydrogeologic conditions, ground water quality in the area, and other environmental studies and information support the finding.

R317-7-10. Technical Requirements for Class I Nonhazardous and Class III Wells.

10.1 Construction Requirements

A. Class I Nonhazardous Well Construction Requirements

1. All Class I Nonhazardous wells as defined in Section 7-3.1(B) shall be sited so they inject beneath the lowermost formation containing, within two miles of the well bore, an USDW.

2. All Class I Nonhazardous wells shall be cased and cemented to prevent the movement of fluids into or between USDW's. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements the following factors shall be considered:

a. depth to the injection zone;

b. injection pressure, external pressure, internal pressure, and axial loading;

c. hole size;

d. size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification, and construction material);

e. corrosiveness of injected fluid, formation fluids, and temperatures;

f. lithology of injection and confining intervals; and

g. type or grade of cement.

3. All Class I Nonhazardous injection wells (except for municipal wells injecting noncorrosive wastes) shall inject

through tubing with a packer set immediately above the injection zone or tubing with an approved fluid seal. Alternatives may be used with the written approval of the Executive Secretary if they provide a comparable level of protection.

The following factors shall be considered in determining and specifying requirements for tubing, packer or alternatives:

a. depth of setting;
b. characteristics of injected fluid;
c. injection pressure;
d. annular pressure;
e. rate, temperature and volume of injected fluid; and
f. size of casing.

4. Appropriate logs and other tests shall be conducted during the drilling and construction of new wells and a descriptive report interpreting the results of such logs and tests shall be prepared by a qualified log analyst and submitted to the Executive Secretary. At a minimum, such logs and tests shall include:

a. deviation checks on holes constructed by drilling a pilot hole, and then enlarging the pilot hole;

b. Such other logs and tests as may be required by the Executive Secretary. In determining which logs and tests shall be required, the following shall be considered for use in the following situations:

(1) for surface casing intended to protect USDW's:

(a) electric and caliper logs (before casing is installed);

(b) cement bond, temperature or density log (after casing is set and cemented);

(2) for intermediate and long strings of casing intended to facilitate injection:

(a) electric, porosity and gamma ray logs (before casing is installed);

(b) fracture finder logs;

(c) cement bond, temperature or density log (after casing is set and cemented).

5. At a minimum, the following information concerning the injection formation shall be determined or calculated for new wells:

a. fluid pressure;
b. temperature;
c. fracture pressure;
d. physical and chemical characteristics of the injection matrix; and
e. physical and chemical characteristics of the formation fluids.

B. Class III Construction Requirements

1. All new Class III wells shall be cased and cemented to prevent the migration of fluids into or between underground sources of drinking water. The Executive Secretary may waive the cementing requirement for new wells in existing projects or portions of existing projects where he has substantial evidence that no contamination of underground sources or drinking water would result. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:

a. depth to the injection zone;
b. injection pressure, external pressure, internal pressure, and axial loading;
c. hole size;
d. size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification, and construction material);
e. corrosiveness of injected fluids and formation fluids;
f. lithology of injection and confining zones; and
g. type and grade of cement.

2. Appropriate logs and other tests shall be conducted during the drilling and construction of new Class III wells. A descriptive report interpreting the results of such logs and tests shall be prepared by a qualified log analyst and submitted to the Executive Secretary. The logs and tests appropriate to each type of Class III well shall be determined based on the intended function, depth, construction and other characteristics of the well, availability of similar data in the area of the drilling site, and the need for additional information that may arise from time to time as the construction of the well progresses. Deviation checks shall be conducted on all holes where pilot holes and reaming are used, unless the hole will be cased and cemented by circulating cement to the surface. Where deviation checks are necessary they shall be conducted at sufficiently frequent intervals to assure that vertical avenues for fluid migration in the form of diverging holes are not created during drilling.

3. Where the injection zone is a formation which is naturally water-bearing the following information concerning the injection zone shall be determined or calculated for new Class III wells or projects:

a. fluid pressure;
b. fracture pressure; and
c. physical and chemical characteristics of the formation fluids.

4. Where the injection zone is not a water bearing formation, only the fracture pressure must be submitted.

5. Where injection is into a formation which contains water with less than 10,000 mg/l TDS, monitoring wells shall be completed into the injection zone and into any USDW above the injection zone.

6. Where injection is into a formation which does not contain water with less than 10,000 mg/l TDS, no monitoring wells are necessary in the injection stratum.

7. Where the injection wells penetrate an USDW in a area subject to subsidence or catastrophic collapse, an adequate number of monitoring wells shall be completed into the USDW.

10.2 Operation Requirements

A. For Class I Nonhazardous and Class III wells it is required that:

1. Except during stimulation, the injection pressure at the wellhead shall not exceed a maximum which shall be calculated to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. In no case shall the injection pressure initiate fractures in the confining zone or cause the movement of injection or formation fluids into an USDW.

2. Injection between the outermost casing protecting USDW's and the well bore is prohibited.

B. For Class I Nonhazardous wells, unless an alternative to tubing and packer has been approved, the annulus between the tubing and the long string of casings shall be filled with a fluid approved by the Executive Secretary and a pressure approved by the Secretary shall be maintained on the annulus.

10.3 Monitoring. The permittee shall identify types of tests and methods used to generate the monitoring data:

A. Class I Nonhazardous well monitoring shall, at a minimum, include:

1. the analysis of the injected fluids with sufficient frequency to yield representative data of their characteristics;

2. installation and use of continuous recording devices to monitor injection pressure, flow rate and volume, and the pressure on the annulus between tubing and the long string of casing;

3. a demonstration of mechanical integrity pursuant to 40 C.F.R. 146.8 at least once every five years during the life of the well; and

4. the type, number and location of wells within the area of review to be used to monitor any migration of fluids into and pressure in the USDW, the parameters to be measured and the frequency of monitoring.

5. Ambient monitoring requirements for Class I

Nonhazardous wells found in 40 C.F.R. 146.13(d).

B. Class III monitoring shall, at a minimum, include:

1. the analyses of the physical and chemical characteristics of the injected fluid with sufficient frequency to yield representative data on its characteristics;

2. monitoring of injection pressure and either flow rate or volume semi- monthly, or metering and daily recording of injected and produced fluid volumes as appropriate;

3. demonstration of mechanical integrity pursuant to 40 C.F.R. 146.8 at least once every five years during the life of the well for salt solution mining;

4. monitoring of the fluid level in the injection zone semi-monthly, where appropriate and monitoring of the parameters chosen to measure water quality in the monitoring wells required by Section 7-10.2 of these rules, semi-monthly;

5. quarterly monitoring of wells required by Section 7-10.1(B)(7).

6. All Class III wells may be monitored on a field or project basis rather than an individual well basis by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one injection well, operating with a common manifold. Separate monitoring systems for each well are not required, provided the owner/operator demonstrates that manifold monitoring is comparable to individual well monitoring.

7. In determining the number, location, construction and frequency of monitoring of the monitoring wells, the criteria in 40 C.F.R. 146.32(h) shall be considered.

10.4 Reporting Requirements

A. For Class I Nonhazardous injection wells reporting shall, at a minimum, include:

1. quarterly reports to the Executive Secretary on:

a. the physical, chemical and other relevant characteristics of injection fluids;

b. monthly average, maximum and minimum values for injection pressure, flow rate and volume, and annular pressure; and

c. the results of monitoring of wells in the area of review.

2. Reporting the results, with the first quarterly report after the completion of:

a. periodic tests of mechanical integrity;

b. any other test of the injection well conducted by the permittee if required by the Executive Secretary; and

c. any well work over.

B. For Class III injection wells reporting shall, at a minimum, include:

1. quarterly reporting to the Executive Secretary on required monitoring;

2. results of mechanical integrity and any other periodic test required by the Executive Secretary reported with the first regular quarterly report after the completion of the test; and

3. monitoring may be reported on a project or field basis rather than individual well basis where manifold monitoring is used.

10.5 Plugging and Abandonment Requirements

A. Prior to abandoning Class I Nonhazardous and Class III wells, the well shall be plugged with cement in a manner which will not allow the movement of fluid either into or between underground sources of drinking water. The Executive Secretary may allow Class III wells to use other plugging materials if he is satisfied that such materials will prevent movement of fluids into or between underground sources of drinking water.

B. Placement of the cement plugs shall be accomplished by one of the following:

1. the Balance Method;

2. the Dump Bailer Method;

3. the Two-Plug Method; or

4. an alternative method approved by the Executive Secretary which will reliably provide a comparable level of protection to USDW's.

C. The well to be abandoned shall be in a state of static equilibrium with the mud weight equalized top to bottom, either by circulating the mud in the well at least once, or by a comparable method prescribed by the Executive Secretary, prior to the placement of the cement plug.

D. The plugging and abandonment plan required in Section 7-9 shall, in the case of a Class III well field which underlies or is in an aquifer which has been exempted, also demonstrate adequate protection of USDW's. The Executive Secretary shall prescribe aquifer cleanup and monitoring where he deems it necessary and feasible to insure adequate protection of USDW's.

10.6 Information to be Considered by the Executive Secretary. Requirements for information from well owners or operators and evaluations by the Executive Secretary for the issuance of permits, approval of well operation or well plugging and abandonment of Class I Nonhazardous injection wells are found in 40 C.F.R. 146.14 and Class III injection wells are found in 40 C.F.R. 146.34.

R317-7-11. Technical Requirements for Class I Hazardous Waste Injection Wells.

11.1 Applicability. Statements of applicability and definitions are described in 40 C.F.R. 146.61.

11.2 Minimum Siting Criteria. Minimum siting requirements for Class I hazardous waste wells are described in 40 C.F.R. 146.62.

11.3 Area of Review. The area of review is defined for Class I hazardous waste injection wells in 40 C.F.R. 146.63.

11.4 Corrective Action for Wells in the Area of Review. Corrective action requirements for wells found within the area of review are located in 40 C.F.R. 146.64.

11.5 Construction Requirements. Construction requirements for all Class I hazardous waste injection wells are found in 40 C.F.R. 146.65.

11.6 Logging, Sampling, and Testing Prior to New Well Operation. Pre-operation requirements for logging, sampling, and testing of new wells are found in 40 C.F.R. 146.66.

11.7 Operating Requirements. Operation requirements for Class I hazardous waste injection wells are found in 40 C.F.R. 146.67.

11.8 Testing and Monitoring Requirements. Testing and monitoring requirements are found in 40 C.F.R. 146.68.

11.9 Reporting Requirements. Reporting requirements are found in 40 C.F.R. 146.69.

11.10 Information to be Evaluated by the Executive Secretary. Requirements for information from well owners or operators and evaluations by the Executive Secretary for the issuance of permits, approval of well operation or well plugging and abandonment are found in 40 C.F.R. 146.70.

11.11 Closure. Well closure requirements are found in 40 C.F.R. 146.71.

11.12 Post-closure Care. Post-closure care requirements for Class I hazardous waste injection wells and facilities are found in 40 C.F.R. 146.72.

11.13 Financial Responsibility for Post-closure Care. Financial responsibility requirements for care of a Class I hazardous waste injection well during post-closure are found in 40 C.F.R. 146.73.

11.14 Requirements for Wells Injecting Hazardous Waste. Requirements for injection of waste accompanied by a manifest are found in 40 C.F.R. 144.14.

R317-7-12. Hazardous Waste Injection Restrictions.

12.1 Purpose, Scope, and Applicability. Standards are found in 40 C.F.R. 148.1.

12.2 Definitions. Definitions are found in 40 C.F.R.

148.2.

12.3 Dilution Prohibited as a Substitute for Treatment. The prohibition is found in 40 C.F.R. 148.3.

12.4 Procedures for Case-by-case Extensions to an Effective Date. Requirements are found in 40 C.F.R. 148.4.

12.5 Waste Analysis. Requirements are found in 40 C.F.R. 148.5.

12.6 Waste Specific Prohibitions - Solvent Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.10.

12.7 Waste Specific Prohibitions - Dioxin - Containing Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.11.

12.8 Waste Specific Prohibitions - California List Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.12.

12.9 Waste Specific Prohibitions - First Third Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.14.

12.10 Waste Specific Prohibitions - Second Third Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.15.

12.11 Waste Specific Prohibitions - Third Third Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.16.

12.12 Waste Specific Prohibitions - Newly Listed Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.17.

12.13 Petitions to Allow Injection of a Waste Prohibited Under Sections 7.11 and 7.12. Requirements for petitions to allow injection of prohibited wastes are found in 40 C.F.R. 148.20.

12.14 Information to be Submitted in Support of Petitions. Requirements are found in 40 C.F.R. 148.21.

12.15 Requirements for Petition Submission, Review and Approval or Denial. Requirements are found in 40 C.F.R. 148.22.

12.16 Review of Exemptions Granted Pursuant to a Petition. Requirements are found in 40 C.F.R. 148.23.

12.17 Termination of Approved Petition. Petition termination requirements are found in 40 C.F.R. 148.24.

R317-7-13. Public Participation.

In addition to adjudicatory hearings required under the State Administrative Procedures Act 63-46b, et seq. and proceedings otherwise outlined or referenced in these regulations, the Board or its duly appointed representative will investigate and provide written response to all citizen complaints duly submitted. In addition, the Board shall not oppose intervention in any civil or administrative proceeding by any citizen where permissive intervention may be authorized by statute or rule. The Board will publish notice of and provide at least thirty (30) days of public comment on any proposed settlement of any enforcement action.

KEY: water quality, underground injection control
October 26, 2004 19-5
Notice of Continuation July 18, 2006

R386. Health, Epidemiology and Laboratory Services, Epidemiology.
R386-703. Injury Reporting Rule.
R386-703-1. Purpose Statement.

(1) The Injury Reporting Rule is adopted under authority of Sections 26-1-30 and 26-6-3.

(2) The Injury Reporting Rule establishes an injury surveillance and reporting system for major injuries occurring in Utah. Injuries constitute a leading cause of death and disability in Utah and, therefore, pose an important risk to public health.

(3) Rule R386-703 is adopted with the intent of identifying causes of major injury which can be reduced or eliminated, thereby reducing morbidity and mortality.

R386-703-2. Injury Definition.

(1) Injury is defined as bodily damage resulting from exposure to physical agents such as mechanical energy, thermal energy, ionizing radiation, or chemicals, or resulting from the deprivation of basic environmental requirements such as oxygen or heat. Mechanical energy injuries include acceleration and deceleration injuries, blunt trauma, and penetrating wound injuries.

R386-703-3. Reportable Injuries.

(1) The Utah Department of Health declares the following injuries to be of concern to the public's health. Each case shall be reported to the Utah Department of Health as described in R386-703-4.

(a) Acute traumatic brain injury. Reportable acute traumatic brain injuries include head injuries of sufficient severity to cause death or to require admission to a hospital. Acute traumatic brain injuries may be associated with transient or persistent neurological dysfunction, and may be diagnosed as brain concussions, brain contusions, or traumatic intracranial hemorrhages.

(b) Acute spinal cord injury. Reportable acute spinal cord injuries include traumatic injuries to the contents of the spinal canal, spinal cord or cauda equina, which result in death or which result in transient or persistent neurological dysfunction of sufficient severity to require hospital admission.

(c) Blunt force injury. Reportable injuries include all blunt force injuries which result in death or which are of sufficient severity to require hospital admission.

(d) Drowning and near drowning. Reportable drownings and near drownings include all water immersion injuries resulting in death and other water immersion injuries of sufficient severity to require hospital admission.

(e) Asphyxiation. Reportable asphyxiations include injuries which arise from atmospheric oxygen deprivation or from traumatic respiratory obstruction which result in death or which are of sufficient severity to require hospital admission.

(f) Burns. Reportable burn injuries include injuries resulting from acute thermal exposure or exposure to fire which result in death or which are of sufficient severity to require hospital admission.

(g) Electrocution. Reportable electrocution injuries include injuries arising from exposure to electricity which result in death or which are of sufficient severity to require hospital admission.

(h) Elevated Blood Lead. Reportable cases of elevated blood lead levels include all persons with whole blood lead concentrations equal to or greater than 10 micrograms per deciliter.

(i) Chemical Poisoning. Reportable cases of chemical poisoning include all persons with acute exposure to toxic chemical substances which result in death or which require hospital admission or hospital emergency department evaluation. Unintentional adverse health effects resulting from the use of pharmacological agents as prescribed by physicians do not require reporting under this rule.

(j) Intentional Injuries. Reportable intentional injuries include all cases of suicide or attempted suicide resulting in hospital admission and all cases of homicide, attempted homicide, or battery resulting in hospitalization.

(k) Injuries Related to Substance Abuse. Reportable injuries include all cases of injury resulting in death or hospitalization and associated with alcohol or drug intoxication of any person involved in the injury occurrence.

(l) Traumatic Amputations. Reportable amputations include traumatic amputations of a limb or part of a limb which result in death or which require hospital admission or hospital emergency department treatment. Only amputations resulting in bone loss shall be reported.

R386-703-4. Report Requirements.

(1) Case Report Contents. Unless otherwise specified, each injury report shall provide the following information pertaining to the injured person: name, date of birth or age if date of birth is unknown, sex, address of residence, date of injury, type of injury, external cause of injury, locale of injury, intentionality, relation of injury to occupation, disposition of the injured person, and the individual or agency submitting the report. A standard report format has been adopted and shall be supplied to reporting sources by the Department of Health upon request.

(2) Agencies or Individuals Required to Report Injuries. A reportable injury evaluated or treated at a hospital shall be reported by that hospital. Reportable injuries not evaluated at a hospital shall be reported by the involved physician, nurse, other health care practitioner, medical examiner, or laboratory administrator.

(3) Time Requirements. Persons required to report shall submit their reports to the local health department or the Utah Department of Health within 60 days of the time of diagnosis or recognition of injury. In the event of an unusual or excessive occurrence of injuries which may arise from a continuing or immediate threat to the public's health, persons required to report shall immediately report by telephone to the local health officer or to the Utah Department of Health.

(4) Case Report Destinations. Each case of injury shall be reported to the Utah Department of Health or to the local health department responsible for the geographic area where the injury occurred.

(a) The local health officer shall forward all original reports to the Utah Department of Health. Local health departments may maintain copies of these reports.

(b) Except as noted in R386-703-4(c), (d) and (e), case reports shall be sent to the Bureau of Epidemiology of the Utah Department of Health.

(c) In fatal cases, submission of completed death certificates to the Bureau of Vital Records fulfills reporting requirements.

(d) In cases evaluated in hospital emergency departments, submission of properly completed hospital emergency department logs to the Bureau of Emergency Medical Services will fulfill reporting requirements, provided that the records are submitted through an electronic medium in a computer database format acceptable to the Bureau of Emergency Medical Services.

(e) In cases where reportable injuries listed in R386-703-3 are reported under the requirements of the Utah Health Data Authority Act, 26-33a, the data supplier may notify the Utah Department of Health in writing that information relating to individuals with a reportable injury will be supplied to the Bureau of Epidemiology before the identifying information is removed from the data file. Any data provided in this manner fulfills reporting requirements. If permission is not granted by

the data supplier, duplicate reporting is required.

R386-703-5. Special Investigations of Injury.

(1) The Utah Department of Health and local health departments may conduct epidemiologic investigations of injury occurrence. The Utah Department of Health and local health departments may collect additional information pertaining to risk factors, medical condition, and circumstances of injury. Hospitals and other health care providers shall, upon request, provide authorized health personnel the occasion to inspect medical records of reportable injuries. The Utah Department of Transportation, Utah Industrial Commission, Utah Department of Public Safety, and local public safety agencies shall make available to authorized health personnel information on reportable injuries.

R386-703-6. Confidentiality of Reports.

(1) All reports herein required are confidential and are not open to public inspection. The confidentiality of personal information obtained under this rule shall be maintained according to the provisions of Sections 26-6-27 through 26-6-30. Nothing in this rule, however, precludes the discussion of case information with the attending physician or public health workers.

R386-703-7. Penalties.

(1) Enforcement provisions and penalties for the violation or for the enforcement of public health rules, including this Injury Reporting Rule, are prescribed under Sections 26-23-3 through 26-23-6.

KEY: rules and procedures, injury
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R392. Health, Epidemiology and Laboratory Services, Environmental Services.
R392-101. Food Safety Manager Certification.
R392-101-1. Authority and Purpose of Rule.

This rule is authorized by Section 26-15a-103 for the purposes of establishing statewide uniform standards for certified food safety managers and implementing the Food Safety Manager Certification Act.

R392-101-2. Definitions.

(1) As used in Title 26, Chapter 15a, and in this rule:

(a) Commercially prepackaged means any food packaged in a regulated food processing plant that does not require temperature control and is stored and used in accordance with the manufacturer's label.

(b) Continental breakfast means a breakfast meal restricted to:

(i) Beverages such as coffee, tea, and fruit juices;

(ii) Pasteurized Grade A milk;

(iii) Fresh fruits;

(iv) Frozen and commercially processed and prepackaged fruits;

(v) Commercially prepackaged baked goods, such as pastries, rolls, breads and muffins that are non-potentially hazardous foods;

(vi) Cereals;

(vii) Commercially prepackaged jams, jellies, honey, and syrup;

(viii) Pasteurized Grade A creams and butters, non-dairy creamers, or similar products;

(ix) Commercially prepackaged hard cheeses, cream cheese and yogurt in unopened packages; and

(x) foods served with single-use articles.

(xi) Single-use article means a utensil designed and constructed to be used once and discarded.

(xii) Heat and serve foods are precooked by the manufacturer and do not require cooking to critical temperatures as required by R392-100, but only require heating to meet the customer's satisfaction.

R392-101-3. Certification and Recertification Examination Content.

Certification and recertification examinations shall require the examinee to demonstrate knowledge in food protection management in the following areas:

(1) Identify foodborne illness.

(a) Define terms associated with foodborne illness.

(i) foodborne illness

(ii) foodborne outbreak

(iii) foodborne infection

(iv) foodborne intoxication

(v) diseases communicated by food

(vi) foodborne pathogens

(b) Recognize the major organisms and toxins that can contaminate food and the problems that can be associated with the contamination.

(i) bacteria

(ii) viruses

(iii) parasites

(iv) fungi

(c) Define and recognize potentially hazardous foods.

(d) Define and recognize chemical and physical contamination and illnesses that can be associated with chemical and physical contamination.

(e) Define and recognize the major contributing factors for foodborne illness.

(f) Recognize how microorganisms cause foodborne disease.

(2) Identify time/temperature relationship with foodborne illness.

(a) Recognize the relationship between time/temperature and microorganisms survival, growth, and toxin production during the following stages:

(i) receiving

(ii) storing

(iii) thawing

(iv) cooking

(v) holding/displaying

(vi) serving

(vii) cooling

(ix) storing or post production

(x) reheating

(xi) transporting

(b) Describe the use of thermometers in monitoring food temperatures.

(i) types of thermometers

(ii) techniques and frequency

(iii) calibration and frequency

(3) Describe the relationship between personal hygiene and food safety.

(a) Recognize the association between hand contact and foodborne illness.

(i) hand washing technique and frequency

(ii) proper use of gloves, including replacement frequency

(iii) minimal hand contact with food

(b) Recognize the association of personal habits and behaviors and foodborne illness.

(i) smoking

(ii) eating and drinking

(iii) wearing clothing that may contaminate food

(iv) personal behaviors, including sneezing, coughing and scratching.

(c) Recognize the association of health of a foodhandler to foodborne disease

(i) free of symptoms of communicable disease

(ii) free of infections spread through food on contact

(iii) food protected from contact with open wounds

(d) Recognize how policies, procedures and management contribute to improved hygiene practices.

(4) Describe methods for preventing food contamination from purchasing to serving.

(a) Define terms associated with contamination:

(i) contamination

(ii) adulteration

(iii) damage

(iv) approved source

(v) sound and safe condition

(b) Identify potential hazards prior to delivery and during delivery.

(i) approved source

(ii) sound and safe condition

(c) Identify potential hazards and methods to minimize or eliminate hazards after delivery:

(i) personal hygiene

(ii) cross contamination from food to food

(iii) cross contamination between equipment and utensils

(iv) contamination from chemicals

(v) contamination from additives

(vi) physical contamination

(vii) contamination during service and display

(viii) contamination from customers

(ix) storage

(x) re-service

(5) Identify correct procedures for cleaning and sanitizing equipment and utensils:

(a) Define terms associated with cleaning and sanitizing.

(i) cleaning

(ii) sanitizing

(b) Apply principles of cleaning and sanitizing
(c) Identify materials: equipment, detergent and sanitizer
(d) Identify appropriate methods of cleaning and sanitizing.
(i) manual dishwashing
(ii) mechanical dishwashing
(iii) clean-in-place
(e) Identify frequency of cleaning and sanitizing
(6) Recognize problems and potential solutions associated with facility, equipment and layout.
(a) Identify facility, design and construction suitable for food establishments:
(i) refrigeration
(ii) heating and hot-holding
(iii) floors, walls and ceilings
(iv) pest control
(v) lighting
(vi) plumbing
(vii) ventilation
(viii) water supply
(ix) wastewater disposal
(x) waste disposal
(b) Identify equipment and utensil design and location
(7) Recognize problems and potential solutions associated with temperature control, preventing cross contamination, housekeeping and maintenance:
(a) by self inspection program.
(b) by pest control program.
(c) by cleaning schedules and procedures.
(d) by equipment and facility maintenance program.

R392-101-4. Food Safety Manager Certification Courses.
(1) For the purposes of Section 26-15a-104(2)(b), a course approved by the Department shall be designed for a specific approved examination in R392-101-5(4) as determined by that examination's developer.
(2) The course developer shall certify the instructor.
(3) The Department shall approve the course for 3 years.

R392-101-5. Test Approval.
(1) A person seeking approval of an examination shall provide the following background information to the Department:
(a) The person's name, address, telephone number and contact person.
(b) A description of the usage of the examination including the time period in use, number of examinations already administered, and any government or other agencies already approving the examination.
(c) A copy of the examination's pool of questions. Each question shall be:
(i) Cross-referenced to the corresponding content area in R392-101-3, and
(ii) Documented with the correct answer and the source from which the correct answer was determined.
(d) A sample copy of the official certificate issued to persons who pass the examination.
(2) An examination must meet the following requirements in order to be approved:
(a) It must contain at least 50 multiple choice questions, drawn from a pool of at least three times the number of questions given in the examination.
(b) All questions shall be multiple choice with 4 choices.
(c) At least 85% of the questions must be in the content categories of R392-101-3 and shall be apportioned to them as follows:
(i) Identify foodborne illness shall constitute 6-20% percent of the total examination questions,
(ii) Identify time/temperature relationship with foodborne illness shall constitute 6-20% percent of the total examination questions,
(iii) Describe the relationship between personal hygiene and food safety shall constitute 6-20% percent of the total examination questions,
(iv) Describe methods for preventing food contamination from purchasing to serving shall constitute 6-20% percent of the total examination questions,
(v) Identify correct procedures for cleaning and sanitizing equipment and utensils shall constitute 6-20% percent of the total examination questions,
(vi) Recognize problems and potential solutions associated with facility, equipment and layout shall constitute 6-20% percent of the total examination questions,
(vii) Recognize problems and potential solutions associated with temperature control, preventing cross contamination, housekeeping and maintenance shall constitute 6-20% percent of the total examination questions.
(d) The person seeking approval shall demonstrate that the same version of the examination will not be used more than 6 months and that at least 10% of the questions will be randomly selected and changed between versions.
(e) The person seeking approval shall demonstrate that a system for updating the pool of questions at least every three years is in place.
(f) The examination questions must be grammatically correct and contain no misspellings.
(g) The distractors must be relevant to the examination question and represent a plausible alternative.
(3) The Department shall review the materials submitted by an applicant in R392-101-5(1) and (2). The Department shall approve examinations that meet the requirements. If an examination is approved the Department shall notify the examination developer of the approval in writing. If the Department does not approve an examination, it shall notify the examination developer in writing of the reasons why.
(4) The Department shall maintain a current list of approved examinations.
(5) A person may not represent an examination as Department of Health approved, or other similar language, if the examination is not listed according to R392-101-5(4).

R392-101-6. Test Administration.
(1) Test administrators shall:
(a) Provide monitors and security at the locations where the examination is administered.
(b) Maintain a tracking system for all examinations to protect them against theft.
(c) Provide locations and dates of all examinations administered by the testing organization upon request of the Department.
(d) Provide necessary staff to administer, monitor and grade examinations.
(e) Maintain records of each candidate's name, home address, social security number, pass/fail status, date of examination, and name of instructor for at least three years.
(f) Provide accommodation for examinees who do not speak English and who wish to take the test.
(2) The test administrator shall assure there is at least one monitor for every 40 students taking the examination.
(3) The monitor shall confirm the identity of the individual who wishes to take the examination by photographic identification, driver's license or student identification card. The individual shall provide a legal document bearing his signature to the monitor if he does not have a photographic identification card.
(4) The test administrator shall provide test security measures which protect the test from compromise in preparation, printing and transportation to the site, as follows:

(a) The examination materials are stored and administered under secure conditions, where access to the examination is limited to the monitor and test administrator.

(b) The examination materials are inventoried prior to and immediately following each administration of the examination.

(c) The examination materials are available to the candidate during the examination administration only.

(5) The test administrator may not certify an individual determined to have cheated on the examination.

(6) The test administrator may not administer an examination which has been compromised.

R392-101-7. Certification and Recertification Requirements.

(1) A person must answer at least 70% of the questions correctly on a Department- approved examination to pass the examination; except that the examination developer may set the passing score for an examination that it demonstrates to have been developed in accordance with the Standards For Educational And Psychological Testing published by the American Psychological Association.

(a) The examination developer must submit documentation to the Department supporting its claim.

(b) The Department shall review the documentation and determine the validity of the claim.

(2) A person who successfully passes a Department-approved examination must provide documentation of that to the local health officer within sixty days of receipt of the documentation to be certified as a food safety manager. A photocopy of the documentation is acceptable. If a certified food safety manager commences work in a different local health jurisdiction he shall notify the local health officer in that jurisdiction.

(3) A person who completes the requirement in R392-101-7(2) shall be considered to be certified as a food safety manager throughout Utah.

(4) Food safety manager certifications are effective for three years from the date the applicant receives documentation of a passing score from the testing organization.

(5) A food service establishment must maintain a copy of its certified food safety manager's documentation of a passing score on a Department-approved examination on file at the establishment. The food service establishment's person in charge must provide this documentation to the local health officer or his designated representative upon request.

(6) To recertify, a certified food safety manager must submit documentation to the appropriate local health department indicating a passing score on a Department-approved examination within the previous six months.

(7) A person certified as a food safety manager is exempt from state or local requirements for food handlers as defined in Section 26-15-1(1) Utah Code.

R392-101-8. Exempt Establishments.

A local health officer shall exempt a food service establishment from having a Certified Food Safety Manager on staff, if after evaluation by the local health department, the food service establishment:

(1) is classified within the lowest risk category for a local health department utilizing a risk-based assessment system; or

(2) serves a menu of commercially prepackaged, or heat and serve foods, or foods that require limited handling or assembly and does not conduct any of the following food preparation processes as defined in the Food Code, R392-100:

(a) cook ing foods that are required to reach critical temperatures as required by R392-100;

(b) use using foods that must are required to be cooled within a 6 hour time period as required by R392-100; or

(c) use using foods that must be reheated to 165 degrees as required by R392-100.

R392-101-9. Penalties.

Any person who violates any provision of this rule may be assessed a civil money penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

KEY: public health, food service
July 25, 2006 **26-15a-103**
Notice of Continuation May 24, 2004

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-3A. Outpatient Hospital Services.
R414-3A-1. Introduction and Authority.

This rule defines the scope of outpatient hospital services available to Medicaid clients for the treatment of disorders other than mental disease. This rule is authorized under Utah Code 26-18-3 and governs the services allowed under 42 CFR 440.20.

R414-3A-2. Definitions.

(1) "Allowed charges" mean actual charges submitted by the provider less any charges for non-covered services.

(2) "CHEC" means Child Health Evaluation and Care and 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.

(3) "Clinical Laboratory Improvements Act" (CLIA) is the Centers for Medicare and Medicaid Services (CMS) program that limits reimbursement for laboratory services based on the equipment and capability of the physician or laboratory to provide an appropriate, competent level of laboratory service.

(4) "Hyperbaric Oxygen Therapy" is therapy that places the patient in an enclosed pressure chamber for medical treatment.

(5) "Other Practitioner of the Healing Arts" means a doctor of dental surgery or a podiatrist.

(6) "Outpatient" means professional services provided for less than a 24-hour period regardless of the hour of admission, whether or not a bed is used, or whether or not the patient remains in the facility past midnight.

(7) "Prepaid Mental Health Plan" means the prepaid, capitated program through which the Department pays contracted community mental health centers to provide all needed inpatient and outpatient mental health services to residents of the community mental health center's catchment area who are enrolled in the plan.

R414-3A-3. Client Eligibility Requirements.

Outpatient hospital services are available to categorically and medically needy individuals who are under the care of a physician or other practitioner of the healing arts.

R414-3A-4. Program Access Requrements.

(1) The Department reimburses for outpatient hospital services and supplies only if they are:

(a) furnished in a hospital;

(b) provided by hospital personnel by or under the direction of a physician or dentist;

(c) provided as evaluation and management of illness or injury under hospital medical staff supervision and according to the written orders of a physician or dentist.

(2) All outpatient hospital services are subject to review by the Department.

R414-3A-5. Prepaid Mental Health Plan.

A Medicaid client residing in a county for which a prepaid mental health contractor provides mental health services must obtain authorization for outpatient psychiatric services from the prepaid mental health contractor for the client's county of residence.

R414-3A-6. Services.

(1) Services appropriate in the outpatient hospital setting for adequate diagnosis and treatment of a client's illness are limited to less than 24 hours and encompass medically necessary diagnostic, therapeutic, rehabilitative, or palliative medical services and supplies ordered by a physician or other practitioner of the healing arts.

(2) Outpatient hospital services include:

(a) the service of nurses or other personnel necessary to complete the service and provide patient care during the provision of service;

(b) the use of hospital facilities, equipment, and supplies; and

(c) the technical portion of clinical laboratory and radiology services.

(3) Laboratory services are limited to tests identified by the Centers for Medicare and Medicaid Services (CMS) where the individual laboratory is CLIA certified to provide, bill and receive Medicaid payment.

(4) Cosmetic, reconstructive, or plastic surgery is limited to:

(a) correction of a congenital anomaly;

(b) restoration of body form following an injury; or

(c) revision of severe disfiguring and extensive scars resulting from neoplastic surgery.

(5) Abortion procedures are limited to procedures certified as medically necessary, cleared by review of the medical record, approved by division consultants, and determined to meet the requirements of Utah Code 26-18-4 and 42 CFR 441.203.

(6) Sterilization procedures are limited to those that meet the requirements of 42 CFR 441, Subpart F.

(7) Nonphysician psychosocial counseling services are limited to evaluations and may be provided only through a prepaid mental health plan by a licensed clinical psychologist for:

(a) mentally retarded persons;

(b) cases identified through a CHEC/EPSDT screening; or

(c) victims of sexual abuse.

(8) Outpatient individualized observation of a mental health patient to prevent the patient from harming himself or others is not covered.

(9) Sleep studies are available only in a sleep disorder center accredited by the American Academy of Sleep Medicine.

(10) Hyperbaric Oxygen Therapy is limited to service in a hospital facility in which the hyberbaric unit has been accredited or approved by the Undersea and Hyperbaric Medical Society.

(11) Lithotripsy is covered by an all-inclusive fixed fee. This payment covers all hospital and ambulatory surgery-related services for lithotripsy on the same kidney for 90 days, including repeat treatments. Lithotripsy for treatment of the other kidney is a separate service.

(12) Reimbursement for services in the emergency department is limited to codes and diagnoses that are medically necessary emergency services as described in the provider manual. The diagnosis reflecting the primary reason for emergency services must be used and must be one of the first five diagnoses listed on the claim form.

(13) Take home supplies and durable medical equipment are not reimbursable.

(14) Prescriptions are not a covered Medicaid service for a client with the designation "Emergency Services Only Program" printed on the Medicaid Identification Card.

R414-3A-7. Prior Authorization.

Prior authorization must be obtained on certain medical and surgical procedures in accordance with R414-1-14.

R414-3A-8. Copayment Policy.

Each Medicaid client is responsible for a copayment as established in the Utah State Medicaid Plan and incorporated by reference in R414-1.

R414-3A-9. Reimbursement for Services.

(1) Except for emergency room, lithotripsy, laboratory and radiology services, the payment level for outpatient hospital claims is based on 77% of allowed charges for urban hospitals

and 93% of allowed charges for rural hospitals.

(2) Payments for emergency room services vary depending on urban and rural designation and whether the service is designed as "emergency" or "non-emergency." The "emergency" designation is based on the principal diagnosis according to ICD-9 Code. Rural hospitals receive 98% of charges for emergency services and 65% for non-emergency use of the emergency room. Urban hospitals receive 98% of charges for emergencies and 40% of charges for non-emergency use of the emergency room.

(3) Payment for laboratory and radiology services provided in a hospital to outpatients is based on HCPCS codes and an established fee schedule, unless a lesser amount is billed. The fee schedule used to pay physicians is used to establish payment rates.

(4) Billed charges shall not exceed the usual and customary charge to private pay patients.

(5) Payments for all outpatient services are limited to the aggregate annual amount Medicare would pay for the same services as required by 42 CFR 447.321.

KEY: Medicaid
July 25, 2006 **26-1-5**
Notice of Continuation November 26, 2002 **26-18-2.3**
26-18-3(2)
26-18-4

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-11. Podiatry Services.
R414-11-1. Introduction and Authority.

Podiatry services are authorized by 42 CFR 440.60 and include the examination, diagnosis, or treatment of the foot. Podiatry services are optional and provided in accordance with 42 CFR 440.225.

R414-11-2. Definitions.

In this rule, "Subluxation" means a structural misalignment or partial dislocation of a joint or joints in the feet.

R414-11-3. Client Eligibility Requirements.

Podiatry services are available to categorically and medically needy individuals.

R414-11-4. Service Coverage.

(1) The Department covers the following podiatry services:
(a) foot incision and drainage of simple abcess;
(b) foot skin debridement;
(c) cutting benign or premalignant lesions;
(d) treatment of nail plate;
(e) injections for ganglion cysts;
(f) foot bone excisions;
(g) walking cast, Unna boots;
(h) radiologic exam of ankle or foot; and
(i) office visits.

(2) The Department covers the following podiatry-related medical supplies and equipment:
(a) shoes attached to a brace or prosthesis;
(b) shoes specially constructed to provide for a totally or partially missing foot; and
(c) additional supplies not regularly used for office surgery procedures.

(3) Shoe repair is covered if it relates to external modification of an existing shoe to accommodate a leg length discrepancy requiring a shoe build up of one inch or more.

R414-11-5. Limitations.

(1) Service limitations that apply to physicians also apply to podiatrists.

(2) Treatment of a fungal (mycotic) infection of the toenail is limited to recipients with documented clinical evidence of mycosis that shows inflammation, infection, erythema, or marked limitation of ambulation.

(3) Podiatry services in long-term care facilities are covered with the following limitations:
(a) podiatry visits are limited to once every 60 days;
(b) debridement of mycotic toenails is limited to once every 60 days;
(c) trimming corns, warts, callouses, or nails is limited to once every 60 days;
(d) podiatry visits that include only evaluation and management are not covered;

(4) Medicaid does not cover the administration of general anesthesia and foot amputations by podiatrists.

(5) The removal of corns, warts, or callouses is limited to patients endangered by diabetes, arteriosclerosis or Buerger's disease.

R414-11-6. Non-Covered Services.

(1) The following preventive or routine foot care services are not covered:
(a) the trimming, cutting, clipping, or debridement of nails outside of long-term care facilities;
(b) hygienic and preventive maintenance care, such as cleaning and soaking of the feet, the use of massage or skin creams to maintain skin tone of either ambulatory or bedfast patients, and any other service performed in the absence of localized illness or injury;
(c) any application of topical medication;

(2) Supportive devices that include arch supports, foot pads, foot supports, orthotic devices, or metatarsal head appliances are not covered.

(3) The following subluxation services are not covered:
(a) surgical correction of a subluxated foot structure, or surgical procedures performed to improve foot function and alleviate symptomatic conditions;
(b) treatment that includes evaluations and prescriptions of supporting devices, and the local condition of flattened arches regardless of the underlying pathology.

(4) Internal modification of a shoe is not covered.

(5) Shoes or other supportive devices for the feet that are not an integral part of a leg brace or prosthesis are not covered.

(6) Special shoes are not covered. These include:
(a) mismatched shoes (unless attached to a brace);
(b) shoes to support an overweight individual;
(c) "orthopedic" or "corrective" trade name or brand name shoes; and
(d) "athletic" or "walking" shoes.

(7) Personal comfort items such as "cookies" or other comfort accessories are not covered.

R414-11-7. Reimbursement for Podiatry Services.

(1) Reimbursement for services is limited to one podiatry office visit per day.

(2) A podiatrist may bill for laboratory procedures necessary for diagnosis and treatment of the patient if equipment necessary for the laboratory procedure is available in the podiatrist's office. Laboratory services requested by a podiatrist but provided by an independent laboratory or hospital outpatient laboratory must be billed directly by the laboratory.

(3) Palliative care is included in the specific service and must be billed by that service only, not through the use of an office call procedure code.

(4) Payments are based on the established fee schedule unless a lower amount is billed. The amount billed cannot exceed usual and customary charges to private pay patients. Fees are established by discounting historical charges, and by professional judgment to encourage efficient, effective and economical services.

R414-11-8. Copayment Policy.

(1) The Department requires a copayment in the amount of $3 for each podiatry visit when a non-exempt Medicaid client as designated on his Medicaid card, receives a podiatry service. Medicaid limits the out-of-pocket expense of the Medicaid client to $100 annually, which is a total aggregate cost for all Medicaid services.

(2) Medicaid deducts the copayment amount, limited to one amount per day from the reimbursement paid to the provider for each podiatry visit.

(3) The provider should collect the copayment amount from the Medicaid client for each podiatry visit.

(4) Medicaid clients in the following categories are exempt from copayment requirements:
(a) children;
(b) pregnant women;
(c) institutionalized individuals; and
(d) individuals whose total gross income, before exclusions or deductions, is below the Temporary Assistance to Needy Families (TANF) standard payment allowance.

KEY: Medicaid
July 14, 2006 26-1-5
Notice of Continuation: November 3, 2004 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-305. Resources.
R414-305-1. A, B and D Medicaid and A, B and D Institutional Medicaid Resource Provisions.

(1) This section establishes the standards for the treatment of resources to determine eligibility for aged, blind and disabled Medicaid and aged, blind and disabled institutional Medicaid.

(2) To determine eligibility of the aged, blind or disabled, the Department adopts 42 CFR 435.725 and 435.726, 435.840 through 435.845, 2005 ed., and 20 CFR 416.1201 through 416.1202 and 416.1204 through 416.1266, 2005 ed., which are incorporated by reference. The Department adopts Subsection 1902(k) of the Compilation of the Social Security Laws, 1993 ed., which is incorporated by reference. The Department adopts 1917(d) and (e), 404(h)(4) and 1613(a)(13) of the Compilation of the Social Security Laws in effect January 1, 1999, which are incorporated by reference. The Department adopts sections 6012, 6014 and 6015(b) of Pub. L. 109-171 which are incorporated by reference. The Department shall not count as an available resource any assets that are prohibited under other federal laws from being counted as a resource to determine eligibility for federally-funded medical assistance programs. Insofar as any provision of this rule is inconsistent with applicable federal law, the applicable federal law governs over the inconsistent rule provision.

(3) The definitions in R414-1 and R414-301 apply to this rule, in addition:

(a) "Burial plot" means a burial space and any item related to repositories customarily used for the remains of any deceased member of the household. This includes caskets, concrete vaults, urns, crypts, grave markers and the cost of opening and closing a grave site.

(b) "Sanction" means a period of time during which a person is not eligible for Medicaid services for institutional care or services provided under a Home and Community Based waiver due to a transfer of assets for less than fair market value.

(c) "Transfer" in regard to assets means a person has disposed of assets for less than fair market value.

(4) A resource is available when the client owns it or has the legal right to sell or dispose of the resource for the client's own benefit.

(5) Except for the Medicaid Work Incentive Program, the resource limit for aged, blind or disabled Medicaid is $2,000 for a one-person household and $3,000 for a two- member household.

(6) For an individual who meets the criteria for the Medicaid Work Incentive Program, the resource limit is $15,000. This limit applies whether the household size is one or more than one.

(7) The Department bases non-institutional and institutional Medicaid eligibility on all available resources owned by the client, or deemed available to the client from a spouse or parent. Eligibility cannot be granted based upon the client's intent to or action of disposing of non-liquid resources as described in 20 CFR 416.1240, 2005 ed.

(8) Any resource or the interest from a resource held within the rules of the Uniform Transfers to Minors Act is not countable. Any money from the resource that is given to the child as unearned income is countable.

(9) The resources of a ward that are controlled by a legal guardian are counted as the ward's resources.

(10) Lump sum payments received on a sales contract for the sale of an exempt home are not counted if the entire proceeds are committed to replacement of the property sold within 30 days and the purchase is completed within 90 days. The individual shall receive one extension of 90 days if more than 90 days is needed to complete the actual purchase. Proceeds is defined as all payments made on the principal of the contract. Proceeds does not include interest earned on the principal.

(11) If a resource is potentially available, but a legal impediment to making it available exists, it is not a countable resource until it can be made available. The applicant or recipient must take appropriate steps to make the resource available unless one of the following conditions as determined by a person with established expertise relevant to the resources exists:

(a) Reasonable action would not be successful in making the resource available.

(b) The probable cost of making the resource available exceeds its value.

(12) Water rights attached to the home and the lot on which the home sits are exempt providing it is the client's principal place of residence.

(13) For an institutionalized individual, a home or life estate is not considered an exempt resource.

(14) The Department excludes an institutionalized individual's principal home or life estate from countable resources if the individual's equity in the home or life estate does not exceed the equity limit established in Section 6014 of Pub. L. 109-171, and one of the following conditions is met:

(i) the individual intends to return to the home;

(ii) the individual's spouse resides in the home;

(iii) the individual's child who is under age 21, or who is blind or disabled resides in the home; or

(iv) a reliant relative of the individual resides in the home.

(15) For A, B and D Medicaid, the Department shall not count up to $6,000 of equity value of non-business property used to produce goods or services essential to home use daily activities.

(16) A previously unreported resource may be retroactively designated for burial and thereby exempted effective the first day of the month in which it was designated for burial or intended for burial. However, it cannot be exempted retroactively prior to November 1982 or earlier than 2 years prior to the date of application. Such resources shall be treated as funds set aside for burial and the amount exempted cannot exceed the limit established for the SSI program.

(17) One vehicle is exempt if it is used at least four times per calendar year to obtain necessary medical treatment.

(18) The Department allows SSI recipients who have a plan for achieving self support approved by the Social Security Administration to set aside resources that allow them to purchase work-related equipment or meet self support goals. These resources are excluded.

(19) An irrevocable burial trust is not counted as a resource. However, if the owner is institutionalized or on home and community based waiver Medicaid, the value of the trust, which exceeds $7,000, is considered a transferred resource.

(20) Business resources required for employment or self-employment are not counted.

(21) For the Medicaid Work Incentive Program, the Department excludes the following additional resources of the eligible individual:

(a) Retirement funds held in an employer or union pension plan, retirement plan or account, including 401(k) plans, or an Individual Retirement Account, even if such funds are available to the individual.

(b) A second vehicle when it is used by a spouse or child of the eligible individual living in the household to get to work.

(22) After qualifying for the Medicaid Work Incentive Program, these resources described in R414-305-1(21) will continue to be excluded throughout the lifetime of the individual to qualify for A, B or D Medicaid programs other than the Medicaid Work Incentive, even if the individual ceases to have earned income or no longer meets the criteria for the Work Incentive Program.

(23) Assets shall be deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997. Sponsor deeming will end when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. Beginning after December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(24) Sponsor deeming does not apply to applicants who are eligible for Medicaid for emergency services only.

(25) Life estates.

(a) For non-institutional Medicaid, life estates shall be counted as resources only when a market exists for the sale of the life estate as established by knowledgeable sources.

(b) For Institutional Medicaid, life estates are countable resources even if no market exists for the sale of the life estate, unless the life estate can be excluded as defined in paragraph 14 of this section.

(c) The client may dispute the value of the life estate by verifying the property value to be less than the established value or by submitting proof based on the age and life expectancy of the life estate owner that the value of the life estate is lower. The value of a life estate shall be based upon the age of the client and the current market value of the property.

(d) The following table lists the life estate figure corresponding to the client's age. This figure is used to establish the value of a life estate:

TABLE

Age	Life Estate Figure
0	.97188
1	.98988
2	.99017
3	.99008
4	.98981
5	.98938
6	.98884
7	.98822
8	.98748
9	.98663
10	.98565
11	.98453
12	.98329
13	.98198
14	.98066
15	.97937
16	.97815
17	.97700
18	.97590
19	.97480
20	.97365
21	.97245
22	.97120
23	.96986
24	.96841
25	.96678
26	.96495
27	.96290
28	.96062
29	.95813
30	.95543
31	.95254
32	.94942
33	.94608
34	.94250
35	.93868
36	.93460
37	.93026
38	.92567
39	.92083
40	.91571
41	.91030
42	.90457
43	.89855
44	.89221
45	.88558
46	.87863
47	.87137
48	.86374
49	.85578
50	.84743
51	.83674
52	.82969
53	.82028
54	.81054
55	.80046
56	.79006
57	.77931
58	.76822
59	.75675
60	.74491
61	.73267
62	.72002
63	.70696
64	.69352
65	.67970
66	.66551
67	.65098
68	.63610
69	.62086
70	.60522
71	.58914
72	.57261
73	.55571
74	.53862
75	.52149
76	.50441
77	.48742
78	.47049
79	.45357
80	.43659
81	.41967
82	.40295
83	.38642
84	.36998
85	.35359
86	.33764
87	.32262
88	.30859
89	.29526
90	.28221
91	.26955
92	.25771
93	.24692
94	.23728
95	.22887
96	.22181
97	.21550
98	.21000
99	.20486
100	.19975
101	.19532
102	.19054
103	.18437
104	.17856
105	.16962
106	.15488
107	.13409
108	.10068
109	.04545

R414-305-2. Family Medicaid and Family Institutional Medicaid Resource Provisions.

(1) This section establishes the standards for the treatment of resources to determine eligibility for Family Medicaid and Family Institutional Medicaid programs.

(2) The Department adopts 45 CFR 233.20(a)(3)(i)(B)(1), (2), (3), (4) and (6), and 233.20(a)(3)(vi)(A), 2004 ed., which are incorporated by reference. The Department adopts Subsection 1902(k) of the Compilation of the Social Security Laws, 1993 ed., which is incorporated by reference. The Department adopts 1917(d) and (e), Subsection 404(h) and 1613(a)(13) of the Compilation of the Social Security Laws in effect January 1, 2003, which are incorporated by reference. The Department adopts sections 6012, 6014 and 6015(b) of Pub. L. 109-171 which are incorporated by reference. The Department does not count as an available resource retained funds from sources that federal laws specifically prohibit from being counted as a resource to determine eligibility for federally-funded medical assistance programs. Insofar as any provision of this rule is inconsistent with applicable federal law,

the applicable federal law governs over the inconsistent rule provision.

(3) A resource is available when the client owns it or has the legal right to sell or dispose of the resource for the client's own benefit.

(4) Except for pregnant women who meet the criteria under Sections 1902(a)(10)(A)(i)(IV) and 1902(a)(10)(A)(ii)(IX) of the Social Security Act in effect January 1, 2003, the resource limit is $2,000 for a one person household, $3,000 for a two person household and $25 for each additional household member. For pregnant women defined above, the resource limit is defined in R414-303-11.

(5) Except for the exclusion for a vehicle, the agency uses the same methodology for treatment of resources for all medically needy and categorically needy individuals.

(6) To determine countable resources for Medicaid eligibility, the agency considers all available resources owned by the client. The agency does not consider a resource unavailable based upon the client's intent to or action of disposing of non-liquid resources.

(7) The agency counts resources of a household member who has been disqualified from Medicaid for failure to cooperate with third party liability or duty of support requirements.

(8) If a legal guardian, conservator, authorized representative, or other responsible person controls any resources of an applicant or recipient, the agency counts the resources as the applicant's or recipient's. The arrangement may be formal or informal.

(9) If a resource is potentially available, but a legal impediment to making it available exists, the agency does not count the resource until it can be made available. Before an applicant can be made eligible, or to continue eligibility for a recipient, the applicant or recipient must take appropriate steps to make the resource available unless one of the following conditions exist:

(a) Reasonable action would not be successful in making the resource available.

(b) The probable cost of making the resource available exceeds its value.

(10) Except for determining countable resources for 1931 Family Medicaid, the agency excludes a maximum of $1,500 in equity value of one vehicle.

(11) The agency does not count as resources the value of household goods and personal belongings that are essential for day-to-day living. Any single household good or personal belonging with a value that exceeds $1000 must be counted toward the resource limit. The agency does not count as a resource the value of any item that a household member needs because of the household member's medical or physical condition.

(12) The agency does not count the value of one wedding ring and one engagement ring as a resource.

(13) For a non-institutionalized individual, the agency does not count the value of a life estate as an available resource if the life estate is the applicant's or recipient's principal residence. If the life estate is not the principal residence, the rule in Subsection R414-305-1(25) applies.

(14) The agency does not count the resources of a child who is not counted in the household size to determine eligibility of other household members.

(15) For a non-institutionalized individual, the agency does not count as a resource, the value of the lot on which the excluded home stands if the lot does not exceed the average size of residential lots for the community in which it is located. The agency counts as a resource the value of the property in excess of an average size lot. If the individual is institutionalized, the provisions of R414-305-1(13), (14) and (25) apply to the individual's home or life estate. In addition, the provisions of section 6014 of Pub. L. 109-171 apply.

(16) The agency does not count as a resource the value of water rights attached to an excluded home and lot.

(17) The agency does not count any resource, or interest from a resource held within the rules of the Uniform Transfers to Minors Act. The agency counts as a resource any money from such a resource that is given to the child as unearned income and retained beyond the month received.

(18) Lump sum payments received on a sales contract for the sale of an exempt home are not counted if the entire proceeds are committed to replacement of the property sold within 30 days and the purchase is completed within 90 days. The individual shall receive one extension of 90 days, if more than 90 days is needed to complete the actual purchase. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal.

(19) Retroactive benefits received from the Social Security Administration and the Railroad Retirement Board are not counted as a resource for the first 9 months after receipt.

(20) The agency excludes from resources, a burial and funeral fund or funeral arrangement up to $1500 for each household member who is counted in the household size. Burial and funeral agreements include burial trusts, funeral plans, and funds set aside expressly for the purposes of burial. All such funds must be separated from non-burial funds and clearly designated as burial funds. Interest earned on exempt burial funds and left to accumulate does not count as a resource. If exempt burial funds are used for some other purpose, remaining funds will be counted as an available resource as of the date funds are withdrawn.

(21) Assets shall be deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997. Sponsor deeming will end when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. Beginning after December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(22) Sponsor deeming does not apply to applicants who are eligible for Medicaid for emergency services only.

(23) Business resources required for employment or self employment are not counted.

(24) For 1931 Family Medicaid households, the agency will not count as a resource either the equity value of one vehicle that meets the definition of a "passenger vehicle" as defined in 26-18-2(6), or $1,500 of the equity of one vehicle, whichever provides the greatest disregard for the household.

(25) For eligibility under Family-related Medicaid programs, the agency will not count as a resource retirement funds held in an employer or union pension plan, retirement plan or account including 401(k) plans and Individual Retirement Accounts of a disabled parent or disabled spouse who is not included in the coverage.

(26) The agency will not count as a resource, funds received from the Child Tax credit or the Earned Income Tax credit for nine months following the month received. Any remaining funds will count as a resource in the 10th month after being received.

R414-305-3. Spousal Impoverishment Resource Rules for Married Institutionalized Individuals.

(1) This section establishes the standards for the treatment of resources for married couples when one spouse is institutionalized and the other spouse is not institutionalized.

(2) To determine the countable resources of an institutionalized individual who has a community spouse, the

Department adopts Section 1924(a), (c) and (f) of the Compilation of the Social Security Laws, in effect January 1, 1999, which is incorporated by reference. The Department adopts section 6013 of Pub. L. 109-171 which is incorporated by reference. Insofar as any provision of this rule is inconsistent with applicable federal law, the applicable federal law governs over the inconsistent rule provision.

(3) The resource limit for an institutionalized individual is $2,000.

(4) If a client is otherwise eligible for institutional Medicaid, but is unable to comply with spousal impoverishment rules and claims undue hardship because of an uncooperative spouse or because the spouse cannot be located, the client may obtain institutional Medicaid by assigning support rights to the State of Utah.

(5) "Undue hardship" in regard to counting a spouse's resources as available to the institutionalized client means:

(a) The client assigns support rights to the State.

(b) The client will not be able to get the medical care needed without Medicaid.

(c) The client is at risk of death or permanent disability without institutional care.

(6) The agency will determine the client's eligibility for institutional Medicaid without regard to the spouse's resources if both of the following conditions are met:

(a) The spouse cannot be located or will not provide information needed to determine eligibility.

(b) The client meets the undue hardship criteria including assigning support rights to the State.

(7) The assessed spousal share of resources shall not be less than the minimum amount nor more than the maximum amount mandated by section 1924(f) of the Compilation of the Social Security Laws in effect January 1, 1999.

(8) Any resource owned by the community spouse in excess of the assessed spousal share is counted to determine the institutionalized client's initial Medicaid eligibility.

(9) A protected period, after eligibility is established, lasting until the time of the next regularly scheduled eligibility redetermination is allowed for an institutionalized client to transfer resources to the community spouse.

(10) After eligibility is established for the institutionalized client, those resources held in the name of the community spouse will not be considered available to the institutionalized client to determine the countable resources of the institutionalized client.

R414-305-4. Medicaid Qualifying Trusts.

The Department adopts Section 1902(k) of the Compilation of the Social Security Laws, 1993 ed., which is incorporated by reference.

R414-305-5. Transfer of Resources for A, B and D Medicaid and Family Medicaid.

There is no sanction for the transfer of resources.

R414-305-6. Transfer of Resources for Institutional Medicaid.

(1) This section establishes the standards for the treatment of transfers of assets for less than fair market value to determine eligibility for nursing home or other long-term care services under a home and community based services waiver.

(2) The Department adopts Subsection 1917(c) of the Compilation of the Social Security Laws, in effect January 1, 1999, which is incorporated by reference. The Department adopts sections 6011, 6012, and 6016 of Pub. L. 109-171 which are incorporated by reference. In so far as any provision of this rule is inconsistent with applicable federal law, the applicable federal law governs over the inconsistent rule provision.

(3) If an individual or the individual's spouse transfers the home or life estate, the transfer requirements of Section 1917(c) of the Compilation of the Social Security Act apply.

(4) If an individual or the individual's spouse transfers assets in more than one month on or after February 8, 2006, the uncompensated value of all transfers including fractional transfers are combined to determine the sanction period. The Department applies partial month sanctions for transferred amounts that are less than the monthly average private pay rate for nursing home services.

(5) If assets are transferred during any sanction period, the sanction period for those transfers will not begin until the previous sanction has expired.

(6) If a transfer occurs after an individual has been approved for Medicaid for nursing home or home and community based services, the sanction begins on the first day of the month after the month the asset is transferred.

(7) The average private-pay rate for nursing home care in Utah is $4,526 per month.

(8) To determine if a resource is transferred for the sole benefit of a spouse, disabled or blind child, or disabled individual, a binding written agreement must be in place which establishes that the resource transferred can only be used to benefit the spouse, disabled child, or disabled individual, and is actuarially sound. The written agreement must specify the payment amounts and schedule. Any provisions in such agreement that would benefit another person at any time nullifies the sole benefit provision except for exempt trusts established under section 1917(d) of the Compilation of the Social Security Laws, January 1, 1999 ed., that provide for repayment of the state Medicaid agency or provide for a pooled trust to retain a portion of the remainder.

(9) No sanction is imposed when the total value of a whole life insurance policy is irrevocably assigned to the state; and the recipient is the owner of and the insured in the policy; and no further premium payments are necessary for the policy to remain in effect. At the time of the client's death, the state shall distribute the benefits of the policy as follows:

(a) Up to $7,000 can be distributed to cover burial and funeral expenses. The total value of this distribution plus the value of any irrevocable burial trusts and/or the burial and funeral funds for the client can not exceed $7,000.

(b) An amount to the state that is not more than the total amount of previously unreimbursed medical assistance correctly paid on behalf of the client.

(c) Any amount remaining after payments are made as defined in a. and b. will be made to a beneficiary named by the client.

(10) If the agency determines that a sanction period applies for an otherwise eligible institutionalized person, the agency shall notify the individual that the individual is ineligible for nursing home or other long-term care services because of the sanction. The notice shall include when the sanction period begins and ends. The individual may request a waiver of the sanction period based on undue hardship. The individual must send a written request to the agency within 30 days after the mailing date of the sanction notice.

(11) Clients that claim an undue hardship as a result of a transfer of resources must meet both of the following conditions:

(a) The client or the person who transferred the resources has exhausted all reasonable means including legal remedies to regain possession of the transferred resource. It is considered unreasonable to require the client to take action if a knowledgeable source confirms that it is doubtful those efforts will succeed. It is unreasonable to require the client to take action more costly than the value of the resource, and

(b) Application of the sanction for a transfer of resources would deprive the client of medical care such that the client's life or health would be endangered, or would deprive the client

of food, clothing, shelter or other necessities of life.

(12) The Department bases its decision that undue hardship exists upon the client's medical condition and the financial situation of the client. The Department will consider income and resources of the client, client's spouse, and parents of an unemancipated client to decide if the financial situation creates undue hardship. The agency shall send a written notice of its decision on the undue hardship request. The client has 90 days from the date of mailing of the decision concerning the request for an undue hardship waiver to request a fair hearing.

(13) The portion of an irrevocable burial trust that exceeds $7,000 is considered a transfer of resources. The value of any fully paid burial plot, as defined in R414-305-1(3)(a), shall be deducted from such burial trust first before determining the amount transferred.

(14) If more than one transfer has occurred and the sanction periods would overlap, the sanctions will be applied consecutively so that they do not overlap. If a resource was transferred before February 8, 2006, the sanction begins on the first day of the month in which the resource was transferred unless a previous sanction is in effect, in which case the sanction begins on the first day of the month immediately following the month the previous sanction ends.

R414-305-7. Home and Community-Based Services Waiver Resource Provisions.

(1) The resource limit is $2,000.

(2) Following the initial month of eligibility, continued eligibility is determined by counting only the resources that belong to the client.

(3) For married clients, spousal impoverishment resource rules apply as defined in R414-305-3.

R414-305-8. QMB, SLMB, and QI Resource Provisions.

(1) The Department adopts Subsection 1905(p) of the Compilation of the Social Security Laws, 1999 ed., which is incorporated by reference.

(2) The resource limit is the same for all medically needy individuals.

(3) The QMB, SLMB, and QI resource limit is $4,000 for an individual and $6,000 for a couple.

KEY: Medicaid
July 25, 2006 **26-18**
Notice of Continuation January 31, 2003

R432. Health, Health Systems Improvement, Licensing.
R432-6. Assisted Living Facility General Construction.
R432-6-1. Legal Authority.

This rule is promulgated pursuant to Title 26, Chapter 21. Sections numbered less than R432-6-99 apply to all assisted living facilities. Sections in the R432-6-100 series apply to Type I assisted living facilities. Sections in the R432-6-200 series apply to Type II assisted living facilities.

R432-6-2. Purpose.

The purpose of this rule is to promote the health and welfare of individuals receiving assisted living services through the establishment and enforcement of construction standards.

R432-6-3. Definitions.

(1) Assisted Living Facility Type I is a residential facility that provides assistance with activities of daily living and social care to two or more ambulatory residents who require protected living arrangements.

(2) Assisted Living Facility Type II is a residential facility that provides coordinated supportive personal and health care services to two or more semi-independent residents.

(a) "Semi-independent means a person who is:

(i) physically disabled but able to direct his or her own care; or

(ii) cognitively impaired or physically disabled but able to evacuate from the facility, or to a zone or area of safety, with the physical assistance of one person.

(b) "Resident Living Unit" means:

(i) a one bedroom unit which may also include a bathroom and additional living space; or

(ii) a two bedroom unit which may also include a bathroom and additional living space.

(c) "Additional Living Space" means a living room, dining area and kitchen, or a combination of these rooms or areas in a resident living unit.

(3) "Room" or "office" means a specific, separate, fully enclosed space for the service. If "room" or "office" is not used, multiple services may be accommodated in one enclosed space.

(4) Assisted Living Facilities Type I and Type II may be classified as either large, small or limited capacity.

(a) A large assisted living facility houses 17 or more residents.

(b) A small assisted living facility houses six to 16 residents.

(c) A limited capacity assisted living facility houses up to five residents.

R432-6-4. General Requirements.

(1) The licensee is responsible for assuring compliance with R432-6.

(2) If testing and certification compliance can only be verified through written documentation, the documentation shall be maintained in the facility for Department inspection.

(3) If conflicts exist between applicable codes or if other authorities having jurisdiction adopt more restrictive requirements than contained in these rules, the most restrictive requirement applies.

(4) If the Department has concerns about compliance, the licensee is responsible to demonstrate compliance.

R432-6-5. Codes and Code Compliance.

(1) The following codes and standards enforced by other agencies or jurisdictions apply to assisted living facilities. The licensee shall obtain documentation of compliance for the following codes and standards from the authority having jurisdiction and submit the documentation to the Department:

(a) Local zoning ordinances;

(b) International Building Code, 2000 edition;

(c) International Plumbing Code, 2000 edition;

(d) International Fire Code, 2000 edition; and

(e) Americans with Disabilities Act Accessibility Guidelines, (ADAAG) 28 CFR 36, Appendix A (July 1993).

(2) The licensee shall obtain a certificate of occupancy from the local building official having jurisdiction.

(3) The licensee shall obtain a certificate of fire clearance from the Fire Marshal having jurisdiction.

(4) The licensee shall submit a copy of the certificates to the Department prior to resident utilization of newly constructed facilities, additions or remodels of existing facilities.

R432-6-6. Application of Codes for New and Existing Buildings.

(1) New construction, additions and remodels to existing buildings shall comply with Department rules in effect on the date the first drawings are received by the Department.

(2) If the remodeled area or addition in any building, wing, floor or service area of a building exceeds 50 percent of the total square foot area of the building, wing, floor or service area, then the entire building, wing, floor or service area shall be brought into compliance with rules governing new construction which are in effect on the date the first drawings are submitted to the Department.

(3) During remodeling, new construction or additions, the safety level which existed prior to the start of work shall be maintained.

(4) Current licensed buildings shall conform to Department construction rules in effect at the time of initial facility licensure.

(5) Buildings which are changing license classification shall comply with requirements for new construction.

(6) Buildings undergoing refurbishing shall comply with the following:

(a) All materials installed as part of a refurbishing project shall comply with flame spread ratings required by the fire marshal having jurisdiction.

(b) The facility shall keep written documentation of compliance with codes and standards.

R432-6-7. Plans Review and Approval and Construction Inspection.

(1) Health facilities shall obtain Department approval before occupying any newly constructed buildings or remodeled systems, or areas in existing buildings.

(2) Prior to submitting documents for plans review, the facility architect and licensee must schedule a conference with Department representatives to outline the required plans review process.

(3) The licensee shall submit the following for Department review:

(a) a functional program;

(b) schematic drawings;

(c) design development drawings; and

(d) working drawings, including specifications.

(4) The Department shall initiate its review when it receives all required documents and fees.

(5) Working drawings and specifications for new construction, additions, or remodeling shall have the seal of a Utah licensed architect affixed in compliance with Section 58-3a-602.

(6) Plans approved by the Department do not relieve the licensee of responsibility for full compliance with R432-6.

(7) Plan approval expires 12 months after the date of the Department's approval letter, or latest plan review response letter if construction has not commenced. After a 12 month lapse the licensee must resubmit plans to the Department with a new plan review paid. A new letter of approval must be obtained from the Department.

(8) The Department shall issue an initial license, renewal license, or modified license only after the Department has determined the facility conforms with applicable licensure construction rules and has obtained all required clearances and certifications.

R432-6-8. Functional Program.

(1) The licensee must furnish to the Department a functional program which includes the following:

(a) the purpose and license category of the facility;

(b) services offered, including a detailed description of each service;

(c) ancillary services required to support each function or program;

(d) services offered under contract by outside providers and the required in-house facilities to support these services;

(e) services shared with other health care licensure categories or functions;

(f) physical and mental condition of intended residents;

(g) ambulatory condition of intended residents, such as mobile or ambulatory;

(h) special electrical requirements related to resident care; and

(i) communication systems and other special systems.

(2) The functional program must include a description of how essential core services will accommodate increased demand if the building is designed for later expansion.

R432-6-9. Drawings.

(1) Drawings shall show all equipment necessary for the operation of the facility, such as kitchen equipment, laundry equipment, and similar equipment.

(2) Schematic drawings, which may be single line, shall contain the following information:

(a) list of applicable building codes;

(b) location of the building on the site and access to the building for public, emergency, and service vehicles;

(c) site drainage and any natural drainage channels which traverse the site;

(d) any unusual site conditions, including easements which might affect the building or its appurtenances;

(e) relationships of rooms and areas within departments;

(f) number of resident beds; and

(g) total building area or area of additions or remodeled portions.

(3) Design development drawings, drawn to scale, shall contain the following information:

(a) room dimensions and room square footage;

(b) site plan, showing relationship to streets and vehicle access;

(c) location and size of public utilities; and

(d) types of mechanical, electrical and auxiliary systems.

(4) Working drawings shall include all the drawings outlined above in R432-6-9(1) through (3).

(a) The licensee shall provide one copy of completed working drawings and specifications which shows all equipment necessary for the operation of the facility such as kitchen, laundry, and other equipment.

(b) The Bureau of Licensing will keep the final drawings for 12 months after final approval of the project. Drawings may then be returned to the owner upon request.

(5) Within 30 days after receipt of required documentation and fee, the Department shall provide to the licensee and the project architect a written report of plans review outlining necessary modifications required to comply with Department rules.

(6) If changes are necessary, the licensee shall submit revised plans for review and final approval.

R432-6-10. Construction Inspections.

(1) The Department may conduct interim inspections.

(2) Prior to resident utilization, the licensee shall schedule a final inspection with the Department when the project is complete and furnishings and equipment are in place.

R432-6-11. Construction Without Plans Approval.

(1) If construction is commenced without prior Department plans approval, the Department may issue a license and authorize resident utilization only after it has approved as-built drawings and has conducted a construction inspection.

(2) The licensee shall correct all non-compliant items and pay the full plans review fee and inspection fee.

R432-6-12. Buildings Without Plans.

(1) If plans are not available for existing buildings involved in initial licensing or license category change, the licensee shall submit to the Department a functional program as defined in subsection R432-6-8, and a report identifying modifications to the building required to bring it into compliance with construction rules for the requested licensure category.

(2) The Department shall review the functional program and furnish to the licensee a letter of approval or rejection within 30 days after receipt of the material. The Department may provide, at its option, a written report of modifications required to comply with construction standards.

(3) The licensee shall request and schedule a Department inspection upon completion of the modifications.

(4) Prior to a final Department inspection, the licensee shall pay the inspection fee.

(5) The Department shall issue a license when the building is in compliance with all licensing rules.

R432-6-13. Construction Phasing.

Projects involving remodeling or additions to an occupied building shall be programmed and phased to minimize detrimental effects to and disruption of residents and employees of the facility by protecting against construction traffic, dust, and dirt from the construction site.

R432-6-14. Site Location.

(1) The site shall be accessible to both visitor and service vehicles.

(2) Facilities shall be located to ensure that public utilities are available.

R432-6-15. Site Design.

The site design shall include the following:

(1) Surrounding land for outdoor activities;

(2) Paved roads for access to service docks and entrances;

(3) Fire equipment access as required by the fire marshal; and

(4) Paved walkways for pedestrian traffic and from every required exit to a dedicated public way.

R432-6-16. Parking.

(1) Parking requirements must comply with local zoning ordinances.

(2) Parking spaces for persons with disabilities shall be as level as practical and conform to requirements for disabled parking access as required by ADAAG.

(a) The extra width required for disabled parking may be used as part of a common walkway.

(b) Parking spaces for the disabled shall be directly accessible to the facility without requiring the disabled to go behind parked cars.

R432-6-17. Elevators.

All large multi-level assisted living facilities shall have an elevator which serves all levels. At least one elevator serving all levels shall accommodate a gurney with attendant and have minimum inside cab dimensions of 5'8" wide by 8'5" deep and a minimum clear door width of 3'8".

R432-6-18. Special Design Features.

(1) Building entrances in large facilities shall be at grade level, clearly marked, and located to minimize the need for residents to traverse other program areas. A main facility entrance shall be designated and accessible to persons with disabilities.

(2) Lobbies of multi-occupancy buildings may be shared if the design precludes unrelated traffic within or through units or suites of the licensed health care facility.

(3) At least one building entrance shall be accessible to persons with physical disabilities. Entrances requiring ramps with a slope in excess of 1:20 shall have steps as well as ramps.

(4) In Large facilities where all resident units do not have kitchens or toilet facilities, at least one drinking fountain or water cooler, toilet, and handwashing fixture on each floor shall be wheelchair accessible.

(5) Each resident bedroom or sleeping room shall have a wardrobe, closet, or locker for each resident occupying the unit. The closet, wardrobe or locker shall have a shelf and a hanging rod, with minimum inside dimensions of 22 inches deep by 36 inches wide by 72 inches tall, suitable for hanging full-length garments.

R432-6-19. General Standards for Details.

(1) Placement of drinking fountains, telephone booths, or vending machines shall not restrict corridor traffic or reduce required corridor width.

(2) Doors and windows shall comply with the following requirements:

(a) Rooms which contain bathtubs, showers, or water closets for resident use shall be equipped with doors and hardware which permit emergency access.

(b) Doors, except those to spaces such as small closets not subject to occupancy, shall not swing into corridors in a manner which will obstruct traffic or reduce corridor width. Large walk-in type closets are occupiable spaces.

(c) Windows which open to the exterior shall be equipped with insect screens.

(d) Resident rooms and suites intended for 24-hour occupancy shall have operable windows which open to the exterior of the building or to a court open to the sky.

(e) Doors, sidelights, borrowed lights, and windows glazed to within 18 inches of the floor shall be constructed of safety glass, wired glass, or plastic break-resistant material that creates no dangerous cutting edges when broken.

(f) Safety glass, wired glass, or plastic break-resistant materials shall be used for wall openings in recreation rooms, exercise rooms, and other activity areas unless prohibited in the International Building Code.

(g) Doors used for shower and bath enclosures shall be made of safety glass or plastic glazing materials.

(3) Trash chutes, laundry chutes, dumbwaiters, elevator shafts, and other similar systems shall not allow movement of contaminated air into clean areas.

(4) Thresholds and expansion joint covers shall be flush with the floor surface to facilitate use of wheelchairs and carts.

(5) All lavatories must be equipped with hand drying facilities.

(a) Lavatories that are expected to serve more than one resident shall have single use paper towel dispensing units or cloth towel dispensing units that are enclosed to protect towels from being soiled. Double occupancy units are not required to provide towel dispensing units if occupied by two related persons.

(b) Lavatories shall be anchored to withstand an applied vertical load of not less than 250 pounds on the fixture front.

R432-6-20. General Standards for Finishes.

(1) Curtains and draperies shall be affixed to permanently mounted tracks or rods.

(2) Floors and walls shall be designed and constructed as follows:

(a) Floor materials shall be easily cleanable;

(b) Floors in areas used for food preparation or food assembly shall be water-resistant. Floor surfaces, including tile joints, shall be resistant to food acids.

(c) In areas subject to frequent wet-cleaning, floor materials shall not be physically affected by germicidal cleaning solutions.

(d) Floors in shower and bath areas, kitchens, and similar work areas subject to traffic while wet shall have non slip surfaces.

(e) Floors and wall bases of kitchens, toilet rooms, bath rooms, janitors' closets, and other areas subject to frequent wet cleaning shall be homogeneous with coved bases and tightly sealed seams.

(f) Wall finishes shall be washable and, in the immediate vicinity of plumbing fixtures, smooth and moisture-resistant.

(g) Finish, trim, floor, and wall construction in dietary and food preparation areas shall be free of insect and rodent harboring spaces.

(h) Floor and wall openings for pipes, ducts, conduits, and joints of structural elements shall be tightly sealed to resist passage of fire and smoke and minimize entry of pests.

(i) Carpet and padding shall be stretched taut and be free of loose edges.

(j) Carpet pile shall be sufficiently dense so as not to interfere with the operation of wheel chairs, walkers, wheeled carts, and other wheeled equipment.

(k) Carpet and other floor coverings shall comply with provisions of ADAAG.

(3) Ceiling finishes shall be designed and constructed as follows:

(a) Finishes of all exposed ceilings and ceiling structures in resident rooms and staff work areas shall be readily cleanable with routine housekeeping equipment.

(b) In large facilities, acoustical treatment for sound control shall be provided in areas where sound control is needed, including corridors in resident areas, dayrooms, recreation rooms, dining areas, and waiting areas.

(c) Finished ceilings may be omitted in mechanical and equipment spaces, shops, general storage areas, and similar spaces unless required for fire resistive purposes.

(4) The following signs shall be provided:

(a) general and circulation direction signs in corridors of large assisted living facilities;

(b) emergency evacuation directional signs for all facilities; and

(c) room identification signs on the corridor side of all corridor doors.

R432-6-21. Building Systems.

(1) Facilities and equipment shall be provided for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes if applicable, using techniques acceptable to the State Department of Environmental Quality, and the local health department having jurisdiction.

(2) The following engineering service and equipment shall be provided for effective service and maintenance functions:

(a) rooms for mechanical equipment or electrical equipment;

(b) a storage room for building maintenance supplies;

(c) yard equipment and supply storage areas located so that equipment may be moved directly to the exterior of the building without passing through building rooms or corridors;

(d) central storage for supplies, equipment and miscellaneous storage in large and small facilities; and

(e) in large facilities, a separate maintenance room or office.

(3) In small and large facilities a housekeeping room shall be located on each floor of the assisted living facility. In large facilities this room shall have a floor receptor or service sink. All housekeeping rooms shall be mechanically exhausted.

(4) Sound Control for large assisted living facilities must be designed and constructed to meet the noise reduction criteria as outlined in Table 1.

TABLE 1
Sound Transmission Limitations

	Airborne Sound Transmissions Class	
	Partitions	Floors
Residents' room to residents' room	35	40
Public space to residents' room	40	40
Service areas to residents' room	45	45

(a) Sound transmission class shall be determined by tests in accordance with methods set forth in ASTM Standard E 90 and ASTM Standard E 413. Where partitions do not extend to the structure above, sound transmission through ceilings and composite STC performance must be considered.

(b) Public space includes lobbies, dining rooms, recreation rooms, treatment rooms, and similar space.

(c) Service areas include kitchens, elevators, elevator machine rooms, laundries, garages, maintenance rooms, boilers and mechanical equipment rooms, and similar spaces of high noise. Mechanical equipment located on the same floor or above resident's rooms, offices, and similarly occupied space shall be effectively isolated from the floor.

(d) Recreation rooms, exercise rooms, equipment rooms and similar spaces where impact noises may be generated may not be located directly over residents' rooms.

R432-6-22. Mechanical, Heating, Cooling and Ventilation Systems.

(1) The HVAC system design shall prevent large temperature differentials, high velocity supply, excessive noise, and air stagnation.

(2) Air supply and exhaust in rooms for which no minimum total air change rate is mandated by Table 2 may vary to zero in response to room load.

(3) Mechanical ventilation shall be provided for interior spaces independent of thermostat-controlled demands.

(a) Minimum total air change, room temperature, and temperature control shall comply with standards in Table 2.

(b) To maintain asepsis and odor control, airflow supply and exhaust shall be controlled to ensure movement of air from clean to less clean areas.

(c) Rooms containing heat-producing equipment shall be insulated and ventilated to prevent the floor surface above or the walls of adjacent occupied areas from exceeding a temperature of ten degrees Fahrenheit above ambient room temperature.

(d) All rooms and occupiable areas in the facility shall have provisions for ventilation. Natural window ventilation may be used for ventilation of nonsensitive areas and resident rooms when weather conditions permit, but mechanical ventilation shall be provided during periods of temperature extremes.

(e) The heating system shall be capable of maintaining temperatures of 80 degrees F. in areas occupied by residents.

(f) The cooling system shall be capable of maintaining temperatures of 72 degrees F. in areas occupied by residents.

(g) Equipment must be available to provide essential heating during a loss of normal heating capability. All emergency heating devices shall be approved by the local fire jurisdiction.

(h) Fans serving exhaust systems shall be located at the discharge end and shall be readily serviceable. Exhaust fans may be on the inlet side if individually ducted directly to the outside.

(i) Fresh air intakes shall be located at least 10 feet from exhaust outlets of ventilating systems, combustion equipment stacks, plumbing vents, or areas subject to vehicular exhaust or other noxious fumes.

(j) All ventilation, air conditioning systems and air delivery equipment, including through wall units, shall be equipped with filters in accordance with Table 2.

(k) Gravity exhaust may be used where conditions permit for boiler rooms, central storage, and other nonresident areas.

(l) The ventilation system shall be air tested and balanced prior to the final Department construction inspection. The initial test results and air balancing report shall be maintained for Department review.

TABLE 2
Ventilation Requirements

AREA DESIGNATION	AIR MOVEMENT IN RELATION TO ADJACENT AREAS	MINIMUM AIR CHANGES OF OUTDOOR AIR PER HOUR TO ROOM	MINIMUM TOTAL AIR CHANGES PER HOUR	ALL AIR EXHAUSTED OUTSIDE
Bath and Shower Rooms	N	Optional	10	YES
Clean Linen Storage	P	Optional	2	Optional
Dietary Day Storage	V	Optional	2	Optional
Food Preparation Center	E	2	10	YES
Janitors' Closets	N	Optional	10	YES
Laundry	V	2	10	YES
Corridor	E	Optional	2	Optional
Grooming Area	N	2	2	YES
Resident Room	E	Greater	2	Optional of one air change or minimum 20 CFM/ person
Soiled Linen holding	N	Optional	10	YES
Toilet Rooms	N	Optional	10	YES
Ware Washing	N	Optional	10	YES
Common Areas	E	2	2	Optional

E = Equal; N = Negative; P = Positive; V = Variable

(m) The requirements of Table 2 do not apply to limited

capacity facilities. Limited capacity facilities shall provide exhaust for kitchens and bathrooms.

(n) If an existing building bathroom or toilet room is not exhausted to the outside, the licensee may submit a Request for Agency Action Variance to the Table 2 requirements at the time of initial licensing.

(4) All areas for resident care, and those areas providing direct service or clean supplies shall provide at least one filter bed with a minimum of 30% efficiency.

(5) All administrative, bulk storage, soiled holding, food preparation and laundries shall provide at least one filter bed with a minimum of 25% efficiency.

R432-6-23. Plumbing.

(1) Showers and tubs shall have non-slip or slip-resistant surfaces.

(2) Potable water supply systems shall comply with the following requirements:

(a) Water supply systems shall be designed with sufficient pressure to operate all fixtures and equipment during maximum demand.

(b) Each water service main, branch main, riser, and branch to a group of fixtures shall have a stop valve. A stop valve shall be provided for each fixture. Panels shall be provided for access to valves.

(c) All fixtures used by residents shall be trimmed with valves with cross, tee or single lever handles.

(3) Hot water systems shall meet the following requirements:

(a) As a minimum, water-heating systems shall provide supply capacity at temperatures and amounts indicated in Table 3. Water temperature shall be measured at the point of use or inlet to equipment.

TABLE 3
Hot Water Use

	Resident Care Areas	Dietary	Laundry
Gallons per Hour per Bed	3	2	2
Temperature Centigrade	43	49	71
Temperature Fahrenheit	110	120	160

(b) Distribution systems that exceed 50 linear feet and that service resident care areas shall be under constant recirculation to provide continuous hot water to each outlet. The temperature of hot water for lavatories, showers and bathing shall not exceed 120 degrees Fahrenheit. Thermostatically controlled automatic mixing valves may be used to maintain hot water at these temperatures.

(c) 180 degrees Fahrenheit rinse water must be provided at the dishwasher if an approved low temperature chemical rinse is not utilized.

(d) 160 degrees Fahrenheit hot water must be available at the laundry equipment as needed.

(4) Quantities indicated for design demand of hot water are for general reference minimums and shall not substitute for accepted engineering design procedures using actual number and types of fixtures to be installed.

(5) Drainage system shall comply with the following requirements:

(a) Building sewers shall discharge into community sewerage. Where such a system is not available, the facility shall treat its sewage in accordance with local requirements and State Department of Environmental Quality requirements.

(b) Where overhead drain piping is exposed, special provisions shall be made to protect the space below from contamination from leakage, condensation, and dust particles. Approval of special provisions in food preparation, food service areas, and food storage areas shall be obtained from the local health department.

(c) Kitchen grease trap locations shall comply with local health department rules.

(6) Dishwashers, in sink garbage disposers, and other appliances shall be National Sanitation Foundation, NSF, approved and have the NSF seal affixed.

R432-6-24. Electrical.

(1) In large assisted living facilities, panel boards serving normal lighting and appliance circuits shall be located on the same floor or on the same wing as the circuits served. Panels for emergency circuits, if provided, may serve the floors above and below for general resident areas and administration.

(2) Corridors shall be illuminated at night in accordance with Table 4.

(3) Light intensity shall be at or above the minimum foot-candle in accordance with Table 4. Areas not shown in Table 4, including parking lots and approaches to the building, shall have fixtures to provide light levels as recommended in IES Recommended Practice RP-20-1998, Lighting for Parking Facilities by the Illuminating Engineering Society of North America, which is adopted and incorporated by reference.

TABLE 4
Assisted Living Facilities Lighting Standards

Physical Plant Area	Minimum Foot-candle
Corridors	
Day	15
Night	7.5
Exits	15
Stairways	15
Res. Room	
General	7.5
Reading/Mattress Level	30
Toilet area	30
Lounge	
General	7.5
Reading	30
Recreation	30
Dining	20
Dining and Recreation	30
Laundry	30

(4) Each resident room shall have a duplex grounded receptacle on every wall. If a TV jack is included, there must be an extra outlet on the wall with the TV jack.

(5) Duplex grounded receptacles for general use shall be installed no more than 50 feet apart in corridors, on either side, and within 25 feet of corridor ends.

(6) A night light shall be provided in each resident bedroom and bathroom.

R432-6-25. Food Service.

(1) Food service facilities and equipment shall comply with R392-100, the Utah Department of Health Food Service Sanitation Rules.

(2) Food service space and equipment shall be provided as follows:

(a) storage area for food supplies, including a cold storage area, for a seven-day supply of staple foods and a three-day supply of perishable foods;

(b) food preparation area;

(c) an area to serve and distribute resident meals;

(d) an area for receiving, scraping, sorting, and washing soiled dishes and tableware;

(e) a storage area for waste which is located next to an outside facility exit for direct pickup; and

(f) a space for meal planning.

R432-6-100. Type I Facilities.

The following sections in the 100 series apply to Type I assisted living facilities.

R432-6-101. Occupancy Type.

(1) Large assisted living facilities shall comply with I-1, International Building Code, requirements.

(2) Small assisted living facilities shall comply with R-4, International Building Code, requirements.

(3) Limited capacity assisted living facilities shall comply with R-3, International Building Code, requirements.

R432-6-102. Common Areas.

(1) A common room or rooms shall be provided for dining, sitting, visiting, recreation, worship, and other activities.

(a) Common rooms shall have sufficient space and separation to promote and facilitate the activity without interfering with concurrent activities or functions in the building.

(i) In a small facility the common rooms shall be at least 28 square feet per bed, but no less than a total of 225 square feet.

(ii) In a large facility the common rooms shall be at least 30 square feet per bed. In a facility with 100 beds or more, the common rooms minimum square footage per bed may be reduced to 25.

(b) Space shall be provided for necessary equipment and storage of recreational equipment and supplies.

R432-6-103. Resident Units.

(1) Minimum room areas, exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, and vestibules, shall be 100 square feet in single-bed rooms and 80 square feet per bed in multiple-bed rooms.

(a) The areas noted above are minimums and do not prohibit larger rooms.

(b) Resident units may not have more than two beds per unit

(2) No room used for other purposes, such as a hall, corridor, unfinished attic, garage, storage area, shed, or similar detached building, may be used as a residents' sleeping room.

(3) No bedroom may be used as a passageway to another room, bath, or toilet other than those serving the bedroom.

(4) Bedrooms shall open directly into a corridor or common living area, but shall not open into a food preparation area.

(5) Unless furnished by the resident, the licensee shall provide for each resident a bed, comfortable chair, a chest of drawers and a reading lamp.

R432-6-104. Toilet and Bathing Facilities.

(1) Residents shall have privacy in toilet and bathrooms. Toilet and bathrooms shall be conveniently located.

(2) Resident toilet, bathtub, shower rooms, and facilities designed for use by the disabled shall comply with ADAAG.

(3) Grab bars shall be provided in all resident bathtubs and showers as required by ADAAG. At least one grab bar, which complies with ADAAG, shall be provided at the side of each resident toilet facility.

(4) Bars, including those which are an integral part of soap dishes, towel bars, and other fixtures shall be anchored to sustain a concentrated load of 250 pounds.

(5) There shall be one toilet and lavatory on each floor for each six occupants not otherwise served by toilet and lavatory in the resident rooms. A large type I assisted living facility shall have separate and additional toilet and bathing facilities for live-in family and staff.

(6) There shall be at least one bathtub or shower for each 10 residents not otherwise served by bathing facilities in resident rooms. Separate and additional facilities shall be provided for live-in family and staff. In a multistory building, there shall be at least one bathtub or shower which opens from the corridor on each floor that contains resident bedrooms not otherwise served.

(7) Each central bathroom shall have a toilet and lavatory.

(8) Toilet and bathing facilities shall not open directly into food preparation areas.

(9) All toilet, shower, and tub facilities shall have impermeable walls and surfaces that can be easily cleaned and sanitized.

(10) Showers and bathrooms shall contain recessed soap dishes.

(11) Each lavatory fixture shall have a mirror, except in food preparation areas.

R432-6-105. Service Areas.

There shall be adequate space and equipment for the following service or functions.

(1) Large assisted living facilities must provide the following:

(a) an administrator's office with equipment for keeping records and supplies;

(b) an employee toilet room, lockers, and lounges, in addition to and separate from those required for the public;

(c) a public reception or information area; and

(d) housekeeping closets each with a floor receptor or service sink.

(2) The following required spaces apply to all type I assisted living facilities:

(a) A secure area for administrative activities and storage for resident records;

(b) a medication-storage area including a locked drug cabinet;

(c) a closet or compartment for the staff's personal effects;

(d) a clean linen storage area;

(e) a telephone for private use by residents or visitors;

(f) at least one general use housekeeping closet accessible from a general corridor on each wing or each floor; and

(g) storage space for housekeeping equipment and supplies with a mechanical exhaust system.

R432-6-106. Linen Services.

(1) Each facility shall have space and equipment to store and process clean and soiled linen as required for resident care. Laundry may be done within the facility, in a separate building, on or off site, or in a commercial or shared laundry.

(2) At least one washing machine, one clothes dryer, and ironing equipment in good working order shall be available for use by residents who wish to do their personal laundry.

R432-6-107. Signal System.

(1) A signal system is required for the following facilities:

(a) a large facility;

(b) a facility with bedrooms on more than one floor; and

(c) when staff are not continuously present on the same level as any resident.

(2) The signal system shall be designed to:

(a) operate from each resident's living unit, and from each bathroom or toilet room;

(b) transmit a visual or auditory signal or both to a centrally staffed location, or produce an auditory signal at the living unit loud enough to summon staff;

(c) the signal system shall be designed to turn off only at the resident calling station; and

(d) identify the location of the resident summoning help.

R432-6-200. Type II Facilities.

The following sections in the 200 series apply to Type II assisted living facilities.

R432-6-201. Occupancy Type.

(1) Large assisted living facilities shall comply with I-2

International Building Code requirements and shall have, at a minimum, 6 foot wide corridors. Area, height and story increases as permitted in the body of IBC paragraph 504.2 shall be permitted.

(2) Small assisted living facilities shall comply with I-1, International Building Code, requirements and shall have, at a minimum, six-foot wide corridors.

(3) Limited capacity assisted living facilities that house Type II assisted living residents shall comply with R-4, International Building Code requirements and shall either have an approved sprinkler system, or provide a staff to resident ratio of one to one on a 24-hour basis. Residents shall be housed on floors at grade level.

R432-6-202. Campus-Type Facilities.

(1) If a campus-type facility has separate buildings, all of the buildings shall be located on the same site within 150 feet of each other.

(2) Resident living units shall be connected to bathing facilities and common areas by enclosed temperature controlled corridors.

(3) Recreation and dining spaces that are also utilized by residents of other licensed health care facilities within the same campus may be counted in determining common area space as long as all applicable code and space requirements are met for all licensed facilities and the shared space is accessible without the need to pass through corridors or resident care areas of another licensed facility. The shared space may not account for more than fifty percent of the total common square footage required for any one licensed facility.

R432-6-203. Resident Units.

(1) Facility services shall be accessible from common areas without compromising resident privacy.

(2) Resident living units shall include room areas exclusive of space for toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules as follows:

(a) A single occupant unit without additional living space shall be a minimum of 120 square feet.

(b) A double occupant unit without additional living space shall be a minimum of 200 square feet.

(c) A single occupant bedroom in a unit with additional living space shall be a minimum of 100 square feet.

(d) A double occupant bedroom in a unit with additional living space shall be a minimum of 160 square feet.

(3) No space used for other purposes, such as a hall, corridor, unfinished attic, garage, storage area, shed, or similar detached building, may be used as a resident's bedroom.

(4) Bedrooms may not be used as a passageway to another room, bath, or toilet other than those serving the bedroom.

(5) Each resident living unit shall open directly into a corridor or common living area, but must not open into a food preparation area.

(6) A maximum of two residents may occupy a resident living unit.

(7) Unless furnished by the resident, the licensee shall provide for each resident a bed, comfortable chair, a chest of drawers and a reading lamp.

R432-6-204. Toilet and Bathing Facilities.

(1) If toilet and bathrooms are shared by more than one resident, the facility shall provide individual privacy.

(2) A minimum of fifty percent of all toilet rooms, bathrooms and shower rooms shall be designed in compliance with ADAAG.

(3) Public toilet rooms shall be accessible from a corridor, and shall comply with ADAAG.

(4) If the living unit includes a private bathroom, the bathroom shall contain a toilet and a lavatory.

(5) If resident living units do not have a private bathroom, the facility shall provide the following:

(a) a toilet and lavatory for every four residents;

(b) a bathtub or shower for every 10 residents designed to accommodate a resident in a wheelchair and space to allow staff to assist a resident in taking a shower; and

(c) a bathroom with bathtub or shower, toilet and lavatory which open from a corridor on each floor of a multiple story facility.

(6) If resident living units have private bathrooms that do not allow staff assistance, then each floor or level shall provide a bathroom equipped with a bathtub or shower, toilet, and lavatory which opens from a corridor that provides wheelchair clearances and allows for staff assistance in bathing.

(7) Grab bars shall be provided in all resident bathtubs and showers as required by ADAAG. At least one grab bar, which complies with ADAAG, shall be provided at the side of each resident toilet facility not designed for accessibility.

(8) Toilet and bathing facilities may not open directly into food preparation areas.

(9) All toilet, shower, and tub facilities shall have impermeable walls and surfaces that may be easily cleaned and sanitized.

(10) Showers and tubs shall contain recessed soap dishes.

(11) Each lavatory fixture shall have a mirror. Mirrors over lavatories located in food preparation areas are prohibited.

(12) All lavatories shall have hand drying facilities.

(a) If lavatories are used by more than one individual, enclosed, single use paper towel dispensing units or cloth towel dispensing units or hot air drying units shall be provided.

(b) Lavatories shall be anchored to withstand an applied vertical load of 250 pounds on the front of the fixture.

(13) Bars, including those which are parts of soap dishes, towel bars, and other fixtures shall be anchored to a wall and withstand a concentrated load of 250 pounds.

R432-6-205. Common Areas.

(1) The facility shall provide a common room or rooms for dining, sitting, visiting, recreation, worship, and other activities.

(a) If concurrent activities are planned in a common room, the room shall be arranged to promote and facilitate the activities to minimize disruption through the use of physical barriers for separation.

(b) Space shall be provided for storing recreational equipment and supplies.

(2) The facility shall provide the following minimum space for recreational activities:

(a) in large facilities, 20 square feet per bed;

(b) in small facilities, 20 square feet per bed, or a minimum of 160 square feet total area whichever is greater;

(c) in a limited capacity facility, a minimum of 120 square feet.

(3) If a facility adds 40 square feet per bed to a bedroom area square footage requirement, or adds 80 square feet of recreation space in a separate living room within the resident living unit, the square footage requirements for common recreational space may be reduced by 20 square feet per licensed bed in large and small facilities, not to exceed a reduction of 50 percent of the total common area square footage.

(4) The facility shall provide the following space for dining activities:

(a) in large and small facilities, a minimum of 15 square feet per licensed bed;

(b) in limited capacity facilities, a minimum of 100 square feet.

(5) If a kitchen and a minimum of 30 square feet of dining area space are provided in a resident unit in a large or small facility, then the common dining area may be reduced by 15 square feet per licensed bed. The maximum reduction shall be

50 percent of the total required dining area.

(6) A separate private living room for family or informal gatherings shall be provided in a large facility as part of the common area space. The private living room shall be a minimum of 110 square feet. If all resident living units include additional living space, the facility is not required to provide a separate private living room.

(7) Corridors and public reception space may not be included in the calculation for required square footage for dining or recreation space.

(8) The facility shall provide ten square feet per bed, or a minimum area of 100 square feet, whichever is greater, for outdoor recreation activities.

R432-6-206. Resident Support Areas.

A large facility shall provide a nourishment station which contains a work counter, a refrigerator, a sink, and cabinets for storage. The station may be located in a single purpose room, dining room, or in a kitchen if staff has 24-hour access to the area.

R432-6-207. Administrative and General Service Areas.

(1) There shall be space and equipment for the administrative services as follows:

(a) in large facilities, an administrative office of sufficient size to store records and equipment;

(b) in small and limited capacity facilities, a designated area for administrative activities and record storage.

(2) Storage shall be provided for securing staff belongings as follows:

(a) In large facilities, a room shall be provided to serve as a staff lounge with staff lockers for storage. A staff toilet room shall also be provided.

(b) In small and limited care facilities, a storage area shall be identified to store staff belongings.

(3) A large facility shall provide a public reception or information area.

(4) A telephone shall be provided for private use by residents and visitors.

R432-6-208. Special Design Features.

(1) A signal system shall be provided to alert staff of a resident's need for help.

(2) The signal system shall be designed to:

(a) operate from each resident's living unit and from each bath room or toilet room;

(b) transmit a visual and auditory signal to a 24-hour staffed location, except a limited capacity facility signal system shall produce an auditory signal to summon staff;

(c) identify the location of the resident summoning help; and

(d) allow it to be turned off only at the source of the call.

(3) Large and small facilities shall provide a thermostat control in each resident living unit. The Department shall grant a variance upon request from the licensee to this requirement for an existing building seeking initial licensure.

(4) Plumbing shutoff valves shall be located on the main water supply line and at each fixture. In addition, large facilities shall provide an accessible shutoff valve on each primary hot and cold branch of the water line and shall provide a minimum of two hot and two cold water zones. The Department shall grant a variance upon request from the licensee to this requirement for an existing building seeking initial licensure.

(5) Building entrances in large and small facilities shall be at grade level, clearly marked, and located to minimize the need for residents to traverse other program areas. A main facility entrance shall be designated and accessible to persons with disabilities.

(6) Special units intended to accommodate residents with Alzheimers or Dementia shall comply with Section 8.8 of the Guidelines for Design and Construction of Hospital and Health Care Facilities, 2001 edition, which is adopted and incorporated by reference.

R432-6-209. General Standards for Details.

(1) Each resident living unit entry door shall be constructed as follows:

(a) be 36 inches wide;

(b) open inward into the resident living unit or designed so that an outward swinging door does not restrict the corridor width;

(c) be lockable, but operable from the inside by single-action lever; and

(d) be individually keyed with the key under resident control.

(2) A master key shall be available for staff.

(3) Door handles for all doors used by residents shall be of the lever type and shall meet ADAAG requirements. Building entrances and exit doors may have panic hardware.

(4) Each door to toilet and bathing facilities shall comply with ADAAG and the following:

(a) be equipped with hardware which permits emergency access from the outside; and

(b) open out or be double acting.

(5) Handrails shall meet the requirements of ADAAG and be provided on both sides of all resident corridors.

R432-6-210. Linen Services.

(1) Each facility shall have space and equipment to store and process clean and soiled linen as required for resident care. Laundry may be done within the facility, in a building on or off-site, or in a commercial or shared laundry.

(2) If laundry is done off the site, the following shall be provided:

(a) a room for receiving and holding soiled linen until ready for pickup or processing;

(b) a central, clean linen storage room(s); and

(c) a lavatory in each area where unbagged, soiled linen is handled.

(3) If a large or small facility processes its own laundry on-site, the following shall be provided:

(a) a laundry room for receiving, holding, washing, drying, and sorting soiled linens, with the following:

(i) a pre-wash sink at least 13 inches deep by 20 inches wide;

(ii) a separate hand washing sink;

(iii) washer(s) and dryer(s); and

(iv) storage for laundry supplies;

(b) arrangement of equipment that will permit an orderly workflow and minimize cross-traffic that might mix clean and soiled operations; and

(c) a central, clean linen storage room(s);

(4) If a limited capacity facility processes its own laundry on-site, the following shall be provided:

(a) a room to store and process both clean and soiled linen;

(b) a washer and dryer; and

(c) a utility sink in the laundry room.

(5) Each facility shall provide a minimum of one washing machine, one clothes dryer, and ironing equipment in good working order for resident use.

R432-6-211. 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.

The Department may assess a civil money penalty of up to $5,000 and deny approval for patient utilization of new or

remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to $5,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to $500 per day for each day a new or renovated area is occupied prior to Bureau of Licensing approval.

KEY: health facilities
July 20, 2006 26-21-5
Notice of Continuation January 8, 2004 26-21-16

R539. Human Services, Services for People with Disabilities.
R539-2. Service Coordination.
R539-2-1. Purpose.

(1) The purpose of this rule is to provide standards for the Division service system, including planning, developing and managing an array of services for Persons with disabilities and their families throughout the state as required by Subsection 62A-5-103(1).

R539-2-2. Authority.

(1) This rule establishes standards as required by Subsection 62A-5-103(1).

R539-2-3. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101 and R539-1-3.

(2) In addition:

(a) "Quality Assurance" means the Family, Provider, and Division management's role to assure accountability in areas of fiscal operations, health, safety, and contract compliance.

(b) "Quality Improvement" means the Provider's role to evaluate and improve the internal delivery of services.

(c) "Quality Enhancement" means the Division and the Team members' role in supporting a Person to experience personal life satisfaction in accordance with the Person's preferences.

R539-2-4. Waiting List.

(1) Pursuant to Subsection 62A-5-102(3), the Division shall determine a Person's eligibility for service, followed by a determination of that Person's priority relative to others who are also eligible. Each region shall use a standardized Needs Assessment to score and prioritize the Person's level of need. Persons with the highest scores shall receive support first. The Support Coordinator shall assess with the Person the array of services that may be needed. If funding is not immediately available, the Person shall be placed on a waiting list for support. Persons who have been determined eligible for the Division's Medicaid Waivers can choose to wait for Division Support services or seek services available through Medicaid in an approved facility.

(2) If the Person requires, and could use, support services on the day of intake, the Person has an immediate need; otherwise, the Person has a future need.

(3) A Needs Assessment Form 2-2 shall be completed for all Persons with an immediate need for support services. The Needs Assessment calculates the score of each Person by using the following criteria:

(a) severity of the disabling condition;
(b) needs of the Person and/or family;
(c) length of time on the waiting list, if applicable;
(d) appropriate alternatives available; and
(e) other factors determined by the Region to reflect accurately on the Person's need:
(i) family composition;
(ii) skills and stress of primary caregiver;
(iii) finances and insurances;
(iv) ability to be self-directing;
(v) special medical needs;
(vi) problem behaviors;
(vii) protective service issues;
(viii) resources/supports needed;
(ix) projected deterioration issues; and
(x) time on immediate need waiting list.

(4) The Region Needs Assessment Committee determines the Person's score, rank orders the scores, and enters the Person's name and score on the statewide waiting list.

(5) A Person's ranking may change if the Person's needs change or as Needs Assessments are completed for new Applicants.

(6) No age limitations apply to a Person placed on the waiting list for community living support or family support.

(7) To preserve the Medicaid Waiver and state-wide service infrastructure, exceptions may be made to the person's ranking on the waiting list when authorized by the Division Director and the Department of Health.

R539-2-5. Person-Centered Process.

(1) The Division supports Person-Centered Planning, which includes assessing, planning, implementing, and evaluating. This process shall have an individualized focus and incorporate the principles of Person-Centered Planning, self-determination, informed choice, and equity. Input from the Person and the Person's Team should guide and direct this process.

(a) The Person's Team shall work with the Person to identify goals.

(i) The Person receiving supports determines the membership of the Team, which shall include the Support Coordinator.

(ii) The Team meets at least annually within the month in which the previous meeting occurred, or more often as the Person or other members of the Team determine necessary.

(b) The Person, Provider, and Family shall assess, plan, implement, and evaluate goals and supports for which they are responsible, as agreed upon and listed on Division Form 1-16 in the planning meeting.

(c) The Team shall decide the level of detail required to describe the actions involved in the assessing, planning, implementing, and evaluating needs for the supports based on the experience and expertise of the staff providing the Person's supports. The use of the philosophical Person-Centered Planning approach shall be demonstrated and documented in the Person's file.

(d) Any interested party who believes that Person-Centered Planning is not being implemented as outlined or receives a request from the Person, should contact the Support Coordinator immediately to resolve the issue informally, and, if necessary, through the administrative hearing process outlined in R539-3-8 Notice of Agency Action and Administrative Hearings.

R539-2-6. Entry Into and Movement Within Service System.

(1) The Division shall assure that an appropriate choice of supports and Providers exist for Persons entering or moving within the support system in accordance with Subsections 62A-5-103(1) and 62A-5-103(12). The Division shall coordinate, approve, and oversee all out-of-home placements.

(2) Entry into Division-funded supports:

(a) Once a Person's application for waiver services is processed by the Division, the Person is referred to the local financial eligibility office.

(b) Prior to the provision of community living supports, a Person may be required to complete a medical examination and, if under the age of 18, provide a current immunization record.

(c) Admission to Division programs from a nursing facility will be coordinated by the Region office with the Person, the nursing facility social worker, the Support Coordinator, and the prospective Provider.

(d) The Division shall provide Persons with a choice of Providers by:

(i) sending Providers notice and invitation to submit offers to provide services via use of Division Form 1-6; and

(ii) assisting the Person to make an informed choice of Provider.

(e) Interested Providers may schedule and coordinate a service entry meeting that involves the Person, the Representative, Support Coordinator, and invited guests, (e.g.,

Developmental Center staff, school representative, and Division staff). The meeting should be held at the prospective site of placement whenever possible.

(f) The Provider shall submit an acceptance or denial letter within ten business days of the service entry meeting to the Support Coordinator and the Person. An acceptance letter shall include a written description of the following:

(i) services to be provided;

(ii) location of the service;

(iii) name and address of the primary care physician, or other medical specialists, including, for example, neurologist or dentist, if applicable;

(iv) a training and in-service schedule for the staff to meet with the Person;

(v) proposed date services will begin; and

(vi) agreed upon rate and level of support.

(g) The physical move of the Person shall be the responsibility of the Provider who is accepting the Person.

(h) The Division shall send the Person's information to the Provider five business days prior to the move.

(3) Any Team Member may initiate a request to change Provider or Developmental Center residence by asking the Support Coordinator to arrange a meeting.

(4) If a Person requests a change of Provider, the Support Coordinator shall arrange a discharge meeting that provides a ten-business-day written notice to the Person, present Provider, and Support Coordinator.

(a) The present Provider may request the opportunity to make changes in the existing relationship to address the concerns that initiated the discharge meeting.

(b) The Region Director shall make the final decision concerning the discharge if the parties cannot come to agreement.

(5) A Provider initiated request for discharge of a Person shall require 90 calendar days prior notification to the Person and the Division.

(6) Emergency Services Management Committee (ESMC):

(a) An Emergency Services Management Committee chairperson shall be appointed by the Division Director. Membership shall include:

(i) Division Specialists;

(ii) a representative from each Region who is skilled in crisis intervention and knowledgeable of local resources;

(iii) a representative from the Developmental Center; and

(iv) others as appointed by the Division Director.

(b) The Emergency Services Management Committee shall ensure that Persons are placed in the least restrictive most appropriate living situation as per Sections 62A-5-302 through 62A-5-312 and Subsection 62A-5-402(2)(a). Exceptions to the statute requiring children under age 11 to live only in family-like environments, as per Section 62A-5-403, require Emergency Services Management Committee review and recommendation to the Division Director for final written approval.

R539-2-7. Quality Management Procedures.

(1) The Division will oversee the three distinct functional roles of quality management, which are Quality Assurance, Quality Improvement, and Quality Enhancement.

(a) Necessary quality assurances are specified by contract with the Division. The Division may work with other offices and bureaus of the Department of Human Services and the Department of Health to assure quality.

(b) Providers are responsible to develop and implement an internal quality management system, which shall:

(i) Evaluate the Provider's programs; and

(ii) Establish a system of self-correcting feedback.

(c) The implementation of the Person's Action Plan shall be designed to enhance the Person's life. The Person and Person's Team shall:

(i) Identify and document the Person's preferences;

(ii) Plan how to support the Person's life satisfaction; and

(iii) Implement the plan with supports from the Division, such as;

(A) Technical Assistance, which involves training, mentoring, consultation, and referral through Division staff.

(B) Quality Enhancement Resource Brokerage, which involves identification and compilation of community resources, including other consumers and families, and referral to and prior approval of payment for these supports.

(C) Consumer empowerment, which involves rights education, leadership training.

(D) Team and System Process Enhancement, which involves facilitation and negotiation training, community education, and consumer satisfaction surveys.

(2) The Division shall evaluate the Person's satisfaction and statistical statewide system indicators of life enhancement.

(3) Division staff shall promote enhancement of the Person's life; support improvement efforts undertaken by Providers, Persons, and families; and assure accountability.

R539-2-8. Request for New Support Coordinator.

(1) A Person may request a new Support Coordinator by submitting a written request to the Region Office Supervisor.

KEY: services, people with disabilities
July 11, 2006 **62A-5-102**
62A-5-103

R592. Insurance, Title and Escrow Commission.
R592-3. Filing a Schedule of Minimum Charges for Escrow Services.
R592-3-1. Authority.

This rule is promulgated by the Title and Escrow Commission pursuant to Section 31A-2-404.

R592-3-2. Purpose and Scope.

(1) The purpose of this rule is to set forth the procedures for filing a Schedule of Minimum Charges for Escrow Services pursuant to Section 31A-19a-209.

(2) This rule applies to all title insurers, agencies and producers providing escrow services in Utah.

R592-3-3. Required Documents.

(1) The department requires that the documents described in this rule shall be used for all filings. Actual copies may be used or you may adapt them to your word processing system. If adapted, the content, size, font, and format must be similar.

(2) The following filing documents are available on the department's web site, http://www.insurance.utah.gov/RF-Flgs.html.

(a) "Schedule of Minimum Charges for Escrow Services;"

(b) "Transmittal Document for Title Agency or Title Producer."

R592-3-4. Definitions.

In addition to the definitions of Sections 31A-1-301, 31A-2-402,and 31A-19a-102, the following definitions shall apply for the purpose of this rule:

(1) "Certification" means that a filing being submitted is in compliance with the Utah Insurance Code.

(2) "File and Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.

(3) "File Before Use" means a filing can be used, sold, or offered for sale after it has been filed with the department and a stated period of time has elapsed from the date filed.

(4) "Filer" means a person or entity who submits a filing.

(5) "Order to Prohibit Use" means an order issued by the commissioner that forbids the use of a filing.

(6) "Rejected" means a filing is:

(a) not submitted in accordance with Utah laws and rules;

(b) returned to the filer by the department with the reasons for rejection; and

(c) not considered filed with the department.

R592-3-5. General Filing Information.

(1) Each filing submitted must be accurate, consistent, complete, and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.

(2) Insurers and filers are responsible for assuring compliance with Utah laws and rules. Filings not in compliance with Utah laws and rules are subject to regulatory action under Section 31A-2-308.

(3) Charges, supplementary information, and forms applying to a specific program or product may be submitted as one filing.

(4) A filing that does not comply with this rule will be rejected as incomplete and returned to the filer. A rejected filing is not considered filed with the department.

(5) Prior filings will not be researched to determine the purpose of the current filing.

(6) The department does not review or proofread every filing.

(a) A filing may be reviewed:

(i) when submitted;

(ii) as a result of a complaint;

(iii) during a regulatory examination or investigation; or

(iv) at any other time the department deems necessary.

(b) If a filing is reviewed and is not in compliance with Utah laws and rules, an ORDER TO PROHIBIT USE will be issued to the filer. The commissioner may require the filer to disclose deficiencies in forms or rating practices to affected consumers.

(7) Filing correction.

(a) No filing transmittal is required when clerical or typographical corrections are made to a filing previously filed if the corrected filing is submitted within 30 days of the date "Filed" with the department. The filer will need to reference the original filing.

(b) A new filing is required if the clerical or typographical corrections are made more than 30 days after the filed date of the original filing. The filer will need to reference the original filing.

(8) Filing withdrawal. A filer must notify the department when the filer withdraws a previously filed form, charge, or supplementary information.

R592-3-6. Filing Requirements.

(1) Only an individual who is authorized to act on behalf of the insurer, agency or producer can submit a filing.

(2) A complete filing consists of the following documents submitted in the following order:

(a) Utah Transmittal Document for Title Agency or Title Producer; and

(b) Schedule of Minimum Charges for Escrow Services;

(3) Description of Filing. The filer must:

(a) indicate whether the filing is new, amending or replacing a previous filing, or contains charges that have been previously filed and are included for informational purposes;

(b) describe the filing and the purpose of the filing in detail in the Filing Description section of the transmittal; and

(c) if the filing is amending or replacing a previous filing:

(i) provide a detailed description of the changes; and

(ii) highlight the changed provisions.

(4) Transmittal Document for Title Agency or Title Producer. The entire transmittal form must be properly completed.

(5) Schedule of Minimum Charges for Escrow Services.

(a) An initial Schedule of Minimum Charges for Escrow Services filing is a file and use filing.

(b) A revised Schedule of Minimum Charges for Escrow Services filing is a use and file filing and is effective:

(i) thirty calendar days after the revised Schedule of Minimum Charges for Escrow Services is filed; or

(ii) a date specified by the filer that is later than 30 calendar days after the revised Schedule of Minimum Charges for Escrow Services is filed.

(6) Return Notification Materials.

(a) Return notification materials are limited to:

(i) a copy of the transmittal; and

(ii) a self-addressed, stamped envelope.

(b) Notice of filing will not be provided unless return notification materials are submitted.

(c) Any extra information will be discarded.

(7) Certification.

(a) The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules.

(b) A filing will be rejected if the certification is missing or incomplete.

(c) A certification that is inaccurate may subject the filer to administrative action.

R592-3-7. Correspondence, Inquiries, and Responses.

(1) Correspondence. When corresponding with the department, provide sufficient information to identify the

original filing:
(a) type of filing;
(b) date of filing;
(c) date of prior correspondence; and
(d) a copy of the original transmittal.
(2) Status Checks. A filer can request the status of its filing by telephone, or email 60 days after the date of submission.
(3) A Response to an Order must include:
(a) a response cover letter identifying the changes made;
(b) a copy of the prohibition letter;
(c) a copy of the revised documents; and
(d) return notification materials, which consist of a copy of the response cover letter and a self-addressed stamped envelope.
(4) Rejected Filings.
(a) A filing that is rejected is NOT considered filed.
(b) If resubmitted it is treated as a new filing. If a filing has been previously rejected, include a copy of the rejection form returned to the filer with the original filing.

R592-3-8. 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.

R592-3-9. Enforcement Date.
The commissioner will begin enforcing this rule 90 days from the rule's effective date.

R592-3-10. Severability.
If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remaining provisions to other persons or circumstances shall not be affected.

KEY: title escrow filings
July 19, 2006 **31A-2-404**

R592. Insurance, Title and Escrow Commission.
R592-4. Standards for Minimum Charges for Escrow Services.
R592-4-1. Authority.

This rule is promulgated by the Title and Escrow Commission pursuant to Section 31A-2-404.

R592-4-2. Purpose and Scope.

(1) The purpose of this rule is to set forth standards for minimum charges for escrow services on the Schedule of Minimum Charges for Escrow Services.

(2) This rule applies to all title insurers, agencies and producers providing escrow services in Utah.

R592-4-3. Definitions.

In addition to the definitions of Sections 31A-1-301, 31A-2-402 and 31A-19a-102, the following definitions shall apply for the purposes of this rule:

(1) "Additional escrow work" means escrow settlement services that are rendered in excess of the escrow settlement services not specifically shown in the minimum escrow charges listed in the Schedule of Minimum Charges for Escrow Services.

(2) "Charge" means a dollar amount charged for a service rendered by a title insurer, title agency, or title producer.

(3) "Document Preparation" means the preparation or compilation of documents in connection with escrow services.

(4) "Escrow charge" means a dollar amount charged for an escrow service shown in the Schedule of Minimum Charges for Escrow Services.

(5) "Schedule of Minimum Charges for Escrow Services " means the standardized form submitted with a title escrow charge filing.

(6) "Escrow Services" means those services to settle real estate transactions.

(7) "Long-term Escrow" means For Benefit Of (FBO) accounts that are for the purpose of payment collection and administration of seller-financed transactions.

(8) "Mini Escrow" means an escrow settlement service done by a title agency to clear a title, obtain payoffs and record necessary closing documents for a lender that performs his or her own closing service.

(9) "Other Settlement Services" means additional services not specifically listed in the Schedule of Minimum Charges for Escrow Services.

R592-4-4. Schedule of Minimum Charges for Escrow Services.

(1) The Schedule of Minimum Charges for Escrow Services must be used when submitting:

(a) an initial Schedule of Minimum Charges for Escrow Services filing; or

(b) changes to a previously submitted Schedule of Minimum Charges for Escrow Services filing.

(2) All blank fields of the Schedule of Minimum Charges for Escrow Services must be completed.

(3) If a filer does not perform a service, the blank field must show "N/A" or "Not Applicable."

R592-4-5. Charges.

(1) Escrow service charges.

(a) Escrow charge.

(i) In accordance with 31A-19a-209(3), no escrow charge may be filed or used that would cause the agency or producer to operate at less than the cost of doing the business of escrow.

(ii) Only minimum escrow charges shown in the Schedule of Minimum Charges for Escrow Services must be filed.

(b) Other settlement services charge.

(i) An other settlement services charge will be used for services not specifically shown in the Schedule of Minimum Charges for Escrow Services.

(ii) An other settlement service charge must be filed as a per hour charge.

(c) Document preparation charge. Only document charges shown in the Schedule of Minimum Charges for Escrow Services must be filed.

(2) Other services which are not specifically listed on the Schedule of Minimum Charges for Escrow Services may be rendered provided a justifiable charge is made.

R592-4-6. 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.

R592-4-7. Enforcement Date.

The commissioner will begin enforcing this rule 90 days from the rule's effective date.

R592-4-8. Severability.

If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remaining provisions to other persons or circumstances shall not be affected.

KEY: title escrow charges
July 19, 2006 **31A-2-204**

R612. Labor Commission, Industrial Accidents.
R612-2. Workers' Compensation Rules-Health Care Providers.
R612-2-1. Definitions.

A. All definitions in Rule R612-1 apply to this section.

B. "Medical Practitioner" - means any person trained in the healing arts and licensed by the State in which such person practices.

C. "Global Fee Cases" - are those flat fee cases where fees include pre-operative and follow-up or aftercare.

D. "Usual and Customary Rate (UCR)" is the rate of payment to a dental provider using Ingenix, or a similar service, for charges for services for a particular zip code.

E. Unless otherwise specified, the term "insurer" includes workers' compensation insurance carriers and self-insured employers.

R612-2-2. Authority.

This rule is enacted under the authority of Section 34A-1-104 and Section 34A-2-407.

R612-2-3. Filings.

A. Within one week following the initial examination of an industrial patient, nurse practicioners, physicians and chiropractors shall file "Form 123 - Physicians' Initial Report" with the carrier/self-insured employer, employee, and the division. This form is to be completed in as much detail as feasible. Special care should be used to make sure that the employee's account of how the accident occurred is completely and accurately reported. All questions are to be answered or marked "N/A" if not applicable in each particular instance. All addresses must include city, state, and zip code. If modified employment in #29 is marked "yes," the remarks in #29 must reflect the particular restrictions or limitations that apply, whether as to activity or time per day or both. Estimated time loss must also be given in #29. If "Findings of Examination" (#17) do not correctly reflect the coding used in billing, a reduction of payment may be made to reflect the proper coding. A physician, chiropractor, or nurse practitioner is to report every initial visit for which a bill is generated, including first aid, when a worker reports that an injury or illness is work related. All initial treatment, beyond first aid, that is provided by any health care provider other than a physician, chiropractor, or nurse practictioner must be countersigned by the supervising physician and reported on Form 123 to the Industrial Accidents Division and the insurance carrier or self-insured employer.

B. 1. Any medical provider billing under the restorative services section of the Labor Commission's adopted Resource-Based Relative Value Scale (RBRVS) or the Medical Fee Guidelines shall file the Restorative Services Authorization (RSA) form with the insurance carrier or self-insured employer (payor) and the division within ten days of the initial evaluation.

2. Upon receipt of the provider's RSA form, the payor has ten days to respond, either authorizing a specified number of visits or denying the request. No more than eight visits may be incurred during the authorization process.

3. After the initial RSA form is filed with the payor and the division, an updated RSA form must be filed for approval or denial at least every six visits until a fixed state of recovery has been achieved as evidenced by either subjective or objective findings. If the medical provider has filed the RSA form per this rule, the payor is responsible for payment, unless compensability is denied by the payor. In the event the payor denies the entire compensability of a claim, the payor shall so notify the claimant, provider, and the division, after which the provider may then bill the claimant.

4. Any denial of payment for treatment must be based on a written medical opinion or medical information. The denial notification shall include a copy of the written medical opinion or information from which the denial was based. The payor is not liable for payment of treatment after the provider, claimant, and division have been notified in writing of the denial for authorization to pay for treatment. The claimant may then become responsible for payment.

5. Any dispute regarding authorization or denial for treatment will be determined from the date the division received the RSA form or notification of denial for payment of treatment.

6. The claimant may request a hearing before the Division of Adjudication to resolve compensability or treatment issues.

7. Subjective objective assessment plan/procedure (SOAP notes) or progress notes are to be sent to the payor in addition to the RSA form.

8. Any medical provider billing under the Restorative Services Section of the RBRVS or the Commission's Medical Fee Guidelines who fails to submit the required RSA form shall be limited to payment of up to eight visits for a compensable claim. The medical provider may not bill the patient or employer for any remaining balances.

C. S.O.A.P. notes or progress reports of each visit are to be sent to the payor by all medical practitioners substantiating the care given, the need for further treatment, the date of the next treatment, the progress of the patient, and the expected return-to-work date. These reports must be sent with each bill for the examination and treatment given to receive payment. S.O.A.P. notes are not to be sent to the division unless specifically requested.

D. "Form 110 - Release to Return to Work" must be mailed by either the medical practitioner or carrier/employer to the employee and the division within five calendar days of release.

E. The carrier/employer may request medical reports in addition to regular progress reports. A charge may be made for such additional reports, which charge should accurately reflect the time and effort expended by the physician.

R612-2-4. Hospital or Surgery Pre-Authorization.

Any ambulatory surgery or impatient hospitalization other than a life or limb threatening admission, allegedly related to an industrial injury or occupational disease, shall require pre-authorization by the employer/insurance carrier. Within two working days of a telephone request for pre-authorization, the employer/carrier shall notify the physician and employee of approval or denial of the surgery or hospitalization, or that a medical examination or review is going to be obtained. The medical examination/review must be conducted without undue delay which in most circumstances would be considered less than thirty days. If the request for pre-authorization is made in writing, the employer/carrier shall have four days from receipt of the request to notify the physician and employee. If the employee chooses to be hospitalized and/or to have the surgery prior to such pre-authorization or medical examination/review, the employee may be personally responsible for the bills incurred and may not be reimbursed for the time lost unless a determination is made in his/her favor.

R612-2-5. Regulation of Medical Practitioner Fees.

Pursuant to Section 34A-2-407:

A. The Labor Commission of Utah:

1. Establishes and regulates fees and other charges for medical, surgical, nursing, physical and occupational therapy, mental health, chiropractic, naturopathic, and osteopathic services, or any other area of the healing arts as required for the treatment of a work-related injury or illness.

2. Adopts and by this reference incorporates the National Centers for Medicare and Medicaid Services (CMS) for the Medicare Physician Fee Schedule (MPFS) "Resource-Based Relative Value Scale" (RBRVS), 2006 edition, as the method for calculating reimbursement and the American Medical

Association's CPT-4, 2006 edition, coding guidelines. The non-facility total unit value will apply in calculating the reimbursement, except that procedures provided in a facility setting shall be reimbursed at the facility total unit value and the facility may bill a separate facility charge. The CPT-4 coding guidelines and RBRVS are subject to the Utah Labor Commission's Medical Fee Guidelines and Codes and the following Labor Commission conversion factors for medical care rendered for a work-related injury or illness, effective July 11, 2006: (Conversion Rates below EFFECTIVE July 11, 2006, to be used with the RBRVS procedural Unit value as per specialty.)

Anesthesiology $41.00 (1 unit per 15 minutes of anesthesia);

Medicine E and M $44.00;

Pathology and Laboratory 150% of Utah's published Medicare carrier;

Radiology $53.00;

Restorative Services $44.00, with Utah code 97001 and 97003 at a 1.5 relative value unit and Utah code 97002 and 97004 at a 1.0 of relative value unit.

Surgery $37.00;

All 20000 codes, codes 49505 thru 49525 and all 60000 codes of the CPT-4 coding guidelines $58.00.

3. Adopts and incorporates by this reference the Utah Labor Commission's Medical Fee Guidelines and Codes, as of July 11, 2006. The Utah Medical Fee Guidelines and Codes can be obtained from the division for a fee sufficient to recover costs of development, printing, and mailing or can be downloaded at the Labor Commission's website at www.laborcommission.utah.gov/indacc/indacc.htm.

4. Decides appropriate billing procedure codes when disputes arise between the medical practitioner and the employer or its insurance carrier. In no instance will the medical practitioner bill both the employer and the insurance carrier.

B. Employees cannot be billed for treatment of their work-related injuries or illnesses.

C. Discounting from the fees established by the Labor Commission is allowed only through specific contracts between a medical provider and a payor for treatment of work-related injury or illness.

D. Restocking fee 15%. Rule R612-2-16 covers the restocking fee.

E. Dental fees are not published. Rule R612-2-18 covers dental injuries.

F. Ambulance fees are not published. Rule R612-2-19 covers ambulance charges.

R612-2-6. Fees in Cases Requiring Unusual Treatment.

The RBRVS scheduled fees are maximum fees except that fees higher than RBRVS scheduled may be authorized by the Commission when extraordinary difficulties encountered by the physician justify increased charges and are documented by written reports.

R612-2-7. Insurance Carrier's Privilege to Examine.

The employer or the employer's insurance carrier or a self-insured employer shall have the privilege of medical examination of an injured employee at any reasonable time. A copy of the medical examination report shall be made available to the Commission at any time upon request of the Commission.

R612-2-8. Who May Attend Industrial Patients.

A. The employer has first choice of physicians; but if the employer fails or refuses to provide medical attention, the employee has the choice of physicians.

B. An employee of an employer with an approved medical program may procure the services of any qualified practitioner for emergency treatment if a physician employed in the program is not available for any reason.

R612-2-9. Changes of Doctors and Hospitals.

A. It shall be the responsibility of the insurance carrier or self-insured employer to notify each claimant of the change of doctor rules. Those rules are as follows:

1. If a company doctor, designated facility or PPO is named, the employee must first treat with that designated provider. The insurance carrier or self-insured employer shall be responsible for payment for the initial visit, less any health insurance copays and subject to any health insurance reimbursement, if the employee was directed to and treated by the employer's or insurance carrier's designated provider, and liability for the claim is denied and if the treating physician provided treatment in good faith and provided the insurance carrier or self-insured employer a report necessary to make a determination of liability. Diagnostic studies beyond plain x-rays would need prior approval unless the claimed industrial injury or occupational illness required emergency diagnosis and treatment.

2. The employee may make one change of doctor without requesting the permission of the carrier, so long as the carrier is promptly notified of the change by the employee.

(a) Physician referrals for treatment or consultation shall not be considered a change of doctor.

(b) Changes from emergency room facilities to private physicians, unless the emergency room is named as the "company doctor", shall not be considered a change of doctor. However, once private physician care has begun, emergency room visits are prohibited except in cases of:

(i) Private physician referral, or

(ii) Threat to life.

3. Regardless of prior changes, a change of doctor shall be automatically approved if the treating physician fails or refuses to rate permanent partial impairment.

B. Any changes beyond those listed above made without the permission of the carrier/self-insurer may be at the employee's own expense if:

1. The employee has received notification of rules, or

2. A denial of request is made.

C. An injured employee who knowingly continues care after denial of liability by the carrier may be individually responsible for payment. It shall be the burden of the carrier to prove that the patient was aware of the denial.

D. It shall be the responsibility of the employee to make the proper filings with the division when changing locale and doctor. Those forms can be obtained from the division.

E. Except in special cases where simultaneous attendance by two or more medical care practitioners has been approved by the carrier/employer or the division, or specialized services are being provided the employee by another physician under the supervision and/or by the direct referral of the treating physician, the injured employee may be attended by only one practitioner and fees will not be paid to two practitioners for similar care during the same period of time.

F. The Commission has jurisdiction to decide liability for medical care allegedly related to an industrial accident.

R612-2-10. One Fee Only to be Paid in Global Fee Cases.

In a global fee case which is transferred from one doctor to another doctor, one fee only will be paid, apportioned at the discretion of the Commission. Adequate remuneration shall also be paid to the medical practitioner who renders first aid treatment where the circumstances of the case require such treatment.

R612-2-11. Surgical Assistants' Fees.

Fees, in accordance with the Commission's adopted Resource-Based Relative Value Scale (RBRVS), in addition to

the global fee for surgical services, will be paid surgical assistants only when specifically authorized by the employer or insurance carrier involved, or in hospitals where interns and residents are not available and the complexity of the surgery makes a surgical assistant necessary.

R612-2-12. Separate Bills.

Separate bills must be presented by each surgeon, assistant, anesthetist, consultant, hospital, special nurse, or other medical practitioner within 30 days of treatment on a HCFA 1500 billing form so that payment can be made to the medical practitioner who rendered the service. All bills must contain the federal ID number of the person submitting the bill.

R612-2-13. Interest for Medical Services.

A. All hospital and medical bills must be paid promptly on an accepted liability claim. All bills which have been submitted properly on an accepted liability claim are due and payable within 45 days of being billed unless the bill or a portion of the bill is in dispute. Any portion of the bill not in dispute is payable within 45 days of the billing.

B. Per Section 34A-2-420, any award for medical treatment made by the Commission shall include interest at 8% per annum from the date of billing for the medical service.

R612-2-14. Hospital Fees Separate.

Fees covering hospital care shall be separate from those for professional services and shall not extend beyond the actual necessary hospital care. When it becomes evident that the patient needs no further hospital treatment, he/she must be discharged. All billings must be submitted on a UB92 form and be properly itemized and coded and shall include all appropriate documentation to support the billing. There shall not be a separate fee charged for the necessary documentation in billing for payment of hospital services. The documentation of hospital services shall include at a minimum the discharge summary. The insurance carrier may request further documentation if needed in order to determine liability for the bill.

R612-2-15. Charges for Ordinary Supplies, Materials, or Drugs.

Fees covering ordinary dressing materials or drugs used in treatment shall not be charged separately but shall be included in the amount allowed for office dressings or treatment.

R612-2-16. Charges for Special or Unusual Supplies, Materials, or Drugs.

A. Charges for special or unusual supplies, materials, or drugs not included as a normal and usual part of the service or procedure shall, upon receipt of an itemized and coded billing, be paid at cost plus 15% restocking fees.

B. For purposes of part A above, the amount to be paid shall be calculated as follows:

1. Applicable shipping charges shall be added to the purchase price of the product;

2. The 15% restocking fee shall then be added to the amount determined in sub part 1;

3. The amount of taxes paid on the purchase of the supplies, materials, or drugs shall then be added to the amount determined in sub part 2, which sum shall constitute the total amount to be paid.

R612-2-17. Fees for Unscheduled Procedures.

Fees for medical or surgical procedures not appearing in the Commission's adopted RBRVS current fee schedule are subject to the Commission's approval and should be submitted to the Commission when the physician and employer or insurance carrier do not agree on the value of the service. Such fees shall be in proportion as nearly as practicable to fees for similar services appearing in the RBRVS.

R612-2-18. Dental Injuries.

A. This rule establishes procedures to obtain dental care for work-related dental injuries and sets fees for such dental care.

B. Initial Treatment.

1. If an employer maintains a medical staff or designates a company doctor, an injured worker seeking dental treatment for work-related injuries shall report to such medical staff or doctor and follow their instructions.

2. If an employer does not maintain a medical staff or designate a company doctor, or if such staff or doctor are not available, an injured worker may consult a dentist to obtain immediate care dental for injuries caused by a work-related accident. The insurer shall pay the dentist providing this initial treatment at 70% of UCR for the services rendered.

C. Subsequent care by initial treatment provider.

1. If additional treatment is necessary, the dentist who provided initial treatment may submit to the insurer a request for authorization to continue treatment. The transmission date of the request must be verifiable. The request itself must include a description of the injury, the additional treatment required, and the cost of the additional treatment. If the dentist proceeds with treatment without authorization, the dentist must accept 70% of UCR as payment in full and may not charge any additional sum to the injured worker.

2. The insurer shall respond to the request for authorization within 10 working days of the request's transmission. This 10-day period can be extended only with written approval of the Industrial Accidents Division. If the insurer does not respond to the dentist's request for authorization within 10 working days, the insurer shall pay the cost of treatment as contained in the request for authorization.

3. If the insurer approves the proposed treatment, the insurer shall send written authorization to the dentist and injured worker. This authorization shall include the anticipated payment amount.

4. On receipt of the insurer's written authorization, and if the dentist accepts the payment provisions therein, the dentist may proceed to provide the approved services. The dentist must accept the amount to be paid by the insurer as full payment for those services and may not bill the injured worker for any additional amount.

D. Subsequent care by other providers.

1. If the dentist who provided initial treatment does not agree to the payment offered by the insurer, the insurer shall within 20 calendar days direct the injured worker to a dentist located within a reasonable travel distance who will accept the insurer's payment offer.

2. If the insurer cannot locate another dentist to provide the necessary services, the insurer shall attempt to negotiate a satisfactory reimbursement with the dentist who provided initial treatment. The negotiated reimbursement may not include any balance billing to the claimant.

3. If the insurer is successful in arranging treatment with another dentist, the insurer shall notify the injured worker.

4. If, after having received notice that the insurer has arranged the services of another dentist, the injured worker chooses to obtain treatment from a different dentist, the insurer shall only be responsible for payment at 70% of UCR. Under the circumstances of this subsection (4), the treating dentist may bill the injured worker for the difference between the dentist's charges and the amount paid by the insurer.

E. Payment or treatment disputes that cannot be resolved by the parties may be submitted to the Labor Commission's Adjudication Division for decision, pursuant to the Adjudication Division's established forms and procedures.

R612-2-19. Ambulance Charges.

Ambulance charges must not exceed the rates adopted by the State Emergency Medical Service Commission for similar services.

R612-2-20. Travel Allowance and Per Diem.

A. An employee who, based upon his/her physician's advice, requires hospital, medical, surgical, or consultant services for injuries arising out of and in the course of employment and who is authorized by the self-insurer, the carrier, or the Commission to obtain such services from a physician and/or hospital shall be entitled to:

1. Subsistence expenses of $6 per day for breakfast, $9 per day for lunch, $15 per day for dinner, and actual lodging expenses as per the state of Utah's in-state travel policy provided:

(a) The employee travels to a community other than his/her own place of residence and the distance from said community and the employee's home prohibits return by 10:00 p.m., and

(b) The absence from home is necessary at the normal hour for the meal billed.

2. Reasonable travel expenses regardless of distance that are consistent with the state of Utah's travel reimbursement rates, or actual reasonable costs of practical transportation modes above the state's travel reimbursement rates as may be required due to the nature of the disability.

B. This rule applies to all travel to and from medical care with the following restrictions:

1. The carrier is not required to reimburse the injured employee more often than every three months, unless:

(a) More than $100 is involved, or

(b) The case is about to be closed.

2. All travel must be by the most direct route and to the nearest location where adequate treatment is reasonably available.

3. Travel may not be required between the hours of 10:00 p.m. and 6:00 a.m., unless approved by the Commission.

4. Requests for travel reimbursement must be submitted to the carrier for payment within one year of the authorized medical care.

5. Travel allowance shall not include picking up prescriptions unless documentation is provided substantiating a claim that prescriptions cannot be obtained locally within the injured worker's community.

6. The Commission has jurisdiction to resolve all disputes.

R612-2-21. Notice to Health Care Providers.

Any notice from a carrier denying further liability must be mailed to the Commission and the patient on the same day as it is mailed to the health care provider. Where it can be shown, in fact, that a medical care provider and the injured employee have received a denial of further care by the insurance carrier or self-insured employer, further treatment may be performed at the expense of the employee. Any future ratification of the denial by the Commission will not be considered a retroactive denial but will serve to uphold the force and effect of the previous denial notice.

R612-2-22. Medical Records.

A. Workers' compensation insurers, employers and the Utah Labor Commission need access to health information of individuals who are injured on the job or who have a work-related illness in order to process or adjudicate claims, or to coordinate care under Utah's workers' compensation system. Generally, this health information is obtained from health care providers who treat these individuals and who may be covered by federal "HIPAA" privacy rules.

The HIPAA Privacy Rule specifically recognizes the legitimate need of the workers' compensation system to have access to individuals' health information to the extend authorized by State law. See 45 CFR 164.512(1). The Privacy Rule also recognizes the importance of permitting disclosures required by other laws. See 45 CFR 164.512(a). Therefore, disclosures permitted by this rule for workers' compensation purposes or otherwise required by this rule do not conflict with and are not prohibited by the HIPAA Privacy Rule.

B. A medical provider, without authorization from the injured workers, shall:

1. For purposes of substantiating a bill submitted for payment or filing required Labor Commission forms, such as the "Physician's Initial Report of Injury/Illness" or the "Restorative Services Authorization," disclose medical records necessary to substantiate the billing, including drug and alcohol testing, to:

a. An employer's workers' compensation insurance carrier or third party administrator;

b. A self-insured employer who administers its own workers' compensation claims;

c. The Uninsured Employers' Fund;

d. The Employers' Reinsurance Fund; or

e. The Labor Commission as required by Labor Commission rules.

2. Disclose medical records pertaining to treatment of an injured worker, who makes a claim for workers' compensation benefits, to another physician for specialized treatment, to a new treating physician chosen by the claimant, or for a consultation regarding the claimed work related injury or illness.

C. 1. Except as limited in C(3), a medical provider, whose medical records are relevant to a workers' compensation claim shall, upon receipt of a Labor Commission medical records release form, or an authorization form that conforms to HIPAA requirements, disclose his/her medical records to:

a. An employer's insurance carrier or third party administrator;

b. A self-insured employer who administers its own workers' compensation claims;

c. An agent of an entity listed in B(1)(a through e), which includes, but is not limited to a case manager or reviewing physician;

d. The Uninsured Employers Fund;

e. The Employers' Reinsurance Fund;

f. The Labor Commission;

g. The injured worker;

h. An injured workers' personal representative;

i. An attorney representing any of the entities listed above in an industrial injury or occupational disease claim.

2. Medical records are relevant to a workers' compensation claim if:

a. The records were created after the reported date of the accident or onset of the illness for which workers' compensation benefits have been claimed; or

b. The records were created in the past ten years (15 years if permanent total disability is claimed) and;

i. There is a specific reason to suspect that the medical condition existed prior to the reported date of the claimed work related injury or illness or

ii. The claim is being adjudicated by the Labor Commission.

3. Medical records related to care provided by a psychiatrist, psychologist, obstetrician, or care related to the reproductive organs may not be disclosed by a medical provider unless a claim has been made for a mental condition, a condition related to the reproductive organs, or the claimant has signed a separate, specific release for these records.

D. A medical provider, who has treated an injured worker for a work related injury or illness, shall disclose information to an injured workers' employer as to when and what restrictions an injured worker may return to work.

E. Requests for medical records beyond what sections B,

C, and D permit require a signed approval by the director, the medical director, a designated person(s) within the Industrial Accidents Division or an administrative law judge if the claim is being adjudicated.

F. A party affected by the decision made by a person in section E may appeal that decision to the Adjudication Division of the Labor Commission.

G. Upon receipt and within the scope of this rule, an injured worker shall provide those entities or person listed in C(1) the names, address, and dates of medical treatment (if known) of the medical providers who have provided medical care within the past 10 years (15 years for permanent total disability claim) except for those medical providers names in C(3). Labor Commission form number 307 "Medical Treatment Provider List" must be used for this purpose. Parties listed in C(1) of this rule must provide each medical provider identified on form 307 with a signed authorization for access to medical records. A copy of the signed authorization may be sent to the medical providers listed on form 307.

H. An injured worker may contest, for good reason, a request for medical records created prior to the reported date of the accident or illness for which the injured worker has made a claim for benefits by filing a complaint with the Labor Commission. Good reason is defined as the request has gone beyond the scope of this rule or sensitive medical information is contained in a particular medical record.

I. 1. Any party obtaining medical records under authority of this rule may not disclose those medical records, without a valid authorization, except as required by law.

2. An employer may only use medical records obtained under the authority of this rule to:

a. Pay or adjudicate workers' compensation claims if the employer is self-insured;

b. To assess and facilitate an injured workers' return to work;

c. As otherwise authorized by the injured worker.

3. An employer obtaining medical records under authority of this rule must maintain the medical records separately from the employee's personnel file.

J. Any medical records obtained under the authority of this rule to make a determination regarding the acceptance of liability or for treatment of a condition related to a workers' compensation claim shall only be used for workers' compensation purposes and shall not be released, without a signed release by the injured worker or his/her personal representative, to any other party. An employer shall make decisions related only to the workers' compensation claim based on any medical information received under this rule.

K. When any medical provider provides copies of medical records, other than the records required when submitting a bill for payment or as required by the Labor commission rules, the following charges are presumed reasonable:

1. A search fee of $15 payable in advance of the search;

2. Copies at $.50 per page, including copies of microfilm, payable after the records have been prepared and

3. Actual costs of postage payable after the records have been prepared an sent. Actual cost of postage are deemed to be the cost of regular mail unless the requesting party has requested the delivery of the records by special mail or method.

4. The Labor Commission will release its records per the above charges to parties/entities with a signed and notarized release from the injured worker unless the information is classified and controlled under the Government Records Access and Management Act (GRAMA).

L. No fee shall be charged when the RBRVS or the Commission's Medical Fee Guidelines require specific documentation for a procedure or when medical providers are required to report by statute or rule.

M. An injured worker or his/her personal representative may obtain one copy of each of the following records related to the industrial injury or occupational disease claim, at no cost, when the injured worker or his/her personal representative have signed a form by the Industrial Accidents Division to substantiate his/her industrial injury/illness claim;

1. History and physical;
2. Operative reports of surgery;
3. Hospital discharge summary;
4. Emergency room records;
5. Radiological reports;
6. Specialized test results; and
7. Physician SOAP notes, progress notes, or specialized reports.

(a) Alternatively, a summary of the patients records may be made available to the injured worker or his/her personal representative at the discretion of the physician.

R612-2-23. Adjusting Resource-Based Relative Value Scale (RBRVS) Codes.

A. When adjusting any medical provider's bill who has billed per the Commission's adopted RBRVS the adjusting entity shall provide one or more of the following explanations as applies to the down coding when payment is made to the medical provider:

1. Code 99202, 99203, 99204 or 99205 - the submitted documentation for a new patient did not meet the three key components lacking in the level of history for the code billed.

2. Code 99202, 99203, 99204 or 99205 - the submitted documentation for a new patient did not meet the three key components lacking in the level of examination for the code billed.

3. Code 99202, 99203, 99204 or 99205 - the submitted documentation for a new patient did not meet the three key components lacking in the level of medical decision making for the code billed.

4. Code 99202, 99203, 99204, or 99205 - the submitted documentation for a new patient did not meet the three key components lacking in the level of history and exam for the code billed.

5. Code 99213, 99214 or 99215 - the submitted documentation for an established patient did not meet the two key components lacking in the level of history and exam that the code billed.

6. Code 99213, 99214 or 99215 - the submitted documentation for an established patient did not meet the two key components lacking in the level of history and medical decision making for the code billed.

7. Code 99213, 99214 or 99215 - the submitted documentation for the established patient did not meet the two key components lacking in the level of exam and medical decision making for the code billed.

B. The above explanations may be abbreviated, with a legend provided, to accommodate the space of computerized messages.

R612-2-24. Review of Medical Payments.

A. Health care providers and payors are primarily responsible to resolve disputes over fees for medical services between themselves. However, in some cases it is necessary to submit such disputes to the Division for resolution. The Commission therefore establishes the following procedure for submission and review of fees for medical services.

1. The provider shall submit a bill for services rendered, with supporting documentation, to the payor within one year of the date of service;

2. The payor shall evaluate the bill according to the guidelines contained in the Commission's Medical Fee Guidelines and RBRVS and shall pay the provider the appropriate fee within 45 days as required by Rule R612-2-13.

3. If the provider believes that the payor has improperly computed the fee under the RBRVS, the provider or designee shall request the payor to re-evaluate the fee. The provider's request for re-evaluation shall be in writing, shall describe the specific areas of disagreement and shall include all appropriate documentation. The provider shall submit all requests for re-evaluation to the payor within one year of the date of the original payment.

4. Within 30 days of receipt of the written request for re-evaluation, the payor shall either pay the additional fee due the provider or respond with a specific written explanation of the basis for its denial of additional fees. The payor shall maintain proof of transmittal of its response.

B. If the provider continues to disagree with the payor's determination of the appropriate fee, the provider shall submit the matter to the Division by filing with the Division a written explanation of the disagreement. The provider's explanation shall include copies of:

1. The provider's original bill and supporting documentation;

2. The payor's initial payment of that bill;

3. The provider's request for re-evaluation and supporting documentation; and

4. The payor's written explanation or its denial of additional fees.

C. The Division will evaluate the dispute according to the requirements of the Medical Fee Guidelines and RBRVS and, if necessary, by consulting with the provider, payor, or medical specialists. Within 45 days from the date the Division receives the provider's request, the Division will mail its determination to both parties.

D. Any party aggrieved by the Division's determination may file an application for hearing with the Division of Adjudication to obtain formal adjudication of the dispute.

E. A payor seeking reimbursement from a provider for overpayment of a bill shall submit a written request to the provider detailing the circumstances of the payment requested within one year of submission of the bill.

1. Providers should make appropriate reimbursements, or respond in writing detailing the reasons why repayment will not be made, within 90 days or receipt of a written request from a payor.

2. If a dispute as to reimbursement occurs, an aggrieved party may request resolution of the dispute by the Labor Commission.

R612-2-25. Injured Worker's Right to Privacy.

A. No agent of the employer or the employer's insurance carrier shall be present during an injured worker's visit with a medical provider, unless agreed upon by the claimant.

B. If an agent of the employer or the employer's insurance carrier is excluded from the medical visit, the medical provider and the injured worker shall meet with the agent at the conclusion of the visit so as to communicate regarding medical care and return to work issues.

R612-2-26. Utilization Review Standards.

A. As used in this subsection:

1. "Payor" means a workers' compensation insurance carrier, a self-insured employer, third-party administrator, uninsured employer or the Uninsured Employers' Fund, which is responsible for payment of the workers' compensation claim.

2. "Health Care Provider" means a provider of medical services, including an individual provider, a health-service plan, a health-care organization, or a preferred-provider organization.

3. "Request for Authorization" means any request by a physician for assurance that appropriate payment will be made for a course of proposed medical treatment, including surgery or hospitalization, or any diagnostic studies beyond plain X-rays.

4. "Utilization Review," as authorized in Section 34A-2-111, is a process used to manage medical costs, improve patient care, and enhance decision-making. Utilization review includes, but is not limited to, the review of requests for authorization to treat, and the review of bills, for the purpose of determining whether the medical services provided were or would be necessary, to treat the effects of the injury/illness. Utilization review does not include bill review for the purpose of determining whether the medical services rendered were accurately billed. Nor does it include any system, program, or activity in connection with making decisions concerning whether a person has sustained an injury or illness which is compensable under Section 34A-2 or 34A-3.

5. "Reasonable Attempt" is defined as at least two phone calls and a fax, or three phone calls, within five business days from date of the payor's receipt of the physician's request for review.

B. Any utilization review system shall establish an appeals process which utilizes a physician(s) for a final decision by the insurer, should an initial review decision be contested. The payor may establish levels of review that meet the following criteria:

1. Level I--Initial Request and Review. A payor may use medical or non-medical personnel to initially apply medically-based criteria to a request for authorization for payment of a specific treatment. The treating physician must send all the necessary documentation for the payor to make a decision regarding the treatment recommended. The payor must then notify the physician within five business days of the request for authorization of payment for the treatment, by a method which provides certification of transmission of the document, of either an acceptance or a denial of the request. A denial for authorization of payment for a recommended treatment utilizing the Commission's form, Form 223, must be sent to the provider with the criteria used in making the determination to deny payment for the treatment. A copy of the denial must also be mailed to the claimant. Level I--Request and Review does not include authorization requests for services billed from the Restorative section of the Resource-Based Relative Value Scale (RBRVS). Requests for authorization for restorative services are governed by rule R612-2-3(B).

2. Level II--Review. A physician, who has been denied authorization of payment for treatment, or has received no response within five business days from the request for authorization for payment at Level I review, may request a physician's review by sending the completed portion of the Commission form 223 to the payor. Such a request for review may be filed by any physician who has been denied authorization for payment for restorative services beyond the initial eight visits as authorized by Rule R612-2-3(B). The requesting physician must include the times and days that he/she is available to discuss the case with the reviewing physician, and must be reasonably available during normal business hours. The payor's physician representative must complete the review within five business days of the treating physician's request for review. Before the insurer's physician representative may issue a denial of an authorization for payment to treat, a reasonable effort must have made to contact the requesting treating physician to discuss the differing aspects of the case. Failure by the payor to respond within five business days, by a method which provides certification of transmission, to a denial for authorization for payment for treatment, shall constitute an authorization for payment of the treatment. The payor's denial to pay for the recommended treatment must be issued on Commission's form 223, and the denial must be accompanied by the criteria that was used in making the decision to deny authorization, along with the name and speciality of the reviewing physician. The denial to authorize payment for treatment must then be sent to the physician, the claimant, and

the Commission. The payor shall notify the Commission if an additional five days is needed in order to contact the treating physician or to review the case. An additional extension of time may be requested from the Commission to accommodate highly unusual circumstances or particularly difficult cases.

C. Upon receipt of denial of authorization for payment for medical treatment at Level II, the Commission will facilitate, upon the request of the claimant, the final disposition of the case. If the parties agree, the medical dispute may be resolved by the Commission through binding mediation or medical review. If there is not agreement among the parties, the Commission will resolve the dispute through formal adjudication. The payor shall be responsible for sending the claimant the Commission appeals information when the denial for authorization for payment for medical treatment is sent to the claimant.

D. If the medical treatment requested is not an emergency, and treatment is rendered by the physician after, receiving notice of the utilization standards encompassed in this rule, the following shall apply:

1. The Commission shall, if the disputed medical treatment is ultimately determined to be compensable as an expense necessary to treat the industrial injury or occupational disease, order that the physician be reimbursed at only 75% of the of the amount otherwise payable had appropriate authorization been timely obtained. The injured worker shall not be liable for any additional payment to the physician above the 75%.

2. Neither the worker's employer or its workers' compensation insurer shall be liable for any portion of the cost of disputed medical treatment, if that treatment is ultimately determined not to be compensable as an expense necessary to treat an industrial injury or occupational disease.

3. A worker may become liable for the cost of the disputed medical treatment, if that treatment is ultimately determined not to be compensable as an expense necessary to treat the industrial injury or occupational disease.

4. Except for any co-pays or deductibles under the worker's health insurance plan, the penalty provision in D(1) and D(3) shall not apply if the physician performs the medical treatment in question, having been preauthorized in writing to do the same by a health insurer or other non-worker's compensation insurance payor.

5. The penalty provisions in D(1) shall not apply to medical treatment rendered in emergency situations, which are defined as a threat to life or limb.

6. The Commission shall notify a physician, in writing, of reported violations of this rule. Repeated violations of this rule by a physician may result in a report from the Commission to the Department of Commerce, Division of Occupational/Professional Licensing.

KEY: workers' compensation, fees, medical practitioner
July 11, 2006 **34A-2-101 et seq.**
Notice of Continuation May 28, 2003 **34A-3-101 et seq.**
34A-1-104

R612. Labor Commission, Industrial Accidents.
R612-7. Impairment Ratings for Industrial Injuries and Diseases.
R612-7-1. Authority.

This rule is enacted under the authority of Sections 34A-1-104 and 34A-2-412.

R612-7-2. Definition.

The definition of impairment in Section 34A-2-102 applies to this rule.

R612-7-3. Method for Rating.

A. For rating all impairments, which are not expressly listed in Section 34A-2-412, the Commission incorporates by reference "Utah's 2006 Impairment Guides" as published by the Commission for all injuries rated on or after July 11, 2006. For those conditions not found in "Utah's 2006 Impairment Guides," the American Medical Association's "Guides to the Evaluation of Permanent Impairment, Fifth Edition" are to be used.

KEY: workers' compensation, impairment ratings
July 11, 2006 34A-1-104
Notice of Continuation May 28, 2003 34A-2-412

R652. Natural Resources; Forestry, Fire and State Lands.
R652-20. Mineral Resources.
R652-20-100. Authority.

This rule implements Section 65A-6-2 which authorizes the Division of Forestry, Fire and State Lands to establish rules for the issuance of mineral leases and management of state owned lands and mineral resources.

R652-20-200. Mineral Leases--Issuance.

Applications are made for and the division shall issue separate mineral leases on the following classifications of mineral substances:

1. Metalliferous Minerals - shall include Aluminum, Antimony, Arsenic, Beryllium, Bismuth, Chromium, Cadmium, Cerium, Columbium, Cobalt, Copper, Fluorspar, Gallium, Gold, Germanium, Hafnium, Iron, Indium, Lead, Mercury, Manganese, Molybdenum, Nickel, Platinum, Group Metals, Radium, Silver, Selenium, Scandium, Rare Earth Metals, Rhenium, Tantalum, Tin, Thorium, Tungsten, Thallium, Tellurium, Vanadium, Uranium, Ytterbium, and Zinc.

2. Oil, Gas, and Hydrocarbon - shall include oil, natural gas, elaterite, ozocerite, and other hydrocarbons (whether the same be found in solid, semi-solid, liquid, vaporous, or any other form) including tar, bitumen, asphaltum, and maltha, and other gases. The oil, gas, and hydrocarbon category shall not include coal, oil shale, or gilsonite.

3. Oil Shale - shall include any sedimentary rock containing kerogen.

4. Coal - shall include black or brownish-black solid fossil fuel that has been subjected to the natural processes of coalification and which falls within the classification of coal by rank: I anthracite, II Bituminous, III Sub-Bituminous, IV Lignitic.

5. Potash - shall include the chlorides, sulfates, carbonates, borates, silicates, and nitrates of potassium.

6. Phosphate - shall mean any phosphate rock containing one or more phosphate minerals such as calcium phosphate and shall include all phosphatized limestones, sandstones, shales, and igneous rocks.

7. Clay Minerals - Kaolin, Bentonite, Ball Clay, Fire Clay, Fuller Earth, Common Clay, and Shale.

8. Building Stone and Limestone - Flagstone, Granite, Quartzite, Sandstone, Slate, Marble, Travertine, Dolostone, and Limestone whether dimensioned crushed, or calcined.

9. Gemstone and Fossil - Agate, Amber, Beryl, Calcite, Chert, Coral, Corundum, Diamond, Feldspar, Garnet, Geodes, Jade, Jasper, Olivine, Opal, Pearl, Quartz, septarian Nodules, Spinel, Spodumene, Topaz, Tourmaline, Turquoise, and Zircon; and Coquina, Petrified Wood, Trilobites, and Other Fossilized Flora and Fauna.

10. Gypsum - Alabaster, Anhydrite, Gypsite, Satin Spar, and Selenite.

11. Gilsonite.

12. Volcanic Material - Lava Rock; Volcanic Pyroclastic Material including Ash, Blocks, Bombs, and Tuff; and Volcanic Glass Material including Perlite, Pitchstone, Pumice, Scoria, and Vitrophyre.

13. Industrial Sands - Abrasive Sands, Filler Sands, Foundry Sands, Frac Sands, Glass Sands, Lime Sands, Magnetic Sands, Silica Sands, and other uncommon sands used in industrial applications.

14. Mineral Salts (Great Salt Lake) - Refer to R652-20-3100, R652-20-3200.

R652-20-300. Non-Classified Minerals.

A person may make application for and the division may issue leases covering other minerals not included in R652-20-200 classifications. These leases are on terms and conditions as the division finds to be in the best interest of the state of Utah.

R652-20-400. Close Association Minerals.

A mineral lease issued as to any category shall include other minerals found in a close association with the expressly leased minerals when the expressly leased minerals cannot reasonably be mined or removed separately.

R652-20-600. Bed of Navigable Lake or River.

A mineral lease on any section of land lying in the bed of any navigable lake or river will normally only be issued inclusive of all lake or river bed lands available for lease within the section.

R652-20-700. Non-Contiguous Tracts.

A separate application is filed for each non-contiguous tract of land sought to be leased, unless all of the tracts sought to be leased fall entirely within a single township. This rule shall not apply to mineral salt leases within Great Salt Lake.

R652-20-800. Size of Leasable Tract.

Except for good cause shown, no mineral lease is issued for a tract less than a quarter-quarter section or surveyed lot, except where the land owned by the state within any quarter-quarter section or surveyed lot is less than the whole thereof, in which case the lease will be issued only on the entire area owned and available for lease by the state within the quarter-quarter section or surveyed lot.

R652-20-900. Lease Acreage Limitations.

Mineral leases are limited to no more than 2,560.00 acres or four sections. The acreage limitation shall not apply to mineral salt leases within Great Salt Lake (R652-20-3100).

R652-20-1000. Rentals and Royalties.

1. Rentals

(a) Rental for the first lease year is at the rate of $1 per acre, or fractional part thereof, per annum, regardless of percentage of state ownership in any given acre of land. Subsequent rental paying dates shall be on or before the annual anniversary date of the effective date of the lease, the effective date of the lease being the first day of the month following the date on which the lease is issued.

(b) Any overpayment of advance rental occurring from mineral lease applicant's incorrect listing of acreage of lands described in the application may be credited toward the applicant's rental account.

(c) Minimum annual rental on any mineral lease is $20.

(d) The division shall accept lease payments made by any party, but the acceptance of lease payments shall not be deemed to be a recognition of any interest of the payee in the lease.

2. Royalty Provisions

The following production royalty rates shall apply to all classified mineral leases, as listed in R652-20-200, issued on or after the effective date of the applicable adjusted royalty rate. Mineral leases entered into prior to the effective date of adjusted royalty rates shall retain the royalty rate as specified in the lease agreement.

(a) Royalty rates on substances under oil, gas, and hydrocarbon leases.

TABLE

Oil	12-1/2%	-	Sulfur	12-1/2%
Gas	12-1/2%	-	Other hydrocarbon substances	6-1/4%(1)

(1) The rental paid for the lease year shall be credited against production royalties as they accrue for that lease year, but not against advance or minimum royalties unless allowed by the mineral lease.

(2) During the first ten years of production and increasing annually thereafter at the rate of 1% to a maximum of 16-2/3%.

(b) Royalty rates on mineral commodities, coal, and solid hydrocarbons.

TABLE

Coal	8%	Phosphate	5%
Oil Shale (1)	5%	Potash and Associated Minerals	5%
Asphaltic/Bituminous Sands (2)	7%	Gypsum	5%
Gilsonite	10%	Clay	5%
Met. Minerals:		Geothermal Resources	10%
Fissionable	8%	Building Stone/Limestone (except 2% for calcined lime)	5%
Non-Fissionable	4%	Volcanic Materials	5%
Gemstone/Fossil(3)	10%	Industrial sands	5%
Magnesium	1-1/2%		
Salt (Sodium chloride) (4)	$0.50/dry ton		

(1) 5% during the first five years of production and increasing annually thereafter at the rate of 1% to a maximum of 12-1/2%.

(2) May be escalated after the first five years of production at the rate of 1% per annum to maximum of 12-1/2%.

(3) Requires payment of annual minimum royalty of $5 per acre.

(4) Beginning January 1, 2001, the royalty rate per ton will be adjusted annually by the Producer Price Index for Industrial Commodities as provided under R652-20-1000(e) using 1997 as the base year.

(c) Notwithstanding the terms of oil, gas, and hydrocarbon lease agreements, gas and natural gas liquid reports, and their required royalty payments, are required to be received by the division on or before the last day of the second month succeeding the month of production. This extension of payment and reporting time for gas and NGL does not alter the payment and reporting time for oil and condensate royalty which must be received by the division on or before the last day of the calendar month succeeding the month of production, as currently provided in the lease form.

(d) Readjustment of salt royalties on royalty agreements negotiated before July 9, 1992.

i) The division is obligated to receive full value for the public trust resources leased to persons for profit. This obligation includes obtaining a fair royalty for salt produced from the waters of Great Salt Lake. The division shall readjust the royalty rate for sodium chloride on all royalty agreements negotiated prior to July 9, 1992. The royalty rate will be readjusted in accordance with analysis done by the Utah Bureau of Economic and Business Research, Office of Energy and Resource Planning and division staff and with a rule change approved by the Board of State Lands and Forestry on July 9, 1992 to increase the royalty on salt from $0.10 per ton to a rate per ton approximately equivalent to three percent of gross value of dry salt. The division has determined this rate to be $0.50 per dry ton. The royalty rate shall be phased in as provided in Subsections (ii) and (iii).

ii) Effective January 1, 1997, the royalty rate for sodium chloride shall be $0.20 per dry ton. Effective January 1, 1998 and on each January 1 thereafter, the royalty rate for sodium chloride shall be increased by the lesser of $0.10 per dry ton or $0.10 per dry ton times the percent of salt in brine by weight at the point of intake for each lessee divided by the percent of salt by weight derived from samples at sampling point LVG4 as measured by the Utah Geological Survey for the current year. The method for calculating the percent salt in brine from Utah Geological Survey and company data shall be determined by the division, but shall include a weighted average of samples taken at low and high water and of samples taken at different depths at the sampling point. The point of sampling for each producer shall be determined by the division after considering factors including the location of the intake canal, point of diversion for water rights, and placement of intake pumps.

iii) The annual adjustment under Subsection(ii) shall continue until the royalty rate for a lessee is $0.50 per dry ton or an amount per ton as determined under Subsection (e), whichever is greater, at which time subsequent annual adjustments shall be determined in accordance with Subsection (e).

(e) Effective January 1, 2001 or the date on which the royalty paid by a lessee reaches $0.50 per dry ton, whichever is later, the royalty rate for sodium chloride will be adjusted annually by the Producer Price Index for Industrial Commodities using the following formula: $.50 times the Producer price index for Industrial Commodities for the current year divided by the Producer Price Index for Industrial Commodities for 1997.

R652-20-1100. Rental Credit.

The rental paid for the lease year shall be credited only against the production royalties as they accrue for that lease year.

R652-20-1200. Record of Application and Deficient Applications.

Applications for mineral leases, except in the case of simultaneous filing, are received for filing in the office of the division during office hours. Except as provided, all the applications received, whether by U.S. Mail or by personal delivery over the counter, are immediately stamped with the date of filing. If an application is determined to be deficient, it is returned to the applicant with instructions for its amendment or completion.

If the application is resubmitted in satisfactory form within 15 days from the date of the instructions, it shall retain its original filing time. If the application is resubmitted at any later time, it is deemed filed at the time of resubmission.

R652-20-1300. Order of Filing Conflict.

Except in cases of simultaneous filing, in the event that two or more applications for the same land bear a date stamp showing the said applications were filed at the same time, then the division shall determine which applicant is awarded a lease by public drawing.

R652-20-1400. Newly Acquired Lands.

The term "newly acquired lands" as used in this rule shall include those lands transferred to the state of Utah by the federal government. If these transferred lands are encumbered by a federal mineral lease at the time of transfer, they are deemed to be newly acquired as of the date when the lands first become available for leasing by the state and not as of the date when the encumbered lands are first transferred to the state.

R652-20-1500. Minimum Bid/Simultaneous Filing.

The bid shall at least equal the rental rate for the substance to be leased and shall be the rental for the first year of the lease.

R652-20-1600. Posting Dates/Simultaneous Filing.

Notices of the offering of lands for simultaneous filing will run for 15 working days and are posted at times to insure that all bid openings are on the last Monday of that month.

R652-20-1700. Sealed Envelopes/Simultaneous Filing.

Applications shall be submitted in sealed envelopes marked for simultaneous filing.

R652-20-1800. Application Refund.

If application, or any part thereof, is rejected, money tendered for rental or rejected portion may be refunded or credited.

R652-20-1900. Application Withdrawal.

Should an applicant desire to withdraw his application, the applicant must make a written request. If the request is received prior to the time the division approves the application, all money tendered by the applicant, except the filing fee, is refunded. If the request is received after approval, then, unless the applicant accepts the offered lease, all money tendered is forfeited to the state.

R652-20-2000. Application Withdrawal Under Simultaneous Filing.

Applicants desiring to withdraw an application which has been filed under the simultaneous filing procedure, must make a written request. If the request is received before sealed bids for rental have been opened, all money tendered by the applicant, except the filing fee, shall be refunded. If the request is received after sealed bids for rental have been opened, and if the applicant's rental offer is high, then unless the applicant accepts the offered lease, all money tendered is forfeited to the state.

R652-20-2100. Failure of State's Title.

Should it be found necessary to reject an application or to terminate an existing lease, excepting applications or leases approved through simultaneous leasing procedure, due to failure of state's land title, then only advance rental paid for the year in which title failure is discovered is refunded. All other advance rentals and fees paid on the application or lease are forfeited to the state.

R652-20-2200. Lease Provisions.

In order to affect the purposes of development of mineral resources owned by the state of Utah, the following provisions, terms and conditions shall apply to all mineral lessees/leases:

1. Preference Rights for Unleased Minerals--Any state mineral lessee who discovers any minerals on lands leased from the state of Utah which are not included within his lease shall have a preference right to a state mineral lease covering these unleased minerals, provided the unleased minerals at the time of discovery are not included within a mineral lease or mineral lease application of another party. The preference right lease is issued upon a lease form in current use by the state of Utah. The preference right lease is subject to the rental, royalty, and development requirements as provided in the lease form. The preference right shall not extend to any unleased minerals on state lands which have been withdrawn from mineral leasing. The preference right shall continue for a period of 60 days after the discovery of unleased minerals, provided the applicant notifies the division within the ten days after the discovery and makes application to lease the unleased minerals within 60 days after the date of discovery.

2. Lease Term Exclusion--If drilling operations are being diligently pursued on the leased premises at the end of the term, including any valid extension of any oil and gas lease, the term of the lease shall automatically extend for a term of two additional years. Upon written application by lessee and satisfactory showing of due diligence in prosecution of drilling operations, an extension rider is issued by the division. Application for extension rider shall be filed by the lessee within 30 days prior to expiration of the fixed term of any valid extension of the lease.

3. Cultural, Paleontological, and Biological Resources--The division may require the lessee to:

(a) provide a cultural, paleontological or biological survey on lands under mineral lease; and

(b) be responsible for reasonable mitigative actions as specified by the division. Surveys conducted in performance for another state or federal agency may be submitted to the division when the survey is also required by the division.

4. Geologic Data--Lessee or operator shall keep a log of geologic data accumulated or acquired by lessee within the land area described in the lease. This log shall show the formations encountered and any other geologic information reasonably required by lessor and shall be available upon request by the division. A copy of the log, as well as any data related to exploration drill holes, shall be deposited with the division upon termination of the lease.

5. Assignments, Subleases and Overriding Royalties

(a) Definitions

i) A total assignment is an assignment of undivided total interest.

ii) An interest assignment is an assignment of any working interest less than the undivided total, except overriding royalty interests.

iii) A partial assignment is an assignment of part of the lands in a lease and a segregation of the assigned lands into a separate lease.

(b) Any mineral lease may be assigned or subleased as to all or part of the acreage, to any person, firm, association, or corporation qualified to hold a state lease, provided, however, that all assignments and subleases are approved by the division. No assignment or sublease is effective until approval is given. Any assignment or sublease made without approval is void.

(c) Unless otherwise authorized by the division, an assignment of a portion of a lease covering less than a quarter-quarter section, a surveyed lot, an assignment of a separate zone, or a separate deposit is not approved.

(d) An assignment or sublease shall take effect the first day of the month following the approval of the assignment or sublease by the division. The assignor or sublessor or surety, if any, shall continue to be responsible for performance of any and all obligations as if no assignment or sublease had been executed until the effective date of the assignment or sublease. After the effective date of any assignment of sublease, the assignee or sublessee is bound by the terms of the lease to the same extent as if the assignee or sublessee were the original lessee, any conditions in the assignment to the contrary notwithstanding.

(e) A partial assignment of any lease shall segregate the assigned or retained portions thereof and, after the effective date, release or discharge the assignor from any obligation thereafter accruing with respect to the assigned lands. Segregated leases shall continue in full force and effect for the primary term of the original lease or as further extended pursuant to the terms of the lease.

(f) An assignment or transfer of a lease, interest herein, or of an overriding royalty must be a good and sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the serial number of the lease, the land involved, and the name and address of the assignee, and the interest transferred.

(g) An assignment must affect or concern only one lease or a portion thereof, except for good cause shown.

(h) Any assignment which would create a cumulative overriding royalty in excess of the production royalty payable to the state as landowner of the state mineral lease will not be approved by the division. Any agreement to create or any assignment creating overriding royalties or payments out of production removed or sold from the leased lands is subject to the division, after notice and hearing, to require the proper parties thereto to suspend or modify the royalties or payments out of production in such a manner as may be reasonable when and during such period of time as they may constitute any undue economic burden upon the reasonable operations of this lease.

(i) Assignment instructions are as follows:

i) Prepare and execute the assignments in duplicate, complete with acknowledgments.

ii) Each copy of the assignment shall have attached thereto an acceptance of assignment duly executed by the assignee.

iii) All assignments forwarded to or deposited with the division must be accompanied by the prescribed fee.

6. Lease Amendments--When the division approves the amendment of existing mineral leases by substituting a new lease form for the existing form(s), the amended lease will retain the effective date of the original lease.

R652-20-2300. Lessee Rights.

Mineral exploration, oil and gas drilling, or other operations which disturb the surface of lands contained within or above state mineral lease lands require surface rehabilitation of the disturbed area as approved by the division, and as required by the laws administered by the Utah Division of Oil, Gas and Mining.

R652-20-2400. Operations Notification Period.

1. At least 60 days prior to the commencement of mineral exploration, mining or other operations which disturb the surface of lands contained within or above a state mineral lease, lessee shall submit plans for operations to the Division of Forestry, Fire and State Lands. The division shall review and make an environmental assessment and endorse or stipulate changes in lessee's plan of operation within the review period. Where feasible, the division's review shall be conducted concurrently with those of other agencies. Review by another state or federal agency may be accepted by the division in lieu of a separate division review. Following review, the division may require the lessee to adopt a special rehabilitation program required by lessor for the particular property in question. Lessee shall not commence operations upon the land without a plan of operation approved by the division.

2. Before any operator or lessee shall commence actual drilling operations of any well or prior to commencing any surface disturbance associated with the activity on lands contained within a state mineral lease, the operator or lessee shall simultaneously file with the division a legible copy of the application for permit to drill (APD), as is filed with the Division of Oil, Gas, and Mining.

The division will review any request for drilling operation and will grant approval, providing that the contemplated location and operations are not in violation of any rules, order, or policy. Division approval of the application for permit to drill on mineral resources administered by the Division of Forestry, Fire and State Lands is required prior to approval by the Division of Oil, Gas, and Mining. Notice of approval by the Division of Forestry, Fire and State Lands will be given in an expeditious manner to the Division of Oil, Gas, and Mining.

3. All lessees or designated operators under state mineral leases have responsibility to be aware of notification requirements and operating rules promulgated by the Division of Oil, Gas and Mining with regard to mineral exploration, mining, or oil and gas drilling on lands within the state of Utah. Lessees or operators shall fully comply with all the rules or requirements and provide timely notifications, mine plans, well completion reports, or other information as may be requested.

R652-20-2500. Multiple Mineral Development (MMD) Area Designation.

1. The division may designate any state land under its authority as a multiple mineral development area. In designated multiple mineral development areas the division may require, in addition to all other terms and conditions of the mineral lease, that the lessee furnish a bond or evidence of financial responsibility as specified by the division, to assure that the state and other mineral lessees shall be indemnified and held harmless from and against unreasonable and all unnecessary damage to mineral deposits or improvements caused by the conduct of the lessee on state lands. Written notice shall be given to all mineral lessees holding a mineral lease within the multiple mineral development area. Thereafter, in order to preserve the value of mineral resources the division may impose any reasonable requirements upon any mineral lessee who intends to conduct any mineral activity within the multiple mineral development area. The lessee is required to submit advance written notice of any activities to occur within the multiple mineral development area to the division and any other information that the division may request. All activities within the multiple mineral development area are to be deferred until the division has specified the terms and conditions under which the mineral activity is to occur and has granted specific permission to conduct the activity. The division may hold public meetings regarding the mineral development within the multiple mineral development area.

2. The division may grant a mineral lease extension under a multiple mineral development area designation, providing that the mineral lessee or operator requests an extension prior to the lease expiration date, and that the lessee or operator would have otherwise been able to request a lease extension as provided in Section 65A-6-4(4).

R652-20-2600. Term of Mineral Lease.

The term of all mineral leases included in any cooperative or unit plan of oil and gas development or operation in which the division has joined, or shall hereafter join, shall be extended automatically for the term of the unit or cooperative agreement. Rentals on leases so extended shall be at the rate specified in the lease, subject to the change in rates as may be demanded by the lessor on any lease readjustment date as authorized by the lease.

R652-20-2700. Lease Continuation.

Any lease which is eliminated from any such cooperative or unit plan of development or operation, or any lease which is in effect at the termination of the cooperative or unit plan of development or operation, unless relinquished, shall continue in effect for the fixed term of the lease, or for two years after its elimination from the plan or agreement or the termination thereof, whichever is longer, and so long thereafter as the leased substances are produced in paying quantities. Rentals under the lease shall continue at the rate specified in the lease.

R652-20-2800. Bonding.

1. Prior to commencement of any operations on a state mineral lease, the lessee or designated operator shall post with the division a bond in the form and amount as may be determined by the division to assure compliance with all terms and conditions of the lease.

2. The bond required for an oil and gas, geothermal, or minerals exploration project shall be:

(a) a statewide blanket bond in the minimum amount of $80,000 covering exploration operations on all state of Utah mineral leases held by lessee which shall be in an amount at least equal to the accumulative amount of individual project bonds as set forth below; or

(b) a project bond covering an individual exploration project involving one or more state of Utah mineral leases. The amount of the project bond will be determined by the division at the time lessee gives notice of proposed operations. This bond will not be less than $5,000 per acre of surface disturbance, or in the case of an oil and gas or geothermal well:

TABLE

WELL DEPTH	BOND AMOUNT
0- 3,000 ft.	$10,000
3,000-10,000 ft.	20,000
Greater than 10,000 ft.	40,000

3. The bond required for construction and operation of a mine or minerals production plant shall be determined by the

division on basis of an approved mining and reclamation plan or plan of development and operations. This bond may be posted with the Division of Oil, Gas and Mining providing written consent is first obtained from the Division of Forestry, Fire and State Lands. Existing project bonds on the same lease(s) may be incorporated into this mine or minerals production plant bond.

4. All bonds posted on mineral leases may be used for payment of all monies, rentals, and royalties, due the state as lessor; including:

(a) costs of reclamation, damages to the surface and improvements thereon, and any other costs which arise by operation of the lease and accrue to the lessor.

(b) lessee's compliance with all other terms and conditions of the lease, and rules, and policies relating thereto of the Board of State Lands and Forestry, Division of Forestry, Fire and State Lands, Board of Oil, Gas, and Mining, and Division of Oil, Gas, and Mining.

This bond shall be in effect even if the lessee or designated operator has conveyed all or part of the leasehold interest to a sublessee(s), assignee(s), or subsequent operator(s), until the bond may be released by the state as lessor, or until the lessee or designated operator fully satisfies the above-described obligations, or until the bond is replaced with a new bond posted by a sublessee, assignee, or new designated operator.

5. Bonds may be accepted in any of the following forms:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. The state will not be responsible for any investment returns on cash deposits.

(c) Certificate of deposit in the name of "Utah Division of Forestry, Fire and State Lands and lessee, c/o lessee's address", with an approved state or federally insured banking institution registered in Utah. The certificate of deposit must have a maturity date no greater than 12 months, be automatically renewable, and be deposited with the division. The lessee will be entitled to and receive the interest payments. All certificates of deposit must be endorsed by the lessee prior to acceptance by the director.

(d) Other forms of surety as may be acceptable to the Utah Division of Forestry, Fire and State Lands.

6. Any lessee or designated operator forfeiting a bond is denied approval of any future exploration or mining on state lands, except by compensating the state for previous defaults and posting the full bond amount estimated for reclamation or lease performance and reclamation on subsequent operations.

7. Bonds may be increased at any time in reasonable amounts as the Division of Forestry, Fire and State Lands may order, providing lessor first gives lessee 30 days written notice stating the increase and the reason for the increase.

8. The division shall waive the filing of a bond for any period during which a bond meeting the requirements of this section is on file with another agency.

R652-20-3000. Mineral Lease Application--Lake or Stream Bed.

1. Applications for mineral leases for lands within the bed of a lake or stream will be rejected unless:

(a) the lake or stream has been judicially determined to have been navigable at the time of statehood or was, in the reasonable judgment of the division, navigable at the time; or

(b) the issuance to applicant of a lease on the navigable lake or navigable stream bed would serve to protect the applicant as the owner, or holder of mineral rights, on abutting riparian uplands.

2. Any lessee or operator proposing, or conducting, exploration or mining operations in the bed of a navigable lake or stream shall, prior to the commencement of operations, file the notification and obtain such permits as may legally be required by any and all local, state, or federal governmental agencies, having jurisdiction over these activities. In no event will the lessee or operator cause pollution or salinity in any navigable lake or stream to exceed these limits which are set by ordinance, law or inter-governmental treaty.

R652-20-3100. Great Salt Lake--Salt and Other Mineral Resources.

1. Salts and other minerals in the waters of Great Salt Lake are reserved to the state and shall be sold only upon a royalty basis and under the terms and provisions as specified in the royalty agreement as herein provided for in this rule and all other terms and conditions as the division deems necessary in the best interest of the state.

2. The term "salts and other minerals" as used in this rule shall include all salts and other minerals contained in solution or suspension in the waters of Great Salt Lake, and shall not include salts or other minerals that have precipitated out or have settled on the bottom of the lake.

3. Royalty agreement applications shall be made upon forms provided by the division and shall be in accordance with the laws and rules governing applicant qualifications, application and lease form.

4. Royalty agreements for salts and other minerals contained in waters of Great Salt Lake, shall require the following advance royalty payment which may be applied against royalties which may thereafter accrue during the same calendar year for which the advance royalty is paid.

(a) $10,000 per annum for all royalty agreements in which the lessee therein also obtains a lease of land within Great Salt Lake.

(b) $5,000 per annum for all royalty agreements in which the lessee therein does not obtain a surface or mineral lease of state lands within Great Salt Lake.

c. Royalty agreements for sodium chloride salts shall require on or before January 1st of each year, an advance royalty of not less than $1,000, which sum may be applied against royalties which may thereafter accrue during the same calendar year for which the advance royalty is paid.

5. Royalties shall be paid upon a calendar year basis. The minimum royalty for the balance of the calendar-year in which the agreement is executed shall be prorated in proportion to the time remaining.

6. The gross market value of the products shipped, upon which the royalty payments are to be paid, shall not include amounts expended for bags, boxes, receptacles, or other costs directly related to or necessary in the shipping of any product.

7. Royalty agreements shall contain provisions necessary to effect the purpose of this rule, including: the rights of the vendee; the term of the royalty agreement; annual rental and royalties; rights reserved to the vendor; bonds; reporting of technical data; operation requirements; vendees consent to suit in any dispute arising under the terms of the royalty agreement or as a result of operations carried on under the royalty agreement; procedures for notification; transfers of interest by vendee; establishment of water rights and water usage; discovery of other minerals; terms and conditions of royalty agreement forfeiture; protection of the state from liability from all actions of the vendee; and all other provisions that the division deems necessary to protect the interest of the state and to fulfill the purpose of this rule.

R652-20-3200. Mineral Salts Leases Within Great Salt Lake.

1. Mineral leases for mineral salts on land within Great Salt Lake, shall be issued pursuant to the provisions of this rule, and other applicable laws and rules governing the issuance of mineral leases on state owned lands or mineral resources.

2. Definitions: The term "state land within Great Salt Lake", as used in this section, shall include all state lands lying

within the exterior boundary lines of the meander-line around the lake as surveyed by the United States. The term "salts", as used in this section, shall mean, chlorides, sulphates, carbonates, boratex, silicates, oxides, nitrates and associated minerals existing at the surface and to the extent of their continuous depth, but shall not include the salts and other minerals contained in solution or suspension in the waters of Great Salt Lake as defined in R652-20-3100.

3. All mineral lessees granted a mineral salts lease under this section must have a royalty agreement as provided under R640-20-3100. This royalty agreement shall be a minimum royalty of $10,000.

4. Leases issued pursuant to this rule shall grant the lessee the right to mine, extract, or remove salts from the surface of the lands covered thereby, together with the right to use so much of the surface as is necessary for all purposes incident to the extraction of salts and other minerals from brines of Great Salt Lake or the surface of the lands covered by the lease.

5. These leases shall provide a rental of $1 per acre per annum and shall be coterminous with R652-20-3100. Ten years after date of issuance, the rental thereunder shall increase from $1 per acre to $2 per acre per annum.

6. Leases issued pursuant to this rule shall contain provisions necessary to affect the purpose of this rule, including, the following provisions: the rights of the lessee; the term of the lease; annual rental and royalties; rights reserved to the lessor; bonds; reporting of technical data; operation requirements; lessees consent to suit in any dispute arising under the terms of this lease or as a result of operations carried on under this lease; procedures for notification; transfers of interest by lessee; establishment of water rights and water usage; discovery of other minerals; terms and conditions of lease forfeiture; protection of the state from liability from all actions of the lessee; and all other provisions that the division deems necessary to protect the interest of the state and to fulfill the purpose of this rule.

R652-20-3400. Geothermal Steam Leases.

Geothermal steam resources contained in or under lands of the state of Utah are reserved to the state and shall be sold only upon a lease and royalty basis. Applications shall be made upon forms provided by the division and shall be subject to all applicable minerals management statutes and rules and the following provisions:

1. Geothermal steam leases are issued only on lands where the state of Utah owns both the surface and mineral rights, unless lessee agrees to accept as part of his lease agreement the "Addendum to Geothermal Steam Lease and Agreement", adopted by the Board of State Lands and Forestry on March 20, 1974.

2. Lessee shall file the required bond prior to the commencement of any operations on lands of the state.

R652-20-3600. Special Lease Agreement--Documentation.

1. Application for Special Lease Agreement for mineral lease on state lands held by other state agencies shall be in accordance with mineral rules applying to lands held by the Division of Forestry, Fire and State Lands, provided however, that Special Lease Agreement Applications shall be accompanied by the following documentation to be submitted by the applicant at the time of application for each tract of land contained in the application:

(a) A complete chain of title indicating all conveyances and mineral reservations.

(b) A plat map showing the exact location, dimensions, and legal description of the land.

(c) Written consent of the state agency using or holding the land.

2. Special Lease Agreement - Forms

Special Lease Agreements issued for mineral lease on state lands held by other state agencies shall be on forms approved by the division, provided however, that the state agency holding these lands may stipulate special terms and conditions to be added to the lease to mitigate impact of the lease or lessee's operations upon that state agency's land.

R652-20-4000. Readjustment Rule.

1. Any lease, except an oil, gas and hydrocarbon lease, which is subject to a readjustment provision may be readjusted as follows:

(a) Any term or condition of a lease may be readjusted including the rent, royalty, minimum rental, or minimum royalty provisions of the lease.

(b) The division shall give notice to the lessee at least one year prior to readjustment. Failure to give notice prior to a date a lease is eligible for readjustment shall not waive or prejudice the right of the division to readjust the lease at a later date.

(c) The readjusted terms shall become effective on the date specified by the division at the time the readjusted terms are sent to the lessee.

(d) Failure of the lessee to accept the terms of any readjustment shall be considered a violation of the provisions of the lease and shall subject the lease to forfeiture.

2. In the event of a conflict between this section and the terms of a readjustment provision in a lease, the lease terms shall supersede to the extent of the conflict.

KEY: royalties, salt, primary term, administrative procedures

July 13, 2006 65A-6-2

Notice of Continuation April 2, 2002 65A-6-4(3)

R657. Natural Resources, Wildlife Resources.
R657-5. Taking Big Game.
R657-5-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking deer, elk, pronghorn, moose, bison, bighorn sheep, and Rocky Mountain goat.

(2) Specific dates, areas, methods of take, requirements, and other administrative details which may change annually are published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation and the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Antlerless deer" means a deer without antlers or with antlers five inches or shorter.

(b) "Antlerless elk" means an elk without antlers or with antlers five inches or shorter.

(c) "Antlerless moose" means a moose with antlers shorter than its ears.

(d) "Arrow quiver" means a portable arrow case that completely encases all edges of the broadheads.

(e) "Buck deer" means a deer with antlers longer than five inches.

(f) "Buck pronghorn" means a pronghorn with horns longer than five inches.

(g) "Bull elk" means an elk with antlers longer than five inches.

(h) "Bull moose" means a moose with antlers longer than its ears.

(i) "Cow bison" means a female bison.

(j) "Doe pronghorn" means a pronghorn without horns or with horns five inches or shorter.

(k) "Highway" means the entire width between property lines of every way or place of any nature when any part of it is open to the use of the public as a matter of right for vehicular travel.

(l) "Hunter's choice" means either sex may be taken.

(m) "Limited entry hunt" means any hunt published in the hunt tables of the proclamation of the Wildlife Board for taking big game, which is identified as limited entry and does not include general or once-in-a-lifetime hunts.

(n) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(o) "Once-in-a-lifetime hunt" means any hunt published in the hunt tables of the proclamation of the Wildlife Board for taking big game, which is identified as once-in-a-lifetime, and does not include general or limited entry hunts.

(p) "Once-in-a-lifetime permit" means any permit obtained for a once-in-a-lifetime hunt by any means, including conservation permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(q) "Ram" means a male desert bighorn sheep or Rocky Mountain bighorn sheep.

(r)(i) "Resident" for purposes of this rule means a person who:

(A) has been domiciled in the state of Utah for six consecutive months immediately preceding the purchase of a license or permit; and

(B) does not claim residency for hunting, fishing, or trapping in any other state or country.

(ii) A Utah resident retains Utah residency if that person leaves this state:

(A) to serve in the armed forces of the United States or for religious or educational purposes; and

(B) complies with Subsection (m)(i)(B).

(iii)(A) A member of the armed forces of the United States and dependents are residents for the purposes of this chapter as of the date the member reports for duty under assigned orders in the state if the member:

(I) is not on temporary duty in this state; and

(II) complies with Subsection (m)(i)(B).

(iv) A copy of the assignment orders must be presented to a wildlife division office to verify the member's qualification as a resident.

(v) A nonresident attending an institution of higher learning in this state as a full-time student may qualify as a resident for purposes of this chapter if the student:

(A) has been present in this state for 60 consecutive days immediately preceding the purchase of the license or permit; and

(B) complies with Subsection (m)(i)(B).

(vi) A Utah resident license or permit is invalid if a resident license for hunting, fishing, or trapping is purchased in any other state or country.

(vii) An absentee landowner paying property tax on land in Utah does not qualify as a resident.

(s) "Spike bull" means a bull elk which has at least one antler having no branching above the ears. Branched means a projection on an antler longer than one inch, measured from its base to its tip.

(t)(i) "Valid application" means:

(A) it is for a species that the applicant is eligible to possess a permit;

(B) there is a hunt for that species regardless of estimated permit numbers; and

(C) there is sufficient information on the application to process the application, including personal information, hunt information, and sufficient payment.

(ii) Applications missing any of the items in Subsection (a) may still be considered valid if the application is timely corrected through the application correction process.

R657-5-3. License, Permit, and Tag Requirements.

(1) A person may engage in hunting protected wildlife or in the sale, trade, or barter of protected wildlife or their parts in accordance with Section 23-19-1 and the rules or proclamations of the Wildlife Board.

(2) Any license, permit, or tag that is mutilated or otherwise made illegible is invalid and may not be used for taking or possessing big game.

R657-5-4. Age Requirements and Restrictions.

(1)(a) A person 14 years of age or older may purchase a permit and tag to hunt big game. A person 13 years of age may purchase a permit and tag to hunt big game if that person's 14th birthday falls within the calendar year for which the permit and tag are issued.

(2)(a) A person at least 14 years of age and under 16 years of age must be accompanied by his parent or legal guardian, or other responsible person 21 years of age or older and approved by his parent or guardian, while hunting big game with any weapon.

(b) As used in this section, "accompanied" means at a distance within which visual and verbal communication are maintained for the purposes of advising and assisting.

R657-5-5. Duplicate License and Permit.

(1) Whenever any unexpired license, permit, tag or certificate of registration is destroyed, lost or stolen, a person may obtain a duplicate from a division office or online license agent, for five dollars or half of the price of the original license, permit, or certificate of registration, whichever is less.

(2) The division may waive the fee for a duplicate unexpired license, permit, tag or certificate of registration provided the person did not receive the original license, permit, tag or certificate of registration.

R657-5-6. Hunting Hours.

Big game may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

R657-5-7. Temporary Game Preserves.

(1)(a) A person who does not have a valid permit to hunt on a temporary game preserve may not carry a firearm or archery equipment on any temporary game preserve while the respective hunts are in progress.

(b) "Carry" means having a firearm on your person while hunting in the field.

(2) As used in this section, "temporary game preserve" means all bull elk, buck pronghorn, moose, bison, bighorn sheep, Rocky Mountain goat, limited entry buck deer areas and cooperative wildlife management units, excluding incorporated areas, cities, towns and municipalities.

(3) Weapon restrictions on temporary game preserves do not apply to:

(a) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Proclamation and Waterfowl Proclamation, respectively, and possessing only legal weapons to take upland game and waterfowl;

(b) livestock owners protecting their livestock;

(c) peace officers in the performance of their duties; or

(d) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife.

R657-5-8. Prohibited Weapons.

(1) A person may not use any weapon or device to take big game other than those expressly permitted in this rule.

(2) A person may not use:

(a) a firearm capable of being fired fully automatic; or

(b) any light enhancement device or aiming device that casts a beam of light.

R657-5-9. Rifles and Shotguns.

(1) The following rifles and shotguns may be used to take big game:

(a) any rifle firing centerfire cartridges and expanding bullets; and

(b) a shotgun, 20 gauge or larger, firing only 00 or larger buckshot or slug ammunition.

R657-5-10. Handguns.

(1) A handgun may be used to take deer and pronghorn, provided the handgun is a minimum of .24 caliber, fires a centerfire cartridge with an expanding bullet and develops 500 foot-pounds of energy at the muzzle.

(2) A handgun may be used to take elk, moose, bison, bighorn sheep, and Rocky Mountain goat provided the handgun is a minimum of .24 caliber, fires a centerfire cartridge with an expanding bullet and develops 500 foot-pounds of energy at 100 yards.

R657-5-11. Muzzleloaders.

(1) A muzzleloader may be used during any big game hunt, except an archery hunt, provided the muzzleloader:

(a) can be loaded only from the muzzle;

(b) has open sights, peep sights, or a fixed non-magnifying 1x scope;

(c) has a single barrel;

(d) has a minimum barrel length of 18 inches;

(e) is capable of being fired only once without reloading;

(f) powder and bullet, or powder, sabot and bullet are not bonded together as one unit for loading;

(g) is loaded with black powder or black powder substitute, which must not contain nitrocellulose based somkeless powder.

(2)(a) A lead or expanding bullet or projectile of at least 40 caliber must be used to hunt big game.

(b) A 170 grain or heavier bullet, including sabots must be used for taking deer and pronghorn.

(c) A 210 grain or heavier bullet must be used for taking elk, moose, bison, bighorn sheep, and Rocky Mountain goat, except sabot bullets used for taking these species must be a minimum of 240 grains.

(3)(a) A person who has obtained a muzzleloader permit may not possess or be in control of any firearm other than a muzzleloading rifle or have a firearm other than a muzzleloading rifle in his camp or motor vehicle during a muzzleloader hunt.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Proclamation and Waterfowl Proclamation, respectively, and possessing only legal weapons to take upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the muzzleloader hunt;

(iii) livestock owners protecting their livestock; or

(iv) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife.

R657-5-12. Archery Equipment.

(1) Archery equipment may be used during any big game hunt, except a muzzleloader hunt, provided:

(a) the minimum bow pull is 40 pounds at the draw or the peak, whichever comes first; and

(b) arrowheads used have two or more sharp cutting edges that cannot pass through a 7/8 inch ring;

(c) expanding arrowheads cannot pass through a 7/8 inch ring when expanded; and

(d) arrows must be a minimum of 20 inches in length from the tip of the arrowhead to the tip of the nock, and must weigh at least 300 grains.

(2) The following equipment or devices may not be used to take big game:

(a) a crossbow, except as provided in Rule R657-12;

(b) arrows with chemically treated or explosive arrowheads;

(c) a mechanical device for holding the bow at any increment of draw;

(d) a release aid that is not hand held or that supports the draw weight of the bow; or

(e) a bow with an attached electronic range finding device or a magnifying aiming device.

(3) Arrows carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(4)(a) A person who has obtained an archery permit may not possess or be in control of a firearm or have a firearm in his camp or motor vehicle during an archery hunt.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Proclamation and Waterfowl Proclamation, respectively, and possessing only legal weapons to take upland game or waterfowl;

(ii) a person licensed to hunt big game species during

hunts that coincide with the archery hunt;

(iii) livestock owners protecting their livestock; or

(iv) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife.

R657-5-13. Areas With Special Restrictions.

(1)(a) Hunting of any wildlife is prohibited within the boundaries of all park areas, except those designated by the Division of Parks and Recreation in Rule R651-603-5.

(b) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park area facilities, including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(c) Hunting with shotguns or archery equipment is prohibited within one-quarter mile of the areas provided in Subsection (b).

(2) Hunting is closed within the boundaries of all national parks and monuments unless otherwise provided by the governing agency.

(3) Hunters obtaining a Utah license, permit or tag to take big game are not authorized to hunt on tribal trust lands. Hunters must obtain tribal authorization to hunt on tribal trust lands.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

(5) In Salt Lake County, a person may not:

(a) hunt big game within one-half mile of Silver Lake in Big Cottonwood Canyon;

(b) hunt big game or discharge a shotgun or archery equipment within 600 feet of a road, house, or any other building; or

(c) discharge a rifle, handgun, shotgun firing slug ammunition, or muzzleloader within one mile of a cabin, house, or other building regularly occupied by people, except west of I-15 a muzzleloader may not be discharged within one-half mile of a cabin, house or other building regularly occupied by people.

(6) Hunting is closed within a designated portion of the town of Alta. Hunters may refer to the town of Alta for boundaries and other information.

(7) Domesticated Elk Facilities and Domesticated Elk Hunting Parks, as defined in Section 4-39-102(2) and Rules R58-18 and R58-20, are closed to big game hunting. This restriction does not apply to the lawful harvest of domesticated elk as defined and allowed pursuant to Rule R58-20.

(8) State waterfowl management areas are closed to taking big game, except as otherwise provided in the proclamation of the Wildlife Board for taking big game.

(9) Hunters are restricted to using archery equipment, muzzleloaders or shotguns on the Matheson Wetlands.

(10) A person may not discharge a firearm, except a shotgun or muzzleloader, from, upon, or across the Green River located near Jensen, Utah from the Highway 40 bridge upstream to the Dinosaur National Monument boundary.

R657-5-14. Spotlighting.

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight, or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland, or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of headlights or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-5-15. Use of Vehicle or Aircraft.

(1)(a) A person may not use an airplane or any other airborne vehicle or device, or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles, except a vessel as provided in Subsection (c), to take protected wildlife.

(b) A person may not take protected wildlife being chased, harmed, harassed, rallied, herded, flushed, pursued or moved by an aircraft or any other vehicle or conveyance listed in Subsection (a).

(c) Big game may be taken from a vessel provided:

(i) the motor of a motorboat has been completely shut off;

(ii) the sails of a sailboat have been furled; and

(iii) the vessel's progress caused by the motor or sail has ceased.

(2)(a) A person may not use any type of aircraft from 48 hours before any big game hunt begins through 48 hours after any big game hunting season ends to:

(i) transport a hunter or hunting equipment into a hunting area;

(ii) transport a big game carcass; or

(iii) locate, or attempt to observe or locate any protected wildlife.

(b) Flying slowly at low altitudes, hovering, circling or repeatedly flying over a forest, marsh, field, woodland or rangeland where protected wildlife is likely to be found may be used as evidence of violations of Subsections (1) and (2).

(3) The provisions of this section do not apply to the operation of an aircraft in a usual manner, or landings and departures from improved airstrips, where there is no attempt or intent to locate protected wildlife.

R657-5-16. Party Hunting and Use of Dogs.

(1) A person may not take big game for another person, except as provided in Section 23-19-1 and Rule R657-12.

(2) A person may not use the aid of a dog to take, chase, harm or harass big game.

R657-5-17. Big Game Contests.

A person may not enter or hold a big game contest that:

(1) is based on big game or their parts; and

(2) offers cash or prizes totaling more than $500.

R657-5-18. Tagging.

(1) The carcass of any species of big game must be tagged in accordance with Section 23-20-30.

(2) A person may not hunt or pursue big game after any of the notches have been removed from the tag or the tag has been detached from the permit.

(3) The tag must remain with the largest portion of the meat until the animal is entirely consumed.

R657-5-19. Transporting Big Game Within Utah.

(1) A person may transport big game within Utah only as follows:

(a) the head or sex organs must remain attached to the largest portion of the carcass;

(b) the antlers attached to the skull plate must be transported with the carcass of an elk taken in a spike bull unit; and

(c) the person who harvested the big game animal must accompany the carcass and must possess a valid permit corresponding to the tag attached to the carcass, except as

provided in Subsection (2).

(2) A person who did not take the big game animal may transport it only after obtaining a shipping permit or disposal receipt from the division or a donation slip as provided in Section 23-20-9.

R657-5-20. Exporting Big Game From Utah.

(1) A person may export big game or their parts from Utah only if:

(a) the person who harvested the big game animal accompanies it and possesses a valid permit corresponding to the tag which must be attached to the largest portion of the carcass; or

(b) the person exporting the big game animal or its parts, if it is not the person who harvested the animal, has obtained a shipping permit from the division.

R657-5-21. Purchasing or Selling Big Game or Their Parts.

(1) A person may only purchase, sell, offer or possess for sale, barter, exchange or trade any big game or their parts as follows:

(a) Antlers, heads and horns of legally taken big game may be purchased or sold only on the dates published in the proclamation of the Wildlife Board for taking big game;

(b) Untanned hides of legally taken big game may be purchased or sold only on the dates published in the proclamation of the Wildlife Board for taking big game;

(c) Inedible byproducts, excluding hides, antlers and horns, or legally possessed big game as provided in Subsection 23-20-3(1)(d), may be purchased or sold at any time;

(d) tanned hides of legally taken big game may be purchased or sold at any time; and

(e) shed antlers and horns may be purchased or sold at any time.

(2)(a) Protected wildlife that is unlawfully taken and seized by the division may be sold at any time by the division or its agent.

(b) A person may purchase protected wildlife, which is sold in accordance with Subsection (2)(a), at any time.

(3) A person selling or purchasing antlers, heads, horns or untanned hides shall keep transaction records stating:

(a) the name and address of the person who harvested the animal;

(b) the transaction date; and

(c) the permit number of the person who harvested the animal.

(4) Subsection (3) does not apply to scouting programs or other charitable organizations using untanned hides.

R657-5-22. Possession of Antlers and Horns.

(1) A person may possess antlers or horns or parts of antlers or horns only from:

(a) lawfully harvested big game;

(b) antlers or horns lawfully purchased as provided in Section R657-5-21; or

(c) shed antlers or horns.

(2) "Shed antler" means an antler which:

(a) has been dropped naturally from a big game animal as part of its annual life cycle; and

(b) has a rounded base commonly known as the antler button or burr attached which signifies a natural life cycle process.

(3) "Shed horn" means the sheath from the horn of a pronghorn that has been dropped naturally as part of its annual life cycle. No other big game species shed their horns naturally.

R657-5-23. Poaching-Reported Reward Permits.

(1) Any person who provides information leading to another person's arrest and successful prosecution for wanton destruction of a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat, bison, bull elk, buck deer or buck pronghorn under Section 23-20-4 for any once-in-a-lifetime species or within any limited entry area may receive a permit from the division to hunt for the same species and on the same once-in-a-lifetime or limited entry area where the violation occurred, except as provided in Subsection (2).

(2)(a) In the event that issuance of a poaching-reported reward permit would exceed 5% of the total number of limited entry or once-in-a-lifetime permits issued in the following year for the respective area, a permit shall not be issued for that respective area. As an alternative, the division may issue a permit as outlined in Subsections (b) or (c).

(b) If the illegally taken animal is a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat or bison, a permit for an alternative species and an alternative once-in-a-lifetime or limited entry area that has been allocated more than 20 permits may be issued.

(c) If the illegally taken animal is a bull elk, buck deer or buck pronghorn, a permit for the same species on an alternative limited entry area that has been allocated more than 20 permits may be issued.

(3)(a) The division may issue only one poaching-reported reward permit for any one animal illegally taken.

(b) No more than one poaching-reported reward permit shall be issued to any one person per successful prosecution.

(c) No more than one poaching-reported reward permit per species shall be issued to any one person in any one calendar year.

(4)(a) Poaching-reported reward permits may only be issued to the person who provides the most pertinent information leading to a successful prosecution. Permits are not transferrable.

(b) If information is received from more than one person, the director of the division shall make a determination based on the facts of the case, as to which person provided the most pertinent information leading to the successful prosecution in the case.

(c) The person providing the most pertinent information shall qualify for the poaching-reported reward permit.

(5) Any person who receives a poaching-reported reward permit must be eligible to hunt and obtain big game permits as provided in all rules and regulations of the Wildlife Board and the Wildlife Resources Code.

(6) For purposes of this section, "successful prosecution" means the screening, filing of charges and subsequent adjudication for the poaching incident.

R657-5-24. Application Process for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit and Once-In-A-Lifetime Permits, and Application Process for General Buck Deer, General Muzzleloader Elk, and Youth General Any Bull Elk Permits.

(1)(a) A person may obtain only one permit per species of big game, including premium limited entry, limited entry, cooperative wildlife management unit, once-in-a-lifetime, conservation, sportsman, landowner and general permits, except antlerless permits as provided in the Antlerless Addendum and permits as provided in Rule R657-42.

(b) Hunting with a permit where payment has not been received for that permit constitutes a violation of hunting without a valid permit.

(c) A person must notify the division of any change of mailing address, residency, telephone number, and physical description.

(2) Applications are available from license agents, division offices, and through the division's Internet address.

(3) A resident may apply in the big game drawing for the following permits:

(a) only one of the following:
(i) buck deer - premium limited entry, limited entry and cooperative wildlife management unit;
(ii) bull elk - premium limited entry, limited entry and cooperative wildlife management unit; or
(iii) buck pronghorn - limited entry and cooperative wildlife management unit; and
(b) only one once-in-a-lifetime permit, including once-in-a-lifetime cooperative wildlife management unit permits, except as provided in Section R657-5-64(2)(b).
(4) A nonresident may apply in the big game drawing for the following permits:
(a) only one of the following:
(i) buck deer - premium limited entry and limited entry;
(ii) bull elk - premium limited entry and limited entry; or
(iii) buck pronghorn - limited entry; and
(b) only one once-in-a-lifetime permit.
(5) A resident or nonresident may apply in the big game drawing for:
(a)(i) a statewide general archery buck deer permit;
(ii) by region for general any weapon buck deer; or
(iii) by region for general muzzleloader buck deer.
(b) A youth may apply in the drawing as provided in Subsection (a) or Subsection R657-5-27(4), and for youth general any bull elk pursuant to Section R657-5-46.
(6) A person may not submit more than one application per species as provided in Subsections (3) and (4), and Subsection (5) in the big game drawing.
(7)(a) Applications must be mailed by the date prescribed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation may be rejected.
(b) If an error is found on an application, the applicant may be contacted for correction.
(8)(a) Late applications, received by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation, will not be considered in the drawing, but will be processed, for the purpose of entering data into the division's draw database to provide:
(i) future preprinted applications;
(ii) notification by mail of late application and other draw opportunities; and
(iii) re-evaluation of division or third-party errors.
(b) The nonrefundable handling fee will be used to process the late application. Any permit fees submitted with the application will be refunded.
(c) Late applications received after the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation shall not be processed and shall be returned to the applicant.
(9) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.
(10) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Subsections R657-5-27(4).
(12) To apply for a resident permit, a person must be a resident at the time of purchase.
(13) The posting date of the drawing shall be considered the purchase date of a permit.

R657-5-25. Fees for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit and Once-In-A-Lifetime Permits, and for General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Permits.
(1) Each premium limited entry, limited entry, cooperative wildlife management unit and once-in-a-lifetime application must include:
(a) the highest permit fee of any permits applied for;
(b) a nonrefundable handling fee for one of the following permits:
(i) buck deer;
(ii) bull elk; or
(iii) buck pronghorn; and
(c) the nonrefundable handling fee for a once-in-a-lifetime permit; and
(d) the nonrefundable handling fee, if applying only for a bonus point.
(2) Each general buck deer and general muzzleloader elk application must include:
(a) the permit fee, which includes the nonrefundable handling fee; or
(b) the nonrefundable handling fee per species, if applying only for a preference point.

R657-5-26. Applying as a Group for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit and Once-In-A-Lifetime Permits, and for General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Permits.
(1)(a) Up to four people may apply together for premium limited entry, limited entry, and resident cooperative wildlife management unit deer, elk or pronghorn permits in the big game drawing and in the antlerless drawing.
(b) Up to two youth may apply together for youth general any bull elk permits in the big game drawing.
(c) Up to ten people may apply together for general deer permits in the big game drawing.
(d) Youth applicants who wish to participate in the youth general buck deer drawing process as provided in Subsection R657-5-27(4), or the youth antlerless drawing process as provided in Subsection R657-5-59(3), must not apply as part of a group.
(2)(a) Applicants must indicate the number of hunters in the group by filling in the appropriate box on each application form.
(b) If the appropriate box is not filled out with the number of hunters in the group, each hunter in that group shall be entered into the drawing as individual hunters, and not as a group.
(3) Group applicants must submit their applications together in the same envelope.
(4) Residents and nonresidents may apply together.
(5)(a) Group applications shall be processed as one single application.
(b) Any bonus points used for a group application, shall be averaged and rounded down.
(6) When applying as a group:
(a) if the group is successful in the drawing, then all applicants with valid applications in that group shall receive a permit;
(b) if the group is rejected due to an error in fees and only one species is applied for, then the entire group is rejected;
(c) if the group is rejected due to an error in fees and more than one species is applied for, the group will be kept in the drawing for any species with sufficient fees, using the draw order; or
(d) if one or more members of the group are rejected due to an error other than fees, the members with valid applications will be kept in the drawing, unless the group indicates on the application that all members are to be rejected.
(i) The applicant whose application is on the top of all the

applications for that group, will be designated the group leader.

(ii) If any group member has an error on their application that is not corrected during the correction process, the reject box on the group leader's application will determine whether the entire group is rejected.

R657-5-27. Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit and Once-In-A-Lifetime and General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Drawings.

(1)(a) Big game drawing results may be posted at the Lee Kay Center for Hunter Education, Cache Valley Hunter Education Center, division offices and on the division Internet address on the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) Applicants shall be notified by mail of draw results by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) Permits for the big game drawing shall be drawn in the following order:

(a) premium limited entry, limited entry and cooperative wildlife management unit buck deer;

(b) premium limited entry, limited entry and cooperative wildlife management unit bull elk;

(c) limited entry and cooperative wildlife management unit buck pronghorn;

(d) once-in-a-lifetime;

(e) youth general buck deer;

(f) general buck deer; and

(g) youth general any bull elk.

(3) Any person who draws one of the following permits is not eligible to draw a once-in-a-lifetime permit:

(a) a premium limited entry, limited entry or Cooperative Wildlife Management unit buck deer;

(b) a premium limited entry, limited entry, or Cooperative Wildlife Management unit elk; or

(c) a limited entry or Cooperative Wildlife Management unit buck pronghorn.

(4)(a) Fifteen percent of the general buck deer permits in each region are reserved for youth hunters.

(b) For purposes of this section, "youth" means any person 18 years of age or younger on the opening day of the general archery buck deer season.

(c) Youth hunters who wish to participate in the youth drawing must:

(i) submit an application in accordance with Section R657-5-24; and

(ii) not apply as a group.

(d) Youth applicants who apply for a general buck deer permit as provided in Subsection (c), will automatically be considered in the youth drawing based upon their birth date.

(e) Preference points shall be used when applying.

(f) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the general buck deer drawing.

(5) If any permits listed in Subsection (2)(a) through (2)(d) remain after the big game drawing after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

R657-5-28. Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit and Once-In-A-Lifetime, and General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Application Refunds.

(1) Unsuccessful applicants who applied in the big game drawing and who applied with a check or money order will receive a refund in May.

(2)(a) Unsuccessful applicants, who applied with a credit or debit card, will not be charged for a permit.

(b) Unsuccessful applicants, who applied as a group, will receive an equally distributed refund of money remaining after the successful applicants' permits are paid for.

(c) If group members have other financial arrangements between themselves, group members should be prepared to reallocate each group member's individual refunds among themselves.

(3) The handling fees are nonrefundable.

R657-5-29. Permits Remaining After the Drawing.

(1) Permits remaining after the big game drawing are sold only by mail or on a first-come, first-served basis beginning and ending on the dates provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-30. Waiting Periods for Deer.

(1) A person who obtained a premium limited entry buck, limited entry buck or cooperative wildlife management unit buck deer permit through the big game drawing process during the preceding two years may not apply in the big game drawing for any of these permits during the current year.

(2) A person who obtains a premium limited entry buck, limited entry buck or cooperative wildlife management unit buck deer permit through the big game drawing process, may not apply for any of these permits again for a period of two years.

(3) A waiting period does not apply to:

(a) general archery, general any weapon, general muzzleloader, antlerless deer, conservation, sportsman, poaching-reported reward and dedicated hunter limited entry deer permits; or

(b) cooperative wildlife management unit or limited entry landowner buck deer permits obtained through the landowner.

R657-5-31. Waiting Periods for Elk.

(1) A person who obtained a premium limited entry, limited entry or cooperative wildlife management unit bull elk permit through the big game drawing process during the preceding four years may not apply in the big game drawing for any of these permits during the current year.

(2) A person who obtains a premium limited entry, limited entry or cooperative wildlife management unit bull elk permit through the big game drawing, may not apply for any of these permits for a period of five years.

(3) A waiting period does not apply to:

(a) general archery, general any weapon, general muzzleloader, antlerless elk, cooperative wildlife management unit spike bull elk, conservation, sportsman, poaching-reported reward and dedicated hunter limited entry elk permits; or

(b) cooperative wildlife management unit or limited entry landowner bull elk permits obtained through the landowner.

R657-5-32. Waiting Periods for Pronghorn.

(1) A person who obtained a buck pronghorn permit through the big game drawing process in the preceding two years, may not apply in the big game drawing for a buck pronghorn permit during the current year.

(2) A person who obtains a buck pronghorn or cooperative wildlife management unit buck pronghorn permit through the big game drawing, may not apply for any of these permits for a period of two years.

(3) A waiting period does not apply to:

(a) doe pronghorn, pronghorn conservation, sportsman and poaching-reported reward permits; or

(b) cooperative wildlife management unit or limited entry landowner buck pronghorn permits obtained through the

landowner.

R657-5-33. Waiting Periods for Antlerless Moose.

(1) A person who obtained an antlerless moose permit or a cooperative wildlife management unit antlerless moose permit through the antlerless drawing process during the preceding four years, may not apply for an antlerless moose permit during the current year.

(2) A person who obtains an antlerless moose permit or a cooperative wildlife management unit antlerless moose permit through the antlerless drawing process in the current year, may not apply for an antlerless moose permit for a period of five years.

(3) A waiting period does not apply to cooperative wildlife management unit antlerless moose permits obtained through the landowner.

R657-5-34. Waiting Periods for Once-In-A-Lifetime Species.

(1) Any person who has obtained a permit for any bull moose, bison, Rocky Mountain bighorn sheep, desert bighorn sheep, or Rocky Mountain goat may not apply for a once-in-a-lifetime permit for the same species in the big game drawing or sportsman permit drawing.

(2) A person who has been convicted of unlawfully taking a once-in-a-lifetime species may not apply for or obtain a permit for that species.

R657-5-35. Waiting Periods for Permits Obtained After the Drawing.

(1) Waiting periods provided in Sections R657-5-30 through R657-5-34 do not apply to the purchase of the remaining permits sold over the counter.

(2) However, waiting periods are incurred as a result of purchasing remaining permits after the drawing. Therefore, if a remaining permit is purchased in the current year, waiting periods will be in effect when applying in the drawing in following years.

R657-5-36. Waiting Periods for Cooperative Wildlife Management Unit Permits and Landowner Permits.

(1)(a) A waiting period or once-in-a-lifetime status does not apply to purchasing limited entry landowner or cooperative wildlife management unit permits obtained through a landowner, except as provided in Subsection (b).

(b) Waiting periods are incurred for the purpose of applying in the big game drawing as a result of obtaining a cooperative wildlife management unit bull moose permit through a landowner.

R657-5-37A. Bonus Point System.

(1) Bonus points are used to improve odds for drawing permits.

(2)(a) A bonus point is awarded for:

(i) each valid unsuccessful application when applying for permits in the big game or antlerless drawing; or

(ii) each valid application when applying for bonus points in the big game or antlerless drawing.

(b) Bonus points are awarded by species for:

(i) premium limited entry, limited entry and cooperative wildlife management unit buck deer;

(ii) premium limited entry, limited entry and cooperative wildlife management unit bull elk;

(iii) limited entry and cooperative wildlife management unit buck pronghorn;

(iv) all once-in-a-lifetime species; and

(v) antlerless moose.

(3) A person may apply for a bonus point for:

(a) only one of the following species:

(i) buck deer - premium limited entry, limited entry and cooperative wildlife management unit;

(ii) bull elk - limited entry and cooperative wildlife management unit; or

(iii) buck pronghorn - limited entry and cooperative wildlife management unit;

(iv) antlerless moose, and

(b) only one once-in-a-lifetime, including once-in-a-lifetime cooperative wildlife management unit.

(4)(a) A person may not apply in the drawing for both a premium limited entry or limited entry bonus point and a premium limited entry or limited entry permit.

(b) A person may not apply in the drawing for a once-in-a-lifetime bonus point and a once-in-a-lifetime permit.

(c) A person may not apply in the drawing for an antlerless moose bonus point and an antlerless moose permit.

(d) A person may not apply for a bonus point if that person is ineligible to apply for a permit for the respective species.

(e) A person may only apply for bonus points in the big game and antlerless drawings.

(f) Group applications will not be accepted when applying for bonus points.

(5)(a) Fifty percent of the permits for each hunt unit and species will be reserved for applicants with bonus points.

(b) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points for each species.

(c) If reserved permits remain, the reserved permits will be designated by a random number to eligible applicants with the next greatest number of bonus points for each species.

(d) The procedure in Subsection (c) will continue until all reserved permits have been issued or no applications for that species remain.

(e) Any reserved permits remaining and any applicants who were not selected for reserved permits will be returned to the big game drawing.

(6)(a) Each applicant receives a random drawing number for:

(i) each species applied for; and

(ii) each bonus point for that species.

(7) Bonus points are forfeited if a person obtains a permit through the drawing for that bonus point species as provided in Subsection (2)(c), including any permit obtained after the drawing.

(8) Bonus points are not forfeited if:

(a) a person is successful in obtaining a conservation permit or sportsman permit;

(b) a person obtains a landowner or a cooperative wildlife management unit permit from a landowner; or

(c) a person obtains a poaching-reported reward permit.

(9) Bonus points are not transferable.

(10) Bonus points are averaged and rounded down when two or more applicants apply together on a group application.

(11)(a) Bonus points are tracked using social security numbers or division-issued customer identification numbers.

(b) The division shall retain paper copies of applications for three years prior to the current big game and antlerless drawings for the purpose of researching bonus point records.

(c) The division shall retain electronic copies of applications from 1996 to the current big game drawing for the purpose of researching bonus point records.

(d) Any requests for researching an applicant's bonus point records must be requested within the time frames provided in Subsection (b) and (c).

(e) Any bonus points on the division's records shall not be researched beyond the time frames provided in Subsection (b) and (c).

(f) The division may eliminate any bonus points earned that are obtained by fraud or misrepresentation.

R657-5-37B. Preference Point System.

(1) Preference points are used in the big game and antlerless drawings to ensure that applicants who are unsuccessful in the drawing will have first preference in the next year's drawing.

(2)(a) A preference point is awarded for:

(i) each valid unsuccessful application when applying for a general buck deer, antlerless deer, antlerless elk, or doe pronghorn permit; or

(ii) each valid application when applying only for a preference point in the big game or antlerless drawing.

(b) Preference points are awarded by species for:

(i) general buck deer;

(ii) antlerless deer;

(iii) antlerless elk; and

(iv) doe pronghorn.

(3)(a) A person may not apply in the drawing for both a preference point and permit for the species listed in (2)(b).

(b) A person may not apply for a preference point if that person is ineligible to apply for a permit.

(c) Preference points shall not be used when obtaining remaining permits after the big game or antlerless drawing.

(4) Preference points are forfeited if a person obtains a general buck deer, antlerless deer, antlerless elk or doe pronghorn permit through the drawing.

(5)(a) Preference points are not transferable.

(b) Preference points shall only be applied to the big game and antlerless drawing.

(6) Preference points are averaged and rounded down when two or more applicants apply together on a group application.

(7)(a) Preference points are tracked using social security numbers or division-issued hunter identification numbers.

(b) The division shall retain copies of paper applications for three years prior to the current big game and antlerless drawings for the purpose of researching preference point records.

(c) The division shall retain copies of electronic applications from 2000 to the current big game drawing for the purpose of researching preference point records.

(d) Any requests for researching an applicant's preference point records must be requested within the time frames provided in Subsection (b) and (c).

(e) Any preference points on the division's records shall not be researched beyond the time frames provided in Subsection (b) and (c).

(f) The division may eliminate any preference points earned that are obtained by fraud or misrepresentation.

R657-5-38. General Archery Buck Deer Hunt.

(1) The dates of the general archery buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer may use archery equipment to take:

(a) one buck deer statewide within a general hunt area published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game; or

(b) a deer of hunter's choice within the Wasatch Front or Uintah Basin extended archery area as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(c) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(d) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may not hunt within premium limited entry deer and limited entry deer areas, except Crawford Mountain.

(3)(a) A person who obtains a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may hunt within the Wasatch Front, Ogden or the Uintah Basin extended archery areas during the extended archery area seasons as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game and as provided in Subsection (b).

(b) A person must complete an extended archery ethics course annually to hunt the Wasatch Front, Ogden or Uintah Basin extended archery areas during the extended archery season.

(c) A person must possess the extended archery ethics course certificate of completion while hunting.

(4) A person who has obtained a general archery deer permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer.

(5)(a) Any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt the statewide general archery, or by region the general any weapon and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-8 through R657-5-12, respectively, for each respective season, provided that person obtains a general any weapon or general muzzleloader deer permit for a specified region.

(b) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the statewide general archery deer season and the extended archery season as provided Section R657-5-38(3).

(6) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Archers are cautioned to study rifle hunt tables and identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-39. General Any Weapon Buck Deer Hunt.

(1) The dates for the general any weapon buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general any weapon buck permit may use any legal weapon to take one buck deer within the hunt area specified on the permit as published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person who has obtained a general any weapon buck deer permit, or any other permit which allows that person to hunt general any weapon buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(c) A person who has obtained a general any weapon buck deer permit, or any other permit which allows that person to hunt general any weapon buck deer, may not hunt within premium limited entry deer and limited entry deer areas, except Crawford Mountain.

(3) A person who has obtained a general any weapon buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except:

(a) antlerless deer; and

(b) any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt the general archery, general any weapon and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-8 through R657-5-12, respectively, for each respective season.

(i) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the statewide general archery deer season and the

extended archery season as provided Section R657-5-38(3).

R657-5-40. General Muzzleloader Buck Deer Hunt.

(1) The dates for the general muzzleloader buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general muzzleloader buck permit may use a muzzleloader to take one buck deer within the general hunt area specified on the permit as published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person who has obtained a general muzzleloader buck deer permit, or any other permit which allows that person to hunt general muzzleloader buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(c) A person who has obtained a general muzzleloader buck deer permit, or any other permit which allows that person to hunt general muzzleloader buck deer, may not hunt within premium limited entry deer and limited entry deer areas, except Crawford Mountain.

(3) A person who has obtained a general muzzleloader deer permit may not hunt during any other deer hunt or obtain any other deer permit, except:

(a) antlerless deer; and

(b) any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt the general archery, general any weapon and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-8 through R657-5-12, respectively, for each respective season.

(i) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the statewide general archery deer season and the extended archery season as provided Section R657-5-38(3).

(4) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Muzzleloader hunters are cautioned to study the rifle hunt tables to identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-41. Limited Entry Buck Deer Hunts.

(1) To hunt in a premium limited entry or limited entry area, hunters must obtain the respective limited entry buck permit. Limited entry areas are not open to general archery buck, general any weapon buck, or general muzzleloader buck hunting, except as specified in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A limited entry buck deer permit allows a person using the prescribed legal weapon, to take one buck deer within the area and season specified on the permit, except deer cooperative wildlife management units located within the limited entry unit.

(3)(a) A person who has obtained a premium limited entry, limited entry, or cooperative wildlife management unit buck deer permit must report hunt information within 30 days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a buck deer.

(b) Limited entry and cooperative wildlife management unit buck deer permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(4) A person who has obtained a limited entry buck permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer.

R657-5-42. Antlerless Deer Hunts.

(1) To hunt an antlerless deer, a hunter must obtain an antlerless deer permit.

(2)(a) An antlerless deer permit allows a person to take one antlerless deer, per antlerless deer tag, using any legal weapon within the area and season as specified on the permit and in the antlerless addendum.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless deer permit for a cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained an antlerless deer permit may not hunt during any other antlerless deer hunt or obtain any other antlerless deer permit.

(4)(a) A person who obtains an antlerless deer permit and any of the permits listed in Subsection (b) may use the antlerless deer permit during the established season for the antlerless deer permit and during the established season for the permits listed in Subsection (b) provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used if hunting with an archery permit;

(iii) the appropriate muzzleloader equipment is used if hunting with a muzzleloader permit.

(b)(i) General archery deer;

(ii) general muzzleloader deer;

(iii) limited entry archery deer; or

(iv) limited entry muzzleloader deer.

R657-5-43. General Archery Elk Hunt.

(1) The dates of the general archery elk hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general archery elk permit may use archery equipment to take:

(i) one elk of hunter's choice on a general any bull elk unit, except on elk cooperative wildlife management units;

(ii) an antlerless elk or spike bull elk on a general spike bull elk unit, except on elk cooperative wildlife management units and the Plateau, Fish Lake-Thousand Lakes;

(iii) only a spike bull elk on the Plateau, Fish Lake-Thousand Lakes; or

(iv) one elk of hunter's choice on the Wasatch Front or Uintah Basin extended archery areas as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3)(a) A person who obtains a general archery elk permit may hunt within the Wasatch Front, Uintah Basin, Nebo-West Desert, and Sanpete Valley extended archery areas during the extended archery area seasons as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game and as provided in Subsection (b).

(b) A person must complete an extended archery ethics course annually to hunt the extended archery areas during the extended archery season.

(c) A person must possess the extended archery ethics course certificate of completion while hunting.

(4) A person who has obtained an archery elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-48(3).

(5) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Archers are cautioned to study the rifle hunt tables to identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-44. General Season Bull Elk Hunt.

(1) The dates for the general season bull elk hunt are

provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game within general season elk units, except in the following areas:

(a) Salt Lake County south of I-80 and east of I-15; and

(b) elk cooperative wildlife management units.

(2)(a) A person may purchase either a spike bull permit or an any bull permit.

(b) A person who has obtained a general season spike bull elk permit may take a spike bull elk on a general season spike bull elk unit. Any bull units are closed to spike bull permittees.

(c) A person who has obtained a general season any bull elk permit may take any bull elk, including a spike bull elk on a general season any bull elk unit. Spike bull units are closed to any bull permittees.

(3) A person who has obtained a general season bull elk permit may use any legal weapon to take a spike bull or any bull elk as specified on the permit.

(4) A person who has obtained a general season bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-48(3).

R657-5-45. General Muzzleloader Elk Hunt.

(1) The dates of the general muzzleloader elk hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game within the general season elk units, except in the following closed areas:

(a) Salt Lake County south of I-80 and east of I-15; and

(b) elk cooperative wildlife management units.

(2)(a) General muzzleloader elk hunters may purchase either a spike bull elk permit or an any bull elk permit.

(b) A person who has obtained a general muzzleloader spike bull elk permit may take a spike bull elk on an any general spike bull elk unit. Any bull units are closed to spike bull muzzleloader permittees.

(c) A person who has obtained a general muzzleloader any bull elk permit may take any bull elk on an any bull elk unit. Spike bull units are closed to any bull muzzleloader permittees.

(3) A person who has obtained a general muzzleloader elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-48(3).

R657-5-46. Youth General Any Bull Elk Hunt.

(1)(a) For purposes of this section "youth" means any person 18 years of age or younger on the opening day of the youth any bull elk season published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A youth may apply for or obtain a youth any bull elk permit.

(c) A youth may only obtain a youth any bull elk permit once during their youth.

(2) The youth any bull elk hunting season and areas are published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3)(a) A youth who has obtained a youth general any bull elk permit may take any bull elk, including a spike bull elk, on a general any bull elk unit. Spike bull elk units are closed to youth general any bull elk permittees.

(b) A youth who has obtained a youth general any bull elk permit may use any legal weapon to take any bull elk as specified on the permit.

(4) A youth who has obtained a youth general any bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Section R657-5-48(3).

(5) Preference points shall not be awarded or utilized when applying for, or in obtaining, youth general any bull elk permits.

R657-5-47. Limited Entry Bull Elk Hunt.

(1) To hunt in a premium limited entry or limited entry bull elk area, a hunter must obtain the respective premium limited entry or limited entry elk permit.

(2)(a) A premium limited entry bull elk permit allows a person, using the prescribed legal weapon, to take one bull elk within the area and to hunt all seasons specified in the hunt tables, published in the proclamation of the Wildlife Board for taking big game, for the area specified on the permit, except elk cooperative wildlife management units located within a premium limited entry unit. Spike bull elk restrictions do not apply to premium limited entry elk permittees.

(b) A limited entry bull elk permit allows a person, using the prescribed legal weapon, to take one bull elk within the area and season specified on the permit, except elk cooperative wildlife management units located within a limited entry unit. Spike bull elk restrictions do not apply to limited entry elk permittees.

(3)(a) A person who has obtained a premium limited entry, limited entry or cooperative wildlife management unit bull elk permit must report hunt information within 30 days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bull elk.

(b) Limited entry and cooperative wildlife management unit bull elk permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(4) A person who has obtained a premium limited entry or limited entry bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsections (4)(a) and R657-5-48(3).

R657-5-48. Antlerless Elk Hunts.

(1) To hunt an antlerless elk, a hunter must obtain an antlerless elk permit.

(2)(a) An antlerless elk permit allows a person to take one antlerless elk using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless elk permit for a cooperative wildlife management unit as specified on the permit.

(3)(a) A person may obtain two elk permits each year, provided one or both of the elk permits is an antlerless elk permit.

(b) For the purposes of obtaining two elk permits, a hunter's choice elk permit may not be considered an antlerless elk permit.

(4)(a) A person who obtains an antlerless elk permit and any of the permits listed in Subsection (b) may use the antlerless elk permit during the established season for the antlerless elk permit and during the established season for the permits listed in Subsection (b) provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used if hunting with an archery permit;

(iii) the appropriate muzzleloader equipment is used if hunting with a muzzleloader permit.

(b)(i) General archery deer;

(ii) general archery elk;

(iii) general muzzleloader deer;

(iv) general muzzleloader elk;

(v) limited entry archery deer;

(vi) limited entry archery elk;
(vii) limited entry muzzleloader deer; or
(viii) limited entry muzzleloader elk.

R657-5-49. Buck Pronghorn Hunts.

(1) To hunt buck pronghorn, a hunter must obtain a buck pronghorn permit.

(2) A person who has obtained a buck pronghorn permit may not obtain any other pronghorn permit or hunt during any other pronghorn hunt.

(3)(a) A person who has obtained a limited entry or cooperative wildlife management unit buck pronghorn permit must report hunt information within 30 days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a buck pronghorn.

(b) Limited entry and cooperative wildlife management unit buck pronghorn permit holders must report hunt information by telephone, or through the Division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(4) A buck pronghorn permit allows a person using any legal weapon to take one buck pronghorn within the area and season specified on the permit, except during the buck pronghorn archery hunt, only archery equipment may be used.

R657-5-50. Doe Pronghorn Hunts.

(1) To hunt a doe pronghorn, a hunter must obtain a doe pronghorn permit.

(2)(a) A doe pronghorn permit allows a person to take one doe pronghorn, per doe pronghorn tag, using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless moose permit for a cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained a doe pronghorn permit may not hunt during any other pronghorn hunt or obtain any other pronghorn permit.

R657-5-51. Antlerless Moose Hunts.

(1) To hunt an antlerless moose, a hunter must obtain an antlerless moose permit.

(2)(a) An antlerless moose permit allows a person to take one antlerless moose using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management unit unless that person obtains an antlerless moose cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained an antlerless moose permit may not hunt during any other moose hunt or obtain any other moose permit.

R657-5-52. Bull Moose Hunts.

(1) To hunt bull moose, a hunter must obtain a bull moose permit.

(2) A person who has obtained a bull moose permit may not obtain any other moose permit or hunt during any other moose hunt.

(3) A bull moose permit allows a person using any legal weapon to take one bull moose within the area and season specified on the permit, except in bull moose cooperative wildlife management units located within a limited entry unit.

(4)(a) A person who has obtained a bull moose permit must report hunt information within 30 days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bull moose.

(b) Bull moose permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

R657-5-53. Bison Hunts.

(1) To hunt bison, a hunter must obtain a bison permit.

(2) A person who has obtained a bison permit may not obtain any other bison permit or hunt during any other bison hunt.

(3) The bison permit allows a person using any legal weapon to take a bison of either sex within the area and season as specified on the permit.

(4)(a) An orientation course is required for bison hunters who draw a an Antelope Island bison permit. Hunters shall be notified of the orientation date, time and location.

(b) The Antelope Island hunt is administered by the Division of Parks and Recreation.

(5) A Henry Mountain cow bison permit allows a person to take one cow bison using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(6) An orientation course is required for bison hunters who draw Henry Mountain cow bison permits. Hunters will be notified of the orientation date, time and location.

(7)(a) A person who has obtained a bison permit must report hunt information within 30 days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bison.

(b) Bison permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

R657-5-54. Desert Bighorn and Rocky Mountain Bighorn Sheep Hunts.

(1) To hunt desert bighorn sheep or Rocky Mountain bighorn sheep, a hunter must obtain the respective permit.

(2) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit may not obtain any other desert bighorn sheep or Rocky Mountain bighorn sheep permit or hunt during any other desert bighorn sheep or Rocky Mountain bighorn sheep hunt.

(3) Desert bighorn sheep and Rocky Mountain big horn sheep permits are considered separate once-in-a-lifetime hunting opportunities.

(4)(a) The desert bighorn sheep permit allows a person using any legal weapon to take one desert bighorn ram within the area and season specified on the permit.

(b) The Rocky Mountain sheep permit allows a person using any legal weapon to take one Rocky Mountain bighorn ram within the area and season specified on the permit.

(5) The permittee may attend a hunter orientation course. The division provides each permittee with the time and location of the course.

(6) All bighorn sheep hunters are encouraged to have a spotting scope with a minimum of 15 power while hunting bighorn sheep. Any ram may be legally taken, however, permittees are encouraged to take a mature ram. The terrain inhabited by bighorn sheep is extremely rugged, making this hunt extremely strenuous.

(7) Successful hunters must deliver the horns of the bighorn sheep to a division office within 72 hours of leaving the hunting area. A numbered seal will be permanently affixed to the horn indicating legal harvest.

(8)(a) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit must report hunt information within 30 days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a desert bighorn sheep or Rocky Mountain bighorn sheep.

(b) Desert bighorn sheep or Rocky Mountain bighorn sheep permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

R657-5-55. Rocky Mountain Goat Hunts.

(1) To hunt Rocky Mountain goat, a hunter must obtain a Rocky Mountain goat permit.

(2) A person who has obtained a Rocky Mountain goat permit may not obtain any other Rocky Mountain goat permit or hunt during any other Rocky Mountain goat hunt.

(3) A Rocky Mountain goat of either sex may be legally taken on a hunter's choice permit. Permittees are encouraged to take a mature goat. A mature goat is a goat older than two years of age, as determined by counting the annual rings on the horn.

(4) The goat permit allows a person using any legal weapon to take one goat within the area and season specified on the permit.

(5) All goat hunters are encouraged to have a spotting scope with a minimum of 15 power while hunting goats. The terrain inhabited by Rocky Mountain goat is extremely rugged making this hunt extremely strenuous. The goat's pelage may be higher quality later in the hunting season.

(6) A female-goat only permit allows a person to take one female-goat using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(7) An orientation course is required for Rocky Mountain goat hunters who draw female-goat only permits. Hunters will be notified of the orientation date, time and location.

(8)(a) A person who has obtained a Rocky Mountain goat permit must report hunt information within 30 days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a Rocky Mountain goat.

(b) Rocky Mountain goat permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

R657-5-56. Depredation Hunter Pool Permits.

When deer, elk or pronghorn are causing damage, antlerless control hunts not listed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be held as provided in Rule R657-44. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

R657-5-57. Antlerless Application - Deadlines.

(1) Applications are available from license agents, division offices, and through the division's Internet address.

(2) Residents may apply for, and draw the following permits, except as provided in Subsection (5):

(a) antlerless deer;

(b) antlerless elk;

(c) doe pronghorn; and

(d) antlerless moose.

(3) Nonresidents may apply in the drawing for, and draw the following permits, except as provided in Subsection (5):

(a) antlerless deer;

(b) antlerless elk;

(c) doe pronghorn; and

(d) antlerless moose, if permits are available during the current year.

(4) A youth may apply in the antlerless drawing as provided in Subsection (3) or Subsection R657-5-59(3).

(5) Any person who has obtained a pronghorn permit, or a moose permit may not apply for a doe pronghorn permit or antlerless moose permit, respectively, except as provided in Section R657-5-61.

(6) A person may not submit more than one application in the antlerless drawing per each species as provided in Subsections (2) and (3).

(7) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Subsection R657-5-59(4) and Section R657-5-61.

(8)(a) Applications must be mailed by the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be rejected.

(b) If an error is found on an application, the applicant may be contacted for correction.

(9)(a) Late applications, received by the date published in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation, will not be considered in the drawing, but will be processed for the purpose of entering data into the division's draw data base to provide:

(i) future preprinted applications;

(ii) notification by mail of late application and other draw opportunities; and

(iii) re-evaluation of division or third-party errors.

(b) The nonrefundable handling fee will be used to process the late application. Any permit fees submitted with the application will be refunded.

(c) Late applications received after the date published in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation shall not be processed and shall be returned to the applicant.

(10) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get written permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.

(11) To apply for a resident permit, a person must establish residency at the time of purchase.

(12) The posting date of the drawing shall be considered the purchase date of a permit.

R657-5-58. Fees for Antlerless Applications.

Each application must include the permit fee and a nonrefundable handling fee for each species applied for, except when applying with a credit or debit card, the permit fees and handling fees must be paid pursuant to Rule R657-42-8(5).

R657-5-59. Antlerless Big Game Drawing.

(1) The antlerless drawing results may be posted at the Lee Kay Center, Cache Valley Hunter Education Center, division offices and on the division Internet address on the date published in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) Permits are drawn in the order listed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3)(a) Twenty percent of the antlerless deer, elk and doe pronghorn permits are reserved for youth hunters.

(b) For purposes of this section, "youth" means any person 18 years of age or younger on the opening day of the general archery buck deer season.

(c) Youth hunters who wish to participate in the youth drawing must:

(i) submit an application in accordance with Section R657-5-57; and

(ii) not apply as a group.

(d) Youth applicants who apply for an antlerless deer, elk, or doe pronghorn permit as provided in Subsection (c), will automatically be considered in the youth drawing based upon their birth date.

(e) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the antlerless drawing.

(4) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

R657-5-60. Antlerless Application Refunds.

(1) Unsuccessful applicants, who applied with a check or money order will receive a refund in August.

(2)(a) Unsuccessful applicants, who applied with a credit or debit card, will not be charged for a permit.

(b) Unsuccessful applicants, who applied as a group, will receive an equally distributed refund of money remaining after the successful applicants' permits are paid for in accordance with Section R657-5-26(6).

(3) The handling fees are nonrefundable.

R657-5-61. Over-the-counter Permit Sales After the Antlerless Drawing.

Permits remaining after the drawing will be sold beginning on the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game on a first-come, first-served basis from division offices, through participating online license agents, and through the mail.

R657-5-62. Application Withdrawal or Amendment.

(1)(a) An applicant may withdraw their application for premium limited entry, limited entry, cooperative wildlife management unit and once-in-a-lifetime, and general buck deer and general muzzleloader elk permits from the big game drawing, or antlerless drawing by requesting such in writing by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the address published in the proclamation of the Wildlife Board for taking big game.

(c) Handling fees will not be refunded.

(2)(a) An applicant may amend their application for the premium limited entry, limited entry, cooperative wildlife management unit and once-in-a-lifetime, and general buck deer and general muzzleloader elk permits from the big game drawing, or antlerless drawing by requesting such in writing by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the address published in the proclamation of the Wildlife Board for taking big game.

(c) The applicant must identify in their statement the requested amendment to their application.

(d) Handling fees will not be refunded.

(e) An amendment may cause rejection if the amendment causes an error on the application.

R657-5-63. Special Hunts.

(1)(a) In the event that wildlife management objectives are not being met for once-in-a-lifetime, premium limited entry, or limited entry species, the division may recommend that the Wildlife Board authorize a special hunt for a specific species.

(b) The division will only utilize Subsection (1)(a) if the Bucks, Bulls and Once-In-A-Lifetime Proclamation and Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game has been published and the Bucks, Bulls and Once-In-A-Lifetime and Antlerless drawings have been completed.

(2) The special hunt season dates, areas, number of permits, methods of take, requirements and other administrative details shall be provided in an addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum of the Wildlife Board for taking big game.

(3) Permits will be allocated through a special drawing for the pertinent species.

R657-5-64. Special Hunt Application - Deadlines.

(1) Applications are available from license agents and division offices.

(2)(a) Residents and nonresidents may apply.

(b) Any person who was unsuccessful in the Bucks, Bulls and Once-In-A-Lifetime or Antlerless drawing may apply. However, any person who has obtained a permit may not apply, unless otherwise provided in this rule and the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3)(a) Applications must be mailed by the date prescribed in the addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum of the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be rejected. Late applications will be returned unopened.

(b) If an error is found on an application, the applicant may be contacted for correction.

(4) Bonus points will be used in the special hunt drawings to improve odds for drawing permits as provided in Section R657-5-37. However, bonus points will not be awarded for unsuccessful applications in the special hunt drawings.

(5) Any person who obtains a special hunt permit is subject to all rules and regulations provided in this rule, the Bucks, Bulls and Once-In-A-Lifetime Proclamation and Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game, unless otherwise provided in Sections R657-5-63 through R657-5-68.

R657-5-65. Fees for Special Hunt Applications.

(1) Each application must include:

(a) the permit fee for the species applied for; and

(b) a nonrefundable handling fee.

(2)(a) Personal checks, money orders, cashier's checks and credit or debit cards are accepted from residents.

(b) Money orders, cashier's checks and credit or debit cards are accepted from nonresidents. Personal checks are not accepted from nonresidents.

(3)(a) Credit or debit cards must be valid at least 30 days after the drawing results are posted.

(b) If applicants are applying as a group, all fees for all applicants in that group must be charged to one credit or debit card.

(c) Handling fees are charged to the credit or debit card when the application is processed. Permit fees are charged after the drawing, if successful.

(d) Payments to correct an invalid or refused credit or debit card must be made with a cashier's check or money order for the full amount of the application fees plus any permits requested.

(4) An application is voidable if the check is returned unpaid from the bank or the credit or debit card is invalid or refused.

R657-5-66. Special Hunt Drawing.

(1) The special hunt drawing results are posted at the Lee Kay Center, Cache Valley Hunter Education Center and division offices on the date published in the addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

R657-5-67. Special Hunt Application Refunds.

(1) Unsuccessful applicants, who applied on the initial drawing and who applied with a check or money order will receive a refund within six weeks after posting of the drawing results.

(2) Unsuccessful applicants, who applied with a credit or debit card, will not be charged for a permit.

(3) The handling fees are nonrefundable.

R657-5-68. Permits Remaining After the Special Hunt Drawing.

Permits remaining after the special hunt drawing may be sold by mail or on a first-come, first-served basis as provided in the addendum to the Bucks, Bulls and Once-In-A-Lifetime or Antlerless Addendum of the Wildlife Board for taking big game. These permits may be purchased by either residents or nonresidents.

R657-5-69. Carcass Importation.

(1) It is unlawful to import dead elk, mule deer, or white-tailed deer or their parts from the areas of any state, province, game management unit, equivalent wildlife management unit, or county, which has deer or elk diagnosed with Chronic Wasting Disease, except the following portions of the carcass:

(a) meat that is cut and wrapped either commercially or privately;

(b) quarters or other portion of meat with no part of the spinal column or head attached;

(c) meat that is boned out;

(d) hides with no heads attached;

(e) skull plates with antlers attached that have been cleaned of all meat and tissue;

(f) antlers with no meat or tissue attached;

(g) upper canine teeth, also known as buglers, whistlers, or ivories; or

(h) finished taxidermy heads.

(2)(a) The affected states, provinces, game management units, equivalent wildlife management units, or counties, which have deer or elk diagnosed with Chronic Wasting Disease shall be available at division offices and through the division's Internet address.

(b) Importation of harvested elk, mule deer or white-tailed deer or their parts from the affected areas are hereby restricted pursuant to Subsection (1).

(3) Nonresidents of Utah transporting harvested elk, mule deer, or white-tailed deer from the affected areas are exempt if they:

(a) do not leave any part of the harvested animal in Utah and do not stay more than 24 hours in the state of Utah;

(b) do not have their deer or elk processed in Utah; or

(c) do not leave any parts of the carcass in Utah.

R657-5-70. Chronic Wasting Disease - Infected Animals.

(1) Any person who under the authority of a permit issued by the division legally takes a deer or elk that is later confirmed to be infected with Chronic Wasting Disease may:

(a) retain the entire carcass of the animal;

(b) retain any parts of the carcass, including antlers, and surrender the remainder to the division for proper disposal; or

(c) surrender all portions of the carcass in their actual or constructive possession, including antlers, to the division and receive a free new permit the following year for the same hunt.

(2) The new permit issued pursuant to Subsection (1)(c) shall be for the same species, sex, weapon type, unit, region, and otherwise subject to all the restrictions and conditions imposed on the original permit, except season dates for the permit shall follow the proclamation of the Wildlife Board for taking big game published in the year the new permit is valid.

(3) Notwithstanding other rules to the contrary, private landowners and landowner associations may refuse access to private property to persons possessing new permits issued under Subsection (1)(c).

KEY: wildlife, game laws, big game seasons
July 11, 2006 23-14-18
Notice of Continuation November 21, 2005 23-14-19
23-16-5
23-16-6

R746. Public Service Commission, Administration.
R746-110. Uncontested Matters to be Adjudicated Informally.
R746-110-1. Requests.

When a request for agency action is filed with the Commission and the party filing the request anticipates and represents in the request that the matter will be unopposed and uncontested, or when the Commission determines that the matter can reasonably be expected to be unopposed and uncontested the request may be adjudicated informally in accord with Section 63-46b-5 and the following:

R746-110-2. Procedure.

The applicant shall file in support of the request sworn statements and documents as may be necessary to establish the pertinent facts of the matter. Thereupon, the Commission may, without hearing, enter its Report and Order in tentative form not to be effective for a minimum of 20 days after its issuance. Provided, however, that in cases where the applicant shall establish good cause, the Commission may waive the 20-day tentative period and issue a final order. Section 63-46b-12 provides for review of final agency orders. The order shall provide that any person may file a protest prior to its effective date and that if the Commission finds the protest to be meritorious, the effective date shall be suspended pending further proceedings. The order shall be served by the applicant upon all persons deemed by the Commission to have an interest or potential interest in the subject matter, and the Commission may require public notice in the form designated by the Commission.

Absent meritorious protest, the order shall automatically become effective without further action.

R746-110-3. Rate Increases.

In cases where a public utility seeks an increase in rates, fees, or charges, informal summary procedure may be invoked if the applicant files in addition to supporting documentation a sworn statement from each person impacted by the increase that such person has no objection to the increase. This provision does not apply to energy-cost pass-through cases, which are provided for in Section 54-7-12(3)(d), nor does it apply to cases brought under Section 54-7-12(6).

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R746. Public Service Commission, Administration.
R746-200. Residential Utility Service Rules for Electric, Gas, Water, and Sewer Utilities.
R746-200-1. General Provisions.

A. Title -- These rules shall be known and may be cited as the Residential Utility Service Rules.

B. Purpose -- The purpose of these Rules is to establish and enforce uniform residential utility service practices and procedures governing eligibility, deposits, account billing, termination, and deferred payment agreements.

C. Policy --

1. The policy of these rules is to assure the adequate provision of residential utility service, to restrict unreasonable termination of or refusal to provide residential utility service, to provide functional alternatives to termination or refusal to provide residential utility service, and to establish and enforce fair and equitable procedures governing eligibility, deposits, account billing, termination, and deferred payment agreements.

2. Nondiscrimination -- Residential utility service shall be provided to qualified persons without regard to employment, occupation, race, handicap, creed, sex, national origin, marital status, or number of dependents.

D. Requirement of Good Faith -- Each agreement or obligation within these rules imposes an obligation of good faith, honesty, and fair dealings in its performance and enforcement.

E. Customer Information -- When residential service is extended to an account holder, a public utility shall provide the consumer with a consumer information pamphlet approved by the Commission which clearly describes and summarizes the substance of these rules. The utility shall mail or deliver a copy of this pamphlet, or a summarized version approved by the Commission, to its residential customers annually in September or October. Copies of this pamphlet shall be prominently displayed in the business offices maintained by the utility and furnished to consumers upon request. The utility has a continuing obligation to inform its consumers of significant amendments to these rules. Each utility with over 10,000 customers receiving service shall print and make available upon request a Spanish edition of a consumer information pamphlet. The English edition of the pamphlet shall contain a prominent notice, written in Spanish and English, that the utility has a Spanish edition of its pamphlet and whether or not it has qualified personnel available to help Spanish-speaking customers. In this section, utilities with fewer than 10,000 users may use the pamphlets printed by the Division of Public Utilities for the distribution and availability requirements.

F. Scope --

1. These rules shall apply to gas, water, sewer, and electric utilities that are subject to the regulatory authority of the Commission. Except as provided in R746-200-7(G)(4), Notice of Proposed Termination, these rules do not apply to master metered apartment dwellings. Commercial, industrial, government accounts and special contracts are also excluded from the requirements of these rules.

2. Upon a showing that specified portions of these rules impose an undue hardship and provide limited benefit to its customers, a utility may petition the Commission for an exemption from specified portions of these rules.

G. Customer's Statement of Rights and Responsibilities -- When utility service is extended to an account holder, annually, and upon first notice of an impending service disconnection, a public utility shall provide a copy of the "Customer's Statement of Rights and Responsibilities" as approved by the Commission. The Statement of Rights and Responsibilities shall be a single page document. It shall be prominently displayed in each customer service center.

R746-200-2. General Definitions.

A. "Account Holder" -- A person, corporation, partnership, or other entity which has agreed with a public utility to pay for receipt of residential utility service and to which the utility provides service.

B. "Applicant" -- As used in these rules means a person, corporation, partnership, or other entity which applies to a public utility for residential utility service.

C. "Budget Billing" -- Monthly residential payment plan under which the customer's estimated annual billing is divided into 12 monthly payments.

D. "Deferred Payment Agreement" -- As used in these rules means an agreement to receive, or to continue to receive, residential utility service pursuant to Section R746-200-5 and to pay an outstanding debt or delinquent account owed to a public utility.

E. "Residential Utility Service" -- Means gas, water, sewer, and electric service provided by a public utility to a residence.

F. "Termination of Service" -- The terms "termination," "disconnection," and "shutoff" as used in these rules are synonymous and mean the stopping of service for whatever cause.

G. "Load Limiter" -- Device which automatically interrupts electric service at a residence when the preset kW demand is exceeded. Service is restored when the customer decreases usage and then presses the reset button on the device.

R746-200-3. Deposits, Eligibility for Service, and Shared Meter or Appliance.

A. Deposits and Guarantees --

1. Each utility shall submit security deposit policies and procedures to the Commission for its approval before the implementation and use of those policies and procedures. Each utility shall submit third-party guarantor policies and procedures to the Commission.

2. Each utility collecting security deposits shall pay interest thereon at a rate as established by the Commission. For electric cooperatives and electric service districts, interest rates shall be determined by the governing board of directors of the cooperative or district and filed with the Commission and shall be deemed approved by the Commission unless ten percent or more of the customers file a request for agency action requesting an investigation and hearing. The deposit paid, plus accrued interest, is eligible for return to the customer after the customer has paid the bill on time for 12 consecutive months.

3. A residential customer shall have the right to pay a security deposit in at least three equal monthly installments if the first installment is paid when the deposit is required.

B. Eligibility for Service --

1. Residential utility service is to be conditioned upon payment of deposits, where required, and of any outstanding debts for past utility service which are owed by the applicant to that public utility, subject to Subsections R746-200-3(B)(2), and R746-200-7(B)(2), Reasons for Termination. Service may be denied when unsafe conditions exist, when the applicant has furnished false information to get utility service, or when the customer has tampered with utility-owned equipment, such as meters and lines. An applicant is ineligible for service if at the time of application, the applicant is cohabiting with a delinquent account holder, whose utility service was previously disconnected for non-payment, and the applicant and delinquent account holder also cohabited while the delinquent account holder received the utility's service, whether the service was received at the applicants present address or another address.

2. When an applicant cannot pay an outstanding debt in full, residential utility service shall be provided upon execution of a written, deferred payment agreement as set forth in Section R746-200-5.

C. Shared Meter or Appliance - In rental property where

one meter provides service to more than one unit or where appliances provide service to more than one unit or to other occupants at the premises, and this situation is known to the utility, the utility will recommend that service be in the property owner's name and the property owner be responsible for the service. However, a qualifying applicant will be allowed to put service in their own name provided the applicant acknowledges that the request for services is entered into willingly and he has knowledge of the account responsibility.

R746-200-4. Account Billing.

A. Billing Cycle -- Each gas, electric, sewer and water utility shall use a billing cycle that has an interval between regular periodic billing statements of not greater than two months. This section applies to permanent continuous service customers, not to seasonal customers.

B. Estimated Billing --

1. A gas, electric, sewer or water public utility using an estimated billing procedure shall try to make an actual meter reading at least once in a two-month period and give a bill for the appropriate charge determined from that reading. When weather conditions prevent regular meter readings, or when customers are served on a seasonal tariff, the utility will make arrangements with the customer to get meter reads at acceptable intervals.

2. If a meter reader cannot gain access to a meter to make an actual reading, the public utility shall take appropriate additional measures in an effort to get an actual meter reading. These measures shall include, but are not limited to, scheduling of a meter reading at other than normal business hours, making an appointment for meter reading, or providing a prepaid postal card with a notice of instruction upon which an account holder may record a meter reading. If after two regular route visits, access has not been achieved, the utility will notify the customer that he must make arrangements to have the meter read as a condition of continuing service.

3. If, after compliance with Subsection R746-200-4(B)(2), a public utility cannot make an actual meter reading it may give an estimated bill for the current billing cycle in accordance with Subsection R746-200-7(B)(1)(f), Reasons for Termination.

C. Periodic Billing Statement -- Except when a residential utility service account is considered uncollectible or when collection or termination procedures have been started, a public utility shall mail or deliver an accurate bill to the account holder for each billing cycle at the end of which there is an outstanding debit balance for current service, a statement which the account holder may keep, setting forth each of the following disclosures to the extent applicable:

1. the outstanding balance in the account at the beginning of the current billing cycle using a term such as "previous balance";

2. the amount of charges debited to the account during the current billing cycle using a term such as "current service";

3. the amount of payments made to the account during the current billing cycle using a term such as "payments";

4. the amount of credits other than payments to the account during the current billing cycle using a term such as "credits";

5. the amount of late payment charges debited to the account during the current billing cycle using a term such as "late charge";

6. the closing date of the current billing cycle and the outstanding balance in the account on that date using a term such as "amount due";

7. a listing of the statement due date by which payment of the new balance must be made to avoid assessment of a late charge;

8. a statement that a late charge, expressed as an annual percentage rate and a periodic rate, may be assessed against the account for late payment;

9. the following notice: "If you have any questions about this bill, please call the Company."

D. Late Charge --

1. Commencing not sooner than the end of the first billing cycle after the statement due date, a late charge of a periodic rate as established by the Commission may be assessed against an unpaid balance in excess of new charges debited to the account during the current billing cycle. The Commission may change the rate of interest.

2. No other charge, whether described as a finance charge, service charge, discount, net or gross charge may be applied to an account for failure to pay an outstanding bill by the statement due date. This section does not apply to reconnection charges or return check service charges.

E. Statement Due Date -- An account holder shall have not less than 20 days from the date the current bill was prepared to pay the new balance, which date shall be the statement due date.

F. Disputed Bill --

1. In disputing a periodic billing statement, an account holder shall first try to resolve the issue by discussion with the public utility's collections personnel.

2. When an account holder has proceeded pursuant to Subsection R746-200-4(F)(1), the public utility's collections personnel shall investigate the disputed issue and shall try to resolve that issue by negotiation.

3. If the negotiation does not resolve the dispute, the account holder may obtain informal and formal review of the dispute as set forth in Section R746-200-8, Informal Review, and R746-200-9, Formal Review.

4. While an account holder is proceeding with either informal or formal review of a dispute, no termination of service shall be permitted if amounts not disputed are paid when due.

G. Unpaid Bills - Utilities transferring unpaid bills from inactive or past accounts to active or current accounts shall follow these limitations:

1. A utility company may only transfer bills between similar classes of service, such as residential to residential, not commercial to residential.

2. Unpaid amounts for billing cycles older than four years before the time of transfer cannot be transferred to an active or current account.

3. The customer shall be provided with an explanation of the transferred amounts from earlier billing cycles and informed of the customer's ability to dispute the transferred amount.

4. The customer may dispute the transferred amount pursuant to R746-200-4(F).

R746-200-5. Deferred Payment Agreement.

A. Deferred Payment Agreement --

1. An applicant or account holder who cannot pay a delinquent account balance on demand shall have the right to receive residential utility service under a deferred payment agreement subject to R746-200-5(B) unless the delinquent account balance is the result of unauthorized usage of, or diversion of, residential utility service. If the delinquent account balance is the result of unauthorized usage of, or diversion of, residential utility service, the use of a deferred payment agreement is at the utility's discretion.

2. An applicant or account holder shall have the right to a deferred payment agreement, consisting of 12 months of equal monthly payments, if the full amount of the delinquent balance plus interest shall be paid within the 12 months and if the applicant or account holder agrees to pay the initial monthly installment. The account holder shall have the right to pre-pay a monthly installment, pre-pay a portion of, or the total amount of the outstanding balance due under a deferred payment agreement at any time during the term of the agreement. The account holder also has the option, when negotiating a deferred payment agreement, to include the amount of the current

month's bill plus the reconnection charges in the total amount to be paid over the term of the deferred payment agreement.

3. Payment Options

a. If a utility has a budget billing or equal payment plan available, it shall offer the account holder the option of:

I. agreeing to pay monthly bills for future residential utility service as they become due, plus the monthly deferred payment installment, or

ii. agreeing to pay a budget billing or equal payment plan amount set by the utility for future residential utility service plus the monthly deferred payment installment.

b. When negotiating a deferred payment agreement with a utility that does not offer a budget billing or equal payment plan, the account holder shall agree to pay the monthly bills for future residential utility service plus the monthly deferred payment installment necessary to liquidate the delinquent bill.

4. The terms of the deferred payment agreement shall be set forth in a written agreement, a copy of which shall be provided to the customer.

5. A deferred payment agreement may include a finance charge as approved by the Commission. If a finance charge is assessed, the deferred payment agreement shall contain notice of the charge.

B. Breach -- If an applicant or account holder breaches a condition or term of a deferred payment agreement, the public utility may treat that breach as a delinquent account and shall have the right to disconnect service pursuant to these rules, subject to the right of the customer to seek review of the alleged breach by the Commission, and the account holder shall not have the right to a renewal of the deferred payment agreement. Renewal of deferred payment agreements after the breach shall be at the utility's discretion.

R746-200-6. Reconnection of Discontinued Service.

A. Public utilities shall have personnel available 24 hours each day to reconnect utility service. Service shall be reconnected as soon as possible, but no later than the next generally recognized business day after the customer has requested reconnection and complied with all necessary conditions for reconnection of service; which may include payment of reconnection charges and compliance with deferred payment agreement terms.

B. If a customer requests reconnection or other services outside of the utility's normal business days or hours of operation, the utility shall inform the customer of any additional charges or terms, as specified in the utility's tariff provisions, applicable to the customer's request.

R746-200-7. Termination of Service.

A. Delinquent Account --

1. A residential utility service bill which has remained unpaid beyond the statement due date is a delinquent account.

2. When an account is a delinquent account, a public utility, before termination of service, shall issue a written late notice to inform the account holder of the delinquent status. A late notice or reminder notice must include the following information:

a. A statement that the account is a delinquent account and should be paid promptly;

b. A statement that the account holder should communicate with the public utility's collection department, by calling the company, if he has a question concerning the account;

c. A statement of the delinquent account balance, using a term such as "delinquent account balance."

3. When the account holder responds to a late notice or reminder notice the public utility's collections personnel shall investigate disputed issues and shall try to resolve the issues by negotiation. During this investigation and negotiation no other action shall be taken to disconnect the residential utility service if the account holder pays the undisputed portion of the account subject to the utility's right to terminate utility service pursuant to R746-200-7(F), Termination of Service Without Notice.

4. A copy of the "Statement of Customer Rights and Responsibilities" referred to in Subsection R746-200-1(G) of these rules shall be issued to the account holder with the first notice of impending service disconnection.

B. Reasons for Termination of Service --

1. Residential utility service may be terminated for the following reasons:

a. Nonpayment of a delinquent account;

b. Nonpayment of a deposit when required;

c. Failure to comply with the terms of a deferred payment agreement or Commission order;

d. Unauthorized use of, or diversion of, residential utility service or tampering with wires, pipes, meters, or other equipment;

e. Subterfuge or deliberately furnishing false information; or

f. Failure to provide access to meter during the regular route visit to the premises following proper notification and opportunity to make arrangements in accordance with R746-200-4(B), Estimated Billing, Subsection (2).

2. The following shall be insufficient grounds for termination of service:

a. A delinquent account, accrued before a divorce or separate maintenance action in the courts, in the name of a former spouse, cannot be the basis for termination of the current account holder's service;

b. Cohabitation of a current account holder with a delinquent account holder whose utility service was previously terminated for non-payment, unless the current and delinquent account holders also cohabited while the delinquent account holder received the utility's service, whether the service was received at the current account holder's present address or another address;

c. When the delinquent account balance is less than $25.00, unless no payment has been made for two months;

d. Failure to pay an amount in bona fide dispute before the Commission;

e. Payment delinquency for third party services billed by the regulated utility company, unless prior approval is obtained from the Commission.

C. Restrictions upon Termination of Service During Serious Illness --

1. Residential gas, water, sewer and electric utility service may not be terminated and will be restored if terminated when the termination of service will cause or aggravate a serious illness or infirmity of a person living in the residence. Utility service will be restored or continue for one month or less as stated in Subsection R746-200-7(C)(2).

2. Upon receipt of a statement, signed by an osteopathic physician, a physician, a surgeon, a naturopathic physician, a physician assistant, a nurse, or a certified nurse midwife, as the providers are defined and licensed under Title 58 of the Utah Code, either on a form obtained from the utility or on the health care provider's letterhead stationery, which statement legibly identifies the health infirmity or potential health hazard, and how termination of service will injure the person's health or aggravate their illness, a public utility will continue or restore residential utility service for the period set forth in the statement or one month, whichever is less; however, the person whose health is threatened or illness aggravated may petition the Commission for an extension of time.

3. During the period of continued service, the account holder is liable for the cost of residential utility service. No action to terminate the service may be undertaken, however, until the end of the period of continued service.

D. Restrictions upon Termination of Service to Residences with Life-Supporting Equipment -- No public utility shall terminate service to a residence in which the account holder or a resident is known by the utility to be using an iron lung, respirator, dialysis machine, or other life-supporting equipment whose normal operation requires continuation of the utility's service, without specific prior approval by the Commission. Account holders eligible for this protection can get it by filing a written notice with the utility, which notice form is to be obtained from the utility, signed and supported by a statement consistent with that required in part C.2. above, and specifically identifying the life-support equipment that requires the utility's service. Thereupon, a public utility shall mark and identify applicable meter boxes when this equipment is used.

E. Payments for HEAT, Home Energy Assistance Target, Program -- The Commission approves the provision of the Department of Human Service's standard contract with public utility suppliers in Utah that suppliers will not discontinue utility service to a low-income household for at least 30 days after receipt of utility payment from the state program on behalf of the low-income household.

F. Termination of Service Without Notice -- Any provision contained in these rules notwithstanding, a public utility may terminate residential utility service without notice when, in its judgment, a clear emergency or serious health or safety hazard exists for so long as the conditions exist, or when there is unauthorized use or diversion of residential utility service or tampering with wires, pipes, meters, or other equipment owned by the utility. The utility shall immediately try to notify the customer of the termination of service and the reasons therefor.

G. Notice of Proposed Termination of Service --

1. At least 10 calendar days before a proposed termination of residential utility service, a public utility shall give written notice of disconnection for nonpayment to the account holder. The 10-day time period is computed from the date the bill is postmarked. The notice shall be given by first class mail or delivery to the premises and shall contain a summary of the following information:

a. a Statement of Customer Rights and Responsibilities under existing state law and Commission rules;

b. the Commission-approved policy on termination of service for that utility;

c. the availability of deferred payment agreements and sources of possible financial assistance including but not limited to state and federal energy assistance programs;

d. informal and formal procedures to dispute bills and to appeal adverse decisions, including the Commission's address and telephone number;

e. specific steps, printed in a conspicuous fashion, that may be taken by the consumer to avoid termination of service;

f. the date on which payment arrangements must be made to avoid termination of service; and

g. subject to the provision of Subsection R746-200-1(E), Customer Information, a conspicuous statement, in Spanish, that the notice is a termination of service notice and that the utility has a Spanish edition of its customer information pamphlet and whether it has personnel available during regular business hours to communicate with Spanish-speaking customers.

2. At least 48 hours before termination of service is scheduled, the utility shall make good faith efforts to notify the account holder or an adult member of the household, by mail, by telephone or by a personal visit to the residence. If personal notification has not been made either directly by the utility or by the customer in response to a mailed notice, the utility shall leave a written termination of service notice at the residence. Personal notification, such as a visit to the residence or telephone conversation with the customer, is required only during the winter months, October 1 through March 31. Other months of the year, the mailed 48-hour notice can be the final notice before the termination of service.

If termination of service is not accomplished within 15 business days following the 48-hour notice, the utility company will follow the same procedures for another 48-hour notice.

3. A public utility shall send duplicate copies of 10-day termination of service notices to a third party designated by the account holder and shall make reasonable efforts to personally contact the third party designated by the account holder before termination of service occurs, if the third party resides within its service area. A utility shall inform its account holders of the third-party notification procedure at the time of application for service and at least once each year.

4. In rental property situations where the tenant is not the account holder and that fact is known to the utility, the utility shall post a notice of proposed termination of service on the premises in a conspicuous place and shall make reasonable efforts to give actual notice to the occupants by personal visits or other appropriate means at least five calendar days before the proposed termination of service. The posted notice shall contain the information listed in Subsection R746-200-7(G)(1). This notice provision applies to residential premises when the account holder has requested termination of service or the account holder has a delinquent bill. If nonpayment is the basis for the termination of service, the utility shall also advise the tenants that they may continue to receive utility service for an additional 30 days by paying the charges due for the 30-day period just past.

H. Termination of Service -- Upon expiration of the notice of proposed termination of service, the public utility may terminate residential utility service. Except for service diversion or for safety considerations, utility service shall not be disconnected between Thursday at 4:00 p.m. and Monday at 9:00 a.m. or on legal holidays recognized by Utah, or other times the utility's business offices are not open for business. Service may be disconnected only between the hours of 9:00 a.m. and 4:00 p.m.

I. Customer-Requested Termination of Service --

1. A customer shall advise a public utility at least three days in advance of the day on which he wants service disconnected to his residence. The public utility shall disconnect the service within four working days of the requested disconnect date. The customer shall not be liable for the services rendered to or at the address or location after the four days, unless access to the meter has been delayed by the customer.

2. A customer who is not an occupant at the residence for which termination of service is requested shall advise the public utility at least 10 days in advance of the day on which he wants service disconnected and sign an affidavit that he is not requesting termination of service as a means of evicting his tenants. Alternatively, the customer may sign an affidavit that there are no occupants at the residence for which termination of service is requested and thereupon the disconnection may occur within four days of the requested disconnection date.

J. Restrictions Upon Termination of Service Practices -- A public utility shall not use termination of service practices other than those set forth in these rules. A utility shall have the right to use or pursue legal methods to ensure collections of obligations due it.

K. Policy Statement Regarding Elderly and Handicapped -- The state recognizes that the elderly and handicapped may be seriously affected by termination of utility service. In addition, the risk of inappropriate termination of service may be greater for the elderly and handicapped due to communication barriers which may exist by reason of age or infirmity. Therefore, this section is specifically intended to prevent inappropriate terminations of service which may be hazardous to these individuals. In particular, Subsection R746-200-7(G), requiring adequate notice of impending terminations of service, including

notification to third parties upon the request of the account holder, Subsection R746-200-7(C), restricting termination of service when the termination of service will cause or aggravate a serious illness or infirmity of a person living in the residence, and Subsection R746-200-7(D), restricting terminations of service to residences when life-supporting equipment is in use, are intended to meet the special needs of elderly and handicapped persons, as well as those of the public in general.

L. Load Limiter as a Substitute for Termination of Service, Electric Utilities --

1. An electric utility may, but only with the customer's consent, install a load limiter as an alternative to terminating electric service for non-payment of a delinquent account or for failure to comply with the terms of a deferred payment agreement or Commission order. Conditions precedent to the termination of electric service must be met before the installation of a load limiter.

2. Disputes about the level of load limitation are subject to the informal review procedure of Subsection R746-200-8.

3. Electric utilities shall submit load limiter policies and procedures to the Commission for their review before the implementation and use of those policies.

R746-200-8. Informal Review.

A. A person who is unable to resolve a dispute with the utility concerning a matter subject to Public Service Commission jurisdiction may obtain informal review of the dispute by a designated employee within the Division of Public Utilities. This employee shall investigate the dispute, try to resolve it, and inform both the utility and the consumer of his findings within five business days from receipt of the informal review request. Upon receipt of a request for informal review, the Division employee shall, within one business day, notify the utility that an informal complaint has been filed. Absent unusual circumstances, the utility shall attempt to resolve the complaint within five business days. In no circumstances shall the utility fail to respond to the informal complaint within five business days. The response shall advise the complainant and the Division employee regarding the results of the utility's investigation and a proposed solution to the dispute or provide a timetable to complete any investigation and propose a solution. The utility shall make reasonable efforts to complete any investigation and resolve the dispute within 30 calendar days. A proposed solution may be that the utility request that the informal complaint be dismissed if, in good faith, it believes the complaint is without merit. The utility shall inform the Division employee of the utility's response to the complaint, the proposed solution and the complainant's acceptance or rejection of the proposed solution and shall keep the Division employee informed as to the progress made with respect to the resolution and final disposition of the informal complaint. If, after 30 calendar days from the receipt of a request for informal review, the Division employee has received no information that the complainant has accepted a proposed solution or otherwise completely resolved the complaint with the utility, the complaint shall be presumed to be unresolved.

B. Mediation -- If the utility or the complainant determines that they cannot resolve the dispute by themselves, either of them may request that the Division attempt to mediate the dispute. When a mediation request is made, the Division employee shall inform the other party within five business days of the mediation request. The other party shall either accept or reject the mediation request within ten business days after the date of the mediation request, and so advise the mediation-requesting party and the Division employee. If mediation is accepted by both parties or the complaint continues to be unresolved 30 calendar days after receipt, the Division employee shall further investigate and evaluate the dispute, considering both the customer's complaint and the utility's response, their past efforts to resolve the dispute, and try to mediate a resolution between the complainant and the utility. Mediation efforts may continue for 30 days or until the Division employee informs the parties that the Division has determined that mediation is not likely to result in a mutually acceptable resolution, whichever is shorter.

C. Division Access to Information During Informal Review or Mediation -- The utility and the complainant shall provide documents, data or other information requested by the Division, to evaluate the complaint, within five business days of the Division's request, if reasonably possible or as expeditiously as possible, if they cannot be provided within five business days.

D. Commission Review -- If the utility has proposed that the complaint be dismissed from informal review for lack of merit and the Division concurs in the disposition, if either party has rejected mediation or if mediation efforts are unsuccessful and the Division has not been able to assist the parties in reaching a mutually accepted resolution of the informal dispute, or the dispute is otherwise unresolved between the parties, the Division in all cases shall inform the complainant of the right to petition the Commission for a review of the dispute, and shall make available to the complainant a standardized complaint form with instructions approved by the Commission. The Division itself may petition the Commission for review of a dispute in any case which the Division determines appropriate. While a complainant is proceeding with an informal or a formal review or mediation by the Division or a Commission review of a dispute, no termination of service shall be permitted, if any amounts not disputed are paid when due, subject to the utility's right to terminate service pursuant to R746-200-7(F), Termination of Service Without Notice.

R746-200-9. Formal Agency Proceedings Based Upon Complaint Review.

The Commission, upon its own motion or upon the petition of any person, may initiate formal or investigative proceedings upon matters arising out of informal complaints.

R746-200-10. Penalties.

A. A residential account holder who claims that a regulated utility has violated a provision of these customer service rules, other Commission rules, company tariff, or other approved company practices may use the informal and formal grievance procedures. If considered appropriate, the Commission may assess a penalty pursuant to Section 54-7-25.

B. Fines collected shall be used to assist low income Utahns to meet their basic energy needs.

KEY: public utilities, rules, utility service shutoff

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R746. Public Service Commission, Administration.
R746-360. Universal Public Telecommunications Service Support Fund.
R746-360-1. General Provisions.

A. Authorization -- Section 54-8b-15 authorizes the Commission to establish an expendable trust fund, known as the Universal Public Telecommunications Service Support Fund, the "universal service fund," "USF" or the "fund," to promote equitable cost recovery and universal service by ensuring that customers have access to basic telecommunications service at just, reasonable and affordable rates, consistent with the Telecommunications Act of 1996.

B. Purpose -- The purposes of these rules are:

1. to govern the methods, practices and procedures by which:

a. the USF is created, maintained, and funded by end-user surcharges applied to retail rates;

b. funds are collected for and disbursed from the USF to qualifying telecommunications corporations so that they will provide basic telecommunications service at just, reasonable and affordable rates; and,

2. to govern the relationship between the fund and the trust fund established under 54-8b-12, and establish the mechanism for the phase-out and expiration of the latter fund.

C. Application of the Rules -- The rules apply to all retail providers that provide intrastate public telecommunications services.

R746-360-2. Definitions.

A. Affordable Base Rate (ABR) -- means the monthly per line retail rates, charges or fees for basic telecommunications service which the Commission determines to be just, reasonable, and affordable for a designated support area. The Affordable Base Rate shall be established by the Commission. The Affordable Base Rate does not include the applicable USF retail surcharge, municipal franchise fees, taxes, and other incidental surcharges.

B. Average Revenue Per Line -- means the average revenue for each access line computed by dividing the sum of all revenue derived from a telecommunications corporation's provision of public telecommunications services, including, but not limited to, revenues received from the provision of services in both the interstate and intrastate jurisdictions, whether designated "retail," "wholesale," or some other categorization, all revenues derived from providing network elements, services, functionalities, etc. required under the Federal Telecommunications Act of 1996, Pub. L. 104-104,110 Stat.56 or the Utah Telecommunications Reform Act, Laws of Utah 1995, Chapter 269, all support funds received from the Federal Universal Service Support Fund, and each and every other revenue source or support or funding mechanism used to assist in recovering the costs of providing public telecommunications services in a designated support area by that telecommunications corporation's number of access lines in the designated support area.

C. Basic Telecommunications Service -- means a local exchange service consisting of access to the public switched network; touch-tone, or its functional equivalent; local flat-rated, unlimited usage, exclusive of extended area service; single-party service with telephone number listed free in directories that are received free; access to operator services; access to directory assistance, lifeline and telephone relay assistance; access to 911 and E911 emergency services; access to long-distance carriers; access to toll limitation services; and other services as may be determined by the Commission.

D. Designated Support Area -- means the geographic area used to determine USF support distributions. A designated support area, or "support area," need not be the same as a USF proxy model's geographic unit. The Commission will determine the appropriate designated support areas for determining USF support requirements. Unless otherwise specified by the Commission, the designated support area for a rate-of-return regulated Incumbent telephone corporation shall be its entire certificated service territory located in the State of Utah.

E. Facilities-Based Provider -- means a telecommunications corporation that uses its own facilities, a combination of its own facilities and essential facilities or unbundled network elements obtained from another telecommunications corporation, or a telecommunications corporation which solely uses essential facilities or unbundled network elements obtained from another telecommunications corporation to provide public telecommunications services.

F. Geographic Unit -- means the geographic area used by a USF proxy cost model for calculating costs of public telecommunications services. The Commission will determine the appropriate geographic area to be used in determining public telecommunications service costs.

G. Net Fund Distributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues collected by that company, when the former amount is greater than the latter amount.

H. Net Fund Contributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues generated by that company, when the latter amount is greater than the former amount.

I. Trust Fund -- means the Trust Fund established by 54-8b-12.

J. USF Proxy Model Costs -- means the total, jurisdictionally unseparated, cost estimate for public telecommunications services, in a geographic unit, based on the forward-looking, economic cost proxy model(s) chosen by the Commission. The level of geographic cost disaggregation to be used for purposes of assessing the need for and the level of USF support within a geographic unit will be determined by the Commission. These models shall be provided by the Commission by January 2, 2001.

K. Universal Service Fund (USF or fund) -- means the Universal Public Telecommunications Service Support Fund established by 54-8b-15 and set forth by this rule.

R746-360-3. Duties of Administrator.

A. Selection of Administrator -- The Division of Public Utilities will be the fund administrator. If the Division is unable to fulfill that responsibility, the administrator, who must be a neutral third party, unaffiliated with any fund participant, shall be selected by the Commission.

B. Cost of Administration -- The cost of administration shall be borne by the fund; unless administered by a state agency.

C. Access to Books -- Upon reasonable notice, the administrator shall have access to the books of account of all telecommunications corporations and retail providers, which shall be used to verify the intrastate retail revenue assessed in an end-user surcharge, to confirm the level of eligibility for USF support and to ensure compliance with this rule.

D. Maintenance of Records -- The administrator shall maintain the records necessary for the operation of the USF and this rule.

E. Report Forms -- The administrator shall develop report forms to be used by telecommunications corporations and retail providers to effectuate the provisions of this rule and the USF. An officer of the telecommunications corporation or retail provider shall attest to and sign the reports to the administrator.

F. Administrator Reports -- The administrator shall file reports with the Commission containing information on the average revenue per line calculations, projections of future USF

needs, analyses of the end-user surcharges and Affordable Base Rates, and recommendations for calculating them for the following 12-month period. The report shall include recommendations for changes in determining basic telecommunications service, designated support areas, geographic units, USF proxy cost models and ways to improve fund collections and distributions.

G. Periodic Review -- The administrator, under the direction of the Commission, shall perform a periodic review of fund recipients to verify eligibility for future support and to verify compliance with all applicable state and federal laws and regulations.

H. Proprietary Information -- Information received by the administrator which has been determined by the Commission to be proprietary shall be treated in conformance with Commission practices.

I. Information Requested -- Information requested by the administrator which is required to assure a complete review shall be provided within 45 days of the request. Failure to provide information within the allotted time period may be a basis for withdrawal of future support from the USF or other lawful penalties to be applied.

R746-360-4. Application of Fund Surcharges to Customer Billings.

A. Commencement of Surcharge Assessments -- Commencing June 1, 1998, end-user surcharges shall be the source of revenues to support the fund. Surcharges will be applied to intrastate retail rates, and shall not apply to wholesale services.

B. Surcharge Based on a Uniform Percentage of Retail Rates -- The retail surcharge shall be a uniform percentage rate, determined and reviewed annually by the Commission and billed and collected by all retail providers.

C. Surcharge -- The surcharge to be assessed shall equal 0.5 percent of billed intrastate retail rates.

R746-360-5. Fund Remittances and Disbursements.

A. Remitting Surcharge Revenues --

1. Telecommunications corporations, not eligible for USF support funds, providing telecommunications services subject to USF surcharges shall collect and remit surcharge revenues to the Commission within 45 days after the end of each month.

2. Telecommunications corporations eligible for USF support funds shall make remittances as follows:

a. Prior to the end of each month, the fund administrator shall inform each qualifying telecommunications corporation of the estimated amount of support that it will be eligible to receive from the USF for that month.

b. Net fund contributions shall be remitted to the Commission within 45 calendar days after the end of each month. If the net amount owed is not received by that date, remedies, including withholding future support from the USF, may apply.

3. The Commission will forward remitted revenues to the Utah State Treasurer's Office for deposit in a USF account.

B. Distribution of Funds -- Net Fund distributions to qualifying telecommunications corporations for a given month shall be made 60 days after the end of that month, unless withheld for failure to maintain qualification or failure to comply with Commission orders or rules.

R746-360-6. Eligibility for Fund Distributions.

A. Qualification --

1. To qualify to receive USF support funds, a telecommunications corporation shall be designated an "eligible telecommunications carrier," pursuant to 47 U.S.C. Section 214(e), and shall be in compliance with Commission orders and rules. Each telecommunications corporation receiving support shall use that support only to provide basic telecommunications service and any other services or purposes approved by the Commission.

2. Additional qualification criteria for Incumbent telephone corporations - In addition to the qualification criteria of R746-360-6A.1.,

a. Non-rate-of-return Incumbent telephone corporations, except Incumbent telephone corporations subject to pricing flexibility pursuant to 54-8b-2.3 shall make Commission approved, aggregate rate reductions for public telecommunications services, provided in the State of Utah, equal to each incremental increase in USF distribution amounts received after December 1, 1999.

b. Rate-of-return Incumbent telephone corporations shall complete a Commission review of their revenue requirement and public telecommunications services' rate structure prior to any change in their USF distribution which differs from a prior USF distribution, beginning with the USF distribution for December, 1999.

B. Rate Ceiling -- To be eligible, a telecommunications corporation may not charge retail rates in excess of the Commission determined Affordable Base Rates for basic telecommunications service or vary from the terms and conditions determined by the Commission for other telecommunications services for which it receives Universal Service Fund support.

C. Lifeline Requirement -- A telecommunications corporation may qualify to receive distributions from the fund only if it offers Lifeline service on terms and conditions prescribed by the Commission.

D. Exclusion of Resale Providers -- Only facilities-based providers, will be eligible to receive support from the fund. Where service is provided through one telecommunications corporation's resale of another telecommunications corporation's service, support may be received by the latter only.

R746-360-7. Calculation of Fund Distributions in Non-rate-of-Return Regulated Incumbent Telephone Corporation Territories.

A. Use of Proxy Cost Models -- The USF proxy cost model(s) selected by the Commission and average revenue per line will be used to determine fund distributions within designated support areas.

B. Use of USF Funds --Telecommunications corporations shall use USF funds to support each primary residential line in active service which it furnishes in each designated area.

C. Determination of Support Amounts --

1. Incumbent telephone corporation - Monies from the fund will equal the numerical difference between USF proxy model cost estimates of costs to provide residential Basic Telecommunications Service in the designated support area and the product of the Incumbent telephone corporation's Average Revenue per line, for the designated support area, times the number of Incumbent telephone corporation's active residential access lines in the designated support area.

2. Telecommunications corporations other than Incumbent telephone corporations - Monies from the fund will equal the Incumbent telephone corporation's average residential access line support amount for the respective designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active residential access lines in the designated support area, times the eligible telecommunications corporation's number of active residential access lines.

D. Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

E. Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

R746-360-8. Calculation of Fund Distributions in Rate-of-Return Incumbent Telephone Corporation Territories.

A. Determination of Support Amounts --

1. Incumbent telephone corporation - Monies from the fund will equal the numerical difference between the Incumbent telephone corporation's total embedded costs of providing public telecommunications services, for a designated support area, less the product of the Incumbent telephone corporation's Average Revenue Per Line, for the designated support area, times the Incumbent telephone corporation's active access lines in the designated support area.

2. Telecommunications corporations other than Incumbent telephone corporations - Monies from the fund will equal the respective Incumbent telephone corporation's average access line support amount for the designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active access lines in the designated support area, times the eligible telecommunications corporation's number of active access lines in the designated support area.

B. Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission-approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

C. Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

R746-360-9. One-Time Distributions From the Fund.

A. Applications for One-Time Distributions -- Telecommunications corporations, whether they are or are not receiving USF funds under R746-360-7 or R746-360-8, potential customers not presently receiving service because facilities are not available, or customers receiving inadequate service may apply to the Commission for one-time distributions from the fund for extension of service to a customer, or customers, not presently served or for amelioration of inadequate service.

1. These distributions are to be made only in extraordinary circumstances, when traditional methods of funding and service provision are infeasible.

2. One-time distributions will not be made for:

a. New subdivision developments;

b. Property improvements, such as cable placement, when associated with curb and gutter installations; or

c. Seasonal developments that are exclusively vacation homes.

i. Vacation home is defined as: A secondary residence which is primarily used for recreation and is unoccupied for a period of four consecutive weeks per year.

3. An application for a one-time distribution may be filed with the Commission by an individual or group of consumers desiring telephone service or improved service, a telecommunications corporation on behalf of those consumers, the Division of Public Utilities, or any entity permitted by law to request agency action. An application shall identify the service(s) sought, the area to be served and the individuals or entities that will be served if the one-time distribution is approved.

4. Following the application's filing, affected telecommunications corporations shall provide engineering, facilities, costs, and any other pertinent information that will assist in the Commission's consideration of the application.

5. In considering the one-time distribution application, the Commission will examine relevant facts including the type and grade of service to be provided, the cost of providing the service, the demonstrated need for the service, whether the customer is within the service territory of a telecommunications corporation, whether the proposed service is for a primary residence, the provisions for service or line extension currently available, and other relevant factors to determine whether the one-time distribution is in the public interest.

B. Presumed Reasonable Amounts and Terms -- Unless otherwise ordered by the Commission, the maximum one-time distribution will be no more than $10,000 per customer for customers of rate-of-return regulated companies. For customers of non-rate of return companies, the maximum one-time distribution shall be calculated so that the required customer payments would equal the payments required from a customer of a rate-of-return regulated company. The Commission will presume a company's service or line extension terms and conditions reasonable, for a subscriber in connection with one-time universal service fund distribution requests, if the costs of service extension, for each extension, are recovered as follows:

1. For rate-of-return regulated Local Exchange Carriers who request USF One-Time Distribution support for facility placement: The first $2,500 of cost coverage per account is provided by the company; and for cost amounts exceeding $2,500 per account up to two times the statewide average loop investment per account for rate-of-return regulated telecommunication companies, as determined annually by the Division of Public Utilities, the company will pay 50 percent of the costs of the project.

2. For non-rate-of-return Local Exchange Carriers who request USF One-Time Distribution support for facility placement the first $2,500 of cost coverage per account is provided by the company; and all other costs are shared between the customer and the fund as provided herein.

3. For projects that exceed $2,500 per account, but are equal to or less than $10,000 per account, the customer shall pay 25 percent of the costs that exceed $2,500. For projects that exceed $10,000 per account, but are equal to or less than $20,000 per account, the customer shall pay 50 percent of the costs that are greater than $10,000 plus the previously calculated amount. For projects exceeding $20,000 per account the customer shall pay 75 percent of the cost above $20,000 until the State Universal Service Support Fund has paid the maximum amount as provided herein, any project costs above that level will be paid for 100 percent by the customer.

4. The State Universal Service Support Fund shall pay the difference between the sum of the defined company contributions plus customer contribution amounts and the total project cost up to the maximum amount provided herein.

5. Other terms and conditions for service extension shall be reviewed by the Commission in its consideration of an application and may be altered by the Commission in order to approve the use of universal service funds through the requested one-time distribution.

C. Combination of One-Time Distribution Funds with Additional Customer Funds and Future Customer Payment Recovery --

1. At least 51 percent of the potential customers must be full-time residents in the geographic area being petitioned for and must be willing to pay the initial up-front contribution to the project as calculated by the Commission or its agent.

2. Qualified customers in the area shall be notified by the telecommunications corporation of the nature and extent of the

proposed service extension including the necessary customer contribution amounts to participate in the project. Customer contribution payments shall be made prior to the start of construction. In addition to qualified customers, the Local Exchange Company needs to make a good faith effort to contact all known property owners within the geographic boundaries of the proposed project and invite them to participate on the same terms as the qualified customers. Local Exchange Companies may ask potential customers to help in the process of contacting other potential customers.

3. New developments and empty lots will not be considered in the cost analysis for USF construction projects unless the property owner is willing to pay the per account costs for each lot as specified in this rule.

4. Potential customers who are notified and initially decline participation in the line extension project, but subsequently decide to participate, prior to completion of the project, may participate in the project if they make a customer contribution payment, prior to completion of the project, of 105 percent of the original customer contribution amount.

5. For a period of five years following completion of a project, new customers who seek telecommunications service in the project area, shall pay a customer contribution payment equal to 110 percent of the amount paid by the original customers in the project.

6. The telecommunications corporation shall ensure that all customer contribution payments required by R746-360-9(C)(3), (4), and (5) are collected. Funds received through these payments shall be sent to the universal service fund administrator. The company is responsible for tracking and notification to the Commission when the USF has been fully compensated. All monies will be collected and reported by the end of each calendar year, December 31st.

7. For each customer added during the five-year period following project completion, the telecommunications corporation and new customers shall bear the costs to extend service pursuant to the company's service or line extension terms and conditions, up to the telecommunications corporation's original contribution per customer for the project and the customer contributions required by this rule. The company may petition the Commission for a determination of the recovery from the universal service fund and the new customer for costs which exceed this amount.

D. Impact of Distribution on Rate of Return Companies -- A one-time distribution from the fund shall be recorded on the books of a rate base, rate of return regulated LEC as an aid to construction and treated as an offset to rate base.

E. Notice and Hearing -- Following notice that a one-time distribution application has been filed, any interested person may request a hearing or seek to intervene to protect his interests.

F. Bidding for Unserved Areas -- If only one telecommunications corporation is involved in the one-time distribution request, the distribution will be provided based on the reasonable and prudent actual or estimated costs of that company. If additional telecommunications corporations are involved, the distribution will be determined on the basis of a competitive bid. The estimated amount of the one-time distribution will be considered in evaluating each bid. Fund distributions in that area will be based on the winning bid.

R746-360-10. Altering the USF Charges and the End-User Surcharge Rates.

The uniform surcharge shall be adjusted periodically to minimize the difference between amounts received by the fund and amounts disbursed.

R746-360-11. Support for Schools, Libraries, and Health Care Facilities. Calculation of Fund Distributions.

The Universal Service Fund rules for schools, libraries and health care providers, as prescribed by the Federal Communications Commission in Docket 96-45, 97-157 Sections X and XI, paragraphs 424 - 749, of Order issued May 8, 1996, and CFR Sections 54.500 through 54.623 inclusive, incorporated by this reference, is the prescribed USF method that shall be employed in Utah. Funding shall be limited to funds made available through the federal universal service fund program.

KEY: public utilities, telecommunications, universal service

August 1, 2006	**54-3-1**
Notice of Continuation November 25, 2003	**54-4-1**
	54-7-25
	54-7-26
	54-8b-12
	54-8b-15

R746. Public Service Commission, Administration.
R746-409. Pipeline Safety.
R746-409-1. General Provisions.

A. Scope and Applicability -- To enable the Commission to carry out its duties regarding pipeline safety under Chapter 13, Title 54, the following rules shall apply to persons owning or operating an intrastate pipeline facility as defined in that chapter, or a segment of that chapter including, but not limited to, master meter systems, as well as persons engaged in the transportation of gas.

B. Adoption of Parts 190, 191, 192, 193, and 199 -- The Commission hereby adopts, and incorporates by this reference, CFR Title 49, Parts 190, 191, 192, 193, and 199, as amended, October 1, 2004. Persons owning or operating an intrastate pipeline facility in Utah, or a segment thereof, as well as persons engaged in the transportation of gas, shall comply with the minimum safety standards specified in those Parts of CFR Title 49.

R746-409-2. Definitions.

For purposes of these rules, the following terms shall bear the following meanings:

A. "CFR" means the Code of Federal Regulations;

B. "Commission" means the Public Service Commission of Utah;

C. "Division" means the Division of Public Utilities, Utah Department of Commerce;

D. "Master Meter System" means a pipeline system that distributes natural gas or liquid propane gas within a public place, such as a mobile home park, housing project, apartment complex, school, university or hospital and which is owned, operated and maintained by an operator that purchases the gas from an outside source.

E. "Part 190" means CFR Title 49, Part 190 entitled, Pipeline Safety Program Procedures.

F. "Part 191" means CFR Title 49, Part 191, entitled, Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports.

G. "Part 192" means CFR Title 49, Part 192 entitled, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards.

H. "Part 193" means CFR Title 49, Part 193 entitled, Liquified Natural Gas Facilities: Federal Safety Standards.

I. "Part 199" means CFR Title 49, part 199 entitled, Drug Testing.

J. "Public place" means a highway, street, alley or other parcel of land, essentially unobstructed, which is subject to easement, deeded, dedicated or otherwise appropriated to the public for public use, and where the public exists, traverses or is likely to frequent.

R746-409-3. Inspections.

A. Authorized Inspector -- A person employed or authorized by the Commission or the director of the Division, upon presenting appropriate credentials, is authorized to enter upon, inspect and examine, during normal business hours, the records and properties of a person in possession or control of them, if the records and properties are relevant to determining the compliance with applicable state and federal statutes, rules and regulations.

B. Reasons for Inspection -- Inspections are ordinarily conducted pursuant to one of the following:

1. routine scheduling;
2. a complaint received from a member of the public;
3. information obtained from a previous inspection;
4. pipeline accident or incident;
5. when deemed appropriate by the Commission.

C. Testing -- To the extent necessary to carry out its responsibilities, the Commission may require testing of portions of intrastate pipeline facilities which have been involved in or affected by an accident.

D. Further Action -- When information obtained from an inspector or from other appropriate sources indicates that further action is warranted, the Division shall issue a warning letter and, if necessary, initiate proceedings before the Commission.

R746-409-4. Accidents or Incidents Reports and Annual Reports.

A. U.S. Department of Transportation -- An operator shall report to the U.S. Department of Transportation (800-424-8802) accidents or incidents involving its pipeline facilities operated within the state of Utah that cause personal injuries requiring in-patient hospitalization, fatality, or estimated damage to property totaling $50,000 or more.

B. Commission Notification -- The Commission shall be notified of the accidents or incidents as soon as possible, consistent with public welfare and safety. In those instances where a telephonic report to the United States Department of Transportation is required, a similar report of the accident or incident shall be made by telephone to:

Utah Division of Public Utilities
Lead Pipeline Safety Engineer
P.O. Box 146751
Salt Lake City, Utah 84145-6751
Telephone: 801-530-6667
801-530-6652
800-874-0904

C. Written Report -- An operator, except for master meter systems, shall furnish to the Commission, within 30 days after the occurrence of a reportable accident or incident, a written report of the accident or incident. The report may be made on the standard USDOT form designated Accident or Incident Report, or on a form acceptable to the Commission showing the same information. If certain information is not available, the incomplete report should be submitted indicating this unavailability. When the information becomes available, a supplemental report will be submitted.

D. Annual Report -- An operator, except for master meter systems, shall submit an annual report for that system on DOT form RSPA F 7100.1-1. This report must be submitted annually, not later than March 15, for the preceding calendar year. Operators who file annual reports to federal agencies in accordance with 49 CFR, part 191, are required to file copies of the reports with this Commission. Annual reports may be sent to the same address as noted in Subsection R746-409-4B.

R746-409-5. Operation and Maintenance Plans.

An operator of natural gas transportation facilities, except for master meter operators and liquid propane operators, shall file with the Commission for review by the Division of Public Utilities, a plan for the operation and maintenance of pipeline facilities owned or operated by it, and shall subsequently file changes in the plan. The plan shall cover gas transmission facilities, distribution facilities, and those gathering or production facilities located in non-rural areas. Master meter operators and liquid propane gas operators shall have at their distribution facility a plan for the operation and maintenance of their pipeline facilities. The essential requirements stated in Title 49 CFR Part 192.605, shall be covered by the plan. If the Commission, on recommendation of the Division, finds the plan inadequate for safe operation, the Commission shall, after notice and opportunity for a hearing, require revision of the plan.

R746-409-6. Emergency Plan.

An operator, except for master meter operators and liquid propane operators, shall file with the Commission, for review by the Division, a plan of written procedures to minimize the

hazard resulting from a gas line emergency. The plan shall cover gas transmission facilities, distribution facilities and those gathering or production facilities located in non-rural areas. Master meter operators and liquid propane operators shall have at their distribution facilities a plan to minimize hazards resulting from an incident involving their gas facilities. The essential requirements stated in Title 49 CFR Part 192.615 shall be covered by the plan. If the Commission, on recommendation of the Division, finds the plan inadequate for safe operation, the Commission shall, after notice and opportunity for a hearing, require the plan to be revised.

R746-409-7. Cathodic Protection and Leak Surveys.

A. Cathodic Protection -- Operators of gas transportation facilities who do not have cathodic protection on their metallic underground piping system shall install cathodic protection, in accordance with 49 CFR, Subpart I, unless exempted as per Part 192.455(2)(b) on it within one year after establishment of the Commission rules, unless a time exemption is approved by the Commission.

B. Leak Survey -- A gas detector leak survey shall be conducted on master metered facilities, which were not cathodically protected prior to the Commission rules, at intervals not exceeding 15 months, but at least once each calendar year. The surveys shall be performed annually for at least five years after the date of the installation of cathodic protection.

R746-409-8. Remedies.

A. Rules of Practice and Procedure -- The Commission's Rules of Practice and Procedure, R746-100, shall govern and control proceedings before the Commission regarding pipeline safety, with the exception of the additional remedies and procedures specified herein.

B. Hazardous Facility Order -- If the Commission finds, after notice and a hearing, that a particular intrastate pipeline facility is hazardous to life or property, it may issue a Hazardous Facility Order requiring the owner or operator of the intrastate pipeline facility to take corrective action. Civil penalties set forth in Section 54-13-6 may also be imposed. Corrective action may include suspended or restricted use of the facility, physical inspection, testing, repair replacement, or other action as may be appropriate.

C. Waiver of Notice and Hearing -- The Commission may waive the requirement for notice and hearing in Subsection (B) above before issuing an order pursuant to this section when it or the Division determines that the failure to do so would result in the likelihood of serious harm to life or property. However, the Commission shall include in the order an opportunity for hearing as soon as practicable after issuance of the order.

D. Hazardous Conditions -- The Commission may find an intrastate pipeline facility to be hazardous under paragraph 2 of this section if:

1. under the facts and circumstances the Commission determines the particular facility is hazardous to life or property; or

2. the intrastate pipeline facility, or a component thereof, has been constructed or operated with equipment, material, or technique which the Commission determines is hazardous to life or property, unless the operator involved demonstrates to the satisfaction of the Commission that, under the particular facts and circumstances involved, such equipment, material, or technique is not hazardous to life or property.

E. Considerations -- In making a determination under paragraph (D)(2) of this section, the Commission may consider, if relevant:

1. the characteristics of the pipe and other equipment used in the intrastate pipeline facility involved, including its age, manufacturer, physical properties, including its resistance to corrosion and deterioration, and the method of its manufacture, construction, or assembly;

2. the nature of the materials transported by the facility, including their corrosive and deteriorative qualities, the sequence in which the materials are transported, and the pressure required for the transportation;

3. the aspects of the areas in which the intrastate pipeline facility is located, in particular the climatic and geologic conditions, including soil characteristics, associated with the areas, and the population density and population and growth patterns of such areas;

4. a recommendation of the National Transportation Safety Board issued in connection with an investigation conducted by the board;

5. other factors as the Commission may consider appropriate.

F. Contents of Hazardous Facility Order -- A Hazardous Facility Order issued by the Commission shall contain the following information:

1. a finding that the pipeline facility is hazardous to life or property;

2. the relevant facts which form the basis for the finding;

3. the legal basis for the order;

4. the nature and description of particular corrective action required of the respondent;

5. the date by which the required action must be taken or completed and, where appropriate, the duration of the order.

G. No Longer Hazardous -- The Commission shall rescind or suspend a Hazardous Facility Order whenever it determines that the facility is no longer hazardous to life or property.

KEY: rules and procedures, safety, pipelines

June 28, 2001	**54-13-3**
Notice of Continuation December 3, 2001	**54-13-5**
	54-13-6

R746. Public Service Commission, Administration.
R746-510. Funding for Speech and Hearing Impaired Certified Interpreter Training.
R746-510-1. Authority and Purpose.

A. Authority -- This rule is authorized by 54-8b-10(5)(c) which requires the Public Service Commission to adopt rules in accordance with its responsibilities.

B. Purpose -- The purpose of this rule is to establish uniform administrative requirements for the distribution of funds from the telephone surcharge to be awarded by contract to institutions within the state system of higher education, or to the Division of Services to the Deaf and Hard of Hearing, for training persons to qualify as certified interpreters for deaf, hard of hearing or severely speech impaired persons, pursuant to 54-8b-10(5)(b)(vi).

R746-510-2. Definitions.

A. Definitions -- The meaning of terms used in these rules shall be consistent with the definitions provided in 54-8b-10(1), R746-343-2 or these rules. As used in these rules, the following definitions shall apply.

1. "Certified Interpreter" means a person who is certified as meeting the certification requirements of Title 53A, Chapter 26a, the Interpreter Services for the Hearing Impaired Act.

2. "Contract" means an award of a contractual agreement by the Commission to an eligible recipient.

3. "DaHH Division" means the Division of Services to the Deaf and Hard of Hearing, as created by 53A-24-402.

4. "Recipient" means the legal entity to which a contract is awarded and which is accountable for the use of the funds provided. The recipient is the entire legal entity even if a particular component of the entity is designated in the contract document. The term "recipient" shall also include all subcontractors.

5. "Subcontractor" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity, who has a contract with any recipient to perform any portion of the services or work required under a contract. A "subcontractor" does not include suppliers who provide property, including equipment, materials, and printing to a recipient or subcontractor.

R746-510-3. Eligibility Requirements.

A. Eligibility -- An organization is eligible if it is:

1. an institution within the state system of higher education listed in Section 53B-1-102 that offers a program approved by the Board of Regents for training persons to qualify as certified interpreters; or

2. the DaHH Division.

R746-510-4. Proposal and Funding.

A. Process -- The Commission will solicit proposals in conformity to the Utah Procurement Code, Title 63, Chapter 56, and applicable rules.

1. Eligible organizations shall submit a proposal to request funding.

2. Funds will be disbursed pursuant to the terms of contracts that may be negotiated from the proposals submitted.

3. Contracts, allocations and distributions shall be at the discretion of the Commission.

R746-510-5. Subcontractors.

A. Identification of subcontractors -- A proposal may not include subcontract work covered by this rule unless:

1. the subcontractor is specifically identified in the proposal;

2. the subcontractor complies with all applicable Board requirements;

3. the proposal provides the same information for each subcontractor in the same manner as if the subcontract work was procured directly by the Commission;

4. the proposal includes a copy of all subcontractor contracts; and

5. all subcontractors look solely to recipient for payment.

R746-510-6. Accountability.

A. On-site visits -- In addition to any request for proposal or contact requirements, organizations that seek or have a contract will permit the Commission, it representatives or its designees to visit prior to and during a contract period to evaluate the organization's effectiveness and preparedness.

B. Recipient Report Filing -- A recipient receiving funding shall file an annual report with the Commission on or before July 1 for the preceding year.

C. Report contents -- The annual report shall contain the following information:

1. a budget expenditure report and income source report; and

2. description of its program, which includes, but is not limited to, the number of students and teachers served, the graduation rate and the number of students who become certified as a certified interpreter, employment information for graduating students and those who become certified interpreters;

3. a description of services provided by the recipient pursuant to the contract, and if requested, copies of any and all materials developed; and

4. other information which may be specified in the contract.

R746-510-7. General Administrative Responsibilities.

A. Administration -- A recipient shall comply with applicable statutes, regulations, and the contract, and shall use funds in accordance with those statutes, regulations, and the contract.

B. Supervision -- A recipient shall directly supervise the administration of the contract and funds received.

C. Accounting -- A recipient shall use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for funds received.

R746-510-8. Records.

A. Records -- In addition to any contract requirement,

1. A recipient shall keep records that record:

a. The amount of funds awarded and received under the contract;

b. How the recipient uses the funds;

c. The total cost of the proposal;

d. The share of the costs provided from other sources and identification of such sources;

e. The identity of students participating in a program supported by the contract; and

f. Other records to facilitate an effective audit.

2. A recipient shall keep records that demonstrate its compliance with contract and rule requirements.

3. A recipient is responsible for managing and monitoring each program supported by the contract.

B. Retention and Access Requirements for Records--

1. All financial records, supporting documents, statistical records, and all other records pertinent to a contract shall be retained for a period consistent with Government Records Access and Management Act, Title 63, Chapter 2 and any term specified in a contract.

2. The Commission or any of its duly authorized representatives or designees, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the contracts, in order to make audits, examinations, excerpts, transcripts, and copies of documents. This right also includes timely and reasonable

access to a recipient's personnel for the purpose of interview and discussion related to these documents and a contract program. The rights of access are not limited to the required retention period, but shall last as long as records are retained.

3. All procurement records shall be retained and disposed of in accordance with the Government Records Access and Management Act, Title 63, Chapter 2.

R746-510-9. Termination of Awards.

A. Termination of Contracts -- Contracts may be terminated in whole or in part:

1. By the Commission if a recipient fails to comply with the terms and conditions of a contract; or

2. With the consent of the Commission; or

3. Pursuant to the terms of a contract.

4. No provision of this rule shall preclude or prevent the Commission from terminating or modifying a contract for any reason or means not listed in this rule.

R746-510-10. Enforcement.

A. Enforcement -- If a recipient fails to comply with the terms and conditions of a contract, in addition to any remedy provided by law or contract, the Commission may take one or more of the following actions, as the Commission may deem appropriate in the circumstances:

1. Withhold payments pending correction of the deficiency by the recipient or more severe enforcement action by the Commission.

2. Deny the use of contract funds for all or part of the cost of the activity or action not in compliance.

3. Wholly or partly suspend or terminate the current contract.

4. Or any other action which the Commission may determine appropriate.

KEY: speech impaired, hearing impaired, training, interpreters
August 25, 2005 54-8b-10(5)(b)(vi)

R765. Regents (Board of), Administration.
R765-608. Utah Engineering and Computer Science Loan Forgiveness Program.
R765-608-1. Purpose.

To provide Utah Higher Education Assistance Authority ("UHEAA") policy and procedures for implementing the Utah Engineering and Computer Science Loan Forgiveness Program ("UECLP" or "program"), UCA 53B-6, Section 105.7, enacted in S.B. 61 by the 2001 General Session of the Utah Legislature.

R765-608-2. References.

2.1. Utah Code. Title 53B, Utah System of Higher Education, Chapter 6, Section 105.7.

2.2. State Board of Regents Policy R610, Board of Directors of the Utah Higher Education Assistance Authority.

R765-608-3. Effective Date.

These policies and procedures are effective September 1, 2001.

R765-608-4. Policy.

4.1. Program Description - UECLP is a student loan forgiveness program authorized as part of the higher education Engineering and Computer Science Initiative established with an effective date of July 1, 2001. UCA 53B-6-105.7 provides for establishment of the program "to recruit and train engineering, computer science, and related technology students to assist in providing for and advancing the intellectual and economic welfare of the state," and authorizes the State Board of Regents to provide by rule for the overall administration of the program, consistent with the general student loan provisions in Title 53B and policy guidelines contained in the Section.

4.2. Program Administration - The Board of Regents has delegated to the UHEAA Board of Directors the authority to govern UECLP on behalf of the Board of Regents. The program is administered by the Associate Commissioner for Student Financial Aid as Executive Director of UHEAA, reporting to the Commissioner of Higher Education.

4.3. Program Design - The program utilizes UHEAA-guaranteed Federal Family Education Loan Program (FFELP) Stafford Student Loans and Federal Perkins Student Loans as the vehicle for providing UECLP loan forgiveness. A students enrolled at a Qualifying Institution in a Qualifying Program applies to UHEAA, with an endorsement from the dean of the school or college in which enrolled, for a Certificate for Student Loan Forgiveness which guarantees that upon completion of the requirements for loan forgiveness the Recipient will receive a direct credit for reduction of the outstanding principal balance(s) of the Recipient's outstanding Stafford or Perkins Student Loan(s). The student applies for and receives the Stafford and/or Perkins Student Loans through regular application and award procedures. Upon completion of the Qualifying Program, and Qualifying Employment, the Recipient submits an Application for Student Loan Forgiveness to UHEAA, UHEAA verifies the Recipient's qualification and the loan forgiveness amount for which the Recipient qualifies, and promptly processes the payment of outstanding principal on the Recipient's student loan(s). If the remaining principal balance on the Recipient's student loans is less than the forgiveness amount for which the Recipient qualifies, UHEAA will pay any amount above the outstanding balance directly to the Recipient, up to the amount of Stafford or Perkins Student Loan principal actually borrowed by the Recipient while enrolled in the Qualifying Program. The loan forgiveness amount for which the Recipient qualifies will include the amount of Tuition and Fees, as defined in section 4.4.9, which is applicable to the academic year for which the Application for Student Loan Forgiveness is submitted, plus the portion of the Recipient's loan interest accrued or paid which is applicable to the principal amount to be paid on the Recipient's behalf.

4.4. Definitions -

4.4.1. Qualifying Institution - A college or university of the Utah System of Higher Education (USHE) which offers one or more Qualifying Programs.

4.4.2. Qualifying Program - An accredited engineering, computer science, or related technology baccalaureate degree program.

4.4.2.1. Related technology baccalaureate degree programs shall be limited to those certified by the Commissioner of Higher Education, in accordance with such criteria as may be established pursuant to UCA 53B-6-105.7.

4.4.3. Eligible Student - A student who is enrolled on at least a half-time basis in a Qualifying Institution in a Qualifying Program, in good standing, and maintaining satisfactory academic progress as defined by the institution.

4.4.4. Recipient - A person who applies for and receives a UECLP Certificate for Student Loan Forgiveness from UHEAA.

4.4.5. Certificate for Student Loan Forgiveness - A certificate issued by UHEAA to an Eligible Student, which guarantees forgiveness of student loan principal plus related loan interest paid by the Recipient, up to the amount of Tuition and Fees paid for a specified number of years of enrollment in a Qualifying Program for up to a specified number of years of Qualifying Employment.

4.4.6. Stafford Student Loan - A FFELP Stafford student loan, either subsidized or unsubsidized, guaranteed by UHEAA.

4.4.6.1. A subsidized Stafford Student Loan is certified by the student's institution on the basis of financial need, and qualifies for payment of interest by the U.S. Secretary of Education on the student's behalf while the student is enrolled at least half-time and during a six-month grace period after the student graduates or ceases to be enrolled at least half-time.

4.4.6.2. An unsubsidized Stafford Student Loan is certified by the student's institution either as needed in addition to the full subsidized loan amount, or for a student who does not qualify on the basis of financial need. The recipient of an unsubsidized Stafford Student Loan is responsible for payment of interest accruing from the date of disbursement of the loan, but may choose to have the interest deferred until the loan enters repayment (at the end of the grace period), at which time the interest is capitalized and added to the outstanding principal. The interest on an unsubsidized Stafford Student Loan is at the same favorable rates as determined annually according to statute for a subsidized Stafford Student Loan.

4.4.6.3. A student is required to file a Free Application for Federal Student Aid (FAFSA) to establish eligibility for either a subsidized or an unsubsidized Stafford Student Loan, but is entitled without limitation to receive the loan, up to statutorily-specified loan amounts, if eligible.

4.4.7. Perkins Student Loan - A Federal Perkins student loan awarded by the student's institution. Availability of Perkins Student Loans is limited, based on available funds, but a Perkins Student Loan may carry a more favorable interest rate than a Stafford Student Loan. Interest is not charged on a Perkins Student Loan while the borrower is enrolled at least half time and during the applicable grace period thereafter. A student is required to file a FAFSA to establish eligibility for a Perkins Student Loan, but might not receive the loan even if eligible, due to limited availability.

4.4.8. Year of Qualifying Employment - Full-time employment within Utah, for a full 12-month period, in a position requiring the baccalaureate degree, in engineering or in the field of computer science or in a related technology field. Provided, however, that, if a Recipient's Qualifying Employment is as a public school teacher or USHE faculty member, the annual school year or academic year contract length shall qualify as a Year of Qualifying Employment.

4.4.8.1. For purposes of this definition, employment in the fields of engineering or computer science or in a related technology field must reasonably be demonstrated to utilize skills and knowledge required for an applicable Qualifying Program.

4.4.9. Tuition and Fees - Tuition and general fees applicable to the Qualifying Program, for the institution in which the recipient is enrolled, for a full-time-equivalent (FTE) student, as defined in annual tuition and fee schedules approved by the State Board of Regents.

4.5. Application for a Certificate for Student Loan Forgiveness - An Eligible Student may apply for a Certificate for Student Loan Forgiveness at any time during an academic year in which enrolled in a Qualifying Program. The application may be for the year in which currently enrolled and subsequent years, except that it may not include years prior to the academic year during which the application is submitted and the total number of years covered by the application may not exceed five.

4.5.1 The application shall include a declaration of intent to complete the Qualified Program in which enrolled, or an equivalent Qualifying Program, and to work within Utah in Qualifying Employment for a period of four years after graduation.

4.6. Application for Student Loan Forgiveness - A Recipient may apply for forgiveness of the amount of one year of Tuition and Fees paid, as a reduction in outstanding loan principal or as a direct payment as provided for in 4.3, after each completed Year of Qualifying Employment covered by the Certificate for Loan Forgiveness, subject to the following limitation:

4.6.1. The Certificate for Student Loan Forgiveness shall provide that its guarantee, and the Recipient's eligibility to submit an Application for Student Loan Forgiveness, shall expire at the end of the 72nd month (six years) after the Recipient's date of graduation with the baccalaureate degree. Provided, however, that a period of full-time enrollment in a graduate degree program related to the Recipient's Qualifying Program shall not be counted as part of the 72 months following the Recipient's graduation with the baccalaureate degree.

4.7. Eligibility for UHEAA Borrower Benefits - Regardless of whether or not the Recipient qualifies for and receives forgiveness of any part of the principal on a Stafford Student Loan, the Recipient will remain eligible for all forbearances, deferments, and other statutory privileges under the FFELP, and also shall remain eligible for all applicable principal reductions and interest rate reductions under UHEAA's borrower benefit programs. A Recipient who does qualify for and receive forgiveness of principal on a Stafford Student Loan under UECLP also shall remain eligible for all applicable principal reductions and interest rate reductions under UHEAA's borrower benefit programs.

4.8 Limited Availability and Allocation Principles - Funding for UECLP is dependent on annual legislative appropriations, and the ability to underwrite Certificates for Student Loan Forgiveness is limited. The Program Administrator shall establish an application and award calendar annually after the amount available for new awards is determined. Selection criteria established as part of the annual calendar shall include an initial tentative allocation by Qualifying Institutions proportionate to the number of engineering and computer science baccalaureate degrees awarded by each institution in the most recent academic year for which information is available, except that a minimum amount of $10,000 or five percent of the amount available, whichever is the lesser, shall be established for each Qualifying Institution. The President of each Qualifying Institution electing to participate in the program shall designate an individual to administer the program for the institution, and an alternate to administer the program in the absence of the designated administrator. Each institution shall establish criteria for the selection of nominees each academic year, in priority order from persons submitting an Application for Certificate for Student Loan forgiveness, and provision for an independent internal appeal of adverse decisions by the institution's program administrator. The institution's program administrator shall submit a copy of its selection criteria and appeal procedure for acceptance by UHEAA. Selection of Recipients from applicants certified by a Qualifying Institution shall take into account the priority order of nominations from the institution, the institution's allocation for awards from available funds, and reasonable actuarial projections regarding the percentage of recipients of certificates who will qualify for and receive the payments of principal and interest guaranteed by certificates awarded.

KEY: higher education, student loans
August 15, 2002 **53B-6**
Notice of Continuation July 13, 2006

R895. Technology Services, Administration.
R895-1. Access to Records.
R895-1-1. Purpose and Authority.

Under authority of Sections 63-2-204, and 63-2-904, and Title 63, Chapter 46a, this rule provides procedures for access and denial of access to government records.

R895-1-2. Definitions.

(1) "Department" means the Department of Technology Services.

(2) "Division" means a division of the Department of Technology Services.

(3) "Non-Department Record" means a record that is maintained for another entity by the department but is not the property of the department.

(4) "Records officer" means the individual appointed by the executive director to fulfill the function of Subsection 63-2-103.

R895-1-3. Records Officer.

(1) The executive director shall appoint a records officer to perform the following functions:

(a) The duties set forth in Section 63-2-903; and

(b) Review and respond to requests for access to department records.

R895-1-4. Requests for Access.

(1) Request for access to records shall be on a form provided by the department or in another legible written document which contains the following information: the requester's name, mailing address, daytime telephone, a description of the records requested that identifies the record with reasonable specificity, and if the record is not public, information regarding requester's status.

(2) The request shall be submitted to the department records officer. The response to the request may be delayed if not properly directed.

(3) The department shall deny a request for access to non-department records. The records officer, with written permission from the executive director, may redirect a request for non-department records to the owner of the records.

(4) The department shall deny a request for private, controlled, protected or limited access records if the request is not made in writing and does not contain information required in this section.

(5) Notwithstanding the provision of subsection 63-2-204, the department may, at its discretion, waive the requirement for a written request if the records requested are public, the records are readily accessible and the request is filled promptly by providing access or copying at the time the request is made.

R895-1-5. Appeal of Agency Decision.

(1) If a requester is dissatisfied with the department's initial decision, the requester may appeal the decision to the executive director under the procedures of Section 63-2-401 et seq.

(2) An individual may contest the accuracy or completeness of a document pertaining to that individual pursuant to Section 63-2-603. The request should be made to the records officer.

R895-1-6. Fees.

(1) A fee schedule for the direct costs of duplicating or compiling a record may be obtained from the department by contacting the records officer.

(2) Fees for duplication and compilation of a record may be waived under certain circumstances described in Subsection 63-2-203. Requests for this waiver of fees may be made to the records officer.

R895-1-7. Forms.

Request forms are available from the records officer of the department.

KEY: freedom of information, public information, confidentiality of information, access to information
July 25, 2006 **63-46a-3**
63F-1-206
63-2-101 et seq.

R895. Technology Services, Administration.
R895-2. Americans With Disabilities Act (ADA) Complaint Procedure.
R895-2-1. Authority and Purpose.

(1) This rule is promulgated pursuant to Section 63-46a-3 of the State Administrative Rulemaking Act. The Department of Technology Services hereby adopts and defines a complaint procedure to provide for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act, pursuant to 28 CFR 35.107, 1992 edition.

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

R895-2-2. Definitions.

(1) "Department" mean the Utah Department of Technology Services.

(2) "Department ADA Coordinator" means an individual, appointed by the executive director of the Department of Technology Services', who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities in accordance with the Americans With Disabilities Act, or provisions of this rule.

(3) "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

(a) Governor's Office of Planning and Budget;

(b) Department of Human Resource Management;

(c) Division of Risk Management;

(d) Division of Facilities Construction Management; and

(e) Office of the Attorney General.

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

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

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

R895-2-3. Filing of Complaints.

(1) The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 60 days from the date of the alleged act of discrimination. However, any complaint alleging an act of discrimination occurring between March 8, 2006 and the effective date of this rule may be filed within 60 days of the effective date of this rule.

(2) The complaint shall be filed with the department's ADA Coordinator in writing or in another accessible format suitable to the individual.

(3) Each complaint shall:

(a) include the individual's name and address;

(b) include the nature and extent of the individual's disability;

(c) describe the department's alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation;

(d) describe the action and accommodation desired; and

(e) be signed by the individual or by his or her legal representative.

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

R895-2-4. Investigation of Complaint.

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

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

(a) an expenditure of funds which is not absorbable within the agency's budget and would require appropriation authority;

(b) facility modifications; or

(c) reclassification or reallocation in grade; the coordinator shall consult with the ADA State Coordinating Committee.

R895-2-5. Issuance of Decision.

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

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

R895-2-6. Appeals.

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

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

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

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

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

(a) an expenditure of funds which is not absorbable and would require appropriation authority;

(b) facility modifications; or

(c) reclassification or reallocation in grade; the executive director or designee shall also consult with the State ADA Coordinating Committee.

(6) The decision shall be issued within ten working days after receiving the appeal and shall be in writing or in another accessible suitable format to the individual.

(7) If the executive director or designee is unable to reach a decision within the ten working day period, the executive

director or designee shall notify the individual in writing or by another acceptable suitable format why the decision is being delayed and the additional time needed to reach a decision.

R895-2-7. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under the State Anti-Discrimination Complaint Procedures Section (67-19-32); the Federal ADA Complaint Procedures (28 CFR Part 35.170, 1992 edition); or any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: developmentally disabled, disabilities act
July 25, 2006 63-46a-3; 63F-1-206

R926. Transportation, Program Development.
R926-2. Evaluation of Proposed Additions to or Deletions from the State Highway System.
R926-2-1. Authority.

This rule establishes the procedure and criteria by which highways shall be considered for the addition to or deletion from the state highway system as required by Utah Code Ann. Section 72-4-102.5.

R926-2-2. Purpose.

The purpose of this rule is to establish the following:

(1) a process for a highway authority to propose additions to or deletions from the state highway system;

(2) a procedure for evaluating requested additions to or deletions from the state highway system; and

(3) a set of criteria by which proposed changes shall be consistently evaluated.

R926-2-3. Definitions.

The terms used in this rule to describe different types of highways shall have the same meaning as provided in Utah State Code under Section 72-4-102.5 which is the same as provided under the Federal Highway Administration Functional Classification Guidelines.

(1) "commission" means the Utah Transportation Commission;

(2) "department" means the Utah Department of Transportation;

(3) "local highway authority" means the local political subdivision, such as town, city or county responsible for the highway system in that jurisdiction;

(4) "tourist area" means an area of the state frequented by tourists for the purpose of visiting national parks, national recreation areas, national monuments, or state parks;

(5) "transfer" means the process of adding or deleting a segment of roadway from one government's highway system to or from another government's highway system;

(6) "urban area" has the same meaning as provided under the Federal Highway Administration Functional Classification Guidelines.

R926-2-4. Notifications.

The following notifications shall be made regarding the transfer of highways.

(1) The department will annually, on or before September 1st, notify the local highway authorities of its intent to collect proposed changes to the state system with the responding proposals requested to be returned to the department by December 1st.

(2) The department shall no later than June 30th of each year notify the Transportation Interim Committee of the Legislature of any proposed transfers.

(3) The commission shall notify the public and any affected local highway authority of any transfer under consideration and provide the opportunity to discuss that proposal at an open public meeting of the commission.

(4) The commission shall no later than November1st of each year notify and provide to the Transportation Interim Committee of the Legislature:

(a) a list of the highways recommended for transfer;

(b) a list of potential transfers that are currently under consideration; and

(c) a list of transfers that were proposed but not agreed to by the department or local highway authority.

R926-2-5. Procedure for Requesting an Addition to or a Deletion from the State Highway System.

A request for the addition to or deletion of a highway from the state highway system shall be made by the government agency currently responsible for the highway, a member of the Utah Transportation Commission or the Utah Department of Transportation. The request shall be conveyed to the Utah Department of Transportation and will be directed to the region director responsible for the area where the highway is primarily located.

R926-2-6. Procedure for Evaluating Proposed Changes to the State System.

The procedure for evaluating proposed changes to the state highway system is as follows:

(1) The region director shall:

(a) notify all impacted local government agencies of the proposed change;

(b) make a preliminary review of the proposed change that may include but not be limited to:

(i) determine of what, if any funding will accompany the road transfer;

(ii) determine of what, if any, physical improvements may be necessary on the roadway before the transfer is completed;

(iii) secure a written statement from the local government agency regarding the proposed transfer;

(iv) make a judgment as to which highway agency has the best operational abilities for maintenance and construction activities on the proposed route; and

(v) determine if the highway continuity and the efficiency of state highway system operation and maintenance activities is impacted by the proposed change.

(c) forward the proposed transfer along with the results of the preliminary review to the Systems Planning and Programming Director; and

(d) present and discuss potential road transfers at the regularly scheduled monthly Transportation Commission meetings.

(2) The Systems Planning and Programming Director shall review the request from the region director and shall:

(a) determine if the proposed transfer meets the criteria to qualify for inclusion on the state highway system and is consistent with statewide practice;

(b) with the Director of Program Financing, identify the source of funds, if any, proposed to accompany the transfer; and

(c) shall present the evaluation to the commission with a recommendation whether the route qualifies for inclusion on the state highway system and any proposed funding considerations;

(3) The commission shall review the recommendation and shall:

(a) consider the proposed transfer at a public meeting where the affected local officials are invited to discuss and comment on the proposed change;

(b) discuss any funding considerations and the circumstances under which the proposed transfer will take place;

(c) take into account any other factors considered appropriate in consultation with the department and local highway authority impacted;

(d) approve or reject the proposed change in the state highway system;

(e) if it approves the transfer, make the required changes to the state highway system by resolution; and

(f) report to the Transportation Interim Committee of the Legislature as detailed in section (4).

(4) The commission may continue to process proposed transfers that are currently under consideration by using the same notification and evaluation criteria as presented in this rule.

(5) The State Legislature will review the addition to or deletions from the state highway system and shall approve or disapprove the changes.

R926-2-7. Criteria for Inclusion of Highways in the State Highway System.

Highways requested to be added to or to remain on the state highway system shall be evaluated as follows:

(1) General Criteria:

(a) The primary function of state highways is to provide for the safe and efficient movement of traffic, while providing access to property is a secondary function.

(b) The primary function of county and municipal highways is to provide safe and efficient access to property.

(c) For purposes of this rule, if a highway is within ten miles of a location identified under this section, the location is considered to be served by that highway.

(2) A state highway shall:

(a) serve a statewide purpose by accommodating interstate movement of traffic or interregion movement of traffic within the state;

(b) primarily move higher traffic volumes over longer distances than highways under local jurisdiction;

(c) connect major population centers;

(d) be spaced so that:

(i) all developed areas in the state are within a reasonable distance of a state highway; and

(ii) duplicative state routes are avoided.

(e) provide state highway system continuity and efficiency of state highway system operation and maintenance activities;

(f) include all interstate routes, all expressways, and all highways on the National Highway System as designated by the Federal Highway Administration under 23 C.F.R. Section 470, Subpart A, as of January 1, 2005; and

(g) exclude parking lots, driving ranges, and campus roads.

(3) In addition to the provisions of Subsection (1), in rural areas a state highway shall:

(a) include all minor arterial highways;

(b) include a major collector highway that:

(i) serves a county seat;

(ii) serves a municipality with a population of 1,000 or more;

(iii) serves a major industrial, commercial, or recreation areas that generate traffic volumes equivalent to a population of 1,000 or more;

(iv) provides continuity for the state highway system by providing major connections between other state highways;

(v) provides service between two or more counties; or

(vi) serves a compelling statewide public safety interest; and

(c) exclude all minor collector streets and local roads.

(4) In addition to the provisions of Subsection (1), in urban areas a state highway shall:

(a) include all principal arterial highways;

(b) include a minor arterial highway that:

(i) provides continuity for the state highway system by providing major connections between other state highways;

(ii) is a route that is expected to be a principal arterial highway within ten years; or

(iii) is needed to provide access to state highways; and

(c) exclude all collector highways and local roads.

(5) In addition to the provisions of Subsections (2) and (3), in tourist areas, a state highway:

(a) shall include a highway that:

(i) serves a national park or a national recreational area; or

(ii) serves a national monument with visitation greater than 100,000 per year; or

(b) may include a highway that:

(i) serves a state park with visitation greater than 100,000 per year; or

(ii) serves a recreation site with a visitation greater than 100,000 per year.

KEY: transportation planning, highway planning, highways, transportation

July 28, 2006 72-4-102.5

Notice of Continuation: January 21, 2002

R930. Transportation, Preconstruction.
R930-6. Manual of Accommodation of Utility Facilities and the Control and Protection of State Highway Rights-of-Way.
R930-6-1. Incorporation by Reference.

In order to implement its federally-mandated responsibility to ensure the safe use and protection of federal-aid highways, the department incorporates by reference the Manual of Accommodation of Utility Facilities and the Control and Protection of State Highway Rights-of-Way, January 2006 edition, copies of which are available at the department's headquarters, 4501 South 2700 West, Salt Lake City, Utah 84114, and on the department's Internet site, http://www.udot.utah.gov/dl.php/tid=674/Utility_Accomodation_and_Access_Management.pdf. The provisions of this Manual also apply to non-federal aid state highways.

KEY: utility rules, utilities access

July 28, 2006	**72-3-109**
Notice of Continuation January 22, 2002	**72-6-116**
	72-7-102
	72-7-108

R986. Workforce Services, Employment Development.
R986-100. Employment Support Programs.
R986-100-101. Authority.

(1) The legal authority for these rules and for the Department of Workforce Services to carry out its responsibilities is found in Sections 35A-1-104 and 35A-3-103.

(2) If any applicable federal law or regulation conflicts with these rules, the federal law or regulation is controlling.

R986-100-102. Scope.

(1) These rules establish standards for the administration of the following programs, for the collection of overpayments as defined in 35A-3-602(7) and/or disqualifications from any public assistance program provided under a state or federally funded benefit program;

(a) Food Stamps
(b) Family Employment Program (FEP)
(c) Family Employment Program Two Parent (FEPTP)
(d) Refugee Resettlement Program (RRP)
(e) Working Toward Employment (WTE)
(f) General Assistance (GA)
(g) Child Care Assistance (CC)
(h) Emergency Assistance Program (EA)
(i) Adoption Assistance Program (AA)
(ii) Activities funded with TANF monies

(2) The rules in the 100 section (R986-100 et seq.) apply to all programs listed above. Additional rules which apply to each specific program can be found in the section number assigned for that program. Nothing in R986 et seq. is intended to apply to Unemployment Insurance.

R986-100-103. Acronyms.

The following acronyms are used throughout these rules:

(1) "AA" Adoption Assistance Program
(2) "ALJ" Administrative Law Judge
(3) "CC" Child Care Assistance
(4) "CFR" Code of Federal Regulations
(5) "DCFS" Division of Children and Family Services
(6) "DWS" Department of Workforce Services
(7) "EA" Emergency Assistance Program
(8) "FEP" Family Employment Program
(9) "FEPTP" Family Employment Program Two Parent
(10) "GA" General Assistance
(11) "INA" Immigration and Nationality Act
(12) "IPV" intentional program violation
(13) "ORS" Office of Recovery Service, Utah State Department of Human Services
(14) "PRWORA" the Personal Responsibility and Work Opportunity Reconciliation Act of 1996
(15) "RRP" Refugee Resettlement Program
(16) "SNB" Standard Needs Budget
(17) "SSA" Social Security Administration
(18) "SSDI" Social Security Disability Insurance
(19) "SSI" Supplemental Security Insurance
(20) "SSN" Social Security Number
(21) "TANF" Temporary Assistance for Needy Families
(22) "UCA" Utah Code Annotated
(23) "UI" Unemployment Compensation Insurance
(24) "USCIS" United States Citizenship and Immigration Services.
(25) "VA" US Department of Veteran Affairs
(26) "WTE" Working Toward Employment Program
(27) "WIA" Workforce Investment Act
(28) "WSL" Work Site Learning

R986-100-104. Definitions of Terms Used in These Rules.

In addition to the definitions of terms found in 35A Chapter 3, the following definitions apply to programs listed in R986-100-102:

(1) "Applicant" means any person requesting assistance under any program in Section 102 above.

(2) "Assistance" means "public assistance."

(3) "Certification period" is the period of time for which public assistance is presumptively approved. At the end of the certification period, the client must cooperate with the Department in providing any additional information needed to continue assistance for another certification period. The length of the certification period may vary between clients and programs depending on circumstances.

(4) "Client" means an applicant for, or recipient of, public assistance services or payments, administered by the Department.

(5) "Confidential information" means information that has limited access as provided under the provisions of UCA 63-2-201 or 7 CFR 272.1. The name of a person who has disclosed information about the household without the household's knowledge is confidential and cannot be released. If the person disclosing the information states in writing that his or her name and the information may be disclosed, it is no longer considered confidential.

(6) "Department" means the Department of Workforce Services.

(7) "Education or training" means:

(a) basic remedial education;
(b) adult education;
(c) high school education;
(d) education to obtain the equivalent of a high school diploma;
(e) education to learn English as a second language;
(f) applied technology training;
(g) employment skills training;
(h) WSL; or
(i) post high school education.

(8) "Employment plan" consists of two parts, a participation agreement and an employment plan. Together they constitute a written agreement between the Department and a client that describes the requirements for continued eligibility and the result if an obligation is not fulfilled.

(9) "Executive Director" means the Executive Director of the Department of Workforce Services.

(10) "Financial assistance" means payments, other than for food stamps, child care or medical care, to an eligible individual or household under FEP, FEPTP, RRP, GA, or WTE and which is intended to provide for the individual's or household's basic needs.

(11) "Full-time education or training" means education or training attended on a full-time basis as defined by the institution attended.

(12) "Group Home." The Department uses the definition of group home as defined by the state Department of Human Services.

(13) "Household assistance unit" means a group of individuals who are living together or who are considered to be living together, and for whom assistance is requested or issued. For all programs except food stamps and CC, the individuals included in the household assistance unit must be related to each other as described in R986-200- 205.

(14) "Income match" means accessing information about an applicant's or client's income from a source authorized by law. This includes state and federal sources.

(15) "Local office" means the Employment Center which serves the geographical area in which the client resides.

(16) "Material change" means anything that might affect household eligibility, participation levels or the level of any assistance payment including a change in household composition, eligibility, assets and/or income.

(17) "Minor child" is a child under the age of 18, or under 19 years of age and in school full time and expected to complete

his or her educational program prior to turning 19, and who has not been emancipated either by a lawful marriage or court order.

(18) "Parent" means all natural, adoptive, and stepparents.

(19) "Public assistance" means:

(a) services or benefits provided under UCA 35A Chapter 3, Employment Support Act;

(b) medical assistance provided under Title 26, Chapter 18, Medical Assistance Act;

(c) foster care maintenance payments provided with the General Fund or under Title IV-E of the Social Security Act;

(d) food stamps; and

(e) any other public funds expended for the benefit of a person in need of financial, medical, food, housing, or related assistance.

(20) "Recipient" means any individual receiving assistance under any of the programs listed in Section 102.

(21) Review or recertification. Client's who are found eligible for assistance are given a date for review or recertification at which point continuing eligibility is determined.

(22) "Standard needs budget" is determined by the Department based on a survey of basic living expenses.

(23) "Work Site Learning" or "WSL" means work experience or training program.

R986-100-105. Availability of Program Manuals.

(1) Program manuals for all programs are available for examination on the Department's Internet site. If an interested party cannot obtain a copy from the Internet site, a copy will be provided by the Department upon request. Reasonable costs of copying may be assessed if more than ten pages are requested.

(2) For the Food Stamp Program, copies of additional information available to the public, including records, regulations, plans, policy memos, and procedures, are available for examination upon request by members of the public, during office hours, at the Department's administrative offices, as provided in 7 CFR 272.1(d)(1) (1999).

R986-100-106. Residency Requirements.

(1) To be eligible for assistance for any program listed in R986-100-102, a client must be living in Utah voluntarily and not for a temporary purpose. There is no requirement that the client have a fixed place of residence. An individual is not eligible for public assistance in Utah if they are receiving public assistance in another state.

(2) The Department may require that a household live in the area served by the local office in which they apply.

(3) Individuals are not eligible if they are:

(a) in the custody of the criminal justice system;

(b) residents of a facility administered by the criminal justice system;

(c) residents of a nursing home;

(d) hospitalized; or

(e) residents in an institution.

(4) Individuals who reside in a temporary shelter, including shelters for battered women and children, for a limited period of time are eligible for public assistance if they meet the other eligibility requirements.

(5) Residents of a substance abuse or mental health facility may be eligible if they meet all other eligibility requirements. To be eligible for food stamps, the substance abuse or mental health facility must be an approved facility. Approval is given by the Department. Approved facilities must notify the Department and give a "change report form" to a client when the client leaves the facility and tell the client to return it to the local office. The change report form serves to notify the Department that the client no longer lives in the approved facility.

(6) Residents of a group home may be eligible for food stamps provided the group home is an approved facility. The state Department of Human Services provides approval for group homes.

R986-100-107. Client Rights.

(1) A client may apply or reapply at any time for any program listed in R986-100-102 by completing and signing an application and turning it in, in person or by mail, at the local office.

(2) If a client needs help to apply, help will be given by the local office staff.

(3) No individual will be discriminated against because of race, color, national origin, sex, age, religion or disability.

(4) A client's home will not be entered without permission.

(5) Advance notice will be given if the client must be visited at home outside Department working hours.

(6) A client may request an agency conference to reconcile any dispute which may exist with the Department.

(7) Information about a client obtained by the Department will be safeguarded.

(8) If the client is physically or mentally incapable or has demonstrated an inability to manage funds, the Department may make payment to a protective payee.

R986-100-108. Safeguarding and Release of Information.

(1) All information obtained on specific clients, whether kept in the case file, in the computer system, maintained by the Department, the state, or somewhere else, is safeguarded in accordance with the provisions of Sections 63-2-101 through 63-2-909 and 7 CFR 272.1(c) and 7 CFR 272.8 and PRWORA (1996) Title VIII, Section 837.

(2) General statistical information may be released if it does not identify a specific client. This includes information obtained by the Department from another source. Information obtained from the federal government for purposes of income match can never be released.

R986-100-109. Release of Information to the Client or the Client's Representative.

(1) Information obtained by the Department from any source, which would identify the individual, will not be released without the individual's consent or, if the individual is a minor, the consent of his or her parent or guardian.

(2) A client may request, review and/or be provided with copies of anything in the case record unless it is confidential. This includes any records kept on the computer, in the file, or somewhere else.

(3) Information that may be released to the client may be released to persons other than the client with written permission from the client. All such requests must include:

(a) the date the request is made;

(b) the name of the person who will receive the information;

(c) a description of the specific information requested including the time period covered by the request; and

(d) the signature of the client.

(4) The client is entitled to a copy of his or her file at no cost. Duplicate requests may result in an appropriate fee for the copies in accordance with Department policy which will not be more than the cost to the Department for making copies.

(5) The original case file will only be removed from the office as provided in R986-100-110(6) and cannot be given to the client.

(6) Information that is not released to the client because it is confidential, cannot be used at a hearing or to close, deny or reduce assistance.

(7) Requests for information intended to be used for a commercial or political reason will be denied.

R986-100-110. Release of Information Other Than at the

Request of the Client.

(1) Information obtained from or about a client will not be published or open to public inspection in any manner which would reveal the client's identity except:

(a) unless there has been a criminal conviction against the client for fraud in obtaining public assistance. In that instance, the Department will only provide information available in the public record on the criminal charge; or

(b) if an abstract has been docketed in the district court on an overpayment, the Department can provide information that is a matter of public record in the abstract.

(2) Any information obtained by the Department pursuant to an application for or payment of public assistance may not be used in any court or admitted into evidence in an action or proceeding, except:

(a) in an action or proceeding arising out of the client's receipt of public assistance, including fraudulently obtaining or retaining public assistance, or any attempt to fraudulently obtain public assistance; or

(b) where obtained pursuant to a court order.

(3) If the case file, or any information about a client in the possession of the Department, is subpoenaed by an outside source, legal counsel for the Department will ask the court to quash the subpoena or take such action as legal counsel deems appropriate.

(4) Information obtained by the Department from the client or any other source, except information obtained from an income match, may be disclosed to:

(a) an employee of the Department in the performance of the employee's duties unless prohibited by law;

(b) an employee of a governmental agency that is specifically identified and authorized by federal or state law to receive the information;

(c) an employee of a governmental agency to the extent the information will aid in the detection or avoidance of duplicate, inconsistent, or fraudulent claims against public assistance programs, or the recovery of overpayments of public assistance funds;

(d) an employee of a law enforcement agency to the extent the disclosure is necessary to avoid a significant risk to public safety or to aid a felony criminal investigation except no information regarding a client receiving food stamps can be provided under this paragraph;

(e) to a law enforcement officer when the client is fleeing to avoid prosecution, custody or confinement for a felony or is in violation of a condition of parole or probation or when the client has information which will assist a law enforcement officer in locating or apprehending an individual who is fleeing to avoid prosecution, custody or confinement for a felony or is in violation of a condition of parole or probation and the officer is acting in his official capacity. The only information under this paragraph which can be released on a client receiving food stamps is the client's address, SSN and photographic identification;

(f) to a law enforcement official, upon written request, for the purpose of investigating an alleged violation of the Food Stamp Act 7 USCA 2011 or any regulation promulgated pursuant to the act. The written request shall include the identity of the individual requesting the information and his/her authority to do so, the violation being investigated, and the identity of the person being investigated. Under this paragraph, the Department can release to the law enforcement official, more than just the client's address, SSN and photo identification;

(g) an educational institution, or other governmental entity engaged in programs providing financial assistance or federal needs-based assistance, job training, child welfare or protective services, foster care or adoption assistance programs, and to individuals or other agencies or organizations who, at the request of the Department, are coordinating services and evaluating the effectiveness of those services;

(h) to certify receipt of assistance for an employer to get a tax credit; or

(i) information necessary to complete any audit or review of expenditures in connection with a Department public assistance program. Any information provided under this part will be safeguarded by the individual or agency receiving the information and will only be used for the purpose expressed in its release.

(5) Any information released under paragraph (4) above can only be released if the Department receives assurances that:

(a) the information being released will only be used for the purposes stated when authorizing the release; and

(b) the agency making the request has rules for safeguarding the information which are at least as restrictive as the rules followed by the Department and that those rules will be adhered to.

(6) Case records or files will not be removed from the local office except by court order, at the request of authorized Department employees, the Department's Information Disclosure Officer, the Department's Quality Control office or ORS.

(7) In an emergency, as determined to exist by the Department's Information Disclosure Officer, information may be released to persons other than the client before permission is obtained.

(8) For clients receiving CC, the Department may provide limited additional information to the child care provider identified by the client as the provider as provided in R986-700-703.

(9) Taxpayer requests to view public assistance payrolls will be denied.

R986-100-111. How to Apply For Assistance.

(1) To be eligible for assistance, a client must complete and sign an application for assistance.

(2) The application is not complete until the applicant has provided complete and correct information and verification as requested by the Department so eligibility can be determined or re-established at the time of review at the end of the certification period. The client must agree to provide correct and complete information to the Department at all times to remain eligible. This includes:

(a) property or other assets owned by all individuals included in the household unit;

(b) insurance owned by any member of the immediate family;

(c) income available to all individuals included in the household unit;

(d) a verified SSN for each household member receiving assistance. If any household member does not have a SSN, the client must provide proof that the number has been applied for. If a client fails to provide a SSN without good cause, or if the application for a SSN is denied for a reason that would be disqualifying, assistance will not be provided for that household member. Good cause in this paragraph means the client has made every effort to comply. Good cause does not mean illness, lack of transportation or temporary absence because the SSA makes provisions for mail-in applications in lieu of applying in person. Good cause must be established each month for continued benefits;

(e) the identity of all individuals who are living in the household regardless of whether they are considered to be in the household assistance unit or not;

(f) proof of relationship for all dependent children in the household. Proof of relationship is not needed for food stamps or child care; and

(g) a release of information, if requested, which would allow the Department to obtain information from otherwise

protected sources when the information requested is necessary to establish eligibility or compliance with program requirements.

(3) All clients, including those not required to participate in an employment plan, will be provided with information about applicable program opportunities and supportive services.

R986-100-112. Assistance Cannot Be Paid for Periods Prior to Date of Application.

(1) Assistance payments for any program listed in Section 102 above cannot be made for any time period prior to the day on which the application for assistance was received by the Department.

(2) If an application for assistance is received after the first day of the month, and the client is eligible to receive assistance, payment for the first month is prorated from the date of the application.

(3) If additional verifying information is needed to complete an application, it must be provided within 30 days of the date the application was received. If the client is at fault in not providing the information within 30 days, the first day the client can be eligible is the day on which the verification was received by the Department.

(4) If the verification is not received within 60 days of the date the application was received by the Department, a new application is required and assistance payments cannot be made for periods prior to the date the new application is received.

(5) If an application for assistance was denied and no appeal taken within 90 days, or a decision unfavorable to the client was issued on appeal, assistance cannot be claimed, requested, or paid for that time period.

R986-100-113. A Client Must Inform the Department of All Material Changes.

(1) A material change is any change which might affect eligibility.

(2) Households receiving assistance must report all material changes to the Department as follows:

(a) households receiving food stamps in which all household members are elderly or disabled as defined by food stamp regulations, and the household has no earned income, must report the following material changes to the local office within ten days of the day the change becomes known by a household member:

(i) change in income source, both unearned and earned;

(ii) change of more than $50 in gross monthly unearned income;

(iii) change in employment status including a change from full time to part time or from part time to full time and/or a change in wage rate, salary or income from employment;

(iv) change in household size or marital status;

(v) change in residence and resulting change in shelter costs;

(vi) gain of a licensed vehicle;

(vii) change in available assets including an unlicensed vehicle. A household under this subsection need only report a change in cash on hand, stocks, bonds, and money in a bank account or savings institution which reach or exceed a total of $3,000;

(viii) change in the legal obligation to pay child support; and

(b) households receiving food stamps that do not meet the requirements of paragraph (2)(a) of this section must report the following changes within ten days of the change occurring:

(i) if the household's gross income exceeds 130% of federal poverty level;

(ii) a change of address; and

(iii) if an ABAWD's work hours fall below 20 hours per week.

(c) households receiving GA, WTE, FEP, FEPTP, AA and RRP that do not meet the requirements of paragraph (2)(a) must report the following changes within ten days of the change occurring:

(i) if the household's gross income exceeds 185% of the adjusted standard needs budget;

(ii) a change of address; and

(iii) if the only eligible child leaves the household and the household receives FEP, FEPTP or AA.

(3) Households that do not meet the requirements of paragraph (2)(a) of this section will be assigned a review month. In addition to the ten-day reporting requirements listed in paragraphs (2)(b) and (c) of this section, the household must report, by the last day of the review month, all material changes that have occurred since the last review, or the date of application if it is the first review. The household is also required to accurately complete all review forms and reports as requested by the Department.

(4) Most changes which result in an increase of assistance will become effective the month following the month in which the report of the change was made. If verification is necessary, verification and changes will be made in the month following the month in which verification was received. If the change is to add a person to the household, the person will be added effective on the date reported, provided necessary verification is received within 30 days of the change. If verification is received after 30 days, the increase will be made effective the date verification was received.

R986-100-114. A Client's Continuing Obligation to Provide Verification and Information.

(1) A client who is eligible for assistance must provide additional verification and information, which may affect household eligibility or ongoing eligibility, after the application is approved if requested by the Department.

(2) The client must provide information to determine if eligibility was appropriately established and if payments made under these rules were appropriate. This information may be requested by an employee of the Department or a person authorized to obtain the information under contract with the Department such as an employee of ORS.

R986-100-115. Underpayment Due to an Error on the Part of the Department.

(1) If it is determined that a client was entitled to assistance but, due to an error on the part of the Department, assistance was not paid, the Department will correct its error and make retroactive payment.

(2) If a client receives assistance payments and it is later discovered that due to Department error the assistance payment should have been made at a higher level than the client actually received, retroactive payment will be made to correct the Department's error.

(3) If the client's public assistance was terminated due to the error, the client will be notified and assistance, plus any retroactive payments, will commence immediately.

(4) An underpayment found to have been made within the last 12 calendar months will be corrected and issued to the client. Errors which resulted in an underpayment which were made more than 12 months prior to the date of the discovery of the error are not subject to a retroactive payment.

(5) Retroactive payment under this section cannot be made for any month prior to the date on which the application for assistance was completed.

(6) The client must not have been at fault in the creation of the error.

R986-100-116. Overpayments.

(1) A client is responsible for repaying any overpayment for any program listed in R986-100-102 regardless of who was

at fault in creating the overpayment.

(2) Underpayments may be used to offset an overpayment for the same program.

(3) If a change is not reported as required by R986-100-113 it may result in an overpayment.

(4) The Department will collect overpayments for all programs listed in R986-100-102 as provided by federal regulation for food stamps unless otherwise noted in this rule or inconsistent with federal regulations specific to those other programs.

(5) This rule will apply to overpayments determined under contract with the Department of Health.

(6) If an obligor has more than one overpayment account and does not tell the Department which account to credit, the Department will make that determination.

R986-100-117. Disqualification For Fraud (Intentional Program Violations or IPVs).

(1) Any person who is at fault in obtaining or attempting to obtain, an overpayment of assistance, as defined in Section 35A-3-602 from any of the programs listed in R986-100-102 or otherwise intentionally breaches any program rule either personally or through a representative is guilty of an intentional program violation (IPV). Acts which constitute an IPV include but are not limited to:

(a) knowingly making false or misleading statements;

(b) misrepresenting, concealing, or withholding facts or information;

(c) posing as someone else;

(d) not reporting the receipt of a public assistance payment the individual knew or should have known they were not eligible to receive;

(e) not reporting a material change as required by and in accordance with these rules; and

(f) committing an act intended to mislead, misrepresent, conceal or withhold facts or propound a falsity.

(2) An IPV occurs when a person commits any of the above acts in an attempt to obtain, maintain, increase or prevent the decrease or termination of any public assistance payment(s).

(3) When the Department determines or receives notice from a court that fraud or an IPV has occurred, the client is disqualified from receiving assistance of the same type for the time period as set forth in rule, statute or federal regulation.

(4) Disqualifications run concurrently.

(5) All income and assets of a person who has been disqualified from assistance for an IPV continue to be counted and affect the eligibility and assistance amount of the household assistance unit in which the person resides.

(6) If an individual has been disqualified in another state, the disqualification period for the IPV in that state will apply in Utah provided the act which resulted in the disqualification would have resulted in a disqualification had it occurred in Utah. If the individual has been disqualified in another state for an act which would have led to disqualification had it occurred in Utah and is found to have committed an IPV in Utah, the prior periods of disqualification in any other state count toward determining the length of disqualification in Utah.

(7) The client will be notified that a disqualification period has been determined. The disqualification period shall begin no later than the second month which follows the date the client receives written notice of the disqualification and continues in consecutive months until the disqualification period has expired.

(8) Nothing in these rules is intended to limit or prevent a criminal prosecution for fraud based on the same facts used to determine the IPV.

R986-100-118. Additional Penalty for a Client Who Intentionally Misrepresents Residence.

A person who has been convicted in federal or state court of having made a fraudulent statement or representation with respect to the place of residence in order to receive assistance simultaneously from two or more states is disqualified from receiving assistance for any and all programs listed in R986-100-102 above, for a period of 10 years. This applies even if Utah was not one of the states involved in the original fraudulent misrepresentation.

R986-100-119. Reporting Possible Child Abuse or Neglect.

When a Department employee has reason to believe that a child has been subjected to abuse or neglect, it shall be reported under the provisions of Section 62A-4a-401 et seq.

R986-100-120. Discrimination Complaints.

(1) Complaints of discrimination can be made in person, by phone, or in writing to the local office, the Office of the Executive Director or the Director's designee, the Department's Equal Opportunity Officer, or the appropriate Federal agency.

(2) Complaints shall be resolved and responded to as quickly as possible.

(3) A record of complaints will be maintained by the local office including the response to the complaint.

(4) If a complaint is made to the local office, a copy of the complaint together with a copy of the written response will be sent to the Office of the Executive Director or the Director's designee.

(5) Discrimination complaints pertaining to the Food Stamp Program will also be sent to the Secretary of Agriculture or the Administrator of Food and Nutrition Service, Washington, D.C., 20250 in accordance with the provisions of 7 CFR 272.6 (1999).

R986-100-121. Agency Conferences.

(1) Agency conferences are used to resolve disputes between the client and Department staff.

(2) Clients or Department staff may request an agency conference at any time to resolve a dispute regarding a denial or reduction of assistance.

(3) Clients may have an authorized representative attend the agency conference.

(4) An agency conference will be attended by the client's employment counselor and the counselor's supervisor unless the client or the supervisor request that the employment counselor not attend the conference.

(5) If an agency conference has previously been held on the same dispute, the Department may decline to hold the requested conference if, in the judgment of the employment counselor's supervisor, it will not result in the resolution of the dispute.

(6) If the Department requests the agency conference and the client fails to respond, attend or otherwise cooperate in this process, documentation in the case file of attempts by the staff to follow these steps will be considered as compliance with the requirement to attempt to resolve the dispute.

(7) An agency conference may be held after a client has made a request for hearing in an effort to resolve the dispute. If so, the client must be notified that failure to participate or failure to resolve the dispute at the agency conference will not affect the client's right to proceed with the hearing.

R986-100-122. Advance Notice of Department Action.

(1) Except as provided in (2) below, clients will be notified in writing when a decision concerning eligibility, amount of assistance payment or action on the part of the Department which affects the client's eligibility or amount of assistance has been made. Notice will be sent prior to the effective date of any action to reduce or terminate assistance payments. The Department will send advance notice of its intent to collect overpayments or to disqualify a household

member.

(2) Except for overpayments, advance notice is not required when:

(a) the client requests in writing that the case be closed;

(b) the client has been admitted to an institution under governmental administrative supervision;

(c) the client has been placed in skilled nursing care, intermediate care, or long-term hospitalization;

(d) the client's whereabouts are unknown and mail sent to the client has been returned by the post office with no forwarding address;

(e) it has been determined the client is receiving public assistance in another state;

(f) a child in the household has been removed from the home by court order or by voluntary relinquishment;

(g) a special allowance provided for a specific period is ended and the client was informed in writing at the time the allowance began that it would terminate at the end of the specified period;

(h) a household member has been disqualified for an IPV in accordance with 7 CFR 273.16, or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member;

(i) the Department has received factual information confirming the death of a client or payee if there is no other relative able to serve as a new payee;

(j) the client's certification period has expired;

(k) the action to terminate assistance is based on the expiration of the time limits imposed by the program;

(l) the client has provided information to the Department, or the Department has information obtained from another reliable source, that the client is not eligible or that payment should be reduced or terminated;

(m) the Department determines that the client willfully withheld information or;

(n) when payment of financial assistance is made after performance under R986-200-215 and R986-400-454 no advance notice is needed when performance requirements are not met.

(3) For food stamp recipients and recipients of assistance under R986-300, no action will be taken until ten days after notice was sent unless one of the exceptions in (2)(a) through (k) above apply.

(4) Notice is complete if sent to the client's last known address. If notice is sent to the client's last known address and the notice is returned by the post office with no forwarding address, the notice will be considered to have been properly served.

R986-100-123. The Right To a Hearing and How to Request a Hearing.

(1) A client has the right to a review of an adverse Department action by requesting a hearing.

(2) In cases where the Department sends notice of its intent to take action to collect an alleged overpayment but there is no alleged overpayment of food stamps, the client must request a hearing in writing or orally within 30 days of the date of notice of agency action. In all other cases, the client must request a hearing in writing or orally within 90 days of the date of the notice of agency action with which the client disagrees.

(3) Only a clear expression by the client to the effect that the client wants an opportunity to present his or her case is required.

(4) The request for a hearing can be made at the local office or the Division of Adjudication.

(5) If the client disagrees with the level of food stamp benefits paid or payable, the client can request a hearing within the certification period, even if that is longer than 90 days.

(6) If a request for restoration of lost food stamp benefits is made within one year of the loss of benefits a client may request a hearing within 90 days of the date of the denial of restoration.

(7) In the case of an overpayment and/or IPV the obligor may contact the presiding officer and attempt to resolve the dispute. If the dispute cannot be resolved, the obligor may still request a hearing provided it is filed within the time limit provided in the notice of agency action.

R986-100-124. How Hearings Are Conducted.

(1) Hearings are held at the state level and not at the local level.

(2) Where not inconsistent with federal law or regulation governing hearing procedure, the Department will follow the Utah Administrative Procedures Act.

(3) Hearings for all programs listed in R986-100-102 and overpayments and IPVs in Section 35A-3-601 et seq. are declared to be informal.

(4) Hearings are conducted by an ALJ or a Hearing Officer in the Division of Adjudication. A Hearing Officer has all of the same rights, duties, powers and responsibilities as an ALJ under these rules and the terms are interchangeable.

(5) Hearings are usually scheduled as telephone hearings.

(6) If the client prefers an in-person hearing the client must contact the ALJ assigned to hear the case in advance of the hearing and request that the hearing be converted to an in-person hearing. An in-person hearing is conducted in one of the following ways, at the option of the client:

(a) the client can request that the hearing be conducted in the office of the ALJ and appear personally before the ALJ, but the Department representative and Department witnesses will be allowed to participate by telephone; or

(b) the client can participate from the local Employment Center with the witnesses and Department employees who work in that particular Employment Center. The ALJ and any Department employees or witnesses who are in another location will participate from that location or locations by telephone.

(7) the Department is not responsible for any travel costs incurred by the client in attending an in-person hearing.

(8) the Division of Adjudication will permit collect calls from parties and their witnesses participating in telephone hearings.

R986-100-125. When a Client Needs an Interpreter at the Hearing.

(1) If a client notifies the Department that an interpreter is needed at the time the request for hearing is made, the Department will arrange for an interpreter at no cost to the client.

(2) If an interpreter is needed at the hearing by a client or the client's witness(es), the client may arrange for an interpreter to be present at the hearing who is an adult with fluent ability to understand and speak English and the language of the person testifying, or notify the Division of Adjudication at the time the appeal is filed that assistance is required in arranging for an interpreter.

R986-100-126. Procedure For Use of an Interpreter.

(1) The ALJ will be assured that the interpreter:

(a) understands the English language; and

(b) understands the language of the client or witness for whom the interpreter will interpret.

(2) The ALJ will instruct the interpreter to interpret, word for word, and not summarize, add, change, or delete any of the testimony or questions.

(3) The interpreter will be sworn to truthfully and accurately translate all statements made, all questions asked, and all answers given.

(4) The interpreter will be instructed to translate to the

client the explanation of the hearing procedures as provided by the ALJ.

R986-100-127. Notice of Hearing.

(1) All interested parties will be notified by mail at least 10 days prior to the hearing.

(2) Advance written notice of the hearing can be waived if the client and Department agree.

(3) The notice shall contain:

(a) the time, date, and place, or conditions of the hearing. If the hearing is to be by telephone, the notice will provide the number for the client to call and a notice that the client can call the number collect;

(b) the legal issues or reason for the hearing;

(c) the consequences of not appearing;

(d) the procedures and limitations for requesting rescheduling; and

(e) notification that the client can examine the case file prior to the hearing.

(4) If a client has designated a person or professional organization as the client's agent, notice of the hearing will be sent to that agent. It will be considered that the client has been given notice when notice is sent to the agent.

(5) When a new issue arises during the hearing or under other unusual circumstances, advance written notice may be waived, if the Department and the client agree, after a full verbal explanation of the issues and potential results.

(6) The client must notify any representatives, including counsel and witnesses, of the time and place of the hearing and make necessary arrangements for their participation.

(7) The notice of hearing will be translated, either in writing or verbally, for certain clients participating in the RRP program in accordance with RRP regulations.

R986-100-128. Hearing Procedure.

(1) Hearings are not open to the public.

(2) A client may be represented at the hearing. The client may also invite friends or relatives to attend as space permits.

(3) Representatives from the Department or other state agencies may be present.

(4) All hearings will be conducted informally and in such manner as to protect the rights of the parties. The hearing may be recorded.

(5) All issues relevant to the appeal will be considered and decided upon.

(6) The decision of the ALJ will be based solely on the testimony and evidence presented at the hearing.

(7) All parties may testify, present evidence or comment on the issues.

(8) All testimony of the parties and witnesses will be given under oath or affirmation.

(9) Any party to an appeal will be given an adequate opportunity to be heard and present any pertinent evidence of probative value and to know and rebut by cross-examination or otherwise any other evidence submitted.

(10) The ALJ will direct the order of testimony and rule on the admissibility of evidence.

(11) Oral or written evidence of any nature, whether or not conforming to the legal rules of evidence including hearsay, may be accepted and will be given its proper weight.

(12) Official records of the Department, including reports submitted in connection with any program administered by the Department or other State agency may be included in the record.

(13) The ALJ may request the presentation of and may take such additional evidence as the ALJ deems necessary.

(14) The parties, with consent of the ALJ, may stipulate to the facts involved. The ALJ may decide the issues on the basis of such facts or may set the matter for hearing and take such further evidence as deemed necessary to determine the issues.

(15) The ALJ may require portions of the evidence be transcribed as necessary for rendering a decision.

(16) Unless the client requests a continuance, the decision of the ALJ will be issued within 60 days of the date on which the client requests a hearing.

(17) A decision of the ALJ which results in a reversal of the Department decision shall be complied with within 10 days of the issuance of the decision.

R986-100-129. Rescheduling or Continuance of Hearing.

(1) The ALJ may adjourn, reschedule, continue or reopen a hearing on the ALJ's own motion or on the motion of the client or the Department.

(2) If a party knows in advance of the hearing that they will be unable to proceed with or participate in the hearing on the date or time scheduled, the party must request that the hearing be rescheduled or continued to another day or time.

(a) The request must be received prior to the hearing.

(b) The request must be made orally or in writing to the ALJ who is scheduled to hear the case. If the request is not received prior to the hearing, the party must show cause for failing to make a timely request.

(c) The party making the request must show cause for the request.

(d) Normally, a party will not be granted more than one request for a continuance.

(3) The rescheduled hearing must be held within 30 days of the original hearing date.

R986-100-130. Default Order for Failure to Participate.

(1) The Department will issue a default order if an obligor in an overpayment and/or IPV case fails to participate in the administrative process. Participation for an obligor means:

(a) signing and returning to the Department an approved stipulation for repayment and making all of the payments as agreed,

(b) requesting and participating in a hearing, or

(c) paying the overpayment in full.

(2) If a hearing has been scheduled at the request of a client or an obligor and the client or obligor fails to appear at or participate in the hearing, either in person or through a representative, the ALJ will, unless a continuance or rescheduling has been requested, issue a default order.

(3) A default order will be based on the record and best evidence available at the time of the order.

R986-100-131. Setting Aside A Default and/or Reopening the Hearing After the Hearing Has Been Concluded.

(1) Any party who fails to participate personally or by authorized representative as defined in R986-100-130 may request that the default order be set aside and a hearing or a new hearing be scheduled. If a party failed to participate in a hearing but no decision has yet been issued, the party may request that the hearing be reopened.

(2) The request must be in writing, must set forth the reason for the request and must be mailed, faxed or delivered to the ALJ or presiding officer who issued the default order within ten days of the issuance of the default. If the request is made after the expiration of the ten-day time limit, the party requesting reopening must show good cause for not making the request within ten days.

(3) The ALJ has the discretion to schedule a hearing to determine if a party requesting that a default order be set aside or a reopening satisfied the requirements of this rule or may grant or deny the request on the basis of the record in the case.

(4) If a presiding officer issued the default, the officer shall forward the request to the Division of Adjudication. The request will be assigned to an ALJ who will then determine if the party requesting that the default be set aside or that the

hearing be reopened has satisfied the requirements of this rule.

(5) The ALJ may, on his or her own motion, reschedule, continue or reopen a case if it appears necessary to take continuing jurisdiction based on a mistake as to facts or if the denial of a hearing would be an affront to fairness. A presiding officer may, on his or her own motion, set aside a default on the same grounds.

(6) If a request to set aside the default or a request for reopening is not granted, the ALJ will issue a decision denying the request to reopen. A copy of the decision will be given or mailed to each party, with a clear statement of the right of appeal or judicial review. A defaulted party may appeal a denial of a request to set aside a default by following the procedure in R986-100-135. The appeal can only contest the denial of the request to set aside the default and not the underlying merits of the case. If the default is set aside on appeal, the Executive Director or designee may rule on the merits or remand the case to an ALJ for a ruling on the merits on an additional hearing if necessary.

R986-100-132. What Constitutes Grounds to Set Aside a Default.

(1) A request to reopen or set aside for failure to participate:

(a) will be granted if the party was prevented from participating and/or appearing at the hearing due to circumstances beyond the party's control;

(b) may be granted upon such terms as are just for any of the following reasons: mistake, inadvertence, surprise, excusable neglect or any other reason justifying relief from the operation of the decision. The determination of what sorts of neglect will be considered excusable is an equitable one, taking into account all of the relevant circumstances including:

(i) the danger that the party not requesting reopening will be harmed by reopening,

(ii) the length of the delay caused by the party's failure to participate including the length of time to request reopening,

(iii) the reason for the request including whether it was within the reasonable control of the party requesting reopening,

(iv) whether the party requesting reopening acted in good faith, and

(v) whether the party was represented by another at the time of the hearing. Because they are required to know and understand Department rules, attorneys and professional representatives are held to a higher standard, and

(vi) whether based on the evidence of record and the parties arguments or statements, setting aside the default and taking additional evidence might effect the outcome of the case.

(2) Requests to reopen or set aside are remedial in nature and thus must be liberally construed in favor of providing parties with an opportunity to be heard and present their case. Any doubt must be resolved in favor of granting reopening.

R986-100-133. Canceling an Appeal and Hearing.

When a client notifies the Division of Adjudication or the ALJ that the client wants to cancel the hearing and not proceed with the appeal, a decision dismissing the appeal will be issued. This decision will have the effect of upholding the Department decision. The client will have 30 days in which to reinstate the appeal by filing a written request for reinstatement with the Division of Adjudication.

R986-100-134. Payments of Assistance Pending the Hearing.

(1) A client is entitled to receive continued assistance pending a hearing contesting a Department decision to reduce or terminate food stamps, RRP, FEPTP, or FEP financial assistance if the client's request for a hearing is received no later than 10 days after the date of the notice of the reduction, or termination. The assistance will continue unless the certification period expires until a decision is issued by the ALJ. If the certification period expires while the hearing or decision is pending, assistance will be terminated. If a client becomes ineligible or the assistance amount is reduced for another reason pending a hearing, assistance will be terminated or reduced for the new reason unless a hearing is requested on the new action.

(2) If the client can show good cause for not requesting the hearing within 10 days of the notice, assistance may be continued if the client can show good cause for failing to file in a timely fashion. Good cause in this paragraph means that the delay in filing was due to circumstances beyond the client's control or for circumstances which were compelling and reasonable. Because the Department allows a client to request a hearing by telephone or mail, good cause does not mean illness, lack of transportation or temporary absence.

(3) A client can request that payment of assistance not be continued pending a hearing but the request must be in writing.

(4) If payments are continued pending a hearing, the client is responsible for any overpayment in the event of an adverse decision.

(5) If the decision of the ALJ is adverse to the client, the client is not eligible for continued assistance pending any appeal of that decision.

(6) If a decision favorable to the client is rendered after a hearing, and payments were not made pending the decision, retroactive payment will be paid back to the date of the adverse action if the client is otherwise eligible.

(7) Financial assistance payments under GA or WTE, and CC subsidies will not continue during the hearing process regardless of when the appeal is filed.

(8) Financial assistance under the RRP will not extend for longer than the eight-month time limit for that program under any circumstances.

(9) Clients receiving financial assistance under the FEPTP program must continue to participate to receive financial assistance during the hearing process.

(10) Financial assistance under the FEPTP program will not extend for longer than the seven-month time limit for that program under any circumstance.

(11) Assistance is not allowed pending a hearing from a denial of an application for assistance.

R986-100-135. Further Appeal From the Decision of the ALJ or Presiding Officer.

Either party has the option of appealing the decision of the ALJ or presiding officer to either the Executive Director or person designated by the Executive Director or to the District Court. The appeal must be filed, in writing, within 30 days of the issuance of the decision of the ALJ or presiding officer.

KEY: employment support procedures
August 1, 2006 35A-3-101 et seq.
Notice of Continuation September 13, 2003 35A-3-301 et seq.
35A-3-401 et seq.

R986. Workforce Services, Employment Development.
R986-200. Family Employment Program.
R986-200-201. Authority for Family Employment Program (FEP) and Family Employment Program Two Parent (FEPTP) and Other Applicable Rules.

(1) The Department provides services to eligible families under FEP and FEPTP under the authority granted in the Employment Support Act, UCA 35A-3-301 et seq. Funding is provided by the federal government through Temporary Aid to Needy Families (TANF) as authorized by PRWORA.

(2) Rule R986-100 applies to FEP and FEPTP unless expressly noted otherwise.

R986-200-202. Family Employment Program (FEP).

(1) The goal of FEP is to increase family income through employment, and where appropriate, child support and/or disability payments.

(2) FEP is for families with no more than one able bodied parent in the household. If the family has two able bodied parents in the household, the family is not eligible for FEP but may be eligible for FEPTP. Able bodied means capable of earning at least $500 per month in the Utah labor market.

(3) If a household has at least one incapacitated parent, the parent claiming incapacity must verify that incapacity in one of the following ways:

(a) receipt of disability benefits from SSA;

(b) 100% disabled by VA; or

(c) by submitting a written statement from:

(i) a licensed medical doctor;

(ii) a doctor of osteopathy;

(iii) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(iv) a licensed Advanced Practice Registered Nurse; or

(v) a licensed Physician's Assistant.

(d) the written statement in paragraph (c) of this subsection must be based on a current physical examination of the parent, not just a review of parent's medical records.

(4) Incapacity means not capable of earning $500 per month. The incapacity must be expected to last 30 days or longer.

(5) An applicant or parent must cooperate in the obtaining of a second opinion regarding incapacity if requested by the Department. Only the costs associated with a second opinion requested by the Department will be paid for by the Department. The Department will not pay the costs associated with obtaining a second opinion if the parent requests the second opinion.

(6) An incapacitated parent is included in the FEP household assistance unit and the parent's income and assets are counted toward establishing eligibility unless the parent is a SSI recipient. If the parent is a SSI recipient, that parent is not included in the household and none of the income or assets of the SSI recipient is counted.

(7) An incapacitated parent who is included in the household must still negotiate, sign and agree to participate in an employment plan. If the incapacity is such that employment is not feasible now or in the future, participation may be limited to cooperating with ORS and filing for any assistance or benefits to which the parent may be entitled. If it is believed the incapacity might not be permanent, the parent will also be required to seek assistance in overcoming the incapacity.

R986-200-203. Citizenship and Alienage Requirements.

(1) All persons in the household assistance unit who are included in the financial assistance payment, including children, must be a citizen of the United States or meet alienage criteria.

(2) An alien is not eligible for financial assistance unless the alien meets the definition of qualified alien. A qualified alien is an alien:

(a) who is paroled into the United States under section 212(d)(5) of the INA for at least one year;

(b) who is admitted as a refugee under section 207 of the INA;

(c) who is granted asylum under section 208 of the INA;

(d) who is a Cuban or Haitian entrant in accordance with the requirements of 45 CFR Part 401;

(e) who is an Amerasian from Vietnam and was admitted to the United States as an immigrant pursuant to Public Law 100-202 and Public Law 100-461;

(f) whose deportation is being withheld under sections 243(h) or 241(b)(3) of the INA;

(g) who is lawfully admitted for permanent residence under the INA,

(h) who is granted conditional entry pursuant to section 203(a)(7) of the INA;

(i) who meets the definition of certain battered aliens under Section 8 U.S.C. 1641(c); or

(j) who is a certified victim of trafficking.

(3) All aliens granted lawful temporary or permanent resident status under Sections 210, 302, or 303 of the Immigration Reform and Control Act of 1986, are disqualified from receiving financial assistance for a period of five years from the date lawful temporary resident status is granted.

(4) Aliens are required to provide proof, in the form of documentation issued by the United States Citizenship and Immigration Services (USCIS), of immigration status. Victims of trafficking can provide proof from the Office of Refugee Resettlement.

R986-200-204. Eligibility Requirements.

(1) To be eligible for financial assistance under the FEP or FEPTP a household assistance unit must include:

(a) a pregnant woman when it has been medically verified that she is in the third calendar month prior to the expected month of delivery, or later, and who, if the child were born and living with her in the month of payment, would be eligible. The unborn child is not included in the financial assistance payment; or

(b) at least one minor dependent child who is a citizen or meets the alienage criteria. All minor children age 6 to 16 must attend school, or be exempt under 53A-11-102, to be included in the household assistance unit for a financial assistance payment for that child.

(i) A minor child is defined as being under the age of 18 years and not emancipated by marriage or by court order; or

(ii) an unemancipated child, at least 18 years old but under 19 years old, with no high school diploma or its equivalent, who is a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and the school has verified a reasonable expectation the 18 year old will complete the program before reaching age 19.

(2) Households must meet other eligibility requirements of income, assets, and participation as found in R986-100.

(3) Persons who are fleeing to avoid prosecution of a felony are ineligible for financial assistance.

R986-200-205. How to Determine Who Is Included in the Household Assistance Unit.

The amount of financial assistance for an eligible household is based on the size of the household assistance unit and the income and assets of all people in the household assistance unit.

(1) The income and assets of the following individuals living in the same household must be counted in determining eligibility of the household assistance unit:

(a) all natural parents, adoptive parents and stepparents, unless expressly excluded in this section, who are related to and residing in the same household as an eligible dependent child. Natural parentage is determined as follows:

(i) A woman is the natural parent if her name appears on the birth record of the child.

(ii) For a man to be determined to be the natural parent, that relationship must be established or acknowledged or his name must appear on the birth record. If the parents have a solemnized marriage at the time of birth, relationship is established and can only be rebutted by a DNA test;

(b) household members who would otherwise be included but who are absent solely by reason of employment, school or training, or who will return home to live within 30 days;

(c) all minor siblings, half-siblings, and adopted siblings living in the same household as an eligible dependent child; and

(d) all spouses living in the household.

(2) The following individuals in the household are not counted in determining the household size for determining payment amount nor are the assets or income of the individuals counted in determining household eligibility:

(a) a recipient of SSI benefits. If the SSI recipient is the parent and is receiving FEP assistance for the child(ren) residing in the household, the SSI parent must cooperate with establishing paternity and child support enforcement for the household to be eligible. If the only dependent child is a SSI recipient, the parent or specified relative may receive a FEP assistance payment which does not include that child, provided the parent or specified relative is not on SSI and can meet all other requirements;

(b) a child during any month in which a foster care maintenance payment is being provided to meet the child's needs. If the only dependent child in the household is receiving a foster care maintenance payment, the parent or specified relative may still receive a FEP assistance payment which does not include the child, provided all other eligibility, income and asset requirements are met;

(c) an absent household member who is expected to be gone from the household for 180 days or more unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included.

(3) The household assistance unit can choose whether to include or exclude the following individuals living in the household. If included, all income and assets of that person are counted:

(a) all absent household members who are expected to be temporarily absent from the home for more than 30 but not more than 180 consecutive days unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included;

(b) Native American children, or deaf or blind children, who are temporarily absent while in boarding school, even if the temporary absence is expected to last more than 180 days;

(c) an adopted child who receives a federal, state or local government special needs adoption payment. If the adopted child receiving this type of payment is the only dependent child in the household and excluded, the parent(s) or specified relative may still receive a FEP or FEPTP assistance payment which does not include the child, provided all other eligibility requirements are met. If the household chooses to include the adopted child in the household assistance unit under this paragraph, the special needs adoption payment is counted as income;

(d) former stepchildren who have no blood relationship to a dependent child in the household;

(e) a specified relative. If a household requests that a specified relative be included in the household assistance unit, only one specified relative can be included in the financial assistance payment regardless of how many specified relatives are living in the household. The income and assets of all household members are counted according to the provisions of R986-200-241.

(4) In situations where there are children in the home for which there is court order regarding custody of the children, the Department will determine if the children should be included in the household assistance unit based on the actual living arrangements of the children and not on the custody order. If the child lives in the home 50% or more of the time, the child must be included in the household assistance unit and duty of support completed. It is not an option to exclude the child. This is true even if the court awarded custody to the other parent or the court ordered joint custody. If the child lives in the household less than 50% of the time, the child cannot be included in the household. It is not an option to include the child. This is true even if the parent applying for financial assistance has been awarded custody by the court or the court ordered joint custody. If financial assistance is allowed, a joint custody order might be modified by the court under the provisions of 30-3-10.2(4) and 30-3-10.4.

(5) The income and assets of the following individuals are counted in determining eligibility even though the individual is not included in the assistance payment:

(a) a household member who has been disqualified from the receipt of assistance because of an IPV, (fraud determination);

(b) a household member who does not meet the citizenship and alienage requirements; or

(c) a minor child who is not in school full time or participating in self sufficiency activities.

R986-200-206. Participation Requirements.

(1) Payment of any and all financial assistance is contingent upon all parents in the household, including adoptive and stepparents, participating, to the maximum extent possible, in:

(a) assessment and evaluation;

(b) the completion of a negotiated employment plan; and

(c) assisting ORS in good faith to:

(i) establish the paternity of all minor children; and

(ii) establish and enforce child support obligations.

(d) obtaining any and all other sources of income. If any household member is or appears to be eligible for unemployment, SSA, Workers Compensation, VA, or any other benefits or forms of assistance, the Department will refer the individual to the appropriate agency and the individual must apply for and pursue obtaining those benefits. If an individual refuses to apply for and pursue these benefits or assistance, the individual is ineligible for financial assistance. If the individual is otherwise eligible for FEP or FEPTP, financial assistance will be provided until eligibility for other benefits or assistance has been determined.

(2) Parents who have been determined to be ineligible to be included in the financial assistance payment are still required to participate.

(3) Children at least 16 years old but under 18 years old, unless they are in school full-time or in school part-time and working less than 100 hours per month are required to participate.

R986-200-207. Participation in Child Support Enforcement.

(1) Receipt of child support is an important element in increasing a family's income.

(2) Every natural, legal or adoptive parent has a duty to support his or her children and stepchildren even if the children do not live in the parental home.

(3) A parent's duty to support continues until the child:

(a) reaches age 18;

(b) is 18 years old and enrolled in high school during the normal and expected year of graduation;

(c) is emancipated by marriage or court order;

(d) is a member of the armed forces of the United States; or

(e) is self supporting.

(4) A client receiving financial assistance automatically assigns to the state any and all rights to child support for all children who are included in the household assistance unit while receiving financial assistance. The assignment of rights occurs even if the client claims or establishes "good cause or other exception" for refusal to cooperate. The assignment of rights to support, cooperation in establishing paternity, and establishing and enforcing child support is a condition of eligibility for the receipt of financial assistance.

(5) For each child included in the financial assistance payment, the client must also assign any and all rights to alimony or spousal support from the noncustodial parent while the client receives public assistance.

(6) The client must cooperate with the Department and ORS in establishing and enforcing the spousal and child support obligation from any and all natural, legal, or adoptive non-custodial parents.

(7) If a parent is absent from the home, the client must identify and help locate the non-custodial parent.

(8) If a child is conceived or born during a marriage, the husband is considered the legal father, even if the wife states he is not the natural father.

(9) If the child is born out of wedlock, the client must also cooperate in the establishment of paternity.

(10) ORS is solely responsible for determining if the client is cooperating in identifying the noncustodial parent and with child support establishment and enforcement efforts for the purposes of receipt of financial assistance. The Department cannot review, modify, or reject a decision made by ORS.

(11) Unless good cause is shown, financial assistance will terminate if a parent or specified relative does not cooperate with ORS in establishing paternity or enforcing child support obligations.

(12) Upon notification from ORS that the client is not cooperating, the Department will commence reconciliation procedures as outlined in R986-200-212. If the client continues to refuse to cooperate with ORS at the end of the reconciliation process, financial assistance will be terminated.

(13) Termination of financial assistance for non cooperation is immediate, without a reduction period outlined in R986-200-212, if:

(a) the client is a specified relative who is not included in the household assistance unit;

(b) the client is a parent receiving SSI benefits; or

(c) the client is participating in FEPTP.

(14) Once the financial assistance has been terminated due to the client's failure to cooperate with child support enforcement, the client must then reapply for financial assistance. This time, the client must cooperate with child support collection prior to receiving any financial assistance.

(15) A specified relative, illegal alien, SSI recipient, or disqualified parent in a household receiving FEP assistance must assign rights to support of any kind and cooperate with all establishment and enforcement efforts even if the parent or relative is not included in the financial assistance payment.

R986-200-208. Good Cause for Not Cooperating With ORS.

(1) The Department is responsible for determining if the client has good cause or other exception for not cooperating with ORS.

(2) To establish good cause for not cooperating, the client must file a written request for a good cause determination and provide proof of good cause within 20 days of the request.

(3) A client has the right to request a good cause determination at any time, even if ORS or court proceedings have begun.

(4) Good cause for not cooperating with ORS can be shown if one of following circumstances exists:

(a) The child, for whom support is sought, was conceived as a result of incest or rape. To prove good cause under this paragraph, the client must provide:

(i) birth certificates;

(ii) medical records;

(iii) Department records;

(iv) records from another state or federal agency;

(v) court records; or

(vi) law enforcement records.

(b) Legal proceedings for the adoption of the child are pending before a court. Proof is established if the client provides copies of documents filed in a court of competent jurisdiction.

(c) A public or licensed private social agency is helping the client resolve the issue of whether to keep or relinquish the child for adoption and the discussions between the agency and client have not gone on for more than three months. The client is required to provide written notice from the agency concerned.

(d) The client's cooperation in establishing paternity or securing support is reasonably expected to result in physical or emotional harm to the child or to the parent or specified relative. If harm to the parent or specified relative is claimed, it must be significant enough to reduce that individual's capacity to adequately care for the child.

(i) Physical or emotional harm is considered to exist when it results in, or is likely to result in, an impairment that has a substantial effect on the individual's ability to perform daily life activities.

(ii) The source of physical or emotional harm may be from individuals other than the noncustodial parent.

(iii) The client must provide proof that the individual is likely to inflict such harm or has done so in the past. Proof must be from an independent source such as:

(A) medical records or written statements from a mental health professional evidencing a history of abuse or current health concern. The record or statement must contain a diagnosis and prognosis where appropriate;

(B) court records;

(C) records from the Department or other state or federal agency; or

(D) law enforcement records.

(5) If a claim of good cause is denied because the client is unable to provide proof as required under Subsection (4) (a) or (d) the client can request a hearing and present other evidence of good cause at the hearing. If the ALJ finds that evidence credible and convincing, the ALJ can make a finding of good cause under Subsections (4) (a) or (d) based on the evidence presented by the client at the hearing. A finding of good cause by the ALJ can be based solely on the sworn testimony of the client.

(6) When the claim of good cause for not cooperating is based in whole or in part on anticipated physical or emotional harm, the Department must consider:

(a) the client's present emotional health and history;

(b) the intensity and probable duration of the resulting impairment;

(c) the degree of cooperation required; and

(d) the extent of involvement of the child in the action to be taken by ORS.

(7) The Department recognizes no other exceptions, apart from those recognized by ORS, to the requirement that a client cooperate in good faith with ORS in the establishment of paternity and establishment and enforcement of child support.

(8) If the client has exercised his or her right to an agency review or adjudicative proceeding under Utah Administrative Procedures Act on the question of non-cooperation as determined by ORS, the Department will not review, modify, or

reverse the decision of ORS on the question of non-cooperation. If the client did not have an opportunity for a review with ORS, the Department will refer the request for review to ORS for determination.

(9) Once a request for a good cause determination has been made, all collection efforts by ORS will be suspended until the Department has made a decision on good cause.

(10) A client has the right to appeal a Department decision on good cause to an ALJ by following the procedures for appeal found in R986-100.

(11) If a parent requests a hearing on the basis of good cause for not cooperating, the resulting decision cannot change or modify the determination made by ORS on the question of good faith.

(12) Even if the client establishes good cause not to cooperate with ORS, if the Department supervisor determines that support enforcement can safely proceed without the client's cooperation, ORS may elect to do so. Before proceeding without the client's cooperation, ORS will give the client advance notice that it intends to commence enforcement proceedings and give the client an opportunity to object. The client must file his or her objections with ORS within 10 days.

(13) A determination that a client has good cause for non-cooperation may be reviewed and reversed by the Department upon a finding of new, or newly discovered evidence, or a change in circumstances.

R986-200-209. Participation in Obtaining an Assessment.

(1) Within 20 business days of the date the application for financial assistance has been completed and approved, the client will be assigned to an employment counselor and must complete an assessment.

(2) The assessment evaluates a client's needs and is used to develop an employment plan.

(3) Completion of the assessment requires that the client provide information about:

(a) family circumstances including health, needs of the children, support systems, and relationships;

(b) personal needs or potential barriers to employment;

(c) education;

(d) work history;

(e) skills;

(f) financial resources and needs; and

(g) any other information relevant to the client's ability to become self-sufficient.

(4) The client may be required to participate in testing or completion of other assessment tools and may be referred to another person within the Department, another agency, or to a company or individual under contract with the Department to complete testing, assessment, and evaluation.

R986-200-210. Requirements of an Employment Plan.

(1) Within 15 business days of completion of the assessment, the following individuals in the household assistance unit are required to sign and make a good faith effort to participate to the maximum extent possible in a negotiated employment plan:

(a) All parents, including parents whose income and assets are included in determining eligibility of the household but have been determined to be ineligible or disqualified from being included in the financial assistance payment.

(b) Dependent minor children who are at least 16 years old, who are not parents, unless they are full-time students or are employed an average of 30 hours a week or more.

(2) The goal of the employment plan is obtaining marketable employment and it must contain the soonest possible target date for entry into employment consistent with the employability of the individual.

(3) An employment plan consists of activities designed to help an individual become employed. For each activity there will be:

(a) an expected outcome;

(b) an anticipated completion date;

(c) the number of participation hours agreed upon per week; and

(d) a definition of what will constitute satisfactory progress for the activity.

(4) Each activity must be directed toward the goal of increasing the household's income.

(5) Activities may require that the client:

(a) obtain immediate employment. If so, the parent client shall:

(i) promptly register for work and commence a search for employment for a specified number of hours each week; and

(ii) regularly submit a report to the Department on:

(A) how much time was spent in job search activities;

(B) the number of job applications completed;

(C) the interviews attended;

(D) the offers of employment extended; and

(E) other related information required by the Department.

(b) participate in an educational program to obtain a high school diploma or its equivalent, if the parent client does not have a high school diploma;

(c) obtain education or training necessary to obtain employment;

(d) obtain medical, mental health, or substance abuse treatment;

(e) resolve transportation and child care needs;

(f) relocate from a rural area which would require a round trip commute in excess of two hours in order to find employment;

(g) resolve any other barriers identified as preventing or limiting the ability of the client to obtain employment, and/or

(h) participate in rehabilitative services as prescribed by the State Office of Rehabilitation.

(6) The client must meet the performance expectations of each activity in the employment plan in order to stay eligible for financial assistance.

(7) The client must cooperate with the Department's efforts to monitor and evaluate the client's activities and progress under the employment plan, which includes providing the Department with a release of information, if necessary to facilitate the Department's monitoring of compliance.

(8) Where available, supportive services will be provided as needed for each activity.

(9) The client agrees, as part of the employment plan, to cooperate with other agencies, or with individuals or companies under contract with the Department, as outlined in the employment plan.

(10) An employment plan may, at the discretion of the Department, be amended to reflect new information or changed circumstances.

(11) The number of hours of participation in subsection (3)(c) of this section will not be lower than 34 hours per week. All 34 hours must be in eligible activities. 24 of those 34 hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center.

(12) In the event a client has barriers which prevent the client from 34 hours of participation per week, or 24 hours in priority activities, a lower number of hours of participation can be approved if:

(a) the Department identifies and documents the barriers which prevent the client from full participation; and

(b) the client agrees to participate to the maximum extent possible to resolve the barriers which prevent the client from participating.

R986-200-211. Education and Training As Part of an

Employment Plan.

(1) A parent client's participation in education or training beyond that required to obtain a high school diploma or its equivalent is limited to the lesser of:

(a) 24 months which need not be continuous; or

(b) the completion of the education and training requirements of the employment plan.

(2) Post high school education or training will only be approved if all of the following are met:

(a) The client can demonstrate that the education or training would substantially increase the income level that the client would be able to achieve without the education and training, and would offset the loss of income the household incurs while the education or training is being completed.

(b) The client does not already have a degree or skills training certificate in a currently marketable occupation.

(c) An assessment specific to the client's education and training aptitude has been completed showing the client has the ability to be successful in the education or training.

(d) The mental and physical health of the client indicates the education or training could be completed successfully and the client could perform the job once the schooling is completed.

(e) The specific employment goal that requires the education or training is marketable in the area where the client resides or the client has agreed to relocate for the purpose of employment once the education/training is completed.

(f) The client, when determined appropriate, is willing to complete the education/training as quickly as possible, such as attending school full time which may include attending school during the summer.

(g) The client can realistically complete the requirements of the education or training program within the required time frames or time limits of the financial assistance program, including the 36-month lifetime limit for FEP and FEPTP, for which the client is eligible.

(3) A parent client may participate in education or training for up to six months beyond the 24-month limit if:

(a) the parent client is employed for 80 or more hours per month during each month of the extension;

(b) circumstances beyond the control of the client prevented completion within 24 months; and

(c) the Department director or designee determines that extending the 24-month limit is prudent because other employment, education, or training options do not enable the family to meet the objective of the program.

(4) A parent client with a high school diploma or equivalent who has received 24 months of education or training while receiving financial assistance must participate a minimum of 34 hours per week in eligible activities. Twenty four of those 34 hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center.

(5) Graduate work can never be approved or supported as part of an employment plan.

R986-200-212. Reconciling Disputes and Termination of Financial Assistance for Failure to Comply.

If a client who is required to participate in an employment plan consistently fails, without reasonable cause, to show good faith in complying with the employment plan, the Department will terminate all or part of the financial assistance. This will apply if the Department is notified that the client has failed to cooperate with ORS as provided in R986-200-207. A termination for the reasons mentioned in this paragraph will occur only after the Department attempts reconciliation through the following process:

(1) The employment counselor will attempt to discuss compliance with the client and explore solutions. If compliance is not resolved the counselor will move to the second phase.

(2) In the second phase, the employment counselor will request a meeting with the client, the employment counselor, the counselor's supervisor and any other Department or allied entity representatives, if appropriate, who might assist in encouraging participation. If the client does not attend the meeting, the meeting will be held in the client's absence. A formal meeting with the client is not required for a third or subsequent occurrence. If a resolution cannot be reached, one of the following will occur:

(a) for the first occurrence, the client's financial assistance payment will be reduced by $100 for one month. The reduction will occur in the month following the month the determination was made. If the client does not participate during the $100 reduction month, financial assistance will be terminated beginning the month following the $100 reduction month.

(b) for the second occurrence, the client's financial assistance payment will be terminated and the client will be ineligible for financial assistance for one month. If the client re-applies during the one month termination period, the new application will be denied for non-participation. If the client re-applies after the one month termination period, the client must successfully complete a two week trial participation period before financial assistance will be approved.

(c) for the third and subsequent occurrences the client's financial assistance will be terminated beginning with the month following the determination by the employment counselor that the client is not participating. The client will be ineligible for financial assistance for two months and if the client re-applies during the two month period, the new application will be denied for non-participation. If the client re-applies after the two month termination period, the client must successfully complete a two week trial participation period before financial assistance will be approved.

(3) A client must demonstrate a genuine willingness to participate during the two week trial period.

(4) The occurrences are life-time occurrences and it does not matter how much time elapses between occurrences. If a client's assistance was reduced as provided in (2)(a) of this section three years ago, for example, the next occurrence will be treated as a second occurrence.

(5) The two week trial period may be waived only if the client has cured all previous participation issues prior to re-application.

(6) The provisions of this section apply to clients who are eligible for and receiving financial assistance during an extension period as provided in R986-200-218.

(7) A child age 16-18 who is not a parent and who is not participating will be removed from the financial assistance grant on the first and all subsequent occurrences. The financial assistance will continue for other household members provided they are participating. If the child successfully completes a two week trial period, the child will be added back on to the financial assistance grant.

(8) Reasonable cause under this section means the client was prevented from participating through no fault of his or her own or failed to participate for reasons that are reasonable and compelling.

R986-200-213. Financial Assistance for a Minor Parent.

(1) Financial assistance may be provided to a single minor parent who resides in a place of residence maintained by a parent, legal guardian, or other adult relative of the single minor parent, unless the minor parent is exempt.

(2) The single minor parent may be exempt when:

(a) The minor parent has no living parent or legal guardian whose whereabouts is known;

(b) No living parent or legal guardian of the minor parent allows the minor parent to live in his or her home;

(c) The minor parent lived apart from his or her own parent or legal guardian for a period of at least one year before either the birth of the dependent child or the parent's having made application for FEP and the minor parent was self supporting during this same period of time; or

(d) The physical or emotional health or safety of the minor parent or dependent child would be jeopardized if they resided in the same residence with the minor parent's parent or legal guardian. A referral will be made to DCFS if allegations are made under this paragraph.

(3) Prior to authorizing financial assistance, the Department must approve the living arrangement of all single minor parents exempt under section (2) above. Approval of the living arrangement is not a certification or guarantee of the safety, quality, or condition of the living arrangements of the single minor parent.

(4) All minor parents regardless of the living arrangement must participate in education for parenting and life skills in infant and child wellness programs operated by the Department of Health and, for not less than 20 hours per week:

(a) attend high school or an alternative to high school, if the minor parent does not have a high school diploma;

(b) participate in education and training; and/or

(c) participate in employment.

(5) If a single minor parent resides with a parent, the Department shall include the income of the parent of the single minor parent in determining the single minor parent's eligibility for financial assistance.

(6) If a single minor parent resides with a parent who is receiving financial assistance, the single minor parent is included in the parent's household assistance unit.

(7) If a single minor parent receives financial assistance but does not reside with a parent, the Department shall seek an order requiring that the parent of the single minor parent financially support the single minor parent.

R986-200-214. Assistance for Specified Relatives.

(1) Specified relatives include:

(a) grandparents;

(b) brothers and sisters;

(c) stepbrothers and stepsisters;

(d) aunts and uncles;

(e) first cousins;

(f) first cousins once removed;

(g) nephews and nieces;

(h) people of prior generations as designated by the prefix grand, great, great-great, or great- great-great;

(i) brothers and sisters by legal adoption;

(j) the spouse of any person listed above;

(k) the former spouse of any person listed above; and

(l) individuals who can prove they met one of the above mentioned relationships via a blood relationship even though the legal relationship has been terminated.

(2) The Department shall require compliance with Section 30-1-4.5

(3) A specified relative may apply for financial assistance for the child. If the child is otherwise eligible, the FEP rules apply with the following exceptions:

(a) The child must have a blood or a legal relationship to the specified relative even if the legal relationship has been terminated,

(b) Both parents must be absent from the home where the child lives. This is true even for a parent who has had his or her parental rights terminated;

(c) The child must be currently living with, and not just visiting, the specified relative;

(d) The parents' obligation to financially support their child will be enforced and the specified relative must cooperate with child support enforcement; and

(e) If the parent(s) state they are willing to support the child if the child would return to live with the parent(s), the child is ineligible unless there is a court order removing the child from the parent(s)' home.

(4) If the specified relative is currently receiving FEP or FEPTP, the child must be included in that household assistance unit.

(5) The income and resources of the specified relative are not counted unless the specified relative requests inclusion in the household assistance unit.

(6) If the specified relative is not currently receiving FEP or FEPTP, and the specified relative does not want to be included in the financial assistance payment, the specified relative shall be paid, on behalf of the child, the full standard financial assistance payment for one person. The size of the financial assistance payment shall be increased accordingly for each additional eligible child in the household assistance unit excluding the dependent child(ren) of the specified relative. Since the specified relative is not included in the household assistance unit, the income and assets of the specified relative, or the relative's spouse, are not counted.

(7) The specified relative may request to be included in the household assistance unit. If the specified relative is included in the household assistance unit, the household must meet all FEP eligibility requirements including participation requirements and asset limits.

(8) Income eligibility for a specified relative who wants to be included in the household assistance unit is calculated according to R986-200-241.

R986-200-215. Family Employment Program Two Parent Household (FEPTP).

(1) FEPTP is for households otherwise eligible for FEP but with two able-bodied parents in the household.

(2) Families may only participate in this program for seven months out of any 13-month period. Months of participation count toward the 36-month time limit in Sections 35A-3-306 and R986-200-217.

(3) Both parents must participate in eligible activities for a combined total of 60 hours per week, as defined in the employment plan. At least 55 of those hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center.

(4) Both parents are required to participate every week as defined in the employment plan, unless the parent can establish reasonable cause for not participating. Reasonable cause is defined in rule R986-200-212(8),

(5) Payment is made twice per month and only after proof of participation. Payment is based on the number of hours of participation by both parents. The amount of assistance is equal to the FEP payment for the household size prorated based on the number of hours which the parents participated up to a maximum of 60 hours of participation per week. In no event can the financial assistance payment per month for a FEPTP household be more than for the same size household participating in FEP.

(6) If it is determinated by the employment counselor that either one of the parents has failed to participate to the maximum extent possible assistance for the entire household unit will terminate immediately.

(7) Because payment is made after performance, advance notice is not required to terminate or reduce assistance payments for households participating in FEPTP. However, if the client requests a hearing within ten days of the termination, payment of financial assistance based on participation of both parents in eligible activities can continue during the hearing process as provided in R986-100-134.

(8) The parents must meet all other requirements of FEP including but not limited to, income and asset limits,

cooperation with ORS if there are legally responsible persons outside of the household assistance unit, signing a participation agreement and employment plan and applying for all other assistance or benefits to which they might be entitled.

R986-200-216. Diversion.

(1) Diversion is a one-time financial assistance payment provided to help a client avoid receiving extended cash assistance.

(2) In determining whether a client should receive diversion assistance, the Department will consider the following:

(a) the applicant's employment history;

(b) the likelihood that the applicant will obtain immediate full-time employment;

(c) the applicant's housing stability; and

(d) the applicant's child care needs, if applicable.

(3) To be eligible for diversion the applicant must;

(a) have a need for financial assistance to pay for housing or substantial and unforseen expenses or work related expenses which cannot be met with current or anticipated resources;

(b) show that within the diversion period, the applicant will be employed or have other specific means of self support, and

(c) meet all eligibility criteria for a FEP financial assistance payment except the applicant does not need to cooperate with ORS in obtaining support. If the client is applying for other assistance such as medical or child care, the client will have to follow the eligibility rules for that type of assistance which may require cooperation with ORS.

(4) If the Department and the client agree diversion is appropriate, the client must sign a diversion agreement listing conditions, expectations and participation requirements.

(5) The diversion payment may not exceed three times the monthly financial assistance payment for the household size. All income expected to be received during the three-month period including wages and child support must be considered when negotiating the appropriate diversion payment amount.

(6) Child support will belong to the client during the three-month period, whether received by the client directly or collected by ORS. ORS will not use the child support to offset or reimburse the diversion payment.

(7) The client must agree to have the financial assistance portion of the application for assistance denied.

(8) If a diversion payment is made and the client later decides to reapply for financial assistance within three months of the date of the original application, the initial application date will be used and the amount of the diversion payment previously issued will be prorated over the three months and subtracted from the payment(s) to which the household unit is eligible.

(9) Diversion assistance is not available to clients participating in FEPTP. This is because FEPTP is based on performance and payment can only be made after performance.

R986-200-217. Time Limits.

(1) Except as provided in R986-212-218 and in Section 35A-3-306, a family cannot receive financial assistance under the FEP or FEPTP for more than 36 months.

(2) The following months count toward the 36-month time limit regardless of whether the financial assistance payment was made in this or any other state:

(a) each month when a parent client received financial assistance beginning with the month of January, 1997;

(b) each month beginning with January, 1997, where a parent resided in the household, the parent's income and assets were counted in determining the household's eligibility, but the parent was disqualified from being included in the financial payment. Disqualification occurs when a parent has been determined to have committed fraud in the receipt of public assistance or when the parent is an ineligible alien; and

(c) each month when financial assistance was reduced or a partial financial assistance payment was received beginning with the month of January, 1997.

(3) Months which do not count toward the 36 month time limit are:

(a) months where both parents were absent from the home and dependent children were cared for by a specified relative who elected to be excluded from the household unit;

(b) months where the client received financial assistance as a minor child and was not the head of a household or married to the head of a household;

(c) months during which the parent lived in Indian country, as defined in Title 18, Section 1151, United States Code 1999, or an Alaskan Native village, if the most reliable data available with respect to the month, or a period including the month, indicate that at least 50% of the adults living in Indian country or in the village were not employed; or

(d) months when a parent resided in the home but were excluded from the household assistance unit. A parent is excluded when they receive SSI benefits.

(e) the first diversion period in any 12 month period of time is not counted toward the 36 month time limit. A second and all subsequent diversion periods within 12 months will count as one month toward the 36 month time limit. If a client has already used 36 months of financial assistance, the client is not eligible for diversion assistance unless the client meets one of the extension criteria in R986-200-218 in addition to all other eligibility criteria of diversion assistance.

R986-200-218. Exceptions to the Time Limit.

Exceptions to the time limit may be allowed on a month by month basis for up to 20% of the average monthly number of families receiving financial assistance from FEP and FEPTP during the previous Federal fiscal year for the following reasons:

(1) A hardship under Section 35A-3-306 is determined to exist when a parent:

(a) is determined to be medically unable to work. The client must provide proof of inability to work in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) receipt of VA Disability benefits based on the parent being 100% disabled;

(iii) placement on the Division of Services to People with Disabilities' waiting list. Being on the waiting list indicates the person has met the criteria for a disability; or

(iv) is currently receiving Temporary Total or Permanent Total disability Workers' Compensation benefits;

(v) a medical statement completed by a medical doctor, a licensed Advanced Practice Registered Nurse, a licensed Physician's Assistant, or a doctor of osteopathy, stating the parent has a medical condition supported by medical evidence, which prevents the parent from engaging in work activities capable of generating income of at least $500 a month. The statement must be completed by a professional skilled in both the diagnosis and treatment of the condition; or

(vi) a statement completed by a licensed clinical social worker, licensed psychologist, licensed Mental Health Therapist as defined in UCA Section 58-60-102, or psychiatrist stating that the parent has been diagnosed with a mental health condition that prevents the parent from engaging in work activities capable of generating income of at least $500 a month. Substance abuse is considered the same as mental health condition;

(b) is under age 19 through the month of their nineteenth birthday;

(c) is currently engaged in an approved full-time job preparation, educational or training activity which the parent was expected to complete within the 36 month time limit but

completion within the 36 months was not possible through no fault of the parent. Additionally, if the parent has previously received, beginning with the month of January 1997, 24 months of financial assistance while attending educational or training activities, good cause for additional months must be shown and approved;

(d) was without fault and a delay in the delivery of services provided by the Department occurred. The delay must have had an adverse effect on the parent causing a hardship and preventing the parent from obtaining employment. An extension under this section cannot be granted for more than the length of the delay;

(e) moved to Utah after exhausting 36 months of assistance in another state or states and the parent did not receive supportive services in that state or states as required under the provisions of PRWORA. To be eligible for an extension under this section, the failure to receive supportive services must have occurred through no fault of the parent and must contribute to the parent's inability to work. An extension under this section can never be for longer than the delay in services;

(f) completed an educational or training program at the 36th month and needs additional time to obtain employment; or

(g) is unable to work because the parent is required in the home to meet the medical needs of a dependent. Dependent for the purposes of this paragraph means a person who the parent claims as a dependent on his or her income tax filing. Proof, consisting of a medical statement from a health care professional listed in subparagraph (1)(a)(v) or (vi) of this sectionis required unless the dependent is on the Travis C medicaid waiver program. The medical statement must include all of the following:

(i) the diagnosis of the dependent's condition,

(ii) the recommended treatment needed or being received for the condition,

(iii) the length of time the parent will be required in the home to care for the dependent, and

(iv) whether the parent is required to be in the home full-time or part-time.

(2) Additional months of financial assistance may be provided if the family includes an individual who has been battered or subjected to extreme cruelty which is a barrier to employment and the implementation of the time limit would make it more difficult to escape the situation. Battered or subjected to extreme cruelty means:

(a) physical acts which resulted in, or threatened to result in, physical injury to the individual;

(b) sexual abuse;

(c) sexual activity involving a dependent child;

(d) threats of, or attempts at, physical or sexual abuse;

(e) mental abuse which includes stalking and harassment; or

(f) neglect or deprivation of medical care.

(3) An exception to the time limit can be granted for a maximum of an additional 24 months if:

(a) during the previous month, the parent client was employed for no less than 80 hours. The employment can consist of self-employment if the parent's net income from that self-employment is at or above minimum wage; and

(b) during at least six of the previous 24 months, the parent client was employed for no less than 80 hours a month.

(c) If, at the end of the 24-month extension, the parent client qualifies for an extension under Sections (1) or (2) of this rule, an additional extension can be granted under the provisions of those sections.

(4) All clients receiving an extension must continue to participate, to the maximum extent possible, in an employment plan. This includes cooperating with ORS in the collection, establishment, and enforcement of child support and the establishment of paternity, if necessary.

(5) If a household filing unit contains more than one parent, and one parent has received at least 36 months of assistance as a parent, then the entire filing unit is ineligible unless both parents meet one of the exceptions listed above. Both parents need not meet the same exception.

(6) A family in which the only parent or both parents are ineligible aliens cannot be granted an extension under Section (3) above or for any of the reasons in Subsections (1)(c),(d),(e) or (f). This is because ineligible aliens are not legally able to work and supportive services for work, education and training purposes are inappropriate.

(7) A client who is no longer eligible for financial assistance may be eligible for other kinds of public assistance including food stamps, Child Care Assistance and medical coverage. The client must follow the appropriate application process to determine eligibility for assistance from those other programs.

R986-200-219. Emergency Assistance (EA) for Needy Families With Dependent Children.

(1) EA is provided in an effort to prevent homelessness. It is a payment which is limited to use for utilities and rent or mortgage.

(2) To be eligible for EA the family must meet all other FEP requirements except:

(a) the client need only meet the "gross income" test. Gross income which is available to the client must be equal to or less than 185% of the standard needs budget for the client's filing unit; and

(b) the client is not required to enter into an employment plan or cooperate with ORS in obtaining support.

(3) The client must be homeless, in danger of becoming homeless or having the utilities at the home cut off due to a crisis situation beyond the client's control. The client must show that:

(a) The family is facing eviction or foreclosure because of past due rent or mortgage payments or unpaid utility bills which result from the crisis;

(b) A one-time EA payment will enable the family to obtain or maintain housing or prevent the utility shut off while they overcome the temporary crisis;

(c) Assistance with one month's rent or mortgage payment is enough to prevent the eviction, foreclosure or termination of utilities;

(d) The client has the ability to resolve past due payments and pay future months' rent or mortgage payments and utility bills after resolution of the crisis; and

(e) The client has exhausted all other resources.

(4) Emergency assistance is available for only 30 consecutive days during a year to any client or that client's household. If, for example, a client receives an EA payment of $300 for rent on April 1 and requests an additional EA payment of $200 for utilities on or before April 30 of that same year, the request for an EA payment for utilities will be considered. If the request for an additional payment for utilities is made after April 30, it cannot be considered for payment. The client will not be eligible for another EA payment until April 1 of the following year. A year is defined as 365 days following the initial date of payment of EA.

(5) Payments will not exceed $300 per family for one month's rent payment or $500 per family for one month's mortgage payment, and $200 for one month's utilities payment.

R986-200-220. Mentors.

(1) The Department will recruit and train volunteers to serve as mentors for parent clients. The Department may elect to contract for the recruitment and training of the volunteers.

(2) A mentor may advocate on behalf of a parent client and help a parent client:

(a) develop life skills;
(b) implement an employment plan; or
(c) obtain services and support from:
(i) the volunteer mentor;
(ii) the Department; or
(iii) civic organizations.

R986-200-230. Assets Counted in Determining Eligibility.

(1) All available assets, unless exempt, are counted in determining eligibility. An asset is available when the applicant or client owns it and has the ability and the legal right to sell it or dispose of it. An item is never counted as both income and an asset in the same month.

(2) The value of an asset is determined by its equity value. Equity value is the current market value less any debts still owing on the asset. Current market value is the asset's selling price on the open market as set by current standards of appraisal.

(3) Both real and personal property are considered assets. Real property is an item that is fixed, permanent, or immovable. This includes land, houses, buildings, mobile homes and trailer homes. Personal property is any item other than real property.

(4) If an asset is potentially available, but a legal impediment to making it available exists, it is exempt until it can be made available. The applicant or client must take appropriate steps to make the asset available unless:

(a) Reasonable action would not be successful in making the asset available; or

(b) The probable cost of making the asset available exceeds its value.

(5) The value of countable real and personal property cannot exceed $2,000.

(6) If the household assets are below the limits on the first day of the month the household is eligible for the remainder of the month.

R986-200-231. Assets That Are Not Counted (Exempt) for Eligibility Purposes.

The following are not counted as an asset when determining eligibility for financial assistance:

(1) the home in which the family lives, and its contents, unless any single item of personal property has a value over $1,000, then only that item is counted toward the $2,000 limit. If the family owns more than one home, only the primary residence is exempt and the equity value of the other home is counted;

(2) the value of the lot on which the home stands is exempt if it does not exceed the average size of residential lots for the community in which it is located. The value of the property in excess of an average size lot is counted if marketable;

(3) water rights attached to the home property are exempt;

(4) a maximum of $8,000 equity value of one vehicle. The entire equity value of one vehicle equipped to transport a disabled individual is exempt from the asset limit even if the vehicle has a value in excess of $8,000;

(5) with the exception of real property, the value of income producing property necessary for employment;

(6) the value of any reasonable assistance received for post-secondary education;

(7) bona fide loans, including reverse equity loans;

(8) per capita payments or any asset purchased with per capita payments made to tribal members by the Secretary of the Interior or the tribe;

(9) maintenance items essential to day-to-day living;

(10) life estates;

(11) an irrevocable trust where neither the corpus nor income can be used for basic living expenses;

(12) for refugees, as defined under R986-300-303(1), assets that remain in the refugee's country of origin are not counted;

(13) one burial plot per member of the household. A burial plot is a burial space and any item related to repositories used for the remains of the deceased. This includes caskets, concrete vaults, urns, crypts, grave markers, etc. If the individual owns a grave site, the value of which includes opening and closing, the opening and closing is also exempt;

(14) a burial/funeral fund up to a maximum of $1,500 per member of the household;

(a) The value of any irrevocable burial trust is subtracted from the $1,500 burial/funeral fund exemption. If the irrevocable burial trust is valued at $1,500 or more, it reduces the burial/funeral fund exemption to zero.

(b) After deducting any irrevocable burial trust, if there is still a balance in the burial/funeral fund exemption amount, the remaining exemption is reduced by the cash value of any burial contract, funeral plan, or funds set aside for burial up to a maximum of $1,500. Any amount over $1,500 is considered an asset;

(15) any interest which is accrued on an exempt burial contract, funeral plan, or funds set aside for burial is exempt as income or assets. If an individual removes the principal or interest and uses the money for a purpose other than the individual's burial expenses, the amount withdrawn is countable income; and

(16) any other property exempt under federal law.

R986-200-232. Considerations in Evaluating Real Property.

(1) Any nonexempt real property that an applicant or client is making a bona fide effort to sell is exempt for a nine-month period provided the applicant or client agrees to repay, from the proceeds of the sale, the amount of financial and/or child care assistance received. Bona fide effort to sell means placing the property up for sale at a price no greater than the current market value. Additionally, to qualify for this exemption, the applicant or client must assign, to the state of Utah, a lien against the real property under consideration. If the property is not sold during the period of time the client was receiving financial and/or child care assistance or if the client loses eligibility for any reason during the nine-month period, the lien will not be released until repayment of all financial and/or child care assistance is made.

(2) Payments received on a sales contract for the sale of an exempt home are not counted if the entire proceeds are committed to replacement of the property sold within 30 days of receipt and the purchase is completed within 90 days. If more than 90 days is needed to complete the actual purchase, one 90-day extension may be granted. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal which is counted as income.

R986-200-233. Considerations in Evaluating Household Assets.

(1) The assets of a disqualified household member are counted.

(2) The assets of a ward that are controlled by a legal guardian are considered available to the ward.

(3) The assets of an ineligible child are exempt.

(4) When an ineligible alien is a parent, the assets of that alien parent are counted in determining eligibility for other family members.

(5) Certain aliens who have been legally admitted to the United States for permanent residence must have the income and assets of their sponsors considered in determining eligibility for financial assistance under applicable federal authority in accordance with R986-200-243.

R986-200-234. Income Counted in Determining Eligibility.

(1) The amount of financial assistance is based on the household's monthly income and size.

(2) Household income means the payment or receipt of countable income from any source to any member counted in the household assistance unit including:

(a) children; and

(b) people who are disqualified from being counted because of a prior determination of fraud (IPV) or because they are an ineligible alien.

(3) The income of SSI recipients is not counted.

(4) Countable income is gross income, whether earned or unearned, less allowable exclusions listed in section R986-200-239.

(5) Money is not counted as income and an asset in the same month.

(6) If an individual has elected to have a voluntary reduction or deduction taken from an entitlement to earned or unearned income, the voluntary reduction or deduction is counted as gross income. Voluntary reductions include insurance premiums, savings, and garnishments to pay an owed obligation.

R986-200-235. Unearned Income.

(1) Unearned income is income received by an individual for which the individual performs no service.

(2) Countable unearned income includes:

(a) pensions and annuities such as Railroad Retirement, Social Security, VA, Civil Service;

(b) disability benefits such as sick pay and workers' compensation payments unless considered as earned income;

(c) unemployment insurance;

(d) strike or union benefits;

(e) VA allotment;

(f) income from the GI Bill;

(g) assigned support retained in violation of statute is counted when a request to do so has been generated by ORS;

(h) payments received from trusts made for basic living expenses;

(i) payments of interest from stocks, bonds, savings, loans, insurance, a sales contract, or mortgage. This applies even if the payments are from the sale of an exempt home. Payments made for the down payment or principal are counted as assets;

(j) inheritances;

(k) life insurance benefits;

(l) payments from an insurance company or other source for personal injury, interest, or destroyed, lost or stolen property unless the money is used to replace that property;

(m) cash contributions from any source including family, a church or other charitable organization;

(n) rental income if the rental property is managed by another individual or company for the owner. Income from rental property managed by someone in the household assistance unit is considered earned income;

(o) financial assistance payments received from another state or the Department from another type of financial assistance program including a diversion payment; and

(p) payments from Job Corps and Americorps living allowances.

(3) Unearned income which is not counted (exempt):

(a) cash gifts for special occasions which do not exceed $30 per quarter for each person in the household assistance unit. The gift can be divided equally among all members of the household assistance unit;

(b) bona fide loans, including reverse equity loans on an exempt property. A bona fide loan means a loan which has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment;

(c) the value of food stamps, food donated from any source, and the value of vouchers issued under the Women Infants and Children program;

(d) any per capita payments made to individual tribal members by either the secretary of interior or the tribe are excluded. Income to tribal members derived from privately owned land is not exempt;

(e) any payments made to household members that are declared exempt under federal law;

(f) the value of governmental rent and housing subsidies, federal relocation assistance, or EA issued by the Department;

(g) money from a trust fund to provide for or reimburse the household for a specific item NOT related to basic living expenses. This includes medical expenses and educational expenses. Money from a trust fund to provide for or reimburse a household member for basic living expenses is counted;

(h) travel and training allowances and reimbursements if they are directly related to training, education, work, or volunteer activities;

(i) all unearned income in-kind. In-kind means something, such as goods or commodities, other than money;

(j) thirty dollars of the income received from rental income unless greater expenses can be proven. Expenses in excess of $30 can be allowed for:

(i) taxes;

(ii) attorney fees expended to make the rental income available;

(iii) upkeep and repair costs necessary to maintain the current value of the property; and

(iv) interest paid on a loan or mortgage made for upkeep or repair. Payment on the principal of the loan or mortgage cannot be excluded;

(k) if meals are provided to a roomer/boarder, the value of a one-person food stamp allotment for each roomer/boarder;

(l) payments for energy assistance including H.E.A.T payments, assistance given by a supplier of home energy, and in-kind assistance given by a private non-profit agency;

(m) federal and state income tax refunds and earned income tax credit payments;

(n) payments made by the Department to reimburse the client for education or work expenses, or a CC subsidy;

(o) income of an SSI recipient. Neither the payment from SSI nor any other income, including earned income, of an SSI recipient is included;

(p) payments from a person living in the household who is not included in the household assistance unit, as defined in R986-200-205, when the payment is intended and used for that person's share of the living expenses;

(q) educational assistance and college work study except Veterans Education Assistance intended for family members of the student, living stipends and money earned from an assistantship program is counted as income; and

(r) for a refugee, as defined in R986-300-303(1), any grant or assistance, whether cash or in-kind, received directly or indirectly under the Reception and Placement Programs of Department of State or Department of Justice.

R986-200-236. Earned Income.

(1) All earned income is counted when it is received even if it is an advance on wages, salaries or commissions.

(2) Countable earned income includes:

(a) wages, except Americorps*Vista living allowances are not counted;

(b) salaries;

(c) commissions;

(d) tips;

(e) sick pay which is paid by the employer;

(f) temporary disability insurance or temporary workers' compensation payments which are employer funded and made to an individual who remains employed during recuperation from a temporary illness or injury pending the employee's return to the job;

(g) rental income only if managerial duties are performed

by the owner to receive the income. The number of hours spent performing those duties is not a factor. If the property is managed by someone other than the individual, the income is counted as unearned income;

(h) net income from self-employment less allowable expenses, including income over a period of time for which settlement is made at one given time. The periodic payment is annualized prospectively. Examples include the sale of farm crops, livestock, and poultry. A client may deduct actual, allowable expenses, or may opt to deduct 40% of the gross income from self-employment to determine net income;

(i) training incentive payments and work allowances; and

(j) earned income of dependent children.

(3) Income that is not counted as earned income:

(a) income for an SSI recipient;

(b) reimbursements from an employer for any bona fide work expense;

(c) allowances from an employer for travel and training if the allowance is directly related to the travel or training and identifiable and separate from other countable income; or

(d) Earned Income Tax Credit (EITC) payments.

R986-200-237. Lump Sum Payments.

(1) Lump sum payments are one-time windfalls or retroactive payments of earned or unearned income. Lump sums include but are not limited to, inheritances, insurance settlements, awards, winnings, gifts, and severance pay, including when a client cashes out vacation, holiday, and sick pay. They also include lump sum payments from Social Security, VA, UI, Worker's Compensation, and other one-time payments. Payments from SSA that are paid out in installments are not considered lump sum payments but as income, even if paid less often than monthly.

(2) The following lump sum payments are not counted as income or assets:

(a) any kind of lump sum payment of excluded earned or unearned income. If the income would have been excluded, the lump sum payment is also excluded. This includes SSI payments and any EITC; and

(b) insurance settlements for destroyed exempt property when used to replace that property.

(3) The net lump sum payment is counted as income for the month it is received. Any amount remaining after the end of that month is considered an asset.

(4) The net lump sum is the portion of the lump sum that is remaining after deducting:

(a) legal fees expended in the effort to make the lump sum available;

(b) payments for past medical bills if the lump sum was intended to cover those expenses; and

(c) funeral or burial expenses, if the lump sum was intended to cover funeral or burial expenses.

(5) A lump sum paid to an SSI recipient is not counted as income or an asset except for those recipients receiving financial assistance from GA or WTE.

R986-200-238. How to Calculate Income.

(1) To determine if a client is eligible for, and the amount of, a financial assistance payment, the Department estimates the anticipated income, assets and household size for each month in the certification period.

(2) The methods used for estimating income are:

(a) income averaging or annualizing which means using a history of past income that is representative of future income and averaging it to determine anticipated future monthly income. It may be necessary to evaluate the history of past income for a full year or more; and

(b) income anticipating which means using current facts such as rate of pay and hourly wage to anticipate future monthly income when no reliable history is available.

(3) Monthly income is calculated by multiplying the average weekly income by 4.3 weeks. If a client is paid every two weeks, the income for those two weeks is multiplied by 2.15 weeks to determine monthly income.

(4) The Department's estimate of income, when based on the best available information at the time it was made, will be determined to be an accurate reflection of the client's income. If it is later determined the actual income was different than the estimate, no adjustment will be made. If the client notifies the Department of a change in circumstances affecting income, the estimated income can be adjusted prospectively but not retrospectively.

R986-200-239. How to Determine the Amount of the Financial Assistance Payment.

(1) Once the household's size and income have been determined, the gross countable income must be less than or equal to 185% of the Standard Needs Budget (SNB) for the size of the household. This is referred to as the "gross test".

(2) If the gross countable income is less than or equal to 185% of the SNB, the following deductions are allowed:

(a) a work expense allowance of $100 for each person in the household unit who is employed;

(b) fifty percent of the remaining earned income after deducting the work expense allowance as provided in paragraph (a) of this subsection, if the individual has received a financial assistance payment from the Department for one or more of the immediately preceding four months; and

(c) after deducting the amounts in paragraphs (a) and (b) of this subsection, if appropriate, the following deductions can be made:

(i) a dependent care deduction as described in subsection (3) of this section; and

(ii) child support paid by a household member if legally owed to someone not included in the household.

(3) The amount of the dependant care deduction is set by the Department and based on the number of hours worked by the parent and the age of the dependant needing care. It can only be deducted if the dependant care:

(a) is paid for the care of a child or adult member of the household assistance unit, or a child or adult who would be a member of the household assistance unit except that this person receives SSI. An adult's need for care must be verified by a doctor; and

(b) is not subsidized, in whole or in part, by a CC payment from the Department; and

(c) is not paid to an individual who is in the household assistance unit.

(4) After deducting the amounts allowed under paragraph (2) above, the resulting net income must be less than 100% of SNB for size of the household assistance unit. If the net income is equal to or greater than the SNB, the household is not eligible.

(5) If the net income is less than 100% of the SNB the following amounts are deducted:

(a) Fifty percent of earned countable income for all employed household assistance unit members if the household was not eligible for the 50% deduction under paragraph (2)(b) above; and/or

(b) All of the earned income of all children in the household assistance unit, if not previously deducted, who are:

(i) in school or training full-time, or

(ii) in part-time education or training if they are employed less than 100 hours per month. "Part-time education or training" means enrolled for at least one-half the number of hours or periods considered by the institution to be customary to complete the course of study within the minimum time period. If no schedule is set by the school, the course of study

must be no less than an average of two class periods or two hours per day, whichever is less.

(6) The resulting net countable income is compared to the full financial assistance payment for the household size. If the net countable income is more than the financial assistance payment, the household is not eligible. If it is less, the net countable income is deducted from the financial assistance payment and the household is paid the difference.

(7) The amount of the standard financial assistance payment is set by the State Legislature and available at all Department offices.

R986-200-240. Additional Payments Available Under Certain Circumstances.

(1) Each parent eligible for financial assistance in the FEP or FEPTP programs who takes part in at least one enhanced participation activity may be eligible to receive $40 each month in addition to the standard financial assistance payment. Enhanced participation activities are limited to:

(a) work experience sites of at least 24 hours a week and other eligible activities that together total 34 hours per week;

(b) full-time attendance in an education or employment training program; or

(c) employment of 24 hours or more a week and other eligible activities that together total 34 hours per week.

(2) An additional payment of $15 per month for a pregnant woman in the third month prior to the expected month of delivery. Eligibility for the allowance begins in the month the woman provides medical proof that she is in the third month prior to the expected month of delivery. The pregnancy allowance ends at the end of the month the pregnancy ends.

(3) A limited number of funds are available to individuals for work and training expenses. The funds can only be used to alleviate circumstances which impede the individual's ability to begin or continue employment, job search, training, or education. The payment of these funds is completely discretionary by the Department. The individual does not need to meet any eligibility requirements to request or receive these funds.

(4) Limited funds are available, up to a maximum of $300, to pay for burial costs if the individual is not entitled to a burial paid for by the county.

(5) A Department Regional Director or designee may approve assistance, as funding allows, for the emergency needs of a non-resident who is transient, temporarily stranded in Utah, and who does not intend to stay in Utah.

R986-200-241. Income Eligibility Calculation for a Specified Relative Who Wants to be Included in the Assistance Payment.

(1) The income calculation for a specified relative who wants to be included in the financial assistance payment is as follows:

(a) All earned and unearned countable income is counted, as determined by FEP rules, for the specified relative and his or her spouse, less the following allowable deductions:

(i) one hundred dollars for each employed person in the household. This deduction is only allowed for the specified relative and/or spouse and not anyone else in the household even if working; and

(ii) the child care expenses paid by the specified relative and necessary for employment up to the maximum allowable deduction as set by the Department.

(2) The household size is determined by counting the specified relative, his or her spouse if living in the home, and their dependent children living in the home who are not in the household assistance unit.

(3) If the income less deductions exceeds 100% of the SNB for a household of that size, the specified relative cannot be included in the financial assistance payment. If the income is less than 100% of the SNB, the total household income is divided by the household size calculated under subsection (2) of this section. This amount is deemed available to the specified relative as countable unearned income. If that amount is less than the maximum financial assistance payment for the household assistance unit size, the specified relative may be included in the financial assistance payment.

R986-200-242. Income Calculation for a Minor Parent Living with His or Her Parent or Stepparent.

(1) All earned and unearned countable income of all parents, including stepparents living in the home, is counted when determining the eligibility of a minor parent residing in the home of the parent(s).

(2) From that income, the following deductions are allowed:

(a) one hundred dollars from income earned by each parent or stepparent living in the home, and

(b) an amount equal to 100% of the SNB for a group with the following members:

(i) the parents or stepparents living in the home;

(ii) any other person in the home who is not included in the financial assistance payment of the minor parent and who is a dependent of the parents or stepparents;

(c) amounts paid by the parents or stepparents living in the home to individuals not living at home but who could be claimed as dependents for Federal income tax purposes; and

(d) alimony and child support paid to someone outside the home by the parents or stepparents living in the home.

(3) The resulting amount is counted as unearned income to the minor parent.

(4) If a minor parent lives in a household already receiving financial assistance, the child of the minor parent is included in the larger household assistance unit.

R986-200-243. Counting the Income of Sponsors of Eligible Aliens.

(1) Certain aliens who have been legally admitted into the United States for permanent residence must have a portion of the earned and unearned countable income of their sponsors counted as unearned income in determining eligibility and financial assistance payment amounts for the alien.

(2) The following aliens are not subject to having the income of their sponsor counted:

(a) paroled or admitted into the United States as a refugee or asylee;

(b) granted political asylum;

(c) admitted as a Cuban or Haitian entrant;

(d) other conditional or paroled entrants;

(e) not sponsored or who have sponsors that are organizations or institutions;

(f) sponsored by persons who receive public assistance or SSI;

(g) permanent resident aliens who were admitted as refugees and have been in the United States for eight months or less.

(3) Except as provided in subsection (7) of this section, the income of the sponsor of an alien who applies for financial assistance after April 1, 1983 and who has been legally admitted into the United States for permanent residence must be counted for five years after the entry date into the United States. The entry date is the date the alien was admitted for permanent residence. The time spent, if any, in the United States other than as a permanent resident is not considered as part of the five year period.

(4) The amount of income deemed available for the alien is calculated by:

(a) deducting 20% from the total earned income of the

sponsor and the sponsor's spouse up to a maximum of $175 per month; then,

(b) adding to that figure all of the monthly unearned countable income of the sponsor and the sponsor's spouse; then the following deductions are allowed:

(i) an amount equal to 100% of the SNB amount for the number of people living in the sponsor's household who are or could be claimed as dependents under federal income tax policy; then,

(ii) actual payments made to people not living in the sponsor's household whom the sponsor claims or could claim as dependents under federal income tax policy; then,

(iii) actual payments of alimony and/or child support the sponsor makes to individuals not living in the sponsor's household.

(c) The remaining amount is counted as unearned income against the alien whether or not the income is actually made available to the alien.

(5) Actual payments by the sponsor to aliens will be counted as income only to the extent that the payment amount exceeds the amount of the sponsor's income already determined as countable.

(6) A sponsor can be held liable for an overpayment made to a sponsored alien if the sponsor was responsible for, or signed the documents which contained, the misinformation that resulted in the overpayment. The sponsor is not held liable for an overpayment if the alien fails to give accurate information to the Department or the sponsor is deceased, in prison, or can prove the request for information was incomplete or vague.

(7) In the case where the alien entered the United States after December 19, 1997, the sponsor's income does not count if:

(a) the alien becomes a United States citizen through naturalization;

(b) the alien has worked 40 qualifying quarters as determined by Social Security Administration; or

(c) the alien or the sponsor dies.

R986-200-244. TANF Needy Family (TNF).

(1) TNF is not a program but describes a population that can be served using TANF Surplus Funds.

(2) Eligible families must have a dependent child under the age of 18 residing in the home, and the total household income must not exceed 200% of the Federal poverty level. Income is determined as gross income without allowance for disregards.

(3) Services available vary throughout the state. Information on what is available in each region is available at each Employment Center. The Department may elect to contract out services.

(4) If TANF funded payments are made for basic needs such as housing, food, clothing, shelter, or utilities, each month a payment is received under TNF, counts as one month of assistance toward the 36 month lifetime limit. Basic needs also include transportation and child care if all adults in the household are unemployed and will count toward the 36 month lifetime limit.

(5) If a member of the household has used all 36 months of FEP assistance the household is not eligible for basic needs assistance under TNF but may be eligible for other TANF funded services.

(6) Assets are not counted when determining eligibility for TNF services.

R986-200-245. TANF Non-FEP Training (TNT).

(1) TNT is to provide skills and training to parents to help them become suitably employed and self-sufficient.

(2) The client must be unable to achieve self-sufficiency without training.

(3) Eligible families must have a dependent child under the age of 18 residing in the home and the total household income must not exceed 200% of the Federal poverty level. If the only dependent child is 18 and expected to graduate from High School before their 19th birthday the family is eligible up through the month of graduation. Income is counted and calculated the same as for WIA as found in rule R986-600.

(4) Assets are not counted when determining eligibility for TNT services.

(5) The client must show need and appropriateness of training.

(6) The client must negotiate an employment plan with the Department and participate to the maximum extent possible.

(7) The Department will not pay for supportive services such as child care, transportation or living expenses under TNT. The Department can pay for books, tools, work clothes and other needs associated with training.

KEY: family employment program
August 1, 2006 35A-3-301 et seq.
Notice of Continuation September 14, 2005

R986. Workforce Services, Employment Development.
R986-300. Refugee Resettlement Program.
R986-300-301. Authority for the Refugee Resettlement Program (RRP) and Other Applicable Rules.

(1) The Department provides services to eligible refugees pursuant to 45 CFR 400 and 45 CFR 401 et seq., (2000) which are incorporated herein by reference.

(2) The Department has opted to operate a Publicly-Administered Refugee Cash Assistance Program as provided in 45 CFR 400.65 through 400.68.

(3) Rule R986-100 applies to RRP.

(4) Applicable provisions of R986-200 apply to RRP except as noted in this rule.

R986-300-302. Refugee Resettlement Program (RRP).

(1) RRP provides resettlement assistance to refugees to help them achieve economic self-sufficiency within the shortest possible time after entry into the state.

(2) Financial and medical assistance may be provided to eligible refugees who meet the time limit requirements of R986-300-306 as funding permits.

(3) Refugee Social Services as identified in 45 CFR 400.154, and 400.155 may be provided to eligible refugees who meet the eligibility requirements of 45 CFR 400.152.

(4) Refugee child welfare services will be provided to refugee unaccompanied minor children in accordance with 45 CFR 400 Subpart H.

(5) The following definitions apply to RRP:

(a) "Appropriate employment" means employment that pays a wage which meets or exceeds the applicable federal or state minimum wage law and has daily and weekly hours customary to the occupation. If the minimum wage laws do not apply, the wage must equal what is normally paid for similar work and in no case less than three-fourths of the minimum wage rate.

(b) "Good cause" for quitting or refusing work can be established if the client shows:

(i) the job is vacant due to a strike, lockout, or other genuine labor dispute;

(ii) the client is required to work contrary to his membership in the union governing that occupation;

(iii) the employment was deemed a risk to the health or safety of the worker;

(iv) the employment lacked Workers' Compensation Insurance; or

(v) the individual is unable to engage in employment for physical reasons or lack of child care or transportation.

R986-300-303. Eligibility, Income Standards, and Amount of Assistance.

(1) An applicant for RRP must provide proof, in the form of documentation issued by the USCIS, of being or having been:

(a) paroled as a refugee or asylee under Section 212(d)(5) of the INA;

(b) admitted as a refugee under Section 207 of the INA;

(c) granted asylum under Section 208 of the INA;

(d) a Cuban or Haitian entrant, in accordance with the requirements of 45 CFR Part 401;

(e) certain Amerasians from Vietnam who are admitted to the United States as immigrants pursuant to Public Law 100-202 and Public Law 100-461;

(f) a victim of trafficking; or

(g) admitted for permanent residence, provided the individual previously held one of the statuses listed in (a) through (f) of this section.

(2) The following aliens are not eligible for assistance:

(a) an applicant for asylum unless otherwise provided by federal law;

(b) humanitarian parolees;

(c) public interest parolees; and

(d) conditional entrants admitted under Section 203(a)(7) of the INA.

(3) Refugees who are parents or specified relatives with dependent children must meet the eligibility and participation requirements, including cooperating with ORS to establish paternity and establish and enforce child support, of FEP or FEPTP and will be paid financial assistance under one of those programs.

(4) An applicant for RRP who voluntarily quit or refused appropriate employment without good cause within 30 calendar days prior to the date of application is ineligible for financial assistance for 30 days from the date of the voluntarily quit or refusal of employment. If the applicant is living with a spouse who is ineligible, the income and assets of the ineligible refugee will be counted in determining eligibility but the amount of financial assistance payment will be made as if the household had one less member.

(5) Refugees who are 65 years of age or older will be referred to SSA to apply for assistance under the SSI program.

(6) Income and asset eligibility and the amount of financial assistance available is determined under FEP rules, R986-200-230 through R986-200-240.

(7) If an otherwise eligible client demonstrates an urgent and immediate need for financial assistance, payment will be made on an expedited basis.

R986-300-304. Participation Requirements.

(1) All refugee applicants must comply with the assessment and employment plan requirements in R986-200-207 and R986-200-209. If the assessment cannot be completed or an employment plan negotiated and signed within the time proscribed because of a lack of staff with language skills, the application shall be approved, the assessment completed, and employment plan negotiated and signed as soon as possible.

(2) The goal of participation is to promote family economic self-sufficiency and social adjustment within the shortest possible time after entrance to the state to enable the family to become self-supporting through the employment of one or more members of the family.

(3) If a refugee claims an inability to participate due to incapacity, medical proof is required. Acceptable proof is the same as for FEP found in R986-200-202(3).

(4) Refugees 65 years of age or older, blind, or disabled, are exempt from the work participation requirements of FEP or RRP.

(5) In addition to the requirements of an employment plan as found in R986-200-210, a refugee must, as a condition of receipt of financial assistance:

(a) unless already employed full time, register for work with the Department within 30 days of receipt of refugee financial assistance and participate in employment activities as required by the Department and other appropriate agency providing employment services;

(b) accept any and all offers of appropriate employment as determined by the Department or the local resettlement agency which was responsible for the initial resettlement of the refugee; and

(c) participate in any available social adjustment service or targeted assistance activities determined to be appropriate by the Department or the local resettlement agency which was responsible for the initial resettlement of the refugee.

(6) Education and training cannot be approved for any program which cannot be completed within one year.

(7) English language instruction funded under RRP must be provided concurrently with employment or employment related services.

R986-300-305. Failure to Comply with an Employment

Plan.

(1) If a client who is required to participate in an employment plan consistently fails to show good faith in complying with the employment plan, the client is required to participate in the conciliation process in R986-200-212 with the following exceptions:

(a) the client will be disqualified for a period of three months for the first occurrence and six months for the second occurrence. There is no reduction period as provided in R986-200-212(2),

(b) because the disqualification period for RRP is a time certain, there is no trial period as provided in R986-200-212(2), (3), and (5).

(2) If there are other household members included in the financial assistance payment, the other household members will continue to receive assistance provided those household members are eligible and complying with all of the requirements of RRP.

(3) If eligible, food stamps and medical assistance may be continued for the person who is disqualified for failure to comply with the requirements of an employment plan.

R986-300-306. Time Limits.

(1) Except as provided in paragraph (2) below, a refugee is eligible for financial assistance only during the first eight months after entry into the United States, regardless of when the refugee applies for financial assistance. Financial assistance cannot be paid for any months prior to the date of application.

(2) An asylee's entry date is determined to be the date that the individual was granted asylum in the United States.

(3) The date of entry for a victim of trafficking is established by the certification date.

KEY: refugee resettlement program
August 1, 2006 35A-3-103
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R986. Workforce Services, Employment Development.
R986-400. General Assistance and Working Toward Employment.
R986-400-401. Authority for General Assistance (GA) and Applicable Rules.

(1) The Department provides GA financial assistance pursuant to Section 35A-3-401, et seq. as funding permits.

(2) Rule R986-100 applies to GA.

(3) Applicable provisions of R986-200 apply to GA except as noted in this rule.

(4) The citizenship and alienage requirements of the Food Stamp Program apply to GA.

R986-400-402. General Provisions.

(1) GA provides temporary financial assistance to single persons and married couples who have no dependent children residing with them 50% or more of the time and who are unemployable due to a physical or mental health condition.

(2) Unemployable is defined to mean the individual is not capable of earning $500 per month in the Utah labor market. The incapacity must be expected to last 30 days after the date of application or more.

(3) Drug addiction and/or alcoholism alone is insufficient to prove the unemployable requirement for GA as defined in Public Law 104-121.

(4) For a married couple living together only one must meet the unemployable criteria. The spouse who is employable will be required to meet the work requirements of WTE unless the spouse can provide medical proof that he or she is needed at home to care for the unemployable spouse. Medical proof, consisting of a medical statement from a medical doctor, a doctor of osteopathy, a licensed Advanced Practice Registered Nurse, a licensed Physician's Assistant, a licensed Mental Health Therapist as defined in UCA 58-60-102, or a licensed psychologist, is required. The medical statement must include all of the following:

(a) the diagnosis of the spouse's condition;

(b) the recommended treatment needed or being received for the condition;

(c) the length of time the client will be required in the home to care for the spouse; and

(d) whether the client is required to be in the home full time or part time.

(5) GA is only available to a client who is at least 18 years old or legally or factually emancipated. Factual emancipation means the client has lived independently from his or her parents or guardians and has been economically self-supporting for a period of at least twelve consecutive months, and the client's parents have refused financial support.

(6) A client claiming factual emancipation must cooperate with the Department in locating his or her parents. The parents, once located, will be contacted by the Department. If the parents continue to refuse to support the client, a referral will be made to ORS to enforce the parents' child support obligations.

(7) A person eligible for Bureau of Indian Affairs assistance is not eligible for GA financial assistance.

(8) In addition to the residency requirements in R986-100-106, residents in a group home that is administered under a contract with a governmental unit or administered by a governmental unit are not eligible for financial assistance.

(9) An individual receiving SSI is not eligible for GA. This ineligibility includes persons whose SSI is in suspense status, as defined by 20 CFR Part 416.1321 through 416.1330.

R986-400-403. Proof of Unemployability.

(1) An applicant must provide current medical evidence that he or she is not capable of working and earning $500 per month due to a physical or mental health condition and that the condition is expected to last at least 30 days from onset. Evidence consists of a statement from a medical doctor, a doctor of osteopathy, a licensed Advanced Practice Registered Nurse, a licensed Physician's Assistant, a licensed Mental Health Therapist as defined in UCA 58-60-102.

(2) An applicant must cooperate in the obtaining of a second opinion if requested by the Department. Only the costs associated with a second opinion requested by the Department will be paid for by the Department. The Department will not pay the costs associated with obtaining a second opinion if the client requests the second opinion.

(3) If the illness or incapacity is expected to last longer than 12 months, the client must apply for SSDI/SSI benefits.

(4) Full-time or part-time participation in post-high school education or training is considered evidence of employability rendering the client ineligible for GA financial assistance. If the Department believes work readiness or occupational skills enhancement opportunities will lead to employability, those services can be offered for a maximum of three months if the client is otherwise eligible.

R986-400-404. Participation Requirements.

(1) The client and spouse must participate, to the maximum extent possible, in an assessment and an employment plan as provided in R986-200. The only education or training supported by an employment plan for GA recipients is short term skills training as described in R986-400-403.

(2) The employment plan must include obtaining appropriate medical or mental health treatment, or both, to overcome the limitations preventing the client from becoming employable. The employment plan must provide that all adults age 19 and above who do not qualify for coverage under any other category of Medicaid and who are not covered by or do not have access to private health insurance, Medicare or the Veterans Administration Health Care System must enroll in the Primary Care Network (PCN) through the Department of Health. If a client cannot enroll in PCN because the Department of Health has placed a cap on PCN enrollment, the requirement will be excused during the period enrollment is impossible. The Department may, at its discretion, develop a program whereby eligible clients will be allowed to pay the enrollment fee in installments.

(3) A client must accept any and all offers of appropriate employment as determined by the Department. "Appropriate employment" means employment that pays a wage which meets or exceeds the applicable federal or state minimum wage law and has daily and weekly hours customary to the occupation. If the minimum wage laws do not apply, the wage must equal what is normally paid for similar work and in no case less than three-fourths of the minimum wage rate. The employment is not appropriate employment if the client is unable, due to physical or mental limitations, to perform the work.

(4) A client is exempt from the requirements of paragraphs (1) and (2) of this section if the client has been approved for SSI, is waiting for the first check, and has signed an "Agreement to Repay Interim Assistance" Form.

(5) A client must cooperate in obtaining any and all other sources of income to which the client may be entitled including, but not limited to UI, SSI/SSDI, VA Benefits, and Workers' Compensation.

R986-400-405. Interim Aid for SSI Applicants.

(1) A client who has applied for SSI benefits may be provided with GA financial assistance pending a determination on the application for SSI. To be eligible under this paragraph, the client must sign an "Agreement to Repay Interim Assistance" form and agree to reimburse, or allow SSA to reimburse, the Department for any and all GA financial assistance advanced pending a determination from SSA.

(2) Financial assistance will be immediately terminated

without advance notice when SSA issues a payment or if the client fails to cooperate to the maximum extent possible in pursuing the application which includes cooperating fully with SSA and providing all necessary documentation to insure receipt of SSI benefits.

(3) A client must fully cooperate in prosecuting an appeal of an SSI denial at least to the Social Security ALJ level. If the ALJ issues an unfavorable decision, the client is not eligible for financial assistance unless an unrelated physical or mental health condition develops and is verified.

R986-400-406. Failure to Comply with the Requirements of an Employment Plan.

(1) If a client fails to comply with the requirements of the employment plan without reasonable cause, financial assistance will be terminated immediately. Reasonable cause under this section means the client was prevented from participating through no fault of his or her own or failed to participate for reasons that are reasonable and compelling and may include reasons like verified illness or extraordinary transportation problems.

(2) If a client's financial assistance has been terminated under this section, the client is not eligible for further assistance as follows:

(a) the first time financial assistance is terminated, the client must reapply and participate to the maximum extent possible in all of the required activities of the employment plan;

(b) the second time financial assistance is terminated, the client will be ineligible for financial assistance for a minimum of one month and can only become eligible again upon completing a new application and participating to the maximum extent possible in the required employment activity; and

(c) the third time financial assistance is terminated, the client will be ineligible for a minimum of six months and can only become eligible again upon completing a new application and actively participating in the required employment activity.

R986-400-407. Income and Assets Limits and Amount of Assistance.

(1) The provisions of R986-200 are used for determining asset and income eligibility except;

(a) the income and assets of an SSI recipient living in the household are counted if that individual is legally responsible for the client;

(b) the total gross income of an alien's sponsor and the sponsor's spouse is counted as unearned income for the alien. If a person sponsors more than one alien, the total gross income of the sponsor and the sponsor's spouse is counted for each alien. Indigent aliens, as defined by 7 CFR 273.4(c)(3)(iv), are not exempt.

(2) The financial assistance payment level is set by the Department and available for review at all Department local offices.

R986-400-408. Time Limits.

(1) An individual cannot receive GA financial assistance for more than 24 months out of any 60-month period. Months which count toward the 24-month limit include any and all months during which any client who currently resides in the household received a full or partial financial assistance payment beginning with the month of March, 1998.

(2) There are no exceptions or extensions to the time limit.

(3) Advanced written notice for termination of GA financial assistance due to time limits is not required.

R986-400-451. Authority for Working Toward Employment (WTE) and Other Applicable Rules.

(1) The Department provides WTE financial assistance pursuant to Section 35A-3-401 et seq. as funding permits.

(2) Rule R986-100 applies to WTE.

(3) Applicable provisions of R986-200 apply to WTE except as noted in this rule.

(4) The citizenship and alienage requirements of the Food Stamp Program apply to WTE.

R986-400-452. General Provisions.

(1) Working Toward Employment (WTE) provides financial assistance on a short term basis to single persons and married couples who have no dependent children residing with them 50% or more of the time and who are unemployable because they lack employment skills.

(2) At least one household member must be at least 18 years old or legally or factually emancipated. Factual emancipation is defined in R986-400-402.

(3) As a condition of eligibility, a client claiming factual emancipation must cooperate with the Department in locating his or her parents. The parents, once located, will be contacted by the Department. If the parents continue to refuse to support the client, a referral will be made to ORS to enforce the parents' child support obligations.

(4) All clients must cooperate in obtaining any and all other benefits or sources of income to which the client may be entitled except that a client who has applied for SSI benefits is ineligible for WTE. If a client applies for SSI, WTE financial assistance is terminated.

(5) A person eligible for Bureau of Indian Affairs assistance is not eligible for WTE financial assistance.

(6) If an applicant appears to be eligible for the Refugee Resettlement Program (RRP) the applicant must comply with the requirements of RRP and will be paid out of funds for that program. If found eligible for RRP, the applicant is ineligible for WTE.

R986-400-453. Participation Requirements.

(1) All applicants and spouses must participate in an assessment and an employment plan as found in R986-200. In addition to the requirements of an employment plan as found in R986-200-210, a client must, as a condition of receipt of financial assistance, register for work and accept any and all offers of appropriate employment, as determined by the Department. Appropriate employment is defined in R986-400-404.

(2) The employment plan of each recipient of WTE financial assistance must contain the requirement that the client participate 40 hours per week in eligible activities. A list of approved eligible activities is available at each employment center. Married couples cannot share the performance requirements and each client must participate a minimum of 40 hours per week. The 40 hours must be spent in the following activities:

(a) 32 hours a week in paid employment and/or work experience and training. At least 16 hours of those 32 hours must be spent at a community work site or in paid employment. If the client is under age 25 and has not completed high school or an equivalent course of education, time spent in educational activities to obtain a high school degree or its equivalent can count toward the minimum 16-hour work requirement. Training is limited to short term skills training, job search training, or adult education; and

(b) eight hours a week participating in job search activities. The Department may reduce the number of hours spent in job search activities if it is determined the client has explored all local employment options. A reduction in the number of hours of job search will not reduce the total requirement of 40 hours of participation.

(3) Participation may be excused only if the client can show reasonable cause as defined in R986-400-406(1).

R986-400-454. Failure to Comply with the Requirements of an Employment Plan.

(1) If a client fails to comply with the requirements of the employment plan without reasonable cause as defined in R986-400-406(a), financial assistance will be terminated immediately.

(2) Advanced notice of termination is not required.

(3) If there are two clients in the household and only one client fails to comply, financial assistance for both will be terminated.

(4) Once a client or household's financial assistance has been terminated for failure to comply with the employment plan, the client is not eligible for further assistance as follows:

(a) the first time financial assistance is terminated, the client or couple must reapply and actively participate in all of the required activities of the employment plan;

(b) the second time financial assistance is terminated, the client or couple will be ineligible for financial assistance for a minimum of one month and can only become eligible again upon completing a new application and actively participating in the required employment activity;

(c) the third time financial assistance is terminated, the client will be ineligible for a minimum of six months and can only become eligible again upon completing a new application and actively participating in the required employment activity.

R986-400-455. Income and Assets Limits and Calculation of Assistance Payment.

(1) Income and asset determination and limits are the same as for FEP found in R986-200.

(2) The amount of financial assistance available for payment to a client is based on the number of hours of participation. Payment is made twice per month and only after proof of participation. The base amount of assistance is equal to the GA financial assistance payment for the household size. The base GA payment is then prorated based on the number of hours of participation for each household member, up to a maximum of 40 hours of participation per household member per week. In no event can the financial assistance payment per month for a WTE household be more than for the same size household receiving financial assistance under GA. Payment of financial assistance cannot be made for any period during which the client does not participate.

(3) The base GA financial assistance payment level is determined by the State Legislature and available upon request.

(4) Each WTE household member will receive the sum of $45 per month regardless of number of hours the client participates. This sum is intended to be used for participation expenses.

R986-400-456. Time Limits.

(1) An individual cannot receive WTE financial assistance for more than seven months out of any 18-month period.

(2) In addition to the seven months out of any 18-month period time limit, there is a 24-month life time limit for WTE financial assistance.

(3) Months which count toward the seven month time limit and the 24-month limit include any and all months during which any client who currently resides in the household received a full or partial financial assistance payment.

(4) There are no exceptions or extensions to the time limit.

(5) If WTE financial assistance is terminated due to the time limit, advanced written notice is not required.

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R986. Workforce Services, Employment Development.
R986-700. Child Care Assistance.
R986-700-701. Authority for Child Care Assistance (CC) and Other Applicable Rules.

(1) The Department administers Child Care Assistance (CC) pursuant to the authority granted in Section 35A-3-310.

(2) Rule R986-100 applies to CC except as noted in this rule.

(3) Applicable provisions of R986-200 apply to CC, except as noted in this rule or where in conflict with this rule.

R986-700-702. General Provisions.

(1) CC is provided to support employment.

(2) CC is available, as funding permits, to the following clients who are employed or are participating in activities that lead to employment:

(a) parents;

(b) specified relatives; or

(c) clients who have been awarded custody or appointed guardian of the child.

(3) Child care is provided only for children living in the home and only during hours when neither parent is available to provide care for the children.

(4) If a client is eligible to receive CC, the following children, living in the household unit, are eligible:

(a) children under the age of 13; and

(b) children up to the age of 18 years if the child;

(i) meets the requirements of rule R986-700-717, and/or

(ii) is under court supervision.

(5) Clients who qualify for child care services will be paid if and as funding is available. When the child care needs of eligible applicants exceed available funding, applicants will be placed on a waiting list. Eligible applicants on the list will be served as funding becomes available. Special needs children, homeless children and FEP or FEPTP eligible children will be prioritized at the top of the list and will be served first. "Special needs child" is defined in rule R986-700-717.

(6) The amount of CC might not cover the entire cost of care.

(7) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.

(8) CC can only be provided for an eligible provider and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.

(9) Neither the Department nor the state of Utah are liable for injuries that may occur when a child is placed in child care even if the parent receives a subsidy from the Department.

(10) Foster care parents receiving payment from the Department of Human Services are not eligible to receive CC for the foster children.

(11) Once eligibility for CC has been established, eligibility must be reviewed at least once every six months. The review is not complete until the the client has completed, signed and returned all necessary review forms to the local office. All requested verifications must be provided at the time of the review. If the Department has reason to believe the client's circumstances have changed, affecting either eligibility or payment amount, the Department will reduce or terminate CC even if the certification period has not expired.

R986-700-703. Client Rights and Responsibilities.

In addition to the client rights and responsibilities found in R986-100, the following client rights and responsibilities apply:

(1) A client has the right to select the type of child care which best meets the family's needs.

(2) If a client requests help in selecting a provider, the Department will refer the client to the local Child Care Resource and Referral agency.

(3) A client is responsible for monitoring the child care provider. The Department will not monitor the provider.

(4) A client is responsible to pay all costs of care charged by the provider. If the child care assistance payment provided by the Department is less than the amount charged by the provider, the client is responsible for paying the provider the difference.

(5) The only changes a client must report to the Department within ten days of the change occurring are:

(a) that the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in R986-700-710(3);

(b) that the client is no longer in an approved training or educational program;

(c) if the client's and/or child's schedule changes so that child care is no longer needed during the hours of approved employment and/or training activities;

(d) that the client does not meet the minimum work requirements of an average of 15 hours per week or 15 and 30 hours per week when two parents are in the household and it is expected to continue;

(e) the client is separated from his or her employment;

(f) a change of address;

(g) any of the following changes in household composition; a parent, stepparent, spouse, or former spouse moves into the home, a child receiving child care moves out of the home, or the client gets married; or

(h) a change in the child care provider, including when care is provided at no cost.

(6) If a material change which would result in a decrease in the amount of the CC payment is reported within 10 days, the decrease will be made effective beginning the next month and sums received in the month in which the change occurred will not be treated as an overpayment. If it is too late to make the change to the next month's CC payment, the client is responsible for repayment even if the 10 days for reporting the change has not expired. If the client fails to report the change within 10 days, the decrease will occur as soon as the Department learns of the change and the overpayment will be assessed back to the date of the change.

(7) A client is responsible for payment to the Department of any overpayment made in CC.

(8) If the client has failed to provide all necessary information and the child care provider requests information about payment of CC to the client, the Department is authorized to inform the provider that further information is needed before payment can be determined.

(9) The Department may also release the following information to the designated provider:

(a) limited information regarding the status of a CC payment including that no payment was issued or services were denied;

(b) information contained on the Form 980;

(c) the date the child care subsidy was issued;

(d) the subsidy amount for that provider;

(e) the subsidy deduction amount;

(f) the date a two party check was mailed to the client; and

(g) a copy of the two party check on a need to know basis.

(10) If child care funds are issued on the Horizon Card (electronic benefit transfer) unused child care funds will be removed from the Horizon Card 60 days after the last child care transaction/transfer occurred ("aged off") and will no longer be available to the client.

R986-700-704. Establishment of Paternity.

The provisions of rules R986-100 and R986-200 pertaining to cooperation with ORS in the establishment of paternity and collection of child support do not apply to ES CC.

R986-700-705. Eligible Providers and Provider Settings.

(1) The Department will only pay CC to clients who select eligible providers. The only eligible providers are:

(a) licensed and accredited providers:

(i) licensed homes;

(ii) licensed family group homes; and

(iii) licensed child care centers.

(b) license exempt providers who are not required by law to be licensed and are either;

(i) license exempt centers; or

(ii) related to the client and/or the child. Related under this paragraph means: siblings who are at least 18 years of age and who live in a different residence than the parent, grandparents, step grandparents, aunts, step aunts, uncles, step uncles or people of prior generations of grandparents, aunts, or uncles, as designated by the prefix grand, great, great-great, or great-great-great or persons who meet any of the above relationships even if the marriage has been terminated.

(c) homes with a Residential Certificate obtained from the Bureau of Licensing.

(2) If a new client has a provider who is providing child care at the time the client applies for CC or has provided child care in the past and has an established relationship with the child(ren), but the provider is not currently eligible, the client may receive CC for a period not to exceed three months if the provider is willing to become an eligible provider and actively pursues eligibility.

(3) The Department may, on a case by case basis, grant an exception and pay for CC when an eligible provider is not available:

(a) within a reasonable distance from the client's home. A reasonable distance, for the purpose of this exception only, will be determined by the transportation situation of the parent and child care availability in the community where the parent resides; or

(b) because a child in the home has special needs which cannot be otherwise accommodated; or

(c) which will accommodate the hours when the client needs child care; or

(d) if the provider lives in an area where the Department of Health lacks jurisdiction, which includes tribal lands, to provide licensing or certification; or

(4) If an eligible provider is available, an exception may be granted in the event of unusual or extraordinary circumstances but only with the approval of a Department supervisor.

(5) If an exception is granted under paragraph (3) or (4) above, the exception will be reviewed at each of the client's review dates to determine if an exception is still appropriate.

(6) License exempt providers must register with the Department and agree to maintain minimal health and safety criteria by signing a certification before payment to the client can be approved. The minimum criteria are that:

(a) the provider be at least 18 years of age and physically and mentally capable of providing care to children;

(b) the provider's home is equipped with hot and cold running water, toilet facilities, and is clean and safe from hazardous items which could cause injury to a child. This applies to outdoor areas as well;

(c) there are working smoke detectors and fire extinguishers on all floors of the house where children are provided care;

(d) there are no individuals residing in the home who have a conviction for a misdemeanor which is an offense against a person, or any felony conviction, or have been subject to a supported finding of child abuse or neglect by the Utah Department of Human Services, Division of Child and Family Services or a court;

(e) there is a telephone in operating condition with a list of emergency numbers located next to the phone which includes the phone numbers for poison control and for the parents of each child in care;

(f) food will be provided to the child in care of sufficient amount and nutritional value to provide the average daily nutrient intake required. Food supplies will be maintained to prevent spoilage or contamination. Any allergies will be noted and care given to ensure that the child in care is protected from exposure to those items; and

(g) the child in care will be immunized as required for children in licensed day care and;

(h) good hand washing practices will be maintained to discourage infection and contamination.

(7) The following providers are not eligible for receipt of a CC payment:

(a) a member of a household assistance unit who is receiving one or more of the following assistance payments: FEP, FEPTP, diversion assistance or food stamps for any child in that household assistance unit. The person may, however, be paid as a provider for a child in a different household assistance unit;

(b) a sibling of the child living in the home;

(c) household members whose income must be counted in determining eligibility for CC;

(d) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;

(e) illegal aliens;

(f) persons under age 18;

(g) a provider providing care for the child in another state; and

(h) a provider who has committed fraud as a provider, as determined by the Department or by a court.

R986-700-706. Provider Rights and Responsibilities.

(1) Providers assume the responsibility to collect payment for child care services rendered. Neither the Department nor the state of Utah assumes responsibility for payment to providers.

(2) A provider may not charge clients receiving a CC subsidy a higher rate than their customers who do not receive a CC subsidy.

(3) Providers must keep accurate records of subsidized child care payments, time and attendance. The Department has the right to investigate child care providers and audit their records. Time and attendance records for all subsidized clients must be kept for at least one year. If a provider fails to cooperate with a Department investigation or audit, or fails to keep records for one year, the provider will no longer be an approved provider.

(4) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider may be referred for criminal prosecution and will no longer be an approved provider. A provider cannot require that a client give the provider the client's Horizon card and/or the client's PIN or otherwise obtain the card and/or PIN.

(5) If an overpayment is established and it is determined that the provider was at fault in the creation of the overpayment, the provider is responsible for repayment of the overpayment.

(6) Records will be kept by the Department for individuals who are not approved providers and against whom a referral or complaint is received.

R986-700-707. Subsidy Deduction and Transitional Child Care.

(1) "Subsidy deduction" means a dollar amount which is deducted from the standard CC subsidy for Employment Support CC. The deduction is determined on a sliding scale and

the amount of the deduction is based on the parent(s) countable earned and unearned income and household size.

(2) The parent is responsible for paying the amount of the subsidy deduction directly to the child care provider.

(3) If the subsidy deduction exceeds the actual cost of child care, the family is not eligible for child care assistance.

(4) The full monthly subsidy deduction is taken even if the client receives CC for only part of the month.

(5) There is no subsidy deduction during:

(a) the months covered by a FEP diversion payment;

(b) transitional child care. Transitional child care is available, subject to subsection (6) of this section, during;

(i) the three months immediately following the period covered by the diversion payment if the client is working a minimum of 15 hours per week and is otherwise eligible for ESCC. The subsidy deduction will resume in the fourth month after the period covered by the diversion payment; or

(ii) the three months immediately following a FEP or FEPTP termination if the termination was due to increased income and the parent is otherwise eligible for ESCC. The subsidy deduction will resume in the fourth month after the termination of FEP or FEPTP.

(6) The subsidy deduction will only be waived for transitional child care if the client received ESCC during the calendar month following the termination of FEP or FEPTP or the expiration of the time covered by the diversion agreement. For instance, if a client's FEP was terminated due to increased income on May 18, and the client fails to request or is not eligible for ESCC during June, the client is not eligible for the subsidy deduction waiver. If the same client reapplies and receives ESCC for July, the client is not eligible for the subsidy deduction waiver even though July is one of the three months immediately following the termination of FEP. Likewise, if the client received a diversion payment on March 1 which covered the months of March, April and May, the client must receive ESCC anytime during the month of June. If the client does not request, receive, or is not eligible for ESCC during June but becomes eligible during August, the ESCC is subject to the subsidy deduction even though August is one of the three months immediately following the period covered by diversion.

R986-700-708. FEP, and Diversion CC.

(1) FEP CC may be provided to clients receiving financial assistance from FEP or FEPTP. FEP CC will only be provided to cover the hours a client needs child care to support the activities required by the employment plan. FEP CC is not subject to the subsidy deduction.

(2) Additional time for travel may be included on a case by case basis when circumstances create a hardship for the client because the required activities necessitate travel of distances taking at least one hour each way.

(3) Diversion CC is available for clients who have received a diversion payment from FEP. There is no subsidy deduction for the months covered by the FEP diversion payment.

R986-700-709. Employment Support (ES) CC.

(1) Parents who are not eligible for FEP CC or Diversion CC may be eligible for Employment Support (ES) CC. To be eligible, a parent must be employed or be employed while participating in educational or training activities. Work Study is not considered employment. A parent who attends school but is not employed at least 15 hours per week, is not eligible for ES CC. ES CC will only be provided to cover the hours a client needs child care for work or work and approved educational or training activities.

(2) If the household has only one parent, the parent must be employed at least an average of 15 hours per week.

(3) If the family has two parents, CC can be provided if:

(a) one parent is employed at least an average of 30 hours per week and the other parent is employed at least an average of 15 hours per week and their work schedules cannot be changed to provide care for the child(ren). CC will only be provided during the time both parents are in approved activities and neither is available to care for the children; or

(b) one parent is employed and the other parent cannot work, or is not capable of earning $500 per month and cannot provide care for their own children because of a physical, emotional or mental incapacity. Any employment or educational or training activities invalidate a claim of incapacity. The incapacity must be expected to last 30 days or longer. The individual claiming incapacity must verify that incapacity in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) 100% disabled by VA; or

(iii) by submitting a written statement from:

(A) a licensed medical doctor;

(B) a doctor of osteopathy;

(C) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(D) a licensed Advanced Practice Registered Nurse; or

(E) a licensed Physician's Assistant.

(4) Employed or self-employed parent client(s) must make, either through wages or profit from self-employment, a rate of pay equal to or greater than minimum wage multiplied by the number of hours the parent is working. To be eligible for ES CC, a self employed parent must provide business records for the most recent three month time period to establish that the parent is likely to make at least minimum wage. If a parent has a barrier to other types of employment, exceptions can be made in extraordinary cases with the approval of the state program specialist.

(5) Americorps*Vista is supported even though the program does not meet the minimum wage requirements. The activities of Americorps*Vista volunteers are considered to be work and not training. Job Corps activities are considered to be training and a client in the Job Corps would also have to meet the work requirements to be eligible for ES CC.

(6) Applicants must verify identity but are not required to provide a Social Security Number (SSN) for household members. Benefits will not be denied or withheld if a customer chooses not to provide a SSN if all factors of eligibility are met. SSN's that are supplied will be verified. If an SSN is provided but is not valid, further verification will be requested to confirm identity.

R986-700-710. Income Limits for ES CC.

(1) Rule R986-200 is used to determine:

(a) who must be included in the household assistance unit for determining whose income must be counted to establish eligibility. In some circumstances, determining household composition for a ES CC household is different from determining household composition for a FEP or FEPTP household. ES CC follows the parent and the child, not just the child so, for example, if a parent in the household is ineligible, the entire ES CC household is ineligible. A specified relative may not opt out of the household assistance unit when determining eligibility for CC. The income of the specified relatives in the household must be counted. The income of some household members in multi-generational households is counted in full instead of being deemed as in FEP or FEPTP;

(b) what is counted as income except:

(i) the earned income of a minor child who is not a parent is not counted; and

(ii) child support, including in kind child support payments, is counted as unearned income, even if it exceeds the court or ORS ordered amount of child support, if the payments are made directly to the client. If the child support payments are paid to a third party, only the amount up to the court or ORS

ordered child support amount is counted.

(c) how to estimate income.

(2) The following income deductions are the only deductions allowed on a monthly basis:

(a) the first $50 of child support received by the family;

(b) court ordered and verified child support and alimony paid out by the household;

(c) $100 for each person with countable earned income; and

(d) a $100 medical deduction. The medical deduction is automatic and does not require proof of expenditure.

(3) The household's countable income, less applicable deductions in paragraph (2) above, must be at, or below, a percentage of the state median income as determined by the Department. The Department will make adjustments to the percentage of the state median income as funding permits. The percentage currently in use is available at the Department's administrative office.

(4) Charts establishing income limits and the subsidy deduction amounts are available at all local Department offices.

(5) An independent living grant paid by DHS to a minor parent is not counted as income.

R986-700-711. ES CC to Support Education and Training Activities.

(1) CC may be provided when the client(s) is engaged in education or training and employment, provided the client(s) meet the work requirements under Section R986-700-709(1).

(2) The education or training is limited to courses that directly relate to improving the parent(s)' employment skills.

(3) ES CC will only be paid to support education or training activities for a total of 24 calendar months. The months need not be consecutive.

(a) On a case by case basis, and for a reasonable length of time, months do not count toward the 24-month time limit when a client is enrolled in a formal course of study for any of the following:

(i) obtaining a high school diploma or equivalent,

(ii) adult basic education, and/or

(iii) learning English as a second language.

(b) Months during which the client received FEP child care while receiving education and training do not count toward the 24-month time limit.

(c) CC can not ordinarily be used to support short term workshops unless they are required or encouraged by the employer. If a short term workshop is required or encouraged by the employer, and approved by the Department, months during which the client receives child care to attend such a workshop do not count toward the 24- month time limit.

(4) Education or training can only be approved if the parent can realistically complete the course of study within 24 months.

(5) Any child care assistance payment made for a calendar month, or a partial calendar month, counts as one month toward the 24-month limit.

(6) There are no exceptions to the 24-month time limit, and no extensions can be granted.

(7) CC is not allowed to support education or training if the parent already has a bachelor's degree.

(8) CC cannot be approved for graduate study or obtaining a teaching certificate if the client already has a bachelor's degree.

R986-700-712. CC for Certain Homeless Families.

(1) CC can be provided for homeless families with one or two parents when the family meets the following criteria:

(a) The family must present a referral for CC from an agency known by the local office to be an agency that works with homeless families, including shelters for abused women and children. This referral will serve as proof of their homeless state. Local offices will provide a list of recognized homeless agencies in local office area.

(b) The family must show a need for child care to resolve an emergency crisis.

(c) The family must meet all other relationship and income eligibility criteria.

(2) CC for homeless families is only available for up to three months in any 12-month period. When a payment is made for any part of a calendar month, that month counts as one of the three months. The months need not be consecutive.

(3) Qualifying families may use child care assistance for any activity including, but not limited to, employment, job search, training, shelter search or working through a crisis situation.

(4) If the family is eligible for a different type of CC, the family will be paid under the other type of CC.

(5) When a homeless family presents a referral from a recognized agency, the Department will, if possible, schedule the application interview within three working days of the date of the application.

R986-700-713. Amount of CC Payment.

(1) CC will be paid at the lower of the following levels:

(a) the maximum monthly local market rate as calculated using the Local Market Survey. The Local Market Survey is conducted by the Department and based on the provider category and age of the child. The Survey results are available for review at any Department office through the Department web site on the Internet; or

(b) the rate established by the provider for services; or

(c) the unit cost multiplied by the number of hours approved by the Department. The unit cost is determined by dividing the maximum monthly local market rate by 137.6 hours.

(2) An enhanced CC payment is available to clients who are participating more than 172 hours per month. The enhanced subsidy cannot exceed $100 more than the maximum monthly local market rate for the type of provider used by the client and in no event can an enhanced subsidy payment exceed the accredited center rate for infant care. A two-parent family receiving CC for education or training activities is not eligible for the enhanced CC subsidy.

R986-700-714. CC Payment Method.

(1) CC payments to parents will be generated monthly by a two-party check issued in the parent's name and the chosen provider's name, except as noted in paragraph (2) below. The check is mailed to the client. In the event of an emergency, a payment up to a maximum of $125 can be made on the Horizon card. Emergency payments can only be made where a parent is in danger of not being able to obtain necessary child care if the parent is required to wait until the two party check can be issued.

(2) CC payments will be made by electronic benefit transfer (EBT) either through a point of sale (POS) machine or interactive voice recording (IVR) system to authorized provider types as determined by the Department. The provider may elect which option of EBT to use. The provider must sign an agreement with the Department's contractor in order to be eligible to receive CC payments. If the provider elects to use the POS method of payment, the provider must lease a POS machine at the provider's own expense.

(3) In the event that a check is reported as lost or stolen, both the parent and the provider are required to sign a statement that they have not received funds from the original check before a replacement check can be issued. The check must be reported as lost or stolen within 60 days of the date the check was mailed. The statement must be signed on an approved Department form and the signing witnessed, and in some cases

notarized, at a local office of the Department. If the provider is unable to come into a Department office to sign the form, the form may be accepted if the signature is notarized. If the original check has been redeemed, a copy of the check will be reviewed and both the parent and provider must provide a sworn, notarized statement that the signature on the endorsed check is a forgery. The Department may require a waiting period prior to issuing a replacement check.

(4) The Department is authorized to stop payment on a CC check without prior notice to the client if:

(a) the Department has determined that the client was not eligible for the CC payment, the Department has confirmed with the child care provider that no services were provided for the month in question or the provider cannot be located, and the Department has made an attempt to contact the parent: or

(b) when the check has been outstanding for at least 90 days; or

(c) the check is lost or stolen.

(5) No stop payment will be issued by the Department without prior notice to the provider unless the provider is not providing services or cannot be contacted.

R986-700-715. Overpayments.

(1) An overpayment occurs when a client or provider received CC for which they were not eligible. If the Department fails to establish one or more of the eligibility criteria and through no fault of the client, payments are made, it will not be considered to have been an overpayment if the client would have been eligible and the amount of the subsidy would not have been affected.

(2) If the overpayment was because the client committed fraud, including forging a provider's name on a two party CC check, the client will be responsible for repayment of the resulting overpayment and will be disqualified from further receipt of CC:

(a) for a period of one year for the first occurrence of fraud;

(b) for a period of two years for the second occurrence of fraud; and

(c) for life for the third occurrence of fraud.

(3) If the client was at fault in the creation of an overpayment for any reason other than fraud in paragraph (2) above, the client will be responsible for repayment of the overpayment. There is no disqualification or ineligibility period for a fault overpayment.

(4) All CC overpayments must be repaid to the Department.

Overpayments may be deducted from ongoing CC payments for clients who are receiving CC. If the Department is at fault in the creation of an overpayment, the Department will deduct $10 from each month's CC payment unless the client requests a larger amount.

(5) CC will be terminated if a client fails to cooperate with the Department's efforts to investigate alleged overpayments.

(6) If the Department has reason to believe an overpayment has occurred and it is likely that the client will be determined to be disqualified or ineligible as a result of the overpayment, payment of future CC may be withheld, at the discretion of the Department, to offset any overpayment which may be determined.

R986-700-716. CC in Unusual Circumstances.

(1) CC may be provided for study time, to support clients in education or training activities if the parent has classes scheduled in such a way that it is not feasible or practical to pick up the child between classes. For example, if a client has one class from 8:00 a.m. to 9:00 a.m. and a second class from 11:00 a.m. to noon it might not be practical to remove the child from care between 9:00 a.m. and 11:00 a.m.

(2) An away-from-home study hall or lab may be required as part of the class course. A client who takes courses with this requirement must verify study hall or lab class attendance. The Department will not approve more study hall hours or lab hours in this setting than hours for which the client is enrolled in school. For example: A client enrolled for ten hours of classes each week may not receive more than ten hours of this type of study hall or lab.

(3) CC will not be provided for private kindergarten or preschool activities when a publicly funded education program is available.

(4) CC may be authorized to support employment for clients who work graveyard shifts and need child care services during the day. If no other child care options are available, child care services may be authorized for the graveyard shift or during the day, but not for both.

(5) CC may be authorized to support employment for clients who work at home, provided the client makes at least minimum wage from the at home work, and the client has a need for child care services. The client must choose a provider setting outside the home.

R986-700-717. Child Care for Children With Disabilities or Special Needs.

(1) The Department will fund child care for children with disabilities or special needs at a higher rate if the child has a physical, social, or mental condition or special health care need that requires;

(a) an increase in the amount of care or supervision and/or

(b) special care, which includes but is not limited to the use of special equipment, assistance with movement, feeding, toileting or the administration of medications that require specialized procedures.

(2) To be eligible under this section, the client must submit a statement from one of the professionals listed in rule R986-700-709(3)(b)(ii) or one of the following agencies documenting the child's disability or special child care needs;

(a) Social Security Administration showing that the child is a SSI recipient,

(b) Division of Services for People with Disabilities,

(c) Division of Mental Health,

(d) State Office of Education, or

(e) Baby Watch, Early Intervention Program.

(3) Verification to support that the child is disabled or has a special need must be dated and signed by the preparer and include the following;

(a) the child's name,

(b) a description of the child's disability, and

(c) the special provisions that justify a higher payment rate.

(4) The Department may require additional information and may deny requests if adequate or complete information or justification is not provided.

(5) The higher rate is available through the month the child turns 18 years of age.

(6) Clients qualify for child care under this section if the household is at or below 85% of the state median income.

(7) The higher rate in effect for each child care category is available at any Department office.

KEY: child care
August 1, 2006 35A-3-310
Notice of Continuation September 14, 2005

R986. Workforce Services, Employment Development.
R986-800. Displaced Homemaker Program.
R986-800-801. Authority for the Displaced Homemaker Program and Applicable Rules.

The Department provides services to displaced homemakers pursuant to Section 35A-3-114. The definitions, acronyms, residency, and safeguarding of information provisions of R986-100 apply to this program.

R986-800-802. General Provisions.

Services are available to a displaced homemaker who:

(1) has been a homemaker for a period of eight or more years without significant gainful employment in the labor market, and whose primary occupation during that period of time was the provision of unpaid household services for family members;

(2) has found it necessary to enter the job market but is not reasonably capable of obtaining employment sufficient to provide self-support or necessary support for dependents, due to a lack of marketable job skills or other skills necessary for self-sufficiency; and

(3) has depended on the income of a family member and lost that income or has depended on governmental assistance as the parent of dependent children, and is no longer eligible for that assistance.

R986-800-803. Available Services.

(1) The Department provides the following services to displaced homemakers either directly or through referral:

(a) employment and skills training, career counseling, and placement services specifically designed to address the needs of displaced homemakers;

(b) assistance in obtaining access to existing public and private employment training programs;

(c) educational services, including information on high school or college programs, or assistance in gaining access to existing educational programs;

(d) health education and counseling, or assistance in gaining access to existing health education and counseling services;

(e) financial management services which provide information on insurance, taxes, estate and probate matters, mortgages, loans, and other financial issues;

(f) prevocational self-esteem and assertiveness training; and

(g) encouragement of placement in any displaced homemaker program established or offered by any local, state or federal agency.

(2) Some of these services are available through workshops conducted by the Department.

KEY: displaced homemakers
August 1, 2006 **35A-3-114**
Notice of Continuation September 14, 2005

R986. Workforce Services, Employment Development.
R986-900. Food Stamps.
R986-900-901. Authority for Food Stamps and Applicable Rules.

(1) Food stamps provide assistance to eligible individuals in accordance with the requirements found in: The Food Stamp Act of 1977 as amended (7 USC 2011 et seq); 7 CFR 271 through 7 CFR 283; and PRWORA and its amendments. The complete text of all applicable federal laws and regulations can be found at the United States Department of Agriculture web site at: http://www.fns.usda.gov/fsp/. Federal regulations are also available at most public libraries, on the Internet at: http://access.gpo.gov/nara/cfr/waisidx_00/7cfrv4_00.html, at the Department of Workforce Services, Division of Employment Development, Appeals Division 2nd Floor, 140 E 300 S, Salt Lake City UT, 84145; or at the Division of Administrative Rules, 4120 State Office Building, Salt Lake City UT, 84114. The state maintains a policy manual describing the benefits and eligibility requirements for receipt of food stamps. The policy manual is available on the Department's Internet web site. The provisions of 7 CFR 271 through 7 CFR 283 (2000) are incorporated herein by reference.

(2) The provisions of R986-100 apply to food stamps except where specifically noted otherwise.

R986-900-902. Options and Waivers.

The Department administers the Food Stamp Program in compliance with federal law with the following exceptions or clarifications:

(1) The following options not otherwise found in R986-100 have been adopted by the Department where allowed by the applicable federal law or regulation:

(a) The Department has opted to hold hearings at the state level and not at the local level.

(b) The Department does not offer a workfare program for ABAWDs (Able Bodied Adults Without Dependents).

(c) An applicant is required to apply at the local office which serves the area in which they reside.

(d) The Department has opted to use the Simplified Standard Utility Allowance found in 7 USC 2014(e)(7)(C)(iii) as amended by 2002 H.R. 2646 known as Section 4104 of the Farm Bill. The Department has a mandatory standard utility allowance. This means the customer is eligible for an appropriate utility allowance at the time of application and eligibility for the appropriate allowance is re-determined at recertification or if the household moves to a different place of residence. The customer does not have the choice of using "actual" utility expenses. The Department has three utility standards that are updated annually and are available upon request. This Farm Bill option allows households in subsidized housing and households in shared living arrangements to receive the full appropriate utility allowance.

(e) The Department does not use photo ID cards. ID cards are available upon request to homeless, disabled, and elderly clients so that the client is able to use food stamp benefits at a participating restaurant.

(f) The state has opted to provide food stamp benefits through the use of an electronic benefit transfer system known as the Horizon Card.

(g) The Department counts diversion payments in the food stamp allotment calculation.

(h) The Department has opted to exempt individuals from mandatory participation in Food Stamp Employment and Training activities in counties that have been designated as Labor Surplus Areas by the Department of Labor. These counties change each year based on Department of Labor statistics and a list of counties is available from the Department. They are the same counties as referenced in subsection (2)(a) below.

(i) The Department has opted to use Utah's TANF vehicle allowance rules in conjunction with the Food Stamp Program vehicle allowance regulations at 7 CFR 273.8, as authorized by Pub. L. No. 106-387 of the Agriculture Appropriations Act 2001, Food Stamp Act of 1977, 7 USC 2014.

(j) The Department has opted to count all of an ineligible alien's resources and all but a pro rata share of the ineligible alien's income and deductible expenses as provided in 7 CFR 273.11(c)(3)(ii)(A).

(k) A client may waive his or her right to an administrative disqualification hearing.

(l) A client may deduct actual, allowable expenses from self employment, or may opt to deduct 40% of the gross income from self employment to determine net income.

(m) The Department has opted to allign food stamps with FEP in determining how to count educational assistance income. That income is counted for food stamps as provided in R986-200-235(3)(q).

(n) The Department has opted to do simplified reporting as provided in 7 CFR 273.12(a)(1)(vii).

(2) The Department has been granted the following applicable waivers from the Food and Nutrition Service:

(a) Certain Utah counties have been granted a waiver which exempts ABAWDs from the work requirements of Section 824 of PRWORA. The counties granted this waiver change each year based on Department of Labor statistics. A list of counties granted this waiver is available from the Department.

(b) The Department requires that a household need only report changes in earned income if there is a change in source, the hourly rate or salary, or if there is a change in full-time or part-time status. A client is required to report any change in unearned income over $25 or a change in the source of unearned income.

(c) The Department uses a combined Notice of Expiration and Shortened Recertification Form. Notice of Expiration is required in 7 CFR 273.14(b)(1)(i). The Recertification Form is found under 7 CFR 273.14(b)(2)(i).

(d) The Department conducts the Family Nutrition Education Program for individuals even if they are otherwise ineligible for food stamps.

(e) The Department may deduct overpayments that resulted from an IPV from a household's monthly entitlement.

(f) If the application was received before the 15th of the month and the client has earned income, the certification period can be no longer than six months. The initial certification period may be as long as seven months if the application was received after the 15th of the month.

(g) A household which had its food stamps terminated can be reinstated during the calendar month following the month assistance was terminated without completing a new application if the reason for the termination is fully resolved. The reason for the termination does not matter. Assistance will be prorated to the date on which the client reported that the disqualifying condition was resolved if verification is received within ten days of the report. Assistance is reinstated for the remaining months of the certification period and the certification period must not be changed.

(h) If the Department is unable to obtain proper documentary evidence from an employer, the Department may use Utah quarterly wage data as the primary verification of income when calculating overpayments.

(i) The Department will hold disqualification hearings by telephone.

(j) All households certified for 12 months or less would have their recertification interviews conducted by telephone, rather than in person, unless the household requests an in-person interview or the Department determines that an in-person interview is necessary to resolve issues that would be better

facilitated face-to-face.

KEY: food stamps, public assistance
August 1, 2006 **35A-3-103**
Notice of Continuation September 14, 2005

R994. Workforce Services, Unemployment Insurance.
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% 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 claims with an effective date on or after July 4, 2004, and on or before June 27, 2010 the reduction for social security retirement benefits will only be 50%. 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 does not 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). The recomputation is effective with the first full calendar week in which the claimant is eligible to receive applicable retirement benefits or adjustments to those benefits.

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 When There is No Job Separation from the Part-Time Reimbursable Employer.

(1) If the claimant worked 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, the nonseparating part-time 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 nonseparating 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. See R994-307-101 for contributory employers.

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.

(4) 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 or herself available to the employer, the payment is considered reportable income.

(5) 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.

(6) 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

July 26, 2006	**35A-4-401(1)**
Notice of Continuation May 23, 2002	**35A-4-401(2)**
	35A-4-401(3)
	35A-4-401(6)

R994. Workforce Services, Unemployment Insurance.
R994-406. Fraud, Fault and Nonfault Overpayments.
R994-406-101. Claimant Responsible for Providing Complete, Correct Information.

(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. The claimant is also responsible for following all Department instructions.

(2) The claimant can not 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 or her claim.

R994-406-201. Nonfault Overpayments.

(1) If the claimant followed all instructions and provided complete and correct information as required in R994-406-101(1) and then received benefits to which he or she was not entitled due to an error made by the Department or an employer, the claimant is not at fault in the creation of the overpayment.

(2) The claimant is not liable to repay overpayments created through no fault of the claimant except that the sum will be deducted from any future benefits.

R994-406-202. Method of Repayment of Nonfault Overpayments.

Even though the claimant is without fault in the creation of the overpayment, 50% of the claimant's weekly benefit amount will be deducted from any future benefits payable to him or her until the overpayment is repaid. No billings will be made and no collection procedures will be initiated.

R994-406-203. Waiver of Recovery of Nonfault Overpayments.

(1) The Department may waive recovery of a nonfault overpayment if the claimant:

(a) requests a waiver within 10 days of notification of the opportunity to request a waiver, within 10 days of the first offset of benefits following a reopening, or upon a showing of a significant change in 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 beyond the claimant's control or were compelling and reasonable; and

(b) can show that recovery of the 50% offset as provided in R994-406-202 would render the claimant unable to pay for the basic needs of survival for his or her immediate family, dependents and other household members.

(i) The claimant must provide verification of financial resources and the social security numbers of family members, dependents and household members.

(ii) Before granting the waiver, the Department must consider all potential financial resources of the claimant, the claimant's family, dependents and other household members.

(iii) "Unable to pay for the basic needs of survival" means "economically disadvantaged" and is defined as 70% of the Lower Living Standard Income Level (LLSIL). Therefore, if the claimant's total family resources in relation to family size are not in excess of 70% of the LLSIL, the waiver will be granted provided the economic circumstances are not expected to change within the next 90 days. Individual expenses will not be considered. Available financial resources, current income, and anticipated income will be included and averaged for the three months.

(2) Any nonfault overpayment outstanding at the time the request is granted is forgiven and the claimant has no further repayment obligation.

(3) A waiver cannot be granted retroactively for any payments made against an overpayment or any of the overpayment which has already been offset except if the offset was made pending a decision on a timely waiver request which is ultimately granted.

R994-406-301. Claimant Fault.

(1) Elements of Fault.

Fault is established if all three of the following elements are present, or as provided in subsection (3) and (4) of this section. If one or more elements 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 by the Department regarding his or her Unemployment Insurance claim. If the claimant has any questions about his or her eligibility for unemployment benefits, or the Department's instructions, the claimant must ask the Department for clarification before certifying to eligibility. If the claimant fails to obtain clarification, he or she will be at fault in any resulting overpayment.

(3) Receipt of Settlement or Back-Pay.

(a) A claimant is "at fault" for the resulting overpayment if he or she fails to advise the Department that grievance procedures are being pursued which may result in payment of wages for weeks during which he or she claims benefits.

(b) If the claimant advises the Department prior to receiving a settlement that he or she has filed a grievance with the employer and makes an assignment directing the employer to pay to the Department that portion of the settlement equivalent to the amount of unemployment compensation received, the claimant will not be "at fault" if an overpayment is created due to payment of wages attributable to weeks for which the claimant received 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 Department 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 claimed in a grievance proceeding, benefits will be withheld on the basis that the claimant is not unemployed because of anticipated receipt of wages. In this case, the claimant should file weekly claims and if back wages are not received when the grievance is resolved, benefits will be paid for weeks properly claimed provided the claimant is otherwise eligible.

(4) Receipt of Retirement Income.

Notwithstanding any other provision of this section, a claimant who could be eligible for retirement income but does not apply until after unemployment benefits have been paid, is "at fault" for any overpayment resulting from a retroactive payment of retirement benefits. See R994-401-203(1)(d) and (2)

R994-406-302. Repayment and Collection 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 the claimant is otherwise eligible and files for additional benefits during the same or any subsequent benefit

year, 100% of the benefit payment to which the claimant is entitled will be used to reduce the overpayment.

(2) Discretion for Repayment.

(a) Full restitution is required for all fault overpayments. However, legal collection proceedings may be held in abeyance at the Department's discretion and the overpayment will be deducted from future benefits payable during the current or subsequent benefit years. Discretion will only be exercised if the Department or the employer share fault in the creation of the overpayment but it is determined the claimant was more at fault under the provisions of rule R994-403-119e.

(3) Collection Procedures.

(a) The Department will send an initial overpayment notice on all outstanding fault or fraud overpayments. If, after 15 days, the claimant does not either make payment in full or enter into an installment payment agreement as provided in subsection (4) below the account is considered delinquent and the claimant is notified that a warrant will be filed unless a payment is received or an installment agreement entered into within 15 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 on which a lien has been filed are reported to the State Division of Finance for collection whereby any refunds due to the claimant 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.

(c) No warrant will be issued on fault overpayments provided the claimant entered into an installment agreement within 30 days of the issuance of the initial overpayment notice and all payments are made in a timely manner in accordance with the installment agreement.

(4) Installment Payments.

(a) If repayment in full has not been made within 30 days of the initial overpayment notice or the claimant has not voluntarily entered into an installment agreement, the Department will allow the claimant to pay in installments by notifying 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, the claimant may request a review within ten days of the date written notice is mailed.

(b) Whether voluntarily or involuntary, installment payments will be established as follows:

If the entire overpayment is:

(i) $3,000 or less, the monthly installment payment is equal to 50% of claimant's weekly benefit entitlement

(ii) $3,001 to 5,000, the monthly installment payment is equal to 100% of claimant's weekly benefit entitlement

(iii) $5,001 to 10,000 the monthly installment payment is equal to 125% of claimant's weekly benefit entitlement

(iv) $10,001 or more the monthly installment payment is equal to 150% of claimant's weekly benefit entitlement

(c) Installment agreements will not be approved in amounts less than those established above except in cases where the claimant meets the requirements of economically disadvantaged as defined in R994-406-204(1)(b)(iii). On a periodic basis the Department may send notice to the claimant requesting verification of his or her disadvantaged status. If the claimant fails to provide the verification as requested, or no longer qualifies for a lesser installment payment, the Department will send the claimant a new monthly payment amount. The new installment payment amount may be in accordance with the percentages in subparagraph (b) or a lesser amount depending on the information received from the claimant.

(d) Minimum monthly installment agreement payments must be received by the Department by the last day of each month. Payments not made timely are considered delinquent.

(5) Offsetting overpayments with subsequent eligible weeks.

If an overpayment is set up under Section R994-406-201 or R994-406-301 for weeks paid on a claim, the claimant may repay the overpayment by filing for open weeks in the same benefit year after the claim has been exhausted, provided the claimant is otherwise eligible. 100% of the compensation amount for each eligible week claimed will be credited to the established overpayment(s) up to the total amount of the outstanding overpayment balance owed to the Department.

R994-406-401. Claimant Fraud.

(1) All three elements of fraud must be proved to establish an intentional misrepresentation sufficient to constitute fraud. See section 35A-4-405(5). The three elements are:

(a) Materiality.

(i) Materiality is established when a claimant makes false statements or fails to provide accurate information for the purpose of obtaining;

(A) any benefit payment to which the claimant is not entitled, or

(B) waiting week credit which results in a benefit payment to which the claimant is not entitled.

(ii) A benefit payment received by fraud may include an amount as small as one dollar over the amount a claimant was entitled to receive.

(b) Knowledge.

A claimant must have known or should have known the information submitted to the Department was incorrect or that he or she failed to provide information required by the Department. The claimant does NOT have to know that the information will result in a denial of benefits or a reduction of the benefit amount. Knowledge can also be established when a claimant recklessly makes representations knowing he or she has insufficient information upon which to base such representations. A claimant has an obligation to read material provided by the Department and to ask a Department representative if he or she has a question about what information to report.

(c) Willfulness.

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 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. The claimant is responsible for securing the debit card issued by the Department (EPPICard or card). Securing the card means that the card and the PIN are never kept together, the card is kept in a secure location, and the PIN is not known by anyone but the claimant. If a claimant loses his or her card, the claimant must report the loss of the card to the Department and change his or her PIN immediately even if the claimant is not currently filing weekly claims for benefits. If the claimant fails to report the loss of the card and change the PIN immediately, or fails to secure the card, the claimant will be liable for claims made and money removed from the card.

(2) 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.

(3) The absence of an admission or direct proof of intent

to defraud does not prevent a finding of fraud.

R994-406-402. Burden and Standard of Proof in Fraud Cases.

(1) The Department has the burden of proving each element of fraud.

(2) The elements of fraud must be established by clear and convincing evidence. There does not have to be an admission or direct proof of intent.

R994-406-403. Fraud 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. The Department cannot exercise repayment discretion for fraud overpayments and these amounts are subject to all collection procedures.

(2) Week of Fraud.

(a) A "week of fraud" shall include each week any benefits were received due to fraud. The only exception to this is if the fraud occurred during the waiting week causing the next eligible week to become the new waiting week. In that case, the new waiting week will not be considered as a week of fraud for disqualification purposes. However, because the new waiting week is a non-payable week, any benefits received during that week will be assessed as an overpayment and because the overpayment was as a result of fraud, a fraud penalty will also be assessed.

(b) If a claimant commits a fraudulent act during one week, and benefits are paid in later weeks which would not have been paid but for the original fraud, each week wherein benefits were paid is a week of fraud subject to an overpayment determination, a penalty and a disqualification period.

(c) If the only week of fraud was the waiting week and no benefit payments were made, there will be no disqualification period.

(3) Disqualification Period.

(a) The claimant is ineligible for benefits for a period of 13 weeks for the first week of fraud. For each additional week of fraud, the claimant will be ineligible for benefits for an additional six weeks. The total number of weeks of disqualification will not exceed 49 weeks for each fraud determination. The Department will issue a fraud determination on all weeks of fraud the Department knows about at the time of the determination.

(b) The disqualification period begins the Sunday following the date the Department fraud determination is made.

(4) Overpayment and Penalty.

(a) 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, deducted at the request of the claimant to pay income taxes, or used as a payment to the Office of Recovery Services for child support obligations or other payments as required by law. For example: The claimant has a weekly benefit amount of $100 and reports no earnings during a week when he or she actually had $50 in reportable earnings. Because a claimant may earn up to 30% of his or her weekly benefit amount with no deduction, the claimant was entitled to receive $80 for that week and was thus overpaid the amount of $20. If the elements of fraud are established, the claimant is disqualified during that week of fraud and all benefits paid for that week are considered 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 and penalty 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.

(b) 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. In the example in subsection (3)(a) of this section, the overpayment would be $20 and the penalty would be $20 for a total due of $40. The overpayment and penalty 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.

(5) Additional Penalties. Criminal prosecution of fraud may be pursued as provided by Subsection 35A-4-104(1) in addition to the administrative penalties.

R994-406-404. Repayment and Collection of Fraud Overpayments and Penalties.

Fraud overpayments and penalties will be collected in accordance with rule R994-406-302 except that a warrant will always issue in fraud overpayments even if the claimant enters into an installment agreement and is current in the monthly payments. Fraud overpayments and penalties may also be collected 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 and penalties.

R994-406-405. Future Eligibility in Fraud Cases.

A claimant is ineligible for unemployment benefits or waiting week credit after a disqualification for fraud until any overpayment and penalty established in conjunction with the disqualification has been satisfied in full. Wage credits earned by the claimant cannot be used to pay benefits or transferred to another state until the overpayment and penalty are satisfied. An outstanding overpayment or penalty may NOT be satisfied by deductions from benefit payments for weeks claimed after the disqualification 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 is considered satisfied as of the beginning of the week during which payment is received by the Department. Benefits will be allowed as of the effective date of the new claim if a claimant repays the overpayment and penalty within seven days of the date the notice of the outstanding overpayment and penalty is mailed.

R994-406-406. Agency Error in Determining Disqualification Periods.

If the division has sufficient evidence to assess a disqualification prior to paying benefits, but fails to take action, a fraud disqualification will not be assessed even if the claimant provided false or information or deliberate omissions. The resulting overpayment will be assessed under the provisions of Subsections 35A-4-406(4)(b) or 35A-4-406(5)(a).

KEY: overpayments, unemployment compensation

July 26, 2006	**35A-4-406(2)**
Notice of Continuation May 23, 2002	**35A-4-406(3)**
	35A-4-406(4)

35A-4-406(5)