

**R23. Administrative Services, Facilities Construction and Management.**

**R23-19. Facility Use Rules.**

**R23-19-1. Purpose.**

The purpose of this rule is to regulate the use of state facilities and grounds as defined below, providing rules regarding political signs, as well as authorizing written policies to be created pursuant to this rule.

**R23-19-2. Authority and Applicability.**

(1) This Rule is authorized under Sections 63A-5-103 and 63A-5-204 which authorizes the making of rules regarding the use and management of state facilities and grounds owned or occupied by the State for the use of its department and agencies.

(2) This Rule shall apply to all state facilities and grounds except as follows:

(a) To the extent not authorized by law or the Utah Constitution, this Rule does not apply to state facilities and grounds under the jurisdiction of the legislative and judicial branches of the State of Utah government.

(b) This Rule does not apply to state facilities and grounds under the jurisdiction of the Utah State Board of Regents.

(c) This Rule does not apply to state facilities and grounds under the jurisdiction of the Capitol Preservation Board.

(d) This Rule does apply to state facilities and grounds under a lease to the extent consistent with the lease agreement, as the lease agreement shall control the use of the property under the lease. Notwithstanding this, the requirements of the constitutions of the United States and the State of Utah shall supersede the provisions of any such lease agreement and in particular, in the exercise of freedom of speech or assembly rights under such constitutions in any such leased facilities and grounds, the provisions of this rule regarding time, place and manner shall apply.

**R23-19-3. Definitions.**

(1) "Agency" means a State of Utah department, division or agency.

(2) "DFCM" means the Division of Facilities Construction and Management, a division within the Department of Administrative Services.

(3) "Event" or "events" are commercial, community service, private and state sponsored activities involving one or more persons. A free speech activity is not an event for purposes of this rule. The term "activity" or "activities" may be substituted in this rule for the term "event" or "events."

(4) "Facility Use Application" means a form, if required by the policies of the Managing Agency, which may require information identifying the event, time, location and purpose for a facility use permit that needs to be completed by a prospective user and submitted to the Managing Agency of the State Office Building.

(5) "Facility Use Permit" ("Permit") means a written permit issued by the Managing Agency authorizing the use of an area of state facilities and grounds for an event in accordance with this rule.

(6) "Freedom of Speech Activity" is as defined in Rule R23-20.

(7) "State Sponsored Activity" means any event sponsored by the state that is related to state business. This does not include extra-curricular activities.

(8) "Private Activity" means an event sponsored by private individuals, business or organizations that is not a commercial or community service activity.

(9) "Managing Agency" means the agency responsible for the management, operations and use of the facility. If DFCM is responsible for the maintenance of state facilities and grounds, the agreement between DFCM and the occupying agency shall identify the "Managing Agency."

(10) "State Facilities and Grounds" means State of Utah facilities and/or grounds where the principal use of the facility and/or grounds is related to state office or program functions or is under the control of any State of Utah agency; all of which is subject to the exclusions of Rule R23-19-2(2).

(11) "Community Service Activities" means events sponsored by governmental, quasi-governmental and charitable organizations, city and county government departments and agencies, public schools, and charitable organizations held to support or recognize the public or charitable functions of such sponsoring group.

(12) "Commercial Activities" means events that sponsored or conducted for the promotion of commercial products or services, and include advertising, private parties, private company or organization meetings, and any other non-public organization event. Commercial activities do not include private, community service, state sponsored, or free speech activities.

(13) "Political Sign" means a sign regarding a candidate for political office or regarding a political issue to be considered in an election.

(14) "Commercial Solicitation" is as defined in rule R23-19-6.

(15) "State" means the State of Utah and any of its agencies, departments, divisions, officers, and legislators, members of the judiciary, persons serving on state boards or commissions, and employees of the above entities and persons.

**R23-19-4. State Office Building Use Requirements.**

(1) The Managing Agency may adopt policies, which require a Facility Use Permit to be submitted. Such policies may provide for a waiver of the policy adopted under this Rule R23-19-4(1) under criteria specified in the policies. The policies may specify the form of the application, including:

(a) The time, place, purpose and scope of the proposed activity;

(b) Whether the applicant requests a waiver of any requirement of this rule or provision of the Facility Use Permit;

(c) A certificate of liability insurance in the amount of \$1,000,000 per occurrence, except for Freedom of Speech Activities where no insurance is required; and

(d) Any required fee subject to the following:

(i) Fees may be assessed for the use of state facilities and grounds through the written policies of the Managing Agency. When any activity is subject to a fee, the Managing Agency should consider at a minimum the actual cost to the State including utilities, janitorial, security and rental cost for equipment. The following applies to specific activities:

(ii) "Freedom of Speech Activities." There are no fees for freedom of speech activities, but costs for requested use of state equipment or supplies may be assessed through the uniformly applied policies of the Managing Agency.

(ii) "Commercial Activities" or "Private Activities" shall be assessed a fee, which is reasonably comparable to fees charged for similar activities within the County of the state facilities and grounds. There shall be no fee waiver allowed for commercial or private activities.

(iii) "Community Service Activities" shall be assessed a fee of 50 percent of the fee for a commercial activity and such fee may only be waived if requested in a facility use application and granted by the approving authority. There shall be no waiver of the fee related to the costs of requested use of state equipment and supplies, which is assessed through the uniformly applied policies of the Management Agency.

(iv) "State Sponsored Activities." There are no fees for state sponsored activities, except that state agencies will be required to pay the costs and fees identified in the uniform policies of the Management Agency when the activity is not required for the conducting of state business, such as after-hour

social events, employee recognition events, and holiday parties.

(2) The proposed activity shall not interfere with the operation of governmental business or public access. No persons shall unlawfully intimidate or interfere with persons seeking to enter or exit any facility, or use of any state facilities and grounds.

(3) The consumption, distribution or open storage of alcoholic beverages in state facilities and grounds is prohibited. This provision shall not apply to state facilities and grounds under the jurisdiction of the Department of Alcohol Beverage Control or golf courses under the Division of Parks and Recreation.

(4) Open flames, flammable fluids, candles, burning incense or explosives are prohibited.

(5) No displays, including but not limited to signs, shall be affixed to state facilities and grounds.

(6) User shall not sublet any part of the premises or transfer or assign the premises or change the purpose of the permitted activity without the written consent of the state.

(7) Alteration and damage to a state facilities and grounds including grass, shrubs, trees, paving or concrete, is prohibited.

(8) All costs to repair any damage or replace any destruction, regardless of the amount or cost of restoration or refurbishing shall be at the expense of the persons(s) responsible for such damage or destruction.

(9) Service animals are permitted, but the presence of other animals is allowed only with advance written permission of the Managing Agency. Owners/caretakers are responsible for the safety to the animal, persons, grounds and facilities.

(10) Littering is prohibited.

(11) Decorations.

(a) All cords must be taped down with 3M #471 tape or equivalent as determined by the Managing Agency.

(b) There shall be no posting or affixing of placards, banners, or signs attached to any part of any building or on the grounds. All signs or placards shall be hand held. Signs or posters may not be on sticks or poles.

(c) No adhesive material, wire, nails, or fasteners of any kind may be used on the buildings or grounds.

(d) Nothing may be used as a decoration, or be used in the process of decorating, that marks or damages structure(s).

(e) All decorations and supporting structures shall be temporary.

(f) Any writing or use of ink, paint or sprays applied to any area of any building is prohibited.

(g) Users may not decorate the outside of any facility or any portion of the grounds.

(h) Signs, posters, decorations, displays, or other media shall be in compliance with the state law regarding Pornographic and Harmful Materials and Performances, Section 76-10-1201 et seq.

(12) Set up/Clean up.

(a) All deliveries and loading/unloading of materials shall be limited to routes and elevators as specified by the Managing Agency.

(b) All decorations, displays and exhibits shall be taken down by the designated end time of the event in a manner that is least disruptive to state business.

(c) Users shall leave all state facilities and grounds in its original condition and appearance.

(13) Parking. There must be compliance with the written parking requirements adopted by the Managing Agency.

(14) Compliance with Laws.

(a) Users shall conform to all applicable and constitutional laws and requirements, including health, safety, fire, building and other codes and similar requirements. Occupancy limits as posted in or applicable to any public area will dictate, unless otherwise limited for public safety, the number of persons who can assemble in the public areas. Under no circumstance will

occupancy limits be exceeded. State security personnel shall use reasonable efforts to ensure compliance with occupancy, safety, and health requirements.

(b) Safety requirements as used in this rule include safety and security requirements made known to the Managing Agency by the Utah Department of Public Safety or the federal government for the safety and security of special events and/or persons.

(c) "No Smoking" statutes, rules and policies, including the Utah Indoor Clean Air Act, Section 26-38 et seq. shall be observed.

(d) All persons must obey all applicable firearm laws, rules, and regulations.

(15) Security and Supervision at Events.

(a) The Managing Agency may adopt written policies regarding security requirements for events, which must be followed.

(b) At least one representative of the applicant identified in the application and permit shall be present during the entire activity.

(16) Photography, Portraits and Video/Filming.

(a) Any photography, videotaping or filming, shall require advance notice to, and permission from the Managing Agency for scheduling.

(b) This Subsection (16) shall not apply to tourists and does not apply to the extent it is the exercise of a free speech activity.

(17) Commercial, Private and Community Service Activities. A Managing Agency may determine through its written policies to categorically not allow any commercial, private and/or community service activities. However, if commercial or private activities are allowed, then community service activities shall be allowed subject to all the requirements of this rule and a facility use permit.

(18) Liability.

(a) The state, Managing Agency and their designees, employees and agents shall not be deemed in default of any issued permit, or liable for any damages if the performance of any or all of their obligations under the permit are delayed or become impossible because of any act of God, terrorism, war, riot or civil disobedience, epidemic, strike, lock-out or labor dispute, fire, or any other cause beyond their reasonable control.

(b) Except as required by law, the state shall not be responsible for any property damage or loss, nor any personal injury sustained during, or as a result of, any use, activity or event.

(c) Users/applicants shall be responsible for any personal injury, vandalism, damage, loss, or other destruction of property caused by the user or an attendee at the applicant's event.

(19) Indemnification. Individuals and organizations using any state facilities and grounds do so at their own risk and shall indemnify and hold harmless the state from and against any and all suits, damages, claims or other liabilities due to personal injury or death, and from damage to or loss of property arising out of or resulting from the conduct of such use or activities on the Capitol Hill Complex.

(20) Enforcement of Rules. If any person or group is found to be in violation of any of the applicable laws and rules, a law enforcement officer or state security officer may issue a warning to cease and desist from any non-complying acts. If the law enforcement or security officer observes a non-compliant act after a warning, the officer may take disciplinary action including citations, fines, cancellations of event or activity, or removal from the state facility and grounds.

#### **R23-19-5. Facility Use Permit - Denial - Appeal - Cancellation - Revocation - Transfer.**

(1) Within ten (10) working days of receipt of a completed application, the Managing Agency shall issue a Facility Use

Permit or notice of denial of the application.

(2) The Managing Agency may deny an application if:

(a) The application does not comply with the applicable rules;

(b) The event would conflict or interfere with a state sponsored activity, a time or place reserved for freedom of speech activities, the operation of state business, or a legislative session; and/or

(c) The event poses a safety or security risk to persons or property.

(3) The Managing Agency may place conditions on the approval that alleviates such concerns.

(a) If the applicant disagrees with a denial of the application or conditions placed on the approval, the applicant may request a reconsideration of the Managing Agency's determination by delivering the written request for reconsideration and reasons for the disagreement to the Managing Agency within five (5) working days of the issuance of the notice of denial or approval with conditions.

(b) Within ten (10) days after the Managing Agency receives the written request for reconsideration, the Managing Agency may modify or affirm the determination.

(c) If the matter is still unresolved after the issuance of the Managing Agency's reconsideration determination, the applicant may appeal the matter, in writing, within ten (10) calendar days to the Executive Director of the Department of Administrative Services who will determine the process of the appeal.

(5) Facility Use Permits are non-transferable. The purpose, time, place and other conditions of the Facility Use Permit may not be changed without the advance written consent of the Managing Agency.

(6) An event may be re-scheduled if the Managing Agency determines that an event will conflict with a governmental function, free speech activity or state sponsored activity.

(a) The Managing Agency may revoke any issued permit if this rule R23-19, any applicable law, or any provision of the permit is being violated. The permit may also be revoked if the safety or health of any person is threatened.

(b) The permittee may cancel the permit and receive a refund of fees, less any incurred costs to the state or managing agency, and any deposits if written notice of cancellation is received by the Managing Agency at least 48 hours prior to the scheduled event. Failure to timely cancel the event will result in the forfeiture of any deposit and fees.

#### **R23-19-6. Commercial Solicitation Policy.**

(1) In general, commercial solicitation is prohibited.

(2) Nothing in this rule shall be interpreted as to infringe upon anyone's constitutional right of freedom of speech and freedom of association.

(3) In addition to the definitions in R23-19-3 above, the following definitions shall also apply to this Rule R23-19-6:

(a) "Commercial Solicitation(s)" means any commercial activity conducted for the purpose of advertising, promoting, fund-raising, buying or selling any product or service, encouraging membership in any group, association or organization, or the marketing of commercial activities by distributing handbills, leaflets, circulars, advertising or dispersing printed materials for commercial purposes.

(b) "Commercial Solicitation" for the purpose of this rule does not include free speech activities as defined in rule R23-20, Utah Administrative Code.

(c) "Commercial Solicitation" for the purpose of this rule does not include filming or photographic activities, but such activities shall be subject to rule R23-19 et seq.

(d) "Commercial Solicitation" for the purpose of this rule does not include solicitation by the state or federal government; solicitation related to the business of the state, solicitation related to the procurement responsibilities of the state,

solicitation allowed as a matter of right under applicable federal or state law; or solicitation made pursuant to a contract or lease with the state.

(4) Commercial Solicitation Allowed under a Facility Use Permit.

(a) Commercial solicitation, not prohibited by R23-19-6(5) below, may be allowed in conjunction with the issuance of a facility use permit under rule R23-19 and such commercial solicitation must comply with the facility use rules of R23-19-1 et seq.

(b) All materials allowed shall be displayed only on bulletin boards or in areas that have been approved in advance by the Managing Agency.

(c) The issuance of a facility use permit shall not be construed as state endorsement of the solicitor's product, service, charity or event.

(d) Soliciting activities are subject to all littering laws and regulations.

(5) Prohibited Commercial Solicitation. The following commercial solicitation activities are prohibited and no facility use permit shall be issued for such:

(a) Door-to-door commercial solicitation of items, services or donations.

(b) Commercial solicitation to persons in vehicles or by leaving any commercial solicitation materials on vehicles or parking lots.

(c) Any sale of food or beverage products that would be in any violation of any contract entered into by the State or the Managing Agency.

#### **R23-19-7. Waivers.**

(1) The Managing Agency may waive, in writing, the requirements of any provision of this Rule R23-19 upon being presented with compelling reasons that the waiver will substantially benefit the public of the state of Utah and that the facilities, grounds and persons will be appropriately protected. Conditions may be placed on any approved waiver to assure the appropriate protection of facilities, grounds and person. An appeal of a denial of a request for such waiver may be filed and processed similarly to the denial of a Facility Use Permit as described in R23-19-5.

(2) Costs and fees shall be waived for state sponsored activities. However, state agencies will be required to pay the costs and fees identified in the Schedule of Costs and Fees when the activity is not required for the conducting of state business, such as after-hour social events, employee recognition events, and holiday parties. Costs and fees will not be waived for commercial, private and commercial solicitation activities.

(3) Notwithstanding the waiver provisions of this rule, the following may not be waived by the Managing Agency: R23-19-4(2), (4), (7), (8), (9), (10), (14), (15), (17), (18), (19) and (20) as well as R23-19-6.

#### **R23-19-8. Political Signs.**

Political signs, except for hand-carried signs during permitted events under a Facility Use Permit, are prohibited on all State of Utah owned properties except as allowed under a Freedom of Speech Activity or as protected under the State of Utah or United States Constitutions.

Rule R23-19-8(1) shall not apply to Utah Department of Transportation right-of-ways, properties of the State and Institutional Trust Lands Administration or properties of Higher Education, any of which may have its own laws or rules applicable to political signs.

**KEY: public buildings, facilities use  
June 7, 2007  
Notice of Continuation May 24, 2007**

**63A-5-103  
63A-5-204**

**R23. Administrative Services, Facilities Construction and Management.**

**R23-20. Free Speech Activities.**

**R23-20-1. Purpose.**

- (1) The purpose of this rule is to:
- (a) facilitate constitutionally protected free speech and assembly at state facilities and grounds.
  - (b) preserve the right of every person to exercise free speech and freedom of assembly as protected by the constitutions of the state of Utah and the United States subject to lawful time, place and manner rules regarding free speech activities necessary to protect the public health, safety and welfare, including safety and security considerations, the rights of others to exercise free speech and freedom of assembly, and minimizing the disruption to governmental business;
  - (c) facilitate public assembly and communication between people;
  - (d) designate areas under the Managing Agency's control, for free speech activities as specified in this rule that are necessary to protect the public health, safety and welfare, including safety and security considerations, the rights of others to exercise free speech and freedom of assembly, and minimizing the disruption to governmental business; and
  - (e) establish guidelines to facilitate constitutionally protected free speech activities and public assembly.
- (2) This rule is intended to further the following governmental interests:
- (a) to facilitate constitutionally protected free speech activities and public assembly;
  - (b) to provide for lawful time, place and manner rules regarding free speech activities necessary to protect the public health, safety and welfare;
  - (c) to provide safety and security of all persons visiting or using state facilities and grounds;
  - (d) to minimize disruption to or interruption of the conduct of state business;
  - (e) to maintain unobstructed and efficient flow of pedestrian and vehicular traffic between and within state facilities and grounds in order to provide safety and security of persons, emergency vehicle access, and assure accessibility to public services;
  - (f) to provide all persons their guaranteed right of free speech and freedom of assembly without harm or interruption; and
  - (g) to inform persons of their responsibilities regarding littering, damage to, and vandalism of state facilities and grounds.

**R23-20-2. Authority.**

This rule is adopted pursuant to the authority granted to the Board under Sections 63A-5-103 and 63A-5-204. The Managing Agency may adopt policies and procedures to implement this rule.

**R23-20-3. Definitions.**

The definitions of rule R23-19-3 shall apply to this rule R23-20. In addition, the following definitions shall apply for purposes of this rule:

- (1) "Free Speech" and "Freedom of Assembly" means the exercise of free speech and freedom of assembly as protected by the constitutions of the state of Utah and the United States.
- (2) "Free Speech Activity" or "Free Speech Activities" means the use of an area of the state facilities and grounds for a demonstration, rally, leafleting, press conference, vigil, march or parade that is available for such activity under this rule, by one or more persons for constitutionally protected free speech or assembly.
  - (a) "Advanced Planned Free Speech Activity" means a free speech activity that can be reasonably scheduled in advance of

its occurrence, such that the Managing Agency may lawfully require compliance with certain requirements as specified in this rule.

(b) "Short-Notice Free Speech Activity" means a free speech activity that arises out of, or is related to events or other public issued activities which cannot be reasonably anticipated far enough in advance of the occurrence to reasonably allow compliance with the requirements for an advanced planned free speech activity.

(3) "Demonstration" means the assembly of a group of individuals that join together to express a point of view openly.

(4) "Rally" means to hold an open gathering of a group of individuals of similar purpose to join together to express a point of view openly.

(5) "Leafleting" means the continuous unsolicited distribution of leaflets, buttons, handbills, pamphlets, flyers or any other written or similar materials indiscriminately to pedestrians or passers by.

(6) "Press Conference" is an organized formal assembly called by an individual or group to announce or express a point of view to the public utilizing the press and other media.

(7) "Vigil" means an assembly of an individual or individuals who come together to demonstrate their solidarity by an occasion or devotional watching or observance.

(8) "March" or "Parade" means the organized assembly of individuals who are celebrating or expressing a point of view while moving from one location to another.

(9) "Public Areas" are all areas of the state facilities and grounds open to the public.

**R23-20-4. Free Speech and Freedom of Assembly; In General.**

Unless specifically regulated by this rule as to time, place or manner, all free speech and freedom of assembly may occur in all areas of the state facilities and grounds in any lawful form or manner as guaranteed by the constitutions of the state of Utah and the United States.

**R23-20-5. Time, Place, and Manner of Free Speech Activities.**

(1) Free Speech and Assembly Promoted and Encouraged. Free speech and freedom of assembly, as protected by the constitutions of the state of Utah and United States, is promoted and encouraged at state facilities and grounds. Free speech activities, as specifically defined in this rule, are subject to lawful time, place and manner rules regarding free speech activities necessary to protect the public health, safety and welfare, including safety and security considerations, the rights of others to exercise free speech and freedom of assembly, and minimizing the disruption to governmental business.

(2) Subject to Facility Use Rules, Exception. Free speech activities shall be subject to R23-19-1 et seq., except that, in the case of conflict, the provisions of this rule R23-20 shall control.

(3) Time.

(a) Free speech activities held outdoors may take place 24 hours a day subject to duration requirements specified in this rule.

(b) Free speech activities held indoors may take place during the hours such public areas are open to the public, generally between 8:00 a.m. to 5:00 p.m.

(4) Place.

(a) Health, safety and welfare restricted areas that may not be reserved for a free speech activity are the vehicular traveled portions of roads, roadways or parking lots, areas directly in front of or adjacent to parking garages' entrances or exits, paths of egress or access to emergency stairs and emergency egress hallways, areas under construction which are hazardous to non-construction workers, and those specific portions of the state facilities and grounds that contain storage, utilities and

technology servicing the state facilities and grounds or other areas, which either must be available for prompt repair, are not open for public use or represent a danger to members of the public.

(b) In order to protect the public health, safety and welfare and allow for public accessibility to and the conduct of state business, a demonstration, rally, parade, march or vigil may only be conducted on the public areas of the grounds and not inside the facilities.

(c) Notwithstanding any other provision of this rule, there is no registration requirement for free speech leafleting. In order to protect the public, health, safety and welfare and allow for public accessibility to and the conduct of state business, free speech activity leafleting, as defined in this rule, is allowed at state facilities and grounds in the areas open to the public, without interference from state security, provided that it is done in a non-aggressive manner and does not prevent other individuals from passing along sidewalks and through doorways. The state is allowed to enforce any and all applicable statutes and ordinances regarding blocking public sidewalks, blocking hallways, disorderly conduct, blocking entrances to public buildings, garage entries, assault, battery and the like consistent with the requirements of the constitutions of the state of Utah and the United States. Leafleting is not allowed by placing leaflets on vehicles on the state facilities and grounds.

(5) Manner.

(a) Registration and Scheduling.

(i) All free speech activities shall comply with the following requirements, except that leafleting shall not be subject to any registration requirements.

(ii) An advanced planned free speech activity shall register as soon as reasonably possible, but not less than seven (7) days in advance of the free speech activity by registering with the Managing Agency.

(iii) Persons registering will provide the following information: the name of the sponsoring organization; the name and contact information of a contact person or agent; the type of free speech activity; the date, time and duration of the free speech activity; the public area requested for use; the number of anticipated participants; and a list of equipment and services to be used in connection with the free speech activity. Registration shall be on a standard form prepared by the Managing Agency.

(iv) If a person or group fails to register due to a short-notice free speech activity, they may still conduct the free speech activity provided it does not create a problem of public safety or interfere with the time and location of a previously scheduled free speech activity in the same public area and meets all the other requirements of this rule. In the case of such problem of public safety or interference, the Managing Agency will coordinate with the applicant in reasonable efforts to find an alternative reasonable time or location.

(b) Priority.

(i) The scheduling assignment of public areas shall be made on a first-come, first-serve basis.

(ii) In the case of scheduling conflicts, first priority in the use of the public areas shall be given to government business and/or state sponsored activities where the authorized governmental official is reserving the public area for an expressed governmental or state need. Free speech activities shall be given priority over community service, commercial and private activities. In the case of such problem of public safety or interference, the Managing Agency will coordinate with the applicant in reasonable efforts to find an alternative reasonable time or location.

(iii) No group or individual will be denied access to or use of a public area unless the proposed free speech activity violates this rule, applicable law, conflicts with a scheduled state sponsored activity, or conflicts with the time and location of a previously scheduled free speech activity.

(c) Consistent with the protections of the Utah and United States constitutions in order to preserve the free speech rights of others, outbursts or similar actions which disrupts or is likely to disrupt any government meeting or proceeding, is prohibited.

#### **R23-20-6. Expedited Appeals-Free Speech Activities.**

(1) Claims eligible for expedited appeal. The following determinations of claims regarding a free speech activity may be appealed as provided below:

(a) A determination by the Managing Agency that a proposed event or activity is a commercially related special event and not exempted as a free speech activity;

(b) A claim by an applicant that the Managing Agency's denial, or condition of approval, of a proposed route, time or location for a free speech activity constitutes a violation of this rule or an unlawful time, place or manner restriction; or

(c) Any other claim by an applicant that any action by the state regarding the proposed free speech activity impermissibly burdens constitutionally protected rights of the applicant, sponsor, participants or spectators.

(2) Process for Expedited Appeal:

(a) The State acknowledges an obligation to process appeals regarding a free speech activity promptly so as to not unreasonably inhibit or unlawfully burden constitutionally protected activities. Any time limit stated below may be lengthened if agreed to by the appellant and the Managing Agency.

(i) As soon as reasonably possible, but no later than two (2) working days after receipt of a completed registration, the Managing Agency shall issue a determination, which may include lawful conditions, or notice of denial of the registration application.

(b) The Managing Agency may deny the requested activity if:

(i) the requested activity does not comply with the applicable rules;

(ii) the registrant attempts to register a free speech activity, but the Managing Agency determines that it is a commercial activity;

(iii) the event would disrupt, conflict or interfere with a state sponsored activity, a time or place reserved for another free speech activity, the operation of state business, and such determination is in accordance with applicable constitutional provisions; and/or

(iv) the event poses a safety or security risk to persons or property and such determination is in accordance with applicable constitutional provisions.

(c) The Managing Agency may place conditions on the approval that alleviates such concerns and such conditions are in accordance with this rule and applicable constitutional provisions.

(i) If the applicant disagrees with a denial of the request or conditions placed on the approval, the applicant may appeal the Managing Agency's determination by delivering the written appeal and reasons for the disagreement to the Managing Agency.

(ii) Within three (3) working days after the Managing Agency receives the written appeal, the Managing Agency may modify or affirm the determination.

(iii) If the matter is still unresolved after the issuance of the Managing Agency's reconsideration determination, the applicant may appeal the matter, in writing, within ten (10) calendar days to the Executive Director of the Department of Administrative Services who will determine the process of the appeal and provides for a determination within five (5) working days.

(e) If the applicant for a free speech activity needs a more expeditious process of an appeal, upon written request of the applicant, the Attorney General or designee may advise the

Executive Director of the Department of Administrative Services or the Managing Agency of the need to make an immediate consideration of the appeal.

**R23-20-7. Expedited Review of Free Speech Concern.**

If any person claims to be inhibited from the exercise of constitutionally protected free speech by a public officer, officer or other person at any state facilities and grounds, such person is advised to promptly notify the Managing Agency. The Managing Agency will then take reasonable steps in an attempt to resolve the matter.

**KEY: rally, free speech, assembly**  
**June 7, 2007**

**63A-5-103**  
**63A-5-204**

**R37. Administrative Services, Risk Management.****R37-1. Risk Management General Rules.****R37-1-1. Purpose.**

The purpose of this rule is to establish the liability and property insurance coverage provided by the Risk Management Fund, and the conditions, underwriting standards, and other rules that govern or control the use of this coverage.

**R37-1-2. Authority.**

This rule is established pursuant to Section 63A-4-101 which authorizes the State's Risk Manager to recommend rules to the Director of the Department of Administrative Services who is authorized to enact rules.

**R37-1-3. Definitions.**

(1) "Conditions" specific policy requirements the violation of which will invalidate coverage.

(2) "Coverage or coverage provision" means the type of protection provided against specific risks or losses.

(3) "Covered Entity" means a state department or other state agency not within a state department, a state college or university, a public school district or other entity which is covered under the terms of a coverage document issued to it by the Risk Management Fund.

(4) "Underwriting Standard" or "Risk Control Standard" means an action or procedure which must be performed by a covered entity in order to reduce the risk of loss or to avoid imposition of coverage restrictions, deductibles, increased premiums, or loss of credits or dividends.

**R37-1-4. Description of the Fund and its Activities.**

The Risk Management Fund, hereafter referred to as the Fund, is a self-insurance mechanism established by statute to handle losses to or claims against the state, its agencies and institutions of higher education, and participating school districts and other entities, which are treated as state agencies when participating, all hereafter referred to as covered entities. Although coverage through the Fund may be in formats like or similar to insurance policies, the relationship between the Fund and covered entities is not that of insurer and insured. No special duties, rules of construction or other legal doctrines recognized by the courts or created by statute with respect to the relationship of an insurer to its insured shall apply to the Fund or entities covered by it, except those which are specifically required by Title 31A, Chapter 12 with respect to some coverage provided to school districts. The duty to defend employees, as defined in Section 63-30d-102 UCA, or volunteers, as defined in Section 67-20-2 UCA, of covered entities extends only as far as the entities' duty to employees or volunteers under the "Governmental Immunity Act" and no special relationship of insurer to insured exists between the Fund and employees or volunteers of covered entities.

**R37-1-5. Coverage, Deductibles, Duties and Conditions.**

Specific risks covered, properties covered, coverage limits, exclusions, deductibles, conditions and other coverage provisions for coverage through the Risk Management Fund shall apply in accordance with coverage policies issued by the Fund to each covered entity. Subject to specific provisions of the coverage policies, the Fund provides the following coverage:

**(1) Liability**

(a) Risks Covered - General, automobile, personal injury, errors and omissions, malpractice and garage keepers' liability, and personal injury protection coverage applying to all premises, operations, approved contracts, products and completed operations; owned, non-owned and hired automobiles, other than personal use automobiles; employees, volunteers, and students in the scope of employment or approved services to the public.

(b) Limits - Maximum liability under Section 63-30d-604 UCA for situations subject to the Governmental Immunity Act; higher limits for other situations as indicated in coverage policies issued to each covered entity.

(c) Deductible - Deductibles apply to some specific coverages and situations as noted in the coverage document, but there is no general deductible.

(d) Conditions - The following conditions apply to liability coverages:

(i) In the event of an occurrence, personal injury, act, error, omission, incident, or any other situation likely to give rise to a claim covered by the Fund, written notice containing particulars sufficient to identify the covered entity or person and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the potential claimant, and of available witnesses, shall be given by or for the covered entity or person to the Fund or any of its authorized agents as soon as practicable. The covered entity shall promptly take, at its own expense, all reasonable steps to prevent additional injury or damage from arising out of the same or similar conditions; provided (1) that a failure to take preventive measures shall not constitute a breach of this condition unless the Fund has requested the covered entity, in writing, to undertake the preventive measures and (2) the expense shall not be recoverable from the Fund.

(ii) If claim is made or suit is brought against the covered entity or person, whether in court or through an administrative proceeding with the Utah Anti-discrimination Division, the Federal Equal Employment Opportunity Commission or similar body, the covered entity or person shall immediately forward to the Fund a copy of every demand, notice, summons or other process received by it or its representative. Any covered person who is an employee or volunteer of the covered entity shall comply with all provisions of Sections 63-30d-902 UCA, 63-30d-903 UCA, or both before the Fund shall have any duty to defend or pay any judgment against such covered person.

(iii) The covered entity or person shall cooperate with the Fund and, upon the Fund's request, provide the fund with requested information, assist in making settlements, assist in making rule 68 offers of judgement assist in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the covered entity or person because of bodily injury or property damage with respect to which coverage is afforded by the Fund; and the covered entity or person shall attend hearings and trials and assist in securing and assist giving evidence and obtaining the attendance of witnesses. The covered entity or person shall not, except at its own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of the accident.

(iv) In the event any employee or volunteer requests under the terms of Section 63-30d-902 UCA that the covered entity defend him relative to any action or claim which would be covered by the Fund, the covered entity shall immediately forward the request to the Fund and the Fund shall have the right to determine on behalf of the covered entity whether to defend, defend under a reservation of rights, or decline to defend.

(v) The covered entity or person shall share with the Fund all records requested by the Fund, relative to any claim under this coverage, to the fullest extent permitted by the Utah Government Records Access and Management Act (GRAMA). If the covered entity falls under the provisions of Section 63-2-701, 702 or 703 UCA, the covered entity shall adopt an ordinance or policy, or make rules which allow the sharing of records with the Fund to at least the extent permitted by GRAMA and shall share with the Fund all records requested relative to any claim under this coverage to the fullest extent permitted by the ordinance, policy or rule.

(vi) This coverage does not apply to any claim under the Americans With Disabilities Act, Section 504, of the Rehabilitation Act of 1973, as amended, or similar laws based in whole or in part on the failure of any covered entity to provide a requested accommodation unless the covered entity has notified the Fund of its preliminary intention not to provide the requested accommodation and has allowed the Fund a reasonable opportunity to consult with the covered entity before the covered entity denies the requested accommodation.

(e) Special Automobile Condition - A \$10,000 per accident deductible applies to amounts otherwise payable under this coverage because of an accident involving an automobile driven by a covered person who either:

(i) at the time of the accident was not a licensed driver for the type of vehicle involved; and who also was not so licensed at the closer to the accident date of:

(A) the date of his employment as a driver of the covered entity;

(B) the date of the covered entity became or should have become aware he was not so licensed; or

(C) one year prior to the accident date; or

(D) at the time of such accident the covered entity knew or should have known that the employee:

(I) had a vehicle accident which was his fault,

(II) had been convicted of driving under the influence of alcohol or drugs, or

(III) had been convicted of reckless driving, during the one year period prior to such accident and who had not completed a Fund approved driver safety program before the accident, provided, however, that this provision shall not apply if the date of the accident is less than thirty days after the covered entity knew of or should have known of the incident under a, b or c above.

(2) Property

(a) Risks Covered - Virtually all insurable risks of loss.

(b) Property Covered - Real and personal property owned by covered entities, for which they are liable or for which they have assumed responsibility, and which has been reported to the Fund.

(c) Limits - Replacement cost in most cases; sub-limits apply for earthquake and flood damage.

(d) Deductible - \$1,000 per occurrence applies to each and every loss, as indicated in the coverage policy.

(e) A \$100,000 deductible applies to each and every loss occurrence at any location for which:

(I) the fund has recommended that the insured take a reasonable risk reduction action:

(II) the fund has given the insured thirty days notice that this higher deductible will apply, if the recommendation is not complied with; and

(III) the insured has not complied with the recommendation within thirty days of notice that without compliance this higher deductible will apply

This higher deductible will cease to apply when the insured has complied with the recommendation to the satisfaction of the fund as evidenced by written notice to the insured of the reduction of the deductible.

(f) Conditions - The following conditions apply to property coverage.

(i) In case of loss, the covered entity shall:

(A) give immediate notice of such loss to the Fund;

(B) protect the covered property from further damage, make reasonable temporary repairs required to protect the covered property, and keep an accurate record of repair expenditures;

(C) prepare an inventory of damaged personal property, showing in detail, quantity, description, replacement value, and amount of loss. Attach to the inventory all bills, receipts and related documents that substantiate the figures in the inventory;

(D) exhibit the remains of the damaged property as often as may be reasonably required by the Fund and submit to examination under oath;

(E) submit to the Fund within 60 days after requested a signed, sworn statement of loss that sets forth to the best of the covered entity's knowledge and belief:

(I) the time and cause of loss;

(II) interest of the covered entity and all others in the property involved and all encumbrances on the property;

(III) other policies of insurance that may cover the loss;

(IV) changes in title or occupancy of the property during the term of the policy;

(V) specifications of any damaged building and detailed estimates for repair of the damage;

(VI) an inventory of damaged personal property described in (C) above;

(F) give immediate notice of the loss to the proper police authority if loss is due to a violation of law.

(ii) Values Reporting

The covered entity agrees to submit a statement of replacement values of property covered by the Fund by April 1st each year or by a later date as indicated by the Fund. Required information will be in formats requested by the Fund. In addition, any acquisition valued in excess of \$25,000,000 must be reported within ninety days of acquisition in order to be covered. The requirements of this condition apply to all types of covered property.

(3) Bond

(a) Risks Covered - Faithful performance; all employees except treasurers by title are covered.

(b) Limits - \$10,000,000

(c) Deductible -

(I) Subject to (II) below a \$1,000 deductible applies to each and every occurrence

(II) A \$100,000 deductible applies to each and every loss occurrence or from any operation which;

(A) the fund has recommended that the insured take a reasonable risk reduction action:

(B) the fund has given the insured thirty days notice that this higher deductible will apply, if the recommendation is not complied with; and

(C) the insured has not complied with the recommendation within thirty days of notice that without compliance this higher deductible will apply

This higher deductible will cease to apply when the insured has complied with the recommendation to the satisfaction of the fund as evidenced by written notice to the insured of the reduction of the deductible.

(d) Conditions -

(i) Upon knowledge or discovery of loss under this coverage, the covered entity shall:

(A) give notice thereof at the earliest practicable moment, not to exceed 30 days, to the Fund and,

(B) file detailed proof of loss, duly sworn to, with the Fund within four months after the discovery of loss.

(ii) Upon the Fund's request, the covered entity shall produce for the Fund's examination all pertinent records, at reasonable times and places as the Fund shall designate, and shall cooperate with the Fund in all matters pertaining to loss or claims under this coverage.

(4) Automobile Physical Damage

(a) Risks Covered - Comprehensive and collision.

(b) Automobiles Covered - All automobiles of an entity except personal use automobiles.

(c) Limits - Actual cash value

(d) Deductible - \$1,000 or less, according to coverage policy.

(e) Conditions -

(i) In the event of loss, the covered entity shall:

(A) protect the covered automobile, whether or not this coverage applies to the loss, and any further loss or damage due to the named insured's failure to protect shall not be recoverable under this coverage; reasonable expenses incurred in affording such protection shall be deemed incurred at the Fund's request;

(B) give notice thereof as soon as practicable to the Fund or any of its authorized agents and also, in the event of theft or larceny, to the police;

(C) file with the Fund within 90 days after loss, sworn proof of loss in such form and including such information as the Fund may reasonably require and, upon the Fund's request shall exhibit the damaged property and submit to examination under oath;

(D) cooperate with the Fund and, upon the Fund's request, shall assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the covered entity because of loss with respect to which this coverage applies; and shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

(5) Conditions applicable to all coverages provided by the Fund:

(a) In accordance with Subsection 63A-4-101(2)(b)(v) UCA, in the event of any coverage dispute between the Fund and any covered entity or person, there shall be no right of legal action against the Fund, unless such right is specifically required by statute. Coverage disputes shall be resolved by binding arbitration upon request of any covered entity or person. In the event of a request, the Fund and the requesting covered entity or person shall each select an arbitrator and the two arbitrators shall select a third arbitrator. Decisions made by a majority of the three arbitrators shall be binding upon the Fund and the requesting covered entity or person. The Fund and the requesting covered entity or person shall each pay the cost of their chosen arbitrator. The losing party shall pay the cost of the third arbitrator. The Fund and the covered entity or person may mutually agree on any alternative arbitration procedure.

(b) In the event of any payment under any coverage provided through the Fund, the Fund shall be subrogated to all of the covered entity or person's rights of recovery therefor against any person or organization and the covered entity or person shall execute and deliver instruments and papers and do whatever else is necessary to secure these rights. The covered entity or person shall do nothing after the loss to prejudice these rights.

#### **R37-1-6. Premium Establishment.**

In addition to other actuarially sound factors the Risk Manager may use the following in determining the appropriate premiums for coverage provided to each covered entity:

(1) Entity efforts at exposure management including completion of self inspection forms, employee training, agency attendance at Fund sponsored seminars, agency risk control meetings risk related policy development and implementation, etc.

(2) Entity accidents, claims and loss history

(3) Recent state and federal statutes or court decisions affecting covered entities and operations.

(4) Number of employees in the entity and size of entity's budget.

(5) Value, protection and other characteristics of entity's buildings and contents.

(6) Number, type and value of entity vehicles.

(7) Entity operations and activities.

(8) Actuarial studies

#### **R37-1-7. Risk Control Standards.**

In accordance with Subsection 63A-4-101(2)(b)(i), each covered entity shall comply with the following risk control

standards:

(1) Covered entities shall appoint an entity risk coordinator who shall report directly to the covered entity's director, school superintendent or university/college president, or to another individual who reports directly to the covered entity's director, school superintendent or college/university president. Subordinate risk coordinators or other individuals may be appointed at the division, school or lower levels of the organization as the entity deems appropriate. The day to day implementation or management of the entity's risk management duties may be assigned by the risk coordinator to subordinate individuals, committees, or groups as necessary for efficient operation and implementation.

(2) The covered entity risk coordinator shall be responsible for the following duties:

(a) Identifying, evaluating and resolving risk exposures for the entity,

(b) Coordinating with the Fund on the reporting and investigation of all claims or losses,

(c) Coordinating with the Fund on all liability prevention and loss control and prevention activities.

(d) Ensuring that the Fund is provided with all reasonable information necessary to compute premiums.

(e) Ensuring that premium billings are processed and paid.

(f) Ensuring that notification is made to the Fund on all incidents, issues or informal or administrative claims, including claims originating at the EEOC and/or UALD that may result in a formal claim against the Fund.

(g) Internally supervising or managing all loss prevention activities.

(h) Normally chairing the entity Risk Control Committee and ensuring staff support to the Risk Control Committee.

(3) Each covered entity shall appoint a Risk Control Committee, hereinafter referred to as the committee. Each covered entity shall include on its committee those positions deemed necessary by the Risk Coordinator and/or the entity director, president, or superintendent to provide comprehensive review and risk management services to all of the entities operations. It is recommended that the following positions be included on the committee:

(a) Entity Risk Coordinator.

(b) The covered entity's maintenance director and/or facilities director, where the entity owns or manages its own buildings or in the case where the building is leased the DFCM manager assigned to that building.

(c) The covered entity's Human Resource/Personnel director.

(d) The covered entity's Americans with Disabilities Act Coordinator, or other entity Civil Rights coordinator or director.

(e) The covered entity's Safety Director.

(f) The covered entity's legal counsel or attorney as an ex-officio member.

(g) Staff from the Fund, who may attend the meetings in an ex officio capacity.

The covered entity may appoint on either a permanent or ad hoc basis other individuals whose job duties or special expertise may be of use to the committee. These individuals may include the covered entity's internal auditor, the covered entity's security director, the transportation or motor pool director, a representative from the entity's finance and accounting section and employee representatives. School districts may also wish to include on the committee representatives from the district's athletic, vocational, science and other high risk curriculum areas. The Fund, upon request of the covered entity risk coordinator, will provide recommendations on the makeup of the committee.

The committee shall be normally chaired by the covered entity's risk coordinator. The committee shall be responsible for oversight and supervision of the entity's risk coordination and

management program and shall meet at least once each quarter. In advance of the meeting, the committee shall publish an agenda of its meetings and shall forward a copy of the agenda to the Fund. The entity or its committee may appoint other ad hoc or standing committees, or subcommittees to deal with specific issues and problems such as safety, risk control training, civil rights, accident review etc.

(4) The duties of the committee shall include the following activities:

(a) Identifying, evaluating and resolving entity risk exposures.

(b) Preparing, or reviewing the preparation of, the Risk Management self evaluation forms and shall certify their accuracy.

(c) Serving as a liaison between the Fund and the entity at the discretion of the Risk Coordinator.

(d) Reviewing inspection and other reports from the Fund and where applicable, implementing the proposed recommendations.

(e) Reviewing and analyzing investigation reports and recommendations regarding all claims, accidents, workers injuries or near accidents, and making recommendations to entity management at appropriate levels on methods for reducing accidents or claims.

(i) Where appropriate, the committee may recommend disciplinary and/or corrective action for employees who violate safety standards including but not limited to OSHA, health, hazardous materials, fire and entity specific standards and/or other standards, policies or rules that result in claims, accidents, worker injuries or near accidents. Any disciplinary or corrective action imposed shall be taken in accordance with the entity's rules.

(ii) The committee, acting as the agency's Accident Review committee, shall review reports and recommendations from subcommittees and others regarding the driving and accident records of employees and may restrict employees from using entity vehicles or the employee's own vehicle on entity business.

(f) Developing policies related to risk reduction and accident prevention and shall recommend their adoption by entity management.

(g) Conducting appropriate evaluations or audits of entity operations and developing findings and recommendations for resolution of identified problems or risk exposures.

(h) Conducting an annual review or evaluation of the entity's risk reduction efforts and providing the Fund with a copy of this evaluation.

(i) Performing other related duties as assigned by the entity risk coordinator, by entity management, or as requested by the Fund.

### **R37-1-8. Underwriting Standards.**

In accordance with Subsection 63A-4-101(2)(b)(i), covered entities shall comply with the following underwriting standards.

(1) Covered entities shall complete the Risk Management Self Inspection Forms within established time frames on the forms supplied by the Fund, unless special exemption has been granted by the State Risk Manager.

(2) Covered entities shall provide all staff with training approved by the Fund on sexual harassment (unlawful harassment) in the work place and other civil rights and liability issues as required by the Fund. After initial training all covered entities shall provide updated or refresher training to all staff members every two (2) years. For state entities the Fund shall coordinate the required training with the Department of Human Resource Management as appropriate. This training shall be developed and provided by qualified individuals. Covered entities shall keep records of the training, including who provided the training, who attended the training and when they attended it.

(3) Covered entities shall conduct or shall have conducted for them drivers license verification checks on all new employees and volunteers who operate entity vehicles or their own vehicles on entity business at time of employment. Covered entities shall, at least annually, verify the status of the drivers license of all employees and volunteers who operate entity vehicles or their own vehicles on entity business.

(a) Covered entities shall establish procedures to ensure that any employee or volunteer who does not have a valid drivers license is not allowed to operate an entity vehicle or his own vehicle on entity business.

(b) Covered entities shall develop procedures to ensure that records of drivers license checks and the results of these checks shall be kept confidential.

(4) Covered entities shall include in all written job descriptions or other job analysis documents or individual performance plans where use of a vehicle is an essential function of the job, a requirement for maintenance of a valid and appropriate drivers license.

(5) Covered entities shall require and document that all employees who operate entity vehicles, or their own vehicles on entity business as an essential function of the job, complete yearly a Fund approved or provided driver safety course. All other employees who drive vehicles as part of the performance of entity business shall complete a Fund approved or provided driver safety program at the time of initial employment and at least once every three years.

(6) Covered entities shall develop and enforce policies and procedures to deal with problem drivers and other driving situations. In addition to other appropriate provisions, these policies shall contain the following:

(a) Employees or volunteers who are involved in an at-fault accident, shall not be allowed to operate entity vehicles, or their own vehicles on entity business, beyond a reasonable time, not to exceed thirty days. During this time the employee or volunteer must complete the Fund approved driver safety program in order to maintain driving privilege. This training shall not take the place of any agency imposed discipline, corrective action or counseling.

(b) Employees or volunteers who are required to operate entity vehicles or their own vehicles while on entity business shall operate the vehicles within the limits or restrictions of their individual licenses.

(c) Drivers who are convicted of Driving under the Influence of Alcohol or Drugs, or Reckless Driving shall not be allowed to operate entity vehicles.

(7) Covered entities shall develop return to work and temporary transitional duty procedures. Entities shall ensure that these procedures are in accordance with the requirements of the "Americans With Disabilities Act", and other applicable laws and rules. The procedures shall provide for the return of injured employees to work at the earliest appropriate date.

(8) Covered entities shall review the performance standards or evaluation plan of each employee and where appropriate add a standard requiring the use of required safety equipment, adherence to safety standards, or other liability and risk reduction requirements appropriate to the position and duties performed by the employee.

(9) All new construction, remodels, additions to existing facilities shall comply with the adopted editions of the Uniform Building Code, Uniform Fire Code and other applicable codes. Existing facilities known to be out of compliance with the adopted edition of the Uniform Building Code, Uniform Fire Code and all other applicable codes at the time of construction, shall be brought up to compliance as a condition of insurability, otherwise an appropriate premium surcharge or coverage restriction may be instituted upon reasonable notice and opportunity to correct areas of noncompliance.

**KEY: risk management**  
**March 31, 2006**  
**Notice of Continuation June 8, 2007**

63A-4-101 et seq.

**R37. Administrative Services, Risk Management.****R37-2. Risk Management State Workers' Compensation Insurance Administration.****R37-2-1. Purpose.**

The purpose of this rule is to establish the responsibilities and guidelines governing the acquisition and administration of workers' compensation insurance, the allocation of costs and the required activities or actions of covered agencies utilizing this coverage.

**R37-2-2. Authority.**

This rule is established pursuant to Sections 63A-4-101 and 63A-1-110, which authorize the State's Risk Manager to recommend rules to the Department Director who is authorized to enact rules; and Subsection 63A-4-101(2)(a) which authorizes the State's Risk Manager to acquire and administer workers' compensation insurance for the state.

**R37-2-3. Workers' Compensation Costs Allocation.**

The State's Risk Manager shall allocate workers' compensation insurance costs to state entities on the basis of an equitable and actuarially sound distribution of costs. The Risk Manager shall collect these funds through the state's payroll process. The following factors may be considered in developing this allocation:

- (1). Covered entity injured workers' compensation claims and accident history and trends.
- (2). Covered entity safety, loss prevention and loss control programs.
- (3). Covered entity disability prevention efforts.
- (4). Covered entity injured worker temporary transitional duty, and return to work programs.
- (5). Covered entity case consultation and cooperation with Risk Management.
- (6). Covered entity payroll by rate classification.

**R37-2-4. Expenditure of Workers' Compensation Collections.**

The expenditure of collected funds shall be made with the approval of the Risk Manager. In addition to other activities which reduce the overall workers' compensation costs to the state, the collected funds may be expended for:

- (1). Workers' Compensation Insurance premiums for state entities.
- (2). Work site modification and assistive technology to return injured employees to work.
- (3). Employee safety and loss control programs.
- (4). Disability prevention programs.
- (5). Claims management.
- (6). Claims information systems.

**R37-2-5. Preferred Provider Program.**

The Risk Manager may designate a preferred provider program developed by the state's workers compensation insurer, or a preferred provider program developed by Risk Management. Additional contracted facilities or providers may be designated by the Risk Manager. Any designated program shall be in accordance with statutes and rules governing such workers' compensation programs. If the Risk Manager designates any preferred provider program or additional contracted facility or providers state entities shall notify employees of them and require their use by employees for initial treatment.

**R37-2-6. Agency Notice and Other Requirements.**

All state entities shall do the following with respect to any employee or volunteer injury:

- (1). Provide immediate notification to Risk Management through a phone call, E-mail, or facsimile, when any of the

following conditions occur:

- (a). Serious injury.
  - (b). An injury which is questionable or appears to be fraudulent.
  - (c). An accident involving the death of an employee.
  - (d). An accident where a third party action caused the accident, death or injury.
- (2). Notify the Division of Industrial Accidents of the Utah State Labor Commission of incidents, as required by Subsection 34a-2-407(4).
  - (3). Within seven days of an employee injury, complete a "First Report of Injury Form" provided by Risk Management.
  - (4). Distribute copies of the "First Report of Injury Form", as indicated on the form, to the Division of Industrial Accidents of the Labor Commission, the state's Workers' Compensation insurer, Risk Management, and the injured employee.

**KEY: risk management, workers compensation 1993**

**63A-4-201**

**Notice of Continuation June 8, 2007**

**R37. Administrative Services, Risk Management.****R37-3. Risk Management Adjudicative Proceedings.****R37-3-1. Definitions.**

The terms used in this rule are defined in Section 63-46b-2.

**R37-3-2. Authority.**

This rule is enacted in compliance with the Utah Administrative Procedures Act, Section 63-46b-1(2)(g) et seq., and Section 63A-1-110.

**R37-3-3. Purpose.**

(1) The Risk Manager designates all agency action subject to the scope and applicability of the Utah Administrative Procedures Act, Title 63, Chapter 46b, as informal proceedings.

(2) Pursuant to Section 63-46b-1(2)(g), all agency action with respect to questions of coverage of the risk management Fund, premiums to be charged by the Fund and the interpretation of policies issued by the Fund are actions relating to contracts for the purchase or sale of goods or services by and for the State or by and for an agency of the State and are excluded from the coverage of the Administrative Procedures Act, Section 63-46b-1 et seq., and these rules.

**R37-3-4. Procedure.**

In compliance with Section 63-46b-5, the procedure for the informal adjudicative proceedings is as follows:

(1) The agency shall not be required to respond in writing to a request for agency action.

(2) The respondent to a notice of agency action pursuant to Section 63-46b-3 shall file an answer or responsive pleading to the allegations contained in the notice of agency action within 20 days following receipt of the notice of agency action.

(3) No hearing shall be held in any agency informal adjudication unless required by statute.

(4) If the agency does not respond in writing to a request for agency action, or does not issue a written decision or order pursuant to Section 63-46b-5 (1)(i) within 90 days of the filing of the request for agency action, such request shall be deemed denied by the agency.

**R37-3-5. Agency Review.**

Pursuant to Section 63-46b-12, the risk manager does not recommend and the executive director does not enact a rule permitting agency review.

**KEY: risk management**

**1988**

**Notice of Continuation June 8, 2007**

**63A-1-110**

**63-46b**

**R58. Agriculture and Food, Animal Industry.****R58-8. Testing and Vaccination of Bovine Livestock for Brucellosis Control.****R58-8-1. Authority.**

Promulgated under Subsection 4-2-2(1)(j) and Section 4-31-16.

**R58-8-2. Requirements.**

Before bovine livestock change ownership, testing and/or vaccination for brucellosis must be verified and/or the bovine livestock must meet the applicable animal health requirements. The livestock operation shall show proof of testing and/or vaccination to a representative of the Utah Department of Agriculture and Food. This proof shall be noted and a document made available to accompany the livestock as they are moved. In the event the foregoing requirements have not been met, the cattle shall not be moved.

**KEY: disease control**

1987

Notice of Continuation June 7, 2007

4-31-16

4-2-2(1)(j)

**R81. Alcoholic Beverage Control, Administration.****R81-1. Scope, Definitions, and General Provisions.****R81-1-1. Scope and Effective Date.**

These rules are adopted pursuant to Section 32A-1-107(1), and shall be interpreted so as to be consistent with the Alcoholic Beverage Control Act. These rules shall govern the department and all licensees and permittees of the commission.

**R81-1-2. Definitions.**

Definitions of terms in the Act are used in these rules, except where the context of the terms in these rules clearly indicates a different meaning.

(1) "ACT" means the Alcoholic Beverage Control Act, Title 32A.

(2) "BAR" means a service structure maintained on a licensed premises to furnish glasses, ice and setups and to mix and serve liquor and to serve beer.

(3) "COMMISSION" means the Utah Alcoholic Beverage Control Commission.

(4) "COUNTER" means a level surface on which patrons consume food.

(5) "DECISION OFFICER" means a person who has been appointed by the commission or the director of the Department of Alcoholic Beverage Control to preside over the prehearing phase of all disciplinary actions, and, in all cases not requiring an evidentiary hearing.

(6) "DEPARTMENT" or "DABC" means the Utah Department of Alcoholic Beverage Control.

(7) "DIRECTOR" means the director of the Department of Alcoholic Beverage Control.

(8) "DISCIPLINARY ACTION" means the process by which violations of the Act and these rules are charged and adjudicated, and by which administrative penalties are imposed.

(9) "DISPENSING SYSTEM" means a dispensing system or device which dispenses liquor in controlled quantities not exceeding one ounce and has a meter which counts the number of pours served.

(10) "GUEST ROOM" means a space normally utilized by a natural person for occupancy, usually a traveler who lodges at an inn.

(11) "HEARING OFFICER" or "PRESIDING OFFICER" means a person who has been appointed by the commission or the director to preside over evidentiary hearings in disciplinary actions, and who is authorized to issue written findings of fact, conclusions of law, and recommendations to the commission for final action.

(12) "LETTER OF ADMONISHMENT" is a written warning issued by a decision officer to a respondent who is alleged to have violated the Act or these rules.

(13) "MANAGER" means a person chosen or appointed to manage, direct, or administer the affairs of another person, corporation, or company.

(14) "MEMBER" means an individual who regularly pays dues to a private club. Member does not include any corporation or other business enterprise or association, or any other group or association.

(15) "POINT OF SALE" means that portion of a package agency, restaurant, limited restaurant, airport lounge, on-premise banquet premises, private club, on-premise beer retailer, single event permitted area, temporary special event beer permitted area, or public service special use permitted area that has been designated by the department as an alcoholic beverage selling area. It also means that portion of an establishment that sells beer for off-premise consumption where the beer is displayed or offered for sale.

(16) "REASONABLE" means ordinary and usual thinking, speaking, or acting, which is fit and appropriate to the end in view.

(17) "RESPONDENT" means a department licensee, or

permittee, or employee or agent of a licensee or permittee, or other entity against whom a letter of admonishment or notice of agency action is directed.

(18) "STAFF" or "authorized staff member" means a person duly authorized by the director of the department to perform a particular act.

(19) "UTAH ALCOHOLIC BEVERAGE CONTROL LAWS" means any Utah statutes, commission rules and municipal and county ordinances relating to the manufacture, possession, transportation, distribution, sale, supply, wholesale, warehousing, and furnishing of alcoholic beverages.

(20) "VIOLATION REPORT" means a written report from any law enforcement agency or authorized department staff member alleging a violation of the Utah Alcoholic Beverage Control Act or rules of the commission by a department licensee, or permittee, or employee or agent of a licensee or permittee or other entity.

(21) "WARNING SIGN" means a sign no smaller than six inches high by twelve inches wide, with print no smaller than one half inch bold letters and clearly readable, stating: "Warning: Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."

**R81-1-3. General Policies.**

(1) Official State Label.

Pursuant to Section 32A-1-109(6)(m), the department shall affix an official state label to every container of liquor that is at least 187 ml sold in the state, and to every box containing containers of liquor under 187 ml in size. Removal of the label is prohibited.

(2) Labeling.

No licensee or permittee shall sell or deliver any alcoholic beverage in containers not marked, branded or labeled in conformity with regulations enacted by the agencies of the United States government pertaining to labeling and advertising.

(3) Manner of Paying Fees.

Payment of all fees for licenses or permits, or renewals thereof, shall be made in legal tender of the United States of America, certified check, bank draft, cashier's check, United States post office money order, or personal check.

(4) Copy of Commission Rules.

Copies of the commission rules shall be available at the department's office, 1625 South 900 West, P. O. Box 30408, Salt Lake City, Utah 84130-0408 for an administrative cost of \$20 per copy, or on the department's website at <http://www.abc.utah.gov>.

(5) Interest Assessment on Delinquent Accounts.

The department may assess the legal rate of interest provided in Sections 15-1-1 through -4 for any debt or obligation owed to the department by a licensee, permittee, package agent, or any other person.

(6) Returned Checks.

(a) The department will assess a \$20 charge for any check payable to the department returned for the following reasons:

- (i) insufficient funds;
- (ii) refer to maker; or
- (iii) account closed.

(b) Receipt of a check payable to the department which is returned by the bank for any of the reasons listed in Subsection

(6)(a) may result in the immediate suspension of the license, permit, or operation of the package agency of the person tendering the check until legal tender of the United States of America, certified check, bank draft, cashier's check, or United States post office money order is received at the department offices, 1625 South 900 West, Salt Lake City, Utah, plus the \$20 returned check charge. Failure to make good the returned check and pay the \$20 returned check charge within thirty days after the license, permit, or operation of the package agency is suspended, is grounds for revocation of the license or permit, or

termination of the package agency contract, and the forfeiture of the licensee's, permittee's, or package agent's bond.

(c) In addition to the remedies listed in Subsection (6)(b), the department shall require that the licensee, permittee, or package agent transact business with the department on a "cash only" basis under the following guidelines:

(i) Except as provided in Subsection (6)(b)(ii):

(A) two or more returned checks received by the department from or on behalf of a licensee, permittee, or package agent within three consecutive months shall require that the licensee, permittee, or package agent be on "cash only" status for a period of three to six consecutive months from the date the department received notice of the second returned check;

(B) one returned check received by the department from or on behalf of a licensee, permittee, or package agent within six consecutive months after the licensee, permittee, or package agent has come off "cash only" status shall require that the licensee, permittee, or package agent be returned to "cash only" status for an additional period of six to 12 consecutive months from the date the department received notice of the returned check;

(C) one returned check received by the department from or on behalf of a licensee, permittee, or package agent at any time after the licensee, permittee, or package agent has come off "cash only" status for a second time shall require that the licensee, permittee, or package agent be on "cash only" for an additional period of 12 to 24 consecutive months from the date the department received notice of the returned check;

(D) a returned check received by the department from or on behalf of an applicant for a license, permit, or package agency for either an application or initial license or permit fee shall require that the applicant be on "cash only" status for a period of three consecutive months from the date the department received notice of the returned check;

(E) a returned check received by the department from or on behalf of a licensee or permittee for a license or permit renewal fee shall require that the licensee or permittee be on "cash only" status for a period of three consecutive months from the date the department received notice of the returned check;

(ii) a returned check received by the department from or on behalf of an applicant for or holder of a single event permit or temporary special event beer permit shall require that the person or entity that applied for or held the permit be on "cash only" status for any future events requiring permits from the commission that are conducted within a period of up to 18 consecutive months from the date the department received notice of the returned check;

(iii) in instances where the department has discretion with respect to the length of time a licensee, permittee, or package agent is on "cash only" status, the department may take into account:

(A) the dollar amount of the returned check(s);

(B) the length of time required to collect the amount owed the department;

(C) the number of returned checks received by the department during the period in question; and

(D) the amount of the licensee, permittee, or package agency bond on file with the department in relation to the dollar amount of the returned check(s).

(iv) for purposes of this Subsection (6)(c), a licensee, permittee, or package agent that is on "cash only" status may make payments to the department in cash, with a cashier's check, or with a current debit card with an authorized pin number; and

(v) the department may immediately remove a licensee, permittee, or package agent from "cash only" status if it is determined that the cause of the returned check was due to bank error, and was not the fault of the person tendering the check.

(d) In addition to the remedies listed in Subsections (6)(a),

(b) and (c), the department may pursue any legal remedies to effect collection of any returned check.

(7) Disposition of unsaleable merchandise.

The department, after determining that certain alcoholic products are distressed or unsaleable, but consumable, may make those alcoholic products available to the Utah Department of Public Safety for education or training purposes.

All merchandise made available to the Utah Department of Public Safety must be accounted for as directed by the Department of Alcoholic Beverage Control.

#### **R81-1-4. Employees.**

The department is an Equal Opportunity Employer.

#### **R81-1-5. Notice of Public Hearings and Meetings.**

Notice of all department meetings and public hearings, other than disciplinary hearings, shall be done in the following manner:

(1) The public notice shall specify the date, time, agenda, and location of each hearing or meeting.

(2) In the case of public meetings, notice shall be made as provided in Section 52-4-202.

(3) In the case of hearings, other than disciplinary hearings, public notice shall be made not less than ten days prior to the hearing.

(4) The procedure for posting public notice and the definition of public meeting for purposes of these rules, shall be the same as provided in Section 52-4-202.

#### **R81-1-6. Violation Schedule.**

(1) Authority. This rule is pursuant to Sections 32A-1-107(1)(c)(i), 32A-1-107(1)(e), 32A-1-107(4)(b), 32A-1-119(5), (6) and (7). These provisions authorize the commission to establish criteria and procedures for imposing sanctions against licensees and permittees and their officers, employees and agents who violate statutes and commission rules relating to alcoholic beverages. For purposes of this rule, holders of certificates of approval are also considered licensees. The commission may revoke or suspend the licenses or permits, and may impose a fine against a licensee or permittee in addition to or in lieu of a suspension. The commission also may impose a fine against an officer, employee or agent of a licensee or permittee. Violations are adjudicated under procedures contained in Section 32A-1-119 and disciplinary hearing Section R81-1-7.

(2) General Purpose. This rule establishes a schedule setting forth a range of penalties which may be imposed by the commission for violations of the alcoholic beverage laws. It shall be used by department decision officers in processing violations, and by presiding officers in charging violations, in assisting parties in settlement negotiations, and in recommending penalties for violations. The schedule shall be used by the commission in rendering its final decisions as to appropriate penalties for violations.

(3) Application of Rule.

(a) This rule governs violations committed by all commission licensees and permittees and their officers, employees and agents except single event permittees. Violations by single event permittees and their employees and agents are processed under Section 32A-7-106.

(b) This rule does not apply to situations where a licensee or permittee fails to maintain the minimum qualifications provided by law for holding a license or permit. These might include failure to maintain a bond or insurance, or a conviction for a criminal offense that disqualifies the licensee or permittee from holding the license or permit. These are fundamental licensing and permitting requirements and failure to maintain them may result in immediate suspension or forfeiture of the license or permit. Thus, they are not processed in accordance

with the Administrative Procedures Act, Title 63, Chapter 46b or Section R81-1-7. They are administered by issuance of an order to show cause requiring the licensee or permittee to provide the commission with proof of qualification to maintain their license or permit.

(c) If a licensee or permittee has not received a letter of admonishment, as defined in Sections R81-1-2 and R81-1-7(2)(b), or been found by the commission to be in violation of Utah statutes or commission rules for a period of 36 consecutive months, its violation record shall be expunged for purposes of determining future penalties sought. The expungement period shall run from the date the last offense was finally adjudicated by the commission.

(d) In addition to the penalty classifications contained in this rule, the commission may:

(i) upon revocation of a license or permit, take action to forfeit the bond of any licensee or permittee;

(ii) prohibit an officer, employee or agent of a licensee or permittee from serving, selling, distributing, manufacturing, wholesaling, warehousing, or handling alcoholic beverages in the course of employment with any commission licensee or permittee for a period determined by the commission;

(iii) order the removal of a manufacturer's, supplier's or importer's products from the department's sales list and a suspension of the department's purchase of those products for a period determined by the commission if the manufacturer, supplier, or importer directly committed the violation, or solicited, requested, commanded encouraged, or intentionally aided another to engage in the violation.

(iv) require a licensee to have a written responsible alcohol service plan as provided in R81-1-24.

(e) When the commission imposes a fine or administrative costs, it shall establish a date on which the payment is due. Failure of a licensee or permittee or its officer, employee or agent to make payment on or before that date shall result in the immediate suspension of the license or permit or the suspension of the employment of the officer, employee or agent to serve, sell, distribute, manufacture, wholesale, warehouse or handle alcoholic beverages with any licensee or permittee until payment is made. Failure of a licensee or permittee to pay a fine or administrative costs within 30 days of the initial date established by the commission shall result in the issuance of an order to show cause why the license or permit should not be revoked and the licensee's or permittee's compliance bond forfeited. The commission shall consider the order to show cause at its next regularly scheduled meeting.

(f) Violations of any local ordinance are handled by each individual local jurisdiction.

(4) Penalty Schedule. The department and commission shall follow these penalty range guidelines:

(a) Minor Violations. Violations of this category are lesser in nature and relate to basic compliance with the laws and rules. If not corrected, they are sufficient cause for action. Penalty range: Verbal warning from law enforcement or department compliance officer(s) to revocation of the license or permit and/or up to a \$25,000 fine. A record of any letter of admonishment shall be included in the licensee's or permittee's and the officer's, employee's or agent's violation file at the department to establish a violation history.

(i) First occurrence involving a minor violation: the penalty shall range from a verbal warning from law enforcement or department compliance officer(s), which is documented to a letter of admonishment to the licensee or permittee and the officer, employee or agent involved. Law enforcement or department compliance officer(s) shall notify management of the licensee or permittee when verbal warnings are given.

(ii) Second occurrence of any type of minor violation: a written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The

penalty shall range from a \$100 to \$500 fine for the licensee or permittee, and a letter of admonishment to a \$25 fine for the officer, employee or agent.

(iii) Third occurrence of any type of minor violation: a one to five day suspension of the license or permit and employment of the officer, employee or agent, and/or a \$200 to \$500 fine for the licensee or permittee and up to a \$50 fine for the officer, employee or agent.

(iv) More than three occurrences of any type of minor violation: a six day suspension to revocation of the license or permit and a six to ten day suspension of the employment of the officer, employee or agent, and/or a \$500 to \$25,000 fine for the licensee or permittee and up to a \$75 fine for the officer, employee or agent.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the monetary penalties for each of the charges in their respective categories. If other minor violations are discovered during the same investigation, a verbal warning shall be given for each violation on a first occurrence. If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(b) Moderate Violations. Violations of this category demonstrate a general disregard for the laws or rules. Although the gravity of the acts are not viewed in the same light as in the serious and grave categories, they are still sufficient cause for action. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a letter of admonishment to revocation of the license or permit and/or up to a \$25,000 fine.

(i) First occurrence involving a moderate violation: a written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a letter of admonishment to a \$1000 fine for the licensee or permittee, and a letter of admonishment to a \$50 fine for the officer, employee or agent.

(ii) Second occurrence of any type of moderate violation: a three to ten day suspension of the license or permit and a three to ten day suspension of the employment of the officer, employee or agent, and/or a \$500 to \$1000 fine for the licensee or permittee and up to a \$75 fine for the officer, employee or agent.

(iii) Third occurrence of any type of moderate violation: a ten to 20 day suspension of the license or permit and a ten to 20 day suspension of the employment of the officer, employee or agent, and/or a \$1000 to \$2000 fine for the licensee or permittee and up to a \$100 fine for the officer, employee or agent.

(iv) More than three occurrences of any type of moderate violation: a 15 day suspension to revocation of the license or permit and a 15 to 30 day suspension of the employment of the officer, employee or agent, and/or a \$2000 to \$25,000 fine for the licensee or permittee and up to a \$150 fine for the officer, employee or agent.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(vi) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(c) Serious Violations. Violations of this category directly or indirectly affect or potentially affect the public safety, health and welfare, or may involve minors. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a five day

suspension to revocation of the license or permit and/or up to a \$25,000 fine.

(i) First occurrence involving a serious violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a five to 30 day suspension of the license or permit and a five to 30 day suspension of the employment of the officer, employee or agent, and/or a \$500 to \$3000 fine for the licensee or permittee and up to a \$100 fine for the officer, employee or agent.

(ii) Second occurrence of any type of serious violation: a ten to 90 day suspension of the license or permit and a ten to 90 day suspension of the employment of the officer, employee or agent, and/or a \$1000 to \$9000 fine for the licensee or permittee and up to a \$150 fine for the officer, employee or agent.

(iii) More than two occurrences of any type of serious violation: a 15 day suspension to revocation of the license or permit and a 15 to 120 day suspension of the employment of the officer, employee or agent, and/or a \$9000 to \$25,000 fine for the licensee or permittee and up to a \$500 fine for the officer, employee or agent.

(iv) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(v) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(d) Grave Violations. Violations of this category pose or potentially pose, a grave risk to public safety, health and welfare, or may involve lewd acts prohibited by title 32A, fraud, deceit, willful concealment or misrepresentation of the facts, exclusion of competitors' products, unlawful tied house trade practices, commercial bribery, interfering or refusing to cooperate with authorized officials in the discharge of their duties, unlawful importations, or industry supplying liquor to persons other than the department and military installations. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a ten day suspension to revocation of the license or permit and/or up to a \$25,000 fine.

(i) First occurrence involving a grave violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a ten day suspension to revocation of the license or permit and a 10 to 120 day suspension of the employment of the officer, employee or agent, and/or a \$1000 to \$25,000 fine to the licensee or permittee and up to a \$300 fine for the officer, employee or agent.

(ii) More than one occurrence of any type of grave violation: a fifteen day suspension to revocation of the license or permit, and a 15 to 180 day suspension of the employment of the officer, employee or agent and/or a \$3000 to \$25,000 fine for the licensee or permittee and up to a \$500 fine for the officer, employee or agent.

(iii) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(iv) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(e) The following table summarizes the penalty ranges contained in this section of the rule for licensees and permittees.

Frequency

Minor					
1st	X	X			
2nd			100 to	500	
3rd			200 to	500	1 to 5
Over 3			500 to	25,000	6 to X
Moderate					
1st		X		to 1,000	
2nd			500 to	1,000	3 to 10
3rd			1,000 to	2,000	10 to 20
Over 3			2,000 to	25,000	15 to X
Serious					
1st			500 to	3,000	5 to 30
2nd			1,000 to	9,000	10 to 90
Over 2			9,000 to	25,000	15 to X
Grave					
1st			1,000 to	25,000	10 to X
Over 1			3,000 to	25,000	15 to X

(f) The following table summarizes the penalty ranges contained in this section of the rule for officers, employees or agents of licensees and permittees.

TABLE

Violation Degree and Frequency	Warning Verbal/Written	Fine \$ Amount	Suspension No. of Days
Minor			
1st	X	X	
2nd		X	
3rd			to 25
Over 3			to 50
			to 75
			1 to 5
			6 to 10
Moderate			
1st		X	
2nd			to 50
3rd			to 75
Over 3			to 100
			to 150
			3 to 10
			10 to 20
			15 to 30
Serious			
1st			to 100
2nd			to 150
Over 2			to 500
			5 to 30
			10 to 90
			15 to 120
Grave			
1st			to 300
Over 1			to 500
			10 to 120
			15 to 180

(5) Aggravating and Mitigating Circumstances. The commission and presiding officers may adjust penalties within penalty ranges based upon aggravating or mitigating circumstances. Examples of mitigating circumstances are: no prior violation history, good faith effort to prevent a violation, existence of written policies governing employee conduct, and extraordinary cooperation in the violation investigation that shows the licensee or permittee and the officer, employee or agent of the licensee or permittee accepts responsibility. Examples of aggravating circumstances are: prior warnings about compliance problems, prior violation history, lack of written policies governing employee conduct, multiple violations during the course of the investigation, efforts to conceal a violation, intentional nature of the violation, the violation involved more than one patron or employee, the violation involved a minor and, if so, the age of the minor, and whether the violation resulted in injury or death.

(6) Violation Grid. A violation grid describing each violation of the alcoholic beverage control laws, the statutory and rule reference, and the degree of seriousness of each violation is available for public inspection in the department's administrative office. A copy will be provided upon request at reproduction cost. It is entitled "Alcoholic Beverage Control Commission Violation Grid" and is incorporated by reference as part of this rule.

TABLE

Violation Degree and	Warning Verbal/Written	Fine \$ Amount	Suspension No. of Days	Revoke License
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**R81-1-7. Disciplinary Hearings.****(1) General Provisions.**

(a) This rule is promulgated pursuant to Section 32A-1-107(1)(c)(i) and shall govern the procedure for disciplinary actions under the jurisdiction of the commission. Package agencies are expressly excluded from the provisions of this rule, and are governed by the terms of the package agency contract.

(b) Liberal Construction. Provisions of this rule shall be liberally construed to secure just, speedy and economical determination of all issues presented in any disciplinary action.

(c) Emergency Adjudication Proceedings. The department or commission may issue an order on an emergency basis without complying with the Utah Administrative Procedures Act in accordance with the procedures outlined in Section 63-46b-20.

(d) Utah Administrative Procedures Act. Proceedings under this rule shall be in accordance with Title 63, Chapter 46b, Utah Administrative Procedures Act (UAPA), and Sections 32A-1-119 and -120.

**(e) Penalties.**

(i) This rule shall govern the imposition of any penalty against a commission licensee, permittee, or certificate of approval holder, an officer, employee or agent of a licensee, permittee, or certificate of approval holder, and a manufacturer, supplier or importer whose products are listed in this state.

(ii) Penalties may include a letter of admonishment, imposition of a fine, the suspension or revocation of a commission license, permit, or certificate of approval, the requirement that a licensee have a written responsible alcohol service plan as provided in R81-1-24, the assessment of costs of action, an order prohibiting an officer, employee or agent of a licensee, permittee, or certificate of approval holder, from serving, selling, distributing, manufacturing, wholesaling, warehousing, or handling alcoholic beverages in the course of employment with any commission licensee, permittee, or certificate of approval holder for a period determined by the commission, the forfeiture of bonds, an order removing a manufacturer's, supplier's or importer's products from the department's sales list and a suspension of the department's purchase of those products for a period determined by the commission, and an order removing the products of a certificate of approval holder from the state approved sales list, and a suspension of the purchase of the products in the state.

(iii) Department administrative costs are the hourly pay rate plus benefits of each department employee involved in processing and conducting the adjudicative proceedings on the violation, an hourly charge for department overhead costs, the amount billed the department by an independent contractor for services rendered in conjunction with an adjudicative proceeding, and any additional extraordinary or incidental costs incurred by the department. The commission may also assess additional costs if a respondent fails to appear before the commission at the final stage of the adjudicative process. Department overhead costs are calculated by taking the previous year's total department expenditures less staff payroll charges expended on violations, dividing it by the previous year's total staff hours spent on violations, and multiplying this by a rate derived by taking the previous year's total staff payroll spent on violations to the previous year's total payroll of all office employees. The overhead cost figure shall be recalculated at the beginning of each fiscal year.

(f) Perjured Statements. Any person who makes any false or perjured statement in the course of a disciplinary action is subject to criminal prosecution under Section 32A-12-304.

(g) Service. Service of any document shall be satisfied by service personally or by certified mail upon any respondent, or upon any officer or manager of a corporate or limited liability company respondent, or upon an attorney for a respondent, or by service personally or by certified mail to the last known

address of the respondent or any of the following:

(i) Service personally or by certified mail upon any employee working in the respondent's premises; or

(ii) Posting of the document or a notice of certified mail upon a respondent's premises; or

(iii) Actual notice. Proof of service shall be satisfied by a receipt of service signed by the person served or by a certificate of service signed by the person served, or by certificate of service signed by the server, or by verification of posting on the respondent's premises.

(h) Filing of Pleadings or Documents. Filing by a respondent of any pleading or document shall be satisfied by timely delivery to the department office, 1625 South 900 West, Salt Lake City, or by timely delivery to P. O. Box 30408, Salt Lake City, Utah 84130-0408.

(i) Representation. A respondent who is not a corporation or limited liability company may represent himself in any disciplinary action, or may be represented by an agent duly authorized by the respondent in writing, or by an attorney. A corporate or limited liability company respondent may be represented by a member of the governing board of the corporation or manager of the limited liability company, or by a person duly authorized and appointed by the respondent in writing to represent the governing board of the corporation or manager of the limited liability company, or by an attorney.

**(j) Presiding Officers.**

(i) The commission or the director may appoint presiding officers to receive evidence in disciplinary proceedings, and to submit to the commission orders containing written findings of fact, conclusions of law, and recommendations for commission action.

(ii) If fairness to the respondent is not compromised, the commission or director may substitute one presiding officer for another during any proceeding.

(iii) A person who acts as a presiding officer at one phase of a proceeding need not continue as presiding officer through all phases of a proceeding.

(iv) Nothing precludes the commission from acting as presiding officer over all or any portion of an adjudication proceeding.

(v) At any time during an adjudicative proceeding the presiding officer may hold a conference with the department and the respondent to:

(A) encourage settlement;

(B) clarify issues;

(C) simplify the evidence;

(D) expedite the proceedings; or

(E) facilitate discovery, if a formal proceeding.

(k) Definitions. The definitions found in Sections 32A-1-105 and Title 63, Chapter 46b apply to this rule.

(l) Computation of Time. The time within which any act shall be done shall be computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, or state or federal holiday, in which case the next business day shall count as the last day.

**(m) Default.**

(i) The presiding officer may enter an order of default against a respondent if the respondent in an adjudicative proceeding fails to attend or participate in the proceeding.

(ii) The order shall include a statement of the grounds for default, and shall be mailed to the respondent and the department.

(iii) A defaulted respondent may seek to have the default order set aside according to procedures outlined in the Utah Rules of Civil Procedure.

(iv) After issuing the order of default, the commission or presiding officer shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the respondent in default and shall determine all

issues in the adjudicative proceeding, including those affecting the defaulting respondent.

(2) Pre-adjudication Proceedings.

(a) Staff Screening. Upon receipt of a violation report, a decision officer of the department shall review the report, and the alleged violator's violation history, and in accordance with R81-1-6, determine the range of penalties which may be assessed should the alleged violator be found guilty of the alleged violation.

(b) Letters of Admonishment. Because letters of admonishment are not "state agency actions" under Section 63-46b-1(1)(a), no adjudicative proceedings are required in processing them, and they shall be handled in accordance with the following procedures:

(i) If the decision officer of the department determines that the alleged violation does not warrant an administrative fine, or suspension or revocation of the license, permit, or certificate of approval, or action against an officer, employee or agent of a licensee, permittee, or certificate of approval holder, or against a manufacturer, supplier or importer of products listed in this state, a letter of admonishment may be sent to the respondent.

(ii) A letter of admonishment shall set forth in clear and concise terms:

(A) The case number assigned to the action;

(B) The name of the respondent;

(C) The alleged violation, together with sufficient facts to put a respondent on notice of the alleged violations and the name of the agency or staff member making the report;

(D) Notice that a letter of admonishment may be considered as a part of the respondent's violation history in assessing appropriate penalties in future disciplinary actions against the respondent; and

(E) Notice that a rebuttal is permitted under these rules within ten days of service of the letter of admonishment.

(F) Notice that the letter of admonishment is subject to the approval of the commission.

(iii) A copy of the law enforcement agency or department staff report shall accompany the letter of admonishment. The decision officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.

(iv) A respondent may file a written rebuttal with the department within ten days of service of the letter of admonishment. The rebuttal shall be signed by the respondent, or by the respondent's authorized agent or attorney, and shall set forth in clear and concise terms:

(A) The case number assigned to the action;

(B) The name of the respondent;

(C) Any facts in defense or mitigation of the alleged violation, and a brief summary of any attached evidence. The rebuttal may be accompanied by supporting documents, exhibits, or signed statements.

(v) If the decision officer is satisfied, upon receipt of a rebuttal, that the letter of admonishment was not well taken, it may be withdrawn and the letter and rebuttal shall be expunged from the respondent's file. Letters of admonishment so withdrawn shall not be considered as a part of the respondent's violation history. If no rebuttal is received, or if the decision officer determines after receiving a rebuttal that the letter of admonishment is justified, the matter shall be submitted to the commission for final approval. Upon commission approval, the letter of admonishment, together with any written rebuttal, shall be placed in the respondent's department file and may be considered as part of the respondent's violation history in assessing appropriate penalties in future disciplinary actions against the respondent. If the commission rejects the letter of admonishment, it may either direct the decision officer to dismiss the matter, or may direct that an adjudicative proceeding be commenced seeking a more severe penalty.

(vi) At any time prior to the commission's final approval of a letter of admonishment, a respondent may request that the matter be processed under the adjudicative proceeding process.

(c) Commencement of Adjudicative Proceedings.

(i) Alleged violations shall be referred to a presiding officer for commencement of adjudicative proceedings under the following circumstances:

(A) the decision officer determines during screening that the case does not fit the criteria for issuance of a letter of admonishment under section (2)(b)(i);

(B) a respondent has requested that a letter of admonishment be processed under the adjudicative proceeding process; or

(C) the commission has rejected a letter of admonishment and directed that an adjudicative proceeding be commenced seeking a more severe penalty.

(ii) All adjudicative proceedings shall commence as informal proceedings.

(iii) At any time after commencement of informal adjudicative proceedings, but before the commencement of a hearing, if the department determines that it will seek administrative fines exceeding \$3000, a suspension of the license, permit or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), the presiding officer shall convert the matter to a formal adjudicative proceeding.

(iv) At any time before a final order is issued, a presiding officer may convert an informal proceeding to a formal proceeding if conversion is in the public interest and does not unfairly prejudice the rights of any party.

(3) The Informal Process.

(a) Notice of agency action.

(i) Upon referral of a violation report from the decision officer for commencement of informal adjudicative proceedings, the presiding officer shall issue and sign a written "notice of agency action" which shall set forth in clear and concise terms:

(A) The names and mailing addresses of all persons to whom notice is being given by the presiding officer, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the department;

(B) The department's case number;

(C) The name of the adjudicative proceeding, "DABC vs. \_\_\_\_\_";

(D) The date that the notice of agency action was mailed;

(E) A statement that the adjudicative proceeding is to be conducted informally according to the provisions of this rule and Sections 63-46b-4 and -5 unless a presiding officer converts the matter to a formal proceeding pursuant to Sections (2)(c)(iii) or (iv) of this rule, in which event the proceeding will be conducted formally according to the provisions of this rule and Sections 63-46b-6 to -11;

(F) The date, time and place of any prehearing conference with the presiding officer;

(G) A statement that a respondent may request a hearing for the purpose of determining whether the violation(s) alleged in the notice of agency action occurred, and if so, the penalties that should be imposed;

(H) A statement that a respondent who fails to attend or participate in any hearing may be held in default;

(I) A statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;

(J) A statement of the purpose of the adjudicative proceeding and questions to be decided including:

(I) the alleged violation, together with sufficient facts to put the respondent on notice of the alleged violation and the name of the agency or department staff member making the violation report;

(II) the penalty sought, which may include assessment of costs under Section 32A-1-119(5)(c) and (d) if the respondent

is found guilty of the alleged violation, and forfeiture of any compliance bond on final revocation under Section 32A-1-119(5)(f) if revocation is sought by the department;

(K) Any violation history of the respondent which may be considered in assessing an appropriate penalty should the respondent be found guilty of the alleged violation; and

(L) The name, title, mailing address, and telephone number of the presiding officer.

(ii) A copy of the law enforcement agency or staff report shall accompany the notice of agency action. The presiding officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.

(iii) The notice of agency action and any subsequent pleading in the case shall be retained in the respondent's department file.

(iv) The notice of agency action shall be mailed to each respondent, any attorney representing the department, and, if applicable, any law enforcement agency that referred the alleged violation to the department.

(v) The presiding officer may permit or require pleadings in addition to the notice of agency action. All additional pleadings shall be filed with the presiding officer, with copies sent by mail to each respondent and to the department.

(vi) Amendment to Pleading. The presiding officer may, upon motion of the respondent or department made at or before the hearing, allow any pleading to be amended or corrected. Defects which do not substantially prejudice a respondent or the department shall be disregarded.

(vii) Signing of Pleading. Pleadings shall be signed by the department or respondent, or their authorized attorney or representative, and shall show the signer's address and telephone number. The signature shall be deemed to be a certification by the signer that he has read the pleading and that he has taken reasonable measures to assure its truth.

(b) The Prehearing Conference.

(i) The presiding officer may hold a prehearing conference with the respondent and the department to encourage settlement, clarify issues, simplify the evidence, or expedite the proceedings.

(ii) All or part of any adjudicative proceeding may be stayed at any time by a written settlement agreement signed by the department and respondent or their authorized attorney or representative, and by the presiding officer. The stay shall take effect immediately upon the signing of the settlement agreement, and shall remain in effect until the settlement agreement is approved or rejected by the commission. No further action shall be required with respect to any action or issue so stayed until the commission has acted on the settlement agreement.

(iii) A settlement agreement approved by the commission shall constitute a final resolution of all issues agreed upon in the settlement. No further proceedings shall be required for any issue settled. The approved settlement shall take effect by its own terms and shall be binding upon the respondent and the department. Any breach of a settlement agreement by a respondent may be treated as a separate violation and shall be grounds for further disciplinary action. Additional sanctions stipulated in the settlement agreement may also be imposed.

(iv) If the settlement agreement is rejected by the commission, the action shall proceed in the same posture as if the settlement agreement had not been reached, except that all time limits shall have been stayed for the period between the signing of the agreement and the commission rejection of the settlement agreement.

(v) If the matter cannot be resolved by settlement agreement, the department shall notify the respondent and the presiding officer whether it will seek administrative fines exceeding \$3000, a suspension of the license, permit or certificate of approval for more than ten days, or a revocation of

the license, permit, or certificate of approval for the alleged violation(s).

(vi) If the department does not seek administrative fines exceeding \$3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), any hearing on the matter shall be adjudicated informally.

(vii) If the department does seek administrative fines exceeding \$3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), the presiding officer shall convert the matter to a formal adjudicative proceeding, and any hearing on the matter shall be adjudicated formally. The department may waive the formal adjudicative proceeding requirement that the respondent file a written response to the notice of agency action.

(c) The Informal Hearing.

(i) The presiding officer shall notify the respondent and department in writing of the date, time and place of the hearing at least ten days in advance of the hearing. Continuances of scheduled hearings are not favored, but may be granted by the presiding officer for good cause shown. Failure by a respondent to appear at the hearing after notice has been given shall be grounds for default and shall waive both the right to contest the allegations, and the right to the hearing. The presiding officer shall proceed to prepare and serve on respondent an order pursuant to R81-1-7(3)(d).

(ii) All hearings shall be presided over by the presiding officer.

(iii) The respondent named in the notice of agency action and the department shall be permitted to testify, present evidence, and comment on the issues. Formal rules of evidence shall not apply, however, the presiding officer:

(A) may exclude evidence that is irrelevant, immaterial or unduly repetitious;

(B) shall exclude evidence privileged in the courts of Utah;

(C) shall recognize presumptions and inferences recognized by law;

(D) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all the pertinent portions of the original document;

(E) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the commission, and of technical or scientific facts within the commission's specialized knowledge;

(F) may not exclude evidence solely because it is hearsay; and

(G) may use his experience, technical competence, and specialized knowledge to evaluate the evidence.

(iv) All testimony shall be under oath.

(v) Discovery is prohibited.

(vi) Subpoenas and orders to secure the attendance of witnesses or the production of evidence shall be issued by the presiding officer when requested by a respondent or the department, or may be issued by the presiding officer on his own motion.

(vii) A respondent shall have access to information contained in the department's files and to material gathered in the investigation of respondent to the extent permitted by law.

(viii) Intervention is prohibited.

(ix) The hearing shall be open to the public, provided that the presiding officer may order the hearing closed upon a written finding that the public interest in an open meeting is clearly outweighed by factors enumerated in the closure order. The presiding officer may take appropriate measures necessary to preserve the integrity of the hearing.

(x) Record of Hearing. The presiding officer shall cause an official record of the hearing to be made, at the department's expense, as follows:

(A) The record of the proceedings may be made by means of an audio or video recorder or other recording device at the department's expense.

(B) The record may also be made by means of a certified shorthand reporter employed by the department or by a party desiring to employ a certified shorthand reporter at its own cost in the event that the department chooses not to employ a reporter. If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the department. Those desiring a copy of the certified shorthand reporter's transcript may purchase it from the reporter.

(C) Any respondent, at his own expense, may have a person approved by the department, prepare a transcript of the hearing, subject to any restrictions that the department is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or audio or video recording of a hearing is made, it will be available at the department for use by the parties, but the original transcript or recording may not be withdrawn.

(D) The department shall retain the record of the evidentiary hearing for a minimum of one year from the date of the hearing, or until the completion of any court proceeding on the matter.

(xi) The presiding officer may grant continuances or recesses as necessary.

(xii) Order of presentation. Unless otherwise directed by the presiding officer at the hearing, the order of procedure and presentation of evidence will be as follows: (1) department; (2) respondent; (3) rebuttal by department.

(xiii) Time limits. The presiding officer may set reasonable time limits for the presentations described above.

(xiv) Continuances of the hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a respondent or the department indicating good cause why a continuance is necessary. The continuance of the hearing may also be made upon the motion of the presiding officer when in the public interest.

(xv) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the presiding officer may, in his discretion, permit a respondent and the department to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the presiding officer.

(d) Disposition.

(i) Presiding Officer's Order; Objections.

(A) Within a reasonable time after the close of the hearing, the presiding officer shall issue a signed order in writing that includes the following:

(I) the decision;

(II) the reasons for the decision;

(III) findings of facts;

(IV) conclusions of law;

(V) recommendations for final commission action;

(VI) notice that a respondent or the department having objections to the presiding officer's order may file written objections with the presiding officer within ten days of service of the order, setting forth the particulars in which the report is alleged to be unfair, inaccurate, incomplete, unreasonable, unlawful or not supported by the evidence.

(B) The order shall be based on the facts appearing in the department's files and on the facts presented in evidence at the informal hearing. Any finding of fact that was contested may not be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence. The order shall not recommend a penalty more severe than that sought in

the notice of agency action, and in no event may it recommend administrative fines exceeding \$3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval.

(C) A copy of the presiding officer's order shall be promptly mailed to the respondent and the department.

(D) The presiding officer shall wait ten days from service of his order for written objections, if any. The presiding officer may then amend or supplement his findings of fact, conclusions of law, and recommendations to reflect those objections which have merit or which are not disputed.

(E) Upon expiration of the time for filing written objections, the order of the presiding officer and any written objections timely filed, shall be submitted to the commission for final consideration.

(ii) Commission Action.

(A) Upon expiration of the time for filing objections, the order shall be placed on the next available agenda of a regular commission meeting for consideration by the commission. Copies of the order, together with any objections filed shall be forwarded to the commission, and the commission shall finally decide the matter on the basis of the order and any objections submitted.

(B) The commission shall be deemed a substitute presiding officer for this final stage of the informal adjudicative proceeding pursuant to Sections 63-46b-2(1)(h)(ii) and (iii). This stage is not considered a "review of an order by an agency or a superior agency" under Sections 63-46b-12 and -13.

(C) No additional evidence shall be presented to the commission. The commission may, in its discretion, permit the respondent and department to present oral presentations.

(D) After the commission has reached a final decision, it shall issue or cause to be issued a signed, written order pursuant to Section 32A-1-119(3)(c) and (6) and 63-46b-5(1)(i), containing:

(I) the decision;

(II) the reasons for the decision;

(III) findings of fact;

(IV) conclusions of law;

(V) action ordered by the commission and effective date of the action taken;

(VI) notice of the right to seek judicial review of the order within 30 days from the date of its issuance in the district court in accordance with Sections 63-46b-14, -15, -17, and -18, and 32A-1-119 and -120.

(E) The commission may adopt in whole or in part, any portion(s) of the initial presiding officer's order.

(F) The order shall be based on the facts appearing in the department's files and on the facts presented in evidence at the informal hearing.

(G) The order shall not impose a penalty more severe than that sought in the notice of agency action, and in no event may it impose administrative fines exceeding \$3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval.

(H) The commission, after it has rendered its final decision and order, may direct the department director to prepare, issue, and cause to be served on the parties the final written order on behalf of the commission.

(I) A copy of the commission's order shall be promptly mailed to the parties.

(e) Judicial Review.

(i) Any petition for judicial review of the commission's final order must be filed within 30 days from the date the order is issued.

(ii) Appeals from informal adjudicative proceedings shall be to the district court in accordance with Sections 63-46b-15, -17, and -18, and 32A-1-119 and -120.

## (4) The Formal Process.

(a) Conversion Procedures. If a presiding officer converts an informal adjudicative proceeding to a formal adjudicative proceeding pursuant to sections (2)(c)(iii) or (iv):

(i) the presiding officer shall notify the parties that the adjudicative proceeding is to be conducted formally according to the provisions of this rule and Sections 63-46b-6 to -11;

(ii) the case shall proceed without requiring the issuance of a new or amended notice of agency action;

(iii) the respondent shall be required to file a written response to the original notice of agency action within 30 days of the notice of the conversion of the adjudicative proceeding to a formal proceeding, unless this requirement is waived by the department. Extensions of time to file a response are not favored, but may be granted by the presiding officer for good cause shown. Failure to file a timely response shall waive the respondent's right to contest the matters stated in the notice of agency action, and the presiding officer may enter an order of default and proceed to prepare and serve his final order pursuant to R81-1-7(4)(e). The response shall be signed by the respondent, or by an authorized agent or attorney of the respondent, and shall set forth in clear and concise terms:

(A) the case number assigned to the action;

(B) the name of the adjudicative proceeding, "DABC vs. ";

(C) the name of the respondent;

(D) whether the respondent admits, denies, or lacks sufficient knowledge to admit or deny each allegation stated in the notice of agency action, in which event the allegation shall be deemed denied;

(E) any facts in defense or mitigation of the alleged violation or possible penalty;

(F) a brief summary of any attached evidence. Any supporting documents, exhibits, signed statements, transcripts, etc., to be considered as evidence shall accompany the response;

(G) a statement of the relief the respondent seeks;

(H) a statement summarizing the reasons that the relief requested should be granted.

(iv) the presiding officer may permit or require pleadings in addition to the notice of agency action and the response. All additional pleadings shall be filed with the presiding officer, with copies sent by mail to each party.

(v) the presiding officer may, upon motion of the responsible party made at or before the hearing, allow any pleading to be amended or corrected. Defects which do not substantially prejudice any of the parties shall be disregarded;

(vi) Pleadings shall be signed by the party or the party's attorney and shall show the signer's address and telephone number. The signature shall be deemed to be a certification by the signer that he has read the pleading and that he has taken reasonable measures to assure its truth;

## (b) Intervention.

(i) Any person not a party may file a signed, written petition to intervene in a formal adjudicative proceeding with the presiding officer. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:

(A) the agency's case number;

(B) a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceedings or that the petitioner qualifies as an intervenor under any provision of law; and

(C) a statement of the relief that the petitioner seeks from the agency;

(ii) Response to Petition. Any party to a proceeding into which intervention is sought may make an oral or written response to the petition for intervention. The response shall state the basis for opposition to intervention and may suggest limitations to be placed upon the intervenor if intervention is

granted. The response must be presented or filed at or before the hearing.

(iii) Granting of Petition. The presiding officer shall grant a petition for intervention if the presiding officer determines that:

(A) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and

(B) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

## (iv) Order Requirements.

(A) Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.

(B) An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding.

(C) The presiding officer may impose conditions at any time after the intervention.

(D) If it appears during the course of the proceeding that an intervenor has no direct or substantial interest in the proceeding and that the public interest does not require the intervenor's participation, the presiding officer may dismiss the intervenor from the proceeding.

(E) In the interest of expediting a hearing, the presiding officer may limit the extent of participation of an intervenor. Where two or more intervenors have substantially like interests and positions, the presiding officer may at any time during the hearing limit the number of intervenors who will be permitted to testify, cross-examine witnesses or make and argue motions and objections.

## (c) Discovery and Subpoenas.

(i) Discovery. Upon the motion of a party and for good cause shown that it is to obtain relevant information necessary to support a claim or defense, the presiding officer may authorize the manner of discovery against another party or person, including the staff, as may be allowed by the Utah Rules of Civil Procedure.

(ii) Subpoenas. Subpoenas and orders to secure the attendance of witnesses or the production of evidence in formal adjudicative proceedings shall be issued by the presiding officer when requested by any party, or may be issued by the presiding officer on his own motion.

## (d) The Formal Hearing.

(i) Notice. The presiding officer shall notify the parties in writing of the date, time, and place of the hearing at least ten days in advance of the hearing. The presiding officer's name, title, mailing address, and telephone number shall be provided to the parties. Continuances of scheduled hearings are not favored, but may be granted by the presiding officer for good cause shown. Failure to appear at the hearing after notice has been given shall be grounds for default and shall waive both the respondent's right to contest the allegations, and the respondent's right to the hearing. The presiding officer shall proceed to prepare and serve on respondent his order pursuant to R81-1-7(4)(e).

(ii) Public Hearing. The hearing shall be open to all parties. It shall also be open to the public, provided that the presiding officer may order the hearing closed upon a written finding that the public interest in an open hearing is clearly outweighed by factors enumerated in the closure order. The presiding officer may take appropriate measures necessary to preserve the integrity of the hearing.

(iii) Rights of Parties. The presiding officer shall regulate the course of the hearings to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions, present evidence, argue, respond, conduct cross-examinations, and submit rebuttal evidence.

(iv) Public Participation. The presiding officer may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.

(v) Rules of Evidence. Technical rules of evidence shall not apply. Any reliable evidence may be admitted subject to the following guidelines. The presiding officer:

(A) may exclude evidence that is irrelevant, immaterial or unduly repetitious;

(B) shall exclude evidence privileged in the courts of Utah;

(C) shall recognize presumptions and inferences recognized by law;

(D) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all the pertinent portions of the original document.

(E) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the agency, and of technical or scientific facts within the agency's specialized knowledge;

(F) may not exclude evidence solely because it is hearsay; and

(G) may use his experience, technical competence, and specialized knowledge to evaluate the evidence.

(vi) Oath. All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.

(vii) Order of presentation. Unless otherwise directed by the presiding officer at the hearing, the order of procedure and presentation of evidence will be as follows: (1) agency; (2) respondent; (3) intervenors (if any); (4) rebuttal by agency.

(viii) Time limits. The presiding officer may set reasonable time limits for the presentations described above.

(ix) Continuances of the hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a party indicating good cause why a continuance is necessary. The continuance of the hearing may also be made upon the motion of the presiding officer when in the public interest.

(x) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the presiding officer may, in his discretion, permit the parties to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the presiding officer.

(xi) Record of Hearing. The presiding officer shall cause an official record of the hearing to be made, at the agency's expense, as follows:

(A) The record may be made by means of an audio or video recorder or other recording device at the department's expense.

(B) The record may also be made by means of a certified shorthand reporter employed by the department or by a party desiring to employ a certified shorthand reporter at its own cost in the event that the department chooses not to employ a reporter. If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the department. Those desiring a copy of the certified shorthand reporter's transcript may purchase it from the reporter.

(C) Any respondent, at his own expense, may have a person approved by the department prepare a transcript of the hearing, subject to any restrictions that the agency is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or audio or video recording of a hearing is made, it will be available at the department for use by the parties, but the original transcript or recording may not be withdrawn.

(D) The department shall retain the record of the evidentiary hearing for a minimum of one year from the date of the hearing, or until the completion of any court proceeding on the matter.

(xii) Failure to appear. Inexcusable failure of the respondent to appear at a scheduled evidentiary hearing after receiving proper notice constitutes an admission of the charged violation. The validity of any hearing is not affected by the failure of any person to attend or remain in attendance pursuant to Section 32A-1-119(5)(c).

(e) Disposition.

(i) Presiding Officer's Order; Objections.

(A) Within a reasonable time of the close of the hearing, or after the filing of any post-hearing papers permitted by the presiding officer, the presiding officer shall sign and issue a written order that includes the following:

(I) the findings of fact based exclusively on evidence found in the record of the adjudicative proceedings, or facts officially noted. No finding of fact that was contested may be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence, except if the respondent fails to respond as per R81-1-7(4)(a)(iii), then the findings of fact shall adopt the allegations in the notice of agency action;

(II) conclusions of law;

(III) the decision;

(IV) the reasons for the decision;

(V) recommendations for final commission action. The order shall not recommend a penalty more severe than that sought in the notice of agency action;

(VI) notice that a respondent or the department having objections to the presiding officer's order may file written objections with the presiding officer within ten days of service of the order setting forth the particulars in which the report is alleged to be unfair, inaccurate, incomplete, unreasonable, unlawful, or not supported by the evidence.

(B) A copy of the presiding officer's order shall be promptly mailed to the parties.

(C) The presiding officer shall wait ten days from service of his order for written objections, if any. The presiding officer may then amend or supplement his findings of fact, conclusions of law, and recommendations to reflect those objections which have merit and which are not disputed.

(D) Upon expiration of the time for filing written objections, the order of the presiding officer and any written objections timely filed, shall be submitted to the commission for final consideration.

(ii) Commission Action.

(A) Upon expiration of the time for filing objections, the order shall be placed on the next available agenda of a regular commission meeting for consideration by the commission. Copies of the order, together with any objections filed by the respondent, shall be forwarded to the commission, and the commission shall finally decide the matter on the basis of the order and any objections submitted.

(B) The commission shall be deemed a substitute presiding officer for this final stage of the formal adjudicative proceeding pursuant to Sections 63-46b-2(h)(ii) and (iii). This stage is not considered a "review of an order by an agency or a superior agency" under Sections 63-46b-12 and -13.

(C) No additional evidence shall be presented to the commission. The commission may, in its discretion, permit the parties to present oral presentations.

(D) After the commission has reached a final decision, it shall issue or cause to be issued a signed, written order pursuant to Section 32A-1-119(3)(c) and (6) and 63-46b-10(1) that includes:

(I) findings of fact based exclusively on evidence found in the record of the adjudicative proceedings, or facts officially noted. No finding of fact that was contested may be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence, except if the respondent fails to respond as per R81-1-7(4)(a)(iii), then the findings of

fact shall adopt the allegations in the notice of agency action and the respondent is considered in default;

(II) conclusions of law;

(III) the decision;

(IV) the reasons for the decision;

(V) action ordered by the commission and effective date of the action taken. The order shall not impose a penalty more severe than that sought in the notice of agency action;

(VI) notice of the right to file a written request for reconsideration within ten days of the service of the order;

(VII) notice of the right to seek judicial review of the order within thirty days of the date of its issuance in the court of appeals in accordance with Sections 32A-1-120 and 63-46b-16, -17, and -18.

(E) The commission may adopt in whole or in part, any portion(s) of the initial presiding officer's order.

(F) The commission may use its experience, technical competence and specialized knowledge to evaluate the evidence.

(G) The commission, after it has rendered its final decision and order, may direct the department director to prepare, issue, and cause to be served on the parties the final written order on behalf of the commission.

(H) A copy of the commission's order shall be promptly mailed to the parties.

(I) A respondent having objections to the order of the commission may file, within ten days of service of the order, a request for reconsideration with the commission, setting forth the particulars in which the order is unfair, unreasonable, unlawful, or not supported by the evidence. If the request is based upon newly discovered evidence, the petition shall be accompanied by a summary of the new evidence, with a statement of reasons why the respondent could not with reasonable diligence have discovered the evidence prior to the formal hearing, and why the evidence would affect the commission's order.

(J) The filing of a request for reconsideration is not a prerequisite for seeking judicial review of the commission's order.

(K) Within twenty days of the filing of a request for reconsideration, the commission may issue or cause to be issued a written order granting the request or denying the request in whole or in part. If the request is granted, it shall be limited to the matter specified in the order. Upon reconsideration, the commission may confirm its former order or vacate, change or modify the same in any particular, or may remand for further action. The final order shall have the same force and effect as the original order.

(L) If the commission does not issue an order within twenty days after the filing of the request, the request for reconsideration shall be considered denied.

(f) Judicial Review.

(i) Respondent may file a petition for judicial review of the commission's final order within 30 days from the date the order is issued.

(ii) Appeals from formal adjudicative proceedings shall be to the Utah Court of Appeals in accordance with Sections 63-46b-16, -17, and -18, and Section 32A-1-120.

#### **R81-1-8. Consent Calendar Procedures.**

(1) Authority. This rule is pursuant to the commission's authority to establish procedures for suspending or revoking permits, licenses, and package agencies under 32A-1-107(1)(b) and (e), and the commission's authority to adjudicate violations of Title 32A.

(2) Purpose. This rule establishes a consent calendar procedure for handling letters of admonishment issued and settlement agreements proposed pursuant to R81-1-7 that meet the following criteria:

(a) Uncontested letters of admonishment where no written

objections have been received from the respondent; and

(b) Settlement agreements except those where the respondent is allowed to present further argument to the commission under the terms of the settlement agreement.

(3) Application of the Rule.

(a) A consent calendar may be utilized by the commission at their meetings to expedite the handling of letters of admonishment and settlement agreements that meet the criteria of Section (2).

(b) Consent calendar items shall be briefly summarized by department staff or the assistant attorney general assigned to the department. The summary shall describe the nature of the violations and the penalties sought.

(c)(i) The commission shall be furnished in advance of the meeting a copy of each letter of admonishment and settlement agreement on the consent calendar and any documents essential for the commission to make an informed decision on the matter.

(ii) If the case involves anything unusual or out of the ordinary, it shall be highlighted on the letter of admonishment or settlement agreement and shall be noted by the department staff person or assistant attorney general during the summary of the case.

(iii) Settlement agreements on the consent calendar shall include specific proposed dates for the suspension of any license or permit, and for payment of any fines or administrative costs.

(d) If the case involves a serious or grave violation as defined in R81-1-6, the licensee or permittee, absent good cause, shall be in attendance at the commission meeting. The licensee or permittee shall be present not to make a presentation, but to respond to any questions from the commission. Individual employees of a licensee or permittee are not required to be in attendance at the commission meeting.

(e) Any commissioner may have an item removed from the consent calendar if the commissioner feels that further inquiry is necessary before reaching a final decision. In the event a commissioner elects to remove an item from the consent calendar, and the licensee or permittee is not in attendance, the matter may be rescheduled for the next regular commission meeting. Otherwise, the action recommended by department staff or the assistant attorney general presenting the matter shall be approved by unanimous consent of the commission.

(f) All consent calendar items shall be approved in a single motion at the conclusion of the presentation of the summary.

(g) All fines and administrative costs shall be paid on or before the day of the commission meeting unless otherwise provided by order of the commission.

#### **R81-1-9. Liquor Dispensing Systems.**

A licensee may not install or use any system for the automated mixing or dispensing of spirituous liquor unless the dispensing system has been approved by the department.

(1) Minimum requirements. The department will only approve a dispensing system which:

(a) dispenses spirituous liquor in calibrated quantities not to exceed one ounce; and

(b) has a meter which counts the number of pours dispensed.

The margin of error of the system for a one ounce pour size cannot exceed 1/16 of an ounce or two milliliters.

(2) Types of systems. Dispensing systems may be of various types including: gun, stationary head, tower, insertable spout, ring activator or similar method.

(3) Method of approval.

(a) Suppliers. Companies which manufacture, distribute, sell, or supply dispensing systems must first have their product approved by the department prior to use by any liquor licensee in the state. They shall complete the "Supplier Application for Dispensing System Approval" form provided by the department, which includes: the name, model number, manufacturer and

supplier of the product; the type and method of dispensing, calibrating, and metering; the degree or tolerance of error, and a verification of compliance with federal and state laws, rules, and regulations.

(b) Licensees. Before any dispensing system is put into use by a licensee, the licensee shall complete the "Licensee Application for Dispensing System Approval" form provided by the department. The department shall maintain a list of approved products and shall only authorize installation of a product previously approved by the department as provided in subsection (a). The licensee is thereafter responsible for verifying that the system, when initially installed, meets the specifications which have been supplied to the department by the manufacturer. Once installed, the licensee shall maintain the dispensing system to ensure that it continues to meet the manufacturer's specifications. Failure to maintain the system may be grounds for suspension or revocation of the licensee's liquor license.

(c) Removal from approved list. In the event the system does not meet the specifications as represented by the manufacturer, the licensee shall immediately notify the department. The department shall investigate the situation to determine whether the product should be deleted from the approved list.

(4) Operational restrictions.

(a) The system must be calibrated to pour a quantity of spirituous liquor not to exceed one ounce.

(b) Voluntary consent is given that representatives of the department, State Bureau of Investigation, or any law enforcement officer shall have access to any system for inspection or testing purposes. A licensee shall furnish to the representatives, upon request, samples of the alcoholic products dispensed through any system for verification and analysis.

(c) Spirituous liquor bottles in use with a dispensing system at the dispensing location must be affixed to the dispensing system by the licensee. Spirituous liquor bottles in use with a remote dispensing system must be in a locked storage area. Any other primary spirituous liquor not in service must remain unopened. There shall be no opened primary spirituous liquor bottles at a dispensing location that are not affixed to an approved dispensing device. This rule does not prohibit the presence of opened containers of wine for use as provided by law.

(d) The dispensing system and spirituous liquor bottles attached to the system must be locked or secured in such a place and manner as to preclude the dispensing of spirituous liquor at times when liquor sales are not authorized by law.

(e) All dispensing systems and devices must

(i) avoid an in-series hookup which would permit the contents of liquor bottles to flow from bottle to bottle before reaching the dispensing spigot or nozzle;

(ii) not dispense from or utilize containers other than original liquor bottles; and

(iii) prohibit the intermixing of different kinds of products or brands in the liquor bottles from which they are being dispensed.

(f) Pursuant to federal law, all liquor dispensed through a dispensing system shall be from its original container, and there shall be no re-use or refilling of liquor bottles with any substance whatsoever. The commission adopts federal regulations 27 CFR 194 and 26 USCA Section 5301 and incorporates them by reference.

(g) Each licensee shall keep daily records for each dispensing outlet as follows:

(i) brands of liquor dispensed through the dispensing system;

(ii) beginning and ending meter readings by brand or sales price level and the number of portions dispensed through the dispensing system;

(iii) number of portions sold by brand or sales price level; and

(iv) a comparison of the number of portions dispensed to the number of portions sold including an explanation of any variances by brand or sales price level.

(v) These records must be made available for inspection and audit by the department or law enforcement.

(h) This rule does not prohibit the sale of pitchers of mixed drinks as long as the pitcher contains no more than one ounce of primary spirituous liquor per person to which the pitcher is served.

(i) Licensees shall display in a prominent place on the premises a list of the types and brand names of spirituous liquor being served through its dispensing system. This requirement may be satisfied either by printing the list on an alcoholic beverage menu or by wall posting or both.

(j) A licensee or his employee shall not:

(i) sell or serve any brand of spirituous liquor not identical to that ordered by the patron; or

(ii) misrepresent the brand of any spirituous liquor contained in any drink sold or offered for sale.

(k) All dispensing systems and devices must conform to federal, state, and local health and sanitation requirements. Where considered necessary, the department may:

(i) require the alteration or removal of any system,

(ii) require the licensee to clean, disinfect, or otherwise improve the sanitary conditions of any system.

#### **R81-1-10. Wine Dispensing.**

(1) Each licensee shall keep daily records that compare the number of portions of wine by the glass dispensed to the number of portions sold. These records shall indicate:

(a) the brands of each wine dispensed by the glass;

(b) the portion size, not to exceed five ounces per portion, and the number of portions dispensed by the glass of each wine by brand and sales price level;

(c) the portion size and number of portions sold by the glass of each wine by brand and sales price level; and

(d) a comparison of the number of portions dispensed to the number of portions sold including an explanation of any variances.

These records must be made available for inspection and audit by the department or law enforcement.

#### **R81-1-11. Multiple-Licensed Facility Storage and Service.**

(1) For the purposes of this rule:

(a) "premises" as defined in Section 32A-1-105(37) shall include the location of any licensed restaurant, limited restaurant, club, or on-premise beer retailer facility or facilities operated or managed by the same person or entity that are located within the same building or complex. Multiple licensed facilities shall be termed "qualified premises" as used in this rule.

(b) the terms "sell", "sale", "to sell" as defined in Section 32A-1-105(48) shall not apply to a cost allocation of alcoholic beverages as used in this rule.

(c) "cost allocation" means an apportionment of the as purchased cost of the alcoholic beverage product based on the amount dispensed in each outlet as reconciled by the record keeping requirements of this rule.

(d) "remote storage alcoholic beverage dispensing system" means a dispensing system where the alcoholic product is stored in a single centralized location, and may have separate dispensing heads at different locations, and is capable of accounting for the amount of alcoholic product dispensed to each location.

(2) Where qualified premises have consumption areas in reasonable proximity to each other, the dispensing of alcoholic beverages may be made from the alcoholic beverage inventory

of an outlet in one licensed location to patrons in either consumption area of the qualified premises subject to the following requirements:

(a) for liquor and wine dispensing, daily dispensing records as required in R81-1-9 and R81-1-10 must also show the amount of alcoholic beverage products dispensed to each licensed location;

(b) for beer dispensing, daily records must be kept in a form acceptable to the department that show the amount of beer dispensed to each outlet;

(c) point of sale control systems must be implemented that will record the amounts of each alcoholic beverage product sold in each location. Sales records and dispensing records must be balanced daily;

(d) cost allocation of the alcoholic beverage product cost must be made for each location on at least a monthly basis. Allocations must be able to be supported by the record keeping requirements of Section 32A-4-106, 32A-4-307, 32A-5-107, or 32A-10-206;

(e) dispensing of alcoholic beverages to a licensed location may not be made on prohibited days or at prohibited hours pertinent to that license type;

(f) if separate inventories of liquor are maintained in one dispensing location, the storage area of each licensee's liquor must remain locked during the prohibited hours and days of sale for each license type;

(g) dispensing of alcoholic beverages to a licensed location may not be made in any manner prohibited by the statutory or regulatory operational restrictions of that license type;

(h) a licensee must obtain department approval before dispensing alcoholic beverages as described in this section. Applications for approval shall be in a form prescribed by the department and shall include a floor plan of all storage, dispensing, sales, service, and consumption areas involved.

(i) alcoholic beverages dispensed under this section may be delivered by servers from one outlet to the various approved consumption areas, or dispensed to each outlet through the use of a remote storage alcoholic beverage dispensing system.

(3) On qualified premises where each licensee maintains an inventory of alcoholic beverage products, the alcoholic beverages owned by each licensee may be stored in a common location in the building subject to the following guidelines:

(a) each licensee shall identify the common storage location when applying for or renewing their license, and shall receive department approval of the location;

(b) each licensee must be able to account for its ownership of the alcoholic beverages stored in the common storage location by keeping records, balanced monthly, of expenditures for alcoholic beverages supported by items such as delivery tickets, invoices, receipted bills, canceled checks, petty cash vouchers; and

(c) the common storage area may be located on the premises of one of the licensed liquor establishments.

#### **R81-1-12. Alcohol Training and Education Seminar.**

(1) The alcohol training and education seminar, as described in Section 62A-15-401, shall be completed by every individual of every new and renewing licensee under title 32A who:

(a) is employed to sell or furnish alcoholic beverages to the public within the scope of his employment for consumption on the premises;

(b) is employed to manage or supervise the service of alcoholic beverages; or

(c) holds an ownership interest in an on-premise licensed establishment and performs the duties of a manager, supervisor, or server of alcoholic beverages.

(2) Persons described in subsection 1(a) and (b) must complete the training within 30 days of commencing

employment. Persons described in subsection 1(c) must complete the training within 30 days of engaging in the duties described in subsection 1(a) and (b).

(3) Each licensee shall maintain current records on each individual indicating:

(a) date of hire, and

(b) date of completion of training.

(4) The seminar shall include the following subjects in the curriculum and training:

(a) alcohol as a drug and its effect on the body and behavior;

(b) recognizing the problem drinker;

(c) an overview of state alcohol laws;

(d) dealing with problem customers; and

(e) alternate means of transportation to get a customer safely home.

(5) Persons required to complete the seminar shall pay a fee to the seminar provider.

(6) The seminar is administered by the Division of Substance Abuse of the Utah Department of Human Services.

(7) Persons who are not in compliance with subsection (2) may not:

(a) serve or supervise the serving of alcoholic beverages to a customer for consumption on the premises of a licensee; or

(b) engage in any activity that would constitute managing operations at the premises of a licensee.

#### **R81-1-13. Utah Government Records Access and Management Act.**

(1) Purpose. To provide procedures for access to government records of the commission and the department.

(2) Authority. The authority for this rule is Sections 63-2-204, and 63-2-904 of the Government Records Access and Management Act (GRAMA).

(3) Requests for Access. Requests for access to government records of the commission or the department should be written and made to the executive secretary of the commission or the records officer of the department, as the case may be, at the following address: Department of Alcoholic Beverage Control, 1625 South 900 West, P.O. Box 30408, Salt Lake City, Utah 84130-0408.

(4) Fees. A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from the commission and the department by contacting the appropriate official specified in paragraph (3) above. The department may require payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed \$50 or if the requester has not paid fees from previous requests. Fees for duplication and compilation of a record may be waived under certain circumstances described in Section 63-2-203(4). Requests for this waiver of fees must be made to the appropriate official specified in paragraph (3) above.

(5) Requests for Access for Research Purposes. Access to private or controlled records for research purposes is allowed by Section 63-2-202(8). Requests for access to these records for research purposes may be made to the appropriate official specified in paragraph (3) above.

(6) Intellectual Property Rights. Whenever the commission or department determines that it owns an intellectual property right to a portion of its records, it may elect to duplicate and distribute, or control any materials, in accordance with the provisions of Section 63-2-201(10). Decisions affecting records covered by these rights will be made by the appropriate official specified in paragraph (3) above. Any questions regarding the duplication and distribution of materials should be addressed to that individual.

(7) Requests to Amend a Record. An individual may contest the accuracy or completeness of a document pertaining to him pursuant to Section 63-2-603. The request should be

made to the appropriate official specified in paragraph (3) above.

(8) Time Periods Under GRAMA. The provisions of Rule 6 of the Utah Rules of Civil Procedure shall apply to calculate time periods specified in GRAMA.

**R81-1-14. Americans With Disabilities Act Complaint Procedure.**

(1) Authority and Purpose. This rule is promulgated pursuant to Section 63-46a-3(3). The commission, pursuant to 28 CFR 35.107, July 1, 1992 Ed., adopts, defines, and publishes within this rule complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act, with the commission or the department.

(2) No qualified individual with a disability, by reason of disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of the commission, or department, or be subjected to discrimination by the commission or department.

(3) Definitions.

"ADA coordinator" means the commission's and department's coordinator or designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.

"ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies: Office of Planning and Budget; Department of Human Resource Management; Division of Risk Management; Division of Facilities Construction Management; and Office of the Attorney General.

"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 an individual; a record of an impairment; or being regarded as having an impairment.

"Individual with a disability" 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 commission or department, or who would otherwise be an eligible applicant for vacant positions with the commission or department, as well as those who are employees of the commission or department.

"Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(4) Filing of Complaints.

(a) 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.

(b) The complaint shall be filed with the commission's and department's ADA coordinator in writing or in another accessible format suitable to the individual.

(c) Each complaint shall:

- (i) include the individual's name and address;
- (ii) include the nature and extent of the individual's disability;
- (iii) describe the commission's or department's alleged discriminatory action in sufficient detail to inform the commission or department of the nature and date of the alleged violation;
- (iv) describe the action and accommodation desire; and
- (v) be signed by the individual or by his legal representative.

(d) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

(5) Investigation of Complaint.

(a) 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 paragraph (4)(c) of this rule if it is not made available by the individual.

(b) When conducting the investigation, the ADA coordinator may seek assistance from the commission's or department's legal, human resource, and budget staff in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve an expenditure of funds which is not absorbable within the commission's or department's budget and would require appropriation authority; facility modifications; or reclassification or reallocation in grade, the ADA coordinator shall consult with the ADA State Coordinating Committee.

(6) Issuance of Decision.

(a) Within 15 working days after receiving the complaint, the ADA coordinator shall issue a decision outlining in writing or in another acceptable suitable format stating what action, if any, shall be taken on the complaint.

(b) If the coordinator is unable to reach a decision within the 15 working day period, he 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.

(7) Appeals.

(a) The individual may appeal the decision of the ADA coordinator by filing an appeal within five working days from the receipt of the decision.

(b) Appeals involving the commission shall be filed in writing with the commission. Appeals involving the department shall be filed in writing with the department's executive director or a designee other than the ADA coordinator.

(c) The filing of an appeal shall be considered as authorization by the individual to allow review of all information, including information classified as private or controlled, by the commission, executive director, or designee.

(d) The appeal shall describe in sufficient detail why the ADA coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

(e) The commission, executive director, or designee, shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the ADA 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 any decision that would involve an expenditure of funds which is not absorbable within the commission's or department's budget and would require appropriation authority; facility modifications; or reclassification or reallocation in grade, the commission, executive director, or designee shall also consult with the State ADA Coordinating Committee.

(f) 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.

(g) If the commission, executive director, or designee is unable to reach a decision within the ten working day period, the individual shall be notified in writing or by another acceptable, suitable format why the decision is being delayed and the additional time needed to reach a decision.

(8) Classification of records. The record of each complaint and appeal, and all written records produced or received as part of the action, shall be classified as protected as defined under Section 63-2-304 until the ADA coordinator, executive director, or their designees issue the decision, at

which time any portions of the record which may pertain to the individual's medical condition shall remain classified as private as defined under Section 63-2-302, or controlled as defined in Section 63-2-303. All other information gathered as part of the complaint record shall be classified as private information. Only the written decision of the ADA coordinator, executive director, or designees shall be classified as public information.

(9) 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 35.170, et seq.; or any other Utah or federal law that provides equal or greater protection for the rights of individuals with disabilities.

#### **R81-1-15. Commission Declaratory Orders.**

(1) Authority. As required by Section 63-46b-21, and as authorized by Section 32A-1-107, this rule provides the procedures for the submission, review, and disposition of petitions for commission declaratory orders on the applicability of statutes administered by the commission and department, rules promulgated by the commission, and orders issued by the commission.

(2) Petition Procedure.

(a) Any person or government agency directly affected by a statute administered by the commission, a rule promulgated by the commission, or an order issued by the commission may petition for a declaratory order.

(b) The petitioner shall file the petition with the commission's executive secretary.

(3) Petition Form. The petition shall:

(a) be clearly designated as a request for a declaratory order;

(b) identify the statute, rule, or order to be reviewed;

(c) describe the situation or circumstances giving rise to the need for the declaratory order, or in which applicability of the statute, rule, or order is to be reviewed;

(d) describe the reason or need for the applicability review;

(e) identify the person or agency directly affected by the statute, rule, or order;

(f) include an address and telephone number where the petitioner can be reached during regular work days; and

(g) be signed by the petitioner.

(4) Petition Review and Disposition.

(a) The commission shall:

(i) review and consider the petition;

(ii) prepare a declaratory order stating:

(A) the applicability or non-applicability of the statute, rule, or order at issue;

(B) the reasons for the applicability or non-applicability of the statute, rule, or order; and

(C) any requirements imposed on the department, the petitioner, or any person as a result of the declaratory order;

(iii) serve the petitioner with a copy of the order.

(b) The commission may:

(i) interview the petitioner;

(ii) hold an informal adjudicative hearing to gather information prior to making its determination;

(iii) hold a public information-gathering hearing on the petition;

(iv) consult with department staff, the Attorney General's Office, other government agencies, or the public; and

(v) take any other action necessary to provide the petition adequate review and due consideration.

#### **R81-1-16. Disqualification Based Upon Conviction of Crime.**

(1) The Alcoholic Beverage Control Act generally disqualifies persons from being employees of the department, operating a package agency, holding a license or permit, or being employed in a managerial or supervisory capacity with a

package agency, licensee or permittee if they have been convicted of:

(a) a felony under any federal or state law;

(b) any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages;

(c) any crime involving moral turpitude; or

(d) driving under the influence of alcohol or drugs on two or more occasions within the last five years.

(2) In the case of a partnership, corporation, or limited liability company the proscription under Subsection (1) applies if any of the following has been convicted of any offense described in Subsection (1):

(a) a partner;

(b) a managing agent;

(c) a manager;

(d) an officer;

(e) a director;

(f) a stockholder who holds at least 20% of the total issued and outstanding stock of the corporation; or

(g) a member who owns at least 20% of the limited liability company.

(3) As used in the Act and these rules:

(a) "convicted" or "conviction" means a determination of guilt by a judge or a jury, upon either a trial or entry of a plea, in any court, including a court not of record, that has not been reversed on appeal;

(b) "felony" means any crime punishable by a term of imprisonment in excess of one year; and

(c) a "crime involving moral turpitude" means a crime that involves actions done knowingly contrary to justice, honesty, or good morals. It is also described as a crime that is "malum in se" as opposed to "malum prohibitum" - actions that are immoral in themselves regardless of being punishable by law as opposed to actions that are wrong only since they are prohibited by statute. A crime of moral turpitude ordinarily involves an element of falsification or fraud or of harm or injury directed to another person or another's property. For purposes of this rule, crimes of moral turpitude may include crimes involving controlled substances, illegal drugs, and narcotics.

#### **R81-1-17. Advertising.**

(1) Authority and General Purpose. This rule is pursuant to Section 32A-12-401(4) which authorizes the commission to establish guidelines for the advertising of alcoholic beverages in this state except to the extent prohibited by Title 32A.

(2) Definitions.

(a) For purposes of this rule, "advertisement" or "advertising" includes any written or verbal statement, illustration, or depiction which is calculated to induce alcoholic beverage sales, whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or any written, printed, graphic, or other matter accompanying the container, representations made on cases, billboard, sign, or other public display, public transit card, other periodical literature, publication or in a radio or television broadcast, or in any other media; except that such term shall not include:

(i) labels on products; or

(ii) any editorial or other reading material (i.e., news release) in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any alcoholic beverage industry member or retailer, and which is not written by or at the direction of the industry member or retailer.

(b) For purposes of this rule, "minor" or "minors" shall mean persons under the age of 21 years.

(3) Application.

(a) This rule shall govern the regulation of advertising of alcoholic beverages sold within the state, except where the regulation of interstate electronic media advertising is preempted by federal law. This rule incorporates by reference the Federal Alcohol Administration Act, 27 U.S.C. 205(f), and Subchapter A, Parts 4, 5, 6 and 7 of the regulations of the Bureau of Alcohol, Tobacco and Firearms, United States Department of the Treasury in 27 CFR 4, 5, 6 and 7 (1993 Edition). These provisions shall regulate the labeling and advertising of alcoholic beverages sold within this state, except where federal statutes and regulations are found to be contrary to or inconsistent with the provisions of the statutes and rules of this state.

(b) 27 CFR Section 7.50 provides that federal laws apply only to the extent that the laws of a state impose similar requirements with respect to advertisements of malt beverages manufactured and sold or otherwise disposed of in the state. This rule, therefore, adopts and incorporates by reference federal laws, previously referenced in subparagraph (a), relating to the advertising of malt beverage products.

(4) Current statutes and rules restricting the advertising, display, or display of price lists of liquor products, as defined in 32A-1-105(25), by the department, state stores, or type 1, 2 or 3 package agencies as defined in R81-3-1, are applicable.

(5) All advertising of liquor and beer by manufacturers, suppliers, importers, local industry representatives, wholesalers, permittees, and licensed retailers of such products, and type 4 and 5 package agencies as defined in R81-3-1 shall comply with the advertising requirements listed in Section (6) of this rule.

(6) Advertising Requirements. Any advertising or advertisement authorized by this rule:

(a) May not violate any federal laws referenced in Subparagraph (3);

(b) May not contain any statement, design, device, or representation that is false or misleading;

(c) May not contain any statement, design, device, or representation that is obscene or indecent;

(d) May not refer to, portray or imply illegal conduct, illegal activity, abusive or violent relationships or situations, or anti-social behavior, except in the context of public service advertisements or announcements to educate and inform people of the dangers, hazards and risks associated with irresponsible drinking or drinking by persons under the age of 21 years;

(e) May not encourage over-consumption or intoxication, promote the intoxicating effects of alcohol consumption, or overtly promote increased consumption of alcoholic products;

(f) May not advertise any unlawful discounting practice such as "happy hour", "two drinks for the price of one", "free alcohol", or "all you can drink for \$...".

(g) May not encourage or condone drunk driving;

(h) May not depict the act of drinking;

(i) May not promote or encourage the sale to or use of alcohol by minors;

(j) May not be directed or appeal primarily to minors by:

(i) using any symbol, language, music, gesture, cartoon character, or childhood figure such as Santa Claus that primarily appeals to minors;

(ii) employing any entertainment figure or group that appeals primarily to minors;

(iii) placing advertising in magazines, newspapers, television programs, radio programs, or other media where most of the audience is reasonably expected to be minors, or placing advertising on the comic pages of magazines, newspapers, or other publications;

(iv) placing advertising in any school, college or university magazine, newspaper, program, television program, radio program, or other media, or sponsoring any school, college or university activity;

(v) using models or actors in the advertising that are or

reasonably appear to be minors;

(vi) advertising at an event where most of the audience is reasonably expected to be minors; or

(vii) using alcoholic beverage identification, including logos, trademarks, or names on clothing, toys, games or game equipment, or other materials intended for use primarily by minors.

(k) May not portray use of alcohol by a person while that person is engaged in, or is immediately about to engage in, any activity that requires a high degree of alertness or physical coordination;

(l) May not contain claims or representations that individuals can obtain social, professional, educational, athletic, or financial success or status as a result of alcoholic beverage consumption, or claim or represent that individuals can solve social, personal, or physical problems as a result of such consumption;

(m) May not offer alcoholic beverages without charge;

(n) May not require the purchase, sale, or consumption of an alcoholic beverage in order to participate in any promotion, program, or other activity; and

(o) May provide information regarding product availability and price, and factual information regarding product qualities, but may not imply by use of appealing characters or life-enhancing images that consumption of the product will benefit the consumer's health, physical prowess, sexual prowess, athletic ability, social welfare, or capacity to enjoy life's activities.

(7) Violations. Any violation of this rule may result in the imposition of any administrative penalties authorized by 32A-1-119(5), (6) and (7), and may result in the imposition of the criminal penalty of a class B misdemeanor pursuant to 32A-12-104 and -401.

#### **R81-1-19. Emergency Meetings.**

(1) Purpose. The commission recognizes that there may be times when, due to the necessity of considering matters of an emergency or urgent nature, the public notice provisions of Utah Code Sections 52-4-6(1), (2) and (3) cannot be met. Pursuant to Utah Code Section 52-4-6(5), under such circumstances those notice requirements need not be followed but rather the "best notice practicable" shall be given.

(2) Authority. This rule is enacted under the authority of Sections 63-46a-3 and 32A-1-107.

(3) Procedure. The following procedure shall govern any emergency meeting:

(a) No emergency meeting shall be held unless an attempt has been made to notify all of the members of the commission of the proposed meeting and a majority of the convened commission votes in the affirmative to hold such an emergency meeting.

(b) Public notice of the emergency meeting shall be provided as soon as practicable and shall include at a minimum the following:

(i) Written posting of the agenda and notice at the offices of the department;

(ii) If members of the commission may appear electronically or telephonically, all such notices shall specify the anchor location for the meeting at which interested persons and members of the public may attend, monitor, and participate in the open portions of the meeting;

(iii) Notice to the commissioners shall advise how they may participate telephonically or electronically and be counted as present for all purposes, including the determination of a quorum.

(iv) Written, electronic or telephonic notice shall be provided to at least one newspaper of general circulation within the state and at least one local media correspondent.

(c) If one or more members of the commission appear

electronically or telephonically, the procedures governing electronic meetings shall be followed, except for the notice requirements which shall be governed by these provisions.

(d) In convening the meeting and voting in the affirmative to hold such an emergency meeting, the commission shall affirmatively state and find what unforeseen circumstances have rendered it necessary for the commission to hold an emergency meeting to consider matters of an emergency or urgent nature such that the ordinary public notice of meetings provisions of Utah Code Section 52-4-6 could not be followed.

#### **R81-1-20. Electronic Meetings.**

(1) Purpose. Utah Code Section 52-4-207 requires any public body that convenes or conducts an electronic meeting to establish written procedures for such meetings. This rule establishes procedures for conducting commission meetings by electronic means.

(2) Authority. This rule is enacted under the authority of Sections 52-4-207, 63-46a-3 and 32A-1-107.

(3) Procedure. The following provisions govern any meeting at which one or more commissioners appear telephonically or electronically pursuant to Utah Code Section 52-4-207:

(a) If one or more members of the commission may participate electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the commission not participating electronically or telephonically will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(b) Notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be provided to at least one newspaper of general circulation within the state and to a local media correspondent. These notices shall be provided at least 24 hours before the meetings.

(c) Notice of the possibility of an electronic meeting shall be given to the commissioners at least 24 hours before the meeting. In addition, the notice shall describe how a commissioner may participate in the meeting electronically or telephonically.

(d) When notice is given of the possibility of a commissioner appearing electronically or telephonically, any commissioner may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the commission. At the commencement of the meeting, or at such time as any commissioner initially appears electronically or telephonically, the chair shall identify for the record all those who are appearing telephonically or electronically. Votes by members of the commission who are not at the physical location of the meeting shall be confirmed by the chair.

(e) The anchor location, unless otherwise designated in the notice, shall be at the offices of the Department of Alcoholic Beverage Control, 1625 South 900 West, Salt Lake City, Utah. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. In addition, the anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

#### **R81-1-21. Beer Advertising in Event Venues.**

(1) Authority. This rule is pursuant to the commission's powers and duties as the plenary policymaking body on the subject of alcoholic beverage control under 32A-1-107, and its authority to establish guidelines for the advertising of alcoholic beverages under 32A-12-401(4).

(2) Purpose.

(a) This rule establishes a "safe harbor" from administrative action being taken against beer manufacturers

and retailers under the circumstances and conditions below. This rule is necessary to allow certain advertising relations to occur even though they have the appearance of violating the "tied-house" provisions of 32A-12-603, but where the reasons and purposes for the "tied-house" provisions do not apply.

(b) "Tied-house" provisions have been enacted at both the federal and state level in response to historical forces and concerns. The thrust of the laws is to prevent two particular dangers: the ability and potential ability of large firms to dominate local markets through vertical and horizontal integration, and excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The principle method used to avoid these developments was the establishment of a triple-tiered distribution system and licensing scheme where separate and distinct business enterprises engaged in the production, handling, and final sale of alcoholic beverages. The laws also prohibited certain economic arrangements and agreements between each of the three tiers of the distribution system.

(c) Utah's "tied-house" and trade practice laws prohibit a beer industry member, directly or indirectly or through an affiliate, from inducing any beer retailer to purchase alcoholic beverages from the industry member to the exclusion in whole or in part of any of those products sold or offered for sale by other persons by furnishing the retailer signs, money or other things of value except to the extent allowed under 32A-12-603. The laws prohibit a beer industry member, directly or indirectly or through an affiliate, from paying or crediting a beer retailer for any advertising, display, or distribution service. 32A-12-603(5). This includes the purchase, by an industry member, of advertising on signs, scoreboards, programs, scorecards, and the like at ballparks, racetracks or stadiums, from the retail concessionaire. See 27 C.F.R. Sec. 6.53 as referenced in 32A-12-603(5)(a). The laws also prohibit an industry member from making payments for advertising to a retailer association or a display company where the resulting benefits flow to the individual retailers. 32A-12-603(3)(b)(i)(A).

(d) Throughout the state, there are a number of large facilities which put on or allow events to occur on their premises. This includes sports arenas, ballparks, raceways, fairgrounds, equestrian facilities and the like. These facilities have a recognized area of advertising for sale in connection with the events and which is standard for their events, e.g., fence signage at ballparks. Many of these facilities are or have associated with their on-premise beer retailer, either on an annual basis, or as a temporary event permit holder. The issue is thus raised as to the legality of the advertising of beer products as part of the general advertising where other items are advertised and the facility is or has within it an on-premise beer retailer.

(3) Application of the Rule. If the conditions listed below are met, the reasons and purposes behind the "tied-house" provisions restricting relations between manufacturers and retailers do not apply or are not significantly impacted. In addition, an event facility may be unduly restricted in its ability to sell advertising and be competitive. This is based upon the facility's primary purpose being other than the sale of food and beverages, that advertising is a normal and accepted part of the business of the facility and the events that occur at the facility, that beer advertisers would be on equal footing with other advertisers, and that there is little, if any, likelihood of the purchasing of advertising space or time either having an impact on the beer retailing decisions of the retailer or of allowing the manufacturer to obtain or assert control over the retailer. Therefore, if the following conditions are met, the sale of advertising space or time to a beer manufacturer for display at the facility does not constitute the payment to a retailer for advertising, display or distribution service, and does not otherwise constitute the furnishing of any signs, money, or other

things of value to a retailer in violation of the "tied-house" provisions of 32A-12-603:

(a) The primary purpose of the facility is the hosting or putting on events, and not the sale or service of food and beverages, including alcoholic beverages;

(b) The retail licensee operates with a fixed seating capacity of more than 2,000 persons;

(c) The advertising space or time is purchased only in connection with events to be held on the premises, and not as point-of-sale advertising. The advertising space or time is not located near the beer concession area and does not reference the on-premise retailer or the availability of beer;

(d) Sales of event advertising space or time and retail beer sales are handled by different entities or divisions, that are separate and do not influence each other, and no preference in terms of beer sales or facilities are extended to a beer advertiser;

(e) The retail licensee serves other brands of malt beverages or beer than the brand manufactured or sold by the manufacturer purchasing advertising space or time. Unless demonstrated for sound business reasons unrelated to "tied-house" laws, the percentage of taps in a facility may not exceed by 10% the actual percentage of sales, by brand, in that facility or the community in the previous year;

(f) The advertising space or time is available to all types of advertisers, is not limited to any type of product, such as beer, is pursuant to an established rate card that sets forth the advertising rates equally available to any other industry member or (and at rates substantially similar for any) non-industry advertiser, and the advertising agreement does not provide for an exclusive right to an advertiser or a right to exclude other advertisers;

(g) The industry member may not share in the costs or contribute to the costs of the advertising or promotion of the beer retailer or the facility, or obtain or have any interest in the retailer or the facility; and

(h) The purchase of advertising space or time is by written agreement, a copy of which shall be provided to the department as a confidential business document, non-public, and only to be used for enforcement purposes, and the term of the agreement may not be for a period in excess of three years, including any right of renewal.

(4) This "safe harbor" is limited to its express terms, does not undermine or infringe upon general "tied-house" prohibitions, and shall be strictly construed against its applicability. This "safe harbor" also does not limit or abrogate any exception to "tied-house" prohibitions.

#### **R81-1-22. Diplomatic Embassy Shipments and Purchases.**

(1) Purpose. The Vienna Conventions on Diplomatic and Consular Relations grant foreign diplomatic missions certain exemptions from federal, state and local taxes. The United States, by treaty, is a party to the Vienna Conventions, and is obligated under international law to grant these exemptions under these agreements to accredited diplomatic missions of those countries that grant the United States reciprocal privileges. These privileges include the purchase of alcoholic beverages duty and tax free subject to certain exceptions such as indirect taxes normally incorporated in the price of goods or services, and charges levied for specific services rendered to benefit the mission.

This rule establishes department guidelines for shipments and purchases of alcohol by a foreign diplomatic mission with an accredited embassy having full diplomatic privileges under the Vienna Conventions that establishes an embassy presence in the state of Utah (hereafter "accredited foreign diplomatic mission").

(2) Application of Rule.

(a) Shipments. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may have or

possess, for official diplomatic use, and not for sale or resale, alcoholic beverages that have not been purchased in the state of Utah. Such products may be shipped or transported into the state of Utah under the following conditions:

(i) The embassy must first obtain the approval of this department prior to shipping or transporting its alcoholic beverages into the state.

(ii) Alcoholic beverages shipped or transported into the state must clear U.S. Customs duty free.

(iii) The department shall affix the official state label to the alcoholic beverages.

(iv) The embassy shall pay the department an administrative handling fee of \$1.00 per smallest unit (bottle, can, or keg). Payment of handling fees shall be made by the embassy using an official embassy check or embassy credit card.

(v) The alcoholic beverages may be used by the embassy only for official diplomatic functions, and may not be sold or resold.

(b) Purchases.

(i) Special Orders. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may special order from the department alcoholic beverage products not presently sold in the state of Utah under the following procedures:

(A) The company or importer supplying the product must submit a price quotation to the department indicating the case price (in US dollars) for which it will sell the product to the state.

(B) The quoted case price must be reasonable (a minimum of \$10.00 per case).

(C) The product will be marked up using the department's standard pricing formula (less the state sales tax).

(D) Special orders must be placed by the embassy at least two months in advance to allow the department sufficient time to purchase and receive the product for the embassy.

(E) The product must be paid for by the embassy using an official embassy check or embassy credit card.

(F) The product may be used by the embassy only for official diplomatic functions, and may not be sold or resold.

(ii) Presently Available Merchandise. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may purchase alcoholic beverages that are presently sold in the state of Utah under the following procedures:

(A) Alcoholic beverage product purchases, other than large quantity purchases, may be made by the embassy at any state store. The store shall deduct state sales tax from the purchase price.

(B) Large quantity purchase orders must be placed by the embassy at the department's licensee warehouse. The warehouse shall deduct state sales tax from the purchase price.

(C) The products must be paid for by the embassy using an official embassy check or embassy credit card.

(D) The product may be used by the embassy only for official diplomatic functions, and may not be sold or resold.

#### **R81-1-23. Sales Restrictions on Products of Limited Availability.**

(1) Purpose. Some alcoholic beverage products, especially wines, are of very limited availability from their manufacturers and suppliers to retailers including the department. When the department perceives that customer demand for these limited products may exceed the department's current and future stock levels, the department, as a public agency, may place restrictions on their sales to ensure their fair distribution to all consumers. This also encourages manufacturers and suppliers to continue to provide their products to the department. This rule establishes the procedure for allocating products of limited availability.

(2) Application of Rule.

(a) The purchasing and wine divisions of the department

shall identify those products that are of limited availability and designate them as "Limited /Allocated Status" ("L Status") items. The products shall be given a special "L Status" product code designation.

(b) "L Status" products on the department's price list, in stock, or on order, do not have to be sold on demand. Their sales to the general public and to licensees and permittees may be restricted. The purchasing and wine divisions of the department may issue system-wide restrictions directing the allocation of such products which may include placing limits on the number of bottles sold per customer.

(c) Signs noting this rule shall be posted in state stores and package agencies that carry "L Status" products.

#### **R81-1-24. Responsible Alcohol Service Plan.**

(1) Authority. This rule is pursuant to the commission's powers and duties under 32A-1-107 to act as a general policymaking body on the subject of alcoholic beverage control; set policy by written rules that establish criteria and procedures for suspending or revoking licenses; and prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

(2) Purpose. This rule allows the commission to require a business licensed by the commission to sell, serve or store alcoholic beverages for consumption on the licensed premises that has been found by the commission to have violated any provision of the Alcoholic Beverage Control Act relating to the sale, service, or furnishing of alcoholic beverages to an intoxicated person, or to a person under the age of 21, to have a written Responsible Alcohol Service Plan.

(3) Definitions.

(a) "Commission" means the Alcoholic Beverage Control Commission.

(b) "Department" means the Department of Alcoholic Beverage Control.

(c) "Intoxication" and "intoxicated" means a person who is actually, apparently, or obviously under the influence of an alcoholic beverage, a controlled substance, a substance having the property of releasing toxic vapors, or a combination of alcoholic beverages or said substances, to a degree that the person may endanger himself or another.

(d) "Licensed Business" is a person or business entity licensed by the commission to sell, serve, and store alcoholic beverages for consumption on the premises of the business.

(e) "Manager" means a person chosen or appointed to manage, direct, or administer the operations at a licensed business. A manager may also be a supervisor.

(f) "Responsible Alcohol Service Plan" or "Plan" means a written set of policies and procedures of a licensed business that outline measures that will be taken by the business to prevent employees of the licensed business from:

- (i) over-serving alcoholic beverages to customers;
- (ii) serving alcoholic beverages to customers who are actually, apparently, or obviously intoxicated; and
- (iii) serving alcoholic beverages to persons under the age of 21.

(h) "Server" means an employee who actually makes available, serves to, or provides an alcoholic beverage to a customer for consumption on the business premises.

(i) "Supervisor" means an employee who, under the direction of a manager or owner, directs or has the responsibility to direct, transfer, or assign duties to employees who actually provide alcoholic beverages to customers on the premises of the business.

(4) Application of Rule.

(a)(i) The commission may direct that a licensed business that has been found by the commission to have violated any provision of the Alcoholic Beverage Control Act relating to the sale, service, or furnishing of alcoholic beverages to an

intoxicated person, or to a person under the age of 21, submit to the department a Responsible Alcohol Service Plan.

(ii) The licensee thereafter shall maintain a Plan as a condition of continued licensing and relicensing by the commission.

(b) Any Plan at a minimum shall:

(i) outline the policies and procedures of the licensed business to:

(A) prevent over-service of alcohol;

(B) prevent service of alcohol to persons who are intoxicated;

(C) prevent service of alcohol to persons under the age of 21;

(D) provide alternate transportation options for problem customers; and

(E) deal with hostile customers;

(ii) require that all managers, supervisors, servers, security personnel, and others who are involved in the sale, service or furnishing of alcohol, agree to follow the policies and procedures of the Plan;

(iii) require adherence to the Plan as a condition of employment;

(iv) require a commitment by management to monitor employee compliance with the Plan;

(v) require periodic training sessions on the house policies and procedures in the Plan, and on the techniques of responsible service of alcohol taught in the Alcohol Training and Education Seminar required by 62A-15-401, such as:

(A) identifying legal forms of ID, checking ID, and recognizing fake ID;

(B) identifying persons under the age of 21;

(C) discussing the legal definition of intoxication;

(D) identifying behavioral signs of intoxication;

(E) discussing techniques for monitoring and controlling consumption such as:

(1) drink counting;

(2) slowing down alcohol service;

(3) offering food or nonalcoholic beverages; and

(4) cutting off alcohol service;

(F) discussing third party or "dram shop" liability for the unlawful service of alcohol to intoxicated persons and persons under the age of 21 as outlined in 32A-14a-101 through -105; and

(G) discussing the potential criminal, civil and administrative penalties for over-serving alcohol, selling, serving, or otherwise furnishing alcohol to persons who are intoxicated, or to persons who are under the age of 21.

(c) The licensed business may choose to include in the Plan incentives for those employees who deserve special recognition for their responsible service of alcohol.

(d) The Plan shall be available on the premises of the licensed business so as to be accessible to all employees of the licensed business who are involved in the sale, service or furnishing of alcohol.

(e) The Plan shall be available on the premises of the licensed business for inspection by representatives of the commission, department and by law enforcement officers.

(f) Any licensed business that fails to submit to the department a Plan as directed by the commission pursuant to Subsection (4)(a), or to have a Plan available for inspection as required by Subsection (4)(e), shall be subject to the immediate suspension or revocation of its current license, and shall not be granted a renewal of its license by the commission.

(g) The department, at the request of a licensed business, may provide assistance in the preparation of a Plan.

#### **R81-1-25. Sexually-Oriented Entertainers and Stage Approvals.**

(1) Authority. This rule is pursuant to:

(a) the police powers of the state under 32A-1-103 to regulate the sale, service and consumption of alcoholic beverages in a manner that protects the public health, peace, safety, welfare, and morals;

(b) the commission's powers and duties under 32A-1-107 to prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored; and

(c) 32A-1-601 through -604 that prescribe the attire and conduct of sexually-oriented entertainers in premises regulated by the commission and require them to appear or perform only in a tavern or class D private club and only upon a stage or in a designated area approved by the commission in accordance with commission rule.

(2) Purpose. This rule establishes guidelines used by the commission to approve stages and designated performance areas in a tavern or class D private club where sexually-oriented entertainers may appear or perform in a state of seminudity.

(3) Definitions.

(a) "Seminude", "seminudity, or "state of seminudity" means a state of dress as defined in 32A-1-105(49).

(b) "Sexually-oriented entertainer" means a person defined in 32A-1-105(50).

(4) Application of Rule.

(a) A sexually-oriented entertainer may appear or perform seminude only on the premises of a tavern or class D private club.

(b) A tavern or class D private club licensee, or an employee, independent contractor, or agent of the licensee shall not allow:

(i) a sexually-oriented entertainer to appear or perform seminude except in compliance with the conditions and attire and conduct restrictions of 32A-1-602 and -603;

(ii) a patron to be on the stage or in the performance area while a sexually-oriented entertainer is appearing or performing on the stage or in the performance area; and

(iii) a sexually-oriented entertainer to appear or perform seminude except on a stage or in a designated performance area that has been approved by the commission.

(c) Stage and designated performance area requirements.

(i) The following shall submit for commission approval a floor-plan containing the location of any stage or designated performance area where sexually-oriented entertainers appear or perform:

(A) an applicant for a tavern or class D private club license from the commission who intends to have sexually-oriented entertainment on the premises;

(B) a current tavern or class D private club licensee of the commission that did not have sexually-oriented entertainment on the premises when application was made for the license or permit, but now intends to have such entertainment on the premises; or

(C) a current tavern or class D private club licensee of the commission that has sexually-oriented entertainment on the premises, but has not previously had the stage or performance area approved by the commission.

(ii) The commission may approve a stage or performance area where sexually-oriented entertainers may perform in a state of seminudity only if the stage or performance area:

(A) is horizontally separated from the portion of the premises on which patrons are allowed by a minimum of three (3) feet, which separation shall be delineated by a physical barrier or railing that is at least three (3) feet high from the floor;

(B) is configured so as to preclude a patron from:

(I) touching the sexually-oriented entertainer;

(II) placing any money or object on or within the costume or the person of any sexually-oriented entertainer;

(III) is configured so as to preclude a sexually-oriented entertainer from touching a patron; and

(IV) conforms to the requirements of any local ordinance of the jurisdiction where the premise is located relating to distance separation requirements between sexually-oriented entertainers and patrons that may be more restrictive than the requirements of Sections (4)(c)(i) and (ii) of this rule.

(iii) The person applying for approval of a stage or performance area shall submit with their application:

(A) a diagram, drawn to scale, of the premises of the business including the location of any stage or performance area where sexually-oriented entertainers will appear or perform;

(B) a copy of any applicable local ordinance relating to distance separation requirements between sexually-oriented entertainers and patrons; and

(C) evidence of compliance with any such applicable local ordinance.

#### **R81-1-26. Criminal History Background Checks.**

(1) Authority. This rule is pursuant to:

(a) the commission's powers and duties under 32A-1-107 to set policy by written rules that establish criteria and procedures for granting, denying, suspending, or revoking permits, licenses, and package agencies; and

(b) 32A-3-103, 32A-4-103, 32A-4-203, 32A-4-304, 32A-4-403, 32A-5-103, 32A-6-103, 32A-7-103, 32A-8-103, 32A-8-503, 32A-9-103, 32A-10-203, 32A-10-303, and 32A-11-103 that prohibit certain persons that have been convicted of certain criminal offenses from holding or being employed by the holder of an alcoholic beverage license, permit, or package agency.

(2) Purpose. This rule:

(a) establishes the circumstances under which a person identified in the statutory sections enumerated in Subparagraph (1)(b), must provide the department with a criminal history background report that shows the person meets the qualifications of those statutory sections as a condition of the commission granting a license, permit, or package agency to an applicant for a license, permit, or package agency; and

(b) establishes the procedures for the filing and processing of criminal history background reports.

(3) Application of Rule.

(a)(i) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), and (vi) a person identified in Subparagraph (1)(b) who has been a resident of the state of Utah for at least one year, shall submit a criminal history background report from the Utah Bureau of Criminal Identification, Department of Public Safety.

(ii) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), and (vi) and (3)(b) through (g), a person identified in Subparagraph (1)(b) who has been a resident of the state of Utah for less than one year, shall submit a criminal history background report from the Federal Bureau of Investigation (hereafter "F.B.I.").

(iii) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), and (vi) and (3)(b) through (g), a person identified in Subparagraph (1)(b) who currently resides outside the state of Utah shall submit a criminal history background report from the F.B.I.

(iv) A person identified in Subparagraph (1)(b) who previously submitted a criminal background check as part of the application process for a different license, permit, or package agency that was issued by the commission shall not be required to file a new criminal history background report as part of the application process for a new license, permit, or package agency if the person attests that he or she has not been convicted of any disqualifying criminal offense identified in Subparagraph (1)(b).

(v) An applicant for a single event permit under Title 32A, Chapter 7 shall not be required to submit a criminal history background report if the applicant attests that the persons identified in Subparagraph (1)(b) have not been convicted of any disqualifying criminal offense.

(vi) An applicant for a temporary special event beer permit under 32A-10-301 to -306 shall not be required to submit a criminal history background report if the applicant attests that the persons identified in Subparagraph (1)(b) have not been convicted of any disqualifying criminal offense identified in Subparagraph (1)(b).

(b) An application that requires F.B.I. criminal history background report(s) may be included on a commission meeting agenda, and may be considered by the commission for issuance of a license, permit, or package agency if:

(i) the applicant has completed all requirements to apply for the license, permit, or package agency other than providing the required F.B.I. criminal history background report(s);

(ii) the applicant attests in writing that he or she is not aware of any criminal conviction of any person identified in Subparagraph (1)(b) that would disqualify the applicant from applying for and holding the license, permit, or package agency;

(iii) the applicant attests in writing that all request(s) for any required F.B.I. criminal history background report(s) have been submitted to the F.B.I, and provides the following information and documentation:

(A) the date the request(s) were submitted to the F.B.I.

(B) a copy of the written request(s) submitted to the F.B.I.

(C) a copy of the fingerprint card(s) submitted to the F.B.I.;

(iv) the applicant at the time of application supplies the department with a current criminal history background report conducted by a third-party background check reporting service on any person for which an F.B.I. background check is required; and

(v) the applicant stipulates in writing that if an F.B.I. report shows a criminal conviction that would disqualify the applicant from holding the license, permit, or package agency, the applicant shall immediately surrender the license, permit, or package agency to the department.

(c) The commission may issue a license, permit, or package agency to an applicant that has met the requirements of Subparagraph (3)(b), and the license, permit, or package agency shall be valid during the period the F.B.I. is processing the criminal history report(s).

(d) The department shall use a unique file tracking system for such licenses, permits, and package agencies.

(e) If the required F.B.I. report(s) are not received by the department within six (6) months of the date the license, permit, or package agency is issued by the commission, the licensee, permittee, or package agent shall appear at the next regular meeting of the commission for a status report, and the commission may either order the surrender of the license, permit, or package agency, or may extend the reporting period.

(f) Upon the department's receipt of the F.B.I. report(s):

(i) if there is no disqualifying criminal history, the license, permit, or package agency shall continue for the balance the license or permit period, or the package agency contract period; or

(ii) if there is a disqualifying criminal history, the license, permit, or package agency shall be immediately surrendered, and the commission may enter an order accepting the surrender, or an order revoking the license, permit, or package agency depending on the circumstances.

(g) In the case of a license or permit, if the statutory deadline for renewing the license or permit occurs before receipt of the F.B.I. report(s), the licensee or permittee may file for renewal of the license or permit subject to meeting all of the requirements in Subparagraphs (3)(b) through (f).

32A-4-103(1)(a)  
 32A-4-106(22)  
 32A-4-203(1)(a)  
 32A-4-304(1)(a)  
 32A-4-307(22)  
 32A-4-401(1)(a)  
 32A-4-403(1)(a)  
 32A-5-103(1)(a)  
 32A-5-107(40)  
 32A-6-103(2)(a)  
 32A-7-103(2)(a)  
 32A-7-106(5)  
 32A-8-103(1)(a)  
 32A-8-503(1)(a)  
 32A-9-103(1)(a)  
 32A-10-203(1)(a)  
 32A-10-206(14)  
 32A-10-303(1)(a)  
 32A-10-306(5)  
 32A-11-103(1)(a)

**KEY: alcoholic beverages**

**June 29, 2007**

**Notice of Continuation August 31, 2006**

**32A-1-107**

**32A-1-119(5)(c)**

**32A-3-103(1)(a)**

**R105. Attorney General, Administration.**

**R105-2. Records Access and Management.**

**R105-2-1. Purpose.**

This rule establishes procedures regarding operation of the Government Records Access and Management Act within the Office of the Attorney General.

**R105-2-2. Authority.**

This rule is authorized by 63-2-204(2) and 63-2-904(2).

**R105-2-3. Requests for Access.**

Most records of the Office of the Attorney General are classified as protected or private and may only be released to those specified in 63-2-202.

All requests for records shall be directed to the Public Information Officer at the following address:

TABLE

Public Information Officer  
Office of the Attorney General  
236 State Capitol Building  
Salt Lake City, Utah 84114

The Public Information Officer will then direct the request to the division that maintains the requested record. The division chief of such division shall be responsible to respond to the request as required by Section 63-2-204(3).

**R105-2-4. Appeals.**

Appeals regarding questions of access to records shall be directed as listed below.

TABLE

Appeals from:	Directed to:
Appeals Division, Child Protection Division, Child and Family Support Division, Education Division, Litigation Division and Natural Resources Division	Solicitor General Office of the Attorney General 236 State Capitol Building Salt Lake City, Utah 84114
Administration, Children's Justice Division, Consumer Rights Division, Criminal Division, Environment Division, Executive, Financial Crimes Unit, Investigations, Prosecution Council, Public Affairs Division and Tax and Revenue Division	Chief Deputy Attorney General Office of the Attorney General 236 State Capitol Building Salt Lake City, Utah 84114

**R105-2-5. Record Sharing.**

For the purpose of record sharing between governmental entities as provided in 63-2-206, the Attorney General's Office is one governmental entity and all divisions in the office are part of that entity.

**KEY: public records, government documents, records access\*, GRAMA\***

1992 63-2-204  
Notice of Continuation June 5, 2007 63-2-904

**R152. Commerce, Consumer Protection.****R152-6. Utah Administrative Procedures Act Rules.****R152-6-1. Designation of Adjudicative Proceedings.**

A. All adjudicative proceedings within the Division shall be informal.

B. No hearing will be held unless specifically allowed or required under any laws administered by the Division, or by the Utah Administrative Procedures Act. If a hearing is allowed, it will be held only if timely requested pursuant to Department Rule 151-46b-10.

**R152-6-2. Designation of Presiding Officer.**

The presiding officer in any proceeding shall be the director of the division. The director may designate another person to act as presiding officer in any proceeding or portion thereof.

**KEY: administrative procedure, government hearings, consumer protection**

1992

13-2-5(1)

Notice of Continuation June 22, 2007

**R152. Commerce, Consumer Protection.****R152-15. Business Opportunity Disclosure Act Rules.****R152-15-1. Authority and Purpose.**

Pursuant to Section 13-15-3, these rules are intended to assist in the administration of the Business Opportunity Disclosure Act, Chapter 15, Title 13.

**R152-15-2. Filing Requirements. Filing Fees.**

(1) Information filed with the Division. In addition to the information required to be filed by Section 13-15-4 or 13-15-4.5 Utah Code Annotated (1953, as amended), sellers shall file with the Division, upon request, the following:

(a) the name and address of the registered agent of seller;  
(b) any promotional materials used or to be used by either the seller or the purchaser, whether in writing or in any other form; and

(c) the appropriate filing fee as set in accordance with Section 63-38-3.2 Utah Code Annotated (1953, as amended), which presently is set as follows:

- (i) Section 13-5-4 filing: \$200.00 per year; and
- (ii) Section 13-15-4.5 filing: \$100.00 per year.

(2) Amendment of disclosures. The disclosure document must be current as of the seller's most recent fiscal year, or no later than 90 days after the close of its most recent fiscal year. A seller must amend any information it files or files with the Division in the event of any material change in the information. Such amendment shall be made by filing with the Division, within a reasonable time after such material change, the new or correct information.

(a) "Material change" means any change in information where there is a reasonable likelihood the decision of a prospective purchaser to purchase or not purchase the assisted marketing plan would be influenced by the change.

(b) Without limitation, example of material changes include:

(i) An increase or decrease in the initial or continuing fees charged by the seller;

(ii) The termination, cancellation, failure to renew or reacquisition of a significant number of purchasers of an assisted marketing plan since the most recent date of filing;

(iii) Any significant change in seller's management;

(iv) Any significant change in the seller's or purchaser's obligations;

(v) Significant decrease in seller's income or net worth or;

(vi) Significant change in claims about past sales or projected sales, income, gross or net profits, cash flows or costs involved in the assisted marketing plan.

**KEY: franchises, marketing, consumer protection****August 13, 2002****Notice of Continuation June 22, 2007****13-15-3****13-2-5**

**R152. Commerce, Consumer Protection.****R152-22. Charitable Solicitations Act.****R152-22-1. Authority.**

These rules are promulgated under Section 13-2-5(1) to facilitate the orderly administration of the Charitable Solicitations Act (hereafter, "the Act"), Title 13, Chapter 22.

**R152-22-2. Definitions. Clarifications.**

(1) The definitions set forth in Section 13-22-2 are incorporated herein.

(2) In addition the following definition as regards the administration of R152-22 and Chapter 22 of Title 13 is deemed necessary by the division.

(a) "Parent foundation" or "Parent organization" means a charitable organization which charters or affiliates local units under terms specified in the parent charitable organization's charter, articles of organization, agreement of association, instrument of trust, constitution or other organizational instrument or bylaws. For purposes of registration under Section 13-22-5 a parent foundation or organization is deemed to be soliciting, requesting, promoting, advertising, or sponsoring solicitation in the state within the meaning of said section and thus requiring registration if any part of the funds raised within the state or from residents and inhabitants of the state by the local chapter, branch, area, office or similar affiliate of any other person located within and maintaining a presence in the state inure to the benefit of the parent foundation or organization whether in the form of a percentage division or "split" or affiliation fee or fees paid by the local chapter, branch, area, office or similar affiliate of any other person located within and maintaining a presence in the state.

(1) In addition the following clarification of definition as regards the administration of R152-22 and Chapter 22 of Title 13 is deemed necessary by the division.

(a) "Vending device" as defined by Section 13-22-2(12) and "Vending device decal" as defined by Section 13-22-2(13) as they relate to the necessity of registering as a charitable organization, professional fund raiser, professional fund raising counsel or consultant creates a rebuttable presumption that the party utilizing such a vending device and or vending device decal is acting as such.

**R152-22-3. Application for Charitable Organization Permit.**

(1) Any application for registration as a charitable organization shall be executed on the form authorized by the Division.

(2) A statement of collections and expenditures shall be executed on the form authorized by the division.

(3) Applicants or registrants shall submit to the division, on request:

(a) an updated copy of a financial statement prepared by an independent certified public accountant;

(b) a copy of any written contracts, agreements or other documents showing to whom the applicant or registrant disbursed the funds or a portion of the funds contributed to it;

(c) a copy of the applicant's or registrant's articles of incorporation or other organizational documentation showing current legal status;

(d) a copy of the applicant's or registrant's current by-laws or other policies and procedures governing day to day operations;

(e) a setting forth of the applicant's or registrant's registered agent within the State of Utah for purposes of service of process, including his, her or its name, street address, telephone and facsimile numbers;

(f) a copy of the applicant's or registrant's IRS Section 501(c)(3) tax exemption letter, if applicable;

(g) either the social security number or driver's license number of each of the applicant's or registrant's board of

directors and officers, if a corporation, or partners or the individual applicant or registrant, for the purposes of background checks;

(h) a copy of the applicant's IRS Form 990, 990EZ or 990PF; and

(i) a statement as to whether the charitable organization has conducted activities regulated by the Charitable Solicitations Act, Utah Code Title 13, Chapter 22, without being duly registered with the Division.

(4) All initial applications and renewals of registration in accordance with Section 13-22-6 shall be processed within twenty (20) business days after their receipt by the division.

**R152-22-4. Financial Reports and IRS Form 990s.**

(1) Based on the intent of Section 13-22-15(4) an "annual financial report or IRS Form 990" means the most recent or previous fiscal year only will be accepted by the division.

(2) Based on the intent of Section 13-22-15(2) "within 30 days after the end of the year reported" means the end of the registration year just completed.

**R152-22-5. Notice of Claim of Exemption.**

(1) A charitable organization or individual claiming an exemption from registration under Section 13-22-8 shall file a notice of claim of exemption with the division, prior to conducting any solicitation.

(2) A notice of claim of exemption shall contain:

(a) a detailed description of the claimant and its charitable purposes;

(b) a citation to the exemption within Section 13-22-8 being claimed and a detailed explanation of why the exemption applies;

(c) any documents supporting the notice of claim of exemption;

(d) a notarized statement from the organization's chief executive officer or the individual certifying that the statements made in the notice of claim of exemption are true to the best of his knowledge; and

(e) such other additional information the division deems necessary to support such claim of exemption.

(3) This rule does not relieve any exempt organization or individual of other applicable reporting requirements under the Act.

(4) The division shall charge a reasonable fee to cover the expense of processing the notices of claim of exemption received pursuant to this rule.

**R152-22-6. Application for Professional Fund Raiser, Fund Raising Counsel or Consultant Permit.**

(1) Any application for a professional fund raiser, fund raising counsel or consultant permit shall be executed on the form provided by the Division.

(2) The application shall include a copy of all contracts, agreements, or other documents showing:

(a) the relationship and terms of employment or engagement between the applicant and the organization on whose behalf the applicant proposes to act as a professional fund raiser, fund raising counsel or consultant;

(b) the terms of any direct or indirect compensation, in whatever form, paid or promised to the applicant, including the method of payment and the basis for calculating the amounts of payment;

(c) a copy of the applicant's or registrant's articles of incorporation or other organizational documentation showing current legal status;

(d) a copy of the applicant's or registrant's current by-laws or other policies and procedures governing day to day operations;

(e) a setting forth of the applicant's or registrant's

registered agent within the State of Utah for purposes of service of process, including his, her or its name, street address, telephone and facsimile numbers;

(f) either the social security number or driver's license number of each of the applicant's or registrant's board of directors and officers, if a corporation, or partners or the individual applicant or registrant, for the purposes of background checks; and

(g) a statement as to whether the professional fund raiser, fund raising counsel or consultant has conducted activities regulated by the Charitable Solicitations Act, Utah Code Title 13, Chapter 22, without being duly registered with the Division.

(3) All initial applications and renewals of registration in accordance with Section 13-22-9 shall be processed within twenty (20) business days after their receipt by the division.

**R152-22-7. Incomplete Applications.**

(1) Based on Sections 13-22-6(3) and 13-22-9(3) the division may grant a charitable organization, professional fund raiser, professional fund raising counsel or consultant a 10 calendar day "grace" period for an incomplete application prior to assessing a penalty fee.

(2) Based on Section 13-22-6(1)(xiv)(B) and Section 13-22-6(3) if a charitable organization's initial application or renewal application is deemed incomplete due to the organization's professional fund raiser, professional fund raising counsel or consultant not being registered the division may assess a penalty fee accordingly.

(3) Based on Sections 13-22-6(3) and 13-22-9(3) the division may as regards any charitable organization, professional fund raiser, professional fund raising counsel or consultant whose status is that of "incomplete" or "suspended" for more than 12 months permit such to elect to submit the accumulated penalty fee or cease solicitations in the state for a 1 year period prior to making reapplication.

(4) Based on Sections 13-22-6(3) and 13-22-9(3) the division shall impose a penalty fee of \$25 for each calendar month or part of a calendar month after the date on which a permit application or renewal was due to be filed or such permit application or renewal remains incomplete.

**R152-22-8. Commencement of Solicitation.**

(1) After registration and receipt of a current permit prior to commencement of each solicitation campaign thereafter each professional fund raiser, fund raising counsel or consultant or charitable organization shall notify the Division in writing at least ten (10) days in advance of its intent to commence a campaign.

(2) Professional fund raisers, fund raising counsels or consultants shall not commence or conduct or continue solicitations on behalf of a charitable organization that is not currently registered. "Not currently registered" means not being in possession of a current permit during all times during the solicitation campaign. A professional fund raiser, fund raising counsel or consultant act at their own peril if prior to commencement of any individual solicitation campaign its fails or neglects to confirm with the division that the charitable organization is in fact currently registered and will be during the full extent of any proposed solicitation campaign.

**R152-22-9. Grounds for Denial, Suspension or Revocation Procedure.**

(1) The director may, in accordance with Title 63, Chapter 46b, Administrative Procedures Act, issue an order to deny an initial or renewal application for registration as per Section 13-22-12(5), and suspend or revoke a registration, permit, or information card at anytime, on the grounds set forth in Section 13-22-12(3); and if the necessity of such denial, suspension or revocation in the director's opinion is based on facts known by

the division or presented to the division showing that an immediate and significant danger to the public health, safety or welfare exists, and such threat requires immediate action by the director that such denial, suspension or revocation may issue forthwith as an emergency order, subject to the division's compliance with Section 63-46b-20.

(2) Any hearing convened in accordance with R152-22-11(1), shall be convened within 5 business days of the request for or order of the Division requiring the same. Administrative hearing determinations regarding such Division actions shall receive priority and decisions shall be expedited so as to be issued within no more than 5 business days of such hearings.

**KEY: charities, consumer protection, solicitations**

**April 2, 2007** 13-2-5  
**Notice of Continuation June 22, 2007** 13-22-6  
 13-22-8  
 13-22-9  
 13-22-10

**R152. Commerce, Consumer Protection.****R152-23. Utah Health Spa Services.****R152-23-1. Authority.**

These Rules are promulgated in accordance with the provisions of Section 63-46a-3 and Section 13-2-5, Utah Code Ann. (1953), as amended, to prescribe for the administration of the Utah Health Spa Act, Section 13-23-1, et seq., Utah Code Ann. (1953), as amended, the "Act".

**R152-23-2. Scope and Applicability.**

These rules shall apply to the conduct of every Health Spa Business within the State of Utah.

**R152-23-3. Definitions.**

A. "Advance Sales," shall mean sales of membership contracts on any date prior to the date a health spa facility shall be open and available to provide services to purchasers.

B. "Bond", "Letter of Credit", or "Certificate of Deposit" shall mean an instrument containing a promise from a third party to pay to the Division of Consumer Protection for the benefit of purchasers of membership contracts the dollar value of the unused portion of such purchaser's membership in the event the health spa facility shall be unable to or refuse to provide health services pursuant to such Membership Contract.

C. "Costs" shall mean those costs incurred by the Division in investigating complaints, administering rescission of membership contracts or fulfilling its responsibilities under the Utah Health Spa Act or Rules promulgated thereunder.

D. "Department" shall mean the Department of Commerce of the State of Utah.

E. "Division" shall mean the Division of Consumer Protection of the Department of Commerce of the State of Utah.

F. "Health Spa Business" shall mean the business of buying, operating and selling health spa facilities and shall include all acts related thereto.

G. "Health Spa Facility" shall mean the physical facilities at which the services of a health spa business are provided to its members.

H. "Member" shall mean the purchaser of a Membership contract pursuant to which the member anticipates receipt of health spa services in exchange for consideration given by such purchaser.

I. "Membership Contract" shall mean a legally binding obligation pursuant to which a purchaser agrees to give consideration in exchange for membership privileges which the seller shall be obligated to provide.

J. "Rescission" shall mean the process of canceling a membership contract and refunding to the purchaser thereof the dollar value of the consideration paid for services which have not been provided as of the date of cancellation.

**R152-23-4. Registration Requirements and Contracts for Health Spa Services.**

A. Prior to selling or attempting to sell a Membership Contract, a health spa facility must file the following documentation with the Division:

1. A completed application on the form prescribed and furnished by the Division which shall include:

a. Name, addresses, and telephone numbers of owner(s) of the Health Spa Facility and the facility address, telephone number, and name of contact person at the facility.

b. A check or money order for a \$100 non-refundable application fee.

c. A current pricing structure for membership services.

d. A copy of the contract(s) utilized by the facility containing the language required by the Act.

e. The original or certified copy of the surety bond, letter of credit, or certificate of deposit in the required amount or, if applicable, the information set out in the application as the basis

for a claim of exemption from registration.

f. The number of membership contracts that relate to each facility.

2. Notice of intent to sell memberships.

B. Each Membership Contract shall contain a provision, printed in all capital letters which reads substantially as follows: "IN THE EVENT THE HEALTH SPA FACILITY CLOSURES AND ANOTHER HEALTH SPA FACILITY OPERATED BY THE SELLER, OR ASSIGNS OF THE SELLER, OF THIS CONTRACT IS NOT AVAILABLE WITHIN FIVE (5) MILES OF THE LOCATION THE MEMBER INTENDS TO PATRONIZE, SELLER WILL REFUND TO MEMBER A PRORATA SHARE OF THE MEMBERSHIP COST, BASED UPON THE UNUSED MEMBERSHIP TIME REMAINING ACCORDING TO THE CONTRACT."

C. All Membership Contracts shall specify what items of equipment or services provided by the health spa facility on the date of the execution of the membership contract are subject to deletion or change at the discretion of the facility.

D. All Membership Contracts sold prior to opening of the health spa facility shall allow the buyer a three (3) day right of rescission in accordance with Section 13-23-4 of the Act, or Section 13-11-4(m) of the Utah Consumer Sales Practices Act.

E. The right of rescission set out in Section 13-23-3(6) shall:

1. be a conspicuous statement written in dark bold with at least 12 point type on the first page of the contract; and

2. read as follows: "YOU, THE CONSUMER, MAY CANCEL THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE ON WHICH THE CONTRACT IS EXECUTED."

F. No fee may be charged if a consumer exercises the consumer's right to rescind the contract pursuant to Section 13-23-3(6).

G. The dollar value of a Membership Contract shall be clearly stated on the face of the contract.

H. In any event, no Membership Contract shall be sold which provides a membership term of longer than thirty-six (36) months.

I. The purchaser of a Health Spa Facility shall replace the Seller as a party to any unexpired Membership Contract and shall honor all Membership Contracts of the purchased facility in effect at the time of purchase, pursuant to Section 13-23-5(2) of the Act. In the event a Health Spa Facility shall be sold under circumstances which will result in its closure and the purchaser shall not operate a Health Spa Facility within 5 miles thereof, purchaser must notify Members of such closure in writing within 10 days of the date of sale. Members may cancel their outstanding Membership Contracts or may choose to continue their Membership Contract in force. Notice of such election shall be in writing mailed to the purchaser within 30 days of the receipt of notice of closure of the acquired Health Spa Facility.

J. The notice required in Section 13-23-5(7) shall be in writing and shall include the following:

1. The date on which the health spa will cease operations or relocate and fail to offer an alternative location within five miles;

2. Information concerning the members of the health spa, including:

a. the total number of members;

b. the name and address of each member;

c. the total cost of each membership; and

d. the effective dates of each membership;

3. Proof of the bond, letter of credit, or certificate of deposit required under Section 13-23-5(2)(a) and proof that the bond, letter of credit, or certificate of deposit will remain in force for one year after the health spa notifies the division that it has ceased all activities regulated by Title 13, Chapter 23 of

the Utah code;

4. A description of what action the health spa plans to take with regard to its members, including:

- a. the amount of each member's refund;
- b. any reason refunds are not to be made;
- c. an explanation of how refunds are to be calculated; and
- d. copies of the refund checks that the health spa has issued; and

5. Any complaints that the health spa has received from the members and how the complaints were resolved.

K. A separate registration shall be required for each separate location maintained by a health spa business.

**R152-23-5. Rescission.**

A. In the event a Health Spa Facility shall, for any reason, close, discontinue normal operations or otherwise cease to do business while having outstanding obligations to provide membership services to members holding valid membership contracts, the Health Spa Facility must offer, in writing, to rescind all such membership contracts and to refund the unused portion of all Member's membership fees. Such written offer of rescission shall establish the procedure and time limit for acceptance of the rescission offer and obtaining the desired refund.

B. An offer of rescission shall be made to each purchaser whose Membership Contract is valid on the last day the Health Spa Facility is open for business. The Health Spa Facility shall provide the Division with a list of Membership Contracts valid on the date of closure 10 business days before such closure.

C. Money to be refunded to members upon closure of a Health Spa Facility under these Rules shall be placed in escrow with a bank or other financial institution previously approved by the Division. Such funds shall come from a Bond, Letter of Credit, or Certificate of Deposit payable to the Division.

D. Refunds shall be made to Members who submit claims within a time period to be prescribed by the Division. Such refunds shall be made under the supervision of the Division and shall, if insufficient funds are available for full refund, be made on a prorata basis based upon the full amount due a claimant. The amount due shall be determined by multiplying the number of months remaining on claimant's membership term as of the date of closure by the monthly cost of such membership to the member at the time of purchase. Periods of less than a full month shall be compensated by determining a daily cost of membership and multiplying such daily cost by the number of unused membership days in such period.

E. Refunds shall be made to claimants within 90 days following the final date for submission of claims in accordance with the procedures specified above.

F. The Division may recover from the funds deposited in escrow pursuant to this Rule, its costs, including investigative costs, processing costs, attorneys fees and other expenses related to administration of rescissions made under these rules.

G. In the event there shall be funds remaining after full refund to all claimants and payment of costs of the Division, such excess shall be returned to Owners of the Health Spa Facility.

**R152-23-6. Bond, Letter of Credit, or Certificate of Deposit Required.**

A. Except as provided in Section 13-23-6, of the Act, all Health Spa Facilities shall be covered by a performance Bond, Letter of Credit, or Certificate of Deposit payable to the Division in an amount to be determined by the number and cost of membership contracts sold by the Health Spa Facility.

B. Originals or certified copies of such Bonds, Letters of Credit, or Certificates of Deposit shall be provided to the Division not less than 10 days in advance of the first sale or attempt to sell made by any Health Spa Facility. Annual

renewals of such Bonds, Letters of Credit, or Certificates of Deposit shall be filed with the Division at least 30 days in advance of expiration of existing Bonds, Letters of Credit, or Certificates of Deposit.

C. The Division shall have the right to approve or reject Bonds, Letters of Credit, or Certificates of Deposit submitted in compliance with this Rule. In the event a Bond, Letter of Credit, or Certificate of Deposit is rejected by the Division, the Health Spa Facility shall submit another within 15 days following notice by the Division. In no event shall a Health Spa Facility conduct business without a Bond, Letter of Credit, or Certificate of Deposit in effect.

D. A Health Spa Facility which allows Bonds, Letters of Credit, or Certificates of Deposit to expire without filing renewal as provided herein, may be allowed, at the discretion of the Division, to register as a new Health Spa Facility pursuant to the provisions of R152-7-4 and R152-7-6, hereof.

**R152-23-7. Enforcement.**

A. The Division may be entitled to recover costs, including investigative costs, processing costs, attorneys fees and other costs incurred in administration of these rules. Upon election of the parties, payment of such costs shall be made from the proceeds of the Bond, Letter of Credit, or Certificate of Deposit.

B. Any payment made to the Division shall be approved by the Executive Director of the Department of Commerce.

**KEY: consumer protection, health spas**

**January 23, 2007**

**Notice of Continuation June 22, 2007**

**63-46a-3**

**13-2-5**

**13-23-1**

**R152. Commerce, Consumer Protection.****R152-34. Postsecondary Proprietary School Act Rules.****R152-34-1. Purpose.**

These rules are promulgated under the authority of Section 13-2-5(1) to administer and enforce the Postsecondary Proprietary School Act. These rules provide standards by which institutions and their agents who are subject to the Postsecondary Proprietary School Act are required to operate consistent with public policy.

**R152-34-2. References.**

The statutory references that are made in these rules are to Title 13, Chapter 34, Utah Code Annotated 1953.

**R152-34-3. Definitions in Addition to Those Found in Section 13-34-103.**

(1) "Branch" and "extension" mean a freestanding location that is apart from the main campus, where resident instruction is provided on a regular, continuing basis.

(2) "Correspondence institution" means an institution that is conducted predominantly through the means of home study.

(3) "Course" means a unit subject within a program of education that must be successfully mastered before an educational credential can be awarded.

(4) "Division" means the Division of Consumer Protection.

(5) "Probation" means a negative action of the division that specifies a stated period for an institution to correct stipulated deficiencies; but does not imply any impairment of operational authority.

(6) "Program of education" consists of a series of courses that lead to an educational credential when completed.

(7) "Resident institution" means an institution where the courses and programs offered are predominantly conducted in a classroom or a class laboratory, with an instructor.

(8) "Revocation" means a negative action of the division that orders an institution to surrender its certificate and cease operations, including advertising, enrolling students and teaching classes, for whatever reason.

(9) "Suspension" means a negative action of the division that impairs an institution's operational authority for a stated period of time during which the deficiencies must be corrected or the certificate may be revoked.

**R152-34-4. Rules Relating to the Responsibilities of Proprietary Schools as Outlined in Section 13-34-104.**

(1) In order to be able to award a degree or certificate, a proprietary school must meet the following general criteria:

(a) Its program must meet the following generally accepted minimum number of semester/quarter credit hours required to complete a standard college degree: associate, 60/90; bachelor's, 120/180; master's, 150/225; and doctorate, approximately 200/300.

(b) The areas of study, the methods of instruction, and the level of effort required of the student for a degree or certificate must be commensurate with reasonable standards established by recognized accrediting agencies and associations.

(c) In order for the proprietary school to award a degree or certificate, the faculty must be academically prepared in the area of emphasis at the appropriate level, or as to vocational-technical programs, must have equivalent job expertise based on reasonable standards established by recognized accrediting agencies and associations. This notwithstanding, credit may be awarded toward degree completion based on (1) transfer of credit from other accredited and recognized institutions, (2) recognized proficiency exams (CLEP, AP, etc.), and (3) in-service competencies as evaluated and recommended by recognized national associations such as the American Council on Education. Such credit for personal experiences shall be limited to not more than one year's worth of work (30 semester

credit hours/45 quarter credit hours).

(d) In order to offer a program of study, either degree or non-degree, it must be of such a nature and quality as to make reasonable the student's expectation of some advantage in enhancing or pursuing employment, as opposed to a general education or non-vocational program which is excluded from registration under 13-34-105(g).

(i) If the purpose of an offered program of study is to prepare students for entry into fields of employment which require licensure by any licensing agency or to prepare students for entry into fields of employment for which it would be impracticable to have reasonable expectations of employment without accreditation and/or certification by any trade and/or industry association and/or accrediting and/or certifying body, the entity offering, or desiring to offer, the program of study must provide the Division:

(A) information regarding the type of license, accreditation and/or certification that students completing the program of study must obtain in order to have a reasonable expectation of employment;

(B) the name and contact information of the agency, trade and/or industry association and/or accrediting and/or certifying body;

(C) evidence that the curriculum for the offered program of study has been reviewed by the appropriate entity from subsection(B) above; and,

(D) evidence that the instructors teaching students enrolled in the program of study are licensed by the appropriate agency from subsection (B) above, or have earned the accreditation and/or certification from the appropriate entity from subsection (B) above to teach and/or practice in the field for which the students are being prepared.

(2) The faculty member shall assign work, set standards of accomplishment, measure the student's ability to perform the assigned tasks, provide information back to the student as to his or her strengths and deficiencies, and as appropriate, provide counseling, advice, and further assignments to enhance the student's learning experience. This requirement does not preclude the use of computer assisted instruction or programmed learning techniques when appropriately supervised by a qualified faculty member.

(3) As appropriate to the program or course of study to be pursued, the proprietary school shall evaluate the prospective student's experience, background, and ability to succeed in that program through review of educational records and transcripts, tests or examinations, interviews, and counseling. This evaluation shall include a finding that the prospective student (1) is beyond the age of compulsory high school attendance, as prescribed by Utah law; and (2) has received either a high school diploma or a General Education Development certificate, or has satisfactorily completed a national or industry developed competency-based test or an entrance examination that establishes the individual's ability to benefit. Based on this evaluation, before admitting the prospective student to the program, the institution must have a reasonable expectation that the student can successfully complete the program, and that if he or she does so complete, that there is a reasonable expectation that he or she will be qualified and be able to find appropriate employment based on the skills acquired through the program.

(4) Each proprietary school shall prepare for the use of prospective students and other interested persons a catalog or general information bulletin that contains the following information:

(a) The legal name, address, and telephone number of the institution, also any branches and/or extension locations;

(b) The date of issue;

(c) The names, titles, and qualifications of administrators and faculty;

(d) The calendar, including scheduled state and federal holidays, recess periods, and dates for enrollment, registration, start of classes, withdrawal and completion;

(e) The admission and enrollment prerequisites, both institutional and programmatic, as provided in R152-34-8(1);

(f) The policies regarding student conduct, discipline, and probation for deficiencies in academics and behavior;

(g) The policies regarding attendance and absence, and any provision for make-up of assignments;

(h) The policies regarding dismissal and/or interruption of training and of reentry;

(i) The policies explaining or describing the records that are to be maintained by the institution, including transcripts;

(j) The policies explaining any credit granted for previous education and experience;

(k) The policies explaining the grading system, including standards of progress required;

(l) The policies explaining the provision to students of interim grade or performance reports;

(m) The graduation requirements and the credential awarded upon satisfactory completion of a program;

(n) The schedule of tuition, any other fees, books, supplies and tools;

(o) The policies regarding refunds of any unused charges collected as provided in R152-34-8(3);

(p) The student assistance available, including scholarships and loans.

(q) The name, description, and length of each program offered, including a subject outline with course titles and approximate number of credit or clock hours devoted to each course;

(r) The placement services available and any variation by program;

(s) The facilities and equipment available;

(t) An explanation of whether and to what extent that the credit hours earned by the student are transferable to other institutions; and

(u) Such other information as the division may reasonably require from time to time.

#### **R152-34-5. Rules Relating to Institutions Exempt Under Section 13-34-105.**

(1) Institutions that provide nonprofessional review courses, such as law enforcement and civil service, are not exempt, unless they are considered as workshops or seminars within the meaning of Section 13-34-105(h).

(2) In order for the church or religious denomination to be "bona fide" such that the institution is exempt from registration, the institution may not be the church or religious denomination's primary purpose, function or asset.

(3) Any institution which claims an accreditation exemption must furnish acceptable documentation to the division upon request.

(4) To be exempt under Section 13-34-105(f):

(a) the training or instruction shall not be the primary activity of the organization, association, society, labor union, or franchise system or;

(b) the organization, association, society, labor union, or franchise system shall meet the following requirements:

(i) the organization, association, society, labor union, or franchise system does not recruit students;

(ii) the organization, association, society, labor union, or franchise system provides courses of instruction only to students who are currently employed;

(iii) the cost of the course of instruction is paid for by the employer of the student, not the student; and

(iv) enrollment in each individual course of instruction is limited to those who are bona fide employees of the employer.

(5) The division shall determine an institution's status in

accordance with the categories contained in this section.

(6) An exempt institution shall notify the division within thirty (30) days of a material change in circumstances which may affect its exempt status as provided in this section and shall follow the procedure outlined in Section 13-34-107.

(7) An exempted institution which voluntarily applies for a certificate by filing a registration statement shall comply with all rules as though such institution were nonexempt.

(8) To apply for a certificate of registration, an accredited institution shall submit a completed registration statement application and a copy of such portions of its current accreditation self-evaluation report as are specified by the division.

#### **R152-34-6. Rules Relating to the Registration Statement Required under Section 13-34-106.**

(1) The registration statement application shall provide the following information and statements made under oath:

(a) The institution's name, address, and telephone number;

(b) The names of all persons involved in the operation of the institution and a stipulation that the resumes are on file at the institution and available to the students.

(c) The name of the agent authorized to respond to students inquiries if the registrant is a branch institution whose parent is located outside of the state of Utah;

(d) A statement that its articles of incorporation have been registered and accepted by the Utah Department of Commerce, Division of Corporations and Commercial Code and that it has a local business license, if required;

(e) A statement that its facilities, equipment, and materials meet minimum standards for the training and assistance necessary to prepare students for employment;

(f) A statement that it maintains accurate attendance records, progress and grade reports, and information on tuition and fee payments appropriately accessible to students;

(g) A statement that its maintenance and operation is in compliance with all ordinances, laws, and codes relative to the safety and health of all persons upon the premises;

(h) A statement that there is sufficient student interest in Utah for the courses that it provides and that there is reasonable employment potential in those areas of study in which credentials will be awarded;

(i) If the registration statement is filed pursuant to Section 13-34-107(3)(b), a detailed description of any material modifications to be made in the institution's operations, identification of those programs that are offered in whole or in part in Utah and a statement of whether the student can complete his or her program without having to take residence at the parent campus; and

(j) A statement that it maintains adequate insurance continuously in force to protect its assets.

(k) A disclosure as required by R152-34-7(1).

(l) If the registrant is a correspondence institution, whether located within or without the state of Utah, a demonstration that the institution's educational objectives can be achieved through home study; that its programs, instructional material, and methods are sufficiently comprehensive, accurate, and up-to-date to meet the announced institutional course and program objectives; that it provides adequate interaction between the student and instructor, through the submission and correction of lessons, assignments, examinations, and such other methods as are recognized as characteristic of this particular learning technique; and that any degrees and certificates earned through correspondence study meet the requirements and criteria of R152-34-4(1).

(2) The institution shall provide with its registration statement application copies of the following documents:

(a) A sample of the credential(s) awarded upon completion of a program;

(b) A sample of current advertising including radio, television, newspaper and magazine advertisements, and listings in telephone directories;

(c) A copy of the student enrollment agreement; and

(d) A financial statement, as described in R152-34-7(8) and Section 13-34-107(6).

(3) If any information contained in the registration statement application becomes incorrect or incomplete, the registrant shall, within thirty (30) days after the information becomes incorrect or incomplete, correct the application or file the complete information as required by the division.

(4) An institution ceasing its operations shall immediately inform the division and provide the division with student records in accordance with Section 13-34-109.

#### **R152-34-7. Rules Relating to the Operation of Proprietary Schools under Section 13-34-107.**

(1) An authorized officer of the institution to be registered under this chapter shall sign a disclosure as to whether the institution or an owner, officer, director, administrator, faculty member, staff member, or agent of the institution has violated laws, federal regulations or state rules as determined in a criminal, civil or administrative proceeding.

(2) The division shall refuse to register an institution when the division:

(a) determines that the institution or an owner, officer, director, administrator, faculty member, staff member, or agent of the institution has violated laws, federal regulations or state rules, as determined in a criminal, civil or administrative proceeding;

(b) determines the violation(s) to be relevant to the appropriate operation of the school; and

(c) has a reasonable doubt that the institution will function in accordance with these laws and rules or provide students with an appropriate learning experience.

(3) A change in the ownership of an institution, as defined in Section 13-34-103(8), occurs when there is a merger or change in the controlling interest of the entity or if there is a transfer of more than 50 percent of the its assets within a three-year period. When this occurs the following information is submitted to the division for its review:

(a) a copy of any new articles of incorporation;

(b) a current financial statement, as outlined in section (8) below;

(c) a listing of all institutional personnel that have changed as a result of the ownership transaction, together with complete resumes and qualifications;

(d) a detailed description of any material modifications to be made in the operation of the institution; and

(e) payment of the appropriate fee.

(i) The division collects the following fees in accordance with U.C.A. Subsection 13-34-107(5):

(A) Initial registration application fees will be based on the expected gross income of the registered program during the first year of operation. The initial application fee shall be computed as one-half of one percent of the gross tuition income of the registered program(s) expected during the first year, but not less than \$100 or more than \$2,000. The institution shall provide documentation to substantiate the amount of the fee, in a form specified by the division.

(B) The division also collects annual registration fees computed as one-half of one percent of the gross tuition income of the registered program(s) during the previous year, but not less than \$100 or more than \$2,000. The institution shall provide documentation to substantiate the amount of the fee, in a form specified by the division. The annual registration fee is due on the anniversary date of the institution's certificate of registration.

(C) All registration fees collected by the division will be

used to enhance the administration of the Act and Rules.

(4) The institution shall submit to the division its renewal registration statement application, along with the appropriate fee, no later than thirty (30) days prior to the expiration date of the current certificate of registration.

(5) In addition to the annual registration fee, an institution failing to file a renewal registration application by the due date or filing an incomplete registration application or renewal shall pay an additional fee of \$25 for each month or part of a month after the date on which the registration statement application or renewal were due to be filed.

(6) Within thirty (30) days after receipt of an initial or renewal registration statement application and its attachments, the division shall do one of the following:

(a) issue a certificate of registration;

(b) request further information and, if needed, conduct a site visit to the institution as detailed in R152-34-10(1); or

(c) refuse to accept the registration statement based on Sections 13-34-107 and 113.

(7) Although a certificate of registration is valid for two (2) years, the division may periodically request updates of financial statements, surety requirements and the following statistical information:

(a) The number of students enrolled from September 1 through August 31;

(b) The number of students who completed and received a credential;

(c) The number of students who terminated or withdrew;

(d) The number of administrators, faculty, supporting staff, and agents; and

(e) The new catalog, information bulletin, or supplements.

(8) The institution must have, in addition to other criteria contained in this rule, sufficient financial resources to fulfill its commitments to students and staff members, and to meet its other obligations as evidenced by the following financial statements:

(a)(i) A current financial statement prepared in accordance with generally accepted accounting principles including a balance sheet, a profit and loss statement, and a statement of cash flows for the most recent fiscal year with all applicable footnotes; or

(ii) Pro forma financial statements until actual information is available when an institution has not operated long enough to complete a fiscal year; and

(b)(i) A certified fiscal audit of the institution's financial statement performed by a certified or licensed public accountant; or

(ii) A review of the institution's financial statement performed by a certified or licensed public accountant, which shall include at least a statement by the accountant that there are not material modifications that should be made to the financial statement for it to be in conformity with generally accepted accounting principles;

(9)(a) A satisfactory surety in the form of a bond, certificate of deposit, or irrevocable letter of credit must be provided by the institution before a certificate of registration will be issued by the division.

(b) The obligation of the surety will be that the institution, its officers, agents, and employees will:

(i) faithfully perform the terms and conditions of contracts for tuition and other instructional fees entered into between the institution and persons enrolling as students; and

(ii) conform to the provisions of the Utah Postsecondary Proprietary School Act and Rules.

(c) The bond, certificate of deposit, or letter of credit must be in a form approved by the division and issued by a company authorized to do such business in Utah.

(d)(i) The bond, certificate of deposit, or letter of credit must be payable to the division to be used for creating teach-out

opportunities or for refunding tuition, book fees, supply fees, equipment fees, and other instructional fees paid by a student or potential student, enrollee, or his or her parent or guardian.

(ii) In each instance the division may determine:

(A) which of the uses listed in Subsection (9)(d)(i) are appropriate; and

(B) if the division creates teach-out opportunities, the appropriate institution to provide the instruction.

(e) An institution that closes or otherwise discontinues operation shall maintain the institution's surety until:

(i) at least one year has passed since the institution has notified the division in writing that the institution has closed or discontinued operation; and

(ii) the institution has satisfied the requirements of R152-34-9.

(10)(a) The surety company may not be relieved of liability on the surety unless it gives the institution and the division ninety calendar days notice by certified mail of the company's intent to cancel the surety.

(b) The cancellation or discontinuance of surety coverage after such notice does not discharge or otherwise affect any claim filed by a student, enrollee or his/her parent or guardian for damage resulting from any act of the institution alleged to have occurred while the surety was in effect, or for an institution's ceasing operations during the term for which tuition had been paid while the surety was in force.

(c) If at any time the company that issued the surety cancels or discontinues the coverage, the institution's registration is revoked as a matter of law on the effective date of the cancellation or discontinuance of surety coverage unless a replacement surety is obtained and provided to the division.

(11)(a) Before an original registration is issued, and except as otherwise provided in this rule, the institution shall secure and submit to the division a surety in the form of a bond, certificate of deposit or letter of credit in an amount of one hundred and eighty-seven thousand, five-hundred dollars (\$187,500) for schools expecting to enroll more than 100 separate individual students (non-duplicated enrollments) during the first year of operation, one hundred and twenty-five thousand dollars (\$125,000) for schools expecting to enroll between 50 and 99 separate individual students during the first year, and sixty-two thousand, five-hundred dollars (\$62,500) for institutions expecting to enroll less than 50 separate individual students during the first year.

(b) Institutions that submit evidence acceptable to the division that the school's gross tuition income from any source during the first year will be less than twenty-five thousand dollars (\$25,000) may provide a surety of twelve thousand, five hundred dollars (\$12,500) for the first year of operation.

(12)(a) Except as otherwise provided in this rule, the minimum amount of the required surety to be submitted annually after the first year of operation will be based on twenty-five percent of the annual gross tuition income from registered program(s) for the previous year (rounded to the nearest \$1,000), with a minimum surety amount of twelve thousand, five hundred dollars (\$12,500) and a maximum surety amount of one hundred and eighty-seven thousand, five-hundred dollars (\$187,500).

(b) The surety must be renewed each year by the anniversary date of the school's certificate of registration, and also included as a part of each two-year application for registration renewal.

(c) No additional programs may be offered without appropriate adjustment to the surety amount.

(13)(a) The institution shall provide a statement by a school official regarding the calculation of gross tuition income and written evidence confirming that the amount of the surety meets the requirements of this rule.

(b) The division may require that such statement be

verified by an independent certified public accountant if the division determines that the written evidence confirming the amount of the surety is questionable.

(14) An institution with a total cost per program of five hundred dollars or less or a length of each such program of less than one month shall not be required to have a surety.

(15) The division will not register a program at a proprietary school if it determines that the educational credential associated with the program may be interpreted by employers and the public to represent the undertaking or completion of educational achievement that has not been undertaken and earned.

(16) Acceptance of registration statements and the issuing of certificates of registration to operate a school signifies that the legal requirements prescribed by statute and regulations have been satisfied. It does not mean that the division supervises, recommends, nor accredits institutions whose statements are on file and who have been issued certificates of registration to operate.

#### **R152-34-8. Rules Relating to Fair and Ethical Practices Set Forth in Section 13-34-108.**

(1) An institution, as part of its assessment for enrollment, shall consider the applicant's basic skills, aptitude, and physical qualifications, as these relate to the choice of program and to anticipated employment and shall not admit a student to a program unless there is a reasonable expectation that the student will succeed, as prescribed by R152-34-4(3).

(2) Financial dealings with students shall reflect standards of ethical practice.

(3) The institution shall adopt a fair and equitable refund policy including:

(a) A three-business-day cooling-off period, commencing with the day an enrollment agreement with the applicant is signed or an initial deposit or payment toward tuition and fees of the institution is made, until midnight of the third business day following such date or from the date that the student first visits the institution, whichever is later, shall be applicable and during this time the contract may be rescinded by the student and all money paid refunded.

(b) A student enrolled in a correspondence institution may withdraw from enrollment following the cooling off period, prior to submission by the student of any lesson materials or prior to receipt of course materials, whichever comes first, and effective upon deposit of a written statement of withdrawal for delivery by mail or other means, and the institution shall be entitled to retain no more than \$200 in tuition or fees as registration charges or an alternative amount that the institution can demonstrate to have been expended in preparation for that particular student's enrollment.

(c) A clear and unambiguous written statement of the institution's refund policy for students who desire a refund after the three-business-day cooling-off period or after a student enrolled in a correspondence institution has submitted lesson materials or been in receipt of course materials.

(d) There shall be a written enrollment agreement, to be signed by the student and a representative of the institution, that clearly describes the cooling-off period, nonrefundable registration fee, and refund policy and schedule, including the rights of both the student and the institution, with copies provided to each.

(e) There shall be complete written information on repayment obligations to all applicants for financial assistance before an applicant student assumes such responsibilities.

(f) A pay-as-you-learn payment schedule that limits a student's prospective contractual obligation(s), at any one time, to the institution for tuition and fees to four months of training, plus registration or start-up costs not to exceed \$200 or an alternative amount that the institution can demonstrate to have

spent in undertaking a student's instruction. This restriction applies regardless of whether a contractual obligation is paid to the institution by:

- (i) the student directly; or
  - (ii) a lender or any other entity on behalf of the student.
- (g) The payment of a refund within 30 calendar days of a request for a refund if the person requesting the refund is entitled to the refund:

(i) under any provision of:  
 (A) the Utah Postsecondary Proprietary School Act, Utah Code Title 13, Chapter 34;

(B) the Postsecondary Proprietary School Act Rules, R152-34; or

(C) a contract or other agreement between the institution and the person requesting the refund; or

(ii) because of the institution's failure to fulfill its obligations to the person requesting the refund.

(4) Following the satisfactory completion of his or her training and education, a student is provided with appropriate educational credentials that show the program in which he or she was enrolled, together with a transcript of courses completed and grades or other performance evaluations received.

(5) No institution shall use the designation of 'college' nor 'university' in its title nor in conjunction with its operation unless it actually confers a standard college degree as one of its credentials, unless the use of such designation had previously been approved by the Board of Regents prior to July 1, 2002.

(6) The name of the institution shall not contain any reference that could mislead potential students or the general public as to the type or nature of its educational services, affiliations or structure.

(7) Advertising standards consist of the following:

(a) The institution's chief administrative officer assumes all responsibility for the content of public statements made on behalf of the institution and shall instruct all personnel, including agents, as to this rule and other appropriate laws regarding the ethics of advertisement and recruitment;

(b) Advertising shall be clear, factual, supportable, and shall not include any false or misleading statements with respect to the institution, its personnel, its courses and programs, its services, nor the occupational opportunities for its graduates;

(c) The institution shall not advertise in conjunction with any other business or establishment, nor advertise in "help wanted" nor in "employment opportunity" columns of newspapers, magazines or similar publications in such a way as to lead readers to believe that they are applying for employment rather than education and training. It must disclose that it is primarily operated for educational purposes, if this is not apparent from its legal name;

(d) An institution, its employees and agents, shall refrain from other forms of ambiguous or deceptive advertising, such as:

(i) claims as to endorsement by manufacturers or businesses or organizations until and unless written evidence supporting this fact is on file; and

(ii) representations that students completing a course or program may transfer either credits or credentials for acceptance by another institution, state agency, or business, unless written evidence supporting this fact is on file;

(e) An institution shall maintain a file of all promotional information and related materials for a period of three (3) years;

(f) The division may require an institution to submit its advertising prior to its use; and

(g) An institution cannot advertise that its organization or program is endorsed by the state of Utah other than to state that the school is 'Registered under the Utah Postsecondary Proprietary School Act'.

(i) An institution shall include the following registration and disclaimer statements in its catalog, student information

bulletin, and enrollment agreements:

(A) REGISTERED UNDER THE UTAH POSTSECONDARY PROPRIETARY SCHOOL ACT (Title 13, Chapter 34, Utah Code).

(B) Registration under the Utah Postsecondary Proprietary School Act does not mean that the State of Utah supervises, recommends, nor accredits the institution. It is the student's responsibility to determine whether credits, degrees, or certificates from the institution will transfer to other institutions or meet employers' training requirements. This may be done by calling the prospective school or employer.

(C) The institution is not accredited by a regional or national accrediting agency recognized by the United States Department of Education.

(8) Recruitment standards include the following:

(a) Recruiting efforts shall be conducted in a professional and ethical manner and free from 'high pressure' techniques; and

(b) An institution shall not use loans, scholarships, discounts, or other such enrollment inducements, where such result in unfair or discriminatory practices.

(9) An agent or sales representative may not be directly or indirectly be portrayed as 'counselor,' 'advisor,' or any other similar title to disguise his or her sales function.

(10) An agent or representative is responsible to have a clear understanding and knowledge of the programs and courses, tuition, enrollment requirements, enrollment agreement, support services, and the general operational procedures thereof.

(11) An institution shall indemnify any student from loss or other injury as a result of any fraud or other form of misrepresentation used by an agent in the recruitment process.

(12) An institution operating in Utah but domiciled outside the state shall designate a Utah resident as its registered agent for purposes of service of legal process.

(13) An institution shall provide a student with all of the student's school records, as described in R152-34-9(2), within five business days after a written or verbal request by a student for the student's school records. The institution may not charge a student more than the actual copying costs for the student's school records.

#### **R152-34-9. Rules Relating to Discontinuance of Operations Pursuant to Section 13-34-109.**

(1) Institutional closure procedures consist of the following:

(a) The chief administrative officer of each institution subject to the Postsecondary Proprietary Schools Act shall prepare a written plan for access to and the preservation of permanent records in the event the institution closes for whatever reason; and

(b) In the event an institution closes with students enrolled who have not completed their programs, a list of such, including the amount of tuition paid and the proportion of their program completed, shall be submitted to the division, with all particulars.

(2) School records consist of the following permanent scholastic records for all students who are admitted, even though withdrawn or terminated:

(a) appropriate entrance and admission acceptance information;

(b) attendance and performance information, including transcripts which consist of no less than the program for which he enrolled, each course attempted and the final grade earned;

(c) graduation or termination dates of students;

(d) enrollment agreements, tuition payments, refunds, and any other financial transactions.

(3) The division shall not release a surety required under R152-34-7(11) and/or R152-34-7(12) until one year after the date that the institution has complied with the requirements of (1) and (2) above, or until such time as the institution provides

documentation acceptable to the division to show that the institution has complied with (1) and (2) above and has satisfied all possible claims for refunds that may be made against the institution by students of the institution at the time the institution discontinued operations and by persons who were students of the institution within one year prior to the date that the institution discontinued operations, whichever is shorter.

**R152-34-10. Rules Relating to Suspension, Termination or Refusal to Register under Section 13-34-111.**

(1) The division may perform on-site evaluations to verify information submitted by an institution or an agent, or to investigate complaints filed with the Division.

(2) The division may, in accordance with Title 63, Chapter 46b, Administrative Procedures Act, issue an order to deny, suspend, or revoke a registration, upon a finding that:

(a) the award of credentials by a nonexempt institution without having first duly registered with the division and having obtained the requisite surety;

(b) a registration statement application that contains material representations which are incomplete, improper, or incorrect;

(c) failure to maintain facilities and equipment in a safe and healthful manner;

(d) failure to perform the services or provide materials as represented by the institution, failure to perform any commitment made in the registration statement or permit application, offering programs or services not contained in the registration statement currently on file, or violations of the conditions of the certificate of registration;

(e) failure to maintain sufficient financial capability, as set forth in section R152-34-7;

(f) to confer, or attempt to confer, a fraudulent credential, as set forth in 13-34-201;

(g) employment of students for commercial gain, if such fact is not contained in the current registration statement;

(h) promulgation to the public of fraudulent or misleading statements relating to a program or service offered;

(g) noncompliance of the Postsecondary Proprietary Schools Act or these rules;

(h) withdrawal of the authority to operate in the home state of an institution whose parent campus or headquarters is not domiciled in this state;

(i) failure to comply with applicable laws in this state or another state where the institution is doing business; and

(j) failure to provide reasonable information to the division as requested from time to time.

**R152-34-11. Rules Relating to Fraudulent Educational Credentials under Section 13-34-201.**

(1) A person may not represent him or herself in a deceptive or misleading way, such as by using the title "Dr." or "Ph.D." if he or she has not satisfied accepted academic or scholastic requirements.

**KEY: education, postsecondary proprietary school, registration**

**May 22, 2007**

**13-2-5(1)**

**Notice of Continuation June 15, 2007**

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

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

**R156-56-102. Definitions.**

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

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

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

(3) "Different permit number", as used in Sections R156-56-401 and R156-56-402, means a permit number derived from any format other than the standardized building permit described in R156-56-401. The different permit number may refer to a compliance agency's previous permit numbering system.

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

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

(6) "Permit number", as used in Sections R156-56-401 and R156-56-402, means the 12 digit standardized building permit number described below in R156-56-401.

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

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

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

**R156-56-103. Authority.**

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

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

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

**R156-56-105. Board of Appeals.**

If the commission is required to act as an appeals board in accordance with the provisions of Subsection 58-56-8(3), the

following shall regulate the convening and conduct of the special appeals board:

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

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

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

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

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

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

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

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

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

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

**R156-56-106. Fees.**

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

**R156-56-201. Building Inspector Licensing Board.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**R156-56-301. Reserved.**

Reserved.

**R156-56-302. Licensure of Inspectors.**

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

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

(a) Combination Inspector; or

(b) Limited Inspector.

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

(a) Combination Inspector.

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

(ii) Determine whether the construction, alteration, remodeling, repair or installation of all components of any building, structure or work is in compliance with the adopted codes.

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

(b) Limited Inspector.

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

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

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

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

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

(a) Combination Inspector.

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

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

(ii) all of the following certifications:

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

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

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

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

(b) Limited Inspector.

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

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

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

Certification" issued by the International Association of Electrical Inspectors;

- (iii) the "Plumbing Inspector Certification" issued by the International Code Council;
- (iv) the "Mechanical Inspector Certification" issued by the International Code Council;
- (v) the "Residential Combination Inspector Certification" issued by the International Code Council;
- (vi) the "Commercial Combination Certification" issued by the International Code Council;
- (vii) the "Commercial Building Inspector Certification" issued by the International Code Council;
- (viii) the "Commercial Electrical Inspector Certification" issued by the International Code Council;
- (ix) the "Commercial Plumbing Inspector Certification" issued by the International Code Council;
- (x) the "Commercial Mechanical Inspector Certification" issued by the International Code Council;
- (xi) the "Residential Building Inspector Certification" issued by the International Code Council;
- (xii) the "Residential Electrical Inspector Certification" issued by the International Code Council;
- (xiii) the "Residential Plumbing Inspector Certification" issued by the International Code Council;
- (xiv) the "Residential Mechanical Inspector Certification" issued by the International Code Council;
- (xv) any other special or otherwise limited inspector certifications used by the International Code Council which certifications cover a part of the codes adopted under these rules including but not limited to each of the following: Reinforced Concrete Special Inspector, Prestressed Concrete Special Inspector, Structural Masonry Special Inspector, Structural Steel and Bolting Special Inspection, Structural Welding Special Inspection, Spray Applied Fire Proofing Special Inspector, Residential Energy Inspector, Commercial Energy Inspector;
- (xvi) the Certified Welding Inspector Certification issued by the American Welding Society;
- (xvii) any other certification issued by an agency specified in Chapter 17 of the IBC or an agency specified in the referenced standards; or
- (xviii) any combination certification which is based upon a combination of one or more of the above listed certifications.

(c) If no qualification is listed in the IBC for a special inspector, the special inspector may submit his qualifications to the licensing board for approval.

(4) Application for License.

(a) An applicant for licensure shall:

- (i) submit an application in a form prescribed by the division; and
- (ii) pay a fee determined by the department pursuant to Section 63-38-3.2.

(5) Code transition provisions.

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

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

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

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

considered as a current national certification as required by these rules.

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

**R156-56-303. Renewal Cycle - Procedures.**

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

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

**R156-56-401. Standardized Building Permit Number.**

As provided in Section 58-56-18, beginning on January 1, 2007, any agency issuing a permit for construction within the state of Utah shall use the standardized building permit numbering which includes the following:

(1) The permit number shall consist of 12 digits with the following components in the following order:

- (a) digits one, two and three shall be alphabetical characters identifying the compliance agency issuing the permit as specified in the table in Subsection (3);
- (b) digits four and five shall be numerical characters indicating the year of permit issuance;
- (c) digits six and seven shall be numerical characters indicating the month of permit issuance;
- (d) digits eight and nine shall be numerical characters indicating the day of the month on which the permit is issued; and
- (e) digits ten, eleven and twelve shall be numerical characters used to distinguish between permits issued by the agency on the same day.

(2) When used in addition to a different permit numbering system, as provided for in Subsection 58-56-18(3)(b), the standardized building permit number shall be clearly identified and labeled as the "state permit number" or "Utah permit number".

(3) The following table establishes the three digit alphabetical character for which the compliance agency shall be identified as provided in Subsection (1)(a):

TABLE  
COMPLIANCE AGENCY PERMIT TABLE  
FOR STANDARDIZED BUILDING PERMIT  
THREE LETTER DESIGNATIONS

Index:

- Column 1: City, town, or other compliance agency in which project is located
- Column 2: County in which the city, town, or other compliance agency is located
- Column 3: City, town or other compliance agency 3 digit designation (Designation is shown for cities, towns, or other compliance agency which issue building permits. If no designation is shown, the building permits for the city, town, or other compliance agency are issued by the county, therefore the county three digit designation should be used)
- Column 4: County 3 digit designation

1 City, Town, or other Compliance Agency	2 County	3 City, Town, or other Compliance Agency Designation	4 County Designa- tion
Adamsville	BEAVER		BVR
Alpine	UTAH	ALP	
Alta	SALT LAKE	ALT	
Altamont	DUCHESNE		DCH
Alton	KANE		KAN
Altonah	DUCHESNE		DCH
Amalga	CACHE		CAC
American Fork	UTAH	AFC	

Aneth	SAN JUAN		SJC	Clover	TOOELE		RUV (became Rush Valley)
Angle	PIUTE		PIU				
Annabella	SEVIER		SEV	Coalville	SUMMIT	COA	
Antimony	GARFIELD		GRF	College Ward	CACHE		CAC
Apple Valley	WASHINGTON		WSC	Collinston	BOX ELDER		BEC
Aragonite	TOOELE		TOC	Colton	UTAH		UTA
Aurora	SEVIER		SEV	Copperton	SALT LAKE		SCO
Austin	SEVIER		SEV	Corinne	BOX ELDER	COR	
Avon	CACHE		CAC	Cornish	CACHE		CAC
Axtell	SANPETE		SPC	Cottonwood	SALT LAKE		SCO
Bacchus	SALT LAKE		SCO	Cottonwood Heights	SALT LAKE	CHC	
Ballard	UINTAH	BAL		Cove	CACHE		CAC
Bauer	TOOELE		TOC	Cove Fort	MILLARD		MIL
Bear River	BOX ELDER	BRC		Crescent	SALT LAKE		SCO
Beaver City	BEAVER		BEA	Crescent Junction	GRAND		GRA
BEAVER COUNTY			BVR	Croyden	MORGAN		MRG
Beaver Dam	BOX ELDER		BEC	DAGGETT COUNTY			DAG
Benjamin	UTAH		UTA	Dameron Valley	WASHINGTON		WSC
Benson	CACHE		CAC	Daniels	WASATCH		DAN
Beryl	IRON		IRO	DAVIS COUNTY			DAY
Bicknell	WAYNE		WAY	Deer Creek	WASATCH		WAC
Big Water	KANE	BWM		Delle	TOOELE		TOC
Birdseye	UTAH		UTA	Delta	MILLARD	DEL	
Black Rock	MILLARD		MIL	Deseret	MILLARD		MIL
Blanding	SAN JUAN	BLA		Deseret Mound	IRON		IRO
Bloomington Hills	WASHINGTON	STG (part of St. George)		Devils Slide	MORGAN		MRG
				Deweyville	BOX ELDER	DEW	
Bloomington	WASHINGTON	STG (part of St. George)		Diamond Valley	WASHINGTON		WSC
				Div of Facilities			
Blue Creek	BOX ELDER		BEC	Construction and Mgmt	(statewide)	FCM	
Bluebell	DUCHESNE		DCH	Dividend	UTAH		UTA
Bluff	SAN JUAN		SJC	Draper	SALT LAKE	DRA	
Bluffdale	SALT LAKE	BLU		Draper City South	UTAH		UTA
Bonanza	UINTAH		UTC	Duchesne City	DUCHESNE	DUC	
Boneta	DUCHESNE		DCH	DUCHESNE COUNTY			DCH
Bothwell	BOX ELDER		BEC	Duck Creek	KANE		KAN
Boulder	GARFIELD		GRF	Dugway (Federal)	TOOELE	XXX	
Bountiful	DAVIS	BOU		Dutch John	DAGGETT		DAG
BOX ELDER COUNTY			BEC	Eagle Mountain	UTAH	EMC	
Brian Head	IRON	BHT		East Carbon	CARBON	ECC	
Bridgeland	DUCHESNE		DCH	East Green River	GRAND		GRA
Brigham	BOX ELDER	BRI		East Millcreek	SALT LAKE		SCO
Brighton	SALT LAKE		SCO	Eastland	SAN JUAN		SJC
Brookside	WASHINGTON		WSC	Echo	SUMMIT		SUM
Bryce	GARFIELD		GRF	Eden	WEBER		WEB
Bullfrog	KANE		KAN	Elk Ridge	UTAH	ERC	
Burmester	TOOELE		TOC	Elberta	UTAH		UTA
Burrville	SEVIER		SEV	Elmo	EMERY		EMR
CACHE COUNTY			CAC	Elsinore	SEVIER		SEV
Cache Junction	CACHE		CAC	Elwood	BOX ELDER	ELW	
Caineville	WAYNE		WAY	Emery City	EMERY	EME	
Callao	JUAB		JUA	EMERY COUNTY			EMR
Camp Williams	UTAH		UTA	Emory	SUMMIT		SUM
Cannonville	GARFIELD		GRF	Enoch	IRON	ENO	
CARBON COUNTY			CAR	Enterprise	WASHINGTON	ENT	
Carbonville	CARBON		CAR	Ephraim	SANPETE		SPC
Castle Dale	EMERY		EMR	Erda	TOOELE		TOC
Castle Rock	SUMMIT		SUM	Escalante	GARFIELD		GRF
Castle Valley	GRAND		GRA	Eskdale	MILLARD		MIL
Cedar City	IRON	CEC		Etna	BOX ELDER		BEC
Cedar Creek	BOX ELDER		BEC	Eureka	JUAB	EUR	
Cedar Fort	UTAH	CFT		Fairfield	UTAH		UTA
Cedar Hills	UTAH	CDH		Fairmont	SEVIER		SEV
Cedar Mountain	TOOELE		TOC	Fairview	SANPETE		SPC
Cedar Springs	BOX ELDER		BEC	Farmington	DAVIS	FAR	
Cedar Valley	UTAH		UTA	Farr West	WEBER	FAW	
Cedarview	DUCHESNE		DCH	Faust	TOOELE		TOC
Center Creek	WASATCH		WAC	Fayette	SANPETE		SPC
Centerfield	SANPETE		SPC	Ferron	EMERY		EMR
Centerville	DAVIS	CEV		Fielding	BOX ELDER	FIE	
Central	SEVIER		SEV	Fillmore	MILLARD	FIL	
Central	WASHINGTON		WSC	Flowell	MILLARD		MIL
Central Valley	SEVIER		SEV	Fort Duchesne	UINTAH		UTC
Charleston	WASATCH	CHA		Fountain Green	SANPETE		SPC
Chester	SANPETE		SPC	Francis	SUMMIT	FRA	
Christinburg	SANPETE		SPC	Freedom	SANPETE		SPC
Christmas Meadows	SUMMIT		SUM	Freeport Circle	DAVIS		DAY
Church Wells	KANE		KAN	Fremont	WAYNE		WAY
Circleville	PIUTE	CIR		Fremont Junction	SEVIER		SEV
Cisco	GRAND		GRA	Fruit Heights	DAVIS	FRU	
Clarkston	CACHE		CAC	Fruitland	DUCHESNE		DCH
Clawson	EMERY		EMR	Fry Canyon	SAN JUAN		SJC
Clear Lake	MILLARD		MIL	Gandy	MILLARD		MIL
Clearcreek	BOX ELDER		BEC	Garden City	RICH	GAR	
Clearcreek	CARBON		CAR	Garfield	SALT LAKE		SCO
Clearfield	DAVIS	CLE		GARFIELD COUNTY			GRF
Cleveland	EMERY		EMR	Garland	BOX ELDER	GRL	
Clinton	DAVIS	CLI		Garrison	MILLARD		MIL
Clive	TOOELE		TOC	Geneva	UTAH	GEV	

Genola	UTAH	GEN		Layton	DAVIS	LAY	
Glendale	KANE		KAN	Leamington	MILLARD	LEA	
Glenwood	SEVIER		SEV	Leeds	WASHINGTON	LEE	
Goldhill	TOOELE		TOC	Leeton	UINTAH		UTC
Goshen	UTAH	GOS		Lehi	UTAH	LEH	
Grafton	WASHINGTON	ROC (part of Rockville)		Leland	UTAH		UTA
				Leota	UINTAH		UTC
GRAND COUNTY		GRA		Levan	JUAB	LEV	
Granite	SALT LAKE		SCO	Lewiston	CACHE	LEW	
Grantsville	TOOELE	GTV		Liberty	WEBER		WEC
Green River	EMERY		EMR	Lincoln	TOOELE		TOC
Greenville	BEAVER		BVR	Lindon	UTAH	LIN	
Greenwich	PIUTE		PIU	Little Mountain	WEBER		WEC
Greenwood	MILLARD		MIL	Littleton	MORGAN		MRG
Grouse Creek	BOX ELDER		BEC	Loa	WAYNE	LOA	
Grover	WAYNE		WAY	Logan	CACHE	LOG	
Gunlock	WASHINGTON		WSC	Long Valley	KANE		KAN
Gunnison	SANPETE		SPC	Losepa	TOOELE		TOC
Gusher	UINTAH		UTC	Low	TOOELE		TOC
Hailstone	WASATCH		WAC	Lucin	BOX ELDER		BEC
Halls Crossing	SAN JUAN		SJC	Lund	IRON		IRO
Hamilton Fort	IRON		IRO	Lyman	WAYNE		WAY
Hamlin Valley	IRON		IRO	Lynn	BOX ELDER		BEC
Hanksville	WAYNE		WAY	Lynndyl	MILLARD	LYN	
Hanna	DUCHESNE		DCH	Madsen	BOX ELDER		BEC
Harrisville	WEBER	HAR		Maeser	UINTAH		UTC
Hatch	GARFIELD		GRF	Magna	SALT LAKE		SCO
Hatton	MILLARD		MIL	Mammoth	JUAB		JUA
Heber	WASTACH	HEB		Manderfield	BEAVER		BVR
Helper	CARBON		CAR	Manila	DAGGETT	MNL	
Henefer	SUMMIT	HEN		Manti	SANPETE		SPC
Henrieville	GARFIELD		GRF	Mantua	BOX ELDER	MNT	
Herriman	SALT LAKE	HER		Mapleton	UTAH	MAP	
Hiawatha	CARBON		CAR	Marion	SUMMIT		SUM
Hideway Valley	SANPETE		SPC	Marriott-Slaterville	WEBER	MSC	
Highland	UTAH	HIG		Marysville	PIUTE	MAR	
Hildale	WASHINGTON	HIL		Mayfield	SANPETE		SPC
Hinckley	MILLARD	HIN		Meadow	MILLARD	MEA	
Hite	SAN JUAN		SJC	Meadowville	RICH		RIC
Holden	MILLARD	HOL		Mendon	CACHE	MEN	
Holladay	SALT LAKE	HOD		Mexican Hat	SAN JUAN		SJC
Honeyville	BOX ELDER	HON		Middleton	WASHINGTON	STG (part of St. George)	
Hooper	WEBER	HOO					
Hot Springs	BOX ELDER		BEC	Midvale	SALT LAKE	MID	
Hovenweep Mountain	SAN JUAN		SJC	Midway	WASATCH	MWC	
Howell	BOX ELDER	HPW		Milburn	SANPETE		SPC
Hoytsville	SUMMIT		SUM	Milford	BEAVER	MLF	
Huntington	EMERY		EMR	Mill Fork	UTAH		UTA
Huntsville	WEBER	HTV		MILLARD COUNTY			MIL
Hurricane	WASHINGTON	HUR		Mills	JUAB		JUA
Hyde Park	CACHE	HPC		Mills Junction	TOOELE		TOC
Hyrum	CACHE		CAC	Millville	CACHE		CAC
Ibapah	TOOELE		TOC	Milton	MORGAN		MRG
Indianola	SANPETE		SPC	Minersville	BEAVER		BVR
Ioka	DUCHESNE		DCH	Moab	GRAND	MOA	
IRON COUNTY			IRO	Modena	IRON		IRO
Iron Springs	IRON		IRO	Mohrland	EMERY		EMR
Ivins	WASHINGTON	INI		Molen	EMERY		EMR
Jensen	UINTAH		UTC	Mona	JUAB	MON	
Jericho	JUAB		JUA	Monarch	DUCHESNE		DCH
Joseph	SEVIER		SEV	Monroe	SEVIER		SEV
JUAB COUNTY			JUA	Montezuma Creek	SAN JUAN		SJC
Junction	PIUTE	JUN		Monticello	SAN JUAN	MNC	
Kamas	SUMMIT	KAM		Monument Valley	SAN JUAN		SJC
Kanab	KANE	KNB		Moore	EMERY		EMR
Kanarraville	IRON		IRO	Morgan City	MORGAN	MOR	
KANE COUNTY			KAN	MORGAN COUNTY			MRG
Kaneville	WEBER		WEC	Moroni	SANPETE		SPC
Kanosh	MILLARD	KNS		Mt Carmel	KANE		KAN
Kayenta	WASHINGTON	INI (part of Ivins)		Mt Emmons	DUCHESNE		DCH
Kaysville	DAVIS	KAY		Mt Green	MORGAN		MRG
Kearns	SALT LAKE		SCO	Mt Home	DUCHESNE		DCH
Keetley	WASATCH		WAC	Mt Olympus	SALT LAKE		SCO
Kelton	BOX ELDER		BEC	Mt Pleasant	SANPETE		SPC
Kenilworth	CARBON		CAR	Mt Sterling	CACHE		CAC
Kingston	PIUTE	KIN		Murray	SALT LAKE	MUR	
Knolls	TOOELE		TOC	Myton	DUCHESNE		DCH
Koosharem	SEVIER		SEV	Naples	UINTAH	NAP	
La Sal	SAN JUAN		SJC	National	CARBON		CAR
La Verkin	WASHINGTON	LAV		Navaho Lake	DUCHESNE		DCH
Lake Powell	SAN JUAN		SJC	Neola	DUCHESNE		DCH
Lakepoint	TOOELE		TOC	Nephi	JUAB	NEP	
Lakeshore	UTAH		UTA	New Harmony	WASHINGTON		WSC
Lakeside	BOX ELDER		BEC	Newcastle	IRON		IRO
Laketown	RICH		RIC	Newton	CACHE	NEW	
Lakeview	UTAH		UTA	Nibley	CACHE	NIB	
Lapoint	UINTAH		UTC	North Logan	CACHE	NLC	
Lark	SALT LAKE		SCO	North Ogden	WEBER	NOC	
Lawrence	EMERY		EMR	North Salt Lake	DAVIS	NSL	

Oak City	MILLARD	OAK		Smithfield	CACHE	SMI	
Oakley	SUMMIT	OKL		Snowbird	SALT LAKE		SCO
Oasis	MILLARD		MIL	Snowville	BOX ELDER	SNO	
Ogden	WEBER	OGD		Snyderville	SUMMIT		SUM
Ogden City School Dist	WEBER	OSD		Soldier Summit	WASATCH		WAC
Ophir	TOOELE	OPH		South Jordan	SALT LAKE	SOJ	
Orangeville	EMERY	ORA		South Ogden	WEBER	S00	
Orderville	KANE		KAN	South Salt Lake	SALT LAKE	SSL	
Orem	UTAH	ORE		South Weber	DAVIS	SWC	
Orrey	WAYNE		WAY	Spanish Fork	UTAH	SFC	
Ouray	UINTAH		UTC	Spring City	SANPETE		SPC
Palmyra	UTAH		UTA	Spring Glen	CARBON		CAR
Panguitch	GARFIELD		GRF	Spring Lake	UTAH		UTA
Paradise	CACHE		CAC	Springdale	WASHINGTON	SPD	
Paragonah	IRON		IRO	Springville	UTAH	SPV	
Park City	SUMMIT	PAC		St George	WASHINGTON	STG	
Park City East	WASATCH		WAC	St John	TOOELE	RUV (became Rush Valley)	
Park Valley	BOX ELDER		BEC				
Parowan	IRON		IRO	Standrod	BOX ELDER		BEC
Partoun	JUAB		JUA	Stansbury Park	TOOELE		TOC
Payson	UTAH	PAY		Sterling	SANPETE		SPC
Penrose	BOX ELDER		BEC	Stockmore	DUCHESNE		DCH
Peoa	SUMMIT		SUM	Stockton	TOOELE	STO	
Perry	BOX ELDER	PER		Stoddard	MORGAN		MRG
Petersboro	CACHE		CAC	Sugarville	MILLARD		MIL
Peterson	MORGAN		MRG	Summit	IRON		IRO
Pickleville	RICH		RIC	SUMMIT COUNTY			SUM
Pigeon Hollow Junction	SANPETE		SPC	Summit Park	SUMMIT		SUM
Pine Valley	WASHINGTON		WSC	Summit Point	SAN JUAN		SJC
Pineview	SUMMIT		SUM	Sundance	UTAH		UTA
Pinto	WASHINGTON		WSC	Sunnyside	CARBON		CAR
Pintura	WASHINGTON		WSC	Sunset	DAVIS	SUN	
PIUTE COUNTY			PIU	Sutherland	MILLARD		MIL
Plain City	WEBER	PLA		Swan Creek	TOOELE		TOC
Pleasant Grove	UTAH	PGC		Syracuse	DAVIS	SYR	
Pleasant View	WEBER	PVC		Tabiona	DUCHESNE		DCH
Plymouth	BOX ELDER	PLY		Talmage	DUCHESNE		DCH
Portage	BOX ELDER		BEC	Taylor	WEBER		WEC
Porterville	MORGAN		MRG	Taylorville	SALT LAKE	TAY	
Price	CARBON	PRI		Teasdale	WAYNE		WAY
Promontory	BOX ELDER		BEC	Thatcher	BOX ELDER	THA	
Providence	CACHE	PRV		Thistle	UTAH		UTA
Provo	UTAH	PRO		Thompson Springs	GRAND		GRA
Provo Canyon	UTAH		UTA	Ticaboo	GARFIELD		GRF
Randlett	UINTAH		UTC	Timpe	TOOELE		TOC
Randolph	RICH	RAN		Tintic	JUAB		JUA
Redmond	SEVIER	RED		Tooele City	TOOELE	TOO	
Redmonton	BOX ELDER		BEC	TOOELE COUNTY			TOC
RICH COUNTY			RIC	Toquerville	WASHINGTON	TOQ	
Richfield	SEVIER	RCF		Torrey	WAYNE		WAY
Richmond	CACHE		CAC	Tremonton	BOX ELDER	TRE	
Richville	MORGAN		MRG	Trenton	CACHE		CAC
River Heights	CACHE		CAC	Tridell	UINTAH		UTC
Riverdale	WEBER	RVD		Tropic	GARFIELD		GRF
Riverside	BOX ELDER		BEC	Trout Creek	JUAB		JUA
Riverton	SALT LAKE	RVT		Tucker	UTAH		UTA
Rockville	WASHINGTON	ROC		Ucolo	SAN JUAN		SJC
Rocky Ridge Town	JUAB	ROR		Uintah	WEBER	UIN	
Roosevelt	DUCHESNE	ROO		UINTEAH COUNTY			UTC
Rosette	BOX ELDER		BEC	Upalco	DUCHESNE		DCH
Round Valley	RICH		RIC	Upton	SUMMIT		SUM
Roy	WEBER	ROY		UTAH COUNTY			UTA
Rubys Inn	GARFIELD		GRF	Uvada	IRON		IRO
Rush Valley	TOOELE	RUV		Venice	SEVIER		SEV
Sage Creek Junction	RICH		RIC	Vernal	UINTAH	VER	
Salem	UTAH	SLM		Vernon	TOOELE		TOC
Salina	SEVIER	SEV		Veyo	WASHINGTON		WSC
Salt Lake City	SALT LAKE	SLC		Vineyard	UTAH	VIN	
SALT LAKE COUNTY			SCO	Virgin	WASHINGTON	VIR	
Salt Lake Suburban				Wahsatch	SUMMIT		SUM
Sanitary District #1	SALT LAKE	SSD		Wales	SANPETE		SPC
Salt Springs	TOOELE		TOC	Wallsburg	WASATCH		WAC
Samak	SUMMIT		SUM	Wanship	SUMMIT		SUM
SAN JUAN COUNTY			SJC	Warren	WEBER		WEC
Sandy	SALT LAKE	SAN		WASATCH COUNTY			WAC
SANPETE COUNTY			SPC	Washington City	WASHINGTON	WAS	
Santa Clara	WASHINGTON	SAC		Washakie	BOX ELDER		BEC
Santaquin	UTAH	STQ		Washington Terrace	WEBER	WAT	
Saratoga Springs	UTAH	SRT		WASHINGTON COUNTY			WSC
Scipio	MILLARD	SCI		WAYNE COUNTY			WAY
Scotfield	CARBON		CAR	WEBER COUNTY			WEC
Sevier	SEVIER	SEV		Webster Cove Junction	CACHE		CAC
SEVIER COUNTY			SEV	Wellington	CARBON		CAR
Shivwits (Federal)	WASHINGTON	YYY		Wellsville	CACHE		CAC
Sigurd	SEVIER		SEV	Wendover	TOOELE	WEN	
Silver City	JUAB	JUA		West Bountiful	DAVIS	WEB	
Silver Creek Junction	SUMMIT	SUM		West Haven	WEBER	WEH	
Silver Fork	SALT LAKE	SCO		West Jordan	SALT LAKE	WEJ	
Silver Reef	WASHINGTON	LEE (part of Leeds)		West Point	DAVIS	WEP	

West Valley	SALT LAKE	WVC	
West Warren	WEBER		WEC
West Weber	WEBER		WEC
Westwater	GRAND		GRA
Whiterocks	UINTAH		UTC
Widtsoe Junction	GARFIELD		GRF
Willdwood	UTAH		UTA
Willard	BOX ELDER	WIL	
Wilson	WEBER		WEC
Wins	WASHINGTON		WSC
Woodland Hills	UTAH	WHO	
Woodland	SUMMIT		SUM
Woodruff	RICH		RIC
Woodrow	MILLARD		MIL
Woods Cross	DAVIS	WXC	
Woodside	EMERY		EMR
Yost	BOX ELDER		BEC
Young Ward	CACHE		CAC
Zane	IRON		IRO

**R156-56-402. Standardized Building Permit Content.**

As provided in Section 58-56-18, beginning January 1, 2007, any agency issuing a permit for construction within the state of Utah shall use a permit form that incorporates standardized building permit content as follows:

- (1) permit number, as set forth in Section R156-56-401;
- (2) the name of the owner of the project;
- (3) the name of the original contractor or owner-builder for the project;
- (4) whether the permit applicant is an original contractor or owner-builder; and
- (5) street address of the project or a general description of the project.

**R156-56-501. Administrative Penalties - Unlawful Conduct.**

In accordance with Subsections 58-56-9.1 and 58-56-9.5, unless otherwise ordered by the presiding officer, the following fine schedule shall apply:

- (1) Engaging in the sale of factory built housing without being registered.
  - First offense: \$500
  - Second offense: \$1,000
- (2) Selling factory built housing within the state as a dealer without collecting and remitting to the division the fee required by Section 58-56-17.
  - First offense: \$500
  - Second offense: \$1,000
- (3) Acting as a building inspector or representing oneself to be acting as a building inspector, unless licensed or exempted from licensure under Title 58, Chapter 56 or using the title building inspector or any other description, words, letters, or abbreviation indicating that the person is a building inspector if the person has not been licensed under Title 58, Chapter 56.
  - First offense: \$500
  - Second offense: \$1,000
- (4) Acting as a building inspector beyond the scope of the license held.
  - First offense: \$500
  - Second offense: \$1,000
- (5) Hiring or employing in any manner an unlicensed person as a building inspector, unless exempted from licensure.
  - First offense: \$800
  - Second offense: \$1,600
- (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 Section 58-56-9.5.
- (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 or mitigating circumstances, to increase or decrease the fine amount based on the evidence reviewed.

**R156-56-502. Reserved.**  
Reserved.

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

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

- (1) Construction shall be in accordance with the building standards accepted by the state pursuant to Section 58-56-4.
- (2) The inspection of the construction, modification of or set-up of a modular unit shall be the responsibility of the local regulator; however, nothing in these rules shall preclude the local regulator from entering into an agreement with another qualified person for the inspection of the unit(s) in the manufacturing facility.

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

- (1) Pursuant to the provisions of Subsection 58-56-16(2)(c), a factory built housing dealer shall provide a registration bond issued by a surety acceptable to the Division in the amount of \$50,000. An acceptable surety is one that is listed in the Department of Treasury, Fiscal Service, Circular 570, current revision, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies".
- (2) The coverage of the registration bond shall include losses which may occur as the result of the factory built housing dealer's violation of the unprofessional or unlawful provisions contained in Title 58, Chapters 1 and 56.

**R156-56-603. Factory Built Housing Dispute Resolution Program.**

- (1) Pursuant to Subsection 58-56-15(1)(f)(i), the dispute resolution program is defined and clarified as follows:
  - (a) Persons having disputes regarding manufactured housing issues may file a complaint with the Division.
  - (b) The Division shall investigate such complaints and as part of the investigation may take any of the following actions:
    - (i) The Division may negotiate with the parties involved for informal resolution of such complaints.
    - (ii) The Division may take any informal or formal action allowed by any applicable statute including, but not limited to:
      - (A) pursuing disciplinary proceedings under Section 58-1-401;
      - (B) pursuing civil sanctions under Subsection 58-56-15(2); and
      - (C) referring matters to appropriate criminal prosecuting agencies and cooperating or assisting with the investigation and prosecution of cases by such agencies.
    - (c) In addition, persons having disputes regarding manufactured housing issues may also institute civil action.

**R156-56-604. Factory Built Housing Continuing Education Requirements.**

- (1) Pursuant to Subsection 58-56-15(1)(f)(ii), continuing education required for manufactured housing installation contractors is defined and clarified as follows:
  - (a) the continuing education required by Subsection 58-55-501(21), which is effective July 1, 2005.

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

- (1) In accordance with Subsection 58-56-4(3), and subject to the limitations contained in Subsection (6), (7), and (8), the following codes are hereby incorporated by reference, which codes together with any amendments specified under these

rules, are adopted as the construction standards to be applied to building construction, alteration, remodeling and repair and in the regulation of building construction, alteration, remodeling and repair in the state:

(a) the 2006 edition of the International Building Code (IBC), including Appendix J promulgated by the International Code Council shall become effective on January 1, 2007;

(b) the 2005 edition of the National Electrical Code (NEC) promulgated by the National Fire Protection Association, to become effective January 1, 2006;

(c) the 2006 edition of the International Plumbing Code (IPC) promulgated by the International Code Council shall become effective on January 1, 2007;

(d) the 2006 edition of the International Mechanical Code (IMC) promulgated by the International Code Council shall become effective on January 1, 2007;

(e) the 2006 edition of the International Residential Code (IRC) promulgated by the International Code Council shall become effective on January 1, 2007;

(f) the 2006 edition of the International Energy Conservation Code (IECC) promulgated by the International Code Council shall become effective on January 1, 2007;

(g) the 2006 edition of the International Fuel Gas Code (IFGC) promulgated by the International Code Council shall become effective on January 1, 2007;

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

(i) subject to the provisions of Subsection (4), Appendix E of the 2006 edition of the International Residential Code promulgated by the International Code Council shall become effective on January 1, 2007; and

(j) subject to the provisions of Subsection (4), the 2005 edition of the NFPA 225 Model Manufactured Home Installation Standard promulgated by the National Fire Protection Association shall become effective January 1, 2007.

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

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

(b) the 2006 edition of the International Existing Building Code (IEBC), including its appendix chapters, promulgated by the International Code Council;

(c) ASCE 31-03, Seismic Evaluation of Existing Buildings, promulgated by the American Society of Civil Engineers;

(d) Pre-standard and Commentary for the Seismic Rehabilitation of Buildings (FEMA 356) published by the Federal Emergency Management Agency (November 2000).

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

(4) In accordance with Subsection 58-56-4(2), the following are hereby adopted as the installation standard for manufactured housing for new installations or for existing manufactured or mobile homes which are subject to relocation, building alteration, remodeling or rehabilitation in the state:

(a) The manufacturer's installation instruction for the model being installed shall be the primary standard.

(b) If the manufacturer's installation instruction for the

model being installed is not available or is incomplete, the following standards shall be applicable:

(i) Appendix E of the 2006 edition of the International Residential Code as promulgated by the International Code Council for installations defined in Section AE101 of Appendix E; or

(ii) If an installation is beyond the scope of the 2006 edition of the International Residential Code as defined in Section AE101 of Appendix E, then the 2005 edition of the NFPA 225 Model Manufactured Home Installation Standard promulgated by the National Fire Protection Association shall apply.

(c) The manufacturer, dealer or homeowner shall be permitted to design for unusual installation of a manufactured home not provided for in the manufacturer's standard installation instruction Appendix E of the 2006 edition of the International Residential Code, or the 2005 edition of the NFPA 225, provided the design is approved in writing by a professional engineer or architect licensed in Utah.

(d) For mobile homes built prior to June 15, 1976, the home shall also comply with the additional installation and safety requirements specified in Section R156-56-808.

(5) Pursuant to the Federal Manufactured Home Construction and Safety Standards Section 604(d), a manufactured home may be installed in the state of Utah which does not meet the local snow load requirements as specified in Subsection R156-56-801; however all such homes which fail to meet the standards of Subsection R156-56-801 shall have a protective structure built over the home which meets the International Building Code and the snow load requirements under Subsection R156-56-801.

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

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

(a) the International Property Maintenance Code;

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

(c) the International Fire Code which pursuant to Section 53-7-106 authority is reserved to the Utah Fire Prevention Board; and

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

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

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

(1) In the event that the director of the division rules contrary to the recommendation of the commission with respect to the provisions of Subsection 58-56-7(8), the director shall present his action and the basis for that action at the

commission's next meeting or at a special meeting called by either the division or the commission.

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

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

#### **R156-56-703. Code Amendments.**

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

(1) All requests for amendments to any of the uniform building standards shall be submitted to the division on forms specifically prepared by the division for that purpose.

(2) The processing of requests for code amendments shall be in accordance with division policies and procedures.

#### **R156-56-801. Statewide Amendments to the IBC.**

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

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

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

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

(3) Section 106.3.2 is deleted and replaced with the following:

106.3.2 Previous approval. If a lawful permit has been issued and the construction of which has been pursued in good faith within 180 days after the effective date of the code and has not been abandoned, then the construction may be completed under the code in effect at the time of the issuance of the permit.

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

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

The remaining sections will be renumbered as follows:

109.3.6 Lath or gypsum board inspection

109.3.7 Fire-resistant penetrations

109.3.8 Energy efficiency inspections

109.3.9 Other inspections

109.3.10 Special inspections

109.3.11 Final inspection.

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

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

(6) In Section 202, the definition for Assisted Living Facility is deleted and replaced with the following:

ASSISTED LIVING FACILITY. See Section 308.1.1.

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

305.2 Day care. The building or structure, or portion thereof, for educational, supervision, child day care centers, or personal care services of more than four children shall be classified as a Group E occupancy. See Section 421 for special requirements for Group E child day care centers.

Exception: Areas used for child day care purposes with a

Residential Certificate, Family License or Family Group License may be located in a Group R-2 or R-3 occupancy as provided in Section 310.1 or shall comply with the International Residential Code in accordance with Section 101.2.

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

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

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

TYPE I ASSISTED LIVING FACILITY. A residential facility licensed by the Utah Department of Health that provides a protected living arrangement for ambulatory, non-restrained persons who are capable of achieving mobility sufficient to exit the facility without the assistance of another person.

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

SEMI-INDEPENDENT. A person who is:

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

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

RESIDENTIAL TREATMENT/SUPPORT ASSISTED LIVING FACILITY. A residential treatment/support assisted living facility which creates a group living environment for four or more residents licensed by the Utah Department of Human Services, and provides a protected living arrangement for ambulatory, non-restrained persons who are capable of achieving mobility sufficient to exit the facility without the physical assistance of another person.

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

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

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

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

fewer persons shall be classified as a Group R-4. Type II assisted living facilities as defined in 308.1.1 with at least six and not more than sixteen residents shall be classified as a Group I-1 facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Use is approved by the State Department of Health, as enacted under the authority of the Utah Child Care Licensing

Act, UCA, Sections 26-39-101 through 26-39-110, and in any of the following categories:

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

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

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

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

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

(15) In Section 310.2 the definition for Residential Care/Assisted Living Facilities is deleted and replaced with the following:

See Section 308.1.1.

(16) A new section 421 is added as follows:

Section 421 Group E Child Day Care Centers. Group E child day care centers shall comply with Section 421.

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

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

421.2 Egress. All Group E child day care spaces with an occupant load of more than 10 shall have a second means of egress. If the second means of egress is not an exit door leading directly to the exterior, the room shall have an emergency escape and rescue window complying with Section 1026.

(17) In Section 707.14.1 Exception 4 is deleted.

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

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

(19) In Section (F)903.2.3 condition 2 is deleted and replaced with the following:

2. Where a Group F-1 fire area is located more than three stories above the lowest level of fire department vehicle access; or

(20) In Section (F)903.2.6 condition 2 is deleted and replaced with the following:

2. Where a Group M fire area is located more than three stories above the lowest level of fire department vehicle access; or

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

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

Exceptions:

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

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

(22) In Section F903.2.8 condition 2 is deleted and replaced with the following:

2. Where a Group S-1 fire area is located more than three stories above the lowest level of fire department vehicle access;

or

(23) Section (F)903.2.9 is deleted and replaced with the following:

(F)903.2.9 Group S-2. An automatic sprinkler system shall be provided throughout buildings classified as parking garages in accordance with Section 406.2 or where located beneath other groups.

Exception 1: Parking garages of less than 5,000 square feet (464 m<sup>2</sup>) accessory to Group R-3 occupancies.

Exception 2: Open parking garages not located beneath other groups if one of the following conditions is met:

a. Access is provided for fire fighting operations to within 150 feet (45,720 mm) of all portions of the parking garage as measured from the approved fire department vehicle access; or

b. Class I standpipes are installed throughout the parking garage.

(24) In Section (F)903.2.9.1 the last clause "where the fire area exceeds 5,000 square feet (464 m<sup>2</sup>)" is deleted.

(25) Section (F)904.11 and Subsections (F)904.11.3, (F)904.11.3.1, (F)904.11.4 and (F)904.11.4.1 are deleted and replaced with the following:

(F)904.11 Commercial cooking systems. The automatic fire-extinguishing system for commercial cooking systems shall be of a type recognized for protection of commercial cooking equipment and exhaust systems of the type and arrangement protected. Pre-engineered automatic extinguishing systems shall be tested in accordance with UL 300 and listed and labeled for the intended application. The system shall be installed in accordance with this code, its listing and the manufacturer's installation instructions. Automatic fire-extinguishing systems shall be installed in accordance with the referenced standard for wet-chemical extinguishing systems, NFPA 17A.

Exception: Factory-built commercial cooking recirculating systems that are tested in accordance with UL 710B and listed, labeled and installed in accordance with Section 304.1 of the International Mechanical Code.

(Subsections (F)904.11.1 and (F)904.11.2 remain unchanged.

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

(F)907.2.10 Single- and multiple-station alarms. Listed single- and multiple-station smoke alarms complying with U.L. 217 shall be installed in accordance with the provision of this code and the household fire-warning equipment provision of NFPA 72. Listed single- and multiple-station carbon monoxide detectors shall comply with U.L. 2034 and shall be installed in accordance with the provisions of this code and NFPA 720.

(F)907.2.10.1 Smoke alarms. Single- or multiple-station smoke alarms shall be installed in the locations described in Sections (F)907.2.10.1.1 through (F)907.2.10.1.3.

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

1. In sleeping areas.

2. In every room in the path of the means of egress from the sleeping area to the door leading from the sleeping unit.

3. In each story within the sleeping unit, including basements. For sleeping units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

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

1. On the ceiling or wall outside of each separate sleeping area in the immediate vicinity of bedrooms.

2. In each room used for sleeping purposes.

3. In each story within a dwelling unit, including basements and cellars but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

(F)907.2.10.1.3 Group I-1. Single- or multiple-station smoke alarms shall be installed and maintained in sleeping areas in occupancies in Group I-1.

Exception: Single- or multiple-station smoke alarms shall not be required where the building is equipped throughout with an automatic fire detection system in accordance with Section (F)907.2.6.

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

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

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

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

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

(27) In Section 1007.3 a new exception 6 is added as follows:

6. Areas of refuge are not required at exit stairways in buildings or facilities equipped throughout with an automatic fire sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2.

(28) In Section 1007.4 the word "exception" is changed to "exception 1" and an exception 2 is added as follows:

2. Elevators are not required to be accessed from an area of refuge or horizontal exit in buildings or facilities equipped throughout with an automatic fire sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2.

(29) In Section 1008.1.8.3, a new subparagraph (5) is added as follows:

(5) Doors in Group I-1 and I-2 occupancies, where the clinical needs of the patients require specialized security measures for their safety, approved access controlled egress may be installed when all the following are met:

5.1 The controlled egress doors shall unlock upon activation of the automatic fire sprinkler system or automatic fire detection system.

5.2 The facility staff can unlock the controlled egress doors by either sensor or keypad.

5.3 The controlled egress doors shall unlock upon loss of power.

(30) In Section 1009.3, Exception #4 is deleted and replaced with the following:

4. In Group R-3 occupancies, within dwelling units in Group R-2 occupancies, and in Group U occupancies that are accessory to a Group R-3 occupancy, or accessory to individual dwelling units in Group R-2 occupancies, the maximum riser height shall be 8 inches (203 mm) and the minimum tread depth shall be 9 inches (229 mm). The minimum winder tread depth at the walk line shall be 10 inches (254 mm), and the minimum winder tread depth shall be 6 inches (152 mm). A nosing not less than 0.75 inch (19.1 mm) but not more than 1.25 inches (32 mm) shall be provided on stairways with solid risers where the tread depth is less than 10 inches (254 mm).

(31) In Section 1009.10 Exception 6 is added as follows:

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

(32) Section 1012.3 is amended to include the following exception at the end of the section:

Exception. Non-circular handrails serving an individual unit in a Group R-1, Group R-2 or Group R-3 occupancy with a perimeter greater than 6 1/4 inches (160 mm) shall provide a graspable finger recess area on both sides of the profile. The finger recess shall begin within a distance of 3/4 inch (19 mm) measured vertically from the tallest portion of the profile and achieve a depth of at least 5/16 inch (8 mm) within 7/8 inch (22 mm) below the widest portion of the profile. This required depth shall continue for at least 3/8 inch (10 mm) to a level that is not less than 1 3/4 inches (45 mm) below the tallest portion of the profile. The minimum width of the handrail above the recess shall be 1 1/4 inches (32 mm) to a maximum of 2 3/4 inches (70 mm). Edges shall have a minimum radius of 0.01 inch (0.25 mm).

(33) In Section 1013.2 Exception 3 is added as follows:

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

(34) In Section 1015.2.2 the following sentence is added at the end:

Additional exits or exit access doorways shall be arranged a reasonable distance apart so that if one becomes blocked, the others will be available.

(35) A new Section 1109.7.1 is added as follows:

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

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

1. The unit shall have a living room of not less than 165 square feet (15.3 m<sup>2</sup>) of floor area. An additional 100 square feet (9.3 m<sup>2</sup>) of floor area shall be provided for each occupant of such unit in excess of two.

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

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

(38) In Section 1605.2.1, the formula shown as " $f_2 = 0.2$  for other roof configurations" is deleted and replaced with the following:

$f_2 = 0.20 + .025(A-5)$  for other configurations where roof snow load exceeds 30 psf

$f_2 = 0$  for roof snow loads of 30 psf (1.44kN/m<sup>2</sup>) or less.

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

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

2. Flat roof snow loads of 30 pounds per square foot (1.44 kNm<sup>2</sup>) or less need not be combined with seismic loads. Where flat roof snow loads exceed 30 pounds per square foot (1.44 kNm<sup>2</sup>), the snow loads may be reduced in accordance with the following in load combinations including both snow and seismic loads.  $W_s$  as calculated below, shall be combined with seismic loads.

$W_s = (0.20 + 0.025(A-5))P_f$  is greater than or equal to 0.20  $P_f$

Where

$W_s$  = Weight of snow to be included in seismic calculations;

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

$P_f$  = Design roof snow load, psf

For the purpose of this section, snow load shall be assumed uniform on the roof footprint without including the effects of drift or sliding. The Importance Factor, I, used in calculating  $P_f$  may be considered 1.0 for use in the formula for  $W_s$ .

(40) In Table 1607.1 number 9 is deleted and replaced with the following:

TABLE 1607.1 NUMBER 9

Occupancy or Use	Uniform (psf)	Concentrated (lbs)
9. Decks, except residential	Same as occupancy served <sup>h</sup>	
9.1 Residential decks	60 psf	

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

1608.1 General. Except as modified in section 1608.1.1, 1608.1.2, and 1608.1.3 design snow loads shall be determined in accordance with Section 7 of ASCE 7, but the design roof load shall not be less than that determined by Section 1607.

(42) Section 1608.1.1 is added as follows:

1608.1.1 Section 7.4.5 of Section 7 of ASCE 7 referenced in Section 1608.1 of the IBC is deleted and replaced with the following:

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

(43) Section 1608.1.2 is added as follows:

1608.1.2 Utah Snow Loads. The ground snow load,  $P_g$ , to be used in the determination of design snow loads for buildings and other structures shall be determined by using the following formula:  $P_g = (P_o^2 + S^2(A-A_o)^2)^{0.5}$  for A greater than  $A_o$ , and  $P_g = P_o$  for A less than or equal to  $A_o$ .

WHERE

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

$P_o$  = Base ground snow load (psf) from Table No. 1608.1.2(a)

S = Change in ground snow load with elevation (psf/100 ft.) From Table No. 1608.1.2(a)

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

$A_0$  = Base ground snow elevation from Table 1608.1.2(a) (ft./1000)

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

The building official may also directly adopt roof snow loads in accordance with Table 1608.1.2(b), provided the site is no more than 100 ft. higher than the listed elevation.

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

(44) Table 1608.1.2(a) and Table 1608.1.2(b) are added as follows:

TABLE NO. 1608.1.2(a)  
STATE OF UTAH - REGIONAL SNOW LOAD FACTORS

COUNTY	$P_0$	S	$A_0$
Beaver	43	63	6.2
Box Elder	43	63	5.2
Cache	50	63	4.5
Carbon	43	63	5.2
Daggett	43	63	6.5
Davis	43	63	4.5
Duchesne	43	63	6.5
Emery	43	63	6.0
Garfield	43	63	6.0
Grand	36	63	6.5
Iron	43	63	5.8
Juab	43	63	5.2
Kane	36	63	5.7
Millard	43	63	5.3
Morgan	57	63	4.5
Piute	43	63	6.2
Rich	57	63	4.1
Salt Lake	43	63	4.5
San Juan	43	63	6.5
Sanpete	43	63	5.2
Sevier	43	63	6.0
Summit	86	63	5.0
Tooele	43	63	4.5
Uintah	43	63	7.0
Utah	43	63	4.5
Wasatch	86	63	5.0
Washington	29	63	6.0
Wayne	36	63	6.5
Weber	43	63	4.5

TABLE NO. 1608.1.2(b)  
RECOMMENDED SNOW LOADS FOR SELECTED UTAH CITIES AND TOWNS(2)

	Roof Snow Load (PSF)	Ground Snow Load (PSF)
Beaver County		
Beaver	5920 ft.	43
Box Elder County		
Brigham City	4300 ft.	30
Tremonton	4290 ft.	30
Cache County		
Logan	4530 ft.	35
Smithfield	4595 ft.	35
Carbon County		
Price	5550 ft.	30
Daggett County		
Manila	5377 ft.	30
Davis County		
Bountiful	4300 ft.	30
Farmington	4270 ft.	30
Layton	4400 ft.	30
Fruit Heights	4500 ft.	40
Duchesne County		
Duchesne	5510 ft.	30
Roosevelt	5104 ft.	30
Emery County		
Castledale	5660 ft.	30
Green River	4070 ft.	25

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

NOTES

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

(45) Section 1608.1.3 is added as follows:

1608.1.3 Thermal Factor. The value for the thermal factor,  $C_t$ , used in calculation of  $p_f$  shall be determined from Table 7.3 in ASCE 7.

Exception: Except for unheated structures, the value of  $C_t$  need not exceed 1.0 when ground snow load,  $P_g$  is calculated using Section 1608.1.2 as amended.

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

1608.2 Ground Snow Loads. The ground snow loads to be used in determining the design snow loads for roofs in states

other than Utah are given in Figure 1608.2 for the contiguous United States and Table 1608.2 for Alaska. Site-specific case studies shall be made in areas designated CS in figure 1608.2. Ground snow loads for sites at elevations above the limits indicated in Figure 1608.2 and for all sites within the CS areas shall be approved. Ground snow load determination for such sites shall be based on an extreme value statistical analysis of data available in the vicinity of the site using a value with a 2-percent annual probability of being exceeded (50-year mean recurrence interval). Snow loads are zero for Hawaii, except in mountainous regions as approved by the building official.

(47) In Section 1609.1.1 a new exception number 5 is added as follows:

5. The wind design procedure as found in Section 1616 through 1624 of the 1997 Uniform Building Code may be used as an alternative wind design procedure provided that the building or component being designed meets the limits for the Simplified Method as defined in ASCE 6.4.1.1 and 6.4.1.2 of ASCE 7. The Importance Factor,  $I$ , shall be determined in accordance with Table 6-1 of ASCE 7.

(48) Section 1613.7 is added as follows:

1613.7 ASCE 12.7.2 and 12.14.18.1 of Section 12 of ASCE 7 referenced in Section 1613.1, Definition of  $W$ , Item 4 is deleted and replaced with the following:

4. Where the flat roof snow load,  $P_f$ , exceeds 30 psf, the snow load included in seismic design shall be calculated, in accordance with the following formula:  $W_s = (0.20 + 0.025(A-5))P_f$  is greater than or equal to  $0.20 P_f$

WHERE:

$W_s$  = Weight of snow to be included in seismic calculations;

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

$P_f$  = Design roof snow load, psf

For the purposes of this section, snow load shall be assumed uniform on the roof footprint without including the effects of drift or sliding. The Importance Factor,  $I$ , used in calculating  $P_f$  may be considered 1.0 for use in the formula for  $W_s$ .

(49) A new Section 1613.8 is added as follows:

1613.8 ASCE 7, Section 13.5.6.2.2 paragraph (e) is modified to read as follows:

(e) Penetrations shall have a sleeve or adapter through the ceiling tile to allow for free movement of at least 1 inch (25 mm) in all horizontal directions.

Exceptions:

1. Where rigid braces are used to limit lateral deflections.
2. At fire sprinkler heads in frangible surfaces per NFPA 13.

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

1805.5 Foundation walls. Concrete and masonry foundation walls shall be designed in accordance with Chapter 19 or 21, respectively. Foundation walls that are laterally supported at the top and bottom and within the parameters of Tables 1805.5(1) through 1805.5(5) are permitted to be designed and constructed in accordance with Sections 1805.5.1 through 1805.5.5. Concrete foundation walls may also be constructed in accordance with Section 1805.5.8.

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

1805.5.8 Empirical foundation design. Group R, Division 3 Occupancies three stories or less in height, and Group U Occupancies, which are constructed in accordance with Section 2308, or with other methods employing repetitive wood-frame construction or repetitive cold-formed steel structural member construction, shall be permitted to have concrete foundations constructed in accordance with Table 1805.5(6).

(52) Table 1805.5(6) is added as follows:

Table 1805.5(6), entitled "Empirical Foundation Walls,

dated January 1, 2007, published by the Department of Commerce, Division of Occupational and Professional Licensing is hereby adopted and incorporated by reference. Table 1805.5(6) identifies foundation requirements for empirical walls.

(53) A new section 2306.1.5 is added as follows:

2306.1.5 Load duration factors. The allowable stress increase of 1.15 for snow load, shown in Table 2.3.2, Frequently Used Load Duration Factors,  $C_d$ , of the National Design Specifications, shall not be utilized at elevations above 5,000 feet (1524 M).

(54) In Section 2308.6 the following exception is added:

Exception: Where foundation plates or sills are bolted or anchored to the foundation with not less than 1/2 inch (12.7 mm) diameter steel bolts or approved anchors, embedded at least 7 inches (178 mm) into concrete or masonry and spaced not more than 32 inches (816 mm) apart, there shall be a minimum of two bolts or anchor straps per piece located not less than 4 inches (102 mm) from each end of each piece. A properly sized nut and washer shall be tightened on each bolt to the plate.

(55) Section 2506.2.1 is deleted and replaced with the following:

2506.2.1 Other materials. Metal suspension systems for acoustical and lay-in panel ceilings shall conform with ASTM C635 listed in Chapter 35 and Section 13.5.6 of ASCE 7-05, as amended in Section 1613.8, for installation in high seismic areas.

(56) In Section 2902.1, the title for Table 2902.1 is deleted and replaced with the following and footnote e is added as follows: Table 2902.1, Minimum Number of Required Plumbing Facilities<sup>a, e</sup>.

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

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

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

(58) A new section 3403.2.4 is added as follows:

3403.2.4 Parapet bracing, wall anchors, and other appendages. Buildings constructed prior to 1975 shall have parapet bracing, wall anchors, and appendages such as cornices, spires, towers, tanks, signs, statuary, etc. evaluated by a licensed engineer when said building is undergoing reroofing, or alteration of or repair to said feature. Such parapet bracing, wall anchors, and appendages shall be evaluated in accordance with 75% of the seismic forces as specified in Section 1613. When allowed by the local building official, alternate methods of equivalent strength as referenced in Subsection R156-56-701(2) will be considered when accompanied by engineer sealed drawings, details and calculations. When found to be deficient because of design or deteriorated condition, the engineer shall prepare specific recommendations to anchor, brace, reinforce, or remove the deficient feature.

EXCEPTIONS:

1. Group R-3 and U occupancies.

2. Unreinforced masonry parapets need not be braced according to the above stated provisions provided that the maximum height of an unreinforced masonry parapet above the level of the diaphragm tension anchors or above the parapet braces shall not exceed one and one-half times the thickness of the parapet wall. The parapet height may be a maximum of two and one-half times its thickness in other than Seismic Design Categories D, E, or F.

(59) Section 3406.4 is deleted and replaced with the following:

3406.4 Change in Occupancy. When a change in occupancy results in a structure being reclassified to a higher

Occupancy Category (as defined in Table 1604.5), or when such change of occupancy results in a design occupant load increase of 100% or more, the structure shall conform to the seismic requirements for a new structure.

Exceptions:

1. Specific seismic detailing requirements of this code or ASCE 7 for a new structure shall not be required to be met where it can be shown that the level of performance and seismic safety is equivalent to that of a new structure. Such analysis shall consider the regularity, overstrength, redundancy and ductility of the structure within the context of the existing and retrofit (if any) detailing providing. Alternatively, the building official may allow the structure to be upgraded in accordance with referenced sections as found in Subsection R156-56-701(2).

2. When a change of use results in a structure being reclassified from Occupancy Category I or II to Occupancy Category III and the structure is located in a seismic map area where  $S_{DS}$  is less than 0.33, compliance with the seismic requirements of this code and ASCE 7 are not required.

3. Where design occupant load increase is less than 25 occupants and the Occupancy Category does not change.

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

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

(61) In Section 3409.4, number 7 is added as follows:

7. When a change of occupancy in a building or portion of a building results in a Group R-2 occupancy as determined in section 1107.6.2, not less than 20 percent of the dwelling or sleeping units shall be Type B dwelling or sleeping units. These dwelling or sleeping units may be located on any floor of the building provided with an accessible route. Two percent, but not less than one, of the dwelling or sleeping units shall be Type A dwelling units.

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

TABLE

Number	Title	Referenced in code Section number
720-05	Recommended Practice for the Installation of Household Carbon Monoxide (CO) Warning Equipment	907.2.10, 907.2.10.5

**R156-56-802. Statewide Amendments to the IRC.**

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

(1) All statewide amendments to the IBC under Section R156-56-801, the NEC under Section R156-56-806, the IPC under Section R156-56-803, the IMC under Section R156-56-804, the IFGC under Section R156-56-805 and the IECC under Section R156-56-807 which may be applied to detached one and two family dwellings and multiple single family dwellings shall be applicable to the corresponding provisions of the IRC. All references to the ICC Electrical Code are deleted and replaced with the National Electrical Code adopted under Section R156-56-701(1)(b).

(2) Section 106.3.2 is deleted and replaced with the following:

106.3.2 Previous approval. If a lawful permit has been issued and the construction of which has been pursued in good faith within 180 days after the effective date of the code and has not been abandoned, then the construction may be completed under the code in effect at the time of the issuance of the permit.

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

R109.1.5 Weather-resistive barrier and flashing inspections. An inspection shall be made of the weather-

resistive barrier as required by Section R703.1 and flashings as required by Section R703.8 to prevent water from entering the weather-resistant exterior wall envelope.

The remaining sections are renumbered as follows:

R109.1.6 Other inspections

R109.1.6.1 Fire-resistance-rated construction inspection

R109.1.6.2 Reinforced masonry, insulating concrete form (ICF) and conventionally formed concrete wall inspection

R109.1.7 Final inspection.

(4) Section R114.1 is deleted and replaced with the following:

R114.1 Notice to owner. Upon notice from the building official that work on any building or structured is being prosecuted contrary to the provisions of this code or other pertinent laws or ordinances or in an unsafe and dangerous manner, such work shall be immediately stopped. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent or to the person doing the work; and shall state the conditions under which work will be permitted to resume.

(5) In Section R202, the definition of "Backsiphonage" is deleted and replaced with the following:

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

(6) In Section R202 the following definition is added:

CERTIFIED BACKFLOW PREVENTER ASSEMBLY TESTER: A person who has shown competence to test Backflow prevention assemblies to the satisfaction of the authority having jurisdiction under Subsection 19-4-104(4), Utah Code Ann. (1953), as amended.

(7) In Section R202 the definition of "Cross Connection" is deleted and replaced with the following:

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

(8) In Section R202 the following definition is added:

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

(9) In Section R202 the definition of "Potable Water" is deleted and replaced with the following:

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

(10) In Section R202, the following definition is added:

S-Trap. A trap having it's weir installed above the inlet of the vent connection.

(11) In Section R202 the definition of "Water Heater" is deleted and replaced with the following:

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

(12) Figure R301.2(5) is deleted and replaced with Table R301.2(5a) and Table R301.2(5b) as follows:

TABLE NO. R301.2(5a)  
STATE OF UTAH - REGIONAL SNOW LOAD FACTORS

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

TABLE NO. R301.2(5b)  
RECOMMENDED SNOW LOADS FOR SELECTED UTAH CITIES AND TOWNS(2)

	Roof Snow Load (PSF)	Ground Snow Load (PSF)	
Beaver County			
Beaver	5920 ft.	43	62
Box Elder County			
Brigham City	4300 ft.	30	43
Tremonton	4290 ft.	30	43
Cache County			
Logan	4530 ft.	35	50
Smithfield	4595 ft.	35	50
Carbon County			
Price	5550 ft.	30	43
Daggett County			
Manila	5377 ft.	30	43
Davis County			
Bountiful	4300 ft.	30	43
Farmington	4270 ft.	30	43
Layton	4400 ft.	30	43
Fruit Heights	4500 ft.	40	57
Duchesne County			
Duchesne	5510 ft.	30	43
Roosevelt	5104 ft.	30	43
Emery County			
Castledale	5660 ft.	30	43
Green River	4070 ft.	25	36
Garfield County			
Panguitch	6600 ft.	30	43
Grand County			
Moab	3965 ft.	25	36
Iron County			
Cedar City	5831 ft.	30	43
Juab County			
Nephi	5130 ft.	30	43
Kane County			
Kanab	5000 ft.	25	36
Millard County			
Millard	5000 ft.	30	43
Delta	4623 ft.	30	43
Morgan County			
Morgan	5064 ft.	40	57
Piute County			
Piute	5996 ft.	30	43
Rich County			
Woodruff	6315 ft.	40	57
Salt Lake County			
Murray	4325 ft.	30	43
Salt Lake City	4300 ft.	30	43
Sandy	4500 ft.	30	43
West Jordan	4375 ft.	30	43

West Valley	4250 ft.	30	43
San Juan County			
Blanding	6200 ft.	30	43
Monticello	6820 ft.	35	50
Sanpete County			
Fairview	6750 ft.	35	50
Mt. Pleasant	5900 ft.	30	43
Manti	5740 ft.	30	43
Ephraim	5540 ft.	30	43
Gunnison	5145 ft.	30	43
Sevier County			
Salina	5130 ft.	30	43
Richfield	5270 ft.	30	43
Summit County			
Coalville	5600 ft.	60	86
Kamas	6500 ft.	70	100
Park City	6800 ft.	100	142
Park City	8400 ft.	162	231
Summit Park	7200 ft.	90	128
Tooele County			
Tooele	5100 ft.	30	43
Uintah County			
Vernal	5280 ft.	30	43
Utah County			
American Fork	4500 ft.	30	43
Orem	4650 ft.	30	43
Pleasant Grove	5000 ft.	30	43
Provo	5000 ft.	30	43
Spanish Fork	4720 ft.	30	43
Wasatch County			
Heber	5630 ft.	60	86
Washington County			
Central	5209 ft.	25	36
Dameron	4550 ft.	25	36
Leeds	3460 ft.	20	29
Rockville	3700 ft.	25	36
Santa Clara	2850 ft.	15 (1)	21
St. George	2750 ft.	15 (1)	21
Wayne County			
Loa	7080 ft.	30	43
Hanksville	4308 ft.	25	36
Weber County			
North Ogden	4500 ft.	40	57
Ogden	4350 ft.	30	43

NOTES

- (1) The IRC requires a minimum live load - See R301.6.
- (2) This table is informational only in that actual site elevations may vary. Table is only valid if site elevation is within 100 feet of the listed elevation.

(13) Section R301.6 is deleted and replaced with the following:

R301.6 Utah Snow Loads. The ground snow load, P<sub>g</sub>, to be used in the determination of design snow loads for buildings and other structures shall be determined by using the following formula: P<sub>g</sub> = (P<sub>o</sub><sup>2</sup> + S<sup>2</sup>(A-A<sub>o</sub>)<sup>2</sup>)<sup>0.5</sup> for A greater than A<sub>o</sub>, and P<sub>g</sub> = P<sub>o</sub> for A less than or equal to A<sub>o</sub>.

WHERE

P<sub>g</sub> = Ground snow load at a given elevation (psf)

P<sub>o</sub> = Base ground snow load (psf) from Table No. R301.2(5a)

S = Change in ground snow load with elevation (psf/100 ft.) From Table No. R301.2(5a)

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

A<sub>o</sub> = Base ground snow elevation from Table R301.2(5a) (ft./1000)

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

The building official may also directly adopt roof snow loads in accordance with Table R301.2(5b), provided the site is no more than 100 ft. higher than the listed elevation.

Where the minimum roof live load in accordance with Table R301.6 is greater than the design roof snow load, such roof live load shall be used for design, however, it shall not be reduced to a load lower than the design roof snow load. Drifting need not be considered for roof snow loads less than 20

psf.

(14) Section R304.3 is deleted and replaced with the following:

R304.3 Minimum dimensions. Habitable rooms shall not be less than 7 feet (2134 mm) in any horizontal dimension.

Exception: Kitchens shall have a clear passageway of not less than 3 feet (914 mm) between counter fronts and appliances or counter fronts and walls.

(15) Section R311.5.3 is deleted and replaced with the following:

R311.5.3 Stair treads and risers.

R311.5.3.1 Riser height. The maximum riser height shall be 8 inches (203 mm). The riser shall be measured vertically between leading edges of the adjacent treads. The greatest riser height within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm).

R311.5.3.2 Tread depth. The minimum tread depth shall be 9 inches (228 mm). The tread depth shall be measured horizontally between the vertical planes of the foremost projection of adjacent treads and at a right angle to the tread's leading edge. The greatest tread depth within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm). Winder treads shall have a minimum tread depth of 10 inches (254 mm) measured as above at a point 12 inches (305 mm) from the side where the treads are narrower. Winder treads shall have a minimum tread depth of 6 inches (152 mm) at any point. Within any flight of stairs, the greatest winder tread depth at the 12 inch (305 mm) walk line shall not exceed the smallest by more than 3/8 inch (9.5 mm).

R311.5.3.3 Profile. The radius of curvature at the leading edge of the tread shall be no greater than 9/16 inch (14.3 mm). A nosing not less than 3/4 inch (19 mm) but not more than 1 1/4 inches (32 mm) shall be provided on stairways with solid risers. The greatest nosing projection shall not exceed the smallest nosing projection by more than 3/8 inches (9.5 mm) between two stories, including the nosing at the level of floors and landings. Beveling of nosing shall not exceed 1/2 inch (12.7 mm). Risers shall be vertical or sloped from the underside of the leading edge of the tread above at an angle not more than 30 degrees (0.51 rad) from the vertical. Open risers are permitted, provided that the opening between treads does not permit the passage of a 4-inch diameter (102 mm) sphere.

Exceptions:

1. A nosing is not required where the tread depth is a minimum of 10 inches (254 mm).

2. The opening between adjacent treads is not limited on stairs with a total rise of 30 inches (762 mm) or less.

(16) Section R313 is deleted and replaced with the following:

Section R313 SMOKE AND CARBON MONOXIDE ALARMS

R313.1 Single- and multiple-station smoke alarms. Single- and multiple-station smoke alarms shall be installed in the following locations:

1. In each sleeping room.

2. Outside of each separate sleeping area in the immediate vicinity of the bedrooms.

3. On each additional story of the dwelling, including basements and cellars but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

All smoke alarms shall be listed and installed in accordance with the provisions of this code and the household fire warning equipment provision of NFPA 72.

R313.2 Carbon monoxide alarms. In new residential structures regulated by this code that are equipped with fuel

burning appliances, carbon monoxide alarms shall be installed on each habitable level. All carbon monoxide detectors shall be listed and comply with U.L. 2034 and shall be installed in accordance with provisions of this code and NFPA 720.

R313.3 Interconnection of alarms. When multiple alarms are required to be installed within an individual dwelling unit, the alarm devices shall be interconnected in such a manner that the activation of one alarm will activate all of the alarms in the individual unit. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed. Approved combination smoke- and carbon-monoxide detectors shall be permitted.

R313.4 Power source. In new construction, the required alarms shall receive their primary power from the building wiring when such wiring is served from a commercial source, and when primary power is interrupted, shall receive power from a battery. Wiring shall be permanent and without a disconnecting switch other than those required for overcurrent protection. Alarms shall be permitted to be battery operated when installed in buildings without commercial power or in buildings that undergo alterations, repairs, or additions regulated by Section R313.5

R313.5 Alterations, repairs and additions. When interior alterations, repairs or additions requiring a permit occur, or when one or more sleeping rooms are added or created in existing dwellings, the individual dwelling unit shall be provided with alarms located as required for new dwellings; the alarms shall be interconnected and hard wired.

Exceptions:

1. Alarms in existing areas shall not be required to be interconnected and hard wired where the alterations or repairs do not result in the removal of interior wall or ceiling finishes exposing the structure, unless there is an attic, crawl space, or basement available which could provide access for hard wiring and interconnection without the removal of interior finishes.

2. Repairs to the exterior surfaces of dwellings are exempt from the requirements of this section.

(17) In Section R403.1.6 exception 4 is added as follows:  
4. When anchor bolt spacing does not exceed 32 inches (813 mm) apart, anchor bolts may be placed with a minimum of two bolts per plate section located not less than 4 inches (102 mm) from each end of each plate section at interior bearing walls, interior braced wall lines and at all exterior walls.

(18) In Section R403.1.6.1 the following exception is added at the end of Item 2 and Item 3:

Exception: When anchor bolt spacing does not exceed 32 inches (816 mm) apart, anchor bolts may be placed with a minimum of two bolts per plate section located not less than 4 inches (102 mm) from each end of each plate section at interior bearing walls, interior braced wall lines and at all exterior walls.

(19) New Sections R404.0, R404.0.1 and R404.0.2 are added before Section 404.1 as follows:

R404.0 This section may be used as an alternative to complying with Sections R404.1 through R404.1.5.1.

R404.0.1 Concrete and masonry foundation walls. Concrete and masonry foundation walls may be designed in accordance with IBC Chapters 19 or 21 respectively. Foundation walls that are laterally supported at the top and bottom within the parameters of IBC Tables 1805.5(1) through 1805.5(5) are permitted to be designed and constructed in accordance with IBC Sections 1805.5.1 through 1805.5.5. Concrete foundation walls may also be constructed in accordance with Section R404.0.2.

R404.0.2 Empirical foundation design. Buildings constructed with repetitive wood frame construction or repetitive cold-formed steel structural member construction may be permitted to have concrete foundations constructed in accordance with IBC Table 1805.5(6). IBC Table 1805.5(6) entitled "Empirical Foundations Walls", dated January 1, 2007,

published by the Department of Commerce, Division of Occupational and Professional Licensing, is hereby adopted and incorporated by reference. Table 1805.5(6) identifies foundation requirements for empirical walls.

(20) Section R703.6 is deleted and replaced with the following:

R703.6 Exterior plaster.

R703.6.1 Lath. All lath and lath attachments shall be of corrosion-resistant materials. Expanded metal or woven wire lath shall be attached with 1 1/2 inch-long (38 mm), 11 gage nails having 7/16 inch (11.1 mm) head, or 7/8-inch-long (22.2 mm), 16 gage staples, spaced at no more than 6 inches (152 mm), or as otherwise approved.

R703.6.2 Weather-resistant barriers. Weather-resistant barriers shall be installed as required in Section R703.2 and, where applied over wood-based sheathing, shall include a weather-resistive vapor permeable barrier with a performance at least equivalent to two layers of Grade D paper.

R703.6.3 Plaster. Plastering with portland cement plaster shall be not less than three coats when applied over metal lath or wire lath and shall be not less than two coats when applied over masonry, concrete or gypsum backing. If the plaster surface is completely covered by veneer or other facing material or is completely concealed, plaster application need be only two coats, provided the total thickness is as set forth in Table R702.1(1). On wood-frame construction with an on-grade floor slab system, exterior plaster shall be applied in such a manner as to cover, but not extend below, lath, paper and screed.

The proportion of aggregate to cementitious materials shall be as set forth in Table R702.1(3).

R703.6.3.1 Weep screeds. A minimum 0.019-inch (0.5 mm) (No. 26 galvanized sheet gage), corrosion-resistant weep screed or plastic weep screed, with a minimum vertical attachment flange of 3 1/2 inches (89 mm) shall be provided at or below the foundation plate line on exterior stud walls in accordance with ASTM C 926. The weep screed shall be placed a minimum of 4 inches (102 mm) above the earth or 2 inches (51 mm) above paved areas and shall be of a type that will allow trapped water to drain to the exterior of the building. The weather-resistant barrier shall lap the attachment flange. The exterior lath shall cover and terminate on the attachment flange of the weep screed.

(21) In Section R703.8, number 8 is added as follows:

8. At the intersection of foundation to stucco, masonry, siding, or brick veneer with an approved corrosive-resistance flashing with a 1/2" drip leg extending past exterior side of the foundation.

(22) A new Section G2401.2 is added as follows:

G2401.2 Meter Protection. Fuel gas services shall be in an approved location and/or provided with structures designed to protect the fuel gas meter and surrounding piping from physical damage, including falling, moving, or migrating ice and snow. If an added structure is used, it must provide access for service and comply with the IBC or the IRC.

(23) Section P2602.3 is added as follows:

P2602.3 Individual water supply. Where a potable public water supply is not available, individual sources of potable water supply shall be utilized provided that the source has been developed in accordance with Sections 73-3-1 and 73-3-25, Utah Code Ann. (1953), as amended, as administered by the Department of Natural Resources, Division of Water Rights. In addition, the quality of the water shall be approved by the local health department having jurisdiction.

(24) Section P2602.4 is added as follows:

P2602.4 Sewer required. Every building in which plumbing fixtures are installed and all premises having drainage piping shall be connected to a public sewer where the sewer is within 300 feet of the property line in accordance with Section 10-8-38, Utah Code Ann. (1953), as amended; or an approved

private sewage disposal system in accordance with Rule R317, Chapter 4, Utah Administrative Code, as administered by the Department of Environmental Quality, Division of Water Quality.

(25) Section P2603.2.1 is deleted and replaced with the following:

P2603.2.1 Protection against physical damage. In concealed locations where piping, other than cast-iron or galvanized steel, is installed through holes or notches in studs, joists, rafters, or similar members less than 1 1/2 inch (38 mm) from the nearest edge of the member, the pipe shall be protected by shield plates. Protective shield plates shall be a minimum of 1/16 inch-thick (1.6 mm) steel, shall cover the area of the pipe where the member is notched or bored, and shall be at least the thickness of the framing member penetrated.

(26) In Section P2801.7 the word townhouses is deleted.

(27) Section P2902.1.1 is added as follows:

P2902.1.1 Backflow assembly testing. The premise owner or his designee shall have backflow prevention assemblies operation tested at the time of installation, repair and relocation and at least on an annual basis thereafter, or more frequently as required by the authority having jurisdiction. Testing shall be performed by a Certified Backflow Preventer Assembly Tester. The assemblies that are subject to this paragraph are the Spill Resistant Vacuum Breaker, the Pressure Vacuum Breaker Assembly, the Double Check Backflow Prevention Assembly, the Double Check Detector Assembly Backflow Preventer, the Reduced Pressure Principle Backflow Preventer, and Reduced Pressure Detector Assembly.

(28) Table P2902.3 is deleted and replaced with the following:

TABLE P2902.3  
General Methods of Protection

Assembly (applicable standard)	Degree of Hazard	Application	Installation Criteria
Air Gap (ASME A112.1.2)	High or Low	Backsiphonage	See Table P2902.3.1
Reduced Pressure Principle Backflow Preventer (AWWA C511, USC-FCCCHR, ASSE 1013 CSA CNA/CSA-B64.4) and Reduced Pressure Detector Assembly (ASSE 1047, USC-FCCCHR)	High or Low	Backpressure or Backsiphonage 1/2" - 16"	<ul style="list-style-type: none"> <li>a. The bottom of each RP assembly shall be a minimum of 12 inches above the ground or floor.</li> <li>b. RP assemblies shall NOT be installed in a pit.</li> <li>c. The relief valve on each RP assembly shall not be directly connected to any waste disposal line, including sanitary sewer, storm drains, or vents.</li> <li>d. The assembly shall be installed in a horizontal position only unless listed or approved for vertical installation.</li> </ul>
Double Check Backflow Prevention Assembly (AWWA C510, USC-FCCCHR, ASSE 1015) Double Check Detector Assembly Backflow Preventer (ASSE 1048, USC-FCCCHR)	Low	Backpressure or Backsiphonage 1/2" - 16"	<ul style="list-style-type: none"> <li>a. If installed in a pit, the DC assembly shall be installed with a minimum of 12 inches of clearance between all sides of the vault including the floor and roof or ceiling with adequate room for testing and maintenance.</li> <li>b. Shall be installed</li> </ul>

			in a horizontal position unless listed or approved for vertical installation.	more than five feet off the floor unless a permanent platform is installed.
Pressure Vacuum Breaker Assembly (ASSE 1020, USC-FCCCHR)	High or Low	Backsiphonage 1/2" - 2"	<p>a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions.</p> <p>b. Shall be installed a minimum of 12 inches above all downstream piping and the highest point of use.</p> <p>c. Shall not be installed below ground or in a vault or pit.</p> <p>d. Shall be installed in a vertical position only.</p>	<p>The body of the assembly shall not be closer than 12 inches to any wall, ceiling or incumbrance, and shall be accessible for testing, repair and/or maintenance. In cold climates, assemblies shall be protected from freezing by a means acceptable to the code official.</p> <p>Assemblies shall be maintained as an intact assembly.</p>

(29) Table 2902.3a is added as follows:

Spill Resistant Vacuum Breaker (ASSE 1056, USC-FCCCHR)	High or Low	Backsiphonage 1/4" - 2"	<p>a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions.</p> <p>b. Shall be installed a minimum of 12 inches above all downstream piping and the highest point of use.</p> <p>c. Shall not be installed below ground or in a vault or pit.</p> <p>d. Shall be installed in a vertical position only.</p>
Atmospheric Vacuum Breaker (ASSE 1001, USC-FCCCHR, CSA CAN/CSA-B64.1.1)	High or Low	Backsiphonage	<p>a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions.</p> <p>b. Shall not be installed where it may be subjected to continuous pressure for more than 12 consecutive hours at any time.</p> <p>c. Shall be installed a minimum of six inches above all downstream piping and the highest point of use.</p> <p>d. Shall be installed on the discharge (downstream) side of any valves.</p> <p>e. The AVB shall be installed in a vertical position only.</p>
General Installation Criteria			The assembly owner, when necessary, shall provide devices or structures to facilitate testing, repair, and/or maintenance and to insure the safety of the backflow technician. Assemblies shall not be installed

TABLE 2902.3a  
Specialty Backflow Devices for low hazard use only

Device	Degree of Hazard	Application	Applicable Standard
Antisiphon-type Water Closet Flush Tank Ball Cock	Low	Backsiphonage	ASSE 1002 CSA CAN/CSA-B125
Dual check valve Backflow Preventer	Low	Backsiphonage or Backpressure 1/4" - 1"	ASSE 1024
Backflow Preventer with Intermediate Atmospheric Vent	Low Residential Boiler	Backsiphonage or Backpressure 1/4" - 3/4"	ASSE 1012 CSA CAN/CSA-B64.3
Dual check valve type Backflow Preventer for Carbonated Beverage Dispensers/Post Mix Type	Low	Backsiphonage or Backpressure 1/4" - 3/8"	ASSE 1022
Hose-connection Vacuum Breaker	Low	Backsiphonage 1/2", 3/4", 1"	ASSE 1011 CSA CAN/CSA-B64.2
Vacuum Breaker Wall Hydrants, Frost-resistant, Automatic Draining Type	Low	Backsiphonage 3/4", 1"	ASSE 1019 CSA CAN/CSA-B64.2.2
Laboratory Faucet Backflow Preventer	Low	Backsiphonage	ASSE 1035 CSA CAN/CSA-B64.7
Hose Connection Backflow Preventer	Low	Backsiphonage 1/2" - 1"	ASSE 1052

Installation Guidelines: The above specialty devices shall be installed in accordance with their listing and the manufacturer's instructions and the specific provisions of this chapter.

(30) Section P3003.2.1 is added as follows:

Section P3003.2.1 Improper Connections. No drain, waste, or vent piping shall be drilled and tapped for the purpose of making connections.

(31) In Section P3103.6, the following sentence is added at the end of the paragraph:

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

(32) In Section P3104.4, the following sentence is added at the end of the paragraph:

Horizontal dry vents below the flood level rim shall be permitted for floor drain and floor sink installations when

installed below grade in accordance with Chapter 30, and Sections P3104.2 and P3104.3. A wall cleanout shall be provided in the vertical vent.

(33) Chapter 43, Referenced Standards, is amended as follows:

The following reference standard is added:

TABLE		
USC- FCCCHR 9th Edition Manual of Cross Connection Control	Foundation for Cross-Connection Control and Hydraulic Research University of Southern California Kaprielian Hall 300 Los Angeles CA 90089-2531	Table P2902.3

(34) In Chapter 43, the following standard is added under NFPA as follows:

TABLE		
720-05	Recommended Practice for the Installation of Household Carbon Monoxide (CO) Warning Equipment	R313.2

**R156-56-803. Statewide Amendments to the IPC.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Water Heater. A closed vessel in which water is heated by the combustion of fuels or electricity and is withdrawn for use

external to the system at pressures not exceeding 160 psig (1100 kPa (gage)), including the apparatus by which heat is generated, and all controls and devices necessary to prevent water temperatures from exceeding 210 degrees Fahrenheit (99 degrees Celsius).

(9) Section 304.3 Meter Boxes is deleted.

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

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

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

305.8 Protection against physical damage. In concealed locations where piping, other than cast-iron or galvanized steel, is installed through holes or notches in studs, joists, rafters or similar members less than 1 1/2 inches (38 mm) from the nearest edge of the member, the pipe shall be protected by shield plates. Protective shield plates shall be minimum of 1/16 inch-thick (1.6 mm) steel, shall cover the area of the pipe where the member is notched or bored, and shall be at least the thickness of the framing member penetrated.

(12) Section 305.10 is added as follows:

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

(13) Section 311.1 is deleted.

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

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

(15) In Section 403.1 footnote e is added as follows:

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

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

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

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

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

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

allow water retention within the pan.

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

412.1 Approval. Floor drains shall be made of ABS, PVC, cast-iron, stainless steel, brass, or other approved materials that are listed for the use.

(19) Section 412.5 is added as follows:

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

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

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

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

504.6.2 Material. Relief valve discharge piping shall be of those materials listed in Tables 605.4 and 605.5 and meet the requirements for Sections 605.4 and 605.5 or shall be tested, rated and approved for such use in accordance with ASME A112.4.1. Piping from safety pan drains shall meet the requirements of Section 804.1 and be constructed of those materials listed in Section 702.

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

504.7.2 Pan drain termination. The pan drain shall extend full-size and terminate over a suitably located indirect waste receptor, floor drain or extend to the exterior of the building and terminate not less than 6 inches (152 mm) and not more than 24 inches (610 mm) above the adjacent ground surface. When permitted by the administrative authority, the pan drain may be directly connected to a soil stack, waste stack, or branch drain. The pan drain shall be individually trapped and vented as required in Section 907.1. The pan drain shall not be directly or indirectly connected to any vent. The trap shall be provided with a trap primer conforming to ASSE 1018 or ASSE 1044.

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

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

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

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

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

(26) Section 604.4.1 is added as follows:

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

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

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

(28) Section 606.5.11 is added as follows:

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

to less than 20 psi.

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

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

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

TABLE 608.1  
General Methods of Protection

Assembly (applicable standard)	Degree of Hazard	Application	Installation Criteria
Air Gap (ASME A112.1.2) Low	High or Low	Backsiphonage	See Table 608.15.1
Reduced Pressure Principle Backflow Preventer (AWWA C511, USC-FCCCHR, ASSE 1013 CSA CNA/CSA-B64.4) and Reduced Pressure Detector Assembly (ASSE 1047, USC-FCCCHR)	High or Low	Backpressure or Backsiphonage 1/2" - 16"	<ul style="list-style-type: none"> <li>a. The bottom of each RP assembly shall be a minimum of 12 inches above the ground or floor.</li> <li>b. RP assemblies shall NOT be installed in a pit.</li> <li>c. The relief valve on each RP assembly shall not be directly connected to any waste disposal line, including sanitary sewer, storm drains, or vents.</li> <li>d. The assembly shall be installed in a horizontal position only unless listed or approved for vertical installation.</li> </ul>
Double Check Backflow Prevention Assembly (AWWA C510, USC-FCCCHR, ASSE 1015) Double Check Detector Assembly Backflow Preventer (ASSE 1048, USC-FCCCHR)	Low	Backpressure or Backsiphonage 1/2" - 16"	<ul style="list-style-type: none"> <li>a. If installed in a pit, the DC assembly shall be installed with a minimum of 12 inches of clearance between all sides of the vault including the floor and roof or ceiling with adequate room for testing and maintenance.</li> <li>b. Shall be installed in a horizontal position unless listed or approved for vertical installation.</li> </ul>
Pressure Vacuum Breaker Assembly (ASSE 1020, USC-FCCCHR)	High or Low	Backsiphonage 1/2" - 2"	<ul style="list-style-type: none"> <li>a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions.</li> <li>b. Shall be installed a minimum of 12 inches above all downstream piping and the highest point of use.</li> <li>c. Shall not be installed below ground or in a vault or pit.</li> <li>d. Shall be installed in a vertical position only.</li> </ul>
Spill Resistant Vacuum	High or Low	Backsiphonage 1/4" - 2"	<ul style="list-style-type: none"> <li>a. Shall not be installed in an area that could</li> </ul>

Breaker (ASSE 1056, USC-FCCCHR)		be subjected to backpressure or back drainage conditions.	Device	Degree of Hazard	Application	Applicable Standard
		b. Shall be installed a minimum of 12 inches above all downstream piping and the highest point of use.	Antisiphon-type Water Closet Flush Tank Ball Cock	Low	Backsiphonage	ASSE 1002 CSA CAN/ CSA-B125
		c. Shall not be installed below ground or in a vault or pit.	Dual check valve Backflow Preventer	Low	Backsiphonage or Backpressure 1/4" - 1"	ASSE 1024
		d. Shall be installed in a vertical position only.	Backflow Preventer with Intermediate Atmospheric Vent	Low Residential Boiler	Backsiphonage or Backpressure 1/4" - 3/4"	ASSE 1012 CSA CAN/ CSA-B64.3
Atmospheric Vacuum Breaker (ASSE 1001 USC-FCCCHR, CSA CAN/CSA-B64.1.1)	High or Low	Backsiphonage	Dual check valve type Backflow Preventer for Carbonated Beverage Dispensers/Post Mix Type	Low	Backsiphonage or Backpressure 1/4" - 3/8"	ASSE 1022
		a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions.	Hose-connection Vacuum Breaker	Low	Backsiphonage 1/2", 3/4", 1"	ASSE 1011 CSA CAN/ CSA-B64.2
		b. Shall not be installed where it may be subjected to continuous pressure for more than 12 consecutive hours at any time.	Vacuum Breaker Wall Hydrants, Frost-resistant, Automatic Draining Type	Low	Backsiphonage 3/4", 1"	ASSE 1019 CSA CAN/ CSA-B64.2.2
		c. Shall be installed a minimum of six inches above all downstream piping and the highest point of use.	Laboratory Faucet Backflow Preventer	Low	Backsiphonage	ASSE 1035 CSA CAN/ CSA-B64.7
		d. Shall be installed on the discharge (downstream) side of any valves.	Hose Connection Backflow Preventer	Low	Backsiphonage 1/2" - 1"	ASSE 1052
		e. The AVB shall be installed in a vertical position only.	Installation Guidelines: The above specialty devices shall be installed in accordance with their listing and the manufacturer's instructions and the specific provisions of this chapter.			
General Installation Criteria		The assembly owner, when necessary, shall provide devices or structures to facilitate testing, repair, and/or maintenance and to insure the safety of the backflow technician. Assemblies shall not be installed more than five feet off the floor unless a permanent platform is installed.				
		The body of the assembly shall not be closer than 12 inches to any wall, ceiling or incumbrance, and shall be accessible for testing, repair and/or maintenance.				
		In cold climates, assemblies shall be protected from freezing by a means acceptable to the code official.				
		Assemblies shall be maintained as an intact assembly.				

(31) Table 608.1.1 is added as follows:

TABLE 608.1.1  
Specialty Backflow Devices for low hazard use only

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

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

(33) Section 608.7 is deleted in its entirety.

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

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

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

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

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

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

(37) Section 608.13.4 is deleted in its entirety.

(38) Section 608.13.9 is deleted in its entirety.

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

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

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

608.15.4 Protection by a vacuum breaker. Openings and outlets shall be protected by atmospheric-type or pressure-type vacuum breakers. The critical level of the atmospheric vacuum

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

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

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

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

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

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

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

Exceptions:

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

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

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

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

2. Steam systems that comply with paragraph 1 above.

3. Approved listed electrical drinking water coolers.

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

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

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

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

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

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

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

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

(48) Section 608.16.11 is added as follows:

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

(49) Section 608.17 is deleted in its entirety.

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

701.2 Sewer required. Every building in which plumbing fixtures are installed and all premises having drainage piping shall be connected to a public sewer where the sewer is within 300 feet of the property line in accordance with Section 10-8-38, Utah Code Ann., (1953), as amended; or an approved private sewage disposal system in accordance with Rule R317-4, Utah Administrative Code, as administered by the Department of Environmental Quality, Division of Water Quality.

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

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

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

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

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

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

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

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

(55) Section 1104.2 is deleted and replaced with the following:

1104.2 Combining storm and sanitary drainage prohibited. The combining of sanitary and storm drainage systems is prohibited.

(56) Section 1108 is deleted in its entirety.

(57) The Referenced Standard NFPA 99c-02 in Chapter 13 is deleted and replaced with NFPA 99c-05.

(58) The Referenced Standard NSF-2003e in Chapter 13 is amended to add Section 608.11 to the list of Referenced in code section number.

(59) In Chapter 13, Referenced Standards, the following referenced standard is added:

TABLE

USC- FCCCHR 9th Edition Manual of Cross Connection Control	Foundation for Cross-Connection Control and Hydraulic Research University of Southern California Kaprielian Hall 300 Los Angeles CA 90089-2531	Table 608.1
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(60) Appendix C of the IPC, Gray Water Recycling

Systems as amended herein shall not be adopted by any local jurisdiction until such jurisdiction has requested Appendix C as amended to be adopted as a local amendment and such local amendment has been approved as a local amendment under these rules.

(61) In jurisdictions which have adopted Appendix C as amended as a local amendment as provided herein, Section 301.3 of the IPC is deleted and replaced with the following:

301.3 Connection to the drainage system. All plumbing fixtures, drains, appurtenances and appliances used to receive or discharge liquid wastes or sewage shall be directly connected to the drainage system of the building or premises, in accordance with the requirements of this Code. This section shall not be construed to prevent indirect waste systems provided for in Chapter 8.

Exception: Bathtubs, showers, lavatories, clothes washers and laundry sinks shall not be required to discharge to the sanitary drainage system where such fixtures discharge to a gray water recycling system meeting all the requirements as specified in Appendix C as amended by these rules.

(62) Appendix C is deleted and replaced with the following, to be effective only in jurisdictions which have adopted Appendix C as amended as a local amendment under these rules:

Appendix C, Gray Water Recycling Systems, C101 Gray Water Recycling Systems

C101.1 General, recycling gray water within a building. In R1, R2 and R4 occupancies and one- and two-family dwellings, gray water recycling systems are prohibited.

In commercial occupancies, recycled gray water shall only be utilized for the flushing of water closets and urinals that are located in the same building as the gray water recycling system, provided the following conditions are met:

1. Such systems comply with Sections C101.1 through C101.14 as amended by these rules.

2. The commercial establishment demonstrates that it has and will have qualified staff to oversee the gray water recycling systems. Qualified staff is defined as level 3 waste water treatment plan operator as specified by the Department of Environmental Quality.

3. Gray water recycling systems shall only receive non hazardous waste discharge of bathtubs, showers, lavatories, clothes washers and laundry sinks such as chemicals having a pH of 6.0 to 9.0, or non flammable or non combustible liquids, liquids without objectionable odors, non-highly pigmented liquids, or other liquids that will not interfere with the operation of the sewer treatment facilities.

C101.2 Permit required. A permit for any gray water recycling system shall not be issued until complete plans prepared by a licensed engineer, with appropriate data satisfactory to the Code Official, have been submitted and approved. No changes or connections shall be made to either the gray water recycling system or the potable water system within any site containing a gray water recycling system, without prior approved by the Code Official. A permit may also be required by the local health department to monitor compliance with this appendix for system operator standards and record keeping.

C101.3 Definition. The following term shall have the meaning shown herein.

GRAY WATER. Waste water discharged from lavatories, bathtubs, showers, clothes washers and laundry sinks.

C101.4 Installation. All drain, waste and vent piping associated with gray water recycling systems shall be installed in full compliance with this code.

C101.5 Gray Water Reservoir. Gray water shall be collected in an approved reservoir construction of durable, nonabsorbent and corrosion-resistant materials. The reservoir shall be a closed and gas-tight vessel. Gas tight access openings

shall be provided to allow inspection and cleaning of the reservoir interior. The holding capacity of the reservoir shall be a minimum of twice the volume of water required to meet the daily flushing requirements of the fixtures supplied by the gray water, but not less than 50 gallons (189 L). The reservoir shall be sized to limit the retention time of gray water to 72 hours maximum.

C101.6 Filtration. Gray water entering the reservoir shall pass through an approved cartridge filter or other method approved by the Code Official.

C101.7 Disinfection. Gray water shall be disinfected by an approved method that employs one or more disinfectants such as chlorine, iodine or ozone. A minimum of 1 ppm free residual chlorine shall be maintained in the gray water recycling system reservoir. Such disinfectant shall be automatically dispensed. An alarm shall be provided to shut down the gray water recycling system if disinfectant levels are not maintained at the required levels.

C101.8 Makeup water. Potable water shall be supplied as a source of makeup water for the gray water recycling system. The potable water supply to any building with a gray water recycling system shall be protected against backflow by an RP backflow assembly installed in accordance with this code. There shall be full-open valve on the makeup water supply to the reservoir. The potable water supply to the gray water reservoir shall be protected by an air gap installed in accordance with this code.

C101.9 Overflow. The reservoir shall be equipped with an overflow pipe of the same diameter as the influent pipe for the gray water. The overflow shall be directly connected to the sanitary drainage system.

C101.10 Drain. A drain shall be located at the lowest point of the reservoir and shall be directly connected to the sanitary drainage system. The drain shall be the same diameter as the overflow pipe required by Section C101.9 and shall be provided with a full-open valve.

C101.11 Vent required. The reservoir shall be provided with a vent sized in accordance with Chapter 9 based on the size of the reservoir influent pipe.

C101.12 Coloring. The gray water shall be automatically dyed blue or green with a food grade vegetable dye before such water is supplied to the fixtures.

C101.13 Identification. All gray water distribution piping and reservoirs shall be identified as containing non-potable water. Gray water recycling system piping shall be permanently colored purple or continuously wrapped with purple-colored Mylar tape. The tape or permanently colored piping shall be imprinted in black, upper case letters with the words "CAUTION: GRAY WATER, DO NOT DRINK."

All equipment areas and rooms for gray water recycling system equipment shall have a sign posted in a conspicuous place with the following text: TO CONSERVE WATER, THIS BUILDING USES GRAY WATER TO FLUSH TOILETS AND URINALS, DO NOT CONNECT TO THE POTABLE WATER SYSTEM. The location of the signage shall be determined by the Code Official.

C101.14 Removal from service. All gray water recycling systems that are removed from service shall have all connections to the reservoir capped and routed back to the building sewer. All gray water distribution lines shall be replaced with new materials.

C201.1 Outside the building. Gray water reused outside the building shall comply with the requirements of the Department of Environmental Quality Rule R317.

#### **R156-56-804. Statewide Amendments to the IMC.**

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

**R156-56-805. Statewide Amendments to the IFGC.**

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

(1) The following paragraph is added at the end of Section 305.1

305.1 General. After natural gas, space and water heating appliances have been adjusted for altitude and the Btu content of the natural gas, the installer shall apply a sticker in a visible location indicating that the proper adjustments to such appliances have been made. The adjustments for altitude and the Btu content of the natural gas shall be done in accordance with the manufacturer's installation instructions and the gas utility's approved practices.

(2) Chapter 4, Section 401 General, a new section 401.9 is added as follows:

401.9 Meter protection. Fuel gas services shall be in an approved location and/or provided with structures designed to protect the fuel gas meter and surrounding piping from physical damage, including falling, moving, or migrating ice and snow. If an added structure is used, it must still provide access for service and comply with the IBC or the IRC.

**R156-56-806. Statewide Amendments to the NEC.**

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

**R156-56-807. Statewide Amendments to the IECC.**

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

(1) In Section 504.4, the following exception is added:

Exception: Heat traps, other than the arrangement of piping and fittings, shall be prohibited unless a means of controlling thermal expansion can be ensured as required in the IPC Section 607.3.

**R156-56-808. Installation and Safety Requirements for Mobile Homes Built Prior to June 15, 1976.**

(1) Mobile homes built prior to June 15, 1976 which are subject to relocation, building alteration, remodeling or rehabilitation shall comply with the following:

(a) Exits and egress windows

(i) Egress windows. The home has at least one egress window in each bedroom, or a window that meets the minimum specifications of the U.S. Department of Housing and Urban Development's (HUD) Manufactured Homes Construction and Safety Standards (MHCSS) program as set forth in 24 C.F.R. Parts 3280, 3283 and 3283, MHCSS 3280.106 and 3280.404 for manufactured homes. These standards require the window to be at least 22 inches in the horizontal or vertical position in its least dimension and at least five square feet in area. The bottom of the window opening shall be no more than 36 inches above the floor, and the locks and latches and any window screen or storm window devices that need to be operated to permit exiting shall not be located more than 54 inches above the finished floor.

(ii) Exits. The home is required to have two exterior exit doors, located remotely from each other, as required in MHCSS 3280.105. This standard requires that single-section homes have the doors no less than 12 feet, center-to-center, from each other, and multisection home doors no less than 20 feet center-to-center from each other when measured in a straight line, regardless of the length of the path of travel between the doors. One of the required exit doors must be accessible from the doorway of each bedroom and no more than 35 feet away from any bedroom doorway. An exterior swing door shall have a 28-inch-wide by 74-inch-high clear opening and sliding glass doors shall have a 28-inch-wide by 72-inch-high clear opening. Each exterior door other than screen/storm doors shall have a key-operated lock that has a passage latch; locks shall not require the use of a key or special tool for operation from the inside of the

home.

(b) Flame spread

(i) Walls, ceilings and doors. Walls and ceilings adjacent to or enclosing a furnace or water heater shall have an interior finish with a flame-spread rating not exceeding 25. Sealants and other trim materials two inches or less in width used to finish adjacent surfaces within these spaces are exempt from this provision, provided all joints are supported by framing members or materials with a flame spread rating of 25 or less. Combustible doors providing interior or exterior access to furnace and water heater spaces shall be covered with materials of limited combustibility (i.e. 5/16-inch gypsum board, etc.), with the surface allowed to be interrupted for louvers ventilating the space. However, the louvers shall not be of materials of greater combustibility than the door itself (i.e., plastic louvers on a wooden door). Reference MHCSS 3280.203.

(ii) Exposed interior finishes. Exposed interior finishes adjacent to the cooking range (surfaces include vertical surfaces between the range top and overhead cabinets, the ceiling, or both) shall have a flame-spread rating not exceeding 50, as required by MHCSS 3280.203. Backsplashes not exceeding six inches in height are exempted. Ranges shall have a vertical clearance above the cooking top of not less than 24 inches to the bottom of combustible cabinets, as required by MHCSS 3280.204(e).

(c) Smoke detectors

(i) Location. A smoke detector shall be installed on any ceiling or wall in the hallway or space communicating with each bedroom area between the living area and the first bedroom door, unless a door separates the living area from that bedroom area, in which case the detector shall be installed on the living-area side, as close to the door as practicable, as required by MHCSS 3280.208. Homes with bedroom areas separated by anyone or combination of common-use areas such as a kitchen, dining room, living room, or family room (but not a bathroom or utility room) shall be required to have one detector for each bedroom area. When located in the hallways, the detector shall be between the return air intake and the living areas.

(ii) Switches and electrical connections. Smoke detectors shall have no switches in the circuit to the detector between the over-current protection device protecting the branch circuit and the detector. The detector shall be attached to an electrical outlet box and connected by a permanent wiring method to a general electrical circuit. The detector shall not be placed on the same branch circuit or any circuit protected by a ground-fault circuit interrupter.

(d) Solid-fuel-burning stoves/fireplaces

(i) Solid-fuel-burning fireplaces and fireplace stoves. Solid-fuel-burning, factory-built fireplaces and fireplace stoves may be used in manufactured homes, provided that they are listed for use in manufactured homes and installed according to their listing/manufacturer's instructions and the minimum requirements of MHCSS 3280.709(g).

(ii) Equipment. A solid-fuel-burning fireplace or fireplace stove shall be equipped with an integral door or shutters designed to close the fire chamber opening and shall include complete means for venting through the roof, a combustion air inlet, a hearth extension, and means to securely attach the unit to the manufactured home structure.

(A) Chimney. A listed, factory-built chimney designed to be attached directly to the fireplace/fireplace stove and equipped with, in accordance with the listing, a termination device and spark arrester, shall be required. The chimney shall extend at least three feet above the part of the roof through which it passes and at least two feet above the highest elevation of any part of the manufactured home that is within 10 feet of the chimney.

(B) Air-intake assembly and combustion-air inlet. An air-intake assembly shall be installed in accordance with the terms of listings and the manufacturer's instruction. A combustion air

inlet shall conduct the air directly into the fire chamber and shall be designed to prevent material from the hearth from dropping on the area beneath the manufactured home.

(C) **Hearth.** The hearth extension shall be of noncombustible material that is a minimum of 3/8-inch thick and shall extend a minimum of 16 inches in front and eight inches beyond each side of the fireplace/fireplace stove opening. The hearth shall also extend over the entire surface beneath a fireplace stove and beneath an elevated and overhanging fireplace.

(e) **Electrical wiring systems**

(i) **Testing.** All electrical systems shall be tested for continuity in accordance with MHCSS 3280.810, to ensure that metallic parts are properly bonded; tested for operation, to demonstrate that all equipment is connected and in working order; and given a polarity check, to determine that connections are proper.

(ii) **5.2 Protection.** The electrical system shall be properly protected for the required amperage load. If the unit wiring employs aluminum conductors, all receptacles and switches rated at 20 amperes or less that are directly connected to the aluminum conductors shall be marked CO/ALA. Exterior receptacles, other than heat tape receptacles, shall be of the ground-fault circuit interrupter (GFI) type. Conductors of dissimilar metals (copper/aluminum or copper-clad aluminum) must be connected in accordance with National Electrical Code (NEC) Section 110-14.

(f) **Replacement furnaces and water heaters**

(i) **Listing.** Replacement furnaces or water heaters shall be listed for use in a manufactured home. Vents, roof jacks, and chimneys necessary for the installation shall be listed for use with the furnace or water heater.

(ii) **Securement and accessibility.** The furnace and water heater shall be secured in place to avoid displacement. Every furnace and water heater shall be accessible for servicing, for replacement, or both as required by MHCSS 3280.709(a).

(iii) **Installation.** Furnaces and water heaters shall be installed to provide complete separation of the combustion system from the interior atmosphere of the manufactured home, as required by MHCSS.

(A) **Separation.** The required separation may be achieved by the installation of a direct-vent system (sealed combustion system) furnace or water heater or the installation of a furnace and water heater venting and combustion systems from the interior atmosphere of the home. There shall be no doors, grills, removable access panels, or other openings into the enclosure from the inside of the manufactured home. All openings for ducts, piping, wiring, etc., shall be sealed.

(B) **Water heater.** The floor area in the area of the water heater shall be free from damage from moisture to ensure that the floor will support the weight of the water heater.

#### **R156-56-820. Statewide Amendments to the IEBC.**

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

(1) In Section 101.5 the exception is deleted.

(2) Section R106.3.2 is deleted and replaced with the following:

R106.3.2 Previous approval. If a lawful permit has been issued and the construction of which has been pursued in good faith within 180 days after the effective date of the code and has not been abandoned, then the construction may be completed under the code in effect at the time of the issuance of the permit.

(3) In Section 202 the definition for existing buildings is deleted and replaced with the following:

**EXISTING BUILDING.** A building lawfully erected prior to January 1, 2002, or one which is deemed a legal non-conforming building by the code official, and one which is not a dangerous building.

(4) Section 606.2.2 is deleted and replaced with the following:

602.2.2 Parapet bracing, wall anchors, and other appendages. Buildings constructed prior to 1975 shall have parapet bracing, wall anchors, and appendages such as cornices, spires, towers, tanks, signs, statuary, etc. evaluated by a licensed engineer when said building is undergoing reroofing, or alteration of or repair to said feature. Such parapet bracing, wall anchors, and appendages shall be evaluated in accordance with the reduced International Building Code level seismic forces as specified in IEBC Section 506.1.1.3 and design procedures of Section 506.1.1.1. When found to be deficient because of design or deteriorated condition, the engineer shall prepare specific recommendations to anchor, brace, reinforce, or remove the deficient feature.

**EXCEPTIONS:**

1. Group R-3 and U occupancies.

2. Unreinforced masonry parapets need not be braced according to the above stated provisions provided that the maximum height of an unreinforced masonry parapet above the level of the diaphragm tension anchors or above the parapet braces shall not exceed one and one-half times the thickness of the parapet wall. The parapet height may be a maximum of two and one-half times its thickness in other than Seismic Design Categories D, E, or F.

(5) Section 705.3.1.2 is deleted and replaced with the following:

705.3.1.2 Fire escapes required. When more than one exit is required, an existing fire escape complying with Section 705.3.1.2.1 shall be accepted as providing one of the required means of egress.

705.3.1.2.1 Fire escape access and details. Fire escapes shall comply with all of the following requirements:

1. Occupants shall have unobstructed access to the fire escapes without having to pass through a room subject to locking.

2. Access to an existing fire escape shall be through a door, except that windows shall be permitted to provide access from single dwelling units or sleeping units in Group R-1, R-2, and I-1 occupancies or to provide access from spaces having a maximum occupant load of 10 in other occupancy classifications.

3. Existing fire escapes shall be permitted only where exterior stairs cannot be utilized because of lot lines limiting the stair size or because of the sidewalks, alleys, or roads at grade level.

4. Openings within 10 feet (3048 mm) of fire escape stairs shall be protected by fire assemblies having minimum 3/4-hour fire-resistance ratings.

Exception: Opening protection shall not be required in buildings equipped throughout with an approved automatic sprinkler system.

5. In all buildings of Group E occupancy, up to and including the 12th grade, buildings of Group I occupancy, rooming houses, and childcare centers, ladders of any type are prohibited on fire escapes used as a required means of egress.

(6) Section 906.1 is deleted and replaced with the following:

906.1 General. Accessibility in portions of buildings undergoing a change of occupancy classification shall comply with Section 605 and 912.8.

(7) Section 907.3.1 is deleted and replaced with the following:

907.3.1 Compliance with the International Building Code. When a building or portion thereof is subject to a change of occupancy such that a change in the nature of the occupancy results in a higher seismic occupancy based on Table 1604.5 of the International Building Code; or where such change of occupancy results in a reclassification of a building to a higher



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

TABLE 1505.1.2  
PROHIBITION/ALLOWANCE OF WOOD ROOFING

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

(c) Appendix C is adopted.

(4) Sandy City

(a) Section (F)903.2.14 is added as follows:

(F)903.2.14 An automatic sprinkler system shall be installed in accordance with NFPA 13 throughout buildings containing all occupancies where fire flow exceeds 2,000 gallons per minute, based on Table B105.1 of the 2006 International Fire Code. Exempt locations as indicated in Section 903.3.1.1.1 are allowed.

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

(b) Appendix L is added to the IBC and adopted as follows:

**Appendix L BUILDINGS AND STRUCTURES CONSTRUCTED IN AREAS DESIGNATED AS WILDLAND-URBAN INTERFACE AREAS**

AL 101.1 General. Buildings and structures constructed in areas designated as Wildland-Urban Interface Areas by Sandy City shall be constructed using ignition resistant construction as determined by the Fire Marshal. Section 502 of the 2006 International Wildland-Urban Interface Code (IWUIC), as promulgated by the International Code Council, shall be used to determine Fire Hazard Severity. The provisions listed in Chapter 5 of the 2006 International Wildland-Urban Interface Code, as modified herein, shall be used to determine the requirements for Ignition Resistant Construction.

(i) In Section 504 of the IWUIC Class I IGNITION-RESISTANT CONSTRUCTION a new Section 504.1.1 is added as follows:

504.1.1 General. Subsections 504.5, 504.6, and 504.7 shall only be required on the exposure side of the structure, as determined by the Fire Marshal, where defensible space is less than 50 feet as defined in Section 603 of the 2006 International Wildland-Urban Interface Code.

(ii) In Section 505 of the IWUIC Class 2 IGNITION-RESISTANT CONSTRUCTION Subsections 505.5 and 505.7 are deleted.

**R156-56-902. Local Amendments to the IRC.**

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

(1) All local amendments to the IBC under Section R156-56-901, the NEC under Section R156-56-906, the IPC under Section R156-56-903, the IMC under Section R156-56-904, the IFGC under Section R156-56-905 and the IECC under Section R156-56-907 which may be applied to detached one and two family dwellings and multiple single family dwellings shall be applicable to the corresponding provisions of the IRC for the local jurisdiction to which the local amendment has been made.

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

(2) City of Farmington:  
R325 Automatic Sprinkler Systems.

(a) Sections R325.1 and R325.2 are added as follows:

R325.1 When required. An automatic sprinkler system shall be installed throughout every dwelling in accordance with NFPA 13-D, when any of the following conditions are present:

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

R325.2 Installation requirements and standards. Such sprinkler system shall be installed in basements, but need not be installed in garages, under eaves or in enclosed attic spaces, unless required by the Chief. Such system shall be installed in accordance with NFPA 13-D.

(b) In Chapter 43, Referenced Standards, the following NFPA referenced standards are added as follows:

TABLE	
ADD	
13D-02	Installation of Sprinkler Systems in One- and Two-family Dwellings and Manufactured Homes, as amended by these rules
13R-02	Installation of Sprinkler Systems in Residential Occupancies Up to and Including Four Stories in Height
101-03	Life Safety Code

(c) NFPA 13D-02 is amended to add the following new sections:

1.15 Reference to NFPA 13-D. All references to NFPA 13-D in the codes, ordinances, rules or regulations governing NFPA 13-D systems shall be read to refer to "modified NFPA 13-D" to reference the NFPA 13-D as amended by additional regulations adopted by Farmington City.

4.6 Testing and Inspection of Systems. Testing and inspection of sprinkler systems shall include, but are not limited to:

Residential:

ROUGH Inspection-Verify Water Supply Piping Size and Materials, Installation of Riser, System Piping, Head Locations and all Components, Hydrostatic Pressure Test.

FINAL Inspection-Inspectors Test Flow, System Completeness, Spare Parts, Labeling of Components and Signage, Alarm Function, Water Supply Pressure Verification.

5.2.2.3 Exposed Piping of Metal. Exposed Sprinkler Piping material in rooms of dwellings shall be of Metal.

EXCEPTIONS:

a. CPVC Piping is allowed in unfinished mechanical and storage rooms only when specifically listed for the application as installed.

b. CPVC Piping is allowed in finished, occupied rooms used for sports courts or similar uses only when the ceiling/floor framing above is constructed entirely of non-combustible materials, such as a concrete garage floor on metal decking.

5.2.2.4 Water Supply Piping Material. Water Supply Piping from where the water line enters the dwelling adjacent to and inside the foundation to the fire sprinkler contractor point-of-connection shall be metal, suitable for potable plumbing

systems. See Section 7.1.4 for valve prohibition in such piping. Piping down stream from the point-of-connection used in the fire sprinkler system, including the riser, shall conform to NFPA 13-D standards.

5.4 Fire Pump Disconnect Signs. When installing a Fire Pump, Red Plastic Laminate Signs shall be installed in the electrical service panel, if the pump is wired separately from the main disconnect. These signs shall state: "Fire Pump Disconnect ONLY" and "Main Breaker DOES NOT Shut Off Fire Pump".

7.1.4 Valve Prohibition. NFPA 13-d, Section 7.1 is hereby modified such that NO VALVE is permitted from the City Water Meter to the Fire Sprinkler Riser Control.

7.6.1 Mandatory Exterior Alarm. Every dwelling that has a fire sprinkler system shall have an exterior alarm, installed in an approved location. The alarm shall be of the combination horn/strobe or electric bell/strobe type, approved for outdoor use.

8.1.05 Plan Preparation Identification. All plans for fire sprinkler systems, except for manufacturer's cut sheets of equipment, shall include the full name of the person who prepared the drawings. When the drawings are prepared by a registered professional engineer, the engineer's signature shall also be included.

8.7 Verification of Water Supply:

8.7.1 Fire Flow Tests: Fire Flow Tests for verification of Water Supply shall be conducted and witnesses for all applications other than residential, unless directed otherwise by the Chief. For residential Water Supply, verification shall be determined by administrative procedure.

8.7.2 Accurate and Verifiable Criteria. The design calculations and criteria shall include an accurate and verifiable Water Supply.

(3) Morgan City Corp:

In Section R105.2 Work Exempt From Permit, the following is added:

10. Structures intended to house farm animals, or for the storage of feed associated with said farm animals when all the following criteria is met:

a. The parcel of property involved is zoned for the keeping of farm animals or has grand fathered animal rights.

b. The structure is setback not less than 50 feet from the rear or side of dwellings, and not less than 10 feet from property lines and other structures.

c. The structure does not exceed 1000 square feet of floor area, and is limited to 20 feet in height. Height is measured from the average grade to the highest point of the structure.

d. Before construction, a site plan is submitted to, and approved by the building official.

Electrical, plumbing, and mechanical permits shall be required when that work is included in the structure.

(4) Morgan County:

In Section R105.2 Work Exempt From Permit, the following is added:

10. Structures intended to house farm animals, or for the storage of feed associated with said farm animals when all the following criteria is met:

a. The parcel of property involved is zoned for the keeping of farm animals or has grand fathered animal rights.

b. The structure is set back not less than required by the Morgan County Zoning Ordinance for such structures, but not less than 10 feet from property lines and other structures.

c. The structure does not exceed 1000 square feet of floor area, and is limited to 20 feet in height. Height is measured from the average grade to the highest point of the structure.

d. Before construction, a Land Use Permit must be applied for, and approved, by the Morgan County Planning and Zoning Department.

Electrical, plumbing, and mechanical permits shall be

required when that work is included in the structure.

(5) City of North Salt Lake:

Sections R325.1 and R325.2 are added as follows:

R325.1 When Required. An automatic sprinkler system shall be installed throughout every dwelling when the following condition is present:

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

R325.2 Installation requirements and standards. Such sprinkler system shall be installed in basements, but need not be installed in garages, under eaves, or in enclosed attic spaces, unless required by the fire chief. Such system shall be installed in accordance with NFPA 13-D.

(6) Park City Corporation:

Appendix P is adopted.

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

(a) Section R905.7 is deleted and replaced with the following:

R905.7 Wood shingles. The installation of wood shingles shall comply with the provisions of this section.

Wood roof covering is prohibited in areas with a combined rating of more than 11 using the following tables with a score of 9 for weather factors.

TABLE  
WILDFIRE HAZARD SEVERITY SCALE

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

PROHIBITION/EXEMPTION TABLE

RATING	WOOD ROOF PROHIBITION
less than or equal to 11	wood roofs are allowed
greater than or equal to 12	wood roofs are prohibited

(b) Section R905.8 is deleted and replaced with the following:

R905.8 Wood Shakes. The installation of wood shakes shall comply with the provisions of this section. Wood roof covering is prohibited in areas with a combined rating of more than 11 using the following tables with a score of 9 for weather factors.

TABLE  
WILDFIRE HAZARD SEVERITY SCALE

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

PROHIBITION/EXEMPTION TABLE

RATING	WOOD ROOF PROHIBITION
less than or equal to 11	wood roofs are allowed
greater than or equal to 12	wood roofs are prohibited

(c) Appendix K is adopted.

(8) Sandy City

A new Section R325 is added to the IRC as follows:

Section R325 IGNITION RESISTANT CONSTRUCTION

R325.1 General. Buildings and structures constructed in areas designated as Wildland-Urban Interface Areas by Sandy City shall be constructed using ignition resistant construction as determined by the Fire Marshal. Section 502 of the 2006 International Wildland-Urban Interface Code (IWUIC), as promulgated by the International Code Council, shall be used to determine Fire Hazard Severity. The provisions listed in Chapter 5 of the 2006 IWUIC, as modified herein, shall be used to determine the requirements for Ignition Resistant

Construction.

(i) In Section 504 of the IWUIC Class I IGNITION-RESISTANT CONSTRUCTION a new Section 504.1.1 is added as follows:

504.1.1 General. Subsections 504.5, 504.6, and 504.7 shall only be required on the exposure side of the structure, as determined by the Fire Marshal, where defensible space is less than 50 feet as defined in Section 603 of the 2006 IWUIC.

(ii) In Section 505 of the IWUIC Class 2 IGNITION-RESISTANT CONSTRUCTION Subsections 505.5 and 505.7 are deleted.

**R156-56-903. Local Amendments to the IPC.**

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

(1) South Jordan

(a) Section 312.9.2 is deleted and replaced with the following:

312.9.2 Testing. Reduced pressure principle backflow preventer assemblies, double check-valve assemblies, pressure vacuum breaker assemblies, reduced pressure detector fire protection backflow prevention assemblies, double check detector fire protection backflow prevention assemblies, hose connection backflow preventers, and spill-proof vacuum breakers shall be tested at the time of installation, immediately after repairs or relocation and at least annually. The testing procedure shall be performed in accordance with one of the following standards: ASSE 5013, ASSE 5015, ASSE 5020, ASSE 5047, ASSE 5048, ASSE 5052, ASSE 5056, CSA B64.10 or CSA B64.10.1. Assemblies, other than the reduced pressure principle assembly, protecting lawn irrigation systems that fail the annual test shall be replaced with a reduced pressure principle assembly.

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

608.16.5 Connections to lawn irrigation systems. The potable water supply to lawn irrigation systems shall be protected against backflow by a reduced pressure principle backflow preventer.

**R156-56-904. Local Amendment to the IMC.**

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

**R156-56-905. Local Amendment to the IFGC.**

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

**R156-56-906. Local Amendment to the NEC.**

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

**R156-56-907. Local Amendment to the IECC.**

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

**R156-56-920. Local Amendment to the IEBC.**

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

**KEY: contractors, building codes, building inspection, licensing**

July 1, 2007	58-1-106(1)(a)
Notice of Continuation March 29, 2007	58-1-202(1)(a)
	58-56-1
	58-56-4(2)
	58-56-6(2)(a)
	58-56-18

**R195. Community and Culture, Home Energy Assistance Target (HEAT).****R195-2. Energy Assistance Programs Standards.****R195-2-1. Opening and Closing Dates for HEAT Program.**

1. Each November 1, or the first working day thereafter, the HEAT Program opens for the general population.

2. The HEAT Program closes the following April 30, or the last business day of the month, or when federal LIHEAP funds are exhausted, whichever comes first. Applications taken on or before the program closing date may be processed after the program closing date. If funds are exhausted before all applications are processed, notice of non-payment will be sent to the remaining unprocessed applications.

**R195-2-2. U.S. Residence.**

1. To be eligible for HEAT assistance, a person must meet at least one of the criteria for US residence listed below:

a. Be a US born or naturalized citizen as evidenced by any document verifying the individual was born in the US or naturalization papers.

b. Be lawfully admitted into the US for permanent residence as evidenced by an Immigration and Naturalization Service (INS) form I-151 or I-551.

c. Be lawfully admitted into the US as a Refugee as evidenced by an INS form I-94 stamped "Admitted under the Refugee Act of 1980".

d. Be lawfully admitted into the US as a conditional entrant as evidenced by an INS form I-94 stamped "Conditional Entrant".

e. Be lawfully admitted into the US as a special agricultural worker as evidenced by a green colored INS form I-688 stamped PL 99-603 Sec. 210.

2. Persons not eligible to participate in the HEAT program are:

a. Persons who hold INS I-94 who are admitted as temporary entrants.

b. Persons who hold an INS I-688 Sec. 210A (RAWS).

c. Persons who hold an INS I-688 Sec. 245A (AMNESTY).

d. Persons who hold an INS I-688A Sec. 210, 210A, or 245A (SAWS, RAWS, and AMNESTY).

e. Persons who have no registration card.

**R195-2-3. Utah Residence.**

There is no length of residency requirement. Individuals must be living in Utah voluntarily and not for a temporary purpose.

**R195-2-4. Local Residence.**

1. A household's completed HEAT application must be maintained in the office in the area where they reside.

2. Native American Residents of Daggett, Duchesne, and Uintah Counties who are enrolled in any federally recognized Indian Tribe have a choice of applying for utility assistance through the state HEAT program or through the Ute Tribal LIHEAP Program. Clients cannot receive assistance from both programs in the same program year.

3. Native American Residents of Washington, Iron, Millard, and Sevier Counties have a choice of receiving utility assistance through the state HEAT program or through the Paiute Tribal LIHEAP Program. Clients cannot receive assistance from both programs in the same program year.

4. Residents living on the Navajo Indian Reservation in San Juan county must apply for utility assistance through the Navajo Tribe. They cannot receive assistance through the state HEAT program except through special provision of the State HEAT Office.

**R195-2-5. Vulnerability.**

1. An eligible household must be vulnerable to home heating costs.

a. The following households are considered responsible for home heating costs:

i. Households who are presently paying heating costs directly to energy suppliers on currently active accounts.

ii. Households who are currently paying energy costs indirectly through rent.

2. Residents in the following households are not considered responsible for home heating costs and are not eligible for HEAT assistance:

a. Nursing homes;

b. Hospitals;

c. Prisons and jails;

d. Institutions;

e. Alcoholism and drug treatment centers;

f. Group homes administered under a contract with a government agency or administered by a government agency;

g. Households not connected to a heat source;

h. Households whose utility bills are paid regularly by an outside party;

i. Residents of hotels or trailer courts who have lived there less than 30 days and who do not pay a reasonable or customary rate.

**R195-2-6. Subsidized Housing - Roomers And Boarders.**

Eligibility for HEAT assistance: a household living in a federal, state, or local subsidized housing or anyone renting a room in a private house or apartment must pay an identifiable surcharge for heat in addition to their rent or they must pay a utility bill for heating costs directly to a utility provider.

**R195-2-7. Social Security Numbers.**

1. Adults who apply for HEAT assistance must provide verification of their Social Security Numbers (SSN) or apply for SSN cards. Social Security Numbers may be required for all household members if there is a question of household size and composition.

a. There are four ways to provide a correct SSN. The client can submit one of these three documents.

i. An official SSN card

ii. Official documents from Social Security Administration including award letters, benefit checks or a Medicare card

iii. An SSA receipt form 5028 or 2880.

iv. Official document from another government agency or from an employer.

**R195-2-8. Eligible HEAT Household.**

1. Household members need not be related.

2. Multiple dwellings including duplexes and apartment buildings, are considered separate households.

**R195-2-9. Age and Emancipation.**

Household members 18 years of age or older or emancipated are considered adults. A child can be emancipated by age, marriage or court order.

**R195-2-10. Weatherization Referrals.**

Participation in the weatherization program is not a condition of eligibility for HEAT.

**R195-2-11. Energy Crisis Intervention.**

1. A crisis is any weather-related emergency, any supply shortage emergency, or any other household energy-related emergency as approved by the region or state office.

a. Examples of household energy-related emergencies may include energy costs above 25% of the client's gross income, arrearages when the client has demonstrated a good faith attempt to resolve the problem or repairs to prevent loss of

energy from a dwelling.

b. Examples of household energy-related non-emergencies may include payments that will create a credit balance on a utility account, payments on utility accounts previously sent to a collection agency or capital improvements to rental property.

2. To be eligible for energy crisis intervention, a household must be eligible for HEAT during the same HEAT program year.

a. If the local office determines that a household is eligible to receive energy crisis intervention benefits and is in a life threatening situation, energy crisis intervention benefits will be provided within 18 hours. Regular energy crisis intervention benefits will be provided within 48 hours of eligibility determination.

b. The director or HEAT supervisor must approve all crisis intervention expenditures.

c. HEAT payments are issued to the vendor. In emergencies a check may be issued to the client.

d. When an energy crisis requires work from an outside vendor, the client must obtain at least two bids before work may begin. The job order will go to the lowest bidder unless the reasons for accepting a higher bid is documented and approved by the supervisor or the state office.

e. Energy crisis intervention payments are limited to a maximum of \$500 per household per HEAT program year unless prior approval for an amount larger than \$500 is obtained from the supervisor or state office.

#### **R195-2-12. Supplemental Programs.**

Household who qualify for HEAT assistance may also receive supplemental payments from other utility programs, such as "Reach", "Lend-A-Hand", and Catholic Community Services utility fund.

#### **R195-2-13. Security Deposits.**

1. Public Service Commission (PSC) Regulated Utilities  
a. A PSC regulated utility is required to waive the security deposit requirement for all Heat and Moratorium clients during the period of the Moratorium.

b. Monies received by a regulated utility from third-party sources, including monies provided by HEAT, REACH, CONCERN or similar programs, shall not be applied to the security deposit.

#### **2. Non Regulated Utilities**

a. If the company has signed a HEAT contract, the company has agreed not to charge a security deposit to a HEAT client from November 15th through March 15th. This does not apply to the service initiation fees that are routinely charged as a condition of service.

#### **R195-2-14. Consumer Complaints.**

1. Public Service Commission (PSC) Regulated Utilities  
a. Consumer complaints against a PSC regulated utility should be referred to the Public Service Commission.

#### **2. Non Regulated Utilities**

a. Consumer complaints against a non regulated utility should be referred directly to the individual utility company.

#### **R195-2-15. Credit Balances on Utility Accounts.**

1. If the household discontinues service with their utility supplier, and the household so elects, the disconnecting supplier will forward any HEAT credit balance remaining on the account to the household's new utility company. The new utility company must operate in Utah. The household must furnish, to the disconnecting utility supplier, the name and address of the new utility company within 30 days after termination of service.

2. If the household elects to have the HEAT credit balance refunded directly to them, the disconnecting utility supplier will do so if the household still resides in Utah. The household must

furnish, to the disconnecting utility supplier, their new address within 30 days after termination of service.

3. In no case shall HEAT credit balances be forwarded to utility companies not operating in Utah or to clients no longer residing in Utah.

4. If the client fails to give the disconnecting utility company the information for either option one or option two listed above, the utility company can hold the credit balance for an additional 30 days. If reconnection with the same utility has not occurred, any remaining credit balance must be refunded to the HEAT program.

5. Once credit balances are refunded to the HEAT program they become part of the general HEAT budget and are redistributed in the form of benefits to additional eligible households.

**KEY: energy assistance, residency requirements, opening and closing dates, HEAT**

**January 12, 2005**

**9-12-10**

**Notice of Continuation June 22, 2007**

**R195. Community and Culture, Home Energy Assistance Target (HEAT).****R195-3. Energy Assistance Income Standards, Income Eligibility, and Payment Determination.****R195-3-1. Energy Assistance Income Standards.**

For HEAT assistance cases, the local HEAT office shall determine the countable income of the household.

**R195-3-2. Countable Income.**

Countable income is gross income minus exclusions, disregards, and deductions.

**R195-3-3. Unearned Income.**

1. Countable unearned income is cash received by an individual for which no service is performed.

2. Sources of unearned income include the following:

- a. Pensions and annuities including Railroad Retirement, Social Security, Supplemental Security Income, Veteran's benefits and Civil Service retirement benefits;
- b. Disability benefits including Industrial Compensation, sick pay, mortgage insurance and paycheck insurance;
- c. Unemployment Compensation;
- d. Strike or union benefits;
- e. Veteran's benefits;
- f. Child support and alimony;
- g. Veteran's Educational Assistance intended for family members;
- h. Trust payments;
- i. Tribal fund gratuities unless excluded by law.
- j. Money from sales contracts and mortgages;
- k. Personal injury settlements;
- l. Financial payments made by the Department of Workforce Services;
- m. Income from Rental Property. If the client also manages the property, the income is earned.

**R195-3-4. Earned Income.**

1. Earned income is income in cash or in kind received by an individual for which a service is performed.

2. Sources of earned income include the following:

- a. Wages, including military base pay;
- b. Salaries;
- c. Commissions;
- d. Rent amount, when client works in return for rent;
- e. Monies from self-employment including baby-sitting;
- f. Tips;
- g. Sale of livestock and poultry;
- h. Work Study;
- i. University Year for Action;
- j. Military payments to cover Basic Allowance for Quarters and Basic Allowance for Substance;
- k. Money the employee chooses to have withheld for benefit plans including Flex Plans and Cafeteria Plans.

**R195-3-5. Income Exclusions.**

1. The following definitions apply to this section:

- 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.
  - b. "JTPA" means Jobs Training Partnership Act.
2. The income listed below is not counted:
- a. Earned income of an unemancipated household member.
  - b. Cash over which the household has no control.
  - c. Reimbursements for expenses directly related to employment, training, schooling, and volunteer activities.
  - d. Reimbursements for incurred medical expenses.
  - e. Bona fide loans.
  - f. Compensation paid to individual volunteers under the Retired Senior Volunteers Program, Green Thumb and the

Foster Grandparent Program.

g. Incentive and training expenses paid by the HEAT Self Sufficiency program.

h. Earned Income Tax Credit.

i. Financial payments from JTPA.

j. Value of Food Stamp Coupons, Food Stamp Cash Out checks, and surplus commodities donated by the U.S. Department of Agriculture.

k. Educational loans, grants, scholarships or college work study with the exception of Veterans Educational Assistance intended for the family members of the student. The student's portion is exempt.

l. Interest or Dividend Income.

m. Compensation or reimbursement paid to Volunteers In Service To America, Senior Health Aides, Senior Core of Retired Executives, Senior Companions and ACE.

n. Church cash assistance and voluntary cash contributions by others unless received on a regular basis.

o. Rental subsidies and relocation assistance.

p. Utility subsidies.

q. Any funds, payments, or tribal benefits required by Public Law 98-64, Public Law 93-134(7), Public Law 92-254, Public Law 94-540, Public Law 94-114 and Public Law 96-240(9).

r. Payments required by Public Law 92-203.

s. Payments required by Public Law 101-201 or Public Law 101-239(10405).

t. Payments required by Public Law 100-383.

u. Payments required by Public Law 101-426.

v. Payments required by Public Law 100-707.

**R195-3-6. Income Disregard.**

1. The following definition applies to this section:

a. "Disregard" means a portion of income that is not counted.

2. 20% of earned income, including self-employment earned income, will be disregarded.

3. For self-employed households the cost of doing business will be deducted. The 20% disregard will be applied to the remainder.

**R195-3-7. Income Deductions.**

1. Medical

A deduction for payments on uncompensated medical bills will be allowed when those payments are actually made by a member of the household during the same time period as the income being counted.

a. The client must verify the payment was made directly to a medical provider in the month prior to the month of application and that they will not be reimbursed by a third party.

b. Health and accident insurance payments, dental insurance payments, and Medical Assistance Only (MAO) payments are considered medical expenses.

2. Child Support and Alimony

a. A deduction for child support and alimony payments will be allowed when those payments were actually made by a member of the household during the same time period as the income being counted.

b. The client must verify the payment was actually made directly to the custodial adult or through the court.

c. Payments in lieu of child support and alimony, including car payments or mortgage payments, are deductible.

**R195-3-8. Self-Employment Income.**

1. A self-employed person actively earns income directly from their own business, trade, or profession.

2. Self-employment income will be determined by using the previous year's tax return or as follows:

a. All gross self-employment income is counted.

- i. Capital gains will be included.
- ii. The proceeds from the sale of capital goods or equipment will be calculated in the same way as a capital gain for Federal income tax purposes. Even if only part of the proceeds from the sale of capital goods or equipment is taxed, the full amount of the capital gain will be counted as income for HEAT program purposes.
  - b. The cost of doing business will be deducted.
    - i. Allowable business costs include:
      - A. labor;
      - B. stock;
      - C. raw materials;
      - D. seed and fertilizer;
      - E. interest paid toward the purchase of income producing property;
      - F. insurance premiums;
      - G. taxes paid on income producing property;
    - ii. Transportation costs will be allowed only if the person must move from place to place in the course of business.
    - iii. The following items will not be allowed as business expenses:
      - A. Payments on the principal of the purchase price of income producing real estate and capital assets, equipment, machinery and other durable goods.
      - B. Net losses from previous periods.
      - C. Federal, state and local income taxes, money set aside for retirement purposes, and other work related personal expenses.
      - D. Depreciation.

**R195-3-9. HEAT Financial Eligibility and Payment Determination.**

1. All countable income received in the previous calendar month for the current applicant household will be used to determine eligibility. Terminated income received in the previous calendar month or the month of application is exempt if no new source of income is identified. Failure to provide verification of income will result in the HEAT application being denied.

Verification of countable income includes preceding or current month's SSI or SSA checks, divorce decrees, award letters, or current check stubs if the income is stable and the amount is the same as the actual income received in the previous calendar month.

**KEY: energy assistance, self-employment income, income eligibility, payment determination**

January 12, 2005

9-12-10

Notice of Continuation June 22, 2007

**R195. Community and Culture, Home Energy Assistance Target (HEAT).**

**R195-4. Energy Assistance: Asset Standards.**

**R195-4-1. Resource Limits.**

The value of any household assets, either real or personal property, will not be counted when determining eligibility for the HEAT program.

**KEY: energy assistance, financial disclosures  
1987**

**9-12-10**

**Notice of Continuation June 22, 2007**

**R195. Community and Culture, Home Energy Assistance Target (HEAT).****R195-5. Energy Assistance: Program Benefits.****R195-5-1. Program Benefits.**

Program benefits are limited to a one time payment, per household, per program year. If an applicant household contains anyone who has already received a HEAT benefit in any other household during that program year, the application will be denied.

**R195-5-2. Standard Payment Levels.**

The energy assistance benefit payment level is based on a household's income and energy burden (energy burden is the proportion of a household's income used to pay for home heating). For example, households with the lowest income and the highest energy burden will receive the highest energy assistance benefit payment available. Households with children under age six years, the elderly (age 60 plus years), and/or disabled people may receive an additional energy assistance benefit amount.

**R195-5-3. Benefit Payments.**

1. Direct client payments will be made only when a contract with the primary heat source cannot be obtained or if the primary heat source is the landlord.

**R195-5-4. Split Payments.**

1. If the primary heat source's payment account is current, up to 50% of the HEAT payment may be made to the client. Payment disbursements may be split only in the percentages listed below:

- a. 100%
- b. 50%/50%
- c. 75%/25%

**KEY: energy assistance, benefits**

**January 2, 1996**

**Notice of Continuation June 22, 2007**

**9-12-10**

**R195. Community and Culture, Home Energy Assistance Target (HEAT).****R195-6. Energy Assistance: Eligibility Determination.****R195-6-1. Eligibility Determination.**

The local HEAT Office shall determine a household's eligibility for HEAT by applying the program and income standards to the household's circumstances, and by establishing the validity and accuracy of the information given by the applicant household.

**R195-6-2. Acceptable Verification.**

1. All factors of eligibility must be verified.
2. It is the applicant's responsibility to obtain acceptable verification.
3. If the household refuses to obtain the required verification and refuses to assist the HEAT Office in obtaining the verification, the application will be denied.

**R195-6-3. Determination of The Primary Fuel Type.**

The primary fuel type is the type of fuel for which the house is designed. If the household is actually using a less expensive fuel type as the primary heat source, the fuel type is the type of heat the household is actually using.

**R195-6-4. Date of Application.**

The date of application is the date the application is accepted at the correct HEAT office.

**R195-6-5. Date of Approval or Denial.**

The date of approval or denial is the action date of the application.

**R195-6-6. Date of Payment.**

The payment date is the date the HEAT check is actually issued.

**KEY: energy assistance**

**1991**

**9-12-10**

**Notice of Continuation June 25, 2007**

**R195. Community and Culture, Home Energy Assistance Target (HEAT).****R195-7. Energy Assistance: Records and Benefit Management.****R195-7-1. Records Management.**

1. Documentation of the eligibility decision and amount of HEAT assistance is kept in the household's HEAT folder in the local HEAT office. Every person who completes an application shall have a case record.

2. HEAT case records shall not be removed from the local HEAT Office except by subpoena or request of the State HEAT Office (SHO) or in accordance with the Archives Schedule.

**R195-7-2. Notification.**

1. The local HEAT office shall provide all HEAT applicants with a written notice of any action that affects the amount, form, or requirements of the assistance.

2. Written notice shall include an explanation of the action, the reason for the action, and the effective date of the action. The notice shall also include an explanation of the applicant's hearing rights and how to file a hearing if the applicant is not satisfied with the decision on the case.

**R195-7-3. Checks.**

1. All HEAT payments to clients or vendors are issued by check.

2. If the payee dies before endorsing the check, the local Heat Office director or designee may authorize another person to endorse the check to use it on behalf of the payee or other person in the case.

3. Lost or stolen HEAT checks.

a. The client must report a lost or stolen check within 29 days of the issuance date. A check that is reported lost or stolen 30 days or more after the issuance date will not be replaced.

b. The client may report this by telephone or in person.

c. Lost checks will be replaced after five mailing days from the issuance date.

d. A replacement HEAT check which is lost or stolen after the payee receives it will not be issued.

**KEY: energy assistance, benefits, government documents, state HEAT office records**

**January 12, 2005**

**9-12-10**

**Notice of Continuation June 25, 2007**

**R195. Community and Culture, Home Energy Assistance Target (HEAT).****R195-8. Energy Assistance: Special State Programs.****R195-8-1. Moratorium.**

The department shall require compliance with Section 9-12-201.

1. The moratorium program protects eligible persons from winter utility shut offs.

2. A household can apply for moratorium protection only one time per utility per program year.

3. The protection of the Moratorium lasts from November 15 through the following March 15.

The Department has the option of beginning The Moratorium program earlier or extending it later when severe weather conditions warrant such action.

4. The moratorium applicant must:

a. Be the adult residential account holder, or the adult resident applying for service. A residential utility customer is any adult person who has an account with a utility or any adult who is applying for residential utility service;

b. Be living at the address where Moratorium protection is needed;

c. Have a termination notice from the utility company or have been refused service if the utility is not active;

d. Have a written statement from the utility company stating that all methods of working out satisfactory payment arrangements have failed. A deferred payment agreement must have been offered to the utility customer. If the customer signs a deferred payment agreement, but does not have the money to activate it, the agreement is in immediate default. The written statement must include:

i. account name or the name of the customer applying for service;

ii. the residential address;

iii. account number, if there is one;

iv. indicate if the account is active or inactive;

v. the total amount owed on the account;

vi. indication that the client has applied for HEAT;

vii. indication that the client has applied for utility assistance through the Red Cross;

viii. and must indicate that the client meets at least one of the following criteria:

A. Gross household income in the month of or the month prior to the month of the moratorium application must be less than 125% of the federal poverty limit.

B. have suffered a medical or other emergency in either the month of application or the month prior to the month of application.

C. loss of employment in either the month of application or the month prior to the month of application.

D. 50% drop in income in either the month of application or the month prior to the month of application.

ix. make a good faith effort to pay their utility bill on a consistent basis as specified below.

5. Required Verification

a. All factors of eligibility must be verified.

b. It is the applicant's responsibility to obtain acceptable verification.

c. If the household refuses to obtain the required verification and refuses to assist the local HEAT office in obtaining the verification, the moratorium application will be denied.

6. Good Faith Payment Effort

a. Each month during the moratorium the household must pay the utility company at least 5% of the gross income received in the month prior to the month of the moratorium application, unless the home is heated by electricity.

b. If the home is heated by electricity the household must pay the utility company at least 10% of the gross income

received in the month prior to the month of application.

c. The minimum allowed monthly payment is \$5.00 even if the client has no income in the month prior to the month of application.

7. In order to activate the moratorium, including the restoration of service to those households which are shut off, the first good faith payment is due at the time of application. Payments for subsequent months are due on or before the last day of each month.

8. For clients who defaulted during a previous Moratorium season the default payment is due before the client is eligible for protection under the current moratorium.

a. When a client defaults on a moratorium application, the client is not eligible for moratorium protection on that particular utility for the remainder of that moratorium season.

b. The client must pay the amount of any previous defaulted payment before they are eligible for the moratorium.

c. When a utility company notifies the HEAT office of a client default, the HEAT office will notify the client that of the default.

9. Regulated companies operating in Utah are subject to the Moratorium with the exception of the Mexican Hat Association.

**R195-8-2. Conservation Education Demonstration Project.**

Participants in the HEAT program served under the Mountainlands Community Action Project contract will be required, as a part of eligibility, to attend energy conservation education classes.

**KEY: energy assistance, energy industries  
1994**

**Notice of Continuation June 25, 2007**

**9-12-10**

**R223. Community and Culture, Library.****R223-1. Adjudicative Procedures.****R223-1-1. Authority and Purpose.**

The State Library Division, Department of Community and Culture, State of Utah, hereby declares, in accordance with Utah Code Annotated Section 63-46b-4(2), that all programs, actions, or proceedings carried out under the authority of the State Library Division by State Library Division personnel which require adjudicative procedures in accordance with the provisions of the Utah Administrative Procedures Act, Utah Code Annotated Title 63, Chapter 46b, shall be conducted informally according to the provisions of rules adopted under Utah Code Annotated 63-46b-4 and 63-46b-5.

**R223-1-2. Procedures.**

The requirement that all adjudicative procedures be conducted informally shall apply to all current programs, actions, or proceedings for which adjudicative procedures are required and to all future programs, actions, or proceedings carried out under the authority of the State Library Division for which adjudicative procedures are required.

**KEY: administrative procedures, adjudicative procedures, informal procedures**

**1988**

**Notice of Continuation June 13, 2007**

**63-46b-4**

**63-46b-4(2)**

**63-46b-5**

**R251. Corrections, Administration.****R251-401. Supervision Fees.****R251-401-1. Authority and Purpose.**

- (1) This rule is authorized under Section 64-13-21.
- (2) The purpose of this rule is to define the UDC's policy regarding offenders' monthly supervision fees including criteria for the suspension or waiver of fees and the circumstances under which an offender may request a hearing.

**R251-401-2. Definitions.**

- (1) "Board" means Board of Pardons and Parole.
- (2) "Fee suspension" means temporary, time-limited suspension of required fee payment when inability to pay is a result of short-term, substantial hardship.
- (3) "Fee waiver" means long-term waiver of fee payment when the substantial hardship causing an inability to pay is highly unlikely to change during the period of supervision.
- (4) "Substantial hardship" means any condition which would cause gross monthly household income to be below the Federal Poverty Level.
- (5) "UDC" means Utah Department of Corrections.

**R251-401-3. Policy.**

It is the policy of the Department that:

- (1) in accordance with Section 64-13-21, offenders on probation or parole shall be assessed a monthly supervision fee of \$30.00 if the offense was committed after May 3, 1993;
- (2) court- or Board-ordered supervision fees may be waived if the order would create a substantial hardship as determined by the supervising agent and a supervisor;
- (3) if the offender disagrees with a non-hardship finding, the decision may be appealed up to the appropriate Regional Administrator, whose decision shall be binding;
- (4) offenders required to pay supervision fees shall be provided with written procedures regarding the appeal process;
- (4) former offenders who had a fee suspension or waiver when their supervision ended, shall not automatically assume the same status if placed on probation or parole again;
- (5) offenders who obtain a suspension or waiver shall not be eligible for a refund of any fees previously paid; and
- (6) eligible offenders shall reapply for a suspension or waiver of supervision fees each time they are placed on probation or parole.

**KEY: fees, supervision, offender**

**1994**

**64-13-21**

**Notice of Continuation June 7, 2007**

**R382. Health, Children's Health Insurance Program.****R382-1. Benefits and Administration.****R382-1-1. Authority and Purpose.**

This rule implements the Children's Health Insurance Program under Title XXI of the Social Security Act, as adopted in the state under Title 26, Chapter 40 of the Utah Code. It is authorized by Section 26-40-103.

**R382-1-2. Definitions.**

The definitions found in Title 26, Chapter 40 apply to this rule. In addition,

- (1) "Applicant" means a child on whose behalf has been made an application for benefits under the Children's Health Insurance Program, but who is not an enrollee.
- (2) "Department" means the Utah Department of Health.

**R382-1-3. Nature of Program and Benefits.**

(1) The Children's Health Insurance Program provides reimbursement to medical providers for services rendered to a child who meets the eligibility requirements and application requirements of R382-10. The Children's Health Insurance Program provides limited benefits as described in this rule. The Department provides reimbursement coverage under the program only for benefits and levels of coverage for each program benefit:

- (a) as provided in rule governing the Children's Health Insurance Program;
- (b) as described and limited in Section 6.2 of the State Plan for the Children's Health Insurance Program, July 1, 2005 ed., which is adopted and incorporated by reference, and all applicable laws and rules.

(2) The Children's Health Insurance Program is not health insurance. A relationship with the Department as the insurer and the enrollee as the insured is not created under the program.

**R382-1-4. Limitation of Abortion Benefits.**

Abortion is a covered benefit only if necessary to save the life of the mother.

**R382-1-5. Providers.**

The Department requires a child to enroll in one of the managed care organizations that contracts with the Department under the program.

**R382-1-6. Reimbursement.**

(1) The Department shall reimburse only for benefits as limited in its contracts with the managed care organizations.

(2) Payment for services by the contracted managed care organization and enrollee co-payment, if any, constitutes full payment for services. A provider may not bill or collect any additional monies for services rendered.

**R382-1-7. Cost Sharing.**

A provider may require an enrollee to pay a co-payment equal to that listed in Section 8 of the State Plan for the Children's Health Insurance Program, July 1, 2005 ed., which is adopted and incorporated by reference.

**R382-1-8. Grievances and Appeals.**

(1) An applicant or enrollee may request an agency conference at any time to resolve a problem without requesting an agency action under the Utah Administrative Procedures Act.

(a) Agency conferences may be held at the discretion of the Department.

(b) A representative authorized in writing may participate in the agency conference.

(c) The Department may conduct an agency conference by telephone if the applicant or enrollee does not object.

(2) The enrollee, the enrollee's parent(s), or representative

authorized in writing by the enrollee or the enrollee's parent(s) may request an agency action. An applicant, the applicant's parent(s), or representative authorized in writing by the applicant or the applicant's parent(s) may request an agency action.

(a) Any request for agency action must be in writing clearly stating a desire to commence an agency proceeding, delivered or mailed to the Department, Department of Workforce Services, or the local eligibility office. The request must be mailed within 90 days of the Department's action or initial decision.

(b) Proceedings pursuant to requests for agency action under the Children's Health Insurance Program are designated as formal proceedings.

(c) An applicant's or enrollee's authorized representative may participate in the administrative proceedings before the Department.

(d) The Department may conduct the administrative proceeding, including any hearings, telephonically or by other similar means if the applicant or enrollee does not object.

(e) The enrollee may choose not to accept the continued benefits that the Department offers pending an administrative decision.

(f) The Department need not conduct a hearing if the sole issue is one of state or federal law or policy.

(3) Enrollees must exhaust grievance remedies with the managed care organization before they can request an agency action.

**KEY: children's health benefits****July 1, 2007****Notice of Continuation June 9, 2003****26-1-5****26-40-103**

**R382. Health, Children's Health Insurance Program.****R382-10. Eligibility.****R382-10-1. Authority.**

This rule sets forth the eligibility requirements for coverage under the Children's Health Insurance Program (CHIP). It is authorized by Title 26, Chapter 40.

**R382-10-2. Definitions.**

(1) The Department adopts the definitions found in Sections 2110(b) and (c) of the Social Security Act as enacted by Pub. L. No. 105-33 which is incorporated by reference in this rule.

(2) "Agency" means any local office or outreach location of either the Department of Health or Department of Workforce Services that accepts and processes applications for CHIP.

(3) "Applicant" means a child on whose behalf an application has been made for benefits under the Children's Health Insurance Program, but who is not an enrollee.

(4) "Best estimate" means the Department's determination of a household's income for the upcoming eligibility period, based on past and current circumstances and anticipated future changes.

(5) "Children's Health Insurance Program" or "CHIP" means the program for benefits under the Utah Children's Health Insurance Act, Title 26, Chapter 40.

(6) "Department" means the Utah Department of Health.

(7) "Employer-sponsored health plan" means health insurance that meets the requirements of R414-320-2(8) (a) (b) (c) (d) and (e).

(8) "Income averaging" means a process of using a history of past or current income and averaging it over a determined period of time that is representative of future income.

(9) "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.

(10) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.

(11) "Local office" means any Bureau of Eligibility Services office location, outreach location, or telephone location where an individual may apply for medical assistance.

(12) "Quarterly Premium" means a payment that enrollees must pay every three months to receive coverage under CHIP.

(13) "Renewal month" means the last month of the eligibility period for an enrollee.

(14) "Utah's Premium Partnership for Health Insurance" or "UPP" means the program described in R414-320.

(15) "Verifications" means the proofs needed to decide if a child meets the eligibility criteria to be enrolled in the program. Verifications may include hard copy documents such as a birth certificate, computer match records such as Social Security benefits match records, and collateral contacts with third parties who have information needed to determine the eligibility of a child.

**R382-10-3. Actions on Behalf of a Minor.**

(1) A parent or an adult who has assumed responsibility for the care or supervision of a child may apply for CHIP enrollment, provide information required by this rule, or otherwise act on behalf of a child in all respects under the statutes and rules governing the CHIP program.

(a) The child, if 18 years old or an emancipated minor, the child's parent or legal guardian must indicate in writing to the Department who is authorized as the child's representative.

(b) The Department may designate an authorized representative if the child needs a representative but is unable to make a choice either in writing or orally in the presence of a witness.

(2) Where the statutes or rules governing the CHIP

program require a child to take an action, the parent or adult who has assumed responsibility for the care or supervision of the child is responsible to take the action on behalf of the child. If the parent or adult who has assumed responsibility for the care or supervision of the child fails to take an action, the failure is attributable as the child's failure to take the action.

(3) Notice to the parent or adult who has assumed responsibility for the care or supervision of the child is notice to the child.

**R382-10-4. Applicant and Enrollee Rights and Responsibilities.**

(1) A parent or an adult who has assumed responsibility for the care or supervision of a child may apply or reapply for Children's Health Insurance Program benefits on behalf of a child during an open enrollment period. An emancipated child or an 18 year old child may apply on his own behalf.

(2) The applicant must provide the Department with verifications to establish the eligibility of the child, including information about the parents.

(3) Anyone may look at the eligibility policy manuals located at any local office, except at outreach or telephone locations.

(4) The parent or other individual who arranged for medical services on behalf of the child shall repay the Department for services paid for by the Department under this program if the child is determined not to be eligible for CHIP.

(5) The parent(s) or child, or other responsible person acting on behalf of a child must report certain changes to the local office within ten days of the day the change becomes known. Some examples of reportable changes include:

(a) An enrollee begins to receive coverage under a group health plan or other health insurance coverage.

(b) An enrollee begins to have access to coverage under a group health plan or other health insurance coverage.

(c) An enrollee leaves the household or dies.

(d) An enrollee or the household moves out of state.

(e) Change of address of an enrollee or the household.

(f) An enrollee enters a public institution or an institution for mental diseases.

(6) Applicants and enrollees have the right to be notified about actions the agency takes regarding their eligibility or continued eligibility, the reason the action was taken, and the right to request an agency conference or agency action.

**R382-10-5. Verification and Information Exchange.**

(1) The applicant and enrollee upon renewal must provide verification of eligibility factors as requested by the agency.

(a) The agency will provide the enrollee a written request of the needed verifications.

(b) The enrollee has at least 10 calendar days from the date the agency gives or mails the verification request to the enrollee to provide verifications.

(c) The due date for returning verifications, forms or information requested by the agency is 5:00 p.m. on the date the agency sets as the due date in a written request to the enrollee, but not less than 10 calendar days from the date such request is given to or mailed to the enrollee.

(d) The agency allows additional time to provide verifications if the enrollee requests additional time by the due date. The agency will set a new due date that is at least 10 days from the date the enrollee asks for more time to provide the verifications or forms.

(e) If an enrollee has not provided required verifications by the due date, and has not contacted the agency to ask for more time to provide verifications, agency denies the application, renewal, or ends eligibility.

(2) The Department may release information concerning applicants and enrollees and their households to other state and

federal agencies to determine eligibility for other public assistance programs.

(3) The Department must release information to the Title IV-D agency and Social Security Administration to determine benefits.

(4) The Department may verify information by exchanging information with other public agencies as described in 42 CFR 435.945, 435.948, 435.952, 435.955, and 435.960.

#### **R382-10-6. Citizenship and Alienage.**

(1) To be eligible to enroll in the program, a child must be a citizen of the United States or a qualified alien as defined in Pub. L. No. 104-193(401) through (403), (411), (412), (421) through (423), (431), and (435), and amended by Pub. L. No. 105-33(5302)(b) and (c), (5303), (5305)(b), (5306), (5562), (5563), and (5571).

(2) Hmong or Highland Lao veterans who fought on behalf of the Armed Forces of the United States during the Vietnam conflict and who are lawfully admitted to the United States for permanent residence, and their family members who are also qualified aliens, may be eligible to enroll in the program regardless of their date of entry into the United States.

(3) One adult household member must declare the citizenship or alien status of all applicants in the household. The applicant must provide verification of his citizenship or alien status.

(4) A qualified alien, as defined in Pub. L. No. 104-193(431) and amended by Pub. L. No. 105-33(5302)(c)(3), (5562), and (5571), admitted into the United States prior to August 22, 1996, may enroll in the program.

(5) A qualified alien, as defined in Pub. L. No. 104-193(431) and amended by Pub. L. No. 105-33(5302)(c)(3), (5562), and (5571), newly admitted into the United States on or after August 22, 1996, may enroll in the program after five years have passed from his date of entry into the United States.

#### **R382-10-7. Utah Residence.**

(1) A child must be a Utah resident to be eligible to enroll in the program.

(2) An American Indian child in a boarding school is a resident of the state where his parents reside. A child in a school for the deaf and blind is a resident of the state where his parents reside.

(3) A child is a resident of the state if he is temporarily absent from Utah due to employment, schooling, vacation, medical treatment, or military service.

(4) The child need not reside in a home with a permanent location or fixed address.

#### **R382-10-8. Residents of Institutions.**

(1) Residents of institutions described in Section 2110(b)(2)(A) of the Social Security Act as enacted by Pub. L. No. 105-33 are not eligible for the program.

(2) A child under the age of 18 is not a resident of an institution if he is living temporarily in the institution while arrangements are being made for other placement.

(3) A child who resides in a temporary shelter for a limited period of time is not a resident of an institution.

#### **R382-10-9. Social Security Numbers.**

(1) The Department may request applicants to provide the correct Social Security Number (SSN) or proof of application for a SSN for each household member at the time of application for the program.

(2) A child may not be denied CHIP enrollment for failure to provide a SSN.

#### **R382-10-10. Creditable Health Coverage.**

(1) To be eligible for enrollment in the program, a child

must meet the requirements of Sections 2110(b)(1)(C) and (2)(B) of the Social Security Act as enacted by Pub. L. No. 105-33.

(2) A child who is covered under a group health plan or other health insurance coverage including coverage under a parent's or legal guardian's employer, as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), is not eligible for CHIP assistance.

(3) A child who is covered under an absent parent's insurance coverage that does not provide coverage in the State of Utah is eligible for enrollment.

(4) A child who is covered under a group health plan or other health coverage but has reached the lifetime maximum coverage under that plan is eligible for enrollment.

(5) A child who has access to health insurance coverage, where the cost to enroll the child in the least expensive plan offered by the employer is less than 5% of the household's gross annual income, is not eligible for CHIP. The child is considered to have access to coverage even if the employer offers coverage only during an open enrollment period.

(6) A child who has access to an employer-sponsored health plan where the least expensive plan is equal to or greater than 5% of the household's gross annual income, and the employer offers an employer-sponsored health plan that meets the requirements of R414-320-2 (8) (a), (b), (c), (d) and (e), may choose to enroll in the employer-sponsored health plan and receive reimbursement through the UPP program or may choose to enroll in the CHIP program.

(a) If the employer-sponsored health plan does not include dental benefits, the child may enroll in CHIP dental benefits.

(b) A child who chooses to enroll in the UPP program may switch to CHIP coverage at any time.

(7) The Department shall deny eligibility if the applicant or a custodial parent has voluntarily terminated health insurance coverage in the 90 days prior to the application date for enrollment under CHIP.

(a) An applicant or applicant's parent(s) who voluntarily terminates coverage under a COBRA plan or under the Health Insurance Pool (HIP), or who is involuntarily terminated from an employer's plan is eligible for CHIP without a 90 day waiting period.

(b) An applicant who voluntarily terminates health insurance coverage purchased after the previous CHIP open enrollment period ended but before the beginning of the current open enrollment period and who met CHIP eligibility requirements at the time of purchase, is eligible for CHIP without a 90 day waiting period.

(8) A child with creditable health coverage operated or financed by the Indian Health Services is not excluded from enrolling in the program.

(9) An applicant must report at application and renewal whether any of the children in the household for whom enrollment is being requested has access to or is covered by a group health plan, other health insurance coverage, or a state employee's health benefits plan.

(10) The Department shall deny an application or renewal if the enrollee fails to respond to questions about health insurance coverage for children the household seeks to enroll or renew in the program.

#### **R382-10-11. Household Composition.**

(1) The following individuals who reside together must be included in the household for purposes of determining the household size and whose income will be counted, whether or not the individual is eligible to enroll in the program:

(a) A child who meets the CHIP age requirement and who does not have access to and is not covered by a group health plan or other health insurance;

(b) Siblings, half-siblings, adopted siblings, and step-

siblings of the child who meets the CHIP age requirement if these individuals also meet the CHIP age requirement;

(c) Parents and stepparents of any child who is included in the household size;

(d) Children of any child included in the household size;

(e) The spouse of any child who is included in the household size; and

(f) Unborn children of anyone included in the household size.

(2) Any individual described in Subsection (1) of this Section who is temporarily absent solely by reason of employment, school, training, military service, or medical treatment, or who will return home to live within 30 days from the date of application, is part of the household.

(3) A household member described in Subsection (1) of this Section who does not qualify to enroll in the CHIP program due to his alien status is included in the household size and his income is counted as household income.

(4) If an individual is caring for a child of his or her former spouse, in a case in which a divorce has been finalized, the child may be included in the household if the child resides in the home.

#### **R382-10-12. Age Requirement.**

(1) A child must be under 19 years of age to enroll in the program.

(2) The month in which a child's 19th birthday occurs is the last month of eligibility for CHIP enrollment.

#### **R382-10-13. Income Provisions.**

To be eligible to enroll in the Children's Health Insurance Program, gross household income must be equal to or less than 200% of the federal non-farm poverty guideline for a household of equal size. All gross income, earned and unearned, received by the parents and stepparents of any child who is included in the household size, is counted toward household income, unless this section specifically describes a different treatment of the income.

(1) The Department does not count income that is defined in 20 CFR 416(K) Appendix, 2006 edition, which is adopted and incorporated by reference.

(2) Any income in a trust that is available to, or is received by a household member, is countable income.

(3) Payments received from the Family Employment Program, General Assistance, or refugee cash assistance or adoption support services as authorized under Title 35A, Chapter 3 is countable income.

(4) Rental income is countable income. The following expenses can be deducted:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property;

(c) utility costs only if they are paid by the owner; and

(d) interest only on a loan or mortgage secured by the rental property.

(5) Deposits to joint checking or savings accounts are countable income, even if the deposits are made by a non-household member. An applicant or enrollee who disputes household ownership of deposits to joint checking or savings accounts shall be given an opportunity to prove that the deposits do not represent income to the household. Funds that are successfully disputed are not countable income.

(6) Cash contributions made by non-household members are counted as income unless the parties have a signed written agreement for repayment of the funds.

(7) The interest earned from payments made under a sales contract or a loan agreement is countable income to the extent that these payments will continue to be received during the

eligibility period.

(8) In-kind income, which is goods or services provided to the individual from a non-household member and which is not in the form of cash, for which the individual performed a service or is provided as part of the individual's wages is counted as income. In-kind income for which the individual did not perform a service or did not work to receive is not counted as income.

(9) SSI and State Supplemental Payments are countable income.

(10) Death benefits are not countable income to the extent that the funds are spent on the deceased person's burial or last illness.

(11) A bona fide loan that an individual must repay and that the individual has contracted in good faith without fraud or deceit, and genuinely endorsed in writing for repayment is not countable income.

(12) Child Care Assistance under Title XX is not countable income.

(13) Reimbursements of Medicare premiums received by an individual from Social Security Administration or the Department are not countable income.

(14) Needs-based Veteran's pensions are not counted as income. If the income is not needs-based, only the portion of a Veteran's Administration check to which the individual is legally entitled is countable income.

(15) Income of a child is excluded if the child is not the head of a household.

(16) Educational income such as educational loans, grants, scholarships, and work-study programs are not countable income. The individual must verify enrollment in an educational program.

(17) Reimbursements for expenses incurred by an individual are not countable income.

(18) Any payments made to an individual because of his status as a victim of Nazi persecution as defined in Pub. L. No. 103-286 are not countable income, including payments made by the Federal Republic of Germany, Austrian Social Insurance payments, and Netherlands WUV payments.

(19) Victim's Compensation payments as defined in Pub. L. No. 101-508 are not countable income.

(20) Disaster relief funds received if a catastrophe has been declared a major disaster by the President of the United States as defined in Pub. L. No. 103-286 are not countable income.

(21) Income of an alien's sponsor or the sponsor's spouse, is not countable income.

(22) If the household expects to receive less than \$500 per year, taxable interest and dividend income are not countable income.

#### **R382-10-14. Budgeting.**

The following section describes methods that the Department will use to determine the household's countable monthly or annual income.

(1) The gross income for parents and stepparents of any child included in the household size is counted to determine a child's eligibility, unless the income is excluded under this rule. Only expenses that are required to make an income available to the individual are deducted from the gross income. No other deductions are allowed.

(2) The Department shall determine monthly income by taking into account the months of pay where an individual receives a fifth paycheck when paid weekly, or a third paycheck when paid every other week. The Department shall multiply the weekly amount by 4.3 to obtain a monthly amount. The Department shall multiply income paid bi-weekly by 2.15 to obtain a monthly amount.

(3) The Department shall determine a child's eligibility and

cost-sharing requirements prospectively for the upcoming eligibility period at the time of application and at each renewal for continuing eligibility. The Department shall determine prospective eligibility by using the best estimate of the household's average monthly income that is expected to be received or made available to the household during the upcoming eligibility period. The Department shall prorate income that is received less often than monthly over the eligibility period to determine an average monthly income. The Department may request prior years' tax returns as well as current income information to determine a household's income.

(4) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The Department may use a combination of methods to obtain the most accurate best estimate. The best estimate may be a monthly amount that is expected to be received each month of the eligibility period, or an annual amount that is prorated over the eligibility period. Different methods may be used for different types of income received in the same household.

(5) The Department shall determine farm and self-employment income by using the individual's recent tax return forms. If tax returns are not available, or are not reflective of the individual's current farm or self-employment income, the Department shall request income information from a recent time period during which the individual had farm or self-employment income. The Department shall deduct 40% of the gross income as a deduction for business expenses to determine the countable income of the individual. For individuals who have business expenses greater than 40%, the Department shall request expense information and deduct the expenses from the gross income. The Department shall deduct the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses.

(6) The Department may annualize income for any household and in particular for households that have self-employment income, receive income sporadically under contract or commission agreements, or receive income at irregular intervals throughout the year.

#### **R382-10-15. Assets.**

An asset test is not required for CHIP eligibility.

#### **R382-10-16. Application and Renewal.**

The application is the initial request from an applicant for CHIP enrollment for a child. The application process includes gathering information and verifications to determine the child's eligibility for enrollment in the program. Renewal is the process of gathering information and verifications on a periodic basis to determine continued eligibility of an enrollee.

(1) The applicant must complete and sign a written application to become enrolled in the program.

(2) The Department accepts any Department-approved application form for medical assistance programs offered by the state as an application for CHIP enrollment.

(3) Individuals may apply for enrollment during open enrollment periods in person, through the mail, by fax, or online.

(4) A family who has a child enrolled in CHIP, may enroll a new child born to or adopted by a household member without waiting for the next open enrollment period.

(5) A child who loses Medicaid coverage because he or she has reached the maximum age limit and does not qualify for any other Medicaid program without paying a spenddown, may enroll in CHIP without waiting for the next open enrollment period.

(6) A child who loses Medicaid coverage because he or she is no longer deprived of parental support and does not qualify for any other Medicaid program without paying a spenddown, may enroll in CHIP without waiting for the next

open enrollment period.

(7) A child enrolled in the UPP program who discontinues his or her coverage under an employer-sponsored health plan, may enroll in CHIP without waiting for the next open enrollment period.

(8) The Department may interview applicants, the applicant's parents, and any adult who has assumed responsibility for the care or supervision of the child to assist in determining eligibility.

(9) If eligibility for CHIP enrollment ends, the Department shall review the case for eligibility under any other medical assistance program without requiring a new application. The Department may request additional verification from the household if there is insufficient information to make a determination.

#### **R382-10-17. Eligibility Decisions.**

(1) The Department must determine eligibility for CHIP within 45 days of the date of application. If a decision can not be made in 45 days because the applicant fails to take a required action and requests additional time to complete the application process, or if circumstances beyond the Department's control delay the eligibility decision, the Department shall document the reason for the delay in the case record. The Department must inform the applicant of the status of the application and the time frame for completing the application process.

(2) The Department may not use the time standard as a waiting period before determining eligibility, or as a reason for denying eligibility because the Department has not determined eligibility within that time.

(3) The Department shall complete a determination of eligibility or ineligibility for each application unless:

(a) the applicant voluntarily withdrew the application and the Department sent a notice to the applicant to confirm the withdrawal;

(b) the applicant died; or

(c) the applicant can not be located or has not responded to requests for information within the 30 day application period.

(4) The Department must redetermine eligibility at least every 12 months.

(5) At application and renewal, the Department must determine if any child applying for CHIP enrollment is eligible for coverage under Medicaid. A child who is eligible for Medicaid coverage is not eligible for CHIP. A child who must meet a spend-down to receive Medicaid and chooses not to meet the spenddown can be enrolled in CHIP.

#### **R382-10-18. Effective Date of Enrollment and Renewal.**

(1) The effective date of CHIP enrollment is the date a completed and signed application is received at a local office by 5:00 p.m. on a business day. This applies to paper applications delivered in person or by mail, paper applications sent via facsimile transmission, and electronic applications sent via the internet. If a local office receives an application after 5:00 p.m. of a business day, the effective date of CHIP enrollment is the next business day.

(2) The effective date of CHIP enrollment for applications delivered to an outreach location is as follows:

(a) If the application is delivered at a time when the outreach staff is working at that location, the effective date of enrollment is the date the outreach staff receives the application.

(b) If the application is delivered at a time when the outreach office is closed, including being closed for weekends or holidays, the effective date of enrollment is the last business day that a staff person from the state agency was available to receive or pick up applications from the location.

(3) The Department may allow a grace enrollment period beginning no earlier than four days before the date a completed and signed application is received by the Department. The

Department shall not pay for any services received before the effective enrollment date.

(4) For a family who has a child enrolled in CHIP and who adds a newborn or adopted child, the effective date of enrollment is the date of birth or adoption if the family requests the coverage within 30 days of the birth or adoption. If the request is made more than 30 days after the birth or adoption, enrollment in CHIP will be effective beginning the date of report, except as otherwise provided in R382-10-18(1).

(5) The effective date of enrollment for a renewal is the first day of the month after the renewal month, if the renewal process is completed by the end of the renewal month, or by the last day of the month immediately following the renewal month, and the child continues to be eligible.

(6) If the renewal process is not completed by the end of the renewal month, the case will be closed unless the enrollee has good cause for not completing the renewal process on time. Good cause includes a medical emergency, death of an immediate family member, or natural disaster, or other similar occurrence.

(7) The Department may require an interview with the parent, child, or adult who has assumed responsibility for the care or supervision of a child, or other authorized representative as part of the renewal process.

#### **R382-10-19. Open Enrollment Period.**

(1) The Department accepts applications for enrollment at times when sufficient funding is available to justify enrolling more individuals. The Department limits the number it enrolls according to the funds available for the program.

(a) The Department shall notify the public of the open enrollment period 10 days in advance through a newspaper of general circulation.

(b) During an open enrollment period, the Department accepts applications in person, through the mail, by fax, or online. The Department sorts applications according to the date received. If the applications received on a day exceed the number of openings available, the Department shall randomize all applications for that day and select the number needed to fill the openings.

(c) The Department will not accept applications prior to the open enrollment date, except as provided in R382-10-16.

#### **R382-10-20. Enrollment Period.**

(1) The enrollment period begins with either the date of application, or an earlier date as defined in R382-10-18, if the applicant is determined eligible for CHIP enrollment. Covered services the child received on or after the effective date of enrollment are payable by CHIP for a child who was eligible upon application.

(2) A child eligible for CHIP enrollment receives 12 months of coverage unless the child turns 19 years of age before the end of the 12-month enrollment period, moves out of the state, becomes eligible for Medicaid, begins to be covered under a group health plan or other health insurance coverage, enters a public institution, or does not pay his or her quarterly premium. The month a child turns 19 years of age is the last month the child is eligible for CHIP.

#### **R382-10-21. Quarterly Premiums.**

(1) Each family with children enrolled in the CHIP program must pay a quarterly premium based on the countable income of the family during the first month of the quarter.

(a) A family whose countable income is equal to or less than 100% of the federal poverty level or who are American Indian pays no premium.

(b) A family with countable income greater than 100% and up to 150% of the federal poverty level must pay a quarterly premium of \$30.

(c) A family with countable income greater than 150% and up to 200% of the federal poverty level must pay a quarterly premium of \$60.

(2) A family who does not pay its quarterly premium by the premium due date will be terminated from CHIP. Coverage may be reinstated when any of the following events occur:

(a) The family pays the premium by the last day of the month immediately following the termination;

(b) The family's countable income decreased to below 100% of the federal poverty level prior to the first month of the quarter.

(c) The family's countable income decreases prior to the first month of the quarter and the family owes a lower premium amount. The new premium must be paid within 30 days.

(3) A family who was terminated from CHIP who reapplies within one year of the termination date, must pay any outstanding premiums before the children can be re-enrolled.

#### **R382-10-22. Termination and Notice.**

(1) The Department shall notify an applicant or enrollee in writing of the eligibility decision made on the application or at renewal.

(2) The Department shall notify an enrollee in writing ten days before taking a proposed action adversely affecting the enrollee's eligibility.

(3) Notices under this section shall provide the following information:

- (a) the action to be taken;
- (b) the reason for the action;
- (c) the regulations or policy that support the action;
- (d) the applicant's or enrollee's right to a hearing;
- (e) how an applicant or enrollee may request a hearing;

and

(f) the applicant's or enrollee's right to represent himself, or use legal counsel, a friend, relative, or other spokesperson.

(4) The Department need not give ten-day notice of termination if:

- (a) the child is deceased;
- (b) the child has moved out of state and is not expected to return;
- (c) the child has entered a public institution; or
- (d) the child has enrolled in other health insurance coverage, in which case eligibility ends the day before the new coverage begins.

#### **R382-10-23. Case Closure or Withdrawal.**

The Department shall terminate a child's enrollment upon enrollee request or upon discovery that the child is no longer eligible. An applicant may withdraw an application for CHIP benefits any time prior to approval of the application.

#### **KEY: children's health benefits**

**July 1, 2007**

**Notice of Continuation June 10, 2003**

**26-1-5**

**26-40**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-2A. Inpatient Hospital Services.**

**R414-2A-1. Introduction and Authority.**

This rule defines the scope of inpatient hospital services that are 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 440.10.

**R414-2A-2. Definitions.**

(1) "Admission" means the acceptance of a Medicaid client for inpatient hospital services.

(2) "Diagnosis Related Group (DRG)" is the CMS-coding that determines reimbursement for the resources that a hospital uses to treat a client with a specific diagnosis or medical need and is further described in R414-2A-9 of this rule.

(3) "Hyperbaric Oxygen Therapy" is therapy that places the patient in an enclosed pressure chamber for medical treatment.

(4) "Inpatient" is an individual whose severity of illness requires 24 hours or more of continuous care in a hospital.

(5) "Inpatient Hospital Services" are services that a hospital provides for the care and treatment of inpatients with disorders other than mental illness, under the direction of a physician or other practitioner of the healing arts.

(6) "Leave of Absence" from an inpatient facility is a patient's absence for therapeutic or rehabilitative purposes where the patient does not return by midnight of the same day.

(7) "Observation" means monitoring a patient to evaluate the patient's condition, symptoms, diagnosis, or appropriateness of inpatient admission.

(8) "Other Practitioner of the Healing Arts" means a doctor of dental surgery or a podiatrist.

(9) "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.

**R414-2A-3. Client Eligibility Requirements.**

Inpatient 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.

**R414-2A-4. Hospital Admission Requirements.**

(1) Each hospital providing inpatient services must have a utilization review plan as described in 42 CFR 482.30.

(2) The attending physician or other practitioner of the healing arts must sign a physician acknowledgement statement that meets the requirements of 42 CFR 412.46.

(3) For psychiatric patients, the attending physician must certify and recertify the need for inpatient psychiatric services as described in 42 CFR 441.152.

**R414-2A-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 inpatient psychiatric services from the prepaid mental health contractor for the client's county of residence.

**R414-2A-6. Service Coverage.**

(1) Inpatient hospital services encompass all medically necessary and therapeutic medical services and supplies that the physician or other practitioner of the healing arts orders that are appropriate for the diagnosis and treatment of a patient's illness.

(2) The Department does not pay for physician services

rendered by a non-Medicaid provider.

(3) Diagnostic services performed by the admitting hospital or by an entity wholly owned or operated by the hospital within three days prior to the date of admission to the hospital, are inpatient services.

(4) Medical supplies, appliances, drugs, and equipment required for the care and treatment of a client during an inpatient stay are reimbursed as part of payment under the DRG.

(5) Services associated with pregnancy, labor, and vaginal or C-section delivery are reimbursed as inpatient service as part of payment under the DRG, even if the stay is less than 24 hours.

(6) Services provided to an inpatient that could be provided on an outpatient basis are reimbursed as part of payment under the DRG.

(7) Inpatient hospital psychiatric services are available only to clients not residing in a county covered by a prepaid mental health plan.

**R414-2A-7. Limitations.**

(1) Inpatient admissions for 24 hours or more solely for observation or diagnostic evaluation do not qualify for reimbursement under the DRG system.

(2) Inpatient hospital care for treatment of alcoholism or drug dependency is limited to medical treatment of symptoms associated with drug or alcohol detoxification.

(3) Abortion procedures must first be reviewed and preauthorized by the Department as meeting the requirements of Utah Code 26-18-4 and 42 CFR 441.203.

(4) Sterilization and hysterectomy procedures must first be reviewed and preauthorized by the Department as meeting the requirements of 42 CFR 441, Subpart F.

(5) Organ transplant services are governed by R414-10A, Transplant Services Standards.

(6) Take home supplies, dressings, non-rental durable medical equipment, and drugs are reimbursed as part of payment under the DRG.

(7) Hyperbaric oxygen therapy is limited to service in a hospital facility in which the hyperbaric unit is accredited as a level one facility by the Undersea and Hyperbaric Medical Society.

(8) Inpatient services solely for pain management do not qualify for reimbursement under the DRG system. Pain management is adjunct to other Medicaid services.

(9) Medicaid does not cover inpatient admissions for the treatment of eating disorders.

(10) Physician services provided by a physician who is paid by a hospital are inpatient services reimbursed as part of payment billed on a 1500 form. Payment for physician services provided by providers who are not paid by the hospital is governed by R414-10, Physician Services.

(11) Inpatient rehabilitation services must first be reviewed and preauthorized.

(12) Inpatient psychiatric services not covered by mental health contractual agreements must first be reviewed and preauthorized by the Department to assure that the admission meets the requirements of 42 CFR 412.27 and Part 441, Subpart D.

**R414-2A-8. Coinsurance.**

Each Medicaid client is responsible for a coinsurance payment as established in the Utah State Medicaid Plan and incorporated by reference in R414-1.

**R414-2A-9. Reimbursement Methodology.**

(1) Payments for inpatient hospital services are paid on a prospectively determined amount for each qualifying patient discharge under a Diagnosis Related Group (DRG) system. DRG weights are established to recognize the relative amount of resources consumed to treat a particular type of patient. The

DRG classification scheme assigns each hospital patient to one of over 500 categories or DRGs based on the patient's diagnosis, age and sex, surgical procedures performed, complicating conditions, and discharge status. Each DRG is assigned a weighting factor which reflects the quantity and type of hospital services generally needed to treat a patient with that condition. A preset reimbursement is assigned to each DRG. The DRG system allows for outliers for those discharges that have significant variance from the norm.

(2) For purposes of reimbursement, the day of admission is counted as a full day and the day of discharge is not counted.

(3) When a patient receives SNF-level, ICF-level, or other sub-acute care in an acute-care hospital or in a hospital with swing-bed approval, payment is made at the swing-bed rate.

(4) Reimbursement for services in the emergency department is limited to codes and diagnoses that are medically necessary emergency services. The provider manual lists appropriate emergency codes. The provider must list the discharge diagnosis on the claim form as one of the first five diagnoses.

(5) If a patient is readmitted for the same or a similar diagnosis within 30 days of a discharge, the Department may review and evaluate both claims to determine if, based on severity of illness and intensity of service, the claims should be combined into a single DRG payment or paid separately. Cost effectiveness may also be part of this determination but is not a primary factor.

(6) Exceptions to the 30-day readmission policy must still meet the severity of illness requirements for the allowance of a second DRG payment and are limited to:

(a) pregnancy;

(b) chemotherapy; and

(c) hyperbilirubinemia appearing in newborn infants within the first week of life.

(7) The Department pays for physician interpretation of laboratory services separately from the DRG payment. Laboratory technical services are included within the DRG for the inpatient admission.

(8) If an observation stay meets the intensity and severity for inpatient hospitalization and exceeds 24 hours, the patient becomes an inpatient and the observation services are reimbursed as part of payment under the DRG.

**KEY: Medicaid**

**June 26, 2007**

**Notice of Continuation November 26, 2002**

**26-1-5**

**26-18-3**

**26-18-3.5**

**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 Requirements.**

(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 hyperbaric unit is accredited as a level one facility 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.

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**26-18-2.3**

**26-18-3(2)**

**26-18-4**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-61. Home and Community-Based Services Waivers.****R414-61-1. Introduction and Authority.**

(1) This rule establishes authority for the Department of Health to administer all Section 1915(c) waivers.

(2) The rule is authorized by Section 26-18-3 and Section 1915(c) of the Social Security Act.

**R414-61-2. Incorporation by Reference.**

The Department incorporates by reference the following home and community-based services waivers:

(1) Waiver for Technology Dependent/Medically Fragile Individuals, Effective July 1, 2003;

(2) Waiver for Individuals Age 65 or Older, Effective July 1, 2005;

(3) Waiver for Individuals with Acquired Brain Injuries, Effective July 1, 2004;

(4) Waiver for Individuals with Physical Disabilities, Effective July 1, 2006;

(5) Waiver for Individuals with Mental Retardation and Other Related Conditions, Effective July 1, 2005;

(6) New Choices Waiver, Effective April 1, 2007.

These documents are available for public inspection during business hours at the Utah Department of Health, Division of Health Care Financing, located at 288 North 1460 West, Salt Lake City, UT, 84114-3102.

**KEY: Medicaid****June 26, 2007****26-18-3****Notice of Continuation March 11, 2005**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-310. Medicaid Primary Care Network Demonstration Waiver.****R414-310-1. Authority.**

This rule is authorized by Utah Code Sections 26-1-5 and 26-18-3. The Primary Care Network Demonstration is authorized by a waiver of federal Medicaid requirements approved by the federal Center for Medicare and Medicaid Services and allowed under Section 1115 of the Social Security Act. This rule establishes the eligibility requirements for enrollment under the Medicaid Primary Care Network Demonstration.

**R414-310-2. Definitions.**

The following definitions apply throughout this rule:

(1) "Applicant" means an individual who applies for benefits under the Primary Care Network program, but who is not an enrollee.

(2) "Best estimate" means the Department's determination of a household's income for the upcoming certification period based on past and current circumstances and anticipated future changes.

(3) "Co-payment and co-insurance" means a portion of the cost for a medical service for which the enrollee is responsible to pay for services received under the Primary Care Network.

(4) "Deeming" or "deemed" means a process of counting income from a spouse or an alien's sponsor to decide what amount of income after certain allowable deductions, if any, must be considered income to an applicant or enrollee.

(5) "Department" means the Utah Department of Health.

(6) "Enrollee" means an individual who has applied for and been found eligible for the Primary Care Network program and has paid the enrollment fee.

(7) "Enrollment fee" means a payment that an applicant or an enrollee must pay to the Department to enroll in and receive coverage under the Primary Care Network program.

(8) "Employer-sponsored health plan" means health insurance that meets the requirements of R414-320-2 (8) (a) (b) (c) (d) and (e).

(9) "Income averaging" means a process of using a history of past and current income and averaging it over a determined period of time that is representative of future income.

(10) "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.

(11) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.

(12) "Local office" means any Bureau of Eligibility Services or Department of Workforce Services office location, outreach location, or telephone location where an individual may apply for medical assistance.

(13) "Open enrollment" means a time period during which the Department accepts applications for the Primary Care Network program.

(14) "Primary Care Network" or "PCN" means the program for benefits under the Medicaid Primary Care Network Demonstration Waiver.

(15) "Recertification month" means the last month of the eligibility period for an enrollee.

(16) "Spouse" means any individual who has been married to an applicant or enrollee and has not legally terminated the marriage.

(17) "Verifications" means the proofs needed to decide if an individual meets the eligibility criteria to be enrolled in the program. Verifications may include hard copy documents such as a birth certificate, computer match records such as Social Security benefits match records, and collateral contacts with

third parties who have information needed to determine the eligibility of the individual.

(18) "Student health insurance plan" means a health insurance plan that is offered to students directly through a university or other educational facility or through a private health insurance company that offers coverage plans specifically for students.

(19) "Utah's Premium Partnership for Health Insurance" or "UPP" means the program described in R414-320.

**R414-310-3. Applicant and Enrollee Rights and Responsibilities.**

(1) Any person may apply during an open enrollment period who meets the limitations set by the Department. The open enrollment period may be limited to:

- (a) individuals with children under age 19 in the home;
- (b) individuals without children under age 19 in the home;
- (c) those enrolled in the PCN program;
- (d) those enrolled in the UPP program;
- (e) those enrolled in the General Assistance program;
- (f) those that were enrolled in the Medicaid program within the last thirty days prior to the beginning of the open enrollment period; or

(g) such other group designated in advance by the Department consistent with efficient administration of the program.

(2) If a person needs help to apply, he may have a friend or family member help, or he may request help from the local office or outreach staff.

(3) Applicants and enrollees must provide requested information and verifications within the time limits given. The Department will allow the client at least 10 calendar days from the date of a request to provide information and may grant additional time to provide information and verifications upon request of the applicant or enrollee.

(4) Applicants and enrollees have a right to be notified about the decision made on an application, or other action taken that affects their eligibility for benefits.

(5) Applicants and enrollees may look at information in their case file that was used to make an eligibility determination.

(6) Anyone may look at the eligibility policy manuals located at any Department local office.

(7) An individual must repay any benefits received under the Primary Care Network program if the Department determines that the individual was not eligible to receive such benefits.

(8) Applicants and enrollees must report certain changes to the local office within ten calendar days of the day the change becomes known. The local office shall notify the applicant at the time of application of the changes that the enrollee must report. Some examples of reportable changes include:

(a) An enrollee in the Primary Care Network program begins to receive coverage under a group health plan or other health insurance coverage.

(b) An enrollee in the Primary Care Network program begins to have access to coverage under a group health plan or other health insurance coverage.

(c) An enrollee in the Primary Care Network program begins to receive coverage under, or begins to have access to student health insurance, Medicare Part A or B, or the Veteran's Administration Health Care System.

(d) An enrollee leaves the household or dies.

(e) An enrollee or the household moves out of state.

(f) Change of address of an enrollee or the household.

(g) An enrollee enters a public institution or an institution for mental diseases.

(9) An applicant or enrollee has a right to request an agency conference or a fair hearing as described in R414-301-5 and R414-301-6.

(10) An enrollee in the Primary Care Network program is responsible for paying any required co-payments or co-insurance amounts to providers for medical services the enrollee receives that are covered under the Primary Care Network program.

**R414-310-4. General Eligibility Requirements.**

(1) The provisions of R414-302-1, R414-302-2, R414-302-3, R414-302-5, and R414-302-6 apply to applicants and enrollees of the Primary Care Network program.

(2) An individual who is not a U.S. citizen and does not meet the alien status requirements of R414-302-1 is not eligible for any services or benefits under the Primary Care Network program.

(3) Applicants and enrollees are not required to provide Duty of Support information to enroll in the Primary Care Network program. An individual who would be eligible for Medicaid but fails to cooperate with Duty of Support requirements required by the Medicaid program cannot enroll in the Primary Care Network program.

(4) Individuals who must pay a spenddown or premium to receive Medicaid can enroll in the Primary Care Network program if they meet the program eligibility criteria in any month they do not receive Medicaid as long as the Department has not stopped enrollment under the provisions of R414-310-16(2). If the Department has stopped enrollment, the individual must wait for an applicable open enrollment period to enroll in the PCN program.

**R414-310-5. Verification and Information Exchange.**

(1) The provisions of R414-308-4 apply to applicants and enrollees of the Primary Care Network program.

(2) The Department safeguards information about applicants and enrollees according to the provisions found in R414-301-4.

**R414-310-6. Residents of Institutions.**

The provisions of R414-302-4(1), (3) and (4) apply to applicants and enrollees of the Primary Care Network program.

**R414-310-7. Creditable Health Coverage.**

(1) The Department adopts 42 CFR 433.138(b) and 435.610, 2004 ed., and Section 1915(b) of the Compilation of the Social Security Laws, in effect January 1, 2004, which are incorporated by reference.

(2) An individual who is covered under a group health plan or other creditable health insurance coverage, as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), at the time of application is not eligible for enrollment in the Primary Care Network program. This includes coverage under Medicare Part A or B, student health insurance, and the Veteran's Administration Health Care System. However, an individual who is enrolled in the Utah Health Insurance Pool may enroll in the Primary Care Network program.

(3) Eligibility for the Primary Care Network program for an individual who has access to but has not yet enrolled in health insurance coverage through an employer or a spouse's employer will be determined as follows:

(a) If the cost of the least expensive health insurance plan offered by the employer does not exceed 15% of the household's gross income, the individual is not eligible for the Primary Care Network program.

(b) If the cost of the least expensive health insurance plan offered by the employer exceeds 15% of the household's gross income, and the employer offers a health plan that meets the requirements of R414-320-2 (8) (a) (b) (c) (d) and (e), the individual may choose to enroll in either the Primary Care Network program or the UPP program unless enrollment for one of these programs has been stopped under the provisions of

R414-310-16(2).

(c) If the cost of the least expensive health insurance plan offered by the employer exceeds 15% of the household's gross income, but the employer does not offer a health plan that meets the requirements in R414-320-2 (8) (a) (b) (c) (d) and (e), the individual may only enroll in the PCN program.

(d) The individual is considered to have access to coverage even if the employer offers coverage only during an open enrollment period.

(4) An individual who is covered under Medicare Part A or Part B, or who could enroll in Medicare Part B coverage, is not eligible for enrollment in the Primary Care Network program, even if the individual must wait for a Medicare open enrollment period to apply for Medicare benefits.

(5) An individual who is enrolled in the Veteran's Administration (VA) Health Care System is not eligible for enrollment in the Primary Care Network program. An individual who is eligible to enroll in the VA Health Care System, but who has not yet enrolled, may be eligible for the Primary Care Network program while waiting for enrollment in the VA Health Care System to become effective. To be eligible during this waiting period, the individual must initiate the process to enroll in the VA Health Care System. Eligibility for the Primary Care Network program ends once the individual becomes enrolled in the VA Health Care System.

(6) Individuals who are full-time students and who can enroll in student health insurance coverage are not eligible to enroll in the Primary Care Network program.

(7) The Department shall deny eligibility if the applicant or spouse has voluntarily terminated health insurance coverage within the six months immediately prior to the application date for enrollment under the Primary Care Network program. An applicant or an applicant's spouse can be eligible for the Primary Care Network if their prior insurance ended more than six months before the application date. An applicant or applicant's spouse who voluntarily discontinues health insurance coverage under a COBRA plan or under the state Health Insurance Pool, or who is involuntarily terminated from an employer's plan may be eligible for the Primary Care Network program without a six month waiting period.

(8) Notwithstanding the limitations in this section, an individual with creditable health coverage operated or financed by the Indian Health Services may enroll in the Primary Care Network program.

(9) Individuals must report at application and recertification whether each individual for whom enrollment is being requested has access to or is covered by a group health plan or other creditable health insurance coverage. This includes coverage that may be available through an employer or a spouse's employer, a student health insurance plan, Medicare Part A or B, or the VA Health Care System.

(10) The Department shall deny an application or recertification if the applicant or enrollee fails to respond to questions about health insurance coverage for any individual the household seeks to enroll or recertify in the program.

**R414-310-8. Household Composition.**

(1) The following individuals are included in the household when determining household size for the purpose of computing financial eligibility for the Primary Care Network Program:

- (a) the individual;
- (b) the individual's spouse living with the individual;
- (c) any children of the individual or the individual's spouse who are under age 19 and living with the individual; and
- (d) an unborn child if the individual is pregnant, or if the applicant's legal spouse who lives in the home is pregnant.

(2) A household member who is temporarily absent for schooling, training, employment, medical treatment or military

service, or who will return home to live within 30 days from the date of application is considered part of the household.

**R414-310-9. Age Requirement.**

(1) An individual must be at least 19 and not yet 65 years of age to enroll in the Primary Care Network program.

(2) The month in which an individual's 19th birthday occurs is the first month the person can be eligible for enrollment in the Primary Care Network program.

(a) If the individual could qualify for Medicaid in that month without paying a spenddown or premium, the individual cannot enroll in the Primary Care Network program until the following month.

(b) The individual could enroll in the Children's Health Insurance Program and it is an open enrollment period for CHIP for that month, the individual cannot enroll in the Primary Care Network program until the following month.

(3) The benefit effective date for the Primary Care Network program cannot be earlier than the date of the 19th birthday.

(4) The individual's 65th birthday month is the last month the person can be eligible for enrollment in the Primary Care Network program.

**R414-310-10. Income Provisions.**

(1) To be eligible to enroll in the Primary Care Network program, a household's countable gross income must be equal to or less than 150% of the federal non-farm poverty guideline for a household of the same size. An individual with income above 150% of the federal poverty guideline is not allowed to spend down income to be eligible under the Primary Care Network program. All gross income, earned and unearned, received by the individual and the individual's spouse is counted toward household income, unless this section specifically describes a different treatment of the income.

(2) Any income in a trust that is available to, or is received by a household member, is countable income.

(3) Payments received from the Family Employment Program, Working Toward Employment program, refugee cash assistance or adoption support services as authorized under Title 35A, Chapter 3 are countable income.

(4) Rental income is countable income. The following expenses can be deducted:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property;

(c) utility costs only if they are paid by the owner; and

(d) interest only on a loan or mortgage secured by the rental property.

(5) Cash contributions made by non-household members are counted as income unless the parties have a signed written agreement for repayment of the funds.

(6) The interest earned from payments made under a sales contract or a loan agreement is countable income to the extent that these payments will continue to be received during the certification period.

(7) Needs-based Veteran's pensions are counted as income. Only the portion of a Veteran's Administration check to which the individual is legally entitled is countable income.

(8) Child support payments received for a dependent child living in the home are counted as that child's income.

(9) In-kind income, which is goods or services provided to the individual from a non-household member and which is not in the form of cash, for which the individual performed a service or which is provided as part of the individual's wages is counted as income. In-kind income for which the individual did not perform a service, or did not work to receive, is not counted as income.

(10) Supplemental Security Income and State Supplemental payments are countable income.

(11) Income, unearned and earned, 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 assistance.

(12) Income that is defined in 20 CFR 416 Subpart K, Appendix, 2004 edition, which is incorporated by reference, is not countable.

(13) Payments that are prohibited under other federal laws from being counted as income to determine eligibility for federally-funded medical assistance programs are not countable.

(14) Death benefits are not countable income to the extent that the funds are spent on the deceased person's burial or last illness.

(15) A bona fide loan that an individual must repay and that the individual has contracted in good faith without fraud or deceit, and genuinely endorsed in writing for repayment is not countable income.

(16) Child Care Assistance under Title XX is not countable income.

(17) Reimbursements of Medicare premiums received by an individual from Social Security Administration or the State Department of Health are not countable income.

(18) Earned and unearned income of a child who is under age 19 is not counted if the child is not the head of a household.

(19) Educational income, such as educational loans, grants, scholarships, and work-study programs are not countable income. The individual must verify enrollment in an educational program.

(20) Reimbursements for employee work expenses incurred by an individual are not countable income.

(21) The value of food stamp assistance is not countable income.

**R414-310-11. Budgeting.**

This section describes methods that the Department uses to determine the household's countable monthly or annual income.

(1) The gross income of all household members is counted in determining the eligibility of the applicant or enrollee, unless the income is excluded under this rule. Only expenses that are required to make an income available to the individual are deducted from the gross income. No other deductions are allowed.

(2) The Department determines monthly income by taking into account the months of pay where an individual receives a fifth paycheck when paid weekly, or a third paycheck when paid every other week. The Department multiplies the weekly amount by 4.3 to obtain a monthly amount. The Department multiplies income paid biweekly by 2.15 to obtain a monthly amount.

(3) The Department shall determine an individual's eligibility prospectively for the upcoming certification period at the time of application and at each recertification for continuing eligibility. The Department determines prospective eligibility by using the best estimate of the household's average monthly income that is expected to be received or made available to the household during the upcoming certification period. The Department prorates income that is received less often than monthly over the certification period to determine an average monthly income. The Department may request prior years' tax returns as well as current income information to determine a

household's income.

(4) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The Department may use a combination of methods to obtain the most accurate best estimate. The best estimate may be a monthly amount that is expected to be received each month of the certification period, or an annual amount that is prorated over the certification period. The Department may use different methods for different types of income received in the same household.

(5) The Department determines farm and self-employment income by using the individual's most recent tax return forms. If tax returns are not available, or are not reflective of the individual's current farm or self-employment income, the Department may request income information from the most recent time period during which the individual had farm or self-employment income. The Department deducts 40% of the gross income as a deduction for business expenses to determine the countable income of the individual. For individuals who have business expenses greater than 40%, the Department may exclude more than 40% if the individual can demonstrate that the actual expenses were greater than 40%. The Department deducts the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses.

(6) The Department may annualize income for any household and specifically for households that have self-employment income, receive income sporadically under contract or commission agreements, or receive income at irregular intervals throughout the year.

(7) The Department may request additional information and verification about how a household is meeting expenses if the average household income appears to be insufficient to meet the household's living expenses.

#### **R414-310-12. Assets.**

There is no asset test for eligibility in the Primary Care Network program.

#### **R414-310-13. Application Procedure.**

(1) The Department adopts 42 CFR 435.907 and 435.908, 2004 ed., which are incorporated by reference. The Department shall maintain case records as defined in R414-308-8.

(2) The applicant must complete and sign a written application or complete an application on-line via the Internet to enroll in the Primary Care Network program.

(a) The Department accepts any Department-approved application form for medical assistance programs offered by the state as an application for the Primary Care Network program. The local office eligibility worker may require the applicant to provide additional information that was not asked for on the form the applicant completed, and may require the applicant to sign a signature page from a hardcopy medical application form.

(b) If an applicant cannot write, he must make his mark on the application form and have at least one witness to the signature. A legal guardian or a person with power of attorney may sign the application form for the applicant.

(c) An authorized representative may apply for the applicant if unusual circumstances prevent the individual from completing the application process himself. The applicant must sign the application form if possible.

(3) The application date is the date the agency receives a signed application form at a local office by 5:00 p.m. on a business day. This applies to paper applications delivered in person or by mail, paper applications sent via facsimile transmission, and electronic applications sent via the internet. If a local office receives an application after 5:00 p.m. on a business day, the date of application is the next business day.

(4) The application date for applications delivered to an outreach location is as follows:

(a) If the application is delivered at a time when the outreach staff is working at that location, the date of application is the date the outreach staff receives the application.

(b) If the application is delivered at a time when the outreach office is closed, including being closed for weekends or holidays, the date of application is the last business day that a staff person from the state agency was available to receive or pick up applications from the location.

(5) The due date for verifications needed to complete an application and determine eligibility is 5:00 p.m. on the last day of the application period.

(6) If an applicant has a legal guardian, a person with a power of attorney, or an authorized representative, the local office shall send decision notices, requests for information, and forms that must be completed to both the individual and the individual's representative, or to just the representative if requested or if determined appropriate.

(7) The Department shall reinstate a medical case without requiring a new application if the case was closed in error.

(8) The Department shall continue enrollment without requiring a new application if the case was closed for failure to complete a recertification or comply with a request for information or verification:

(a) if the enrollee complies before the effective date of the case closure or by the end of the month immediately following the month the case was closed; and

(b) the individual continues to meet all eligibility requirements.

(9) An applicant may withdraw an application for the Primary Care Network program any time before the Department completes an eligibility decision on the application.

(10) The applicant shall pay an annual enrollment fee to enroll in the Primary Care Network Program once the local office has determined that the individual meets the eligibility criteria for enrollment.

(a) Coverage does not begin until the Department receives the enrollment fee.

(b) The enrollment fee covers both the individual and the individual's spouse if the spouse is also eligible for enrollment in the Primary Care Network Program.

(c) The enrollment fee is required at application and at each recertification.

(d) The enrollment fee must be paid to the local office in cash, or by check or money order made out to the Department of Health or to the Department of Workforce Services.

(e) The enrollment fee for an individual or married couple receiving General Assistance from the Department of Workforce Services is \$15. The enrollment fee for an individual or couple who does not receive General Assistance but whose countable income is less than 50 percent of the federal poverty guideline applicable their household size is \$25. The enrollment fee for any other individual or married couple is \$50.

(f) The Department may refund the enrollment fee if it decides the person was ineligible for the program; however, the Department may retain the enrollment fee to the extent that the individual owes any overpayment of benefits that were paid in error on behalf of the individual by the Department.

(11) If an eligible household requests enrollment for a spouse, the application date for the spouse is the date of the request. A new application form is not required; however, the household shall provide the information necessary to determine eligibility for the spouse, including information about access to creditable health insurance, including Medicare Part A or B, student health insurance, and the VA Health Care System.

(a) Coverage or benefits for the spouse will be allowed from the date of request or the date an application is received through the end of the current certification period.

(b) A new enrollment fee is not required to add a spouse during the current certification period.

(c) A new income test is not required to add the spouse for the months remaining in the current certification period.

(d) A spouse may be added only if the Department has not stopped enrollment under section R414-310-16.

(e) Income of the spouse will be considered and payment of the enrollment fee will be required at the next scheduled recertification.

**R414-310-14. Eligibility Decisions and Recertification.**

(1) The Department adopts 42 CFR 435.911 and 435.912, 2004 ed., which are incorporated by reference.

(2) When an individual applies for PCN, the local office shall determine if the individual is eligible for Medicaid. An individual who qualifies for Medicaid without paying a spenddown or a premium cannot enroll in the Primary Care Network program. If the individual appears to qualify for Medicaid, but additional information is required to determine eligibility for Medicaid, the applicant must provide additional information requested by the eligibility worker. Failure to provide the requested information shall result in the application being denied.

(a) If the individual must pay a spenddown or premium to qualify for Medicaid, the individual may choose to enroll in the PCN program if it is an open enrollment period, and the individual meets all the applicable criteria for eligibility. If the PCN program is not in an enrollment period, the individual must wait for an open enrollment period.

(b) At recertification for PCN, the local office shall first review eligibility for Medicaid. If the individual qualifies for Medicaid without a spenddown or premium, the individual cannot be reenrolled in the PCN program. If the individual appears to qualify for Medicaid, the applicant must provide additional information requested by the eligibility worker. Failure to provide the requested information shall result in the application being denied.

(3) To enroll, the individual must meet the eligibility criteria for enrollment in the Primary Care Network program, pay the enrollment fee, and it must be a time when the Department has not stopped enrollment under section R414-310-16.

(4) The local office shall complete a determination of eligibility or ineligibility for each application unless:

(a) the applicant voluntarily withdraws the application and the local office sends a notice to the applicant to confirm the withdrawal;

(b) the applicant died; or

(c) the applicant cannot be located; or

(d) the applicant has not responded to requests for information within the 45 day application period or by the date the eligibility worker asked the information or verifications to be returned, if that date is later.

(5) The enrollee must recertify eligibility at least every 12 months.

(6) The local office eligibility worker may require the applicant, the applicant's spouse, or the applicant's authorized representative to attend an interview as part of the application and recertification process. Interviews may be conducted in person or over the telephone, at the local office eligibility worker's discretion.

(7) The enrollee must complete the recertification process and provide the required verifications by the end of the recertification month.

(a) If the enrollee completes the recertification, continues to meet all eligibility criteria and pays the enrollment fee, coverage will be continued without interruption.

(b) The case will be closed at the end of the recertification month if the enrollee does not complete the recertification process and provide required verifications by the end of the recertification month.

(c) If an enrollee does not complete the recertification by the end of the recertification month, but completes the process and provides required verifications by the end of the month immediately following the recertification month, coverage will be reinstated as of the first of that month if the individual continues to be eligible and pays the enrollment fee.

(8) The eligibility worker may extend the recertification due date if the enrollee demonstrates that a medical emergency, death of an immediate family member, natural disaster or other similar cause prevented the enrollee from completing the recertification process on time.

**R414-310-15. Effective Date of Enrollment and Enrollment Period.**

(1) The effective date of enrollment in the Primary Care Network program is the day that a completed and signed application is received by the local office as defined in R414-310-13(3) and R414-310-13(4)(a) and (b) and the applicant meets all eligibility criteria, including payment of the enrollment fee. The Department shall not provide any benefits or pay for any services received before the effective enrollment date.

(2) The effective date of re-enrollment for a recertification in the Primary Care Network program is the first day of the month after the recertification month, if the recertification is completed as described in R414-310-14(7).

(3) If the enrollee does not complete the recertification as described in R414-310-14(7), and the enrollee does not have good cause for missing the deadline, the case will remain closed and the individual may reapply during another open enrollment period.

(4) An individual found eligible for the Primary Care Network program shall be eligible from the effective date through the end of the first month of eligibility and for the following 12 months. If the enrollee completes the recertification process in accordance with R414-310-14(7) and continues to be eligible, the recertification period will be for an additional 12 months beginning the month following the recertification month. Eligibility could end before the end of a 12-month certification period for any of the following reasons:

(a) the individual turns age 65;

(b) the individual becomes entitled to receive student health insurance, Medicare, or becomes covered by Veterans Administration Health Insurance;

(c) the individual dies;

(d) the individual moves out of state or cannot be located;

(e) the individual enters a public institution or an Institute for Mental Disease.

(5) An individual enrolled in the Primary Care Network program loses eligibility when the individual enrolls in any type of group health plan or other creditable health insurance coverage including an employer-sponsored health plan, except under the following circumstances:

(a) An individual who gains access to or enrolls in an employer-sponsored health plan may switch to the UPP program if the individual notifies the local office before the coverage in the employer-sponsored health plan begins, and if the requirements defined in R414-310-7(3)(b) are met.

(b) An individual who enrolls in the Utah Health Insurance Pool (H.I.P.) does not lose eligibility in the Primary Care Network.

(6) If a Primary Care Network case closes for any reason, other than to become covered by another Medicaid program, and remains closed for one or more calendar months, the individual must submit a new application to the local office during an enrollment period to reapply. The individual must meet all the requirements of a new applicant including paying a new enrollment fee.

(7) If a Primary Care Network case closes because the enrollee is eligible for another Medicaid program, the individual

may reenroll in the Primary Care Network program if there is no break in coverage between the programs, even if the State has stopped enrollment under R414-310-16(2).

(a) If the individual's 12-month certification period has not ended, the individual may reenroll for the remainder of that certification period. The individual is not required to complete a new application or have a new income eligibility determination. The individual must continue to meet the criteria defined in R414-310-7. The individual is not required to pay a new enrollment fee for the months remaining in the current certification period.

(b) If the 12-month certification period from the prior enrollment has ended, the individual may still reenroll in the Primary Care Network program. However, the individual must complete a new application, meet eligibility and income guidelines, and pay a new enrollment fee for the new certification period.

(c) If there is a break in coverage of one or more calendar months between programs, the individual must reapply during an open enrollment period for the Primary Care Network program.

May 23, 2007

Notice of Continuation June 13, 2007

26-18-1

26-1-5

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**R414-310-16. Enrollment Limitation.**

(1) The Department shall limit enrollment in the Primary Care Network program.

(2) The Department may stop enrollment of new individuals at any time based on availability of funds.

(3) The Department and local offices shall not accept applications nor maintain waiting lists during a time period that enrollment of new individuals is stopped.

(4) If enrollment has not been stopped, individuals may apply for the Primary Care Network program.

(5) An individual who becomes ineligible for Medicaid, or who must pay a spenddown or premium for Medicaid, but who was not previously enrolled in the Primary Care Network program, may apply to enroll in the Primary Care Network program if the State has not stopped enrollment under R414-310-16(2). If enrollment has been stopped, the individual must wait for an open enrollment period to apply.

**R414-310-17. Notice and Termination.**

(1) The department adopts 42 CFR 431.206, 431.210, 431.211, 431.213, 431.214, 435.919, 2004 ed., which are incorporated by reference.

(2) The local office shall notify an applicant or enrollee in writing of the eligibility decision made on the application or the recertification.

(3) The local office shall terminate an individual's enrollment upon enrollee request or upon discovery that the individual is no longer eligible.

(4) The local office shall terminate an individual's enrollment if the individual fails to complete the recertification process on time.

**R414-310-18. Improper Medical Coverage.**

(1) An individual who receives benefits under the Primary Care Network program for which he is not eligible is responsible to repay the Department for the cost of the benefits received.

(2) An alien and the alien's sponsor are jointly liable for benefits received for which the individual was not eligible.

(3) An overpayment of benefits includes all amounts paid by the Department for medical services or other benefits on behalf of an enrollee or for the benefit of the enrollee during a time period that the enrollee was not actually eligible to receive such benefits.

**KEY: Medicaid, primary care, covered-at-work, demonstration**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-401. Nursing Care Facility Assessment.****R414-401-1. Introduction and Authority.**

(1) This rule implements the assessment imposed on certain nursing care facilities by Utah Code Title 26, Chapter 35a.

(2) The rule is authorized by Section 26-1-30 and Utah Code Title 26, Chapter 35a.

**R414-401-2. Definitions.**

(1) The definitions in Section 26-35a-103 apply to this rule.

(2) The definitions in R414-1 apply to this rule.

**R414-401-3. Assessment.**

(1) The collection agent for the nursing care facility assessment shall be the Department, which is vested with the administration and enforcement of the assessment.

(2) The uniform rate of assessment for every facility is \$8.96 per non-Medicare patient day provided by the facility, except that intermediate care facilities for the mentally retarded shall be assessed at the uniform rate of \$5.52 per patient day. Swing bed facilities shall be assessed the uniform rate for nursing facilities effective January 1, 2006. The Utah State Veteran's Home is exempted from this assessment and this rule.

(3) Each nursing care facility must pay its assessment monthly on or before the last day of the next succeeding month.

(4) The Department shall extend the time for paying the assessment to the next month succeeding the federal approval of a Medicaid State Plan Amendment allowing for the assessment, and consequent reimbursement rate adjustments.

**R414-401-4. Reporting and Auditing Requirements.**

(1) Each nursing care facility shall, on or before the end of the succeeding month, file with the Department a report for the month, and shall remit with the report the assessment required to be paid for the month covered by the report.

(2) Each report shall be on the Department-approved form, and shall disclose the total number of patient days in the facility, by designated category, during the period covered by the report.

(3) Each nursing care facility shall supply the data required in the report and certify that the information is accurate to the best of the representative's knowledge.

(4) Each nursing care facility subject to this assessment shall maintain complete and accurate records. The Department may inspect each nursing care facility's records and the records of the facility's owners to verify compliance.

(5) Separate nursing care facilities owned or controlled by a single entity may combine reports and payments of assessments provided that the required data are clearly set forth for each separately reporting nursing care facility.

(6) The Department shall extend the time for making required reports to the next month succeeding the federal approval of a Medicaid State Plan Amendment allowing for the assessment, and consequent reimbursement rate adjustments.

**R414-401-5. Penalties and Interest.**

The penalties for failure to file a report, to pay the assessment due within the time prescribed, to pay within 30 days of a notice of deficiency of the assessment, for underpayment of the assessment, for intent to evade the assessment are as provided in Utah Code Section 26-35a-105.

**KEY: Medicaid, nursing facility**  
**July 1, 2007**

**26-1-30**  
**26-35a**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-504. Nursing Facility Payments.****R414-504-1. Introduction.**

(1) This rule adopts a case mix or severity based payment system, commonly referred to as RUGS (Resource Utilization Group System) for nursing facilities that are not ICF/MRs. This system reimburses facilities based on the case mix index of the facility. It also establishes rates for ICF/MR facilities.

(2) This rule is authorized by Utah Code sections 26-1-5, 26-18-3, and 26-35a.

**R414-504-2. Definitions.**

The definitions in R414-1-2 and R414-501-2 apply to this rule. In addition:

(1) "Behaviorally complex resident" means a long-term care resident with a severe, medically based behavior disorder, including traumatic brain injury, dementia, Alzheimer's, Huntington's Chorea, which causes diminished capacity for judgment, retention of information or decision-making skills, or a resident, who meets the Medicaid criteria for nursing facility level of care and who has a medically-based mental health disorder or diagnosis and has a high level resource use in the nursing facility not currently recognized in the case mix.

(2) "Case Mix Index" means a score assigned to each facility based on the average of the Medicaid patients' RUGS scores for that facility.

(3) "Facility Case Mix Rate" means the rate the Department issues to a facility for a specified period of time. This rate utilizes the case mix index for a provider, labor wage index application and other case mix related costs.

(4) "FCP" means the Facility Cost Profile report filed by the provider on an annual basis.

(5) "Minimum Data Set" (MDS) means a set of screening, clinical and functional status elements, including common definitions and coding categories, that form the foundation of the comprehensive assessment for all residents of long term care facilities certified to participate in Medicaid.

(6) "Nursing Costs" means the most current costs from the annual FCP report reported on lines 070-012 Nursing Admin Salaries and Wages; 070-013 Nursing Admin Tax and Benefits; 070-040 Nursing Direct Care Salaries and Wages; 070-041 Nursing Direct Care Tax and Benefits, and 070-050 Purchased Nursing Services.

(7) "Nursing facility" or "facility" means a Medicaid-participating NF, SNF, or a combination thereof, as defined in 42 USC 1396r (a) (1988), 42 CFR 440.150 and 442.12 (1993), and UCA 26-21-2(15).

(8) "Patient day" means the care of one patient during a day of service, excluding the day of discharge.

(9) "Property costs" means the fair rental value (FRV) established by this rule.

(10) "RUGS" means the 34 RUG identification system based on the Resource Utilization Group System established by Medicare to measure and ultimately pay for the labor, fixed costs and other resources necessary to provide care to Medicaid patients. Each "RUG" is assigned a weight based on an assessment of its relative value as measured by resource utilization.

(11) "RUGS score" means a total number based on the individual RUGS derived from a resident's physical, mental and clinical condition, which projects the amount of relative resources needed to provide care to the resident. RUGS is calculated from the information obtained through the submission of the MDS data.

(12) "Sole community provider" means a facility that is not an urban provider and is not within 30 paved road miles of another existing facility and is the only facility:

(a) within a city, if the facility is located within the

incorporated boundaries of a city; or

(b) within the unincorporated area of the county if it is located in an unincorporated area.

(13) "Urban provider" means a facility located in a county which has a population greater than 90,000 persons.

(14) "FRV Data Report" means a report that provides the Department with information relating to capital improvements to be included in the FRV calculation.

(15) "Banked beds" means beds that have been taken off-line by the provider, through the process defined by Utah Department of Health, Bureau of Facility Licensing, to reduce the operational capacity of the facility, but does not reduce the licensed bed capacity. This is used in the FRV calculation.

(16) "Medicaid operational bed capacity" means the number of beds remaining when the weighted Medicaid banked beds are subtracted from the facility's Medicaid certified beds.

(17) "Weighted Medicaid banked beds" means the facility's Medicaid certified beds divided by the facility's total licensed beds, which quotient is then multiplied by the facility's banked beds, rounded-down to the nearest whole number. For example, assume there is a facility with 180 licensed beds, 60 banked beds, and 156 Medicaid certified beds. The 156 Medicaid certified beds are divided by 180 total licensed beds, which equals 0.87, which is then multiplied by 60 banked beds, which equals 52 weighted Medicaid banked beds. The Medicaid operational bed capacity then becomes 156 Medicaid certified beds minus 52 weighted Medicaid banked beds, which equals 104 Medicaid operational beds.

**R414-504-3. Principles of Facility Case Mix Rates and Other Payments.**

The following principles apply to the payment of freestanding and provider based nursing facilities for services rendered to nursing care level I, II, and III Medicaid patients, as defined in R414-502. This rule does not affect the system for reimbursement for intensive skilled Medicaid patient add-on amounts.

(1) Approximately 59% of total payments in aggregate to nursing facilities for nursing care level I, II and III Medicaid patients are based on a prospective facility case mix rate. In addition, these facilities shall be paid a flat basic operating expense payment equal to approximately 29% of the total payments. The balance of the total payments will be paid in aggregate to facilities as required by R414-504-3 based on other authorized factors, including property and behaviorally complex residents, in the proportion that the facility qualifies for the factor.

(2) Each quarter, the Department shall calculate a new case mix index for each nursing facility. The case mix index is based on three months of MDS assessment data. The newly calculated case mix index is applied to a new rate at the beginning of a quarter according to the following schedule:

(a) January, February and March MDS assessments are used for July 1 rates.

(b) April, May and June MDS assessments are used for October 1 rates.

(c) July, August and September MDS assessments are used for January 1 rates.

(d) October, November and December MDS assessments are used for April 1 rates.

(3) MDS data is used in calculating each facility's case mix index. This information is submitted by each facility and, as such, each facility is responsible for the accuracy of its data. The Department may exclude inaccurate or incomplete MDS data from the calculation.

(4) MDS assessments for recipients who are eligible for the "Intensive Skilled" add-on are excluded from the case mix calculation. A facility with less than 20 percent of its total census days as Medicaid days, as reported on its FCP or FRV

data report, is excluded from the state case mix average. The state average case mix index is used to set the rate for that facility.

(5) A facility may apply for a special add-on rate for behaviorally complex residents by filing a written request with the Division of Health Care Financing. The Department may approve an add-on rate if an assessment of the acuity and needs of the patient demonstrates that the facility is not adequately reimbursed by the RUGS score for that patient. The rate is added on for the specific resident's payment and is not subsumed as part of the facility case mix rate. Utah's Bureau of Health Facility Licensure Certification and Resident Assessment will make the determination as to qualification for any additional payment. The Division of Health Care Financing shall determine the amount of any add-on.

(6) Property costs are paid separately from the RUGS rate.

(7) Property costs shall be calculated once per year, each July 1, and reimbursed as a component of the facility rate based on an FRV System.

(a) Under this FRV system, the Department reimburses a facility based on the estimated current value of its capital assets in lieu of direct reimbursement for depreciation, amortization, interest, and rent or lease expenses. The FRV system establishes a nursing facility's bed value based on the age of the facility and total square footage.

(i) The initial age of each nursing facility used in the FRV calculation is determined as of September 15, 2004, using each facility's initial year of construction.

(ii) The age of each facility is adjusted each July 1 to make the facility one year older.

(iii) The age is reduced for replacements, major renovations, or additions placed into service since the facility was built, as reported on the FRV Data Report, provided there is sufficient documentation to support the historical changes.

(A) If a facility adds new beds, these new beds are averaged into the age of the original beds to arrive at the facility's age.

(B) If a facility completed a major renovation (defined as a project with capitalized cost equal to or greater than \$500 per bed) or replacement project, the cost of the project is represented by an equivalent number of new beds.

(I) The renovation or replacement project must have been completed during a 24-month period and reported on an FRV Data Report for the reporting period used for the July 1 rate year and be related to the reasonable functioning of the nursing facility. Renovations unrelated to either the direct or indirect functioning of the nursing facility shall not be used to adjust the facility's age.

(II) The equivalent number of new beds is determined by dividing the cost of the project by the accumulated depreciation per bed of the facility's existing beds immediately before the project.

(III) The equivalent number of new beds is then subtracted from the total actual beds. The result is multiplied by the difference in the year of the completion of the project and the age of the facility, which age is based on the initial construction year or the last reconstruction or renovation project. The product is then divided by the actual number of beds to arrive at the number of years to reduce the age of the facility.

(b) A nursing facility's fair rental value per diem is calculated as follows:

As used in this subsection (b), "capital index" is the percent change in the nursing home "Per bed or person, total cost" row and "3/4" column as found in the two most recent annual R.S. Means Building Construction Cost Data as adjusted by the weighted average total city cost index for Salt Lake City, Utah.

(i) The buildings and fixtures value per licensed bed is \$50,000, which is based upon a standard facility size of at least 450 square feet determined using the R.S. Means Building

Construction Cost Data adjusted by the weighted average total city cost index for Salt Lake City, Utah. To this \$50,000 is added 10% (\$5,000) for land and 10% (\$5,000) for movable equipment. Each nursing facility's total licensed beds are multiplied by this amount to arrive at the "total bed value." The total bed value is trended forward by multiplying it by the capital index and adding it to the total bed value to arrive at the "newly calculated total bed value." The newly calculated total bed value is depreciated, except for the portion related to land, at 1.50 percent per year according to the weighted age of the facility. The maximum age of a nursing facility shall be 35 years. Therefore, nursing facilities shall not be depreciated to an amount less than 47.50 percent or 100 percent minus (1.50 percent times 35) of the newly calculated bed value. There shall be no recapture of depreciation.

(ii) A nursing facility's annual FRV is calculated by multiplying the facility's newly calculated bed value times a rental factor. The rental factor is the sum of the 20-year Treasury Bond Rate as published in the Federal Reserve Bulletin using the average for the calendar year preceding the rate year and a risk value of three percent. Regardless of the result produced in this subsection (ii), the rental factor shall not be less than nine percent or more than 12 percent.

(iii) The facility's annual FRV is divided by the greater of:

(A) the facility's annualized actual resident days during the cost reporting period; and

(B) Seventy-five percent of the annualized Medicaid operational bed capacity of the facility; however, the Department recognizes banked beds only as reported in the most recent FRV Data Report. For example, banked beds as reported on the FRV Data Report for the period ending February 28th/29th would be incorporated in the following July 1 FRV calculation.

(iv) The FRV per diem determined under this fair rental value system shall be no lower than \$8 and no greater than \$22 per patient day.

(c) A pass-through component of the rate is applied and is calculated as follows:

(i) The nursing facility's per diem property tax and property insurance cost is determined by dividing the sum of the facility's allowable property tax and property insurance costs, as reported in the most recent FCP or FRV Data Report, as applicable, by the facility's actual total patient days.

(ii) For a newly constructed or newly certified facility that has not submitted an FCP or FRV Data Report that would be used in the rate period, the per diem property tax and property insurance is the state average daily property tax and property insurance cost of all facilities.

(8) Newly constructed or newly certified facilities' case mix component of the rate shall be paid using the average case mix index. This average case mix index remains in place until sufficient MDS data exist for the facility to calculate the case mix as described in R414-504-3(2). At the following quarter's rate setting, the Department shall issue a new case mix adjusted rate. The property payment to the facility is controlled by R414-504-3(7).

(9) An existing facility acquired by a new owner will continue at the same case mix index and property cost payment established for the facility under the previous ownership for the remainder of the quarter.

(a) The subsequent quarter's case mix index is established using the prior ownership facility MDS data until sufficient MDS data exist for the facility to calculate the case mix as described in R414-504-3(2).

(b) The property component is calculated for the facility at the beginning of the next state fiscal year, as noted in R414-504-3(7).

(10) A sole community provider that is financially distressed may apply for a payment adjustment above the case

mix index established rate. The maximum increase will be 7.5% above the average of the most recent Medicaid daily rate for all Medicaid residents in all freestanding nursing facilities in the state. The maximum duration of this adjustment is for no more than a total of 12 months per facility in any five-year period.

(a) The application shall propose what the adjustment should be and include a financial review prepared by the facility documenting:

(i) the facility's income and expenses for the past 12 months; and

(ii) specific steps taken by the facility to reduce costs and increase occupancy.

(b) Financial support from the local municipality and county governing bodies for the continued operation of the facility in the community is a necessary prerequisite to an acceptable application. The Department, the facility and the local governing bodies may negotiate the amount of the financial commitment from the governing bodies, but in no case may the local commitment be less than 50% of the state share required to fund the proposed adjustment. Any continuation of the adjustment beyond 6 months requires a local commitment of 100% of the state share for the rate increase above the base rate. The applicant shall submit letters of commitment from the applicable municipality or county, or both, committing to make an intergovernmental transfer for the amount of the local commitment.

(i) If the governmental agency receives donations in order to provide the financial contribution, it must document that the donations are "bona fide" as set forth in 42 CFR 433.54.

(c) The Department may conduct its own independent financial review of the facility prior to making a decision whether to approve a different payment rate.

(d) If the Department determines that the facility is in imminent peril of closing, it may make an interim rate adjustment for up to 90 days.

(e) The Department's determination shall be based on maintaining access to services and maintaining economy and efficiency in the Medicaid program.

(f) If the facility desires an adjustment for more than 90 days, it must demonstrate that:

(i) the facility has taken all reasonable steps to reduce costs, increase revenue and increase occupancy;

(ii) despite those reasonable steps the facility is currently losing money and forecast to continue losing money; and

(iii) the amount of the approved adjustment will allow the facility to meet expenses and continue to support the needs of the community it serves, without unduly enriching any party.

(g) If the Department approves an interim or other adjustment, it shall notify the facility when the adjustment is scheduled to take effect and how much contribution is required from the local governing bodies. Payment of the adjustment is contingent on the facility obtaining a fully executed binding agreement with local governing bodies to pay the contribution to the Department.

(h) The Department may withhold or deny payment of the interim or other adjustment if the facility fails to obtain the required agreement prior to the scheduled effective date of the adjustment.

(11) A provider may challenge the rate set pursuant to this rule using the appeal in R410-14. This applies to which rate methodology is used as well as to the specifics of implementation of the methodology. A provider must exhaust administrative remedies before challenging rates in any other forum.

(12) In developing payment rates, the Department may adjust urban and non-urban rates to reflect differences in urban and non-urban labor costs. The urban labor costs reimbursement cannot exceed 106% of the non-urban labor costs. Labor costs are as reported on the most recent FCP but

do not include FCP-reported management, consulting, director, and home office fees.

(13) The Department reimburses swing beds, transitional care unit beds, and small health care facility beds that are used as nursing facility beds, using the prior calendar year state-wide average of the daily nursing facility rate.

(14) Withholding of Title XIX payments

(a) The Department may withhold Title XIX payments from providers if:

(i) there is a shortage in a resident trust account managed by the facility;

(ii) the facility fails to submit a complete and accurate FCP as required by Utah State Plan Attachment 4.19-D, Section 332;

(iii) the facility fails to submit timely, accurate Minimum Data Set (MDS) data;

(iv) the facility owes money to the Division of Health Care Financing because of an overpayment, nursing care facility assessment, civil money penalty, or other offset; or

(v) the facility fails to respond within ten business days to requests for information relating to desk review or audit findings relating to the facility's submitted FCP or FRV Data Report.

(b) For ongoing operations, the Department will provide a 30-day notice before withholding payments. The Department may immediately withhold Title XIX payments without giving 30-days notice if it believes the delay may jeopardize the recovery. The Department and provider may negotiate a repayment schedule acceptable to the Department for monies owed to the Department listed in subsection(a)(iv). The repayment schedule may not exceed 180 days.

(c) When the Department rescinds withholding of payments to a facility, it will resume payments according to the regular claims payment cycle. The Department will not issue special checks outside the regular claims payment cycle for any reason.

#### **R414-504-4. Quality Improvement Incentive.**

(1) Upon federal approval of the Nursing Care Facilities State Plan Amendment, funds in the amount of \$1,000,000 shall be set aside annually to reimburse non-ICF/MR facilities that have a quality improvement plan and have no violations that are at an "immediate jeopardy" level, as determined by the Department, at the most recent re-certification survey and during the incentive period. The Department shall distribute incentive payments to qualifying facilities based on the proportionate share of the total Medicaid patient days in qualifying facilities. If a facility appeals the determination of a survey violation, the incentive payment will be withheld pending the final administrative appeal. On appeal, if violations are found not to have occurred at a severity level of "immediate jeopardy" or higher, the incentive payment will be paid to the facility. If the survey findings are upheld, the remaining incentive payments will be distributed to all qualifying facilities.

(2) A facility that receives a substandard quality of care level F, H, I, J, K, or L during the July 1 through June 30 incentive period is eligible for only 50% of the possible payout.

(3) In addition to the above incentive, funds in the amount of \$3,406,000 shall be set aside in state fiscal year 2008 for use in state fiscal year 2008 for the following quality improvement initiatives:

(a) Incentive for facilities to purchase or enhance clinical information systems, which incorporate advanced technology into improved patient care, such as better integration, capture of more information at the point of care, more automated reminders, etc. Qualifying Medicaid providers may receive up to \$108.02 for software and up to \$90 for hardware for each Medicaid certified bed. The Medicaid certified bed count used for each facility for this incentive is the count as of July 1, 2007. The Department will establish qualifying criteria by rule prior to distributing this incentive.

(b) Incentive for facilities to improve their heating, ventilating, and air conditioning systems. Qualifying Medicaid providers may receive up to \$162 for each Medicaid certified bed. The Medicaid certified bed count used for each facility for this incentive is the count as of July 1, 2007. The Department will establish qualifying criteria by rule prior to distributing this incentive.

(c) Incentive to encourage facilities to use innovative means to improve the residents' dining experience. Qualifying Medicaid providers may receive up to \$111 for each Medicaid certified bed. The Medicaid certified bed count used for each facility for this incentive is the count as of July 1, 2007. The Department will establish qualifying criteria by rule prior to distributing this incentive.

(d) Applications and all supporting documentation must be received by June 8, 2008, for consideration.

**R414-504-5. Reimbursement for Intermediate Care Facilities for the Mentally Retarded.**

The following principles apply to the payment of community-based intermediate care facilities for the mentally retarded (ICF/MRs) that are licensed under Utah Code 26-21-13.5:

(1) The Department pays approximately 93% of the aggregate payments to ICF/MR s based on a prospective flat rate established in Utah State Plan Attachment 4.19-D. The Department pays the balance as a property cost component calculated by the Fair Rental Value system pursuant to R414-504-3.

(2) Funds in the amount of \$200,000 shall be set aside annually for incentives to facilities that have a meaningful quality improvement plan and have demonstrated a means to measure that plan. In addition, the facility must have had no violations, as determined by the Department, that are at an immediate jeopardy level at the most recent re-certification survey and during the incentive period. The Department shall distribute incentive payments to qualifying facilities based on the proportionate share of the total Medicaid patient days in qualifying facilities. If a facility appeals the determination of a survey violation, the incentive payment will be withheld pending the final administrative appeal. On appeal, if violations are found not to have occurred at a severity level of immediate jeopardy or higher, the incentive payment will be paid to the facility. If the survey findings are upheld, the Department shall distribute the remaining incentive payments to all qualifying facilities.

**KEY: Medicaid  
July 1, 2007**

**26-1-5  
26-18-3  
26-35a**

**R477. Human Resource Management, Administration.****R477-1. Definitions.****R477-1-1. Definitions.**

The following definitions apply throughout these rules unless otherwise indicated within the text of each rule.

(1) Abandonment of Position: An act of resignation resulting when an employee is absent from work for three consecutive working days without approval.

(2) Actual FTE: The total number of full time equivalents based on actual hours paid in the state payroll system.

(3) Actual Hours Worked: Time spent performing duties and responsibilities associated with the employee's job assignments.

(4) Actual Wage: The employee's assigned salary rate in the central personnel record maintained by the Department of Human Resource Management.

(5) Administrative Leave: Leave with pay granted to an employee at management discretion that is not charged against the employee's leave accounts.

(6) Administrative Adjustment: A DHRM approved change of a position from one job to another job or salary range change for administrative purposes that is not based on a change of duties and responsibilities.

(7) Administrative Salary Decrease: A decrease in the current actual wage of one or more salary steps based on non-disciplinary administrative reasons determined by an agency head or commissioner.

(8) Administrative Salary Increase: An increase in the current actual wage of one or more salary steps based on special circumstances determined by an agency head or commissioner.

(9) Agency: An entity of state government that is:

(a) directed by an executive director, elected official or commissioner defined in Title 67, Chapter 22 or in other sections of the code ;

(b) authorized to employ personnel; and

(c) subject to DHRM rules.

(10) Agency Head: The executive director or commissioner of each agency or their designated appointee.

(11) Agency Management: The agency head and all other officers or employees who have responsibility and authority to establish, implement, and manage agency policies and programs.

(12) Appeal: A formal request to a higher level review for consideration of an unacceptable grievance decision.

(13) Appointing Authority: The officer, board, commission, person or group of persons authorized to make appointments in their agencies.

(14) Budgeted FTE: The total number of full time equivalents budgeted by the Legislature and approved by the Governor.

(15) Bumping: A procedure that may be applied prior to a reduction in force action (RIF). It allows employees with higher retention points to bump other employees with lower retention points as identified in the work force adjustment plan, as long as employees meet the eligibility criteria outlined in interchangeability of skills.

(16) Career Mobility: A time limited assignment of an employee to a position of equal or higher salary range for purposes of professional growth or fulfillment of specific organizational needs.

(17) Career Service Employee: An employee who has successfully completed a probationary period in a career service position.

(18) Career Service Exempt Employee: An employee appointed to work for an unspecified period of time or who serves at the pleasure of the appointing authority and may be separated from state employment at any time without just cause.

(19) Career Service Exempt Position: A position in state service exempted by law from provisions of competitive career service as prescribed in Section 67-19-15 and in Subsection

R477-2-1(1).

(20) Career Service Status: Status granted to employees who successfully complete a probationary period for competitive career service positions.

(21) Category of Work: A job series within an agency that is designated by the agency head as having positions to be eliminated agency wide through a reduction in force. Category of work may be further reduced after review by DHRM as follows:

(a) a unit smaller than the agency upon providing justification and rationale for approval, for example:

(i) unit number;

(ii) cost centers;

(iii) geographic locations;

(iv) agency programs.

(b) positions identified by a set of essential functions, for example:

(i) position analysis data;

(ii) certificates;

(iii) licenses;

(iv) special qualifications;

(v) degrees that are required or directly related to the position.

(22) Certifying: The act of verifying the qualifications and availability of individuals on the hiring list. The number of individuals certified shall be based on standards and procedures established by the Department of Human Resource Management.

(23) Change of Workload: A change in position responsibilities and duties or a need to eliminate or create particular positions in an agency caused by legislative action, financial circumstances, or administrative reorganization.

(24) Classification Grievance: The approved procedure by which an agency or a career service employee may grieve a formal classification decision regarding the classification of a position.

(25) Classified Service: Positions that are subject to the classification and compensation provisions stipulated in Section 67-19-12.

(26) Classification Study: A Classification review conducted by DHRM under the rules outlined in Section R477-3-4. A study may include single or multiple job or position reviews.

(27) Compensatory Time: Time off that is provided to an employee in lieu of monetary overtime compensation.

(28) Contractor: An individual who is contracted for service, is not supervised by a state supervisor, but is responsible for providing a specified service for a designated fee within a specified time. The contractor shall be responsible for paying all taxes and FICA payments, and shall not accrue benefits.

(29) Corrective Action: A documented administrative action to address substandard performance of an employee as described in Section R477-10-2.

(30) Critical Incident Drug or Alcohol Test: A drug or alcohol test conducted on an employee as a result of the behavior, action, or inaction of an employee that is of such seriousness it requires an immediate intervention on the part of management.

(31) Demeaning Behavior: Any behavior which lowers the status, dignity or standing of any other individual.

(32) Demotion: A disciplinary action resulting in a reduction of an employee's current actual wage.

(33) Department: The Department of Human Resource Management.

(34) Derisive Behavior: Any behavior which insults, taunts, or otherwise belittles or shows contempt for another individual.

(35) Designated Hiring Rule: A rule promulgated by

DHRM that defines which individuals on a certification are eligible for appointment to a career service position.

(36) DHRM: The Department of Human Resource Management.

(37) DHRM Approved Recruitment and Selection System: The state's recruitment and selection system, which is a centralized and automated computer system administered by the Department of Human Resource Management.

(38) Disability: Disability shall have the same definition found in the Americans With Disabilities Act (ADA) of 1990, 42 USC 12101 (1994); Equal Employment Opportunity Commission regulation, 29 CFR 1630 (1993); including exclusions and modifications.

(39) Disciplinary Action: Action taken by management under the rules outlined in Section R477-11.

(40) Discrimination: Unlawful action against an employee or applicant based on race, religion, national origin, color, sex, age, disability, protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation, or any other non-merit factor, as specified by law.

(41) Dismissal: A separation from state employment for cause.

(42) Drug-Free Workplace Act: A 1988 congressional act, 34 CFR 85 (1993), requiring a drug-free workplace certification by state agencies that receive federal grants or contracts.

(43) Employee Personnel Files: For purposes of Title 67, Chapters 18 and 19, the files maintained by DHRM and agencies as required by Section R477-2-5. This does not include employee information maintained by supervisors.

(44) Employment Eligibility Certification: A requirement of the Immigration Reform and Control Act of 1986, 8 USC 1324 (1988) that employers verify the identity and eligibility of individuals for employment in the United States.

(45) "Escalator" Principle: Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), returning veterans are entitled to return back onto their seniority escalator at the point they would have occupied had they not left state employment.

(46) Equal Employment Opportunity (EEO): Nondiscrimination in all facets of employment by eliminating patterns and practices of illegal discrimination.

(47) Excess Hours: A category of compensable hours separate and apart from compensatory or overtime hours that accrue at straight time only when an employee's actual hours worked, plus additional hours paid, exceed an employee's normal work period.

(48) Fair Employment Opportunity and Practice: Assures fair treatment of applicants and employees in all aspects of human resource administration without regard to age, disability, national origin, political or religious affiliation, race, sex, or any non-merit factor.

(49) Fitness For Duty Evaluation: Evaluation, assessment or study by a licensed professional to determine if an individual is able to meet the performance or conduct standards required by the position held, or is a direct threat to the safety of self or others.

(50) FLSA: Fair Labor Standards Act. The federal statute that governs overtime. See 29 USC 201 (1996).

(51) FLSA Exempt: Employees who are exempt from the Fair Labor Standards Act.

(52) FLSA Nonexempt: Employees who are not exempt from the Fair Labor Standards Act.

(53) Follow Up Drug or Alcohol Test: Unannounced drug or alcohol tests conducted for up to five years on an employee who has previously tested positive or who has successfully completed a voluntary or required substance abuse treatment program.

(54) Furlough: A temporary leave of absence from duty without pay for budgetary reasons or lack of work.

(55) Grievance: A career service employee's claim or charge of the existence of injustice or oppression, including dismissal from employment resulting from an act, occurrence, omission, condition, discriminatory practice or unfair employment practice not including position classification or schedule assignment.

(56) Grievance Procedures: The statutory process of grievances and appeals as set forth in Sections 67-19a-101 through 67-19a-408 and the rules promulgated by the Career Service Review Board.

(57) Gross Compensation: Employee's total earnings, taxable and nontaxable, as shown on the employee's paycheck stub.

(58) Hiring List: A list of qualified and interested applicants who are eligible to be considered for appointment or conditional appointment to a specific position.

(59) Hostile Work Environment: A work environment or work related situation where an individual suffers physical or emotional stress due to the unwelcome behavior of another individual which is motivated by race, religion, national origin, color, sex, age, disability or protected activity under the anti-discrimination statutes.

(60) HRE: Human Resource Enterprise; the state human resource management information system.

(61) Immediate Supervisor: The employee or officer who exercises direct authority over an employee and who appraises the employee's performance.

(62) Incompetence: Inadequacy or unsuitability in performance of assigned duties and responsibilities.

(63) Inefficiency: Wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.

(64) Interchangeability of Skills: Employees are considered to have interchangeable skills only for those positions they have previously held successfully in Utah state government employment or for those positions which they have successfully supervised and for which they satisfy job requirements.

(65) Intern: An individual in a college degree program assigned to work in an activity where on-the-job training is accepted.

(66) Job: A group of positions similar in duties performed, in degree of supervision exercised or required, in requirements of training, experience, or skill and other characteristics. The same salary range and test standards are applied to each position in the group.

(67) Job Description: A document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.

(68) Job Identification Number: A unique number assigned to a job by DHRM.

(69) Job Proficiency Rating: An average of the last three annual performance evaluation ratings used in reduction in force proceedings.

(70) Job Requirements: Skill requirements defined at the job level.

(71) Job Series: Two or more jobs in the same functional area having the same job class title, but distinguished and defined by increasingly difficult levels of duties and responsibilities and requirements.

(72) Legislative Salary Adjustment: A legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.

(73) Malfeasance: Intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.

(74) Market Based Bonus: One time lump sum monies given to a new hire or a current employee to encourage employment with the state.

(75) Market Comparability Adjustment: Legislatively approved change to a salary range for a job or to an employee's actual wage based on a compensation survey conducted by DHRM.

(76) Merit Increase: A legislatively approved and funded salary increase for employees to recognize and reward successful performance.

(77) Misfeasance: The improper or unlawful performance of an act that is lawful or proper.

(78) Nonfeasance: Failure to perform either an official duty or legal requirement.

(79) Performance Evaluation: A formal, periodic evaluation of an employee's work performance.

(80) Performance Evaluation Date: The date when an employee's performance evaluation shall be conducted. An evaluation shall be conducted at least once during the probationary period and no less than once annually thereafter consistent with the common review date.

(81) Performance Management: The ongoing process of communication between the supervisor and the employee which defines work standards and expectations, and assesses performance leading to a formal annual performance evaluation.

(82) Performance Plan: A written summary of the standards and expectations required for the successful performance of each job duty or task. These standards normally include completion dates and qualitative and quantitative levels of performance expectations.

(83) Performance Standard: Specific, measurable, observable and attainable objectives that represent the level of performance to which an employee and supervisor are committed during an evaluation period.

(84) Personnel Adjudicatory Proceedings: The informal appeals procedure contained in Title 63, Chapter 46b, for all human resource policies and practices not covered by the state employees grievance procedure promulgated by the Career Service Review Board, or the classification appeals procedure.

(85) Position: A unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.

(86) Position Description: A document that describes the detailed tasks performed, as well as the knowledge, skills, abilities, and other requirements of a specific position.

(87) Position Identification Number: A unique number assigned to a position for FTE management.

(88) Position Management Report: A document that lists an agency's authorized positions including job identification numbers, salaries, and schedules. The list includes occupied or vacant positions and full or part-time positions.

(89) Position Sharing: A situation where two employees share the duties and responsibilities of one full-time career service position. Leave benefits for position sharing employees are pro-rated according to the number of hours worked. To be eligible for benefits, position sharing employees must work at least 50% of a full-time equivalent.

(90) Post Accident Drug or Alcohol Test: A Drug or alcohol test conducted on an employee who is involved in a vehicle accident while on duty:

(a) where a fatality occurs;

(b) where the employee receives a citation under state or local law for a moving traffic violation arising from the accident and the accident involves bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident;

(c) where the employee receives a citation under state or local law for a moving traffic violation arising from the accident and the accident involves one or more motor vehicles that incur disabling damage as a result of the accident that must be transported away from the scene by a tow truck or other vehicle;

(d) where there is reasonable suspicion that the employee

had been driving while under the influence of a controlled substance.

(91) Preemployment Drug Test: A drug test conducted on final candidates for a safety sensitive position or on a current employee prior to assuming safety sensitive duties.

(92) Probationary Employee: An employee hired into a career service position who has not completed the required probationary period for that position.

(93) Probationary Period: A period of time considered part of the selection process, identified at the job level, the purpose of which is to allow management to evaluate an employee's ability to perform assigned duties and responsibilities and to determine if career service status should be granted.

(94) Productivity Step Adjustment: A management authorized salary increase of one to four steps. Management and employees agree to the adjustment for employees who accept an increased workload resulting from actual and budgeted FTE reductions.

(95) Promotion: An action moving an employee from a position in one job to a position in another job having a higher maximum salary step.

(96) Protected Activity: Opposition to discrimination or participation in proceedings covered by the antidiscrimination statutes or the Utah State Grievance and Appeal Procedure. Harassment based on protected activity can constitute unlawful retaliation.

(97) Random Drug or Alcohol Test: Unannounced drug or alcohol testing of a sample of safety sensitive employees done in accordance with federal regulations or state rules, policies, and procedures, and conducted in a manner such that each safety sensitive employee has an equal chance of being selected for testing.

(98) Reappointment: Return to work of an individual from the reappointment register. Accrued annual leave, converted sick leave, compensatory time and excess hours in the employee's former position were cashed out upon separation.

(99) Reappointment Register: A register of individuals who have:

(a) held career service positions and been separated in a reduction in force;

(b) held career service positions and accepted career service exempt positions without a break in service and were not retained, unless discharged for cause;

(c) by Career Service Review Board decision been placed on the reappointment register.

(100) Reasonable Suspicion Drug or Alcohol Test: A drug or alcohol test conducted on an employee based on specific, contemporaneous, articulate observations concerning the appearance, behavior, speech or body odors of the employee.

(101) Reassignment: A management initiated action moving an employee from his current job or position to a different job or position for administrative reasons not included in the definition of promotion or demotion.

(102) Reclassification: A DHRM reallocation of a single position or multiple positions from one job to another job to reflect management initiated changes in duties and responsibilities.

(103) Reduction in Force: (RIF) Abolishment of positions resulting in the termination of career service staff. RIFs can occur due to inadequate funds, a change of workload, or a lack of work.

(104) Reemployment: Return to work of an employee who resigned or took military leave of absence from state employment to serve in the uniformed services covered under USERRA. Accrued annual leave, converted sick leave, compensatory time and excess hours may have been cashed out at separation.

(105) Rehire: Return to work of a former career service

employee who resigned from state employment. Accrued annual leave, converted sick leave, compensatory time and excess hours in their former position were cashed out at separation.

(106) Requisition: An electronic document used for Utah Job Match recruitment, selection and tracking purposes that includes specific information for a particular position, job seekers' applications, and a hiring list.

(107) Retaliation: An adverse employment action taken against an employee who has engaged in a protected activity. The adverse action must have a causal link.

(108) Return from LWOP: A return to work from any leave without pay status. Accrued annual leave, converted sick leave, compensatory time and excess hours may have been cashed out before the leave without pay period began.

(109) Return to Duty Drug or Alcohol Test: A drug or alcohol test conducted on an employee prior to allowing the employee to return to duty after successfully completing a drug or alcohol treatment program.

(110) Ridiculing Behavior: Any behavior specifically performed to cause humiliation or to mock, taunt or tease another individual.

(111) RIF'd Individual: A former employee whose employment is terminated as a result of a reduction in force.

(112) Safety Sensitive Position: A position approved by DHRM that includes the performance of functions:

- (a) directly related to law enforcement; or
- (b) involving direct access or having control over direct access to controlled substance; or
- (c) directly impacting the safety or welfare of the general public; or
- (d) which require an employee to carry or have access to firearms.

(113) Salary Range: The segment of an approved pay plan assigned to a job.

(114) Schedule: The determination of whether a position meets criteria stipulated in the Utah Code Annotated to be career service (Schedule B) or career service exempt (Schedule A).

(115) Serious Health Condition: An illness, injury, impairment, physical or mental condition that involves:

- (a) inpatient care in a hospital, hospice, or residential medical care facility; or
- (b) outpatient care with continuing treatment by a health care provider.

(116) Tangible Employment Action: Any significant change in employment status e.g. hiring, firing, promotion, failure to promote, demotion, undesirable assignment, a decision causing a significant change in benefits, compensation decisions, and work assignment. Tangible employment action does not include insignificant changes in employment status such as a change in job title without a change in salary, benefits or duties.

(117) Temporary employee: A career service exempt employee on schedule AI, AJ, or AL.

(118) Temporary Transitional Assignment: An assignment on a temporary basis to a position or duties of lesser responsibility and salary range to accommodate an injury or illness or to provide a temporary reasonable accommodation.

(119) Transfer: An employee initiated movement from one job or position to another job or position for which the employee qualifies for reasons not included in the definition of promotion.

(120) Uniformed Services: The United States Army, Navy, Marine Corps, Air Force, Coast Guard; Reserve units of the Army, Navy, Marine Corps, Air Force, or Coast Guard; Army National Guard or Air National Guard; Commissioned Corps of Public Health Service, National Oceanic and Atmospheric Administration (NOAA), National Disaster Medical Systems (NDMS), or any other category of persons designated by the President in time of war or emergency.

Service in Uniformed Services includes: voluntary or involuntary duty, including active duty; active duty for training; initial active duty for training; inactive duty training; full-time National Guard duty; absence from work for an examination to determine fitness for any of the above types of duty.

(121) Unlawful Harassment: Any behavior or conduct of an unlawful nature based on race, religion, national origin, color, sex, age, disability or protected activity under the anti-discrimination statutes that is unwelcome, pervasive, demeaning, derisive or coercive and results in a hostile, abusive or intimidating work environment or tangible employment action.

(122) USERRA: Uniformed Services Employment and Reemployment Rights Act of 1994 (P.L. 103-353), requires state governments to re-employ eligible veterans who resigned or took a military leave of absence from state employment to serve in the uniformed services and who return to work within a specified time period after military discharge. Employees covered under USERRA are in a leave without pay status from their state position.

(123) Veteran: An individual who has served on active duty in the armed forces for more than 180 consecutive days, or was a member of a reserve component who served in a campaign or expedition for which a campaign medal has been authorized. Individuals must have been separated or retired under honorable conditions.

(124) Volunteer: Any person who donates services to the state or its subdivisions without pay or other compensation except actual and reasonable expenses incurred, as approved by the supervising agency.

(125) Volunteer Experience Credit: Credit given in meeting job requirements to participants who gain experience through unpaid or uncompensated volunteer work with the state, its subdivisions or other public and private organizations.

**KEY: personnel management, rules and procedures, definitions**  
**July 1, 2007**  
**Notice of Continuation June 9, 2007**

67-19-6

**R477. Human Resource Management, Administration.****R477-2. Administration.****R477-2-1. Rules Applicability.**

These rules apply to all career and career service exempt state employees except those specifically exempted in Section 67-19-12.

(1) Certificated employees of the State Board of Education are covered by these rules except for rules governing classification and compensation, found in Rule R477-3 and R477-6.

(2) Nonstate agencies with employees protected by the career service provisions of these rules in Rule R477-4, R477-5, R477-9 and R477-11 are exempted by contract from any provisions deemed inappropriate in their jurisdictions by the Executive Director, DHRM.

(3) Unless employees in exempt positions have written contracts of employment for a definite period of time, they are career service exempt employees. The following employees are exempt from mandatory compliance with these rules:

- (a) members of the Legislature and legislative employees;
- (b) members of the judiciary and judicial employees;
- (c) elected members of the executive branch and their direct staff who are career service-exempt employees;
- (d) officers, faculty, and other employees of state institutions of higher education;
- (e) any positions for which the salary is set by law;
- (f) employees in the Attorney General's Office;
- (g) agency heads and other persons appointed by the governor when authorized by statute;

(h) employees of the Governor's Office of Economic Development whose positions have been designated executive/professional by the executive director of the Governor's Office of Economic Development with the concurrence of the Executive Director, DHRM;

(i) employees of the Medical Education Council.

(4) All other exempt positions are covered by provisions of these rules except rules governing career service status in Rule R477-4, R477-5, R477-9 and R477-11.

(5) The above positions may or may not be exempt from federal and other state regulations.

**R477-2-2. Compliance Responsibility.**

Agencies shall comply with these rules. Agencies are authorized to correct any administrative errors.

(1) The Executive Director, DHRM, may authorize exceptions to provisions of these rules when one or more of the following criteria are satisfied:

- (a) Applying the rule prevents the achievement of legitimate government objectives;
- (b) Applying the rule impinges on the legal rights of an employee.

(2) Agency personnel records, practices, policies and procedures, employment and actions, shall comply with these rules and are subject to compliance audits by DHRM.

(3) In cases of noncompliance with Title 67, Chapter 19, and these rules, the Executive Director, DHRM, may find the responsible agency official to be subject to the penalties prescribed by Subsection 67-19-18(1) pertaining to misfeasance, malfeasance or nonfeasance in office.

**R477-2-3. Fair Employment Practice.**

All state personnel actions must provide equal employment opportunity for all individuals.

(1) Employment actions including appointment, tenure or term, condition or privilege of employment shall be based on the ability to perform the essential duties, functions, and responsibilities assigned to a particular position.

(2) Employment actions shall not be based on race, religion, national origin, color, sex, age, disability, protected

activity under the anti-discrimination statutes, political affiliation, military status or affiliation or any other non-job related factor, nor shall any person be subjected to unlawful harassment by a state employee.

(3) An employee who alleges illegal discrimination may submit a claim to the agency head.

(a) The employee may file a charge with the Utah Anti-Discrimination and Labor Division within 180 days of the alleged harm, or directly with the EEOC within 300 days of the alleged harm.

(b) No state official shall impede any employee from the timely filing of a discrimination complaint in accordance with state and federal requirements.

**R477-2-4. Control of Personal Service Expenditures.**

(1) Statewide control of personal service expenditures shall be the shared responsibility of the employing agency, the Governor's Office of Planning and Budget, the Department of Human Resource Management and the Division of Finance.

(2) Agency management may request changes to the Position Management Report which are justified as cost reduction or improved service measures.

(a) Changes in the numbers, job identification, or salary ranges of positions listed in the Position Management Report shall be approved by the Executive Director, DHRM or designee.

(3) No person shall be placed or retained on an agency payroll unless that person occupies a position listed in an agency's approved Position Management Report.

**R477-2-5. Records.**

(1) DHRM shall maintain a computerized file for each employee that contains the following, as appropriate:

- (a) performance ratings;
- (b) records of actions affecting employee salary, current classification, title and salary range, salary history, and other personnel data, status or standing.

(2) Agencies shall maintain the following records in each employee's personnel file:

- (a) applications for employment, Employment Eligibility Certification record, Form I-9, and other documents required by the United States Bureau of Citizenship and Immigration Services Regulations, under the Immigration Reform and Control Act of 1986, employee signed overtime agreement, personnel action records, notices of corrective or disciplinary actions, new employee orientation form, performance evaluation records, separation and leave without pay records, including employee benefits notification forms for PEHP and URS;
- (b) references to or copies of transcripts of academic, professional, or training certification or preparation;
- (c) copies of items recorded in the DHRM computerized file and other materials required by agency management to be placed in the personnel file. The agency personnel file shall be considered a supplement to the DHRM computerized file and shall be subject to the rules governing personnel files;
- (d) leave and time records; and
- (e) copies of any documents affecting the employee's conduct, status or salary. The agency shall inform employees of any changes in their records based on conduct, status or salary no later than when changes are entered into the file.

(3) Agencies shall maintain a separate file from the personnel file containing confidential employee medical information.

- (a) Information in this file shall include all written and orally obtained information pertaining to medical issues, including Family Medical and Leave Act forms, medical and dental enrollment forms which contain health related information, health statements, applications for additional life insurance, and any other medical information.

(b) Information regarding the results from fitness for duty evaluations and drug testing shall be maintained in a file separate from the personnel file and from the file containing confidential employee medical information.

(c) Information in this file is considered private or controlled information. Communication shall adhere to Title 63, Chapter 2, the Government Records Access and Management Act.

(d) An employee who violates confidentiality is subject to state disciplinary procedures.

(4) An employee has the right to review the employee's personnel file, upon request, in DHRM or the agency, as governed by law and as provided through agency policy.

(a) An employee may correct, amend, or challenge any information in the DHRM computerized or agency personnel file, through the following process:

(i) The employee shall request in writing that changes occur.

(ii) The employing agency shall be given an opportunity to respond.

(iii) Disputes over information that are not resolved between the employing agency and the employee shall be decided in writing by the Executive Director, DHRM. DHRM shall maintain a record of the employee's letter, the agency's response, and the DHRM Executive Director's decision.

(5) When a disciplinary action is rescinded or disapproved upon appeal, forms, documents and records pertaining to the case shall be removed from the personnel file.

(a) When the record in question is on microfilm, a seal will be placed on the record and a suitable notice placed on the carton or envelope. This notice shall indicate the limits of the sealed section and the authority for the action.

(6) Upon employee separation, DHRM and agencies shall retain computerized records for thirty years. Agency hard copy records shall be retained by the agency for a minimum of two years, then transferred to the State Record Center to be retained according to the record retention schedule.

(7) Information classified as private in both DHRM and agency personnel and payroll files shall be available only to the following people:

(a) the employee;

(b) users authorized by the Executive Director, DHRM, who have a legitimate need to know;

(c) individuals who have the employee's written consent.

(8) Utah is an open records state, according to Title 63, Chapter 2, the Government Records Access and Management Act. Information classified as public concerning current or former state employees, volunteers, independent contractors, and members of advisory boards or commissions shall be released upon request.

(9) When an employee transfers from one agency to another, the former agency shall transfer the employee's personnel and medical file to the new agency. The file shall contain a record of all actions that have affected the employee's status and standing.

(10) An employee may request a copy of any documentary evidence used for disciplinary purposes in any formal hearing, regardless of the document's source, prior to such use. This shall not apply to documentary evidence used for rebuttal.

(11) Employee medical information obtained orally or documented in separate confidential files is considered private or controlled information. Communication must adhere to Title 63, Chapter 2, the Government Records Access and Management Act. Employees who violate confidentiality are subject to state disciplinary procedures and may be personally liable for slander or libel.

(12) In compliance with the Government Records Access and Management Act, only information classified as public or private which can be determined to be related to and necessary

for the disposition of a long term disability or unemployment insurance determination shall be approved for release on a need to know basis. The authorized manager in DHRM shall make the determination.

(13) An employee may verbally request the release of information for personal use, or authorize in writing the release of personal performance records for use by an outside agent based on a need to know authorization. Private data shall only be released, except to the employee, after a written request has been evaluated and approved.

#### **R477-2-6. Release of Information in a Reference Inquiry.**

Reference checks or inquiries made regarding current or former public employees, volunteers, independent contractors, and members of advisory boards or commissions can be released if the information is classified as public, or if the subject of the record has signed and provided a reference release form for information authorized under Title 63, Chapter 2, of the Government Records Access and Management Act.

(1) The employment record is the property of Utah State Government with all rights reserved to utilize, disseminate or dispose of in accordance with the Government Records Access and Management Act.

(2) Additional information may be provided if authorized by law.

#### **R477-2-7. Employment Eligibility Certification (Immigration Reform and Control Act - 1986).**

All career and career service exempt employees appointed on and after November 7, 1986, as a new hire, rehire, agency transfer or through reciprocity with or assimilation from another career service jurisdiction must provide verifiable documentation of their identity and eligibility for employment in the United States by completing all sections of the Employment Eligibility Certification Form I-9 as required under the Immigration Reform and Control Act of 1986.

#### **R477-2-8. Disclosure by Public Officers Supervising a Relative.**

It is unlawful for a public officer to appoint, directly supervise, or to make salary or performance recommendations for relatives except as prescribed in the Section 52-3-1.

(1) A public officer supervising a relative shall make a complete written disclosure of the relationship to the agency head in accordance with Section 52-3-1.

#### **R477-2-9. Employee Liability.**

An employee who becomes aware of any occurrence which may give rise to a law suit, who receives notice of claim, or is sued because of an incident related to his employment, shall give immediate notice to his supervisor and to the Department of Administrative Services, Division of Risk Management.

(1) In most cases, under provisions of Sections 63-30-36, and 63-30-37, the Governmental Immunity Act (GIA), an employee shall receive defense and indemnification unless the case involves fraud, malice or the use of alcohol or drugs by the employee.

(2) If a law suit results against an employee, the GIA stipulates that the employee must request a defense from his agency head in writing within ten calendar days.

#### **R477-2-10. Alternative Dispute Resolution.**

Agency management may establish a voluntary alternative dispute resolution program in accordance with Chapter 63-46C, Utah Code Annotated.

**KEY: administrative responsibility, confidentiality of information, fair employment practices, public information**  
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63-2-903(4)  
67-19-6  
67-19-18

**R477. Human Resource Management, Administration.****R477-3. Classification.****R477-3-1. Job Classification Methods.**

The Executive Director, DHRM, shall prescribe the procedures and methods for classifying all positions not exempted by law from the classification plan. The Executive Director, DHRM, may authorize exceptions to provisions of the following rule, consistent with Subsection R477-2-2(1).

**R477-3-2. Job Description.**

DHRM shall maintain job descriptions, as appropriate, for all jobs in the classified plan.

- (1) Job descriptions shall contain:
  - (a) job title;
  - (b) distinguishing characteristics;
  - (c) a description of tasks commonly associated with most positions in the job;
  - (d) statements of required knowledge, skills, and other requirements;
  - (e) FLSA status and other administrative information as approved by DHRM.

**R477-3-3. Assignment of Duties.**

Management may assign, modify, or remove any employee task or responsibility in order to accomplish reorganization, improve business practices or process, or for any other reason deemed appropriate by the department administration.

**R477-3-4. Position Classification Review.**

- (1) A formal classification review may be conducted under the following circumstances:
  - (a) as part of a scheduled study;
  - (b) at the request of an agency, with the approval of the Executive Director, DHRM; or
  - (c) as part of a classification grievance review
- (2) DHRM shall determine if there are significant changes in the duties of a position to warrant a review.
- (3) When an agency is reorganized or positions are redesigned, no classification reviews shall be conducted until an appropriate settling period has occurred.
- (4) The Executive Director, DHRM, or designee shall make final classification decisions unless overturned by a hearing officer or court.

**R477-3-5. Position Classification Grievances.**

- (1) An agency or a career service employee may grieve formal classification decisions regarding the classification of a position.
  - (a) This rule refers to grievances concerning the assignment of individual positions to appropriate jobs based on duties and responsibilities. The assignment of salary ranges is not included in this rule.
  - (b) An employee may only grieve a formal classification decision regarding the employee's own position.

**KEY: administrative procedures, grievances, job descriptions, position classifications**

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67-19-6

67-19-12

**R477. Human Resource Management, Administration.****R477-4. Filling Positions.****R477-4-1. Authorization to Fill a Position.**

Agencies shall have sufficient funds to fill positions that are listed in the Position Management Report. The Executive Director, DHRM, may authorize exceptions to provisions of this rule, consistent with Subsection R477-2-2(1).

The DHRM approved recruitment and selection system is the state's recruitment and selection system for career service positions. Agencies shall use the DHRM approved recruitment and selection system unless an alternate system has been pre-approved by the Department of Human Resource Management.

**R477-4-2. Selection for Career Service Exempt Positions.**

(1) Agencies and managers may use any process to select an employee for a career service exempt position which complies with state and federal laws and regulations.

**R477-4-3. Career Service Positions.**

(1) Selection of a career service employee shall be governed by the following:

- (a) DHRM standards and procedures;
- (b) career service principles;
- (c) equal employment opportunity principles;
- (d) Section 52-3-1, employment of relatives;
- (e) reasonable accommodation for qualified applicants covered under the Americans With Disabilities Act.

(2) DHRM shall take affirmative action to ensure that members of legally protected classes have the opportunity to apply and be considered for available positions in state government.

**R477-4-4. Order of Selection for Career Service Positions.**

(1) Prior to implementing the steps for order of selection, agencies may administer the following personnel actions:

- (a) reemployment of a veteran eligible under USERRA;
- (b) reassignment or transfer within an agency for the purposes of reasonable accommodation under the Americans with Disabilities Act;
- (c) fill a position as a result of return to work from long term disability or workers compensation at the same or lesser salary range;
- (d) reassignments made in order to avoid a reduction in force, or for reorganization or bumping purposes;
- (e) reassignments, management initiated career mobility, or other movement of qualified career service employees at the same or lesser salary range to better utilize skills or assist management in meeting the organization's mission;
- (f) reclassification.

(2) Agencies may carry out all the following steps for recruitment and selection of vacant career service positions concurrently. Appointing authorities may make appointments according to the following order of selection which applies to all vacant career service positions:

- (a) First, agencies shall make appointments from the statewide reappointment register in compliance with Subsection R477-12-3(7) with the names of individuals who meet the position qualifications.
- (b) Second, agencies may make appointments within an agency through promotion or through transfer of a qualified career service employee, career mobility assignments to a higher salary range, or conversions from schedule A to schedule B as authorized by Subsection R477-5-1.(3).
- (c) Third, agencies may make appointments from a list of qualified applicants certified as eligible for appointment to the position, or from another competitive process pre-approved by the Executive Director, DHRM.

**R477-4-5. Recruitment for Career Service Positions.**

(1) Agencies shall use the DHRM approved recruitment and selection system for all career service position vacancies. This includes recruitments open within an agency, across agency lines, or to the general public. Recruitment shall comply with federal and state laws and DHRM rules and procedures.

(a) In addition to the DHRM required recruitment announcement, all other recruitment announcements shall include the following:

- (i) position information about available vacancies;
- (ii) information about the DHRM approved recruitment and selection system;
- (iii) documented communication regarding examination methods and opening and closing dates, if applicable;
- (iv) a strategy for equal employment opportunity, if applicable.

(2) Job information for career service positions shall be announced publicly for a minimum of five working days.

(3) Agencies are required to provide employees with information about the DHRM approved recruitment and selection system.

(4) Recruitment is not required for personnel actions outlined in Subsection R477-4-4(1).

(5) Appointment of an employee from the statewide reappointment register must comply with the order of selection specified in Section R477-4-4.

**R477-4-6. Transfer and Reassignment.**

(1) Positions may be filled by reassigning an employee without a reduction in the current actual wage except as provided in Subsection R477-6-4(5).

(2) The agency that receives a transfer or reassignment of an employee shall verify his career status and that the employee meets the job requirements for the position.

(a) An employee with a disability who is otherwise qualified may be eligible for transfer or reassignment to a vacant position within the agency as a reasonable accommodation measure.

(3) Agencies receiving a transfer or reassignment of an employee shall accept all of that employee's previously accrued sick, annual, and converted sick leave on the official leave records.

(4) A career service employee assimilated from another career service jurisdiction shall accrue leave at the same rate as a career service employee with the same seniority.

(5) A reassignment or transfer may be to one or more of the following:

- (a) a different job or position;
- (b) a different work location;
- (c) a different organizational unit; or
- (d) a different agency.

**R477-4-7. Rehire.**

(1) A former career service employee may be eligible for rehire to any career service position for which he is qualified.

(a) A rehired employee must compete through the DHRM approved recruitment and selection system and must serve a new probationary period, as designated in the official job description.

(i) The annual leave accrual rate for an employee who is rehired to a position which receives leave benefits shall be based on all state employment in which the employee was eligible to accrue leave.

(ii) An employee who is rehired within 12 months of separation to a position which receives sick leave benefits shall have his previously accrued sick leave credit reinstated as program II sick leave.

(b) A rehired employee may be offered any salary within the salary range for the position.

(2) Career Service exempt employees cannot be rehired to

career service positions, except as prescribed by Section 67-19-17.

**R477-4-8. Examinations.**

(1) Examinations shall be designed to measure and predict success of individuals on the job. Appointment to career service positions shall be made through open, competitive selection.

(2) The Executive Director, DHRM, shall establish the standards for the development, approval and implementation of examinations. Examinations shall include the following:

- (a) a documented job analysis;
- (b) an initial, unbiased screening of the individual's qualifications;
- (c) security of examinations and ratings;
- (d) timely notification of individuals seeking positions;
- (e) elimination from further consideration of individuals who abuse the process;
- (f) unbiased evaluation and results;
- (g) reasonable accommodation for qualified individuals with disabilities.

(3) When examinations utilizing ratings of training and experience are administered, agencies may establish maximum years of credit for training and experience for the purpose of rating qualified applicants. Separate maximums may be set for years of training and years of experience.

**R477-4-9. Hiring Lists.**

(1) The hiring list shall include the names of qualified and interested applicants who are eligible to be considered for appointment or conditional appointment to a specific position.

(a) Hiring lists shall be constructed using the DHRM approved recruitment and selection system. All competitive processes shall be based on job related criteria.

(b) All applicants included on a hiring list shall be examined with the same examination or examinations.

(c) An individual shall be considered an applicant when he is determined to be both qualified for and interested in a particular position identified through a specific requisition.

(2) An applicant may be removed from further consideration when he, without valid reason, does not pursue appointment to a position.

(3) An individual who falsifies any information in the job application, examination or evaluation processes may be disqualified from further consideration prior to hire, or disciplined if already hired.

(4) When more than one RIF employee is certified by DHRM, the appointment shall be made from the most qualified.

(5) The appointing authority shall demonstrate and document that equal consideration was given to all applicants whose final score or rating is equal to or greater than that of the applicant hired.

(6) The appointing authority shall ensure that any employee hired meets the job requirements as outlined in the official job description.

**R477-4-10. Time Limited Exempt Positions.**

The Executive Director, DHRM, may approve the creation and filling of career service exempt positions for temporary, emergency, seasonal, intermittent or other special and justified agency needs. These appointments shall be career service exempt as defined in Section 67-19-15.

(1) Time limited, temporary or seasonal career service exempt appointments, such as schedules AJ and AL, may be made without competitive examination, provided job requirements are met.

(a) The following appointments are temporary, and may not receive benefits:

- (i) AJ appointments shall last no longer than 1560 working hours in any consecutive 12 month period.

(b) Appointments under schedules AE, AI and AL shall be career service exempt positions. AE, AI and AL employees may receive benefits on a negotiable basis.

(i) Schedule AL appointments shall work on time limited projects for a maximum of two years or on projects with time limited funding.

(ii) Only schedule A appointments made from a hiring list as prescribed by Subsection R477-4-9 may be considered for conversion to career service.

(2) Appointments to fill an employee's position who is on approved leave without pay shall only be made temporarily.

(3) A time limited agreement shall be signed by the parties.

**R477-4-11. Job Sharing.**

Agency management may establish a job sharing program as a means of increasing opportunities for career part-time employment. In the absence of an agency program, individual employees may request approval for job sharing status through agency management.

**R477-4-12. Internships and Cooperative Education.**

Interns or students in a practicum program may be appointed with or without competitive selection. Intern appointments shall be to temporary, career service exempt positions.

**R477-4-13. Reorganization.**

When an agency is reorganized, but an employee's position does not change substantially, he shall not be required to compete for his current position. However, a reduction in the number of positions in a certain class shall be treated as a reduction in force.

**R477-4-14. Career Mobility Programs.**

Employees and agencies are encouraged to promote career mobility programs.

(1) Agencies may provide career mobility assignments inside or outside state government to qualified employees. Career mobility programs are designed to develop agency resources and to enhance the employee's career growth.

(a) Agencies shall establish procedures governing career mobility programs.

(2) Agencies shall develop and use written career mobility contract agreements between employees and supervisors to outline all program provisions and requirements. The career mobility shall be both voluntary and mutually acceptable.

(a) Programs shall conform to equal employment opportunities and practices.

(b) An eligible employee, the agency or supervisor may initiate a career mobility.

(c) A participating employee shall retain all rights, privileges, entitlements, tenure and benefits from the previous position while on career mobility.

(d) If a reduction in force affects a position vacated by a participating employee, the participating employee shall be treated the same as other RIF employees.

(3) If a career mobility assignment does not become permanent at its conclusion, the employee shall return to the previous position or a similar position and shall receive, at a minimum, the same salary rate and the same or higher salary range that the employee would have received without the career mobility assignment.

(a) An employee who has not attained career service status prior to the career mobility program cannot permanently fill a career service position until the employee obtains career service status through a competitive process.

**R477-4-15. Assimilation.**

(1) An employee assimilated by the state from another career service system shall receive career service status after completing a probationary period if originally selected through a competitive examination process judged by the Executive Director, DHRM, to be equivalent to the process used in the state career service.

(a) Assimilation agreements shall specify whether there are employees eligible for reemployment under USERRA in positions affected by the agreement.

**KEY: employment, fair employment practices, hiring practices**

**July 1, 2007**

**67-19-6**

**Notice of Continuation June 9, 2007**

**R477. Human Resource Management, Administration.****R477-5. Employee Status and Probation.****R477-5-1. Career Service Status.**

(1) Only an employee who is appointed through a pre-approved competitive process shall be eligible for appointment to a career service position.

(2) An employee shall complete a probationary period in a competitive career service position prior to receiving career service status.

(3) An exempt employee may only convert to career service status under the following conditions:

(a) The employee previously held career service status with no break in service between exempt status and the previous career service position.

(b) The employee was hired from a hiring list as prescribed by Subsection R477-4-9, and completed a probationary period.

**R477-5-2. Probationary Period.**

The probationary period allows agency management to evaluate an employee's ability to perform the duties, responsibilities, skills, and other related requirements of the assigned career service position. The probationary period shall be considered part of the selection process.

(1) An employee shall receive full and fair opportunity to demonstrate competence in the job in a career position. As a minimum, a performance plan shall be established and the employee shall receive feedback on performance in relation to that plan.

(a) During the probationary period, an employee may be separated from state employment in accordance with Subsection R477-11-2(1).

(b) At the end of the probationary period, an employee shall receive a performance evaluation. Evaluations shall be entered into HRE as the performance evaluation that reflects successful or unsuccessful completion of probation.

(2) Each career position shall be assigned a probationary period consistent with its job.

(a) The probationary period may not be extended except for periods of leave without pay, workers compensation leave, temporary transitional assignment, military leave under USERRA, or donated leave from an approved leave bank.

(b) The probationary period may not be reduced after appointment.

(c) An employee who has completed a probationary period and obtained career service status shall not be required to serve a new probationary period unless there is a break in service.

(3) An employee in a career service position who works at least 50 percent of the time or more shall acquire career service status after working the same amount of elapsed time in hours as a full-time employee would work with the same probationary period.

(4) An employee serving probation in a competitive career service position may be transferred, reassigned or promoted to another competitive career service position. Each new appointment shall include a new probationary period unless the agency determines that the required duties or knowledge, skills, and abilities of the old and new position are similar enough not to warrant a new probationary period. If an agency determines that a new probationary period is needed, it shall be the full probationary period defined in the job description.

**R477-5-3. Temporary Transitional Position.**

(1) An employee on probation who is temporarily disabled may be placed in another position with lighter duty or reduced responsibility and salary.

(a) This accommodation shall occur for no longer than one year from the date of disability.

(b) Time spent in a transitional position does not reduce the required probationary period in the primary position.

**R477-5-4. Policy Exceptions.**

The Executive Director, DHRM, may authorize exceptions to the provisions of this rule, consistent with Subsection R477-2-2(1).

**KEY: employment, personnel management, state employees  
July 1, 2007 67-19-6**

**Notice of Continuation June 9, 2007 67-19-16(5)(b)**

**R477. Human Resource Management, Administration.****R477-6. Compensation.****R477-6-1. Pay Plans.**

(1) DHRM shall develop or modify pay plans for compensating employees.

(2) Market comparability salary range adjustments shall be legislatively approved.

**R477-6-2. Allocation to the Pay Plans.**

(1) Each job shall be assigned to a salary range on the applicable pay plan, except where compensation is established by statute.

(2) Salary range determination for benchmark jobs shall be based on salary survey data. The salary ranges for other jobs are determined by relative ranking with the appropriate benchmark job.

**R477-6-3. Appointments.**

(1) All appointments shall be placed on the DHRM approved salary range for the job. Hiring officials shall receive approval from their agency head and DHRM before making appointment offers to individuals.

(2) Reemployed veterans under USERRA shall be placed in their previous position or a similar position at their previous salary range. Reemployment shall include the same seniority status, any cost of living allowances, reclassification of the veteran's preservice position, or market comparability adjustments that would have affected the veteran's preservice position during the time spent by the affected veteran in the uniformed services. Performance related salary increases are not included.

**R477-6-4. Salary.**

(1) Merit increases. The following are applicable if merit increases are authorized and funded by the legislature:

(a) Employees who are not on a longevity step and who are not at the maximum step of their salary range, who receive a successful or higher rating on their performance evaluations and who have been in a paid status by the state for at least six months shall receive a merit increase of one or more salary steps at the beginning of the new fiscal year.

(b) Employees designated as schedule AE, AI and AL who are receiving benefits are eligible for merit step increases.

(c) Employees designated as schedule AJ are not eligible for merit step increases.

**(2) Promotions and Reclassifications.**

(a) An employee promoted or reclassified to a job with a salary range exceeding the employee's current salary range maximum by one salary step shall receive a salary increase of a minimum of one salary step and a maximum of four salary steps. An employee who is promoted or reclassified to a job with a salary range exceeding the employee's current salary range maximum by two or more salary steps shall receive a salary increase of a minimum of two salary steps and a maximum of four salary steps.

(i) An employee may not be placed higher than the maximum salary step or lower than the minimum salary step in the new salary range. Placement of an employee in longevity shall be consistent with Subsection R477-6-4(3).

(ii) An employee who remains in longevity status after a promotion or reclassification shall retain the same salary by being placed on the corresponding longevity step.

**(b) To be eligible for a promotion, an employee shall:**

(i) meet the job requirements and skills specified in the job description and position specific criteria as determined by the agency for the position unless the promotion is to a career service exempt position.

(c) An employee whose position is reclassified or changed by administrative adjustment to a job with a lower salary range

shall retain the current salary. The employee shall be placed on the corresponding longevity step if the salary exceeds the maximum of the new salary range.

**(3) Longevity.**

(a) An employee shall receive a longevity increase of 2.75 percent when:

(i) the employee has been in state service for eight years or more. The employee may accrue years of service in more than one agency and such service is not required to be continuous; and

(ii) the employee has been at the maximum salary step in the current salary range for at least one year and received a performance appraisal rating of successful or higher within the 12-month period preceding the longevity increase.

(b) An employee on a longevity step shall be eligible for the same across the board pay plan adjustments authorized for all other employee pay plans.

(c) An employee on a longevity step shall only be eligible for additional step increases every three years. To be eligible, an employee must receive a performance appraisal rating of successful or higher within the 12-month period preceding the longevity increase.

(d) An employee on a longevity step who is reclassified to a lower salary range shall retain the current actual wage.

(e) An employee on a longevity step who is promoted or reclassified to a higher salary range shall only receive an increase if the current actual wage is less than the highest salary step of the new range.

(f) Agency heads or time limited exempt employees identified in Section R477-4-10 are not eligible for the longevity program.

**(4) Administrative Adjustment.**

(a) An employee whose position has been allocated by DHRM from one job to another job or salary range for administrative purposes, shall not receive an adjustment in the current actual wage.

(b) Implementation of new job descriptions as an administrative adjustment shall not result in an increase in the current actual wage unless the employee is below the minimum step of the new range.

**(5) Reassignment.**

An employee's current actual wage may only be lowered when permitted by federal or state law, including but not limited to the Americans with Disabilities Act.

**(6) Transfer.**

Management may increase or decrease the current actual wage of an employee who initiates a transfer to another position consistent with Section R477-6-4.

**(7) Demotion.**

An employee demoted consistent with Section R477-11-2 shall receive a reduction in the current actual wage of one or more salary steps as determined by the agency head or designee. The agency head or designee may move an employee to a position with a lower salary range concurrent with the reduction in the current actual wage.

**(8) Productivity step adjustment.**

Agency management may establish policies to reward an employee who assumes additional workloads which result from the elimination of a position for at least one year with an increase of up to four salary steps. An employee at the maximum step of the salary range or in longevity shall be given a one time lump sum bonus award of 2.75% of their annual salary.

(a) To implement this program, agencies shall apply the following criteria:

(i) either the employee or management can make the suggestion;

(ii) the employee and management agree;

(iii) the agency head approves;

(iv) a written program policy achieves increased productivity through labor and management collaboration;

(v) DHRM approves;

(vi) the position will be abolished from the position authorization plan for a minimum of one year;

(vii) staff receive additional duties which are substantially above a normal full workload;

(viii) the same or higher level of service or productivity is achieved without accruing additional overtime hours;

(ix) the total dollar increase, including benefits, awarded to the workgroup as a result of the additional salary steps does not exceed 50 percent of the savings generated by eliminating the position.

(9) Administrative Salary Increase.

The agency head authorizes and approves administrative salary increases under the following parameters:

(a) An employee shall receive one or more steps up to the maximum of the salary range.

(b) Administrative salary increases shall only be granted when the agency has sufficient funding within their annualized base budgets for the fiscal year in which the adjustment is given.

(c) Justifications for Administrative Salary Increases shall be:

(i) in writing;

(ii) approved by the agency head;

(iii) supported by issues such as: special agency conditions or problems or other unique situations or considerations in the agency.

(d) The agency head is the final authority for salary actions authorized within these guidelines. The agency head or designee shall answer any challenge or grievance resulting from an administrative salary increase.

(e) Administrative salary increases may be given during the probationary period. These increases alone do not constitute successful completion of probation or the granting of career service status.

(f) An employee at the maximum step of the range or on a longevity step may not be granted administrative salary increases.

(10) Administrative Salary Decrease.

The agency head authorizes and approves administrative salary decreases for nondisciplinary reasons according to the following:

(a) An employee shall receive a one or more step decrease not to exceed the minimum of the salary range.

(b) Justification for administrative salary decreases shall be:

(i) in writing;

(ii) approved by the agency head; and

(iii) supported by issues such as previous written agreements between the agency and employees to include career mobility; reasonable accommodation, special agency conditions or problems, or other unique situations or considerations in the agency.

(c) The agency head is the final authority for salary actions within these guidelines. The agency head or designee shall answer any challenge or grievance resulting from an administrative salary decrease.

#### **R477-6-5. Incentive Awards.**

(1) Only agencies with written and published incentive award and bonus policies may reward employees with incentive awards or bonuses. Incentive awards and bonuses are discretionary, not an entitlement, and are subject to the availability of funds in the agency.

(a) Policies shall be approved annually by DHRM and be consistent with standards established in these rules and the Department of Administrative Services, Division of Finance, rules and procedures.

(b) Individual awards shall not exceed \$4,000 per occurrence and \$8,000 in a fiscal year. In exceptional circumstances, an award may exceed these limits upon application to DHRM and approval by the Governor.

(c) All cash and cash equivalent incentive awards and bonuses shall be subject to payroll taxes.

(2) Performance Based Incentive Awards.

(a) Cash Incentive Awards

(i) An agency may grant a cash incentive award to an employee or group of employees who:

(A) demonstrate exceptional effort or accomplishment beyond what is normally expected on the job for a unique event or over a sustained period of time.

(ii) All cash awards must be approved by the agency head or designee. They must be documented and a copy shall be maintained in the agency's individual employee file.

(b) Noncash Incentive Awards

(i) An agency may recognize an employee or group of employees with noncash incentive awards.

(ii) Individual noncash incentive awards shall not exceed a value of \$50 per occurrence and \$200 for each fiscal year.

(iii) Noncash incentive awards may include cash equivalents such as gift certificates or tickets for admission. Cash equivalent incentive awards shall be subject to payroll taxes and must follow standards and procedures established by the Department of Administrative Services, Division of Finance.

(3) Cost Savings Bonus

(a) An agency may establish a bonus policy to increase productivity, generate savings within the agency, or reward an employee who submits a cost savings proposal.

(i) The agency shall document the cost savings involved.

(4) Market Based Bonuses

An agency may award a cash bonus to an employee as an incentive to acquire or retain an employee with job skills that are critical to the state and difficult to recruit in the market.

(a) Retention Bonus

An agency may award a bonus to an employee who has unusually high or unique qualifications that are essential for the agency to retain.

(b) Recruitment or Signing Bonus

An agency may award a bonus to a qualified job candidate to convince the candidate to work for the state.

(c) Scarce Skills Bonus

An agency may award a bonus to a qualified job candidate that has the scarce skills required for the job.

(d) Relocation Bonus

An agency may award a bonus to a current employee who must relocate to accept a position in a different commuting area.

(e) Referral Bonus

An agency may award a bonus to a current employee who refers a job applicant who is subsequently selected and is successfully employed for at least six months.

#### **R477-6-6. Employee Benefits.**

(1) Agencies shall explain all benefits provided by the state to new hires or rehires within five working days of the hire date.

(2) Agency payroll or human resource staff shall submit personnel action forms to the appropriate agency levels within ten days of hire date.

(3) An employee must elect to enroll in the life, health, vision, and dental plans within 60 days of the hire date to avoid having to provide proof of insurability. An employee who does not enroll within 60 days can only enroll during the annual open enrollment period for all state employees. Agencies shall submit the enrollment forms to Group Insurance within three days of the date entered on the enrollment form.

(4) Flex Benefits

(a) A benefits eligible employee may participate in the

FLEX benefits program. The annual open enrollment period will be held each November for the following FLEX plan year. Exceptions to this rule are as follows:

(i) A new employee wishing to participate in the FLEX benefits program shall enroll within the first 60 days of employment. Coverage becomes effective on the employment date.

(ii) An employee who has a change in family status such as marriage, divorce, or birth of a child, may enroll or make changes within 60 days of such event. A completed FLEX family status change form, accompanied by proper documentation such as a marriage license, divorce decree, or birth certificate, must be received by the plan administrator within 60 days of the change in family status.

(b) An employee must reenroll each year to participate in the FLEX benefits program.

(c) An employee's designated FLEX payroll deduction shall not be changed during the course of a year unless there is a change in family status.

(d) To be eligible for reimbursement, expenses must be incurred during the plan year.

(e) The claim submission deadline for any plan year shall be 90 days following the end of the calendar year.

(f) An employee terminating, retiring, or changing from eligible to ineligible status during the plan year may either submit claims incurred during employment no later than 90 days following the date of termination, retirement or status change, or elect COBRA for the health care account only.

(5) An employee in a position which normally requires working less than 40 hours per pay period is ineligible for benefits. An employee in a position which normally requires working 40 hours or more per pay period shall be eligible for all benefits, unless the employee is in a position specifically designated as ineligible for benefits. Leave benefits shall be determined on a prorated basis according to actual hours paid in a pay period.

(6) A reemployed veteran under USERRA shall be entitled to the same employee benefits given to other continuously employed eligible employees to include seniority based increased pension and leave accrual.

#### **R477-6-7. Employee Converting from Career Service to Schedule AD, AR, or AS.**

(1) A career service employee in a position meeting the criteria for career service exempt Schedule AD, AR, AS or AT shall have 60 days to elect to convert from career service to career service exempt. As an incentive to convert, an employee shall be provided the following:

(a) a base salary increase of one to three salary steps, as determined by the agency head. An employee at the maximum of the current salary range or on longevity shall receive, in lieu of the salary step adjustment, a one time bonus of 2.75 percent, 5.5 percent or 8.25 percent to be determined by the agency head;

(b) state paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program, Public Employees Health Plan:

(i) Salaries less than \$50,000 shall receive \$125,000 of term life insurance;

(ii) Salaries between \$50,000 and \$60,000 shall receive \$150,000 of term life insurance;

(iii) Salaries more than \$60,000 shall receive \$200,000 of term life insurance.

(2) An employee electing to convert to career service exempt after the 60 day election period shall not be eligible for the salary increase, but shall be entitled to apply for the insurance coverage through the Group Insurance Office.

(3) An employee electing not to convert to career service exemption shall retain career service status even though the position shall be designated as Schedule AD, AR or AS. When

these career service employees vacate these positions, subsequent appointments shall be career service exempt.

(4) An agency head may reorganize so that a current career service exempt position no longer meets the criteria for exemption. In this case, the employee shall be designated as career service if he had previously earned career service. However, the employee shall not be eligible for the severance package or the life insurance. In this situation, the agency and employee shall make arrangements through the Group Insurance Office to discontinue the coverage.

(5) A career service exempt employee without prior career service status shall remain exempt. When the employee leaves the position, subsequent appointments shall be consistent with R477-4.

(6) Agencies shall communicate to all impacted and future eligible employees the conditions and limitations of this incentive program.

#### **R477-6-8. State Paid Life Insurance.**

(1) A benefits eligible career service exempt employee on schedule AA, AB, AD, AR and AT shall be provided the following benefits if the employee is approved through underwriting:

(a) State paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program Public Employees Health Plan:

(i) Salaries less than \$50,000 shall receive \$125,000 of term life insurance;

(ii) Salaries between \$50,000 and \$60,000 shall receive \$150,000 of term life insurance;

(iii) Salaries more than \$60,000 shall receive \$200,000 of term life insurance.

(2) An employee on schedule AC, AK, AM and AS may be provided these benefits at the discretion of the appointing authority.

#### **R477-6-9. Severance Benefit.**

(1) A benefits eligible career service exempt employee on schedule AB, AD, AR or AT who is separated from state service through an action initiated by management, to include resignation in lieu of termination, shall receive at the time of severance a benefit equal to:

(a) one week of salary, up to a maximum of 12 weeks, for each year of consecutive exempt service in the executive branch; and

(b) if eligible for COBRA, one month of health insurance coverage, up to a maximum of six months, for each year of consecutive exempt service, at the level of coverage the employee has at the time of severance, to be paid in a lump sum payment to the state's health care provider.

(2) A severance benefit shall not be paid to an employee:

(a) whose statutory term has expired without reappointment;

(b) who is retiring from state service; or

(c) who is discharged for cause.

(3) A benefits eligible career service exempt employee on schedule AB, AD, AR or AT who accepts reassignment to a position with a lower salary range, without a break in service, shall receive a severance benefit equal to the difference between the current actual wage and the new actual wage multiplied by the number of accrued annual leave, converted sick leave, and excess hours on the date of reassignment.

(4) An employee on schedule AC, AK, AM or AS may be provided these same severance benefits at the discretion of the appointing authority.

#### **R477-6-10. Human Resource Transactions.**

The Executive Director, DHRM, shall publicize procedures for processing payroll and human resource transactions actions

and documents.

**KEY: salaries, employee benefit plans, insurance, personnel  
management**

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**67-19-12**

**67-19-12.5**

**67-19-15.1(4)**

**R477. Human Resource Management, Administration.****R477-7. Leave.****R477-7-1. Conditions of Leave.**

(1) An employee who normally works 40 hours or more per pay period, except those identified as career service exempt in Section R477-4-10, is eligible for leave benefits. An employee receives leave benefits in proportion to the time paid.

(a) An eligible employee who normally works 40 or more hours per pay period shall accrue annual and sick leave in proportion to the time paid.

(b) An employee shall use leave in no less than quarter hour increments.

(2) A seasonal, temporary, or part-time employee working less than 40 hours per pay period is not eligible for paid leave.

(3) Accrual rates for sick, holiday and annual leave are determined on the Annual, Sick and Holiday Leave Accrual table available through DHRM.

(4) An employee may not use annual, sick, converted sick, compensatory, excess or holiday leave before accrued.

(5) An employee may not use compensatory, annual, converted sick leave used as annual, or excess leave without advance approval by management.

(6) An employee transferring from one agency to another is entitled to transfer all accrued annual, sick, and converted sick leave to the new agency.

(7) An employee on paid leave shall continue to accrue annual, holiday and sick leave.

(8) An employee separating from state service shall be paid in a lump sum for all annual leave and excess hours. An FLSA nonexempt employee shall also be paid in a lump sum for all compensatory hours.

(a)(i) An employee separating from state service for reasons other than retirement shall be paid in a lump sum for all converted sick leave.

(ii) Converted sick leave for a retiring employee shall be subject to Section R477-7-5.

(b) An employee may transfer this payout, minus all nondeferred taxes, to a 401(k) or 457 account up to the amount allowed by IRS regulation.

(c) No leave on leave may accrue or be paid on the cashed out leave.

(d) Leave cannot be used or accrued after the last day worked, except for FMLA or other medical reasons, or administrative leave specifically approved by management to be used after the last day worked.

(9) Contributions to benefits may not be paid on cashed out leave, other than FICA tax, except as it applies to converted sick leave in Section R477-7-5(2) and the Retirement Benefit in Section R477-7-6.

**R477-7-2. Holiday Leave.**

(1) The following dates are designated legal holidays:

(a) New Years Day -- January 1

(b) Dr. Martin Luther King Jr. Day -- third Monday of January

(c) Washington and Lincoln Day -- third Monday of February

(d) Memorial Day -- last Monday of May

(e) Independence Day -- July 4

(f) Pioneer Day -- July 24

(g) Labor Day -- first Monday of September

(h) Columbus Day -- second Monday of October

(i) Veterans' Day -- November 11

(j) Thanksgiving Day -- fourth Thursday of November

(k) Christmas Day -- December 25

(l) Any other day designated as a legal holiday by the Governor.

(2) If a holiday falls on a Sunday, the following Monday shall be observed as a holiday. If a holiday falls on a Saturday,

the preceding Friday shall be observed as a holiday.

(3) If an employee is required to work on an observed holiday, the employee shall receive appropriate holiday leave, or shall accrue excess hours.

(4) The following employees are eligible to receive holiday leave:

(a) A full-time employee shall accrue eight hours of paid holiday leave on holidays.

(b) A part-time career service employee and a partner in a shared position who normally works 40 hours or more per pay period shall receive holiday leave in proportion to the hours paid in the pay period in which the holiday falls.

(c) An employee working flex time, as defined in Section R477-8-2, shall receive a maximum of 88 hours of holiday leave in each calendar year. If the holiday falls on a regularly scheduled day off, a flex time employee shall receive an equivalent workday off, not to exceed eight hours, or shall accrue excess hours.

(5) An employee receives holiday leave in proportion to the number of hours paid during the pay period in which the holiday falls.

(a) A new hire shall be in a paid status on or before the holiday in order to receive holiday leave.

(b) A separating employee shall be in a paid status on or after the holiday in order to receive holiday leave.

(c) An employee in a leave without pay status shall receive holiday leave in proportion to the time paid in the pay period in which the holiday falls.

**R477-7-3. Annual Leave.**

(1) An employee eligible for annual leave shall accrue leave based on the following years of state service:

(a) less than 5 years -- four hours per pay period;

(b) at least 5 and less than 10 years -- five hours per pay period;

(c) at least 10 and less than 20 years -- six hours per pay period;

(d) 20 years or more -- seven hours per pay period.

(2) The accrual rate for an employee rehired to a position which receives leave benefits shall be based on all state employment in which the employee was eligible to accrue leave.

(3) The first eight hours of annual leave used by an employee in the calendar leave year shall be the employee's personal preference day.

(4) Agency management shall allow every employee the option to use annual leave each year for at least the amount accrued in the year.

(5) Unused accrued annual leave time in excess of 320 hours shall be forfeited during year end processing for each calendar year.

(6) The maximum annual leave accrual rate shall be granted to a certain employee under the following conditions:

(a) an employee described in Section 67-22-2, an employee in schedule AB, and agency deputy directors and division directors appointed to career service exempt positions.

(b) an employee who is schedule A, FLSA exempt and who has a direct reporting relationship to an elected official, executive director, deputy director, commissioner or board.

(c) The maximum accrual rate shall be effective from the day the employee is appointed through the duration of the appointment. Employees in these positions on July 1, 2003, shall have the leave accrual rate adjusted prospectively.

(d) The employee may not be eligible for any transfer of leave from other jurisdictions.

(e) Other provisions of leave shall apply as defined in Section R477-7-1.

**R477-7-4. Sick Leave.**

(1) An employee shall accrue sick leave with pay in

proportion to the time paid each pay period, not to exceed four hours. Sick leave shall accrue without limit.

(2) Sick leave shall be granted for:

(a) preventive health and dental care, maternity, paternity, and adoption care, or for absence from duty because of illness, injury or temporary disability of the employee, a spouse, children or parents living in the employee's home; or

(b) FMLA purposes under Section R477-7-15.

(3) Agency management may grant exceptions for other unique medical situations.

(4) An employee shall arrange for a telephone report to supervisors at the beginning of the scheduled workday the employee is absent due to illness or injury. Management may require reports for serious illnesses or injuries.

(5) Any application for a grant of sick leave to cover an absence that exceeds four successive working days shall be supported by administratively acceptable evidence. If there is a reason to believe that an employee is abusing sick leave, a supervisor may require an employee to produce evidence regardless of the number of sick hours used.

(6) After filing a resignation notice, an employee must support a sick leave request with a doctor's certificate.

(7) An employee separating from state service may not receive compensation for accrued unused sick leave unless retiring.

(a) An employee who is rehired within 12 months of separation to a position that receives sick leave benefits shall have previously accrued unused sick leave credit reinstated.

(b) An employee who retires from state service and is rehired may not reinstate unused sick leave credit.

#### **R477-7-5. Converted Sick Leave.**

An employee may convert sick leave hours to converted sick leave after the end of the last pay period of the calendar year in which the employee is eligible.

(1)(a) Converted sick leave hours accrued prior to January 1, 2006 shall be program I converted sick leave hours.

(b) Converted sick leave hours accrued after January 1, 2006 shall be program II converted sick leave hours.

(2) To be eligible, an employee must have accrued a total of 144 hours or more of sick leave in program I and program II combined at the beginning of the first pay period of the calendar year.

(a) At the end of the last pay period of a calendar year in which an employee is eligible, all unused sick leave hours accrued that year in excess of 64 shall be converted to program II converted sick leave.

(b) The maximum hours of converted sick leave an employee may accrue in program I and program II combined is 320.

(c) If the employee has the maximum accrued in converted sick leave, these hours will be added to the annual leave account balance.

(d) In order to prevent or reverse the conversion, an employee shall:

(i) notify agency management no later than the last day of the last pay period of the calendar year in order to prevent the conversion; or

(ii) notify agency management no later than the end of February in order to reverse the conversion.

(e) Upon separation, an eligible employee may convert any unused sick leave hours accrued in the current calendar leave year in excess of 64 to converted sick leave hours in program II.

(3) An employee may use converted sick leave as annual leave or as regular sick leave.

(4) Upon retirement, 25 percent of the value of the unused converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401 (k) account as an employer contribution.

(a) Converted sick leave hours from program II shall be placed in the 401 (k) account before hours from program I.

(b) The remainder shall be used for:

(i) the purchase of health care insurance and life insurance as provided in Subsection R477-7-6(3)(c) if the converted sick leave was accrued in program I; or

(ii) a contribution into the employees PEHP health reimbursement account as provided in Subsection R477-7-6(4)(b) if the converted sick leave was accrued in program II.

#### **R477-7-6. Sick Leave Retirement Benefit.**

Upon retirement from active employment, an employee shall receive an unused sick leave retirement benefit under the provisions of Section 67-19-14.2 and Section 67-19-14.4.

(1)(a) Sick leave hours accrued prior to January 1, 2006 shall be program I sick leave hours.

(b) Sick leave hours accrued after January 1, 2006 shall be program II sick leave hours.

(2) An agency may offer the Unused Sick Leave Retirement Option Program I to an employee who is eligible to receive retirement benefits. However, any decision whether or not to participate in this program shall be agency wide and shall be consistent through an entire fiscal year.

(a) If an agency decides to withdraw for the next fiscal year after initially deciding to participate, the agency must notify all employees at least 60 days before the new fiscal year begins.

(3) An employee in a participating agency shall receive the following benefit provided by the Unused Sick Leave Retirement Options Program I.

(a) Continuing health and life insurance.

(i) The employing agency shall provide the same health and life insurance benefits as provided to current employees until the employee reaches the age eligible for Medicare or up to the following number of years, whichever comes first.

(A) four years if the employee retires during calendar year 2007;

(B) three years if the employee retires during calendar year 2008;

(C) two years if the employee retires during calendar year 2009;

(D) one year if the employee retires during calendar year 2010; or

(E) zero years if the employee retires after calendar year 2010.

(ii) Health insurance provided shall be the same coverage carried by the employee at the time of retirement; i.e., family, two-party, or single. If the employee has no health coverage in place upon retirement, none shall be offered or provided.

(iii) Life insurance provided shall be the minimum authorized coverage provided for all state employees at the time the employee retires.

(iv) The retiree shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

(b) Twenty five percent of the value of the unused sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employees 401(k) account as an employer contribution.

(i) Sick leave hours from program II shall be placed in the 401(k) account before hours from program I.

(ii) After the 401(k) contribution is made, an additional amount shall be deducted from the employees remaining sick leave balance as follows.

(A) 384 hours if the employee retires during calendar year 2007;

(B) 288 hours if the employee retires during calendar year 2008;

(C) 192 hours if the employee retires during calendar year 2009;

(D) 96 hours if the employee retires during calendar year 2010; or

(E) zero hours if the employee retires after calendar year 2010.

(c) The remaining sick leave hours and converted sick leave hours from Subsection R477-7-5(4)(b)(i) shall be used to provide the following benefit.

(i) The purchase of PEHP health insurance, or a state approved program, and life insurance coverage for the employee until he reaches the age eligible for Medicare.

(A) Health insurance shall be the same coverage carried by the employee at the time of retirement; i.e., family, two-party, or single.

(B) The purchase rate shall be eight hours of sick leave or converted sick leave for the state paid portion of one month's premium.

(C) The employee shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

(D) Life insurance provided shall be the minimum authorized coverage provided for state employees at the time the employee retires.

(ii) When the employee reaches the age eligible for Medicare, he may purchase a Medicare supplement policy provided by PEHP for himself at the rate of eight hours of sick leave or converted sick leave for one month's premium.

(iii) After the employee reaches the age eligible for Medicare, he may purchase PEHP health insurance, or a state approved program for a spouse until the spouse reaches the age eligible for Medicare.

(A) The purchase rate shall be eight hours of sick leave or converted sick leave for one month's premium.

(B) The employee shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

(iv) When the spouse reaches the age eligible for Medicare, the employee may purchase a Medicare supplement policy provided by PEHP for the spouse at the rate of eight hours of sick leave or converted sick leave for one month's premium.

(v) In the event an employee is killed in the line of duty, the employee's spouse shall be eligible to use the employee's available sick leave hours for the purchase of health and dental insurance as provided in Section 67-19-14.3.

(4) An employee shall receive the following benefit provided by the Unused Sick Leave Retirement Option Program II.

(a) Twenty five percent of the value of the unused sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401(k) account as an employer contribution.

(b) After the 401(k) contribution the remaining sick leave hours and the converted sick leave hours from Subsection R477-7-5(4)(b)(ii) shall be deposited in the employees PEHP health reimbursement account at the greater of:

(i) the employees rate of pay at retirement, or

(ii) the average rate of pay of state employees who retired in the same retirement system in the previous calendar year.

#### **R477-7-7. Administrative Leave.**

(1) Administrative leave may be granted consistent with agency policy for the following reasons:

(a) administrative;

(i) governor approved holiday leave;

(ii) during management decisions that benefit the

organization;

(iii) when no work is available due to unavoidable conditions or influences; or

(iv) other reasons consistent with agency policy.

(b) protected;

(i) suspension with pay pending hearing results;

(ii) personal decision making prior to discipline;

(iii) removal from adverse or hostile work environment situations;

(iv) fitness for duty or employee assistance; or

(v) other reasons consistent with agency policy.

(c) reward in lieu of cash;

(i) the agency head or designee may grant paid administrative leave up to eight hours per occurrence;

(ii) administrative leave in excess of eight hours may be granted with written approval by the agency head.

(iii) administrative leave given as a reward in lieu of cash may not exceed 40 hours in a fiscal year.

(iv) administrative leave given as a reward in lieu of cash may be given from one agency to employees of another agency if both agency heads agree in advance.

(d) student educational assistance.

(e) An employee who satisfies the criteria in this subsection shall be granted up to two hours of administrative leave to vote in an official election.

(i) The employee must:

(A) have fewer than three total hours off the job between the time the polls open and close, and;

(B) apply for the time in the previous 24 hours.

(ii) Management may specify the hours when the employee may be absent.

(f) Administrative leave shall be given for non-performance based purposes to employees who are on Family and Medical Leave or a military leave of absence if the leave would have been given had the employee been in a working status.

(2) With the exception of administrative leave used as a reward, as described in Subsection R477-7(1)(c), the agency head or designee may grant paid administrative leave up to ten consecutive working days per occurrence. Administrative leave in excess of ten consecutive working days per occurrence may be granted by the agency head.

(3) Administrative leave taken must be documented in the employee's leave record.

#### **R477-7-8. Jury Leave.**

(1) An employee is entitled to a leave of absence with full pay when, in obedience to a subpoena or direction by proper authority, the employee is required to:

(a) appear as a witness as part of the employee's position for the federal government, the State of Utah, or a political subdivision of the state; or

(b) serve as a witness in a grievance hearing as provided in Section 67-19-31 and Title 67, Chapter 19a; or

(c) serve on a jury.

(2) An employee who is absent in order to litigate in matters unrelated to state employment shall use eligible accrued leave or leave without pay.

(3) An employee choosing to use paid leave while on jury duty shall be entitled to keep juror's fees; otherwise, juror's fees received shall be returned to agency payroll clerks for deposit with the State Treasurer. The fees shall be deposited as a refund of expenditure in the low org. where the salary is recorded.

#### **R477-7-9. Bereavement Leave.**

An employee may receive a maximum of 24 hours bereavement leave per occurrence with pay, at management's discretion, following the death of a member of the employee's immediate family. Bereavement leave may not be charged

against accrued sick or annual leave.

(1) The immediate family means relatives of the employee or spouse including in-laws, step-relatives, or equivalent relationship as follows:

- (a) spouse;
- (b) parents;
- (c) siblings;
- (d) children;
- (e) all levels of grandparents; or
- (f) all levels of grandchildren.

#### **R477-7-10. Military Leave.**

One day of military leave is the equivalent to the employee's normal workday but not to exceed eight hours.

(1) An employee who is a member of the National Guard or Military Reserves is entitled to paid military leave not to exceed 15 days per calendar year. An employee shall be on official military orders and may not claim salary for nonworking days spent in military training or for traditional weekend training.

(2) After the first 15 days, officers and employees of the state shall be granted military leave without pay for the period of official military orders, including travel time, Section 39-3-1.

(a) An employee may use accrued leave while on official military orders.

(i) Accrued sick leave may only be used if the reason for leave meets the conditions in Section R477-7-4.

(3) An employee on military leave is eligible for any service awards or non-performance administrative leave he would otherwise be eligible to receive.

(4) An employee shall give notice of official military orders as soon as possible.

(5) Upon release from official military orders under honorable conditions, an employee shall be placed in a position in the following order of priority.

(a) If the period of service was for less than 91 days, the employee shall be placed:

- (i) in the same position the employee held on the date of the commencement of the service in the uniformed services; or
- (ii) in the same position the employee would have held if the continuous employment of the employee had not been interrupted by the service.

(b) If the period of service was for more than 90 days, the employee shall be placed:

- (i) in a position of like seniority, status and salary, of the position the employee held on the date of the commencement of the service in the uniformed services; or
- (ii) in a position of like seniority, status, and salary the employee would have held if the continuous employment of the employee had not been interrupted by the service.

(c) When a disability is incurred or aggravated while on official military orders, the employing agency shall adhere to the Uniformed Services Employment and Reemployment Rights Act (USERRA), United States Code, Title 38, Chapter 43.

(d) The cumulative length of time allowed for reemployment may not exceed five years. This rule incorporates by reference 20CFR1002.103 for the purposes of calculating cumulative time.

(e) An employee is entitled to reemployment rights and benefits including increased pension and leave accrual. An employee entering military leave may elect to have payment for annual leave deferred.

(6) In order to be reemployed, an employee shall present evidence of military service, and:

(a) for service less than 31 days, return at the beginning of the next regularly scheduled work period on the first full day after release from service unless impossible or unreasonable through no fault of the employee;

(b) for service of more than 30 days but less than 181 days,

submit a request for reemployment within 14 days of release from service, unless impossible or unreasonable through no fault of the employee; or

(c) for service of more than 180 days, submit a request for reemployment within 90 days of release from service.

#### **R477-7-11. Disaster Relief Volunteer Leave.**

(1) An employee may be granted leave from work with pay for an aggregate of 15 working days or 120 work hours in any 12 month period to participate in disaster relief services for the American Red Cross. To request this leave an employee must be a certified disaster relief volunteer and file a written request with the employing agency. The request shall include:

- (a) a copy of a written request for the employee's services from an official of the American Red Cross;
- (b) the anticipated duration of the absence;
- (c) the type of service the employee is to provide for the American Red Cross; and
- (d) the nature and location of the disaster where the employee's services will be provided.

#### **R477-7-12. Organ Donor Leave.**

An employee who serves as a bone marrow or human organ donor shall be granted paid leave for the donation and recovery.

(1) An employee who donates bone marrow shall be granted up to seven days of paid leave.

(2) An employee who donates a human organ shall be granted up to 30 days of paid leave.

#### **R477-7-13. Leave of Absence Without Pay.**

(1) An employee shall apply in writing to agency management for approval of a leave of absence without pay. Approval may be granted for continuous leave for up to 12 months from the last day worked.

(a) The employee shall be entitled to previously accrued annual and sick leave.

(b) If unable to return to work within the time period granted, the employee shall be separated from state employment unless prohibited by state or federal law to include but not limited to the Americans with Disabilities Act.

##### **(2) Nonmedical Reasons**

(a) Leave without pay may be granted only when there is an expectation that the employee will return to work. This section does not apply for military leave.

(b) Agency management may approve leave without pay for an employee even though annual or sick leave balances exist. An employee may take up to ten consecutive working days of leave without pay without affecting the leave accrual rate.

(c) An employee who receives no compensation for a complete pay period shall be responsible for payment of the full premium of state provided benefits.

(d) An employee who returns to work on or before the expiration of leave without pay shall be placed in a position with comparable pay and seniority to the previously held position.

##### **(3) Medical Reasons**

(a) An employee who is ineligible for FMLA, Workers Compensation, or Long Term Disability may be granted continuous, reduced or intermittent leave without pay for medical reasons.

(b) Medical leave without pay may be granted for no more than 12 months. Medical leave may be approved if a registered health practitioner certifies that an employee is temporarily disabled.

(c) An employee who is granted this leave shall provide a monthly status update to the employee's supervisor.

**R477-7-14. Furlough.**

(1) Agency management may furlough employees as a means of saving salary costs in lieu of or in addition to a reduction in force. Furlough plans are subject to the approval of the agency head and the following conditions:

- (a) An employee shall accrue annual and sick leave.
- (b) Full payment of all fringe benefits shall continue at the agency's expense.
- (c) An employee shall return to the current position.
- (d) Furlough is applied equitably; e.g., to all persons in a given class, all program staff, or all staff in an organization.

**R477-7-15. Family and Medical Leave.**

(1) An employee is entitled to 12 weeks of family and medical leave each calendar year for any of the following reasons:

- (a) birth of a child;
- (b) adoption of a child;
- (c) placement of a foster child;
- (d) a serious health condition of the employee; or
- (e) care of a spouse, dependent child, or parent with a serious medical condition.

(2) An employee on FMLA leave shall continue to receive the same health insurance benefits the employee was receiving prior to the commencement of FMLA leave.

(3) An employee on FMLA leave shall receive any administrative leave given for non-performance based reasons if the leave would have been given had the employee been in a working status.

(4) To be eligible for family and medical leave, the employee must:

- (a) be employed by the state for at least 12 months;
- (b) be employed by the state for a minimum of 1250 hours worked, as determined under FMLA, during the 12 month period immediately preceding the commencement of leave.

(5) When an employee chooses to use FMLA leave, the employee or an appropriate spokesperson, shall apply in writing for the initial leave and when the reason for requesting family medical leave changes:

- (a) thirty days in advance for foreseeable needs; or
  - (b) as soon as possible in emergencies.
- (6) An employee may use accrued annual leave, sick leave, converted sick leave, excess hours and compensatory time prior to going into leave without pay status for the family and medical leave period.

(a) An employee who chooses to use FMLA leave shall use FMLA leave for all absences related to that qualifying event.

(b) An employee who takes family and medical leave in a leave without pay status must comply with Section R477-7-13.

(7) Any period of leave without pay for an employee with a serious health condition who is determined by a health care provider to be incapable of applying for Family and Medical Leave and has no agent or designee shall be designated as FMLA leave.

(8) An employee with a serious health condition covered under workers' compensation may use FMLA leave concurrently with the workers' compensation benefit.

(9) An employee shall be eligible to return to work under Section R477-7-13.

(a) If an employee has gone into leave without pay status and fails to return to work after FMLA leave has ended, an agency may recover, with certain exceptions, the health insurance premiums paid by the agency on the employee's behalf. An employee is considered to have returned to work if the employee returns for at least 30 calendar days.

- (b) Exceptions to this provision include:
  - (i) an FLSA exempt and schedule AB, AD and AR employee who has been denied restoration upon expiration of their leave time;

(ii) an employee whose circumstances change unexpectedly beyond the employee's control during the leave period preventing the return to work at the end of 12 weeks.

(10) Leave taken for purposes of childbirth, adoption, placement for adoption or foster care shall not be taken intermittently or on a reduced leave schedule unless the employee and employer mutually agree.

(11) Medical records created for purposes of FMLA and the Americans with Disabilities Act must be maintained in accordance with confidentiality requirements of Subsection R477-2-5(7).

**R477-7-16. Workers Compensation Leave.**

(1) An employee may use accrued leave benefits to supplement the workers compensation benefit.

(a) The combination of leave benefit and workers compensation benefit shall not exceed the employee's gross salary. Leave benefits shall only be used in increments of one hour in making up any difference.

(b) The use of accrued leave to supplement the worker compensation benefit shall be terminated if:

- (i) the employee is declared medically stable by licensed medical authority;
- (ii) the workers compensation fund terminates the benefit;
- (iii) the employee has been absent from work for one year;
- (iv) the employee refuses to accept appropriate employment offered by the state; or
- (v) the employee receives Long Term Disability or Social Security Disability benefits.

(c) The employee shall refund to the state any accrued leave paid which exceeds the employee's gross salary for the period for which the benefit was received.

(2) An employee will continue to accrue state paid benefits and leave benefits while receiving a workers compensation time loss benefit for up to one year.

(3) Health insurance benefits shall continue for an employee on leave without pay while receiving workers compensation benefits. The employee is responsible for the payment of the employee share of the premium.

(4) If the employee is able to return to work within one year of the last day worked, the agency shall place the employee in the previously held position or a similar position at a comparable salary range.

(5) If the employee is unable to return to work within 12 months, the employee shall be separated from state employment unless prohibited by state or federal law to include but not limited to the Americans with Disabilities Act.

(6) An employee who files a fraudulent workers compensation claim shall be disciplined according to the provisions of Rule R477-11.

**R477-7-17. Long Term Disability Leave.**

(1) An employee who is determined eligible for the Long Term Disability Program (LTD) shall be granted up to one year of medical leave, if warranted by a medical condition.

(a) The medical leave begins on the last day the employee worked. LTD requires a three month waiting period before benefit payments begin. During this period, an employee may use available sick and converted sick leave. When those balances are exhausted, an employee may use other leave balances available.

(b) An employee determined eligible for Long Term Disability benefits shall be eligible for health insurance benefits the day after the last day worked. The employee is responsible for 10% of the health insurance premium during the first year of disability, 20% during the second year of disability, and 30% thereafter until the employee is no longer covered by the long term disability program.

Upon approval of the LTD claim:

(i) Biweekly salary payments that the employee may be receiving shall cease. If the employee received any salary payments after the three month waiting period, the LTD benefit shall be offset by the amount received.

63-13-2  
67-19-6  
67-19-12.9  
67-19-14  
67-19-14.2  
67-19-14.4

(ii) The employee shall be paid for remaining balances of annual leave, compensatory hours and excess hours in a lump sum payment. This payment shall be made at the time LTD is approved unless the employee requests in writing to receive it upon separation from state employment. No reduction of the LTD payment shall be made to offset this payment. If the employee returns to work prior to one year after the last day worked, the employee has the option of buying back annual leave at the current hourly rate.

(iii) An employee with a converted sick leave balance at the time of LTD eligibility shall have the option to receive a lump sum payout of all or part of the balance or to keep the balance intact to pay for health and life insurance upon retirement. The payout shall be at the rate at the time of LTD eligibility.

(iv) An employee who retires from state government directly from LTD may be eligible for health and life insurance as provided in Subsection 67-19-14(2)(b)(ii).

(v) Unused sick leave balance shall remain intact until the employee retires. At retirement, the employee shall be eligible for the 401(k) contribution and the purchase of health and life insurance as provided in Subsection 67-19-14(2)(c)(i).

(2) An employee shall continue to accrue service credit for retirement purposes while receiving long term disability benefits.

(3) Conditions for return from leave without pay shall include:

(a) If an employee provides an administratively acceptable medical release allowing him to return to work within one year of the last day worked, the agency shall place the employee in the previously held position or similar position in a comparable salary range provided the employee is able to perform the essential functions of the job with or without a reasonable accommodation.

(b) If an employee is unable to return to work within one year after the last day worked, the employee shall be separated from state employment unless prohibited by state or federal law to include but not limited to the Americans with Disabilities Act.

(4) An employee who files a fraudulent long term disability claim shall be disciplined according to the provisions of Rule R477-11.

**R477-7-18. Leave Bank.**

With the approval of the agency head, agencies may establish a leave bank program as follows:

(1) Only annual leave, excess hours, compensatory time earned by an FLSA nonexempt employee, and converted sick leave hours may be donated to a leave bank.

(2) Only employees of agencies with approved leave bank programs may donate leave hours to another agency with a leave bank program, if mutually agreed on by both agencies.

(3) An employee may not receive donated leave until all individually accrued leave is used.

(4) Leave shall be accrued if an employee is on sick leave donated from an approved leave bank program.

**R477-7-19. Policy Exceptions.**

The Executive Director, DHRM, may authorize exceptions to the provisions of this rule consistent with Subsection R477-2-3(1).

**KEY: holidays, leave benefits, vacations**

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**R477. Human Resource Management, Administration.****R477-8. Working Conditions.****R477-8-1. Work Period.**

(1) Tasks shall be assigned and wages paid in return for work completed. During the state's standard work week, each employee is responsible for fulfilling the essential functions of his job.

(a) The state's standard work week begins Saturday and ends the following Friday.

(b) State offices are typically open Monday through Friday from 8 a.m. to 5 p.m. Agencies may adopt extended business hours to enhance service to the public, consistent with overtime provisions of Section R477-8-6.

(c) An employee may negotiate for flexible starting and quitting times with the immediate supervisor as long as scheduling is consistent with overtime provisions of the rules Section R477-8-6.

(d) Agencies may implement alternative work schedules approved by the Director.

(e) An employee is required to be at work on time. An employee who is late, regardless of the reason including inclement weather, shall make up the lost time by using accrued leave, leave without pay or, with management approval, adjust their work schedule.

(f) An employee must work in increments of 15 minutes or more to receive salary for hours worked and overtime hours worked. This rule incorporates by reference 29 CFR 785.48 for rounding practices when calculating time worked.

**R477-8-2. Bus Passes.**

Agencies may participate in the purchase of bus passes for employees.

**R477-8-3. Telecommuting.**

(1) Telecommuting is an agency option, not a universal employee benefit. Agencies utilizing a telecommuting program shall:

(a) establish a written policy governing telecommuting;

(b) enter into a written contract with each telecommuting employee to specify conditions, such as use of state or personal equipment, and results such as identifiable benefits to the state and how customer needs are being met; and

(c) not allow telecommuting employees to violate overtime rules.

**R477-8-4. Lunch and Break Periods.**

(1) Each full-time work day shall include a minimum of 30 minutes noncompensated lunch period. This lunch period is normally scheduled between 11:00 a.m. and 1:00 p.m. for a regular day shift.

(2) An employee may take a 15 minute compensated break period for every four hours worked.

(3) Lunch and break periods shall not be adjusted or accumulated to accommodate a shorter work day or longer lunch period. Any exceptions must be approved in writing by the Executive Director, DHRM.

**R477-8-5. Overtime.**

The state's policy for overtime is adopted and incorporated from the Fair Labor Standards Act, 29 CFR Parts 500 to 899(2002) and Section 67-19-6.7.

(1) Management may direct an employee to work overtime. Each agency shall develop internal rules and procedures to ensure overtime usage is efficient and economical. These policies and procedures shall include:

(a) prior supervisory approval for all overtime worked;

(b) recordkeeping guidelines for all overtime worked;

(c) verification that there are sufficient funds in the budget to compensate for overtime worked.

(2) Overtime compensation standards are identified for each job title in HRE as either FLSA nonexempt, or FLSA exempt.

(a) An employee may appeal the FLSA designation to the agency human resource office and DHRM concurrently. Further appeals must be filed directly with the United States Department of Labor, Wage and Hour Division. The provisions of Sections 67-19-31, 67-19a-301 and Title 63, Chapter 46b shall not apply for FLSA appeals purposes.

(3) An FLSA nonexempt employee may not work more than 40 hours a week without management approval. Overtime shall accrue when the employee actually works more than 40 hours a week. Leave and holiday time taken within the work period shall not count as hours worked when calculating overtime accrual. Hours worked over two or more weeks shall not be averaged with the exception of certain types of law enforcement, fire protection, and correctional employees.

(a) An FLSA nonexempt employee shall sign a prior overtime agreement authorizing management to compensate the employee for overtime worked by actual payment or time off at time and one half.

(b) An FLSA nonexempt employee may receive compensatory time for overtime up to a maximum of 80 hours. Only with prior approval of the Executive Director, DHRM, may compensatory time accrue up to 240 hours for regular employees or up to 480 hours for peace or correctional officers, emergency or seasonal employees. Once an employee reaches the maximum, additional overtime shall be paid on the payday for the period in which it was earned.

(4) An FLSA exempt employee may not work more than 80 hours in a pay period without management approval. Compensatory time shall accrue when the employee actually works more than 80 hours in a work period. Leave and holiday time taken within the work period may not count as hours worked when calculating compensatory time. Each agency shall compensate an FLSA exempt employee who works overtime by granting time off. For each hour of overtime worked, an FLSA exempt employee shall accrue an hour of compensatory time.

(a) Agencies shall establish in written policy a uniform overtime year either for the agency as a whole or by division and communicate it to employees. If an agency fails to establish a uniform overtime year, the Executive Director, DHRM, and the Director of Finance, Department of Administrative Services, will determine the date for the agency at the end of one of the following pay periods: Five, Ten, Fifteen, Twenty, or the last pay period of the calendar year. An agency may change the established overtime year only after the current overtime year has lapsed, unless justifiable reasons exist and the Executive Director, DHRM, has granted a written exception.

(b) Any compensatory time earned by an FLSA exempt employee is not an entitlement, a benefit, nor a vested right.

(c) Any compensatory time earned by an FLSA exempt employee shall lapse upon occurrence of any one of the following events:

(i) at the end of the employee's established overtime year;

(ii) when an employee transfers to another agency; or

(iii) when an employee terminates, retires, or otherwise does not return to work before the end of the overtime year.

(d) If an FLSA exempt employee's status changes to nonexempt, that employee's compensatory time earned while in exempt status shall lapse if not used by the end of the current overtime year.

(e) The agency head may approve overtime for career service exempt deputy and division directors, but overtime shall not be compensated with actual payment. Schedule AB employees shall not be compensated for compensatory time except with time off.

(5) Law enforcement, correctional and fire protection employees

(a) To be considered for overtime compensation under this rule, a law enforcement or correctional officer must meet the following criteria:

- (i) be a uniformed or plainclothes sworn officer;
  - (ii) be empowered by statute or local ordinance to enforce laws designed to maintain public peace and order, to protect life and property from accident or willful injury, and to prevent and detect crimes;
  - (iii) have the power to arrest;
  - (iv) be POST certified or scheduled for POST training;
- and
- (v) perform over 80 percent law enforcement duties.

(b) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to law enforcement or correctional officers designated FLSA nonexempt and covered under this rule.

- (i) 171 hours in a work period of 28 consecutive days; or
  - (ii) 86 hours in a work period of 14 consecutive days.
- (c) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to fire protection employees.
- (i) 212 hours in a work period of 28 consecutive days; or
  - (ii) 106 hours in a work period of 14 consecutive days.
- (d) Agencies may designate a lesser threshold in a 14 day or 28 day consecutive work period as long as it conforms to the following:

- (i) the Fair Labor Standards Act, Section 207(k);
- (ii) 29 CFR 553.230;
- (iii) the state's payroll period;
- (iv) the approval of the Executive Director, DHRM.

(6) Compensatory Time

(a) Agency management shall arrange for an employee's use of compensatory time as soon as possible without unduly disrupting agency operations or endangering public health, safety or property.

(b) Compensatory time balances for an FLSA nonexempt employee shall be paid down to zero in the same pay period that the employee is transferred from one agency to a different agency, promoted, reclassified, reassigned, or transferred to an FLSA exempt position. The pay down for unused compensatory time balances shall be based on the employee's hourly rate of pay in the old position.

(7) Time Reporting

(a) An FLSA nonexempt employee must complete and sign a state approved biweekly time record. Time records developed by the agency shall have the same elements of the state approved time record and be approved by the Department of Administrative Services, Division of Finance.

(b) An FLSA exempt employee who works more than 80 hours in a work period must record the total hours worked and the compensatory time used on a biweekly time record. All hours must be recorded in order to claim overtime. Completion of the time record is at agency discretion when no overtime is worked during the work period.

(8) Hours Worked: An FLSA nonexempt employee shall be compensated for all hours worked. An employee who works unauthorized overtime may be subject to disciplinary action.

(a) All time that an FLSA nonexempt employee is required to wait for an assignment while on duty, before reporting to duty, or before performing activities is counted towards hours worked.

(b) Time spent waiting after being relieved from duty is not counted as hours worked if one or more of the following conditions apply:

- (i) the employee arrives voluntarily before their scheduled shift and waits before starting duties;
- (ii) the employee is completely relieved from duty and allowed to leave the job;
- (iii) the employee is relieved until a definite specified time;

(iv) the relief period is long enough for the employee to use as the employee sees fit.

(c) On-call time: An employee required by agency management to be available for on-call work shall be compensated for on-call time at a rate of one hour for every 12 hours the employee is on-call.

(i) Time is considered on-call time when the employee has freedom of movement in personal matters as long as the employee is available for call to duty.

(ii) An employee must be directed by his supervisor, either verbally or in writing, that he is on call for a specified time period. Carrying a beeper or cell phone shall not constitute on-call time without a specific directive from a supervisor.

(iii) The employee shall record the hours spent in on-call status on his time sheet in order to be paid.

(d) Stand-by time: An employee restricted to stand-by at a specified location ready for work must be paid full-time or overtime, as appropriate. An employee must be paid for stand-by time if required to stand by the post ready for duty, even during lunch periods, equipment breakdowns, or other temporary work shutdowns.

(e) The meal periods of guards, police, and other public safety or correctional officers and firefighters who are on duty more than 24 consecutive hours must be counted as working time, unless an express agreement excludes the time.

(9) Commuting and Travel Time for FLSA exempt and nonexempt employees:

(a) Normal commuting time from home to work and back shall not count towards hours worked.

(b) Time an employee spends traveling from one job site to another during the normal work schedule shall count towards hours worked.

(c) Time an employee spends traveling on a special one day assignment shall count towards hours worked except meal time and ordinary home to work travel.

(d) Travel that keeps an employee away from home overnight does not count towards hours worked if it is time spent outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

(e) Travel as a passenger counts toward hours worked if it is time spent during regular working hours. This applies to nonworking days, as well as regular working days. However, regular meal period time is not counted.

(10) Excess Hours for FLSA exempt and nonexempt employees: An employee may use excess hours the same way as annual leave.

(a) Agency management shall approve excess hours before the work is performed.

(b) Agency management may deny the use of any leave time, other than holiday leave, that results in an employee accruing excess hours.

(c) An employee may not accumulate more than 80 excess hours.

(d) Agency management may pay out excess hours under one of the following:

- (i) paid off automatically in the same pay period accrued;
- (ii) paid off at any time during the year as determined appropriate by a state agency or division;
- (iii) all hours accrued above the limit set by DHRM; or
- (iv) upon request of the employee and approval by the agency head.

**R477-8-6. Dual State Employment.**

An employee who has more than one position within state government, regardless of schedule is considered to be in a dual employment situation. The following conditions apply to dual employment status.

(1) An employee may work in up to four different positions in state government.

(2) An employee's benefit status for any secondary position(s), regardless of schedule of any of the positions, shall be the same as the primary position.

(3) An employee's FLSA status (exempt or nonexempt) for any secondary position(s) shall be the same as the primary position.

(4) Leave accrual shall be based on all hours worked in all positions and may not exceed the maximum amount allowed in the primary position.

(5) As a condition of dual employment, an employee in dual employment status is prohibited from accruing excess hours in either the primary or secondary positions. All excess hours earned shall be paid at straight time in the pay period in which the excess hours are earned.

(6) As a condition of dual employment, the Overtime or Comp selection shall be as overtime paid regardless of FLSA status. An employee may not accrue comp hours while in dual employment status.

(7) Overtime shall be calculated at straight time or time and one half depending on the FLSA status of the primary position. Time and a half overtime rates shall be calculated based on the weighted average rate of the multiple positions. Refer to Division of Finance's payroll policies, dual employment section.

(8) The Accepting Terms of Dual Employment form shall be completed, signed by the employee and supervisor, and placed in the employee's personnel file with a copy sent to the Division of Finance.

(9) Secondary positions may not interfere with the efficient performance of the employee's primary position or create a conflict of interest. An employee in dual employment status shall comply with conditions outlined in Subsection R477-9-2(1).

#### **R477-8-7. Reasonable Accommodation.**

Reasonable accommodation for qualified individuals with disabilities may be a factor in any employment action. Before notifying an employee of denial of reasonable accommodation, the agency shall consult with the Division of Risk Management.

#### **R477-8-8. Fitness For Duty Evaluations.**

Fitness for duty medical evaluations may be performed under any of the following circumstances:

- (1) return to work from injury or illness;
- (2) when management determines that there is a direct threat to the health or safety of self or others;
- (3) in conjunction with corrective action, performance or conduct issues, or discipline;
- (4) when a fitness for duty evaluation is a bona fide occupational qualification for selection, retention, or promotion.

#### **R477-8-9. Temporary Transitional Assignment.**

Temporary transitional assignments may be part of any of the following:

- (1) when an employee is unable to perform essential job functions due to temporary disability or medical restrictions;
- (2) when management determines that there is a direct threat to the health or safety of self or others;
- (3) in conjunction with an internal investigation, corrective action, performance or conduct issues, or discipline;
- (4) where there is a bona fide occupational qualification for retention in a position;
- (5) as a temporary measure while an employee is being evaluated to determine if reasonable accommodation is appropriate.

#### **R477-8-10. Change in Work Location.**

(1) An involuntary change in work location shall not be permitted if this requires the employee to commute or relocate

50 miles or more, one way, beyond his current one way commute, unless:

(a) the change in work location is communicated to the employee at employment; and

(b) the agency shall either pay to move the employee consistent with Section R25-6-8 and Department of Administrative Services, Division of Finance Policy 05-03.03, or reimburse commuting expenses up to the cost of a move.

#### **R477-8-11. Agency Policies and Exemptions.**

(1) Each agency shall write its own policies for work schedules, overtime, leave, and other working conditions consistent with these rules.

(2) The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

#### **KEY: breaks, telecommuting, overtime, dual employment**

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**R477. Human Resource Management, Administration.****R477-9. Employee Conduct.****R477-9-1. Standards of Conduct.**

An employee shall comply with the standards of conduct established in these rules and the policies and rules established by agency management.

(1) Employees shall apply themselves to and shall fulfill their assigned duties during the full-time for which they are compensated.

(a) An employee shall:

(i) comply with the standards established in the individual performance plans;

(ii) maintain an acceptable level of performance and conduct on all other verbal and written job expectations;

(iii) report conditions and circumstances, including controlled substances or alcohol impairment, that may prevent the employee from performing their job effectively and safely;

(iv) inform the supervisor of any unclear instructions or procedures.

(2) An employee shall make prudent and frugal use of state funds, equipment, buildings, and supplies.

(3) An employee who reports for duty or attempts to perform the duties of the position while under the influence of alcohol or nonprescribed controlled substances shall be subject to corrective action or discipline in accordance with Section R477-10-2, Rule R477-11 and R477-14.

(a) The agency may decline to defend and indemnify an employee found violating this rule, in accordance with Subsection 63-30-36(c)(ii) of the Utah Governmental Immunity Act.

(4) An employee shall not drive a state vehicle, or any other vehicle, on state time while under the influence of alcohol or controlled substances.

(a) An employee who violates this rule shall be subject to corrective action or discipline pursuant to Section R477-10-2, Rule R477-11 and R477-14.

(b) The agency may decline to defend or indemnify an employee who violates this rule, according to Subsection 63-30-36(3)(c)(i) of the Utah Governmental Immunity Act.

(5) An employee shall provide the agency with a current mailing address.

(a) The employee shall notify the agency in writing of any change in address.

(b) Mail sent to the current address on record shall be deemed to be delivered for purposes of these rules.

**R477-9-2. Outside Employment.**

(1) State employment shall be the principal vocation for a full-time employee governed by these rules. An employee may engage in outside employment under the following conditions:

(a) Outside employment must not interfere with an employee's efficient performance in his state position.

(b) Outside employment must not conflict with the interests of the agency or the State of Utah.

(c) Outside employment must not give reason for criticism or suspicion of conflicting interests or duties.

(d) An employee shall notify agency management in writing if the outside employment has the potential or appears to conflict with Title 67, Chapter 16, Employee Ethics Act.

(e) Agency management may deny an employee permission to engage in outside employment, or to receive payment, if the outside activity is determined to cause a real or potential conflict of interest.

(i) An employee may grieve this decision.

(ii) Failure to notify the employer and to gain approval for outside employment is grounds for disciplinary action if the secondary employment is found to be a conflict of interest.

**R477-9-3. Conflict of Interest.**

(1) An employee may receive honoraria or paid expenses for activities outside of state employment under the following conditions:

(a) Outside activities must not interfere with the employee's efficient performance in his state position.

(b) Outside activities must not conflict with the interests of the agency or the State of Utah.

(c) Outside activities must not give reasons for criticism or suspicion of conflicting interests or duties.

(2) An employee shall not use his state position or any influence, power, authority or confidential information received in that position, or state time, equipment, property, or supplies for private gain.

(3) An employee shall not receive outside compensation for performing state duties, except for the following:

(a) Gifts or compensation defined in the Governor's Executive Order on Ethics dated February 14, 2007; or

(b) honoraria or expenses paid for papers, speeches, or appearances on an employee's own time with the approval of agency management, which are not compensated by the state or prohibited by rule.

(4) An employee shall declare a potential conflict of interest when required to do or decide something that could be interpreted as a conflict of interest. Agency management shall then excuse the employee from making decisions or taking actions that may cause a conflict of interest.

**R477-9-4. Political Activity.**

A state career service employee may voluntarily participate in political activity according to the provisions in this rule or other federal laws. The employee shall comply with the provisions of the federal Hatch Act, 5 U.S.C. Sec. 1501 through 1508. The following rules apply to a career service employee in any salary range and position.

(1) Any state career service employee elected to any partisan or full-time nonpartisan political office shall be granted a leave of absence without pay while being monetarily compensated for service in political office. An employee shall not receive annual leave while serving in a political office.

(2) During work time, no career service employee may engage in any political activity. No person shall solicit political contributions from employees of the executive branch during hours of employment. However, a state employee may voluntarily contribute to any party or any candidate.

(3) Decisions regarding employment, promotion, demotion or dismissal or any other human resource actions shall not be based on partisan political activity.

(4) Regardless of other provisions in these rules, no member of the Utah State Highway Patrol may use official authority or influence to interfere with an election or to affect election results. No person may induce or attempt to induce any member of the Utah State Highway Patrol to participate in any prohibited activity.

(5) This rule shall not apply to an employee who is restricted or prevented from engaging in political activity through the provisions of the federal Hatch Act. Agency management shall dismiss any employee whose employment is found to be in violation of the provisions of this law by the Merit Systems Protection Board.

**R477-9-5. Employee Indebtedness to the State.**

(1) An employee indebted to the state because of an action or performance in official duties may have a portion of salary that exceeds the minimum federal wage withheld. Overtime salary shall not be withheld.

(a) The following three conditions must be met before withholding of salary may occur:

(i) The debt must be a legitimately owed amount which can be validated through physical documentation or other

evidence.

(ii) The employee must know about and, in most cases, acknowledge the debt. As much as possible, the employee should provide written authorization to withhold the salary.

(iii) An employee must be notified of this rule which allows the state to withhold salary.

(b) An employee separating from state service will have salary withheld from the last paycheck.

(c) An employee going on leave without pay for more than two pay periods may have salary withheld from their last paycheck.

(d) The state may withhold an employee's salary to satisfy the following specific obligations:

(i) travel advances where travel and reimbursement for the travel has already occurred;

(ii) state credit card obligations where the state's share of the obligation has been reimbursed to the employee but not paid to the credit card company by the employee;

(iii) evidence that the employee negligently caused loss or damage of state property;

(iv) payroll advance obligations that are signed by the employee and that the Division of Finance authorizes;

(v) misappropriation of state assets for unauthorized personal use or for personal financial gain. This includes reparation for employee theft of state property or use of state property for personal financial gain or benefit;

(vi) overpayment of salary determined by evidence that an employee did not work the hours for which they received salary or was not eligible for the benefits received and paid for by the state;

(vii) excessive reimbursement of funds from flexible reimbursement accounts;

(viii) other obligations that satisfy the requirements of Subsection R477-9-5(1) above.

(2) This rule does not apply to state employee obligations to other state agencies where the obligation was not caused by their actions or performance as an employee.

#### **R477-9-6. Acceptable Use of Information Technology Resources.**

Information technology resources are provided to a state employee to assist in the performance of assigned tasks and in the efficient day to day operations of state government.

(1) An employee shall use assigned information technology resources in compliance with Rule R895-7, Acceptable Use of Information Technology Resources.

(2) An employee who violates the Acceptable Use of Information Technology Resources policy may be disciplined according to Rule R477-11.

#### **R477-9-7. Policy Exceptions.**

The Executive Director, DHRM, may authorize exceptions to the provisions of this rule, consistent with Subsection R477-2-2(1).

**KEY: conflict of interest, government ethics, Hatch Act, personnel management**

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**R477. Human Resource Management, Administration.**

**R477-10. Employee Development.**

**R477-10-1. Performance Evaluation.**

Agency management shall develop an employee performance management system consistent with these rules and subject to approval by the Executive Director, DHRM. The Executive Director, DHRM, may authorize exceptions to provisions of this rule consistent with Section R477-2-2. For this rule, the word employee refers to a career service employee, unless otherwise indicated.

(1) An acceptable performance management system shall satisfy the following criteria:

(a) Performance standards and expectations for each employee shall be specifically written in a performance plan by August 30 of each fiscal year.

(b) Managers or supervisors provide employees with regular verbal and written feedback based on the standards of performance and conduct outlined in the performance plan.

(c) Each employee shall be informed concerning the actions to be taken, time frames, and the supervisor's role in providing assistance to improve performance and increase the value of service.

(d) Each employee shall have the right to include written comment with his performance evaluation.

(e) Agency management shall select a performance management rating system or a combination of systems by August 31 to be effective for the entire fiscal year. The rating system shall be one or more of the following:

TABLE

SYSTEM	#	RATING	POINTS
1		Pass	2
		Fail	0
2		Exceptional	3
		Successful	2
		Unsuccessful	0
3		Exceptional	3
		Highly Successful	2.5
		Successful	2
4		Unsuccessful	0
		Exceptional	3
		Highly Successful	2.5
		Successful	2
		Marginal	1
	Unsuccessful	0	

(2) Each state employee shall receive a performance evaluation effective on or before the beginning of the first pay period of each fiscal year.

(a) A probationary employee shall receive a performance evaluation at the end of the probationary period and again prior to the beginning of the first pay period of the fiscal year.

(3) The employee shall sign the evaluation. Signing the evaluation only means that the employee has reviewed the evaluation. Refusal to sign the evaluation shall constitute insubordination, subject to discipline.

(a) The evaluation form shall include a space for the employee's comments. The employee may comment in writing, either in the space provided or on a separate attachment.

**R477-10-2. Corrective Action.**

When an employee's performance does not meet established standards due to failure to maintain skills, incompetence, or inefficiency, and after consulting with DHRM, agency management may take appropriate, and documented corrective action in accordance with the following rules:

(1) The supervisor shall discuss the substandard performance with the employee and determine appropriate corrective action. If a formal corrective action plan is developed or a written warning issued, the employee shall sign the plan or the warning to certify that it has been reviewed. Refusal to sign the corrective action plan or warning shall constitute

insubordination subject to discipline.

(2) An employee shall have the right to submit written comment to accompany the corrective action plan.

(3) Corrective action plans shall identify or provide for:

- (a) a designated period of time for improvement;
- (b) an opportunity for remediation;
- (c) performance expectations;
- (d) closer supervision to include regular feedback of the employee's progress;
- (e) notice of disciplinary action for failure to improve;

and, (f) written performance evaluation at the conclusion of the corrective action plan.

(4) Corrective action plans may also identify or provide for the following based on the nature of the performance issue:

- (a) training;
- (b) reassignment;
- (c) use of appropriate leave;

(5) Following successful completion of corrective action, the supervisor shall notify the employee of disciplinary consequences for a recurrence of the deficient work performance.

**R477-10-3. Employee Development and Training.**

Agency management may establish a program for training and staff development consistent with these rules.

(1) All agency sponsored training shall be agency specific or designed for highly specialized or technical jobs and tasks.

(2) Agency management shall consult with the Executive Director, DHRM, when proposed training and development activities may have statewide impact or may be offered more cost effectively on a statewide basis. The Executive Director, DHRM, shall determine whether DHRM will be responsible for the training standards.

(3) The Executive Director, DHRM, shall work with agency management to establish standards to guide the development of statewide activities and to facilitate sharing of resources statewide.

(4) When an agency directs an employee to participate in an educational program, the agency shall pay full costs.

(5) Agencies are required to provide refresher training and make reasonable efforts to requalify veterans reemployed under USERRA, as long as it does not cause an undue hardship to the employing agency.

**R477-10-4. Liability Prevention Training.**

Agencies shall provide liability prevention training to their employees. The curriculum shall be approved by DHRM. Topics shall include but not be limited to: new employee orientation, prevention of unlawful harassment, and supervisor training on prevention of workplace violence.

**R477-10-5. Education Assistance.**

State agencies may assist an employee in the pursuit of educational goals by granting administrative leave to attend classes, a subsidy of educational expenses, or both.

(1) Prior to granting education assistance, agencies shall establish policies which shall include the following conditions:

(a) The educational program will provide a benefit to the state.

(b) The employee shall successfully complete the required course work or the educational requirements of a program.

(c) The employee shall agree to repay any assistance received if the employee resigns from state employment within 12 months of completing educational work.

(d) Education assistance shall not exceed \$5,250 per employee in any one calendar year unless approved in advance by the agency head.

(e) The employee shall disclose all scholarships, subsidies

and grant monies provided to the employee for the educational program.

(i) Except for funding that must be repaid by the employee, the amount reimbursed by the State may not include funding received from sources in Subsection R477-10-5(1)(e).

(2) Agency management shall be responsible for determining the taxable or nontaxable status of educational assistance reimbursements.

(3) Agencies may offer educational assistance to law enforcement and correctional officers consistent with section 67-19-12.2 and with these criteria:

(a) The program shall comply with Subsections R477-10-5(1) and R477-10-5(2).

(b) The program shall be published and available to all qualified employees. To qualify:

(i) The employee's job duties shall satisfy the conditions of subsection 67-19-12.2(1).

(ii) The employee shall have completed probation.

(iii) The employee shall maintain a grade point average of at least 3.0 or equivalent from an accredited college or university.

(c) The program may provide additional compensation for an employee who completes a higher degree on or after April 30, 2001, in a subject area directly related to the employee's duties. If this policy is adopted, then:

(i) Two steps shall be given for an associate's degree.

(ii) Two steps shall be given for a bachelor's degree.

(iii) Two steps shall be given for a master's degree.

**KEY: educational tuition, employee performance evaluations, employee productivity, training programs**

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**R477. Human Resource Management, Administration.****R477-11. Discipline.****R477-11-1. Disciplinary Action.**

(1) Agency management may discipline any employee for any of the following causes or reasons:

(a) noncompliance with these rules, agency or other applicable policies, including but not limited to safety policies, agency professional standards, standards of conduct and workplace policies;

(b) work performance that is inefficient or incompetent;

(c) failure to maintain skills and adequate performance levels;

(d) insubordination or disloyalty to the orders of a superior;

(e) misfeasance, malfeasance, nonfeasance or failure to advance the good of the public service;

(f) any incident involving intimidation, physical harm, or threats of physical harm against co-workers, management, or the public;

(g) no longer meets the requirements of the position.

(2) All disciplinary actions of career service employees shall be governed by principles of due process and Title 67, Chapter 19a. The disciplinary process shall include all of the following, except as provided under Subsection 67-19-18(4):

(a) The agency representative notifies the employee in writing of the proposed discipline and the underlying reasons supporting the intended action.

(b) The employee's reply must be received within five working days in order to have the agency representative consider the reply before discipline is imposed.

(c) If an employee waives the right to respond or does not reply within the time frame established by the agency representative or within five days, whichever is longer, discipline may be imposed in accordance with these rules.

(3) After a career service employee has been informed of the reasons for the proposed discipline and has been given an opportunity to respond and be responded to, the agency representative may discipline that employee, or any career service exempt employee not subject to the same procedural rights, by imposing one or more of the following:

(a) written reprimand;

(b) suspension without pay up to 30 calendar days per incident requiring discipline;

(c) demotion of any employee through one of the following methods:

(i) An employee may be moved from a position in one job to a position in another job having a lower maximum salary range and shall receive a reduction in the current actual wage.

(ii) A demotion within the employee's current salary range may be accomplished by lowering the employee's current actual wage, as determined by the agency head or designee.

(d) dismissal.

An agency head shall dismiss or demote a career service employee only in accordance with the provisions of Subsection 67-19-18(5) and Section R477-11-2.

(4) If agency management determines that a career service employee endangers or threatens the peace and safety of others or poses a grave threat to the public service or is charged with aggravated or repeated misconduct, the agency may impose the following actions, as provided by Subsection 67-19-18(4), pending an investigation and determination of facts:

(a) paid administrative leave; or

(b) temporary reassignment to another position or work location at the same current actual wage.

(5) At the time disciplinary action is imposed, the employee shall be notified in writing of the discipline, the reasons for the discipline, the effective date and length of the discipline.

(6) Disciplinary actions are subject to the grievance and

appeals procedure as provided by law for career service employees only. The employee and the agency representative may agree in writing to waive or extend any grievance step, or the time limits specified for any grievance step.

**R477-11-2. Dismissal or Demotion.**

An employee may be dismissed or demoted for cause as explained under Sections R477-10-2 and R477-11-1, and through the process outlined in this rule.

(1) An agency head or appointing officer may dismiss or demote a probationary employee or career service exempt employee without right of appeal. Such dismissal or demotion may be for any reason or for no reason.

(2) No career service employee shall be dismissed or demoted from a career service position unless the agency head or designee has observed the Grievance Procedure Rules and law cited in Section R137-1-13 and Title 67, Chapter 19a, and the following procedures:

(a) The agency head or designee shall notify the employee in writing of the specific reasons for the proposed dismissal or demotion.

(b) The employee shall have up to five working days to reply. The employee must reply within five working days for the agency head or designee to consider the reply before discipline is imposed.

(c) The employee shall have an opportunity to be heard by the agency head or designee. The hearing before the department head or designee shall be strictly limited to the specific reasons raised in the notice of intent to demote or dismiss.

(i) At the hearing the employee may present, either in person, in writing, or with a representative, comments or reasons as to why the proposed disciplinary action should not be taken. The agency head or designee is not required to receive or allow other witnesses on behalf of the employee.

(ii) The employee may present documents, affidavits or other written materials at the hearing. However, the employee is not entitled to present or discover documents within the possession or control of the department or agency that are private, protected or controlled under Title 63, Chapter 2, the Governmental Access and Records Management Act.

(d) Following the hearing, the employee may be dismissed or demoted if the agency head finds adequate cause or reason.

(e) The employee shall be notified in writing of the agency head's decision. Specific reasons shall be provided if the decision is a demotion or dismissal.

(3) Agency management may place an employee on paid administrative leave pending the administrative appeal to the agency head.

**R477-11-3. Discretionary Factors.**

(1) When deciding the specific type and severity of discipline, the agency head or representative may consider the following factors:

(a) consistent application of rules and standards;

(b) prior knowledge of rules and standards;

(c) the severity of the infraction;

(d) the repeated nature of violations;

(e) prior disciplinary/corrective actions;

(f) previous oral warnings, written warnings and discussions;

(g) the employee's past work record;

(h) the effect on agency operations;

(i) the potential of the violations for causing damage to persons or property.

**KEY: discipline of employees, dismissal of employees, grievances, government hearings**

July 1, 2006

Notice of Continuation June 9, 2007

67-19-6

67-19-18



**R477. Human Resource Management, Administration.****R477-12. Separations.****R477-12-1. Resignation.**

A career service employee may resign or retire by giving written or verbal notice to the immediate supervisor or an appropriate representative of management in the work unit.

(1) Agency management may accept an employee's notice of resignation or retirement without prejudice when received at least ten working days before its effective date.

(2) After submitting a notice of resignation or retirement, an employee may withdraw it on the next working day by notifying the immediate supervisor or an appropriate representative of management in the work unit.

(a) If the withdrawal notice is verbal, the employee shall submit a written notification within 24 hours of the verbal notice.

(b) After the close of the next working day following submission, withdrawal of a resignation or retirement may occur only with the consent of agency management.

**R477-12-2. Abandonment of Position.**

An employee who is absent from work for three consecutive working days without approval shall be considered to have abandoned his position and to have resigned from the employing agency.

(1) An employee who has abandoned his position may be separated from state employment. Management shall inform the employee of the action in writing.

(a) The employee shall have the right to appeal to the agency head within five working days of receipt or delivery of the notice of abandonment to the last known address.

(b) If the separation is appealed, management may not be required to prove intent to abandon the position.

**R477-12-3. Reduction in Force.**

Reductions in force shall be required when there are inadequate funds, a change of workload, or lack of work. Reductions in force shall be governed by DHRM business practices, standards and the following rules:

(1) When staff will be reduced in one or more categories of work, agency management shall develop a work force adjustment plan (WFAP). A career service employee shall only be given formal written notification of separation after a WFAP has been reviewed and approved by the Executive Director, DHRM, or designee. The following items shall be considered in developing the work force adjustment plan:

(a) the categories of work to be eliminated, including positions impacted through bumping, as determined by management;

(b) a decision by agency management allowing or disallowing bumping;

(c) specifications of measures taken to facilitate the placement of affected employees through normal attrition, retirement, reassignment, relocation, and movement to vacant positions for which the employee qualifies;

(d) a list of all affected employees showing the retention points for each employee.

(2) Eligibility for RIF.

(a) Only career service employees who have been identified in an approved WFAP and given an opportunity for a hearing with the agency head may be RIF'd.

(b) An employee covered by USERRA and in a leave without pay status must be identified, assigned retention points, and notified of the RIF of the previous position in the same manner as a career service employee.

(3) Retention points shall be calculated for all affected employees within a category of work as follows:

(a) Seniority shall be determined by the length of total state career service, which commenced in a competitive career

service position for which the probationary period was successfully completed.

(i) For part-time work, length of service shall be determined in proportion to hours actually worked.

(ii) Exempt service time subsequent to attaining career service tenure with no break in service shall also be counted for purposes of seniority.

(iii) In the event of ties in retention points, the amount of time employed in the affected agency or department serves as the tie breaker.

(b) Length of state service shall be measured in years and additional days shown as a fraction of a year.

(c) Time spent in a leave without pay status for service in the uniformed services covered under USERRA shall be counted for purposes of seniority.

(d) Any time spent in leave without pay status, to include worker's compensation leave, may not be counted for purposes of seniority.

(e) An employee within a category of work, including employees covered under USERRA in a leave without pay status, shall be assigned a job proficiency rating. The job proficiency rating shall be an average of the last three annual performance evaluation ratings as described in Subsection R477-10-1(1)(e). If employees have had fewer than three annual performance evaluations, the proficiency ratings shall be an average of all ratings received as of that time.

(f) The numeric values of each employee's job proficiency rating and that employee's actual length of service shall be added together to produce the retention points.

(g) Retention points shall be calculated for an employee covered under USERRA and in a leave without pay status in the same manner as for current employees in the affected class. If there are no performance evaluation ratings for an employee covered under USERRA, no proficiency rating shall be included in the retention points.

(4) The order of separation shall be:

(a) temporary employees;

(b) probationary employees;

(c) career service employees with the lowest retention points are released first. In the event of ties in retention points, the amount of seniority in the affected agency serves as the tie breaker.

(5) An employee, including one covered under USERRA in a leave without pay status, who is separated due to a reduction in force shall be given formal written notification of separation, allowing for a minimum of 20 working days prior to the effective date of the RIF.

(6) Appeals.

(a) An employee notified of separation due to a reduction in force may appeal to the agency head for an administrative review by submitting a written notice of appeal within 20 working days after the receipt of written notification of separation.

(b) The employee may appeal the decision of the agency head according to the appeals procedure of the Career Service Review Board.

(7) Reappointment of RIF'd individual.

(a) A RIF'd individual is eligible for reappointment into a half time or greater career service position for which he qualifies in a salary range comparable to or less than the last career service position held, for a period of one year following the date of separation. Section R477-4-4 applies for selection of individuals from the reappointment register.

(i) The Executive Director, DHRM, shall maintain a reappointment register and shall make the final determination on whether an eligible RIF'd individual meets the job requirements for position vacancies.

(ii) A RIF'd individual shall remain on the state reappointment register for 12 months from the date of

separation, unless reappointed sooner.

(b) During a statewide mandated freeze on hiring wherein the Governor disallows increases in each agency's budgeted FTEs, eligibility for the reappointment register shall be extended for the entire length of time covered by a freeze.

(c) When determining comparable salary ranges in cases of RIF eligibility, a comparison of the previous career service salary range to the current career service salary range maximum step is required. A RIF'd individual shall have RIF rights to any vacant position for which he qualifies. The basis for comparison shall be:

(i) The current salary range of a vacant position if it is equal to or lesser than the individual's previous salary range, or;

(ii) If the maximum step of the position previously held by the RIF'd individual has moved upward, the new range shall be used.

(d) A RIF'd individual who is reappointed to a career service position shall not be required to serve a probationary period. The RIF'd individual shall enjoy all the rights and privileges of a regular career service employee.

(e) At agency discretion, an individual reappointed from a reappointment register may buy back part or all accumulated annual and converted sick leave that was cashed out when RIF'd.

(8) Appeal rights of RIF'd individual. An individual whose name is on the reappointment register as a result of a reduction in force may use the grievance procedure regarding their reappointment rights.

(9) A career service employee in an exempt position. Any career service employee accepting an exempt position without a break in service, who is later not retained by the appointing officer, unless discharged for cause as provided for by these rules, shall be placed on the reappointment register.

(a) The Executive Director, DHRM, shall maintain a reappointment register for this purpose. An individual on this register shall:

(i) be appointed to any half time or greater career service position for which the individual qualifies in a salary range comparable to the individual's last position in the career service, provided an opening exists; or

(ii) be appointed to any lesser career service position for which the individual qualifies, pending the opening of a position at the last career service salary range held.

(b) The Executive Director, DHRM, shall make the final determination on whether an eligible individual meets the job requirements for position vacancies.

(c) The individual shall declare a desire to remain on the reappointment register upon inquiry by DHRM.

(d) Prior to termination and in lieu of placement on the reappointment register, management may place an employee in a vacant career service position consistent with Subsection R477-12-3(7)(c) for which he qualifies. A memorandum of understanding waiving all appeal rights concerning the reassignment shall be signed by the employee.

#### **R477-12-4. Exceptions.**

The Executive Director, DHRM, may authorize exceptions to provisions of this rule consistent with Subsection R477-2-2(1).

**KEY: administrative procedures, employees' rights, grievances, retirement**

**July 1, 2007**

**Notice of Continuation June 9, 2007**

**67-19-6**

**67-19-17**

**67-19-18**

**R477. Human Resource Management, Administration.****R477-13. Volunteer Programs.****R477-13-1. Volunteer Programs.**

Agency management shall approve all work programs for volunteers before volunteers serve the state or any agency or subdivisions of the state. A volunteer is considered a government employee for purposes of workers compensation, operation of motor vehicles or equipment, and liability protection and indemnification.

(1) Agency management may establish a program for people to volunteer their services to the agency consistent with the following rules. The Executive Director, DHRM, may authorize exceptions to provisions of this rule consistent with Subsection R477-2-2(1).

(2) When implementing a volunteer program, agency management shall:

(a) orient the volunteer to the conditions of state service and their specific job assignments;

(b) provide adequate supervision of the volunteer staff;

(c) designate the type of work for which volunteer services may be allowed to supplement paid staff;

(d) document the approval of, numbers of, and hours worked by its volunteers, based on standards established DHRM;

(e) collect data on the number of volunteers and the number of volunteer hours; and

(f) evaluate and assign volunteers in accordance with standards set by DHRM.

**R477-13-2. Volunteer Experience Credit.**

(1) Agency management shall apply approved and documented related volunteer experience to satisfy the job requirements for career service positions.

(a) Volunteer experience shall not substitute for required licensure, POST certification, or other criteria for which there is no substitution in the job requirements in the job description.

(b) Court ordered community service experience will not be considered volunteer work for purposes of meeting job requirements.

(2) Participants in state or other volunteer programs shall receive credit for volunteer experience for the purposes of career service employment when:

(a) The volunteer experience is related to the identified duties and responsibilities of the designated career service position as determined by agency management.

(b) The volunteer experience is documented in accordance with standards established by DHRM.

(3) Credit for documented and job related volunteer experience shall be given in the same manner as similar paid employment.

**KEY: personnel management, administrative rules, rules and procedures, definitions**

**July 5, 2000**

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**67-19-6**

**67-20-8**

**R477. Human Resource Management, Administration.****R477-15. Unlawful Harassment Policy and Procedure.****R477-15-1. Purpose.**

It is the State of Utah's policy to:

- (1) provide all employees a working environment that is free from unlawful harassment based on race, religion, national origin, color, sex, age, disability, or protected activity under the anti-discrimination statute; and
- (2) comply with state and federal laws regarding discrimination based on unlawful harassment.

**R477-15-2. Policy.**

(1) Unlawful harassment means discriminatory treatment based on race, religion, national origin, color, sex, age, protected activity or disability. Discrimination based on unlawful harassment will not be tolerated. Violators shall be subject to corrective action or disciplined and may be referred for criminal prosecution. Discipline may include termination of employment.

(2) Unlawful harassment includes the following subtypes:

- (a) behavior or conduct in violation of Subsection R477-15-2(1) that is unwelcome, pervasive, demeaning, ridiculing, derisive, or coercive, and results in a hostile, offensive, or intimidating work environment;
- (b) behavior or conduct in violation of Subsection R477-15-2(1) that results in a tangible employment action being taken against the harassed employee.

(3) The imposition of corrective action and discipline is governed by Section R477-10-2 and Rule R477-11.

(4) An employee shall be subject to corrective action or discipline for unlawful harassment towards another employee, even if that harassment occurs outside of scheduled work time or work location, provided that the harassment meets the requirements of Subsection R477-15-2(2).

(5) Individuals affected by alleged unlawful harassment may, but shall not be required to, confront the accused harasser before filing a complaint.

(6) Once a complaint has been filed, the accused shall not communicate with the complainant regarding allegations of harassment.

**R477-15-3. Retaliation.**

(1) No person may retaliate against any employee who opposes a practice forbidden under this policy, or has filed a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this policy, or is otherwise engaged in protected activity.

(2) Any act of retaliation toward the complainant, witnesses or others involved in the investigation shall be subject to corrective action or disciplinary action. Prohibited actions include:

- (a) open hostility to complainant, participant or others involved;
- (b) exclusion or ostracism of the complainant, participant or others;
- (c) creation of or the continued existence of a hostile work environment;
- (d) discriminatory remarks about the complainant, participant or others;
- (e) special attention to or assignment of the complainant, participant or others to demeaning duties not otherwise performed;
- (f) tokenism or patronizing behavior;
- (g) discriminatory treatment;
- (h) subtle harassment; or
- (i) unreasonable supervisory imposed time restrictions on employees in preparing complaints or compiling evidence of unlawful harassment activities or behaviors.

**R477-15-4. Complaint Procedure.**

Individuals affected by unlawful harassment may file complaints and engage in an administrative process free from bias, collusion, intimidation or retaliation.

(1) Individuals who feel they are being subjected to unlawful harassment should do the following:

- (a) document the occurrence;
- (b) continue to report to work; and
- (c) identify a witness, if applicable.

(2) An employee may file an oral or written complaint of unlawful harassment with their immediate supervisor, any other supervisor within their direct chain of command, the agency human resource office or the Department of Human Resource Management.

(3) Any complaint of unlawful harassment shall be acted upon following receipt of the complaint.

(a) Complaints may be submitted by any individual, witness, volunteer or other employee.

(b) Complaints may be made through either verbal or written notification and shall be handled in compliance with confidentiality guidelines.

(c) Any supervisor who has knowledge of unlawful harassment shall take immediate, appropriate action and document the action.

(4) If an immediate investigation by the agency is not warranted, a meeting shall be held with the complainant, the supervisor or manager of the appropriate division, and others as appropriate to communicate the findings and management's resolution of the complaint.

**R477-15-5. Investigative Procedure.**

(1) The investigative procedures established by agencies shall allow the complainant to make specific requests relating to the investigation process and about the person or persons who will conduct the investigation. The agency shall attempt to comply with these requests, but may take whatever action necessary and appropriate to resolve the complaint.

(2) Preliminary reviews and investigations must be conducted in accordance with procedures issued by the Department of Human Resource Management.

(3) Results of Investigation

(a) If the investigation reveals that disciplinary action is warranted, the agency head shall take appropriate action as provided in Rule R477-11.

(b) If an investigation reveals evidence of criminal conduct in unlawful harassment allegations, the agency head or Executive Director, DHRM, may refer the matter to the Attorney General's Office or County or District Attorney as appropriate.

(c) If an investigation of unlawful harassment reveals that the accusations are unfounded, the findings shall be documented, the investigation terminated, and appropriate parties notified.

(d) Investigations shall be conducted by qualified individuals based on DHRM standards.

**R477-15-6. Records.**

(1) A separate protected record of all unlawful harassment complaints shall be maintained and stored in the agency's human resource office, DHRM office or in the possession of an authorized official. Removal or disposal of records in the protected file may only be done with the approval of the agency head or Executive Director, DHRM, and only after minimum timelines specified herein have been met. Records shall be kept for: a minimum of three years from the resolution of the complaint or investigative proceeding.

(2) Supervisors shall not keep separate files related to complaints of unlawful harassment.

(3) All information contained in the complaint file shall be

classified as protected pursuant to requirements of Section 63-2-304, Government Records Access and Management Act.

(4) Information contained in the unlawful harassment protected file shall only be released by the agency head or Executive Director, DHRM, when in compliance with the requirements of law.

(5) Participants in any unlawful harassment proceeding shall treat all information as protected.

(6) Final disposition of unlawful harassment cases shall be communicated to appropriate parties.

**R477-15-7. Training.**

(1) Agencies shall comply with the Unlawful Harassment Prevention Training Standards set by DHRM. As a minimum, these shall contain:

- (a) course curriculum standards;
- (b) training presentation requirements;
- (c) trainer qualifications; and
- (d) training records management criteria.

**KEY: administrative procedures, hostile work environment  
July 3, 2001 67-19-6  
Notice of Continuation June 9, 2007 67-19-18  
Governor's Executive Order on Prohibiting Unlawful  
Harassment, December 13, 2006**

**R523. Human Services, Substance Abuse and Mental Health.****R523-20. Division Rules of Administration.****R523-20-1. Allocation of Substance Abuse Purchase-of-Service Money.**

1. The Board of Substance Abuse and Mental Health is granted authority pursuant to Section 62A-15-108 Utah Code to establish a funding formula that allocates funds to the Local Substance Abuse Authorities. The funding formula adopted by the State Board of Substance Abuse and Mental Health (Board) is as follows:

a. Up to 15% of the purchase of service funds may be allocated by the State Division of Substance Abuse and Mental Health for statewide services; the remaining 85% of these funds will be allocated to the Local Substance Abuse Authorities as follows:

i. Rural counties (all counties in the state except Utah, Salt Lake, Davis, and Weber) shall be allocated a rural differential of \$11,600;

ii. Sixty percent of the remaining funds will be allocated to each county based on the need factor derived from the Incidence and Prevalence Studies;

iii. The remaining forty percent of the funds will be allocated to each county based on the county's percent of the General Population as estimated by the Utah Office of Planning and Budget;

2. Cost of Living Adjustments shall be determined by the State Division of Substance Abuse and Mental Health in accordance with legislative appropriations.

3. Funds approved for a local authority, based on the funding formula, belong to that authority. In the event that there is an unexpended amount at the end of the year, the local authority will be allowed to carry these unexpended funds over into the next contract period, provided that the Division can carry the funds over. The only exception to this carryover authority will be that if the unexpended funds cause the state to not meet the statewide set-aside requirements. The division will contract these unexpended funds to other local authorities who can provide the services to fulfill the set-aside requirements. The division shall monitor the fund balances and the set-aside spending throughout the year. The decision to transfer funds will be negotiated in March of each year with any local authority that will not expend all of their funds.

**R523-20-3. Training Priorities and Responsibilities.**

1. The Division of Substance Abuse and Mental Health shall make State staff training the number one training priority. Statewide training shall be limited to the Fall Conference, Networking Conference, Governor's Youth Conference, and joint conferences with the State Office of Education. Local programs shall have the primary responsibility to assure training is available for their staff. The Division assists the local programs by being the central clearing point for training needs and educational opportunities.

**R523-20-4. Research/Evaluation Priorities and Responsibilities.**

1. The Division of Substance Abuse and Mental Health shall have, as a primary focus under research and evaluation, the following areas:

- a. Evaluation of needs;
- b. Evaluation of program outcomes;
- c. Evaluation of community impact; and
- d. Evaluation of cost benefit.

2. The Division of Substance Abuse and Mental Health shall:

a. Provide the State Board of Substance Abuse with evaluation or other research findings to be considered in the formulation of program policy and contracting for services;

b. Assist parties in obtaining funding for evaluation or other research activities pertaining to substance abuse;

c. Review and disseminate evaluation or other research findings to the Board, service providers and the general public;

d. Whenever feasible, consider contracting as a means of conducting evaluation or other research projects;

e. Notify the Utah Behavioral Health Care Network and the Board of Substance Abuse and Mental Health of the proposed research activity and before beginning any research activity obtain approval of the proposed research activity from the Board at its next regularly scheduled meeting;

f. The Division shall establish with the Board an evaluation process in consultation with the providers.

**R523-20-5. Continuum of Services.**

1. Prevention means a proactive comprehensive program which provides a broad array of activities and services designed to discourage the use of alcohol, tobacco and other drugs directed at individuals who have not been identified to be in need of treatment. These activities and services must be provided in a variety of settings for both the general population as well as targeted subgroups who are at high risk for substance abuse.

2. Treatment means those services which target individuals or families who are functionally impaired psychologically, physically, or socially in association with the patterned abuse of or dependence on alcohol, tobacco, or other drugs. This includes only those individuals upon whom a written consumer record, as defined in licensing standards (Rule R501-2-5B) as adopted by the Board of Substance Abuse and Mental Health, is maintained.

**R523-20-6. Funding of Medical Detoxification Programs.**

Medical detoxification programs shall not be funded by the Division on an ongoing basis.

**R523-20-7. Competition - Contracting/Subcontracting.**

1. It is the policy of the Board of Substance Abuse and Mental Health to accept the September 1985 recommendation on contracting/subcontracting made by the Role Review Committee.

a. The Division is responsible for:

i. Defining the continuum of services that must be provided within and across the district(s).

ii. Establishing and assisting in the establishment of contracts that specifically identify the districts' responsibilities in regard to bidding, technical assistance, MIS reporting, deadlines, local match, etc.

iii. Requiring that each district submit its district plan for review and acceptance by the Division and/or Board prior to funding being authorized.

iv. The establishment of monitoring and evaluation procedures which will insure:

A. That state or local procurement policies are followed on all bids.

B. That MIS data is accurate, reported as required and on time.

C. That costs accurately reflect the actual costs of providing the service.

D. That district programming is in compliance with its objectives and those required by the Division.

v. Continued direct contracting and monitoring of all programs operated in/by State institutions.

vi. The Division will also continue to contract directly with other agencies/institutions, on a competitive bid basis, for research and demonstration projects when necessary. The criteria the Division will use when deciding to directly contract-out for these services, rather than apportioning the money across districts, will reflect the need to keep the limited resources intact

to accomplish the designated task. These projects are typically time limited rather than ongoing.

vii. A multi-region provider of services will continue to directly contract with and receive reimbursement from the Division within the following guidelines. The local authority will write the State subcontractors' program into its district plan of continuum of services. The local authority will participate with the Division in monitoring and evaluating the program.

viii. It is required that any program receiving state funds be included in the district plan.

ix. All bids let by the Division will be in compliance with the State of Utah Procurement Act.

x. Every agency/program in the state using funds appropriated to the Division by the State legislature shall have the goal of total abstinence for anyone under the age of twenty-one years.

#### **R523-20-8. Maintenance of Effort.**

1. The Board of the Division of Substance Abuse and Mental Health pursuant to Section 62A-15-108 has required the Local Substance Abuse Authorities to provide a consistent funding base for substance abuse services. This requirement will become effective beginning July 1, 1993.

For the state fiscal year 1994, each Local Substance Abuse Authority shall provide an amount not less than half the sum of the county tax revenues contributed toward substance abuse services during the 1991 and 1992 state fiscal years.

For subsequent state fiscal years, each Local Substance Abuse Authority shall provide an amount of county tax revenue not less than the average computed by dividing by two the sum of Local Substance Abuse Authority county tax revenue contributed toward substance abuse services for the two most recently completed fiscal years.

#### **R523-20-9. Distribution of Fee-On-Fine (DUI) Funds.**

1. The Fee-On-Fine funds collected by the court system under the criminal surcharge law and remitted to the State Treasurer will be allocated to the Local Substance Abuse Authorities based upon each county's percent of the total state population as determined at the time of the funding formula as described in R523-20-1.

Unless notified in writing by the local authority's governing board to send the funds to the local service provider, the Division of Substance Abuse and Mental Health shall authorize quarterly releases of these funds to the county commission of each county for which they are allocated.

#### **R523-20-10. 20% Match Required to Be County Tax Revenue.**

1. The Board of Substance Abuse and Mental Health under the authority granted to it in Section 62A-15-105 has determined that the funds required by Subsection 17-43-301(4)(k) (normally called the 20% match requirement) shall be paid from tax revenues assessed by the county legislative body and collected by the County Clerk.

2. Failure by any county to meet its obligations under this requirement, or Rule R523-20-8, shall result in the amount of State General Funds allocated to that county by formula as described in R523-20-1 being lowered by the percent by which the county undermatches these funds.

3. This rule shall take effect for the State Fiscal Year starting June 1, 1995 and shall remain in effect until changed or repealed by the Board of Substance Abuse and Mental Health or its successor.

#### **R523-20-11. Use of Standard Criteria.**

1. The Board of Substance Abuse and Mental Health under authority granted by 62A-15-105 has determined (a) the assessment instrument that all contractors and subcontractors

must use to determine the degree of severity of a substance abuse problem will be the Addiction Severity Index, (ASI); (b) that the placement decisions for all patients treated in programs funded by or contracting with the Division of Substance Abuse and Mental Health or subcontracted to any local authority shall be based upon the placement criteria developed by the American Society of Additive Medicine (ASAM) as adapted for use in Utah Behavioral Health Network; (c) documentation of the use of this placement criteria must be included in each patient's record.

2. At least one staff member for each contractor and subcontractor shall be trained in the proper use of the ASI and ASAM instruments. This training must be documented in individual personnel files.

**KEY: substance abuse, financing of programs**

**January 30, 2007**

**62A-15-105**

**Notice of Continuation June 5, 2007**

**R523. Human Services, Substance Abuse and Mental Health.****R523-22. Utah Standards for Approval of Alcohol and Drug Educational Programs for Court-Referred DUI Offenders.****R523-22-1. Purpose and Statutory Authority.**

1. Purpose. These rules prescribe standards for approval of programs and certification of instructors for providing alcohol and drug education to court-referred offenders convicted of a Driving Under the Influence (DUI) violation of Sections 41-6-43, 41-6-44, 41-6-45, and 73-18-12 through 73-18-12.2.

2. Statutory Authority. These standards are promulgated by the Utah Department of Human Services through the Division of Substance Abuse and Mental Health (hereinafter referred to as "Division") as authorized by Sections 41-6-44, 62A-15-103, 62A-15-105, 17-43-201 62A-15-501-503 and 76-5-207.

3. Intent. The objective of the DUI Educational Program is to: (a) eliminate alcohol and other drug-related traffic offenses by helping the offender examine the behavior which resulted in his arrest, (b) assist him in implementing behavior changes to cope with problems associated with alcohol and other drug use, and (c) impress upon him the severity of the DUI offense.

**R523-22-2. Definitions as Used in These Standards.**

1. "DUI Educational Program" herein referred to as program is an instructional series operated by a licensed substance abuse treatment program which satisfies the standards established by the Division.

2. "DUI" is driving or being in actual physical control of a vehicle while under the influence of alcohol or any drug or the combined influence of alcohol and any drug to a degree, which renders the person incapable of safely driving a vehicle. In these standards, "DUI" shall refer to individuals convicted of violating Sections 41-6-43, 41-6-44, 41-6-45, and 73-18-12 through 73-18-12.2.

3. "Certificate" is a written authorization issued by the Division to indicate that the Program has been found to be in compliance with these Division standards.

4. "Offender" is an individual convicted of violating Section 41-6-43, 41-6-44, 41-6-45, or 73-18-12 through 73-18-12.2.

5. "Screening" is a process using the SASSI (Substance Abuse Subtle Screening Inventory) or other Division approved screening tool in order to identify the need for additional assessment.

6. "Instructor" is a person who has been certified by the Division to instruct in educational programs for court-referred offenders convicted of DUI.

**R523-22-3. Certification Requirements for DUI Educational Programs.**

1. In order to operate, a DUI Educational Program shall make application to the Division at least 60 days prior to the planned effective date. The Division will provide the application form.

2. Application for certification will require that the program provide, among other things:

- a. a brief description and purpose of program, plus explanation of program's relationship with other components of the local DUI system, i.e., Local Substance Abuse Authorities, local courts, police, Probation and Parole, Alcoholics or Narcotics Anonymous, etc.;
- b. the geographical area to be served;
- c. the ownership and person or group responsible for program operation;
- d. the location and time that DUI classes are normally held;
- e. a list of instructors employed by the program; and
- f. a copy of their substance abuse treatment license.

3. A DUI Educational Program shall also:

- a. ensure that offenders receive no less than 16 hours of face-to-face instruction using the Division's approved curriculum with no more than 4 hours of instruction occurring in any calendar day;
- b. allow no more than 25 persons, including offenders and others to a class;
- c. follow the recommendations of the screening which has been provided;
- d. ensure that screenings are conducted by staff from a licensed treatment program who have been trained in administering the screening tool;
- e. report the number of offenders completing the DUI Educational Program to the Division;
- f. have policies ensuring confidentiality of information maintained on offenders that conform to the requirements in 42 Code of Federal Regulations Chapter 1 Part 2;
- g. ensure that instructors follow the Division-approved curriculum;
- h. have available for review a copy of the program's charter, constitution, or bylaws;
- i. outline the eligibility criteria for admission to the program, including the screening tool used;
- j. ensure that all instructors employed by the program have completed the Division required DUI training/certification; and
- k. comply with all applicable local, state and federal laws and regulations.

4. An offender's participation in the DUI Educational Program shall not be a substitute for treatment required by the courts.

5. The Division shall issue the program a certificate after determination has been made that the applicant is in compliance with these standards.

6. The Division Director has the authority to grant exceptions to any of the certification requirements.

**R523-22-4. On-site Survey of Program.**

1. After a review of the application, a site review will be scheduled by a designated representative of the Division. With each initial application and application for renewal the applicant agrees, as a condition of program certification, to permit representative(s) of the, Division, and/or the local substance abuse authority as authorized by the Division to enter and survey the physical facility, program operation, client records and to interview staff for determining compliance with applicable laws.

2. The DUI Educational Program also agrees to allow representatives from the Division and from the local substance abuse authority as authorized by the Division to attend the classes held. Such visits may be announced or unannounced.

3. Review Procedures. Within 30 days after completion of the on-site survey, the Division shall notify the applicant of action taken: approval, denial, or request for further information.

**R523-22-5. Instructor Certification.**

1. By this rule the Division hereby establishes certification requirements for Instructors, which consist of the following:

- a. All instructors employed by any DUI Educational Program shall be certified by the Division prior to instructing the state approved DUI curriculum for any DUI Educational Program.
- b. All instructors shall attend and complete the requirements of the instructor training sponsored by the Division.
- c. Requirements in A and B above shall be complete and verifiable.
- d. The instructor agrees, as a condition of certification, to use only the Division-approved curriculum when conducting a

DUI Educational Program.

e. The instructors must agree to attend all required DUI training sessions sponsored or approved by the Division.

Notice of Continuation June 22, 2007

62A-15-201  
17-43-301  
73-18-12.1-2

**R523-22-6. Recertification of Instructors.**

1. An instructor must recertify every twenty-four months by: annually, on a calendar year basis attending and completing the requirements of any Division-sponsored or approved DUI training sessions. The instructor must sign a register at those training sessions which have been set aside for DUI instructor recertification.

2. It is the responsibility of the instructor to notify the Division immediately of any address change.

3. The Division Director or designee has the authority to grant exceptions to any of the certification requirements.

**R523-22-7. Corrective Action for a Program or an Instructor.**

1. If the Division becomes aware that a DUI education program or an instructor is in violation of these standards, it shall proceed with the following steps:

a. Within 30 days of becoming aware of the violation, the Division shall notify the program or the instructor in writing of the area(s) of noncompliance.

b. Within 30 days of receiving notification of violation, the program or the instructor shall submit a written plan to the Division for achieving compliance.

c. If the written plan is not accepted as satisfactory by the Division within 30 days the program or the instructor shall be notified that they have been suspended until compliance is achieved.

d. A program or an instructor must cease conducting any DUI Educational Program until the suspension is lifted.

e. If the Division does not receive written evidence of compliance within 30 days of notification of suspension, the Division shall revoke the program or instructor's certification.

**R523-22-8. Revocation of a Program's or an Instructor's Certification.**

1. The Division shall revoke the certification of a program or an instructor for the following reasons:

a. If the program or the instructor fails to provide the Division by certified mail with written evidence of compliance within 30 days of notification of suspension.

b. If the program or the instructor continues to conduct any DUI Educational Program during the period of suspension, or

c. If any program or instructor receives more than two notices of noncompliance with these standards in a one-year period.

2. If any program or instructor's certification is revoked, they may not reapply for recertification for a period of six months.

**R523-22-9. Redress Procedures for Programs or Instructors.**

1. Any program or instructor whose certification has been revoked may request in writing an informal hearing with the Division Director or his designee within ten days of receiving notice of revocation. Within ten days following the close of the hearing, the Division shall inform the program or the instructor in writing of the decision as required under UCA Section 63-46b-5 and UACA R503-2-1 through R503-2-21.

2. If they so choose, the program or the instructor may appeal in writing the decision of the Division Director by requesting a reconsideration hearing with the Office of Administrative Hearings as provided for under UCA Section 63-46b-5.

**KEY: DUI programs, certification of instructors  
July 3, 2001**

41-6-44

**R523. Human Services, Substance Abuse and Mental Health.****R523-23. On-Premise Alcohol Training and Education Seminar Rules of Administration.****R523-23-1. Authority, Intent, and Scope.**

(1) These rules are adopted under the authority of Section 62A-15-401 authorizing the Division of Substance Abuse and Mental Health to administer the Alcohol Training and Education Seminar Program.

(2) The intent of statute and rules is to require every person to complete the seminar who sells or furnishes alcoholic beverages to the public for on premise consumption in the scope of the person's employment.

(3) These rules include:

- (a) certification of providers;
- (b) approval of the Seminar curriculum;
- (c) the ongoing activities of providers; and
- (d) the process for approval, denial, suspension and revocation of provider certification.

**R523-23-2. Definitions.**

(1) "Approved Curriculum" means a provider's curriculum which has been approved by the Division in accordance with these rules.

(2) "Certification" means written approval from the Division stating a person or company has met the requirements to become a seminar provider.

(3) "Director" means the Director of the Division of Substance Abuse and Mental Health.

(4) "Division" means the Division of Substance Abuse and Mental Health.

(5) "Manager" means a person chosen or appointed to manage, direct, or administer the operations at the premises of a licensee. A manager may also be a supervisor.

(6) "On-premise consumption" means the consumption of alcoholic products by a person within any building, enclosure, room, or designated area which has been legally licensed to allow consumption of alcohol.

(7) "Seminar" means the Alcohol Training and Education Seminar.

(8) "Server" is an employee who actually makes available, serves to, or provides a drink or drinks to a customer for consumption on the premises of the licensee.

(9) "Supervisor" means an employee who, under the direction of a manager as defined above if the business establishment employs a manager, or under the direction of the owner or president of the corporation if no manager is hired, directs or has the responsibility to direct, transfer, or assign duties to employees who actually provide alcoholic beverages to customers on the premises of the licensee.

**R523-23-3. Provider Certification Application Procedure.**

(1) A provider seeking first-time certification shall make application to the Division at least 30 days prior to the first scheduled seminar date. A provider seeking recertification to administer the seminar shall make application to the Division at least 30 days prior to expiration of the current certification.

(2) Any seminar conducted by a noncertified provider is void and shall not meet the server training requirements authorized under Section 62A-15-401.

(3) All application forms shall be reviewed by the Division. The Division shall determine if the application is complete and in compliance with Section 62A-15-401 and these rules. If the Division approves the application, the curriculum and determines the provider has met all other requirements, the Division shall certify the provider.

(4) Within 30 days after the Division has taken action, the Division shall officially notify the applicant of the action taken: denial, approval, or request for further information. Notification

of the action taken shall be forwarded in writing to the applicant.

(5) If an application requires additional information of corrective action, a provider may continue to conduct seminars for 30 days from the date of notification. If the provider has not resolved the action required with the Division by that date, the provider is no longer certified to provide the seminar and must cease until all actions are approved by the Division.

**R523-23-4. Provider Responsibilities.**

(1) For each person completing the seminar, the provider shall submit to the Division the name, social security number, expiration date and test results indicating pass or fail, and the required fee, within 30 days of the completion of the seminar.

(2) Each person who has completed the seminar and passed the provider-administered and Division-approved examination shall be approved as a server for a period which begins at the completion of the seminar and expires three years from this date. Recertification requires the server to complete a new seminar every three years.

(3) The provider shall issue a certification card to the server. The card shall contain at least the name of the server and the expiration date. The provider shall be responsible for issuing any duplicates for lost cards.

**R523-23-5. Server Responsibilities.**

A server is required within 30 days of employment to pass the Seminar.

**R523-23-6. Division Responsibilities.**

The Division shall maintain the list of servers who have completed the seminar and make this information available to the public for compliance reviews.

**R523-23-7. Approved Curriculum.**

(1) Each provider must have a curriculum approved by the Division. This curriculum must provide at least three hours of classroom instruction both for original certification and for any and all recertifications. The contents of an approved curriculum shall include the following components:

(a) Alcohol as a drug and its effect on the body and behavior:

- (i) facts about alcohol;
  - (ii) what alcohol is; and
  - (iii) alcohol's path through the body.
- (b) Factors influencing the effect of alcohol including:
- (i) food and digestive factors;
  - (ii) weight, physical fitness and gender factors;
  - (iii) psychological factors;
  - (iv) tolerance; and
  - (v) alcohol used in combination with other drugs.

(c) Recognizing drinking levels:

(i) explanation of behavioral signs and indications of impairment;

- (ii) classification of behavioral signs; and
- (iii) defining intoxication.

(d) Recognizing the problem drinker and techniques for servers to help control consumption:

- (i) use of classification system;
- (ii) use of alcohol facts;
- (iii) continuity of service; and
- (iv) drink counting.

(e) Overview of state alcohol laws:

- (i) Utah liquor distribution and control;
- (ii) legal age;
- (iii) prohibited sales;
- (iv) third party liability and the Dram Shop Law;
- (v) legal definition of intoxication; and
- (vi) legal responsibilities of servers.

(f) Techniques for dealing with the problem customer including rehearsal and practice of these techniques.

(g) Intervention techniques:

(i) slowing down service;

(ii) offering food or nonalcoholic beverages;

(iii) serving water with drinks;

(iv) not encouraging reorders; and

(v) cutting off service.

(h) Establishing house rules for regulating alcoholic beverages:

(i) management and co-workers' support; and

(ii) dealing with minors; and

(i) Alternative means of transportation and getting the customer home safely:

(i) ask customer to arrange alternative transportation;

(ii) call a taxi for transportation service;

(iii) accommodations for the night; and

(iv) telephone the police.

#### **R523-23-8. Examination.**

The examination shall include questions concerning alcohol as a drug and its effect on the body and behavior, recognizing and dealing with the problem drinker, Utah alcohol laws, terminating service, and alternative means of transportation to get the customer safely home. The portion of the exam concerning Utah's alcohol laws shall be uniform questions approved by the Department of Alcoholic Beverage Control or as updated and approved by the Division.

#### **R523-23-9. Alcohol Training and Education Seminar Provider Standards.**

(1) The Division may certify an applicant who has a program course that:

(a) does not have a history of liquor law violations or any convictions showing disregard for laws related to being a responsible liquor provider;

(b) identifies all program instructors and instructor trainers and certifies in writing that they have been trained to present the course material and that they have not been convicted of a felony or of any violation of the laws or ordinances concerning alcoholic beverages, within the last five years;

(c) agrees to notify the Division in writing of any changes in instructors and submit the assurances called for in Subsection R523-23-9(1)(b) for all new instructors;

(d) can show adequate facilities, instructional equipment and materials, personnel, and financial resources to provide a successful program for the length of time the license is in effect; and

(e) will establish and maintain course completion records.

#### **R523-23-10. Grounds For Denial, Corrective Action, Suspension, and Revocation.**

(1) The Division may deny, suspend or revoke certification if:

(a) the provider or applicant violates these rules, as provided in Section 62A-15-401; or

(b) the applicant fails to correctly complete all required steps of the application process as determined by these rules or other rules or statutes referenced in these rules; or

(c) a provider whose certification has been previously denied, suspended or revoked has reapplied without taking the previously required corrective action.

#### **R523-23-11. Corrective Action.**

(1) If the Division becomes aware that a provider is in violation of these rules or other rules or statutes referenced in these rules:

(a) within 30 days after becoming aware of the violation, the Division shall identify in writing the specific areas in which

the provider is not in compliance and send written notice to the provider; and

(b) within 30 days of notification of noncompliance, the provider shall submit a written plan for achieving compliance. The provider may be granted an extension.

#### **R523-12-12. Suspension and Revocation.**

(1) The Director or designee may suspend the certification of a provider as follows:

(a) When a provider fails to respond in writing to areas of noncompliance identified in writing by the Division within the defined period. The defined period is 30-days plus any extensions granted by the Division.

(b) When a provider fails to take corrective action as agreed upon in its written response to the Division.

(c) When a provider fails to allow the Division access to information or records necessary to determine the provider's compliance under these rules and referenced rules and statutes.

(2) The Director or designee may revoke certification of a provider as follows:

(a) A provider or its authorized instructors continue to provide the seminar while the provider is under a suspended certification.

(b) A provider fails to comply with corrective action while under a suspension.

(c) A program has committed a second violation which constitutes grounds for suspension when a previous violation resulted in a suspension during the last 24 months.

#### **R523-23-13. Procedure for Denial, Suspension, or Revocation.**

(1) If the Division has grounds for action under these rules, referenced rules, or as required by law, and intends to deny, suspend or revoke certification of a provider, the steps governing the action are as follows:

(a) The Division shall notify the applicant or provider by personal service or by certified mail, return receipt requested, of the action to be taken. The notice shall contain reasons for the action, to include all statutory or rule violations, and a date when the action shall become effective.

(b) The provider may request an informal hearing with the Director within ten calendar days. The request shall be in writing. Within ten days following the close of the hearing, the Director shall inform the provider or applicant in writing as required under Section 63-46b-5. The provider may appeal to the Department of Human Services Office of Administrative Hearing as provided for under Section 63-46b-5.

**KEY: substance abuse, server training  
January 30, 2007  
Notice of Continuation June 22, 2007**

**62A-15-401**

**R525. Human Services, Substance Abuse and Mental Health, State Hospital.****R525-8. Forensic Mental Health Facility.****R525-8-1. Forensic Mental Health Facility.**

(1) Pursuant to the requirements of UCA Section 62A-15-902(2)(c), the forensic mental health facility allocates beds to serve the following categories:

(a) prison inmates displaying mental illness, as defined in UCA Section 62A-15-602, necessitating treatment in a secure mental health facility;

(b) criminally adjudicated persons found guilty and mentally ill or undergoing evaluation for mental illness under UCA Title 77, Chapter 16a;

(c) criminally adjudicated persons found guilty and mentally ill or undergoing evaluation for mental illness under UCA Title 77, Chapter 16a, who are also mentally retarded;

(d) persons found by a court to be incompetent to proceed in accordance with UCA Title 77, Chapter 15, or not guilty by reason of insanity under UCA Title 77, Chapter 14; and

(e) persons who are civilly committed to the custody of a local mental health authority in accordance with UCA Title 62A, Chapter 15, Part 6, and who may not be properly supervised by the Utah State Hospital because of a lack of necessary security, as determined by the superintendent or his designee.

(2) Additionally, the beds serve the following categories:

(a) persons undergoing an evaluation to determine competency to proceed under UCA Title 77, Chapter 15; and

(b) persons committed to the state hospital as a condition of probation under UCA Subsection 77-18-1(13).

**R525-8-2. Bed Allocation.**

Beds are allocated based on current psychiatric need and legal status. Highest priority shall be given to those cases which are specifically required to be admitted to the Utah State Hospital by Utah law.

**R525-8-3. No Admission Because of Capacity.**

When capacity in the forensic mental health facility has been met, the hospital shall not admit any persons to the forensic mental health facility until a bed becomes available. In such an event the hospital will work cooperatively with the court to find a resolution.

**KEY: forensic, mental health, facilities****June 15, 2007****62A-15-902(2)(c)****Notice of Continuation May 16, 2006**

**R547. Human Services, Juvenile Justice Services.**  
**R547-6. Youth Parole Authority Policies and Procedures.**  
**R547-6-1. Definitions.**

(1) Detainer is an order to hold a youth for another governmental agency.

**R547-6-2. Administration and Organization.**

Section 62A-7-109 establishes a Youth Parole Authority within the Division of Juvenile Justice Services which has responsibility for parole release, rescission, revocation, and termination of parole for youth offenders committed to the Division for secure confinement.

(1) The Authority is established as an autonomous organizational entity reporting directly to the Board of Juvenile Justice Services.

(2) The following criteria shall be utilized by the Board of Juvenile Justice Services in the selection and appointment of the Authority members:

(a) A member shall have training or experience in social work, law, juvenile or criminal justice, or related behavioral sciences.

(b) A member shall not be an employee of the Department of Human Services, other than in the capacity as a member of the Authority, and may not hold any public office during the tenure of the appointment. A member shall not hold a position in the State's juvenile justice system or be an employee, officer, advisor, policy board member, or subcontractor of any juvenile justice agency or its contractor during the tenure of the appointment.

(c) The membership shall represent, to the extent possible, a diversity of the population under the jurisdiction of the Division.

(d) The membership shall be composed of individuals with the capacity to conduct hearings in a professional manner, develop appropriate policies and procedures, be sensitive to both legal and treatment oriented issues and promote credibility in the parole release process.

(3) Youth Parole Authority members shall be appointed for terms of three years by the Board of Juvenile Justice Services.

(4)(a) The Board of Juvenile Justice Services shall elect the chairperson and vice-chairperson of the Authority by majority vote for terms of one year. A second vice-chairperson shall be designated by the Authority members present at hearings in which the chairperson and vice-chairperson are absent.

(b) The duties of the chairperson are as follows:

(i) to preside at meetings and hearings and in the chairperson's absence the first vice-chairperson shall act. In the absence of the chairperson and first vice-chairperson, the second vice-chairperson shall preside at the meeting or hearing.

(ii) to act as official spokesperson for the Authority with the concurrence of the Authority;

(iii) to work closely with the Administrative Officer in the administration of the Authority and in coordinating with the Division.

(5) Any member of the Authority may be removed from office by the Board of Juvenile Justice Services for cause.

(6) The Authority shall seek parity with salaries of other state officers performing similar and responsible duties.

(7) The Division Director shall ensure that time is available for Division members to participate in training and administrative meetings related to Authority and Division matters.

(8) The Authority has the power to require that general and specific conditions of parole be followed in the supervision of parolees.

(9) The Authority has the statutory power, Section 62A-7-112(4), to secure prompt and full information relating to youth

offenders committed to the Division from the staffs of the secure facilities, regional offices, community placements, and the juvenile court.

(10) The Authority has statutory power, Section 62A-7-110, to cause the arrest of parolees and the power to revoke parole.

(11) The Authority has the designated power to terminate youthful offenders from parole.

(12) The Authority shall establish policies and procedures for its governance, meeting, hearings, the conduct of proceedings before it, the parole of youth offenders, and the general conditions under which parole may be granted, rescinded, revoked, modified, and terminated. The Authority's policies and procedures are subject to the approval of the Board of Juvenile Justice Services.

(13) The policy and procedures manual of the Authority will be readily available to youth in secure facilities, parolees, staff and the public.

(14) The Authority shall request any needed legal assistance from the Attorney General's Office.

(15) The position of an Administrative Officer shall be established to carry out day to day functions and to implement the policies and procedures of the Authority.

(16) Required staff shall be appointed to the Authority.

**R547-6-3. Hearings.**

A case file shall be maintained on each youth that comes before the Authority. Materials in the case files are clearly identified as to source, verification and confidentiality.

(1) For the proper operation of the Authority and protection of those furnishing information and for the best interests of youth offenders and society, all written documents, evaluations or medical reports, opinions, investigative reports which contain or are based upon information that is, either privileged by statute or court rule or order of the Authority, or of such confidential nature that the Authority concludes the rights and reputations of particular person or persons pending the order, decision, opinions or submitting the documents would be jeopardized or threatened, or the public interest would not be served, shall be classified as controlled and not be made available to the youth offender or his representative or for public inspection. Requests and reasons for any exceptions shall be submitted in a petition to the Authority, which may upon good cause grant the request.

(2) The Authority may order, when necessary, examinations and opinions by certified psychiatrists or psychologists. Certified members of the appropriate professions shall be available for such examinations and opinions.

(3) In order to have adequate time for case preparation, the Authority will be provided, in advance of hearings, with the necessary case materials and information to make appropriate decisions.

(4) A calendar shall be prepared in advance of all parole hearings.

(5) The number of full hearings scheduled for an Authority panel in a single day should be limited to 12 cases.

(6) Youth offenders shall be notified in writing at least 14 calendar days in advance of initial and parole review hearings and shall be specifically advised as to the purpose of the hearing.

(7) The Authority hearings are not open to the public; however, the Authority has the discretion to admit to the hearings any persons who may serve in the best interest of the youth.

(8) Hearings by the Authority shall be conducted in a secure environment and in private rooms appropriately furnished and of adequate size and comfort.

(9) Youth offenders may have assistance from qualified persons for an effective case presentation.

(10) Youth offenders shall have legal representation at parole revocation hearings. Legal representation shall not be permitted at initial, parole review, progress review, and rescission hearings. Legal representation shall be at the discretion of the hearing officer at preliminary hearings. Legal representation shall be at the discretion of the Authority at special hearings.

(11) It is the policy of the Authority that all youth offenders shall have a personal appearance before the Authority, which provides for ample opportunity for the expression of the youth's views, particularly in the situation where parole may be denied.

(12) A record shall be made of all proceedings and findings made by the Authority.

(13) The youth offender will be notified verbally of the Authority's decisions at the conclusion of each hearing. All decisions shall be supported in writing and forwarded to the youth within 14 days of the hearing date.

(14) The youth offender, parent, or legal guardian of the youth offender may appeal any decision of the Authority regarding parole release or revocation to the Executive Director of the Department of Human Services or designee.

(15)(a) The criteria employed by the Authority in its decision making process are available in written form in the administrative office of the Division of Juvenile Justice Services and are specific enough to permit consistent application to individual cases.

(b) Youth offenders committed to the Division for secure confinement may be released by the Authority earlier than their recommended guideline, when the Division's secure facilities are at maximum capacity.

(16) It is the policy of the Authority that all youth offenders shall be automatically scheduled for an initial hearing before the Authority within 90 days of commitment to a secure facility.

(17)(a) It is the policy of the Authority that a youth offender shall have a progress review hearing held 180 days from the date of the initial hearing, when a parole review hearing has not been scheduled due to lengthy guideline considerations.

(b) All youth offenders shall have a parole review hearing before the Authority prior to release. The parole review hearing shall be scheduled within 180 days of either the initial hearing or the progress review hearing. A date for parole release shall be established at the parole review hearing when appropriate.

(18) The parole release date established by the Authority shall remain in effect except upon findings by the Authority that cause exists for the rescission of said date.

(19) The youth can petition the Authority for reconsideration of an earlier decision, including release prior to the original parole date.

(20) Each parolee shall receive and sign a written copy of the parole agreement.

(21) The parole agreement can be amended upon approval by the Authority.

(22) The Authority does not accept the presence of a detainer as an automatic bar to release; rather, the Authority pursues the basis of any such detainer, and releases the youth per detainer where appropriate.

(23) The Authority has power to terminate youth offenders from parole supervision. Youth are not continued on active parole after one year without cause.

office when there is probable cause that a parole violation(s) has occurred and that such proceedings are in the best interest of the youth or the community.

(2) A pre-revocation hearing may be held by the Administrative Officer or designee to determine whether there is probable cause to return a youth to a secure facility for a parole violation hearing.

(3) The Administrative Officer in behalf of the Authority may issue warrants of arrest.

(4) An alleged parole violator will have a revocation hearing within 21 days of the pre-revocation hearing. Legal representation is required at revocation hearings.

**KEY: juvenile corrections, parole  
1992  
Notice of Continuation June 4, 2007**

**62A-7  
63-2-303**

#### **R547-6-4. Arrest and Revocation.**

An Incident Report Form will be used to convey information to the Authority regarding parolees. The assigned parole officer is responsible to keep the Authority informed regarding all parole violations.

(1) Revocation proceedings will be initiated by the region

**R547. Human Services, Juvenile Justice Services.****R547-13. Guidelines for Admission to Secure Youth Detention Facilities.****R547-13-1. Purpose, Authority and Scope.**

(1) This rule establishes guidelines for admission to secure detention to meet the requirements of Section 62A-7-202.

(2) This rule shall be applied to youth candidates for placement in all secure detention facilities operated by the Division of Juvenile Justice Services.

**R547-13-2. Definitions.**

(1) Terms used in this rule are defined in Sections 62A-7-101 and 78-3a-103.

(2) "Status offense" means a violation of the law that would not be a violation but for the age of the offender.

(3) "Youth" means a person age 10 or over and under the age of 21.

**R547-13-3. General Rules.**

(1) A youth may be detained in a secure detention facility if:

(a) A youth is charged with any of the following State or Federal offenses:

(i) Any felony offense

(ii) Any attempt, conspiracy, or solicitation to commit a felony offense

(iii) A class A misdemeanor of Section 58-37-8 (1) (b) distribution of a controlled substance violation

(iv) Domestic violence 77-66-1 (Cohabitant)

(v) Section 76-5-104(1)(C) Assault, only when the assault is against an individual with whom the youth lives if efforts by law enforcement, in conjunction with the youth's parent or guardian, to safely place the youth with a family member living outside the youth's home are unsuccessful

(vi) Section 76-5-102 (3), assault causing substantial bodily injury

(vii) Section 76-5-104.4, assault on a police officer

(viii) Section 76-6-104 (a), reckless burning which endangers human life

(ix) A class A misdemeanor violation of Section 76-6-105, causing a catastrophe

(x) Section 76-6-106 (2) (b) (i) (a), criminal mischief involving tampering with property that endangers human life

(xi) A class A misdemeanor violation of Section 76-6-406, theft by extortion

(xii) A class A or B misdemeanor violation of Section 76-10-504, carrying a concealed dangerous weapon

(xiii) Section 76-10-505, carrying a loaded firearm

(xiv) Section 76-10-506, threatening with or using a dangerous weapon in a fight or quarrel

(xv) Section 76-10-507, possession of deadly weapon with intent to assault

(xvi) Section 76-10-509, possession of a dangerous weapon by minor

(xvii) Section Violation of Section 76-10-509.4, prohibition of possession of certain weapons by minors

(xviii) A class A or B misdemeanor violation of Section 76-10-509.5, providing certain weapons to a minor

(xix) Section 76-10-1302, prostitution.

(b) None of the alleged offenses are listed in paragraphs R547-13-3 (1) (a), but three or more non-status criminal offenses are currently alleged in a single criminal episode;

(c) The youth is an escapee or absconder from a Juvenile Justice Services secure institution, observation and assessment unit or community placement or state supervision placement.

(d) The youth has been verified as a fugitive (absconder from probation or parole) or a runaway from another state and a formal request has been received (such as a TWX/National Crime Information Center (NCIC) or a telephone call/FAX from

a law enforcement officer or a verified call/FAX from the institution) to hold pending return to the other jurisdiction, whether or not an offense is currently charged.

(e) The youth has failed to appear at a court hearing on a criminal offense within the past twelve months

(f) A youth is not detainable under any of the above criteria, but a non-status law violation has been alleged and one of the following documented conditions exist:

(i) The youth's record discloses two or more prior adjudicated offenses listed in paragraphs R547-13-3(1)(a) in which the offenses were found to be true in the past twelve months.

(ii) The youth, under continuing court jurisdiction excluding those whose ONLY involvement is as a victim of abuse, neglect, abandonment, or dependency, has run from court-ordered placement, including his own home.

(iii) The youth has failed to appear at a court hearing within the past twelve months after receiving legal notice and officials have reason to believe that the youth is likely to abscond unless held.

(2) A youth not otherwise qualified for detention in a secure detention facility shall not be detained for any of the following:

(a) ungovernable or runaway behavior;

(b) neglect, abuse, abandonment, dependency, or other status requiring protection for any other reason;

(c) status offenses such as curfew, possession/consumption of alcohol, tobacco, minor-in-a-tavern, truancy;

(d) Attempted suicide.

(3) No youth under the age of ten years may be detained in a secure detention facility.

**R547-13-4. Juvenile Justice Services' Cases.**

A youth who is on parole or involved in a trial placement from a secure facility, and who is detained solely on a warrant from the Division of Juvenile Justice Services may be held in a secure detention facility up to 48 hours excluding weekends and legal holidays.

**R547-13-5. DCFS Cases.**

A youth in the custody or under the supervision of the Division of Child and Family Services (DCFS) cannot be held in a secure detention facility unless he qualifies for detention under some section of this rule.

**R547-13-6. Traffic Cases.**

A youth brought to detention for traffic violation(s) cannot be held in a secure detention facility unless he qualifies for detention under some section of this rule.

**R547-13-7. Transient Cases.**

(1) Intrastate:

(a) A youth may be admitted to a secure detention facility when a court pickup order for detention has been issued.

(b) A youth may be admitted to a secure detention facility only if he is detainable under some section of this rule.

(2) Interstate:

(a) Youth who are escapees, absconders, and runaways shall be detained in accordance with the provisions of Subsection R547-13-3(1)(d).

(b) Youth who are out-of-state runaways who commit any non-status criminal offense(s) may be admitted to a secure detention facility.

(c) Non-runaways, when brought to a secure detention facility with an alleged criminal offense, may be detained or released based on the same criteria which applies to resident youth.

**R547-13-8. Immigration Cases.**

(1) A youth shall be detained at a secure detention facility when admission is requested by Citizenship and Immigration Services (formerly known as Immigration and Naturalization Services (INS)) officials.

(2) An unaccompanied, undocumented youth with an alleged criminal offense may be detained at a secure detention facility when admission is requested by any other law enforcement officer.

(3) Any unaccompanied, undocumented youth having no alleged criminal offense shall be referred to Youth Services when admission to a secure detention facility is requested by a law enforcement officer.

**R547-13-9. AWOL Military Personnel.**

Absent without leave (AWOL) military personnel shall be admitted to a secure detention facility.

**R547-13-10. Home Detention Cases.**

(1) If a home detention violation is alleged, the home detention counselor may cause the alleged violator to be brought to a secure detention facility. If the case involves a violator who is a runaway where a pickup order (Warrant for Custody) has not yet been issued, a law enforcement officer may bring the violator to a secure detention facility. The home detention counselor may then transfer the minor back to the status of home detention, if appropriate, or may authorize the youth to be held in secure detention for a re-hearing.

(2) A youth placed on home detention who is arrested by a law enforcement officer for an alleged criminal code violation(s) shall be admitted to a secure detention facility.

**R547-13-11. Juvenile Court Warrants for Custody or Pickup Orders.**

A youth shall be admitted to a secure detention facility when a juvenile court judge or commissioner has issued a warrant for custody.

**R547-13-12. Probation Violation - Contempt of Court - Stayed Order for Detention.**

A youth may be admitted to a secure detention facility for conditions such as: an alleged probation violation, contempt of court, or a stayed order for detention when it has been ordered by a judge. When it is not possible to get a written order, verbal authorization from a judge to detention is sufficient to hold a youth in a secure detention facility.

**R547-13-13. Other Court Orders for Detention.**

A youth brought to a secure detention facility pursuant to either federal or out-of-state court orders shall be admitted unless otherwise directed by a juvenile court judge.

**KEY: juvenile corrections, juvenile detention, admission guidelines**

January 18, 2006

Notice of Continuation June 4, 2007

62A-7-202

78-3a-113

78-3a-114

**R590. Insurance, Administration.****R590-102. Insurance Department Fee Payment Rule.****R590-102-1. Authority.**

This rule is adopted pursuant to Subsections 31A-3-103(2) and (4) which require the commissioner to publish the schedule of fees approved by the Legislature and to establish deadlines for payment of each of the various fees.

**R590-102-2. Purpose and Scope.**

(1) The purpose of this rule is to publish the schedule of fees approved by the legislature, to establish fee deadlines, and to disclose this information to licensees and the public.

(2) The rule applies to all persons engaged in the business of insurance in Utah, to all licensees, to applicants for licenses, registrations, certificates, or other similar filings and for services provided by the department for which a fee is required.

**R590-102-3. Definitions.**

For the purposes of this rule the following definitions will apply.

(1) "Admitted insurers" include: fraternal, health, health maintenance organization, life, limited health plan, motor club, non-profit health service, property-casualty, title insurers, and a prescription drug plan.

(2) "Agency" means:

(a) a person, other than an individual, including a sole proprietorship by which a natural person does business under an assumed name; and

(b) an insurance organization required to be licensed under Subsections 31A-23a-301, 31A-25-207, and 31A-26-209.

(3) "Captive insurer" includes association captive, branch captive, industrial insured captive, pure captive, and sponsored captive.

(4) "Deadline" means the date or time imposed by statute, order, or rule by which:

(a) a payment must be received by the department without incurring penalties for late payment or non-payment; or

(b) a filing must be received by the department without incurring penalties for late receipt or non-receipt.

(5) "Fee" means an amount set by the legislature for licenses, registrations, certificates, and other filings and services provided by the Insurance Department.

(6) "Full-line agency" includes producer, consultant, independent adjuster, managing general agent, public adjuster, reinsurance intermediary broker, and third party administrator.

(7) "Full-line individual" includes a producer, consultant, independent adjuster, managing general agent, public adjuster, reinsurance intermediary broker, and third party administrator.

(8) "Limited-line agency" includes bail bond and limited-line producer.

(9) "Limited-line individual" includes bail bond agent, limited-lines producer and customer service representative.

(10) "Other organizations" include: home warranty, joint underwriter, purchasing group, rate service organization, risk retention group, service contract provider, surplus line insurer, accredited reinsurer, trustee reinsurer, and health discount program.

(11) "Paper application" means an application that must be manually entered into the department's database because the application was submitted by paper, facsimile, or email when the department has provided an electronic application process and stated the electronic process is the preferred process for receiving an application.

(12) "Paper filing" means a filing that must be manually entered into the department's database because the filing was submitted by paper, facsimile, or email when the department has provided an electronic filing process and stated the electronic process is the preferred process for receiving a filing.

(13) "Received by the department" means:

(a) except as provided in Subsection R590-102-3(11)(b), the date delivered to and stamped received by the department, whether delivered in person or electronically; or

(b) if delivered to the department by a delivery service, the delivery service's postmark date or pick-up date unless a statute, rule, or order related to a specific filing or payment provides otherwise.

**R590-102-4. General Instructions.**

(1) Any fee payable to the department not included in Subsections R590-102-5 through 14, shall be due when service is requested, if applicable, otherwise by the due date on the invoice. A non-electronic payment fee will be added to the fee due the department when a payment that can be made electronically is done through a non-electronic method.

(2) Payment.

(a) Checks shall be made payable to the Utah Insurance Department. A check that is dishonored in the process of the collection will not constitute payment of the fee for which it was issued and any action taken based on the payment will be voided. Late fees and other penalties, resulting from the voided action will apply until proper payment is made. A check payment that is dishonored is a violation of this rule.

(b) Cash payments. The department is not responsible for un-receipted cash that is lost or misdelivered.

(c) Electronic payments.

(i) Credit Card. Credit cards may be used to pay any fee due to the department. Credit card payments that are dishonored will not constitute payment of the fee and any action taken based on the payment will be voided. Late fees and other penalties, resulting from the voided action, will apply until proper payment is made. A credit card payment that is dishonored is a violation of this rule.

(ii) Automated clearinghouse (ACH). Payers or purchasers desiring to use this method must contact the department for the proper routing and transit information. Payments that are made in error to another agency or that are not deposited into the department's account will not constitute payment of the fee and any action taken based on the payment will be voided. Late fees and other penalties resulting from the voided action will apply until proper payment is made. An ACH payment that is dishonored is a violation of this rule.

(3) Retaliation. The fees enumerated in this rule are not subject to retaliation in accordance with Section 31A-3-401 if other states or countries impose higher fees.

(4) Refunds.

(a) All fees in this rule are non-refundable.

(b) Overpayments of fees are refundable.

(c) Requests for return of overpayments must be in writing.

(5) A non-electronic processing fee will be assessed for a particular service if the department has established an electronic process for that service. See Section 12 for non-electronic processing fees.

**R590-102-5. Admitted Insurer Fees.**

(1) Annual license fees.

(a) certificate of authority, initial license application - due with license application: \$1,002;

(b) certificate of authority - renewal - due by the due date on the invoice: \$302;

(c) certificate of authority - late renewal - due for any renewal paid after the date on the invoice: \$352;

(d) certificate of authority - reinstatement - due with application for reinstatement: \$1,002;

(e) certificate of authority - amendments - due with request for amendment: \$252;

(f) application for merger, acquisition, or change of control - Form A, due with filing: \$2,002. Expenses incurred

for consultant(s) services necessary to evaluate the Form A will be charged to the applicant and due when billed;

(g) redomestication filing - due with filing: \$2,002; and

(h) application for organizational permit for mutual insurer to solicit applications for qualifying insurance policies or subscriptions for mutual bonds or contribution notes - due with application: \$1,002.

(2) The annual initial or annual renewal license fee includes the following licensing services for which no additional fee is required:

(a) filing annual statement and report of Utah business - due annually on March 1;

(b) filing holding company registration statement - Form B;

(c) filing application for material transactions between affiliated companies - Form D;

(d) application for: stock solicitation permit, public offering filing, but not an SEC filing; an SEC filing; private placement offering; and

(e) application for individual license to solicit in accordance with the stock solicitation permit.

(3) Annual service fee:

(a) Due annually by the due date on the invoice. The fee is based on the Utah premium as shown in the latest annual statement on file with the National Association of Insurance Commissioners (NAIC) and the department. Fee calculation example: the 2004 annual service fee calculation will use the Utah premium shown in the December 31, 2003 annual statement.

(i) \$0 premium volume: no service fee;

(ii) more than \$zero but less than \$1 million in premium volume: \$700;

(iii) \$1 million but less than \$3 million in premium volume: \$1,100;

(iv) \$3 million but less than \$6 million in premium volume: \$1,550;

(v) \$6 million but less than \$11 million in premium volume: \$2,100;

(vi) \$11 million but less than \$15 million in premium volume: \$2,750;

(vii) \$15 million but less than \$20 million in premium volume: \$3,500; and

(viii) \$20 million or more in premium volume: \$4,350.

(b) The annual service fee includes the following services for which no additional fee is required:

(i) filing of amendments to articles of incorporation, charter, or bylaws;

(ii) filing of power of attorney;

(iii) filing of registered agent;

(iv) affixing commissioner's seal and certifying any paper;

(v) filing of authorization to appoint and remove agents;

(vi) filing of producer/agency appointment with an insurer - initial;

(vii) filing of producer/agency appointment with an insurer - termination;

(viii) report filing, all lines of insurance;

(ix) rate filing, all lines of insurance; and

(x) form filing, all lines of insurance.

(c) The annual service fee is for services that the department will provide for an admitted insurer during the year. The fee is paid in advance of providing the services.

#### **R590-102-6. Surplus Lines Insurer, Accredited Reinsurer, Trusted Reinsurer, Other Organizations Fees.**

(1) Annual license fee.

(a) other organization:

(i) other organization - initial - due with application: \$252;

(ii) other organization - renewal - due annually by the due

date on the invoice: \$202;

(iii) other organization - late renewal - due for any renewal paid after the date on the invoice: \$252;

(iv) other organization - reinstatement - due with application for reinstatement: \$252;

(v) The annual other organizations initial or renewal fee includes the risk retention group annual statement filing - due annually on May 1.

(b) surplus line insurer, accredited reinsurer, and trusted reinsurer:

(i) surplus lines insurer, accredited reinsurer, and trusted reinsurer - initial - due with application \$1,002.

(ii) surplus lines insurer, accredited reinsurer, and trusted reinsurer - renewal - due annually by the due date on the invoice: \$302;

(iii) surplus lines insurer, accredited reinsurer, and trusted reinsurer - late renewal - due for any renewal paid after the date on the invoice: \$352;

(iv) surplus lines insurer, accredited reinsurer, and trusted reinsurer - reinstatement - due with application for reinstatement: \$1,002;

(v) The annual initial or renewal surplus line license fee includes the surplus lines annual statement filing for:

(A) U.S. companies - due annually on May 1; and

(B) foreign companies - due within 60 days of the annual statement's filing with the insurance regulatory authority where the company is domiciled.

(vi) The annual initial or renewal accredited reinsurer and trusted reinsurer license fee includes the annual statement filing - due annually on March 1.

(2) Annual service fee:

(a) Other organization - due annually by the due date on the invoice: \$200.

(b) Surplus lines insurer, accredited reinsurer, and trusted reinsurer - due annually by the due date on the invoice: \$200

(c) The annual service fee includes the following services for which no additional fee is required:

(i) filing of power of attorney;

(ii) filing of registered agent;

(iii) rate, form, report or service contract filing; and

(iv) any other services provided to the licensee.

(d) The annual service fee is for services that the department will provide during the year. The fee is paid in advance of providing the services.

#### **R590-102-7. Captive Insurer Fees.**

(1) Initial license application - due with license application: \$202.

(2) Initial license application review - due by the due date on the invoice: actual costs incurred by the department to review the application.

(3) Annual license fees:

(a) initial - due by the due date on the invoice: \$5,002;

(b) renewal - due by the due date on the invoice: \$5,002;

(c) late renewal - due for any renewal paid after the date on the invoice: \$5,052;

(d) reinstatement - due with application for reinstatement: \$5,052.

#### **R590-102-8. Viatical Settlement Provider Fees.**

(1) Annual license fees:

(a) initial - due with application: \$1,002;

(b) renewal - due by the due date on the invoice: \$302;

(c) late renewal - due for any renewal paid after the date on the invoice: \$352;

(d) reinstatement - due with reinstatement application: \$1,002.

(2) Annual service fee - due by the due date on the invoice: \$600.

(a) The annual service fee includes the following services for which no additional fee is required:

- (i) rate, form, report or service contract filing; and
- (ii) any other services provided to the licensee.

(b) The annual service fee is for services that the department will provide during the year. The fee is paid in advance of providing the services.

**R590-102-9. Individual Resident and Non-Resident License Fees.**

(1) Biennial resident and non-resident full-line individual initial license or renewal fee for two-year period:

- (a) initial license fee - due with application: \$72;
- (b) express initial license fee - due with application: \$72;
- (c) renewal license fee if renewed prior to renewal deadline - due with renewal application: \$72;
- (d) renewal license fee if renewed 1 through 30 days after renewal deadline and prior to license lapse - due with renewal application: \$122;
- (e) lapsed license reinstatement fee if reinstated 31 days through 730 days after renewal deadline - due with application for reinstatement: \$122.

(2) Biennial resident and non-resident limited-line individual initial or renewal license fee, for two-year period:

- (a) initial license fee - due with application: \$47;
- (b) renewal license fee if renewed prior to renewal deadline - due with renewal application: \$47;
- (c) renewal license fee if renewed 1 through 30 days after renewal deadline and prior to license lapse - due with renewal application: \$97;
- (d) lapsed license reinstatement fee if reinstated 31 days through 730 days after renewal deadline - due with application for reinstatement: \$97.

(3) Fee for addition of producer classification or line of authority to individual producer license - due with request for additional classification or line of authority: \$27.

(4) The biennial initial and renewal full-line producer and limited-line producer fee includes the following services for which no additional fee is required:

- (a) issuance of letter of certification;
- (b) issuance of letter of clearance;
- (c) issuance of duplicate license;
- (d) individual continuing education services; and
- (e) other services provided to the licensee.

(5) The biennial initial and renewal individual license fee includes services the department will provide during the year. The fee is paid in advance of providing the services.

(6) Title insurance product or service approval for dual licensed title licensee form filing fee - due with filing: \$25.

**R590-102-10. Agency License Fees.**

(1) Biennial resident and non-resident agency initial or renewal license per two-year license period for a full-line agency and for a limited-line agency:

- (a) initial license fee - due with application: \$77;
- (b) renewal license fee if renewed prior to renewal deadline - due with renewal application: \$77;
- (c) renewal license fee if renewed 1 through 30 days after renewal deadline and prior to license lapse - due with renewal application: \$127;
- (d) lapsed license reinstatement fee if reinstated 31 days through 730 days after renewal deadline - due with application for reinstatement: \$127.

(2) Fee for addition of producer classification or line of authority to agency license - due with request for additional classification or line of authority: \$27.

(3) Annual bail bond agency per annual license period:

- (a) initial license fee - due with application: \$252;
- (b) renewal license fee if renewed prior to renewal

deadline - due with renewal application: \$252;

(c) renewal license fee if renewed 1 through 30 days after renewal deadline and prior to license lapse - due with renewal application: \$302; and

(d) lapsed license reinstatement fee if reinstated 31 days after renewal deadline - due with application for reinstatement: \$302.

(4) Annual health insurance purchasing alliance annual license:

- (a) initial license fee - due with application: \$502;
- (b) renewal license fee if renewed prior to renewal deadline - due with renewal application: \$502;
- (c) renewal license fee if renewed 1 through 30 days after renewal deadline and prior to license lapse - due with renewal application: \$552; and
- (d) lapsed license reinstatement fee if reinstated 31 days after renewal deadline - due with application for reinstatement: \$552.

(5) The annual or biennial initial and renewal agency license fee includes the following services for which no additional fee is required:

- (a) issuance of letter of certification;
- (b) issuance of letter of clearance;
- (c) issuance of duplicate license;
- (d) filing of producer designation to agency license - initial;
- (e) filing of producer designation to agency license - termination;
- (f) filing of amendment to agency license;
- (g) filing of power of attorney; and
- (h) any other services provided to the licensee.

(6) The annual or biennial initial and renewal agency license fee includes services the department will provide during the year. The fee is paid in advance of providing the services.

(7) Title agency filing (rate, form, or report) - due with filing: \$25.

**R590-102-11. Continuing Education Fees.**

(1) Annual continuing education provider license fees per annual license period:

- (a) initial license fee - due with application: \$252;
- (b) renewal license fee if renewed prior to renewal deadline - due with renewal application: \$252;
- (c) late renewal license fee if renewed 1 through 60-days after renewal deadline and prior to license lapse - due with renewal application: \$302; and
- (d) Lapsed license reinstatement fee if reinstated 61 days after renewal deadline - due with application for reinstatement: \$302.

(2) Continuing education course post-approval fee - due with request for approval: \$5 per credit hour, minimum fee \$27.

**R590-102-12. Non-electronic Processing Fees.**

(1) Paper filing processing fee - assessed on a non-electronic filing when the department has provided an electronic filing process and stated the electronic process is the preferred process for receiving a filing - due with each paper filing or by the due date on the invoice: \$5.

(2) Paper application processing fee - assessed on a non-electronic application when the department has provided an electronic application process and stated the electronic process is the preferred process for receiving an application - due with each paper application or by the due date on the invoice: \$25.

**R590-102-13. Dedicated Fees.**

The following are fees dedicated to specific uses:

- (1) annual fraud assessment fee - due by the due date on the invoice;
- (2) annual title assessment fee - due by the due date on the

invoice;

(3) relative value study book fee - due when book purchased or by invoice due date: \$12; and

(4) mailing fee for books - due if book is to be mailed to purchaser: \$3.

**R590-102-14. Electronic Commerce Dedicated Fees.**

(1) E-commerce and internet technology services fee:

(a) admitted insurer and surplus lines insurer - due with the annual initial, annual renewal, or reinstatement application: \$75;

(b) captive insurer - due with the annual initial, annual renewal, or reinstatement application: \$250;

(c) other organization and viatical settlement provider - due with the annual initial, annual renewal, or reinstatement application: \$50;

(d) continuing education provider - due with the annual initial, annual renewal, or reinstatement application: \$20;

(e) agency - due with the biennial initial, biennial renewal, or reinstatement application: \$10;

(f) individual - due with the biennial initial, biennial renewal, or reinstatement application: \$5.

(2) Database access fee - due when the department's database is accessed to input or acquire data: \$3 per transaction.

**R590-102-15. Other Fees.**

(1) photocopy fee - per page: \$.50.

(2) Complete annual statement copy fee - per statement: \$42.

(3) Fee for accepting service of legal process: \$12.

(4) Fees for production of information lists regarding admitted insurers, other organizations, individuals, agencies, or other information that can be produced by list:

(a) printed list: \$1 per page;

(b) electronic list:

(i) 1 to 500 records: \$52; and

(ii) 501 or more records: \$.11 per record.

(5) Returned check fee: \$20.

(6) Workers compensation loss cost multiplier schedule: \$5.

(7) Address correction fee -- assessed when department has to research and enter new address for a licensee -- due by the due date on the invoice: \$35.

**R590-102-16. Separability.**

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of this provision to other persons or circumstances shall not be affected.

**KEY: insurance**

**June 8, 2007**

**31A-3-103**

**Notice of Continuation January 26, 2007**

**R590. Insurance, Administration.****R590-122. Permissible Arbitration Provisions.****R590-122-1. Authority.**

This rule is promulgated by the commissioner of Insurance under the general authority granted under Section 31A-2-201(3).

**R590-122-2. Purpose and Scope.**

This rule recognizes the emergence of arbitration as a speedy and inexpensive method of alternative dispute resolution. The rule is not intended to create procedural guidelines for the administration of arbitration proceedings once commenced. This rule is intended to:

1. define the term "permissible arbitration provision" as set forth in Sections 31A-21-313(3)(c) and 31A-21-314(2);
2. provide guidelines upon which disclosure of a contract arbitration provision is to be made. This rule is applicable to both individual and group contracts and to all classifications or lines of insurance.

**R590-122-3. Definitions.**

For the purpose of this rule, the commissioner adopts the definitions as particularly set forth in Section 31A-1-301 and in addition the following:

1. Those certain definitions set forth in Section 78-31a-2 of the "Utah Arbitration Act."
2. "Compulsory non-binding arbitration" means a contract provision requiring an insured to exhaust a procedure of extra-judicial arbitration as a condition precedent to the pursuit of an otherwise available judicial remedy.
3. "Compulsory binding arbitration" means a contract provision requiring arbitration as an automatic and exclusive remedy for any dispute involving a contract of insurance to the exclusion of any otherwise available judicial remedy, provided that the claim or controversy exceeds the jurisdictional limit of the small claims court of the state where the action would be brought.
4. "Optional binding arbitration" means a contract provision requiring any party to an insurance contract to submit to arbitration as set forth in such contract at the election of any contracting party, provided that the claim or controversy exceeds the jurisdictional limit of the small claims court of the state where the action would be brought.

**R590-122-4. Rule.**

1. Compulsory non-binding arbitration is contrary to the public interest and is not a "permissible arbitration provision."
2. Optional binding arbitration at the exclusive election of an insured party is a "permissible arbitration provision," in which case the disclosure provisions in paragraph 5 below may not be applicable.
3. Both compulsory and optional binding arbitration at the election of either the insured or the insurer are "permissible arbitration provisions."
4. Policy forms containing optional binding arbitration provisions for the exclusive election of an insurer will be disapproved under Section 31A-21-201(3)(a)(iv). Such provisions in previously approved forms are declared not enforceable. They will be construed under Section 31A-21-107 and applied as if in compliance with the Insurance Code.
5. Except as excluded in paragraph 2 above, each application or binder pertaining to an insurance policy which contains a permissible arbitration provision must include or have attached a prominent statement substantially as follows:

ANY MATTER IN DISPUTE BETWEEN YOU AND THE COMPANY MAY BE SUBJECT TO ARBITRATION AS AN ALTERNATIVE TO COURT ACTION PURSUANT TO THE RULES OF (THE AMERICAN ARBITRATION ASSOCIATION OR OTHER RECOGNIZED ARBITRATOR), A COPY OF WHICH IS AVAILABLE ON REQUEST FROM

THE COMPANY. ANY DECISION REACHED BY ARBITRATION SHALL BE BINDING UPON BOTH YOU AND THE COMPANY. THE ARBITRATION AWARD MAY INCLUDE ATTORNEY'S FEES IF ALLOWED BY STATE LAW AND MAY BE ENTERED AS A JUDGEMENT IN ANY COURT OF PROPER JURISDICTION.

Such statement must be disclosed prior to the execution of the insurance contract between the insurer and the policy holder and, in the case of group insurance, shall be contained in the certificate of insurance or other disclosure of benefits.

6. Both compulsory binding arbitration provisions and optional binding arbitration provisions may not be construed to preclude any dispute resolution by any small claims court having jurisdiction.

7. All arbitration provisions contained in insurance policies shall be in compliance with the "Utah Arbitration Act" (Title 78, Chapter 31a).

8. Any such agreement for arbitration may not obligate any insured to pay more than 50% of the advance payments required to begin the arbitration process.

9. No arbitration provision may require that arbitration be held at a place further from the residence of the insured than the nearest location of a State Court of General Jurisdiction.

**KEY: insurance law****October 8, 1997****Notice of Continuation June 26, 2007****31A-2-201**

**R590. Insurance, Administration.****R590-149. ADA Complaint Procedure Rule.****R590-149-1. Authority and Purpose.**

A. This rule is promulgated pursuant to Section 63-46a-3(2) of the State Administrative Rulemaking Act. The Insurance Department, pursuant to 28 CFR 35.107, 1992 edition, adopts, defines, and publishes within this rule complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act.

B. The provisions of 28 CFR 35, 1992 edition, implements the provisions of Title II of the Americans With Disabilities Act, 42 U.S.C. 12201, which provides that no qualified individual with a disability, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of the Insurance Department, or be subjected to discrimination by this or any such entity.

**R590-149-2. Definitions.**

A. "The ADA Coordinator" means the Insurance Department's coordinator or his designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.

B. "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

- (1) Office of Planning and Budget;
- (2) Department of Human Resources Management;
- (3) Division of Risk Management;
- (4) Division of Facilities Construction Management; and
- (5) Office of the Attorney General.

C. "Disability" means, with respect to an individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment.

D. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

E. "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 Insurance Department, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the state.

**R590-149-3. Filing of Complaints.**

A. 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 January 26, 1992 and the effective date of this rule may be filed within 60 days of the effective date of this rule.

B. The complaint shall be filed with the Insurance Department's ADA Coordinator in writing or in another acceptable format suitable to the individual.

C. Each complaint shall:

- (1) include the individual's name and address;
- (2) include the nature and extent of the individual's disability;
- (3) describe the department's alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation;
- (4) describe the action and accommodation desired; and
- (5) be signed by the individual or by his or her legal representative.

D. Complaints filed on behalf of classes or third parties

shall describe or identify by name, if possible, the alleged victims of discrimination.

**R590-149-4. Investigation of Complaint.**

A. 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 Section 3(C) of this rule if it is not made available by the individual.

B. When conducting the investigation, the coordinator may seek assistance from the Insurance Department's legal, human resource and budget staffs in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve:

- (1) an expenditure of funds which is not absorbable within the agency's budget and would require appropriate authority;
- (2) facility modifications; or
- (3) reclassification or reallocation in grade; the coordinator shall consult with the ADA State Coordinating Committee.

**R590-149-5. Issuance of Decision.**

A. Within 15 working days after receiving the complaint, the ADA Coordinator shall issue a decision outlining in writing or in another acceptable suitable format stating what action, if any, shall be taken on the complaint.

B. If the coordinator is unable to reach a decision within the 15 working day period, he 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.

**R590-149-6. Appeals.**

A. The individual may appeal the decision of the ADA Coordinator by filing an appeal within five working days from the receipt of the decision.

B. The appeal shall be filed in writing with the Insurance Department's executive director or a designee other than the Department's ADA Coordinator.

C. The filing of an appeal shall be considered as authorization by the individual to allow review of all information, including information classified as private or controlled, by the Department's executive director or designee.

D. The appeal shall describe in sufficient detail why the coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

E. The 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 any decision that would involve:

- (1) an expenditure of funds which is not absorbable and would require appropriation authority;
- (2) facility modification or
- (3) reclassification or reallocation in grade; the executive director or designee shall also consult with the State ADA Coordinating Committee.

F. 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.

G. If the executive director or his designee is unable to reach a decision within the ten working day period, he 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.

**R590-149-7. Classification of Records.**

The record of each complaint and appeal, and all written records produced or received as part of such actions, shall be classified as protected as defined under Section 63-2-304 until the ADA coordinator, executive director or their designees issue the decision at which time any portions of the record which may pertain to the individual's medical condition shall remain classified as private as defined under Section 63-2-302 or controlled as defined in Section 63-2-303. All other information gathered as part of the complaint record shall be classified as private information. Only the written decision of the coordinator, executive director or designees shall be classified as public information.

**R590-149-8. Relationship to Other Laws.**

This rule does not prohibit or limit the use of remedies available to individuals under the State Anti-Discrimination Complaint Procedures Section (67-19-32); the Federal ADA Complaint Procedures (28 CFR Subpart F, beginning with Part 35.170, 1992 edition); or any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

**KEY: insurance**

**1992**

**Notice of Continuation June 26, 2007**

**63-46a-3(2)**

**R590. Insurance, Administration.****R590-157. Surplus Lines Insurance Premium Tax and Stamping Fee.****R590-157-1. Authority.**

This rule is promulgated pursuant to the general rulemaking authority vested in the commissioner by Section 31A-2-201, which authorizes rules to implement the Insurance Code. Specific rulemaking authority is granted by Subsection 31A-3-303(2) to prescribe accounting and reporting forms and procedures to be used in calculating and paying the surplus lines premium tax, and Subsection 31A-15-103(11)(d) to specify the stamping fee amount and how it is to be collected.

This rule supersedes Rule R590-119 Surplus Lines Stamping Fee.

**R590-157-2. Purpose and Scope.**

A. The purpose of this rule is to prescribe:

- (1) the amount of the stamping fee and;
- (2) the accounting and reporting forms and procedures to be used in calculating surplus lines premium taxes and stamping fees; and
- (3) the authorized entities to examine the transaction and collect and receive the tax and fee.

B. This rule applies to:

- (1) insurers, surplus lines producers, and policyholders who are jointly and severally liable for the payment of the premium taxes and stamping fee;
- (2) the advisory organization authorized to examine surplus transactions; and
- (3) the commissioner's authorized agent to collect the stamping fee and premium tax and remit the premium tax to the commissioner.

**R590-157-3. Definitions.**

For the purpose of this rule the commissioner adopts the definitions set forth in Section 31A-1-301, and the following:

A. "Courtesy filing" means a surplus lines policy filing done by a resident surplus lines producer on behalf of a resident or non-resident producer whose licensure does not include a surplus lines line of authority.

B. "Courtesy filing fee" means a fee charged by the resident surplus lines producer for doing a courtesy filing for a resident or non-resident producer whose licensure does not include a surplus lines line of authority.

C. "Stamping fee" means a percentage of policy premium payable for the examination of a surplus lines transaction as required in Subsection 31A-15-103(11).

D. "Surplus Line Association" or "Association" means the Surplus Lines Association of Utah.

E. "Surplus lines producer" means a person licensed under Subsection 31A-23a-106(1)(i) to place insurance with eligible unauthorized insurers in accordance with Section 31A-15-103.

F. "Surplus lines insurer" means an unauthorized foreign or alien insurer subject to the limitations and requirements of Section 31A-15-103, doing business in this state through surplus lines producers, and included on the commissioner's "recognized" list.

G. "Surplus lines premium" means the monetary consideration for an insurance policy procured from an unauthorized insurer, and includes policy fees, membership fees, required contributions, or monetary consideration, however designated.

H. "Surplus lines premium tax" means, as prescribed by Section 31A-3-301, a tax of 4-1/4% of gross surplus lines premiums, less 4-1/4% of return premiums paid to insureds by reason of policy cancellations or premium reductions.

I. "Surplus lines transaction" means the placement with a surplus lines insurer of an insurance policy or certificate of insurance. It also means any cancellation, endorsement, audit,

or other adjustment to the insurance policy that affects the premium.

**R590-157-4. Stamping Fee Amounts.**

A. The surplus lines stamping fee is 1/4 of 1% of the policy premium payable for the examination of a surplus lines transaction as required in Subsection 31A-15-103(11)(d).

B. Late surplus lines stamping fee payments may be subject to late fees of 25% of the stamping fee due plus 1 1/2% per month from the time of default until full payment of the fee.

C. A courtesy filing fee is not included as surplus lines premium for the purpose of computing taxes and stamping fees.

**R590-157-5. Authorized Agency.**

A. The commissioner hereby authorizes the Surplus Line Association of Utah to act as his agent for:

(1) collecting and remitting the premium tax imposed by Section 31A-3-301 on insurance transactions described in Sections 31A-15-103, 31A-15-104, and 31A-15-106.

(2) examining surplus lines transactions under Section 31A-15-111; and

(3) collecting the stamping fee authorized under Section 31A-15-103(11).

B. The Surplus Line Association shall remit all premium taxes it collects in accordance with the procedures of Section 6.

**R590-157-6. Accounting Procedures.**

A. Within 60 days of the effective date of a surplus lines transaction, the surplus lines producer must file with the Surplus Line Association a copy of the policy, binder, certificate, endorsement, or other documentation sufficient to identify the subject of the insurance; the coverage, conditions, and term of insurance; the type of transaction; the effective date; the premium charged; the premium taxes payable; the name and address of the policyholder and the insurer.

B. The Surplus Line Association may prescribe the forms and procedures to be used by surplus lines producers in fulfilling Section R590-157-5.

C. The Surplus Line Association shall prepare a monthly statement of surplus lines transactions reported during the preceding 30 days for each surplus lines producer. This statement shall list the transactions and premium amounts reported, the surplus lines premium taxes due under 31A-3-301, and the stamping fee due under Subsection 31A-15-103(11)(d).

D. The monthly statement shall be mailed to the surplus lines producers by the 5th day of each month.

E. By the 25th day of each month the surplus lines producer shall remit payment in full to the Surplus Line Association amounts due shown on the monthly statement. Premium taxes and stamping fees shall be held in trust by the surplus lines producer until remitted to the Surplus Lines Association.

F. Within three days of the date received, the Surplus Line Association shall deposit in a qualified depository approved by the Office of the State Treasurer, for the credit of the Utah Insurance Department, all funds received as payment of the surplus lines premium tax.

G. For tax credits for return premiums, which are not offset by charges in the monthly statement, the Surplus Line Association shall submit a request for payment to the Insurance Department. A reimbursement will be issued to the designated person by the Insurance Department pursuant to the Division of Finance's policies and procedures.

H. The Surplus Line Association shall prepare the following reports for the benefit of the commissioner.

(1) A monthly report shall be prepared listing the surplus lines producers reporting premiums written during the month and the amount of the premiums, taxes and fees reported. The report shall also list the names of surplus lines insurers and the

amount of written premium attributed to them for the month. This report shall be submitted by the 15<sup>th</sup> of the subsequent month.

(2) An annual report shall be prepared on the basis of both surplus lines producers and surplus lines insurers and shall list all premiums reported and taxes paid during the previous calendar year. This report shall be submitted to the commissioner by January 31 of each year.

(3) An annual financial report including income and expense and balance sheet for the Surplus Lines Association shall be submitted to the commissioner within 30 days of the end of the Association's fiscal year.

**R590-157-7. Enforcement Date.**

The commissioner will begin enforcing the revised provision of this rule 45 days from the rule's effective date.

**R590-157-8. Severability.**

If any provision of this rule of the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

**KEY: insurance fee, taxes**

**June 13, 2007**

**Notice of Continuation February 10, 2003**

**31A-2-201**

**31A-3-303**

**31A-15-103**

**R590. Insurance, Administration.**  
**R590-173. Credit For Reinsurance.**

**R590-173-1. Authority.**

This rule is promulgated pursuant to the authority granted by Section 31A-2-201 of the Insurance Code.

**R590-173-2. Purpose.**

The purpose of this rule is to set forth requirements the commissioner deems necessary to carry out the provisions of Section 31A-17-404. The actions and information required by this rule are necessary and appropriate to the public interest and for the protection of the ceding insurers in this state.

**R590-173-3. Definitions.**

A. "Accredited Reinsurer" means an insurer that has, by order of the commissioner, been designated as having met the requirements under Section 31A-17-404 for the allowance of credit against a ceding company's reserves for reinsurance ceded and the security factor required under Subsection 31A-17-404(1)(b) is satisfied in that it is an authorized insurer in at least one state as provided for in Subsection 31A-17-404(3)(e).

B. "Beneficiary" means the entity for whose benefit a trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver, including conservator, rehabilitator or liquidator.

C. "Grantor" means the entity that has established a trust for the benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited, untrusted assuming insurer.

D. "Liabilities" means the assuming insurer's gross liabilities attributable to reinsurance ceded by United States domiciled insurers that are not otherwise secured by acceptable means and includes:

(1) For business ceded by domestic insurers authorized to write disability or property and casualty insurance:

(a) losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;

(b) reserves for losses reported and outstanding;

(c) reserves for losses incurred but not reported;

(d) reserves for allocated loss expenses; and

(e) unearned premiums.

(2) For business ceded by domestic insurers authorized to write life, disability or annuity insurance:

(a) aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;

(b) aggregate reserves for disability policies;

(c) deposit funds and other liabilities without life or disability contingencies; and

(d) liabilities for policy and contract claims.

E. "Mortgage-related security" means an obligation that is rated AA or higher, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the National Association of Insurance Commissioners (NAIC) and that either:

(1) represents ownership of one or more promissory notes or certificates of interest or participation in the notes, including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation, that:

(a) are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C.A. Section 5402(6), whether the manufactured home is considered real or personal property under the laws of the

state in which it is located; and

(b) were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. Sections 1709 and 1715-b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. Section 1703; or

(2) is secured by one or more promissory notes or certificates of deposit or participations in the notes, with or without recourse to the insurer of the notes, and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of Items (1)(a) and (1)(b) of this subsection.

F. "Obligations," means:

(a) reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

(b) reserves for reinsured losses reported and outstanding;

(c) reserves for reinsured losses incurred but not reported; and

(d) reserves for allocated reinsured loss expenses and unearned premiums.

G. "Promissory note," when used in connection with a manufactured home, includes a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument.

H.(1) "Qualified United States financial institution" for the purposes of Section R590-173-7 and Subsection R590-173-8.A.(3) means an institution that:

(a) is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

(b) is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(c) has been determined by either the commissioner or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(2) "Qualified United States financial institution," for general purposes of this rule, means an institution that is eligible to act as a fiduciary of a trust that:

(a) is organized, or, in the case of a United States branch or agency office of a foreign banking organization, licensed, under the laws of the United States or any state of the United States and has been granted authority to operate with fiduciary powers; and

(b) is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

I. "Trusteed Reinsurer" means an alien insurer which by order of the commissioner has been designated as having met the requirements under Section 31A-17-404 for the allowance of credit against a ceding company's reserves for reinsurance ceded and the security factor required under Subsection 31A-17-404(1)(b) is satisfied through a trust fund provided for in Subsection 31A-17-404(3)(d).

**R590-173-4. Credit for Reinsurance - Reinsurer Licensed in this State.**

The commissioner shall allow credit for reinsurance ceded by a domestic insurer to assuming insurers authorized to do business in this state as of the date of the ceding insurer's statutory financial statement.

**R590-173-5. Credit for Reinsurance - Accredited and Trusteed Reinsurers.**

The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been granted accredited or trusteed reinsurer status in this state as of the date of the ceding insurer's statutory financial statement.

**R590-173-6. Credit for Reinsurance - Reinsurer Domiciled and Licensed in Another State.**

A. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which as of the date of the ceding insurer's statutory financial statement:

(1) is domiciled and licensed in a state which employs standards regarding credit for reinsurance substantially similar to those applicable under Section 31A-17-404 and this rule;

(2) maintains total adjusted capital above the Company Action Level RBC; and

(3) files a properly executed Certificate of Assuming Insurer, Form AR-1, with the commissioner as evidence of its submission to this state's authority to examine its books and records.

B. The provisions of this section relating to surplus as regards policyholders will not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same insurance holding company system.

**R590-173-7. Credit for Reinsurance - Reinsurers Maintaining Trust Funds.**

A. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of the date of the ceding insurer's statutory financial statement maintains a trust fund in an amount prescribed below in a qualified United States financial institution, for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the commissioner substantially the same information as that required to be reported on the NAIC annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund.

B. The following requirements apply to the following categories of assuming insurer:

(1) the trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to business written in the United States, and in addition, a trusteed surplus of not less than \$20,000,000. For purposes of this section, liabilities attributable to business written in the United States means the liabilities attributable to reinsurance ceded by United States domiciled insurers.

(2)(a) The trust fund for a group of incorporated and individual unincorporated underwriters shall consist of:

(i) for reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after August 1, 1995, funds in trust in an amount not less than the group's aggregate liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group;

(ii) for reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of this rule, funds in trust in an amount not less than the group's aggregate insurance and reinsurance liabilities attributable to business written in the United States; and

(iii) in addition to these trusts, the group shall maintain a trusteed surplus of which \$100,000,000 shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all the years of account.

(b) The incorporated members of the group will not be engaged in any business other than underwriting as a member of

the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the commissioner:

(i) an annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or

(ii) if a certification is unavailable, a financial statement, prepared by independent public accountants, of each underwriter member of the group.

(3)(a) The trust fund for a group of incorporated insurers under common administration shall:

(i) consist of funds in trust in an amount not less than the assuming insurers' aggregate liabilities attributable to business ceded by United States domiciled insurers to any members of the group pursuant to reinsurance contracts issued in the name of the group and;

(ii) maintain a joint trusteed surplus of which \$100,000,000 shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group; and

(iii) file a properly executed Certificate of Assuming Insurer, Form AR-1, as evidence of the submission to this state's authority to examine the books and records of any of its members and shall certify that any member examined shall bear the expense of any such examination.

(b) Within 90 days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the commissioner an annual certification of each underwriter member's solvency by the member's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.

C.(1) Credit for reinsurance will not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that:

(a) contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied 30 days after entry of the final order of any court of competent jurisdiction in the United States;

(b) legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States ceding insurers, their assigns and successors in interest;

(c) the trust shall be subject to examination as determined by the commissioner;

(d) the trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; and

(e) no later than February 28 of each year the trustee of the trust shall report to the commissioner in writing setting forth the balance in the trust and listing the trust's investments at the preceding year-end, and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the following December 31.

(2)(a) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent

jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.

(b) The assets shall be distributed by and claims of United States trust beneficiaries shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.

(c) If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part of the trust fund are not necessary to satisfy the claims of the United States beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part of the assets, to the trustee for distribution in accordance with the trust agreement.

(d) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

D. Assets deposited in the trust shall be valued according to their fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a qualified United States financial institution, and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust will not exceed 5% of total investments. No more than 20% of the total of the investments in the trust may be foreign investments authorized under Subsection R590-173-7.D.(1)(e), (3), (5)(b) or (6), and no more than 10% of the total of the investments in the trust may be securities denominated in foreign currencies. A depository receipt denominated in United States dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust shall be invested only as follows:

(1) government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed or guaranteed by:

(a) the United States or by any agency or instrumentality of the United States;

(b) a state of the United States;

(c) a territory, possession or other governmental unit of the United States;

(d) an agency or instrumentality of a governmental unit referred to in Subsections R590-173-7.D.(1)(b) and (c) if the obligations shall be by law payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but will not be obligations eligible for investment under this subsection if payable solely out of special assessments on properties benefited by local improvements; or

(e) the government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(2) obligations that are issued in the United States, or that are dollar denominated and issued in a non-United States market, by a solvent United States institution, other than an insurance company, or that are assumed or guaranteed by a solvent United States institution, other than an insurance company, and that are not in default as to principal or interest if the obligations:

(a) are rated A or higher, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;

(b) are insured by at least one authorized insurer, other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer, licensed to insure obligations in this state and, after considering the insurance, are rated AAA, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

(c) have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;

(3) obligations issued, assumed or guaranteed by a solvent non-United States institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of United States corporations issued in a non-United States currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(4) an investment made pursuant to the provisions of Subsection R590-173-7.D. (1), (2) or (3) shall be subject to the following additional limitations:

(a) an investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities will not exceed 5% of the assets of the trust;

(b) an investment in any one mortgage-related security will not exceed 5% of the assets of the trust;

(c) the aggregate total investment in mortgage-related securities will not exceed 25% of the assets of the trust; and

(d) preferred or guaranteed shares issued or guaranteed by a solvent United States institution are permissible investments if all of the institution's obligations are eligible as investments under Subsections R590-173-7.D.(2)(a) and (2)(c), but will not exceed 2% of the assets of the trust.

(5) Equity interests

(a) Investments in common shares or partnership interests of a solvent United States institution are permissible if:

(i) its obligations and preferred shares, if any, are eligible as investments under this subsection; and

(ii) the equity interests of the institution, except an insurance company, are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S. C. Sections 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the National Association of Securities Dealers, Inc. A trust will not invest in equity interests under this subsection an amount exceeding 1% of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;

(b) investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:

(i) all its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and

(ii) the equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development;

(c) an investment in or loan upon any one institution's outstanding equity interests will not exceed 1% of the assets of the trust. The cost of an investment in equity interests made pursuant to this subsection, when added to the aggregate cost of other investments in equity interests then held pursuant to this subsection, will not exceed 10% of the assets in the trust;

(6) obligations issued, assumed or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

(7) Investment companies

(a) Securities of an investment company registered

pursuant to the Investment Company Act of 1940, 15 U.S. C. Section 802, are permissible investments if the investment company:

(i) invests at least 90% of its assets in the types of securities that qualify as an investment under Subsection R590-173-7.D. (1), (2) or (3) or invests in securities that are determined by the commissioner to be substantively similar to the types of securities set forth in Subsection R590-173-7.D.(1), (2) or (3); or

(ii) invests at least 90% of its assets in the types of equity interests that qualify as an investment under Subsection R590-173-7.D.(5)(a);

(b) investments made by a trust in investment companies under this subsection will not exceed the following limitations:

(i) an investment in an investment company qualifying under Subsection R590-173-7.D.(7)(a)(i) will not exceed 10% of the assets in the trust and the aggregate amount of investment in qualifying investment companies will not exceed 25% of the assets in the trust; and

(ii) investments in an investment company qualifying under Subsection R590-173-7.D.(7)(a)(ii) will not exceed 5% of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to Subsection R590-173-7.D.(5)(a).

E. A specific security provided to a ceding insurer by an assuming insurer pursuant to Section 8 of this rule shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

**R590-173-8. Asset or Reduction from Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer not Meeting the Requirements of Sections 4 Through 7.**

A. The commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract. The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution. This security may be in the form of any of the following:

- (1) cash;
- (2) securities listed by the Securities Valuation Office of the NAIC and qualifying as admitted assets;
- (3) clean, irrevocable, unconditional and "evergreen" letters of credit that comply with Rule R590-114 issued or confirmed by a qualified United States financial institution; or
- (4) any other form of security acceptable to the commissioner.

B. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this section shall be allowed only when the requirements of the applicable portions of Sections R590-173-9 and 10 of this rule have been satisfied.

**R590-173-9. Trust Agreements Qualified under Section 8.**

A. Required conditions

(1) The trust agreement shall be entered into between the beneficiary, the grantor and a trustee, which shall be a qualified United States financial institution.

(2) The trust agreement shall create a trust account into which assets shall be deposited.

(3) All assets in the trust account shall be held by the trustee at the trustee's office in the United States.

(4) The trust agreement shall provide that:

(a) the beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

(b) no other statement or document is required to be presented to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

(c) it is not subject to any conditions or qualifications outside of the trust agreement; and

(d) it will not contain references to any other agreements or documents except as provided for in Subsection R590-173-9.A.(11).

(5) The trust agreement shall be established for the sole benefit of the beneficiary.

(6) The trust agreement shall require the trustee to:

(a) receive assets and hold all assets in a safe place;

(b) determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary may, whenever necessary, negotiate any such assets, without consent or signature from the grantor or any other person or entity;

(c) furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

(d) notify the grantor and the beneficiary within 10 days, of any deposits to or withdrawals from the trust account;

(e) upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

(f) allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.

(7) The trust agreement shall provide that at least 30 days, but not more than 45 days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

(8) The trust agreement shall be made subject to and governed by the laws of the state in which the trust is domiciled.

(9) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee.

(10) The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith.

(11) Notwithstanding other provisions of this rule, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and disability, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(a) to pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

(b) to make payment to the assuming insurer any amounts

held in the trust account that exceed 102 % of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

(c) where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for such uses and purposes specified in Subsections R590-173-9.A.(11)(a) and (b) as may remain executory after such withdrawal and for any period after the termination date.

(12) Notwithstanding other provisions of this rule, when a trust agreement is established to meet the requirements of Section R590-173-8. in conjunction with a reinsurance agreement covering life, annuities or disability risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(a) to pay or reimburse the ceding insurer for:

(i) the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and

(ii) the assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;

(b) to pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or

(c) where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for the uses and purposes specified in Subsections R590-173-9.A.(12)(a) and (b) as may remain executory after withdrawal and for any period after the termination date.

(13) The reinsurance agreement may, but need not, contain the provisions required in Subsection R590-173-9.C.(1)(b), so long as these required conditions are included in the trust agreement.

(14) Notwithstanding any other provisions in the trust instrument, if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight or other designated receiver all of the assets of the trust fund. The assets shall be applied in accordance with the priority statutes and laws of the state in which the trust is domiciled applicable to the assets of insurance companies in liquidation. If the commissioner with regulatory oversight determines that all or part of the trust assets are not necessary to

satisfy claims of the United States beneficiaries of the trust, all, or any part of the assets shall be returned to the trustee for distribution in accordance with the trust agreement.

B. Permitted conditions.

(1) The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than 90 days after the beneficiary and grantor receive the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than 90 days after the trustee and the beneficiary receive the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

(2) The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

(3) The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions that the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in Subsection R590-173-9.C.(1)(b).

(4) The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

(5) The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered to the grantor.

C. Additional conditions applicable to reinsurance agreements:

(1) A reinsurance agreement may contain provisions that:

(a) require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specify what the agreement is to cover;

(b) stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the Insurance Code or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust will not exceed 5% of total investments. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities and disability, then the trust agreement may contain the provisions required by this subsection in lieu of including such provisions in the reinsurance agreement;

(c) require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;

(d) require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

(e) stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(i) to pay or reimburse the ceding insurer for:

(I) the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;

(II) the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and

(III) any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;

(ii) to make payment to the assuming insurer, amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(2) The reinsurance agreement also may contain provisions that:

(a) give the assuming insurer the right to seek approval from the ceding insurer, which will not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

(i) the assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or

(ii) after withdrawal and transfer, the market value of the trust account is no less than 102 % of the required amount;

(b) provide for the return of any amount withdrawn in excess of the actual amounts required for Subsection R590-173-9.C.(1)(e), and for interest payments at a rate not in excess of the prime rate of interest on the amounts held pursuant to Subsection R590-173-9.C.(1)(e); and

(c) permit the award by any arbitration panel or court of competent jurisdiction of:

(i) interest at a rate different from that provided in Subsection R590-173-9.C.(2)(b);

(ii) court or arbitration costs;

(iii) attorney's fees; and

(iv) any other reasonable expenses.

(3) Financial reporting

A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department in compliance with the provisions of this rule when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction will be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

(4) Existing agreements

Any trust agreement or underlying reinsurance agreement in existence prior to the effective date of this rule shall continue to be acceptable until January 1, 1999, at which time the agreements must fully comply with this rule for the trust agreement to be acceptable.

(5) The failure of any trust agreement to specifically identify the beneficiary will not be construed to affect any actions or rights that the commissioner may take or possess pursuant to the provisions of the laws of this state.

#### **R590-173-10. Other Security.**

A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

#### **R590-173-11. Contracts Affected.**

All new and renewal reinsurance transactions entered into after the effective date of this rule shall conform to the requirements of this rule if credit is to be given to the ceding insurer for such reinsurance.

#### **R590-173-12. Severability.**

If any provision of this rule or its application to any person or circumstance is, for any reason, held to be invalid, the remainder of this rule and its application to other persons or circumstances are not affected.

#### **KEY: insurance**

**July 16, 1997**

**Notice of Continuation June 29, 2007**

**31A-2-201**

**R590. Insurance, Administration.****R590-240. Procedure to Obtain Exemption of Student Health Programs From Insurance Code.****R590-240-1. Authority.**

This rule is promulgated and adopted pursuant to Subsection 31A-1-103(3)(d) and Section 31A-2-201.

**R590-240-2. Purpose and Scope.**

(1) The purpose of this rule is to exempt student health programs established by institutions of higher education from regulation under the Utah Insurance Code.

(2) Health insurance from an insurer made available by an institution to its students is not exempt from provisions of the Utah Insurance Code under this rule, even if:

- (i) the insurer's policy is integrated into the overall student health program offered by the institution to its students; or
- (ii) use of the institution's student health center is an integral, or mandatory, part of health care coverage under the insurer's policy.

**R590-240-3. Definitions.**

(1) All definitions in Section 31A-1-301 are incorporated by reference.

(2) "Board" means the State Board of Regents established in Section 53B-1-103.

(3) "Eligible member" means:

- (a) an eligible student;
- (b) a spouse of an eligible student; or
- (c) a child of, dependent of, or child placed for adoption with, an eligible student.

(4) "Eligible recipient" means:

- (a) an eligible member;
- (b) the institution's officers, faculty, and employees; or
- (c) upon application by the institution or the institution's student health center, other persons approved by written order of the commissioner.

(5) "Eligible student" is as defined by each institution, but shall, at a minimum, require that the student be enrolled with the institution.

(6) "Health care provider" means a person who provides health care services.

(7) "Health care services" means "health care" as defined in Section 31A-1-301.

(8) "Institution" means an institution of higher education or postsecondary educational institute that consists of the following:

- (a) an institution described in Section 53B-1-102; or
- (b) an institution of higher education that has been accredited by the Northwest Commission on Colleges and Universities.

(9) "Student health center" means a facility that is operated to provide health care services to eligible recipients:

- (a) by that institution or pursuant to contract with that institution;
- (b) that employs health care providers, or contracts with health care providers, which may make referrals to other health care providers;

(c) is funded, at least in part, by payment from one of the following sources, which payment grants access to the student health center during the period of time for which the eligible student is registered:

- (i) a fee assessed to and paid by each eligible student at registration, which ; or
- (ii) the tuition paid by the eligible student;
- (d) may accept insurance payments, or assist users in completing claims forms for insurance claims; and
- (e) may require eligible recipients to pay;
  - (i) an additional fee for each time the student health center is visited;

- (ii) an additional fee for specialty services;

- (iii) an additional fee for medical equipment; or

- (iv) an additional fee for medication received at the student health center.

(10)(a) "Student health program" means a plan organized, established, or adopted, by an institution to provide or arrange for health care services for eligible members.

(b) A "student health program" may include providing:

- (i) coverage for limited health care services;
- (ii) coverage for health care services on an emergency basis; or
- (iii) coverage for health care services by out-of-area health care providers under the following situations:

(A) on an emergency basis, where a prudent layperson would expect the absence of immediate medical attention to result in placing the eligible member's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part;

(B) during periods when the individual is not enrolled in any classes at the institution, but is still matriculated with the institution. Such periods may include time between semesters or quarters, traditional breaks for the summer, or time away from the institution while attending another higher education institution under a plan approved by the institution; and

(C) during periods when the individual is enrolled in classes at the institution, but is not living within commuting distance of the institution, such as while participating in an internship program.

(11)(a) "Supplemental health care services" means health care services provided by the student health program in addition to those available at a student health center.

(b) "Supplemental health care services" includes health care services provided by contract between:

- (i) the institution, and
- (ii) any of the following or any combination of the following:

- (A) a healthcare provider;
- (B) a clinic or other association of health care providers;
- (C) a network plan; or
- (D) an insurer authorized to provide health insurance.

(12) "Utah Insurance Code" means Title 31A, Utah Code Annotated.

**R590-240-4. Supporting Facts.**

(1) Student health programs are offered only to eligible members at institutions. These institutions have an interest in providing affordable health care coverage to their students in order to enable the students to receive limited health care to ensure that progress toward a degree or certificate is not impeded by unattended medical needs. In some instances, student health programs may also be offered to the spouses of students and other dependents of students, as well.

(2) Student health programs are not established to enable the institutions to make a profit from providing health care coverage. Providing or arranging for health care services for students is not the primary purpose of institutions; it is only incidental to the institutions' primary purpose, which is to educate those that matriculate with the institution. In addition, the economic impact on health care providers directly, and the public indirectly, from students receiving medical services and then not being able to pay for those services, is mitigated by providing students at institutions with access to affordable health care coverage through student health programs.

(3) An institution is either a state institution under the direct control of, and supervised by, the Board, or it must be accredited by the Northwest Commission on Colleges and Universities. In order to be accredited, an institution must meet strict accounting standards, and be able to demonstrate it is financially solid. An institution must therefore comply with the

strict accounting and financial requirements of the Board or the Northwest Commission on Colleges and Universities, which would include the need to reflect on the financial statements of the institution any liability for risks the institution assumes, or costs the institutions may incur, for its student health program. Any shortfall in providing health care services at the student health center would become the obligation of the institution.

**R590-240-5. Exemption Requirements.**

A student health program may be exempted from the provisions of the Utah Insurance Code if it meets all of the requirements of this Section 5, applies for exemption under Section 6, and the exemption is granted.

- (1) A student health program must be:
    - (a) established by an institution;
    - (b)(i) owned by an institution; or
    - (ii) owned by the trustees of a trust established by an institution; and
    - (c) operated by:
      - (i) an institution; or
      - (ii) the institution's authorized agent or affiliate.
  - (2) The primary purpose of the institution must be higher education, and not the providing of a student health program.
  - (3) Payment of covered claims of the student health program must be secured by adequate assets:
    - (a) that are:
      - (i) secured by being:
        - (A) pledged;
        - (B) guaranteed;
        - (C) contributed;
        - (D) placed in trust; or
        - (E) using a combination of Subsections 5(3)(a)(i)(A), 5(3)(a)(i)(B), 5(3)(a)(i)(C), and 5(3)(a)(i)(D); and
      - (ii) secured under Subsection 5(3)(a)(i) by:
        - (A) the student health program;
        - (B) the institution that organizes, adopts, or establishes the student health program;
        - (C) the owner of the institution described in Subsection 5(3)(a)(ii)(B);
        - (D) an affiliate of the entity described in Subsection 5(3)(a)(ii)(C); or
        - (E) a combination of the entities described in Subsections 5(3)(a)(ii)(A), 5(3)(a)(ii)(B), 5(3)(a)(ii)(C), and 5(3)(a)(ii)(D); and
    - (b) in an amount and type that would be required under Chapter 17 of the Utah Insurance Code; and
    - (c) under such terms and conditions as the commissioner determines by written order.
  - (4) The student health program may not be offered to or enroll anyone other than an eligible member.
  - (5) The student health program must have a comprehensive legal structure that demonstrates that:
    - (a) the assets described in Subsection 5(3) will be administered in a fiduciary manner to assure that assets are available to provide eligible health care services and to provide payments to health care providers, as outlined in any contracts between the student health program and health care providers;
    - (b) the student health program will be administered by an experienced administrator; and
    - (c) the student health program shall be administered according to contracts between:
      - (i)(A)(I) the student health program; or
      - (II) the institution; or
      - (III) both the student health program and the institution;
- and
- (B) the enrollees; and
  - (ii)(A)(I) the student health program; or
  - (II) the institution; or
  - (III) both the student health program and the institution;

and

- (B) health care providers.
  - (6) Except for emergency health care services, or out-of-area or out-of-country health care providers, health care services for those enrolled in the student health program must be provided:
    - (a) at a student health center; or
    - (b) pursuant to a contract with health care service providers, by which those health care providers will provide health care services upon a referral from the student health center.
  - (7) Any supplemental health care services provided by the student health program must:
    - (a) be obtained from an insurer authorized to provide health insurance;
    - (b) be backed by assets under the conditions set forth in Subsection 5(3); or
    - (c) use a combination of Subsections 5(7)(a) and 5(7)(b).
  - (8) The student health program must provide review procedures substantially similar, and materially equal, to those presently in effect for insurers, health maintenance organizations, and limited health programs.
  - (9) The student health program or the institution or both shall annually provide the department an informational copy of all current policies, booklets, and advertising.
  - (10) The student health program or the institution or both must state in a prominent and appropriate place in all policies, contracts, booklets, explanatory material, advertising or other promotional material, and any presentations relating to solicitations of the student health program, that the student health program is not insurance, and the student health program has been exempted from regulation under the Utah Insurance Code, and must cite the date, docket number, and title of the docket by which the exemption was granted.
  - (11) The student health program must reduce any applicable preexisting condition provisions for any individual covered by the student health program by the amount of previous creditable coverage.
  - (12) The student health program must provide a certificate of creditable coverage upon request by an individual who was covered by the student health program.
- R590-240-6. Procedure for Obtaining Exemption.**
- (1) An institution desiring to have its student health program exempted from the provisions of the Utah Insurance Code shall file with the Utah Insurance Department an application in a form prescribed by the commissioner for an order exempting the student health program, and shall provide verifiable documentation in support of its application, including documentation to support the exemption requirements in Section 5 have been met. The application must provide assurance the institution has sufficient assets placed in trust, or otherwise pledged or guaranteed under Section 3, under conditions acceptable to the commissioner, to meet any liability the institution may have for its student health program.
  - (2) The commissioner may require the following:
    - (a) additional evidence or information, to be provided by the institution;
    - (b) an examination of the student health program by the department, the costs of which shall be borne by the institution; or
    - (c) a hearing on the application.
  - (3) Upon finding that the student health program complies with the provisions of this rule, the commissioner may issue an order exempting the student health program from the provisions of the Utah Insurance Code. The commissioner may place any restrictions or conditions upon the exemption the commissioner believes to be necessary to protect the interests of the residents of this state.

(4) A student health program is not exempt from the Utah Insurance Code unless the commissioner has issued a written order explicitly stating the student health program is exempt from the Utah Insurance Code.

(5) The department shall retain continuing jurisdiction over the institution's student health program to assure compliance with the terms and conditions in Section 5, including any changes in the law or the facts upon which the exemption is granted.

**R590-240-7. Rule and Findings.**

(1) A student health program is an insurer as defined in Section 31A-1-301, and must comply with the requirements of the Utah Insurance Code unless it is exempted from regulation by statute or by this rule.

(2) Pursuant to Subsection 31A-1-103(3)(d)(i), the commissioner finds that a student health program which operates in accordance with the provisions of Section 5, and obtains an order of exemption under Section 6, does not require regulation for the protection of the interests of the residents of this state, and that such student health program is exempt from regulation under the Utah Insurance Code.

(3) If the institution assumes any risk of the student health program, the institution must:

(i) apply for authority to conduct the business of an insurer, or

(ii) apply to the commissioner for an exemption under this rule.

(4) Health insurance from an insurer made available by an institution to its eligible members is not exempt from the Utah Insurance Code under this rule, even if the health insurance from a health insurer is integrated into the overall student health program offered by the institution, or use of the institution's student health center is an integral or required part of the health care coverage under the insurer's policy.

(5) Any inconsistencies between the provisions of this rule and any order previously issued exempting a student health program from regulation under the Utah Insurance Code are resolved by incorporating the provisions of this rule.

**R590-240-8. Enforcement Date.**

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

**R590-240-9. Severability.**

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

**KEY: health insurance exemption**

June 8, 2007

31A-1-103

31A-2-201

**R614. Labor Commission, Occupational Safety and Health.****R614-1. General Provisions.****R614-1-1. Authority.**

A. These rules and all subsequent revisions as approved and promulgated by the Labor Commission, Division of Occupational Safety and Health, are authorized pursuant to Title 34A, Chapter 6, Utah Occupational Safety and Health Act.

B. The intent and purpose of this chapter is stated in Section 34A-6-202 of the Act.

C. In accordance with legislative intent these rules provide for the safety and health of workers and for the administration of this chapter by the Division of Occupational Safety and Health of the Labor Commission.

**R614-1-2. Scope.**

These rules consist of the administrative procedures of UOSH, incorporating by reference applicable federal standards from 29 CFR 1910 and 29 CFR 1926, and the Utah initiated occupational safety and health standards found in R614-1 through R614-7. Notice has been given and rules filed as required by Subsection 34A-6-104(1)(c) and 34A-6-202(2) of the Utah Occupational Safety and Health Act and by Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

**R614-1-3. Definitions.**

A. "Access" means the right and opportunity to examine and copy.

B. "Act" means the Utah Occupational Safety and Health Act of 1973.

C. "Administration" means the Division of Occupational Safety and Health of the Labor Commission, also known as UOSH (Utah Occupational Safety and Health).

D. "Administrator" means the director of the Division of Occupational Safety and Health.

E. "Amendment" means such modification or change in a code, standard, rule, or order intended for universal or general application.

F. "Analysis using exposure or medical records" means any compilation of data, or any research, statistical or other study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.

G. "Commission" means the Labor Commission.

H. "Council" means the Utah Occupational Safety and Health Advisory Council.

I. "Days" means calendar days, including Saturdays, Sundays, and holidays. The day of receipt of any notice shall not be included, and the last day of the 30 days shall be included.

J. "Designated representative" means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purpose of access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

K. "Division" means the Division of Occupational Safety and Health, known by the acronym of UOSH (Utah Occupational Safety and Health).

L. "Employee" includes any person suffered or permitted to work by an employer.

1. For Medical Records: "Employee" means a current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. In the case of deceased or legally incapacitated employee, the employee's legal

representative may directly exercise all the employee's rights under this section.

M. "Employee exposure record" means a record containing any of the following kinds of information concerning employee exposure to toxic substances or harmful physical agents:

1. Environmental (workplace) monitoring or measuring, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretations of the results obtained;

2. Biological monitoring results which directly assess the absorption of a substance or agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent;

3. Material safety data sheets; or

4. In the absence of the above, any other record which reveals the identity (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent.

N. Employee medical record

1. "Employee medical record" means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician including:

a. Medical and employment questionnaires or histories (including job description and occupational exposures);

b. The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including X-ray examinations and all biological monitoring);

c. Medical opinions, diagnoses, progress notes, and recommendations;

d. Descriptions of treatments and prescriptions; and

e. Employee medical complaints.

2. "Employee medical record" does not include the following:

a. Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice, and not required to be maintained by other legal requirements;

b. Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.); or

c. Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

O. "Employer" means:

1. The state;

2. Each county, city, town, and school district in the state; and

3. Every person, firm, and private corporation, including public utilities, having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire.

4. For medical records: "Employer" means a current employer, a former employer, or a successor employer.

P. "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and separate notices shall be posted in each establishment to the extent that such notices have been furnished by the Administrator.

1. Establishments whose primary activity constitutes retail trade; finance, insurance, real estate and services are classified in SIC's 52-89.

2. Retail trades are classified as SIC's 52-59 and for the most part include establishments engaged in selling merchandise to the general public for personal or household consumption. Some of the retail trades are: automotive dealers, apparel and accessory stores, furniture and home furnishing stores, and eating and drinking places.

3. Finance, insurance and real estate are classified as SIC's 60-67 and include establishments which are engaged in banking, credit other than banking, security dealings, insurance and real estate.

4. Services are classified as SIC's 70-89 and include establishments which provide a variety of services for individuals, businesses, government agencies, and other organizations. Some of the service industries are: personal and business services, in addition to legal, educational, social, and cultural; and membership organizations.

5. The primary activity of an establishment is determined as follows: For finance, insurance, real estate, and services establishments, the value of receipts or revenue for services rendered by an establishment determines its primary activity. In establishments with diversified activities, the activities determined to account for the largest share of production, sales or revenue will identify the primary activity. In some instances these criteria will not adequately represent the relative economic importance of each of the varied activities. In such cases, employment or payroll should be used in place of normal basis for determining the primary activity.

Q. "Exposure" or "exposed" means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.) and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

R. "Hearing" means a proceeding conducted by the commission.

S. "Imminent danger" means a danger exists which reasonably could be expected to cause an occupational disease, death, or serious physical harm immediately, or before the danger could be eliminated through enforcement procedures under this chapter.

T. "Inspection" means any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed under R614-1-6.K.1. and 3., any re-inspection, follow-up inspection, accident investigation or other inspection conducted under Section 34A-6-301 of the Act.

U. "National consensus standard" means any occupational safety and health standard or modification:

1. Adopted by a nationally recognized standards-producing organization under procedures where it can be determined by the administrator and division that persons interested and affected by the standard have reached substantial agreement on its adoption;

2. Formulated in a manner which affords an opportunity for diverse views to be considered; and

3. Designated as such a standard by the Secretary of the United States Department of Labor.

V. "Person" means the general public, one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state and its political

subdivisions.

W. "Publish" means publication in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

X. "Record" means any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, X-ray film, or automated data processing.)

Y. "Safety and Health Officer" means a person authorized by the Utah Occupational Safety and Health Administration to conduct inspections.

Z. "Secretary" means the Secretary of the United States Department of Labor.

AA. "Specific written consent" means written authorization containing the following:

1. The name and signature of the employee authorizing the release of medical information;

2. The date of the written authorization;

3. The name of the individual or organization that is authorized to release the medical information;

4. The name of the designated representative (individual or organization) that is authorized to receive the released information;

5. A general description of the medical information that is authorized to be released;

6. A general description of the purpose for the release of medical information; and

7. A date or condition upon which the written authorization will expire (if less than one year).

8. A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless this is expressly authorized, and does not operate for more than one year from the date of written authorization.

9. A written authorization may be revoked in writing prospectively at any time.

BB. "Standard" means an occupational health and safety standard or group of standards which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary to provide safety and healthful employment and places of employment.

CC. "Toxic substance" or "harmful physical agent" means any chemical substance, biological agent (bacteria, virus, fungus, etc.) or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo and hyperbaric pressure, etc) which:

1. Is regulated by any Federal law or rule due to a hazard to health;

2. Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) (See R614-103-20B Appendix B);

3. Has yielded positive evidence of an acute or chronic health hazard in human, animal, or other biological testing conducted by, or known to the employer; or

4. Has a material safety data sheet available to the employer indicating that the material may pose a hazard to human health.

DD. "Variance" means a special, limited modification or change in the code or standard applicable to the particular establishment of the employer or person petitioning for the modification or change.

EE. "Workplace" means any place of employment.

#### **R614-1-4. Incorporation of Federal Standards.**

A. General Industry Standards.

1. Sections 29 CFR 1910.21 to 1910.999 and 1910.1000 through the end of part 1910 of the July 1, 2005, edition are incorporated by reference.

2. 29 CFR 1908, July 1, 2005, is incorporated by

reference.

3. 29 CFR 1904, July 1, 2005, is incorporated by reference.

4. FR Vol. 71, No. 39, Tuesday, February 28, 2006, Pages 10100 to and including 10385. "Occupational Exposure to Hexavalent Chromium; Final Rule" is incorporated by reference.

5. FR Vol. 71, No. 164, Thursday, August 24, 2006, Pages 50122 to and including 50192 "Assigned Protection Factors; Final Rule" is incorporated by reference.

6. FR Vol. 72, No. 30, Wednesday, February 14, 2007, Pages 7136 to and including 7221 "Electrical Standard; Final Rule" is incorporated by reference.

#### B. Construction Standards.

1. Section 29 CFR 1926.20 through the end of part 1926, of the July 1, 2005, edition is incorporated by reference.

2. FR Vol. 71, No. 11, Wednesday, January 18, 2006, Pages 2879 to and including 2885, "Steel Erection: Slip Resistance of Skeletal Structural Steel; Final Rule" is incorporated by reference.

3. FR Vol. 71, No. 39, Tuesday, February 28, 2006, Pages 10100 to and including 10385. "Occupational Exposure to Hexavalent Chromium; Final Rule" is incorporated by reference.

4. FR Vol. 71, No. 39, Thursday, December 29, 2005, Pages 76979 to and including 77025, "Roll-Over Protection Structures (Direct Final Rule)" is incorporated by reference.

5. FR Vol. 71, No. 164, Thursday, August 24, 2006, Pages 50122 to and including 50192 "Assigned Protection Factors; Final Rule" is incorporated by reference.

### **R614-1-5. Adoption and Extension of Established Federal Safety Standards and State of Utah General Safety Orders.**

#### A. Scope and Purpose.

1. The provisions of this rule adopt and extend the applicability of: (1) established Federal Safety Standards, (2) R614, and (3) Workers' Compensation Coverage, as in effect July 1, 1973 and subsequent revisions, with respect to every employer, employee and employment within the boundaries of the State of Utah, covered by the Utah Occupational Safety and Health Act of 1973.

2. All standards and rules including emergency and/or temporary, promulgated under the Federal Occupational Safety and Health Act of 1970 shall be accepted as part of the Standards, Rules and Regulations under the Utah Occupational Safety and Health Act of 1973, unless specifically revoked or deleted.

3. All employers will provide workers' compensation benefits as required in Section 34A-2-201.

4. Any person, firm, company, corporation or association employing minors must comply fully with all orders and standards of the Labor Division of the Commission. UOSH standards shall prevail in cases of conflict.

#### B. Construction Work.

Federal Standards, 29 CFR 1926 and selected applicable sections of R614 are accepted covering every employer and place of employment of every employee engaged in construction work of:

1. New construction and building;
2. Remodeling, alteration and repair;
3. Decorating and painting;
4. Demolition; and
5. Transmission and distribution lines and equipment erection, alteration, conversion or improvement.

#### C. Reporting Requirements.

1. Each employer shall within 8 hours of occurrence, notify the Division of Utah Occupational Safety and Health of the Commission of any work-related fatalities, of any disabling, serious, or significant injury and of any occupational disease incident. Call (801) 530-6901.

2. Tools, equipment, materials or other evidence that might

pertain to the cause of such accident shall not be removed or destroyed until so authorized by the Labor commission or one of its Compliance Officers.

3. Each employer shall investigate or cause to be investigated all work-related injuries and occupational diseases and any sudden or unusual occurrence or change of conditions that pose an unsafe or unhealthful exposure to employees.

4. Each employer shall file a report with the Commission within seven days after the occurrence of an injury or occupational disease, after the employers' first knowledge of the occurrence, or after the employee's notification of the same, on forms prescribed by the Commission, of any work-related fatality or any work-related injury or occupational disease resulting in medical treatment, loss of consciousness or loss of work, restriction of work, or transfer to another job. Each employer shall file a subsequent report with the Commission of any previously reported injury or occupational disease that later resulted in death. The subsequent report shall be filed with the Commission within seven days following the death or the employer's first knowledge or notification of the death. No report is required for minor injuries, such as cuts or scratches that require first-aid treatment only, unless the treating physician files, or is required to file the physician's initial report of work injury or occupational disease with the Commission. Also, no report is required for occupational disease which manifest after the employee is no longer employed by the employer with which the exposure occurred, or where the employer is not aware of an exposure occasioned by the employment which results in an occupational disease as defined by Section 34A-3-103.

5. Each employer shall provide the employee with a copy of the report submitted to the Commission. The employer shall also provide the employee with a statement, as prepared by the Commission, of his rights and responsibilities related to the industrial injury or occupational disease.

6. Each employer shall maintain a record in a manner prescribed by the Commission of all work-related injuries and all occupational disease resulting in medical treatment, loss of consciousness, loss of work, restriction or work, or transfer to another job.

7. No person shall remove, displace, destroy, or carry away any safety devices or safeguards provided for use in any place of employment, or interfere in any way with the use thereof by other persons, or interfere in any method or process adopted for the protection of employees. No employee shall refuse or neglect to follow and obey reasonable orders that are issued for the protection of health, life, safety, and welfare of employees.

#### D. Employer, Employee Responsibility.

1. It shall be the duty and responsibility of any employee upon entering his or her place of employment, to examine carefully such working place and ascertain if the place is safe, if the tools and equipment can be used with safety, and if the work can be performed safely. After such examination, it shall be the duty of the employee to make the place, tools, or equipment safe. If this cannot be done, then it becomes his or her duty to immediately report the unsafe place, tools, equipment, or conditions to the foreman or supervisor.

2. Employees must comply with all safety rules of their employer and with all the Rules and Regulations promulgated by UOSH which are applicable to their type of employment.

3. Management shall inspect or designate a competent person or persons to inspect frequently for unsafe conditions and practices, defective equipment and materials, and where such conditions are found to take appropriate action to correct such conditions immediately.

4. Supervisory personnel shall enforce safety regulations and issue such rules as may be necessary to safeguard the health and lives of employees. They shall warn all employees of any

dangerous condition and permit no one to work in an unsafe place, except for the purpose of making it safe.

E. General Safety Requirements.

1. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

2. Body protection: Clothing which is appropriate for the work being done should be worn. Loose sleeves, tails, ties, lapels, cuffs, or similar garments which can become entangled in moving machinery shall not be worn where an entanglement hazard exists. Clothing saturated or impregnated with flammable liquids, corrosive substances, irritant, oxidizing agents or other toxic materials shall be removed and shall not be worn until properly cleaned.

3. General. Wrist watches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

4. Safety Committees. It is recommended that a safety committee comprised of management and employee representatives be established. The committee or the individual member of the committee shall not assume the responsibility of management to maintain and conduct a safe operation. The duties of the committee should be outlined by management, and may include such items as reviewing the use of safety apparel, recommending action to correct unsafe conditions, etc.

5. No intoxicated person shall be allowed to go into or loiter around any operation where workers are employed.

6. No employee shall carry intoxicating liquor into a place of employment, except that the place of employment shall be engaged in liquor business and this is a part of his assigned duties.

7. Employees who do not understand or speak the English language shall not be assigned to any duty or place where the lack or partial lack of understanding or speaking English might adversely affect their safety or that of other employees.

8. Good housekeeping is the first law of accident prevention and shall be a primary concern of all supervisors and workers. An excessively littered or dirty work area will not be tolerated as it constitutes an unsafe, hazardous condition of employment.

9. Emergency Posting Required.

a. Good communications are necessary if a fire or disaster situation is to be adequately coped with. A system for alerting and directing employees to safety is an essential step in a safety program.

b. A list of telephone numbers or addresses as may be applicable shall be posted in a conspicuous place so the necessary help can be obtained in case of emergency. This list shall include:

- (1) Responsible supervision (superintendent or equivalent)
- (2) Doctor
- (3) Hospital
- (4) Ambulance
- (5) Fire Department
- (6) Sheriff or Police
10. Lockouts and Tagging.

a. Where there is any possibility of machinery being started or electrical circuits being energized while repairs or maintenance work is being done, the electrical circuits shall be locked open and/or tagged and the employee in charge (the one who places the lock) shall keep the key until the job is completed or he is relieved from the job, such as by shift change or other assignment. If it is expected that the job may be assigned to other workers, he may remove his lock provided the supervisor or other workers apply their lock and tag immediately. Where there is danger of machinery being started or of steam or air creating a hazard to workers while repairs on maintenance work is being done, the employee in charge shall disconnect the lines or lock and tag the main valve closed or blank the line on all steam driven machinery, pressurized lines

or lines connected to such equipment if they could create a hazard to workers.

b. After tagging and lockout procedures have been applied, machinery, lines, and equipment shall be checked to insure that they cannot be operated.

c. If locks and tags cannot be applied, conspicuous tags made of nonconducting material and plainly lettered, "EMPLOYEES WORKING" followed by the other appropriate wording, such as "Do not close this switch" shall be used.

d. When in doubt as to procedure, the worker shall consult his supervisor concerning safe procedure.

11. Safety-Type hooks shall be used wherever possible.

12. Emergency Showers, Bubblers, and Eye Washers.

a. Readily accessible, well marked, rapid action safety showers and eye wash facilities must be available in areas where strong acid, caustic or highly oxidizing or irritating chemicals are being handled. (This is not applicable where first aid practices specifically preclude flushing with running water.)

b. Showers should have deluge type heads, easily accessible, plainly marked and controlled by quick opening valves of the type that stay open. The valve handle should be equipped with a pull chain, rope, etc., so the blinded employee will be able to more easily locate the valve control. In addition, it is recommended that the floor platform be so constructed to actuate the quick opening valve. The shower should be capable of supplying large quantities of water under moderately high pressure. Blankets should be located so as to be reasonably accessible to the shower area.

c. All safety equipment should be inspected and tested at regular intervals, preferably daily and especially during freezing weather, to make sure it is in good working condition at all times.

13. Grizzlies Over Chutes, Bins and Tank Openings.

a. Employees shall be furnished with and be required to use approved type safety harnesses and shall be tied off securely so as to suspend him above the level of the product before entering any bin, chute or storage place containing material that might cave or run. Cleaning and barring down in such places shall be started from the top using only bars blunt on one end or having a ring type or D handhold.

b. Employees shall not work on top of material stored or piled above chutes, drawholes or conveyor systems while material is being withdrawn unless protected.

c. Chutes, bins, drawholes and similar openings shall be equipped with grizzlies or other safety devices that will prevent employees from falling into the openings.

d. Bars for grizzly grids shall be so fitted that they will not loosen and slip out of place, and the operator shall not remove a bar temporarily to let large rocks through rather than to break them.

F. All requirements of PSM Standard 29 CFR 1910.119 are hereby extended to include the blister agents, HT, HD, H, Lewisite, and the nerve agents, GA, VX.

**R614-1-6. Personal Protective Equipment.**

A. When no other method or combination of methods can be provided to prevent employees from becoming exposed to toxic dusts, fumes, gases, flying particles or other objects, dangerous rays or burns from heat, acid, caustic, or any other hazard of a similar nature, the employer must provide each worker with the necessary personal protection equipment, such as respirators, goggles, gas masks, certain types of protective clothing, etc. Provision must also be made to keep all such equipment in good, sanitary working condition at all times.

B. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

C. Except when, in the opinion of the Administrator, their use creates a greater hazard, life lines and safety harnesses shall

be provided for and used by workers engaged in window washing, in securing or shifting thrustouts, inspecting or working on overhead machines supporting scaffolds or other high rigging, and on steeply pitched roofs. Similarly, they shall be provided for and used by all exposed to the hazard of falling, and by workmen on poles workers or steel frame construction more than ten (10) feet above solid ground or above a temporary or permanent floor or platform.

D. Every life line and safety harness shall be inspected by the superintendent or his authorized representative and the worker before it is used and at least once a week while continued in use.

E. Wristwatches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

#### **R614-1-7. Inspections, Citations, and Proposed Penalties.**

A. The Utah Occupational Safety and Health Act (Title 34A, Chapter 6) requires, that every employer covered under the Act furnish to his employees employment and a place of employment which are free from recognized hazards that are likely to cause death or serious physical harm to his employees. The Act also requires that employers comply with occupational safety and health standards promulgated under the Act, and that employees comply with standards, rules, regulations and orders issued under the Act applicable to employees actions and conduct. The Act authorizes the Utah Occupational Safety and Health Division to conduct inspections, and to issue citations and proposed penalties for alleged violations. The Act, under Section 34A-6-301, also authorizes the Administrator to conduct inspections and to question employers and employees in connection with research and other related activities. The Act contains provisions for adjudication of violations, periods prescribed for the abatement of violations, and proposed penalties by the Labor Commission, if contested by an employer or by an employee or authorized representative of employees, and for a judicial review. The purpose of R614-1-7 is to prescribe rules and general policies for enforcement of the inspection, citations, and proposed penalty provisions of the Act. Where R614-1-7 sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the Administrator or his designee determines that an alternative course of action would better serve the objectives of the Act.

B. Posting of notices; availability of Act, regulations and applicable standards.

1. Each employer shall post and keep posted notices, to be furnished by the Administrator, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact their employer or the office of the Administrator. Such notices shall be posted by the employer in each establishment in a conspicuous place where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

2. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation communications, and electric, gas and sanitary services, the notices required shall be posted at the location where employees report each day. In the case of employees who do not usually work at, or report to, a single establishment, such as traveling salesman, technicians, engineers, etc., such notices shall be posted in accordance with the requirements of R614-1-7.Q.

3. Copies of the Act, all regulations published under authority of Section 34A-6-202 and all applicable standards will be available at the office of the Administrator. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized

representative.

4. Any employer failing to comply with the provisions of this Part shall be subject to citation and penalty in accordance with the provisions of Sections 34A-6-302 and 34A-6-307 of the Act.

C. Authority for Inspection.

1. Safety and Health Officers of the Division are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by the Act and regulations published in R614-1-7 and 8, and other records which are directly related to the purpose of the inspection.

2. Prior to inspecting areas containing information which has been classified as restricted by an agency of the United States Government in the interest of national security, Safety and Health Officers shall obtain the appropriate security clearance.

D. Objection to Inspection.

1. Upon a refusal to permit the Safety and Health Officer, in exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with R614-1-7.B. and C. or to permit a representative of employees to accompany the Safety and Health Officer during the physical inspection of any workplace in accordance with R614-1-7.G. the Safety and Health Officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records or interview concerning which no objection is raised.

2. The Safety and Health Officer shall endeavor to ascertain the reason for such refusal, and shall immediately report the refusal and the reason therefor to the Administrator. The Administrator shall take appropriate action, including compulsory process, if necessary.

3. Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the Administrator circumstances exist which make such preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):

a. When the employers past practice either implicitly or explicitly puts the Administrator on notice that a warrantless inspection will not be allowed:

b. When an inspection is scheduled far from the local office and procuring a warrant prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the office, obtain a warrant and return to the work-site;

c. When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

4. For purposes of this section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace

under this section.

E. Entry not a Waiver.

Any permission to enter, inspect, review records, or question any person, shall not imply a waiver of any cause of action, citation, or penalty under the Act. Safety and Health Officers are not authorized to grant such waivers.

F. Advance notice of Inspections.

1. Advance notice of inspections may not be given, except in the following instances:

a. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible.

b. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection.

c. Where necessary to assure the presence of the employer or representative of the employer and employees or the appropriate personnel needed to aid the inspection; and

d. In other circumstances where the Administrator determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

2. In the instances described in R614-1-7.F.1., advance notice of inspections may be given only if authorized by the Administrator, except that in cases of imminent danger, advance notice may be given by the Safety and Health Officer without such authorization if the Administrator is not immediately available. Where advance notice is given, it shall be the employer's responsibility to notify the authorized representative of the employees of the inspection, if the identity of such representatives is known to the employer. (See R614-1-7.H.2. as to instances where there is no authorized representative of employees.) Upon the request of the employer, the Safety and Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Safety and Health Officer with the identity of such representatives and with such other information as is necessary to enable him promptly to inform such representatives of the inspection. A person who fails to comply with his responsibilities under this paragraph, may be subject to citation and penalty under Sections 34A-6-302 and 34A-6-307 of the Act. Advance notice in any of the instances described in R614-1-7.F. shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in cases of imminent danger and other unusual circumstances.

3. The Act provides in Subsection 34A-6-307(5)(b) conditions for which advanced notice can be given and the penalties for not complying.

G. Conduct of Inspections.

1. Subject to the provisions of R614-1-7.C., inspections shall take place at such times and in such places of employment as the Administrator or the Safety and Health Officer may direct. At the beginning of an inspection, Safety and Health Officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in R614-1-7.C. which they wish to review. However, such designations of records shall not preclude access to additional records specified in R614-1-7.C.

2. Safety and Health Officers shall have authority to take environmental samples and to take photographs or video recordings related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. (See R614-1-7.I. on trade secrets.) As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges, and other similar devices to employees in order to monitor their exposures.

3. In taking photographs and samples, Safety and Health Officers shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. Safety and Health Officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and shall wear and use appropriate protective clothing and equipment.

4. The conduct of inspections shall preclude unreasonable disruption of the operations of the employer's establishment.

5. At the conclusion of an inspection, the Safety and Health Officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the Safety and Health Officer any pertinent information regarding conditions in the workplace.

H. Representative of employers and employees.

1. Safety and Health Officer shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Safety and Health Officer during the physical inspection of any workplace for the purpose of aiding such inspection. A Safety and Health Officer may permit additional employer representative and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the Safety and Health Officer during each phase of an inspection if this will not interfere with the conduct of the inspection.

2. Safety and Health Officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and the employees for purpose of this Part. If there is no authorized representative of employees, or if the Safety and Health Officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

3. The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Safety and Health Officer during the inspection.

4. Safety and Health Officers are authorized to deny the right of accompaniment under this Part to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of R614-1-7.I.3. With regard to information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany a Safety and Health Officer in areas containing such information.

I. Trade secrets.

1. Section 34A-6-306 of the Act provides provisions for trade secrets.

2. At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the Safety and Health Officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential-trade secret" and shall not be disclosed except in accordance with the provisions of Section 34A-6-306 of the Act.

3. Upon the request of an employer, any authorized

representative of employees under R614-1-7.H. in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is not such representative or employee, the Safety and Health Officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

J. Consultation with employees.

Safety and Health Officers may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which he has reason to believe exists in the workplace to the attention of the Safety and Health Officer.

K. Complaints by employees.

1. Any employee or representative of employees who believe that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Administrator or to a Safety and Health Officer. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice shall be provided the employer or his agent by the Administrator or Safety and Health Officer no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Administrator.

2. If upon receipt of such notification the Administrator determines that the complaint meets the requirements set forth in R614-1-7.K.1., and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable. Inspections under this Part shall not be limited to matters referred to in the complaint.

3. Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Safety and Health Officer, in writing, of any violation of the Act which they have reason to believe exists in such workplace. Any such notice shall comply with requirements of R614-1-7.K.1.

4. Section 34A-6-203 of the Act provides protection for employees while engaged in protected activities.

L. Inspection not warranted; informal review.

1. If the Administrator determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under K, he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Administrator. The Administrator, at his discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral view presented, the Administrator shall affirm, modify, or reverse the determination of the previous decision and again furnish the complaining party and the employer written notification of his decision and the reasons therefor.

2. If the Administrator determines that an inspection is not warranted because the requirements of R614-1-7.K.1. have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of R614-1-7.K.1.

M. Imminent danger.

Whenever a Safety and Health Officer concludes, on the

basis of an inspection, that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm before the imminence of such danger can be eliminated through the enforcement procedures of the Act, he shall inform the affected employees and employers of the danger, that he is recommending a civil action to restrain such conditions or practices and for other appropriate citations of proposed penalties which may be issued with respect to an imminent danger even though, after being informed of such danger by the Compliance Officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

N. Citations.

1. The Administrator shall review the inspection report of the Safety and Health Officer. If, on the basis of the report the Administrator believes that the employer has violated a requirement of Section 34A-6-201 of the Act, of any standard, rule, or order promulgated pursuant to Section 34A-6-202 of the Act, or of any substantive rule published in this chapter, shall issue to the employer a citation. A citation shall be issued even though, after being informed of an alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violations. Any citation shall be issued with reasonable promptness after termination of the inspection. No citation may be issued after the expiration of 6 months following the occurrence of any violation.

2. Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision of the Act, standard, rule, regulations, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violations.

3. If a citation is issued for an alleged violation in a request for inspection under R614-1-7.K.1. or a notification of violation under R614-1-7.K.3., a copy of the citation shall also be sent to the employee or representative of employees who made such request or notification.

4. Following an inspection, if the Administrator determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under R614-1-7.K.1. or a notification of violation under R614-1-7.K.3., the informal review procedures prescribed in R614-1-7.L.1. shall be applicable. After considering all views presented, the Administrator shall either affirm, order a re-inspection, or issue a citation if he believes that the inspection disclosed a violation. The Administrator shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor.

5. Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Commission.

O. Petitions for modification of abatement date.

1. An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of the citation, but such abatement has not been completed because of factors beyond his reasonable control.

2. A petition for modification of abatement date shall be in writing and shall include the following information.

a. All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

b. The specific additional abatement time necessary in order to achieve compliance.

c. The reasons such additional time is necessary, including the unavailability, of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original

abatement date.

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

e. A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with paragraph R614-1-7.O.3.a. and a certification of the date upon which such posting and service was made.

3. A petition for modification of abatement date shall be filed with the Administrator who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

a. A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted for a period of ten (10) days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

b. Affected employees or their representatives may file an objection in writing to such petition with the aforesaid Administrator. Failure to file such objection within ten (10) working days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.

c. The Administrator or his duly authorized agent shall have authority to approve any petition for modification of abatement date filed pursuant to paragraphs R614-1-7.O.2. and 3. Such uncontested petitions shall become final orders pursuant to Subsection 34A-6-303(1) of the Act.

d. The Administrator or his authorized representative shall not exercise his approval power until the expiration of ten (10) days from the date of the petition was posted or served pursuant to paragraphs R614-1-7.O.3.a. and b. by the employer.

4. Where any petition is objected to by the affected employees, the petition, citation, and any objections shall be forwarded to the Administrator per R614-1-7.O.3.b. Upon receipt the Administrator shall schedule and notify all interested parties of a formal hearing before the Administrator or his authorized representative(s). Minutes of this hearing shall be taken and become public records of the Commission. Within ten (10) days after conclusion of the hearing, a written opinion by the Administrator will be made, with copies to the affected employees or their representatives, the affected employer and to the Commission.

#### P. Proposed penalties.

1. After, or concurrent with, the issuance of a citation and within a reasonable time after the termination of the inspection, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of the proposed penalty under Section 34A-6-307 of the Act, or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed penalty shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notice, the employer notifies the Adjudication Division in writing that he intends to contest the citation or the notification of proposed penalty before the Commission.

2. The Administrator shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business, of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of Section 34A-6-307 of the Act.

3. Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such

alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for violations which have no direct or immediate relationship to safety or health.

#### Q. Posting of citations.

1. Upon receipt of any citation under the Act, the employer shall immediately post such citation, or copy thereof, unedited, at or near each place of alleged violation referred to in the citation occurred, except as hereinafter provided. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employees are engaged in activities which are physically dispersed (see R614-1-7.B.), the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location (see R614-1-7.B.2.), the citation must be posted at the location from which the employees commence their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material.

2. Each citation or a copy thereof, shall remain posted until the violation has been abated, or for 3 working days which ever is later. The filing by the employer of a notice of intention to contest under R614-1-7.R. shall not affect his posting responsibility unless and until the Commission issues a final order vacating the citation.

3. An employer, to whom a citation has been issued, may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Commission, such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

4. Any employer failing to comply with the provisions of R614-1-7.Q.1. and 2. shall be subject to citation and penalty in accordance with the provisions of Section 34A-6-307 of the Act.

#### R. Employer and employee hearings before the Commission.

1. Any employer to whom a citation or notice of proposed penalty has been issued, may under Section 34A-6-303 of the Act, notify the Adjudication Division in writing that the employer intends to contest such citation or proposed penalty before the Commission. Such notice of intention to contest must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

2. An employee or representative of employee of an employer to whom a citation has been issued may, under Section 34A-6-303(3) of the Act, file a written notice with the Adjudication Division alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable. Such notice must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed. The Adjudication Division shall handle such notice in accordance with the rules of procedure prescribed by the Commission.

#### S. Failure to correct a violation for which a citation has been issued.

1. If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of such failure and of the additional penalty proposed under Section 34A-6-307 of the Act

by reason of such failure. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the Commission in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

2. Any employer receiving a notification of failure to correct a violation and of proposed additional penalty may, under Section 34A-6-303(3) of the Act, notify the Adjudication Division in writing that he intends to contest such notification or proposed additional penalty before the Commission. Such notice of intention to contest shall be postmarked within 30 days of receipt by the employer of the notification of failure to correct a violation and of proposed additional penalty. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

3. Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notification, the employer notifies the Adjudication Division in writing that he intends to contest the notification or the proposed additional penalty before the Commission.

#### T. Informal conferences.

At the request of an affected employer, employee, or representative of employees, the Administrator may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The Administrator shall provide in writing the reasons for any settlement of issues at such conferences. If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate, at the discretion of the Administrator. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Administrator. Any party may be represented by counsel at such conference. No such conference or request for such conference shall operate as a stay of any 30 day period for filing a notice of intention to contest as prescribed in R614-1-7.R.

### **R614-1-8. Recording and Reporting Occupational Injuries and Illnesses.**

A. The rules in this section implement Sections 34A-6-108 and 34A-6-301(3) of the Act. These sections provide for record-keeping and reporting by employers covered under the Act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics. Regardless of size or type of operation, accidents and fatalities must be reported to UOSH in accordance with the requirements of R614-1-5.C.

NOTE: Utah has adopted and will enforce the Federal Recordkeeping Standard 29CFR1904.

#### R614-1-4. Incorporation of Federal Standards.

##### A. General Industry Standards.

4. FR Vol. 66, No. 13, Friday, January 19, 2001, Pages 5916 to and including 6135. "Occupational Injury and reporting Requirements; Final Rule" is incorporated by reference.

##### Utah Specific Recordkeeping requirements follow:

##### B. Supplementary record.

Each employer shall have available for inspection at each establishment within 6 working days after receiving information that a recordable case has occurred, a supplementary record for that establishment. The record shall be completed in the detail prescribed in the instructions accompanying federal OSHA Form No. 301, Utah Industrial Accidents Form 122. Workers' compensation, insurance, or other reports are acceptable alternative records if they contain the information required by

the federal OSHA Form No. 301, Utah Industrial Accidents Form 122. If no acceptable alternative record is maintained for other purposes, Federal OSHA Form No. 301, Utah Industrial Accidents Form 122 shall be used or the necessary information shall be otherwise maintained.

#### C. Retention of records.

##### Preservation of records.

a. This section applies to each employer who makes, maintains or has access to employee exposure records or employee medical records.

b. "Employee exposure record" means a record of monitoring or measuring which contains qualitative or quantitative information indicative of employee exposures to toxic materials or harmful physical agents. This includes both individual exposure records and general research or statistical studies based on information collected from exposure records.

c. "Employee medical record" means a record which contains information concerning the health status of an employee or employees exposed or potentially exposed to toxic materials or harmful physical agents. These records may include, but are not limited to:

(1) The results of medical examinations and tests;

(2) Any opinions or recommendations of a physician or other health professional concerning the health of an employee or employees; and

(3) Any employee medical complaints relating to workplace exposure. Employee medical records include both individual medical records and general research or statistical studies based on information collected from medical records.

d. Preservation of records. Each employer who makes, maintains, or has access to employee exposure records or employee medical records shall preserve these records.

e. Availability of records. The employer shall make available, upon request to the Administrator, or a designee, and to the Director of the Division of Health, or a designee, all employee exposure records and employee medical records for examination and copying.

#### D. Access to records.

1. Records provided for in R614-1-8.A., E., and F. shall be available for inspection and copying by Compliance Officers during any occupational safety and health inspection provided for under R614-1-7 and Section 34A-6-301 of the Act.

2. The log and summary of all recordable occupational injuries and illnesses (OSHA No. 200) (the log) provided for in R614-1-8.A. shall, upon request, be made available by the employer to any employee, former employee, and to their representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee, and their representatives shall have access to the log for any establishment in which the employee is or has been employed.

3. Nothing in this section shall be deemed to preclude employees and employee representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

4. Access to the log provided under this section shall pertain to all logs retained under requirements of R614-1-8.G.

E. Reporting of fatality or accidents. (Refer to Utah Occupational Safety and Health Rule, R614-1-5.C.)

F. Falsification or failure to keep records or reports.

1. Section 34A-6-307 of the Act provides penalties for false information and recordkeeping.

2. Failure to maintain records or file reports required by this part, or in the details required by forms and instructions issued under this part, may result in the issuance of citations and assessment of penalties as provided for in Sections 34A-6-302 and 34A-6-307 of the Act.

G. Description of statistical program.

1. Section 34A-6-108 of the Act directs the Administrator to develop and maintain a program of collection, compilation, and analysis of occupational safety and health statistics. The program shall consist of periodic surveys of occupational injuries and illnesses.

2. The sample design encompasses probability procedures, detailed stratification by industry and size, and a systematic selection within Stratification. Stratification and sampling will be carried out in order to provide the most efficient sample for eventual state estimates. Some industries will be sampled more heavily than others depending on the injury rate level based on previous experience. The survey should produce adequate estimates for most four-digit Standard Industrial Classification (SIC) industries in manufacturing and for three-digit classification (SIC) in non-manufacturing. Full cooperation with the U. S. Department of Labor in statistical programs is intended.

**R614-1-9. Rules of Practice for Temporary or Permanent Variance from the Utah Occupational Safety and Health Standards. (Also Adopted and Published as Chapter XXIII of the Utah Occupational Safety and Health Field Operations Manual.)**

**A. Scope.**

1. This rule contains Rules of Practice for Administrative procedures to grant variances and other relief under Section 34A-6-202 of the Act. General information pertaining to employer-employee rights, obligations and procedures are included.

**B. Application for, or petition against Variances and other relief.**

1. The applicable parts of Section 34A-6-202 of the Act shall govern application and petition procedure.

2. Any employer or class of employers desiring a variance from a standard must make a formal written request including the following information:

- a. The name and address of applicant;
- b. The address of the place or places of employment involved;
- c. A specification of the standard or portion thereof from which the applicant seeks a variance;
- d. A statement by the applicant, supported by opinions from qualified persons having first-hand knowledge of the facts of the case, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefore;
- e. A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the existing standard;
- f. A statement of when the applicant expects to be able to comply with the standard and of what steps he has taken and will take, with specific dates where appropriate, to come into compliance with the standards (applies to temporary variances);
- g. A statement of the facts the applicant would show to establish that (applies to newly promulgated standards);

(1) The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

(2) He is taking all available steps to safeguard his employees against the hazards covered by the standards; and

(3) He has an effective program for coming into compliance with the standard as quickly as practicable;

h. Any request for a hearing, as provided in this rule;

i. A statement that the applicant has informed his affected employees of the application for variance by giving a copy thereof to their authorized representative, posting a summary statement of the application at the place or places where notices

to employees are normally posted specifying where a copy may be examined; and

j. A description of how affected employees have been informed of their rights to petition the Administrator for a hearing.

3. The applicant shall designate the method he will use to safeguard his employees until a variance is granted or denied.

4. Whenever a proceeding on a citation or a related issue concerning a proposed penalty or period of abatement has been contested and is pending before an Administrative Law Judge or any subsequent review under the Administrative Procedures Act, until the completion of such proceeding, the Administrator may deny a variance application on a subject or an issue concerning a citation which has been issued to the employer.

**C. Hearings.**

1. The Administrator may conduct hearings upon application or petition in accordance with Section 34A-6-202(4) of the Act if:

a. Employee(s), the public, or other interested groups petition for a hearing; or

b. The Administrator deems it in the public or employee interest.

2. When a hearing is considered appropriate, the Administrator shall set the date, time, and place for such hearing. He shall provide timely notification to the applicant for variance and the petitioners. In the notice of hearing to the applicant, the applicant will be directed to notify his employees of the hearing.

3. Notice of hearings shall be published in the Administrative Rulemaking Bulletin. This shall include a statement that the application request may be inspected at the UOSH Division Office.

4. A copy of the Notification of Hearing along with other pertinent information shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

**D. Inspection for Variance Application.**

1. A variance inspection will be required by the Administrator or his designee prior to final determination of either acceptance or denial.

2. A variance inspection is a single purpose, pre-announced, non-compliance inspection and shall include employee or employer representative participation or interview where necessary.

**E. Interim order.**

1. The purpose of an interim order is to permit an employer to proceed in a non-standard operation while administrative procedures are being completed. Use of this interim procedure is dependent upon need and employee safety.

2. Following a variance inspection, and after determination and assurance that employees are to be adequately protected, the Administrator may immediately grant, in writing, an interim order. To expedite the effect of the interim order, it may be issued at the work-site by the Administrator. The interim order will remain in force pending completion of the administrative promulgation action and the formal granting or denying of a temporary/permanent variance as requested.

**F. Decision of the Administrator.**

1. The Administrator may deny the application if:

a. It does not meet the requirements of paragraph R614-1-8.B.;

b. It does not provide adequate safety in the workplace for affected employees; or

c. Testimony or information provided by the hearing or inspection does not support the applicant's request for variance as submitted.

2. Letters of notification denying variance applications shall be sent to the applicant, and will include posting requirements to inform employees, affected associations, and employer groups.

a. A copy of correspondence related to the denial request shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

b. The letter of denial shall be explicit in detail as to the reason(s) for such action.

3. The Administrator may grant the request for variances provided that:

a. Data supplied by the applicant, the UOSHA inspection and information and testimony affords adequate protection for the affected employee(s);

b. Notification of approval shall follow the pattern described in R614-1-9.C.2. and 3.;

c. Limitations, restrictions, or requirements which become part of the variance shall be documented in the letter granting the variance.

4. The Administrator's decision shall be deemed final subject to Section 34A-6-202(6).

G. Recommended Time Table for Variance Action.

1. Publication of agency intent to grant a variance. This includes public comment and hearing notification in the Utah Administrative Rulemaking Bulletin: within 30 days after receipt.

2. Public comment period: within 20 days after publication.

3. Public hearing: within 30 days after publication

4. Notification of U.S. Department of Labor Regional Administrator for OSHA: 10 days after agency publication of intent.

5. Final Order: 120 days after receipt of variance application if publication of agency intent is made.

6. Rejection of variance application without publication of agency intent: 20 days after receipt of application.

a. Notification of U.S. Department of Labor Regional Administrator for OSHA: 20 days after receipt of application.

H. Public Notice of Granted Variances, Tolerances, Exemptions, and Limitations.

1. Every final action granting variance, exemption, or limitation under this rule shall be published as required under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and the time table set forth in R614-1-9.G.

I. Acceptance of federally Granted Variances.

1. Where a variance has been granted by the U.S. Department of Labor, Occupational Safety and Health Administration, following Federal Promulgation procedures, the Administrator shall take the following action:

a. Compare the federal OSHA standard for which the variance was granted with the equivalent UOSH standard.

b. Identify possible application in Utah.

c. If the UOSH standard under consideration for application of the variance has exactly or essentially the same intent as the federal standard and there is the probability of a multi-state employer doing business in Utah, then the Administrator shall accept the variance (as federally accepted) and promulgate it for Utah under the provisions of Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

d. If the variance has no apparent application to Utah industry, or to a multi-state employer in Utah, or if it conflicts with Utah Legislative intent, or established policy or procedure, the federal variance shall not be accepted. In such case, the Regional Administrator will be so notified.

J. Revocation of a Variance.

1. Any variance (temporary or permanent) whether approved by the state or one accepted by State based on Federal approval, may be revoked by the Administrator if it is determined through on-site inspection that:

a. The employer is not complying with provisions of the variance as granted;

b. Adequate employee safety is not afforded by the original provisions of the variance; or

c. A more stringent standard has been promulgated, is in force, and conflicts with prior considerations given for employee safety.

2. A federally approved national variance may be revoked by the state for a specific work-site or place of employment within the state for reasons cited in R614-1-9.J.1. Such revocations must be in writing and give full particulars and reasons prompting the action. Full rights provided under the law, such as hearings, etc., must be afforded the employer.

3. Normally, permanent variances may be revoked or changed only after being in effect for at least six months.

K. Coordination.

1. All variances issued by the Administrator will be coordinated with the U.S. Department of Labor, OSHA to insure consistency and avoid improper unilateral action.

#### **R614-1-10. Discrimination.**

A. General.

1. The Act provides, among other things, for the adoption of occupational safety and health standards, research and development activities, inspections and investigations of work places, and record keeping requirements. Enforcement procedures initiated by the Commission; review proceedings as required by Title 63, Chapter 46b, Administrative Procedures Act; and judicial review are provided by the Act.

2. This rule deals essentially with the rights of employees afforded under section 34A-6-203 of the Act. Section 34A-6-203 of the Act prohibits reprisals, in any form, against employees who exercise rights under the Act.

3. The purpose is to make available in one place interpretations of the various provisions of Section 34A-6-203 of the Act which will guide the Administrator in the performance of his duties thereunder unless and until otherwise directed by authoritative decisions of the courts, or concluding, upon reexamination of an interpretation, that it is incorrect.

B. Persons prohibited from discriminating.

Section 34A-6-203 defines employee protections under the Act, because the employee has exercised rights under the Act. Section 34A-6-103(11) of the Act defines "person". Consequently, the prohibitions of Section 34A-6-203 are not limited to actions taken by employers against their own employees. A person may be chargeable with discriminatory action against an employee of another person. Section 34A-6-203 would extend to such entities as organizations representing employees for collective bargaining purposes, employment agencies, or any other person in a position to discriminate against an employee. (See, *Meek v. United States*, F. 2d 679 (6th Cir., 1943); *Bowe v. Judson C. Burnes*, 137 F 2d 37 (3rd Cir., 1943).)

C. Persons protected by section 34A-6-203.

1. All employees are afforded the full protection of Section 34A-6-203. For purposes of the Act, an employee is defined in Section 34A-6-103(6). The Act does not define the term "employ". However, the broad remedial nature of this legislation demonstrates a clear legislative intent that the existence of an employment relationship, for purposes of Section 34A-6-203, is to be based upon economic realities rather than upon common law doctrines and concepts. For a similar interpretation of federal law on this issue, see, *U.S. v. Silk*, 331 U.S. 704 (1947); *Rutherford Food Corporation v. McComb*, 331 U.S. 722 (1947).

2. For purposes of Section 34A-6-203, even an applicant for employment could be considered an employee. (See, *NLRB v. Lamar Creamery*, 246 F. 2d 8 (5th Cir., 1957).) Further, because Section 34A-6-203 speaks in terms of any employee, it is also clear that the employee need not be an employee of the discriminator. The principal consideration would be whether the person alleging discrimination was an "employee" at the time of engaging in protected activity.

3. In view of the definitions of "employer" and "employee" contained in the Act, employees of a State or political subdivision thereof would be within the coverage of Section 34A-6-203.

D. Unprotected activities distinguished.

1. Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The proscriptions of Section 34A-6-203 apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Act does not automatically render him immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations. (See, *NLRB v. Dixie Motor Coach Corp.*, 128 F. 2d 201 (5th Cir., 1942).)

2. To establish a violation of Section 34A-6-203, the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" engagement in protected activity, Section 34A-6-203 has been violated. (See, *Mitchell v. Goodyear Tire and Rubber Co.*, 278 F. 2d 562 (8th Cir., 1960); *Goldberg v. Bama Manufacturing*, 302 F. 2d 152 (5th Cir., 1962).) Ultimately, the issue as to whether a discharge was because of protected activity will have to be determined on the basis of the facts in the particular case.

E. Specific protections - complaints under or related to the Act.

1. Discharge of, or discrimination against an employee because the employee has filed "any complaint under or related to this Act" is prohibited by Section 34A-6-203. An example of a complaint made "under" the Act would be an employee request for inspection pursuant to Section 34A-6-301(6). However, this would not be the only type of complaint protected by Section 34A-6-203. The range of complaints "related to" the Act is commensurate with the broad remedial purposes of this legislation and the sweeping scope of its application, which entails the full extent of the commerce power. ((See *Cong. Rec.*, vol. 116 P. 42206 December 17, 1970).)

2. Complaints registered with Federal agencies which have the authority to regulate or investigate occupational safety and health conditions are complaints "related to" this Act. Likewise, complaints made to State or local agencies regarding occupational safety and health conditions would be "related to" the Act. Such complaints, however, must relate to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.

3. Further, the salutary principles of the Act would be seriously undermined if employees were discouraged from lodging complaints about occupational safety and health matters with their employers. Such complaints to employers, if made in good faith, therefore would be related to the Act, and an employee would be protected against discharge or discrimination caused by a complaint to the employer.

F. Proceedings under or related to the act.

1. Discharge of, or discrimination against, any employee because the employee has exercised the employee's rights under or related to this Act is also prohibited by Section 34A-6-203. Examples of proceedings which would arise specifically under the Act would be inspections of work-sites under Section 34A-6-301 of the Act, employee contest of abatement date under Section 34A-6-303 of the Act, employee initiation of proceedings for promulgation of an occupational safety and health standard under Section 34A-6-202 of the Act and Title 63, Chapter 46a, employee application for modification or revocation of a variance under Section 34A-6-202(4)(c) of the Act and R614-1-9., employee judicial challenge to a standard under Section 34A-6-202(6) of the Act, and employee appeal of

an order issued by an Administrative Law Judge, Commissioner, or Appeals Board under Section 34A-6-304. In determining whether a "proceeding" is "related to" the Act, the considerations discussed in R614-1-10.G. would also be applicable.

2. An employee need not himself directly institute the proceedings. It is sufficient if he sets into motion activities of others which result in proceedings under or related to the Act.

G. Testimony.

Discharge of, or discrimination against, any employee because the employee "has testified or is about to testify" in proceedings under or related to the Act is also prohibited by Section 34A-6-203. This protection would of course not be limited to testimony in proceedings instituted or caused to be instituted by the employee, but would extend to any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, and administrative rulemaking or adjudicative functions. If the employee is giving or is about to give testimony in any proceeding under or related to the Act, he would be protected against discrimination resulting from such testimony.

H. Exercise of any right afforded by the Act.

1. In addition to protecting employees who file complaints, institute proceedings under or related to the Act it also prohibited by Section 34A-6-203 discrimination occurring because of the exercise "of any right afforded by this Act." Certain rights are explicitly provided in the Act; for example, there is a right to participate as a party in enforcement proceedings (34A-6-303). Certain other rights exist by necessary implications. For example, employees may request information from the Utah Occupational Safety and Health Administration; such requests would constitute the exercise of a right afforded by the Act. Likewise, employees interviewed by agents of the Administrator in the course of inspections or investigations could not subsequently be discriminated against because of their cooperation.

2. Review of the Act and examination of the legislative history discloses that, as a general matter, there is no right afforded by the Act which would entitle employees to walk off the job because of potential unsafe conditions at the workplace. Hazardous conditions which may be violative of the Act will ordinarily be corrected by the employer, once brought to his attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have opportunity to request inspection of the workplace pursuant to Section 34A-6-301 of the Act, or to seek the assistance of other public agencies which have responsibility in the field of safety and health. Under such circumstances, therefore, an employer would not ordinarily be in violation of Section 34A-6-203 by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.

a. Occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition.

I. Procedures - Filing of complaint for discrimination.

1. Who may file. A complaint of Section 34A-6-203 discrimination may be filed by the employee himself, or by a representative authorized to do so on his behalf.

2. Nature of filing. No particular form of complaint is required.

3. Place of filing. Complaint should be filed with the Administrator, Division of Occupational Safety and Health, Labor Commission, 160 East 300 South, Salt Lake City, Utah 84114-6650, Telephone 530-6901.

4. Time for filing.

a. Section 34A-6-203(2)(b) provides protection for an employee who believes that he has been discriminated against.

b. A major purpose of the 30-day period in this provision is to allow the Administrator to decline to entertain complaints which have become stale. Accordingly, complaints not filed within 30 days of an alleged violation will ordinarily be presumed to be untimely.

c. However, there may be circumstances which would justify tolling of the 30-day period on recognized equitable principles or because of strongly extenuating circumstances, e.g., where the employer has concealed, or misled the employee regarding the grounds for discharge or other adverse action; where the employee has, within the 30-day period, resorted in good faith to grievance-arbitration proceedings under a collective bargaining agreement or filed a complaint regarding the same general subject with another agency; where the discrimination is in the nature of a continuing violation. In the absence of circumstances justifying a tolling of the 30-day period, untimely complaints will not be processed.

J. Notification of administrator's determination.

The Administrator is to notify a complainant within 90 days of the complaint of his determination whether prohibited discrimination has occurred. This 90-day provision is considered directory in nature. While every effort will be made to notify complainants of the Administrator's determination within 90 days, there may be instances when it is not possible to meet the directory period set forth in this section.

K. Withdrawal of complaint.

Enforcement of the provisions of Section 34A-6-203 is not only a matter of protecting rights of individual employees, but also of public interest. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the Administrator's investigation. The Administrator's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. However, a voluntary and uncoerced request from a complainant to withdraw his complaint will be given careful consideration and substantial weight as a matter of policy and sound enforcement procedure.

L. Arbitration or other agency proceedings.

1. An employee who files a complaint under Section 34A-6-203(2) of the Act may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board. The Administrator's jurisdiction to entertain Section 34A-6-203 complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of other agencies or bodies. The Administrator may file action in district court regardless of the pendency of other proceedings.

2. However, the Administrator also recognizes the policy favoring voluntary resolution of disputes under procedures in collective bargaining agreements. (See, e.g., *Boy's Market, Inc. v. Retail Clerks*, 398 U.S. 235 (1970); *Republic Steel Corp. v. Maddox*, 379 U.S. 650 (1965); *Carey v. Westinghouse Electric Co.*, 375 U.S. 261 (1964); *Collier Insulated Wire*, 192 NLRB No. 150 (1971).) By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to Section 34A-6-203 complaints.

3. Where a complainant is in fact pursuing remedies other than those provided by Section 34A-6-203, postponement of the Administrator's determination and deferral to the results of such proceedings may be in order. (See, *Burlington Truck Lines, Inc.*, v. U.S., 371 U.S. 156 (1962).)

4. Postponement of determination. Postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under Section 34A-6-203 and those proceedings are not likely to violate the rights guaranteed by Section 34A-6-203. The factual issues in such proceedings must be substantially the same as those raised by Section 34A-6-203 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination. (See, *Rios v. Reynolds Metals Co.*, F. 2d (5th Cir., 1972), 41 U.S.L.W. 1049 (October 10, 1972); *Newman v. Avco Corp.*, 451 F. 2d 743 (6th Cir., 1971).)

5. Deferral to outcome of other proceedings. A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-to-case basis, after careful scrutiny of all available information. Before deferring to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. In this regard, if such other actions initiated by a complainant are dismissed without adjudicative hearing thereof, such dismissal will not ordinarily be regarded as determinative of the Section 34A-6-203 complaint.

M. Employee refusal to comply with safety rules.

Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Act are not exercising any rights afforded by the Act. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations, will not ordinarily be regarded as discriminatory action prohibited by Section 34A-6-203. This situation should be distinguished from refusals to work, as discussed in R614-1-10.H.

#### **R614-1-11. Rules of Agency Practice and Procedure Concerning UOSH Access to Employee Medical Records.**

A. Policy.

UOSH access to employee medical records will in certain circumstances be important to the agency's performance of its statutory functions. Medical records, however, contain personal details concerning the lives of employees. Due to the substantial personal privacy interests involved, UOSH authority to gain access to personally identifiable employee medical information will be exercised only after the agency has made a careful determination of its need for this information, and only with appropriate safeguards to protect individual privacy. Once this information is obtained, UOSH examination and use of it will be limited to only that information needed to accomplish the purpose for access. Personally identifiable employee medical information will be retained by UOSH only for so long as needed to accomplish the purpose for access, will be kept secure while being used, and will not be disclosed to other agencies or members of the public except in narrowly defined circumstances. This section establishes procedures to implement these policies.

B. Scope.

1. Except as provided in paragraphs R614-1-11.B.3. through 6. below, this rule applies to all requests by UOSH personnel to obtain access to records in order to examine or copy personally identifiable employee medical information, whether or not pursuant to the access provision of R614-1-12.D.

2. For the purposes of this rule, "personally identifiable employee medical information" means employee medical

information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (e.g., exact age, height, weight, race, sex, date of initial employment, job title, etc.).

3. This rule does not apply to UOSH access to, or the use of, aggregate employee medical information or medical records on individual employees which is not a personally identifiable form. This section does not apply to records required by R614-1-8 to death certificates, or to employee exposure records, including biological monitoring records defined by R614-1-3.M. or by specific occupational safety and health standards as exposure records.

4. This rule does not apply where UOSH compliance personnel conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance record keeping requirements of an occupational safety and health standard, or with R614-1-12. An examination of this nature shall be conducted on-site and, if requested, shall be conducted under the observation of the record holder. The UOSH compliance personnel shall not record and take off-site any information from medical records other than documentation of the fact of compliance or non-compliance.

5. This rule does not apply to agency access to, or the use of, personally identifiable employee medical information obtained in the course of litigation.

6. This rule does not apply where a written directive by the Administrator authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results.

7. Even if not covered by the terms of this rule, all medically related information reported in a personally identifiable form shall be handled with appropriate discretion and care befitting all information concerning specific employees. There may, for example, be personal privacy interests involved which militate against disclosure of this kind of information to the public.

#### C. Responsible persons.

1. UOSH Administrator. The Administrator of the Division of Occupational Safety and Health of the Labor Commission shall be responsible for the overall administration and implementation of the procedures contained in this rule, including making final UOSH determinations concerning:

- a. Access to personally identifiable employee medical information, and
- b. Inter-agency transfer or public disclosure of personally identifiable employee medical information.

2. UOSH Medical Records Officer. The Administrator shall designate a UOSH official with experience or training in the evaluation, use, and privacy protection of medical records to be the UOSH Medical Records Officer. The UOSH Medical Records Officer shall report directly to the Administrator on matters concerning this section and shall be responsible for:

- a. Making recommendations to the Administrator as to the approval or denial of written access orders.
- b. Assuring that written access orders meet the requirements of paragraphs R614-1-11.D.2. and 3. of this rule.
- c. Responding to employee, collective bargaining agent, and employer objections concerning written access orders.
- d. Regulating the use of direct personal identifiers.
- e. Regulating internal agency use and security of personally identifiable employee medical information.
- f. Assuring that the results of agency analyses of personally identifiable medical information are, where appropriate, communicated to employees.
- g. Preparing an annual report of UOSH's experience under this rule.

h. Assuring that advance notice is given of intended inter-agency transfers or public disclosures.

3. Principal UOSH Investigator. The Principal UOSH Investigator shall be the UOSH employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for assuring that the examination and use of this information is performed in the manner prescribed by a written access order and the requirements of this section. When access is pursuant to a written access order, the Principal UOSH Investigator shall be professionally trained in medicine, public health, or allied fields (epidemiology, toxicology, industrial hygiene, bio-statistics, environmental health, etc.)

#### D. Written access orders.

1. Requirement for written access order. Except as provided in paragraph R614-1-11.D.4. below, each request by a UOSH representative to examine or copy personally identifiable employee medical information contained in a record held by an employer or other record holder shall be made pursuant to a written access order which has been approved by the Administrator upon the recommendation of the UOSH Medical Records Officer. If deemed appropriate, a written access order may constitute, or be accompanied by an administrative subpoena.

2. Approval criteria for written access order. Before approving a written access order, the Administrator and the UOSH Medical Records Officer shall determine that:

- a. The medical information to be examined or copied is relevant to a statutory purpose and there is a need to gain access to this personally identifiable information.
- b. The personally identifiable medical information to be examined or copied is limited to only that information needed to accomplish the purpose for access, and
- c. The personnel authorized to review and analyze the personally identifiable medical information are limited to those who have a need for access and have appropriate professional qualifications.

3. Content of written access order. Each written access order shall state with reasonable particularity:

- a. The statutory purposes for which access is sought.
- b. The general description of the kind of employee medical information that will be examined and why there is a need to examine personally identifiable information.
- c. Whether medical information will be examined on-site, and what type of information will be copied and removed off-site.
- d. The name, address, and phone number of the Principal UOSH Investigator and the names of any other authorized persons who are expected to review and analyze the medical information.
- e. The name, address, and phone number of the UOSH Medical Records Officer, and
- f. The anticipated period of time during which UOSH expects to retain the employee medical information in a personally identifiable form.

4. Special situations. Written access orders need not be obtained to examine or copy personally identifiable employee medical information under the following circumstances:

- a. Specific written consent. If the specific written consent of an employee is obtained pursuant to R614-1-12.D., and the agency or an agency employee is listed on the authorization as the designated representative to receive the medical information, then a written access order need not be obtained. Whenever personally identifiable employee medical information is obtained through specific written consent and taken off-site, a Principal UOSH Investigator shall be promptly named to assure protection of the information, and the UOSH Medical Records Officer shall be notified of this person's identity. The personally identifiable medical information obtained shall thereafter be

subject to the use and security requirements of paragraphs R614-1-11.H.

b. Physician consultations. A written access order need not be obtained where a UOSH staff or contract physician consults with an employer's physician concerning an occupational safety or health issue. In a situation of this nature, the UOSH physician may conduct on-site evaluation of employee medical records in consultation with the employer's physician, and may make necessary personal notes of his or her findings. No employee medical records however, shall be taken off-site in the absence of a written access order or the specific written consent of an employee, and no notes of personally identifiable employee medical information made by the UOSH physician shall leave his or her control without the permission of the UOSH Medical Records Officer.

E. Presentation of written access order and notice to employees.

1. The Principal UOSH Investigator, or someone under his or her supervision, shall present at least two (2) copies each of the written access order and an accompanying cover letter to the employer prior to examining or obtaining medical information subject to a written access order. At least one copy of the written access order shall not identify specific employees by direct personal identifier. The accompanying cover letter shall summarize the requirements of this section and indicate that questions or objections concerning the written access order may be directed to the Principal UOSH Investigator or to the UOSH Medical Records Officer.

2. The Principal UOSH Investigator shall promptly present a copy of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to each collective bargaining agent representing employees whose medical records are subject to the written access order.

3. The Principal UOSH Investigator shall indicate that the employer must promptly post a copy of the written access order which does not identify specific employees by direct personal identifier, as well as post its accompanying cover letter.

4. The Principal UOSH Investigator shall discuss with any collective bargaining agent and with the employer the appropriateness of individual notice to employees affected by the written access order. Where it is agreed that individual notice is appropriate, the Principal UOSH Investigator shall promptly provide to the employer an adequate number of copies of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to enable the employer either to individually notify each employee or to place a copy in each employee's medical file.

F. Objections concerning a written access order. All employees, collective bargaining agents, and employer written objections concerning access to records pursuant to a written access order shall be transmitted to the UOSH Medical Records Officer. Unless the agency decides otherwise, access to the record shall proceed without delay notwithstanding the lodging of an objection. The UOSH Medical Records Officer shall respond in writing to each employee's and collective bargaining agent's written objection to UOSH access. Where appropriate, the UOSH Medical Records Officer may revoke a written access order and direct that any medical information obtained by it be returned to the original record holder or destroyed. The principal UOSH Investigator shall assure that such instructions by the UOSH Medical Records Officer are promptly implemented.

G. Removal of direct personal identifiers. Whenever employees medical information obtained pursuant to a written access order is taken off-site with direct personal identifiers included, the Principal UOSH Investigator shall, unless otherwise authorized by the UOSH Medical Records Officer,

promptly separate all direct personal identifiers from the medical information, and code the medical information and the list of direct identifiers with a unique identifying number of each employee. The medical information with its numerical code shall thereafter be used and kept secured as though still in a directly identifiable form. The Principal UOSH Investigator shall also hand deliver or mail the list of direct personal identifiers with their corresponding numerical codes to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall thereafter limit the use and distribution of the list of coded identifiers to those with a need to know its contents.

H. Internal agency use of personally identifiable employee medical information.

1. The Principal UOSH Investigator shall in each instance of access be primarily responsible for assuring that personally identifiable employee medical information is used and kept secured in accordance with this section.

2. The Principal UOSH Investigator, the UOSH Medical Records Officer, the Administrator, and any other authorized person listed on a written access order may permit the examination or use of personally identifiable employee medical information by agency employees and contractors who have a need for access, and appropriate qualifications for the purpose for which they are using the information. No UOSH employee or contractor is authorized to examine or otherwise use personally identifiable employee medical information unless so permitted.

3. Where a need exists, access to personally identifiable employee medical information may be provided to attorneys in the office of the State Attorney General, and to agency contractors who are physicians or who have contractually agreed to abide by the requirements of this section and implementing agency directives and instructions.

4. UOSH employees and contractors are only authorized to use personally identifiable employee medical information for the purposes for which it was obtained, unless the specific written consent of the employee is obtained as to a secondary purpose, or the procedures of R614-1-11.D. through G. are repeated with respect to the secondary purpose.

5. Whenever practicable, the examination of personally identifiable employee medical information shall be performed on-site with a minimum of medical information taken off-site in a personally identifiable form.

I. Security procedures.

1. Agency files containing personally identifiable employee medical information shall be segregated from other agency files. When not in active use, files containing this information shall be kept secured in a locked cabinet or vault.

2. The UOSH Medical Records Officer and the Principal UOSH Investigator shall each maintain a log of uses and transfers of personally identifiable employee medical information and lists of coded direct personal identifiers, except as to necessary uses by staff under their direct personal supervision.

3. The photocopying or other duplication of personally identifiable employee medical information shall be kept to the minimum necessary to accomplish the purposes for which the information was obtained.

4. The protective measures established by this rule apply to all worksheets, duplicate copies, or other agency documents containing personally identifiable employee medical information.

5. Intra-agency transfers of personally identifiable employee medical information shall be by hand delivery, United States mail, or equally protective means. Inter-office mailing channels shall not be used.

J. Retention and destruction of records.

1. Consistent with UOSH records disposition programs, personally identifiable employee medical information and lists

of coded direct personal identifiers shall be destroyed or returned to the original record holder when no longer needed for the purposes for which they were obtained.

2. Personally identifiable employee medical information which is currently not being used actively but may be needed for future use shall be transferred to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall conduct an annual review of all centrally-held information to determine which information is no longer needed for the purposes for which it was obtained.

K. Results of an agency analysis using personally identifiable employee medical information.

1. The UOSH Medical Records Officer shall, as appropriate, assure that the results of an agency analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as a part of the analysis.

2. Annual report. The UOSH Medical Records Officer shall on an annual basis review UOSH's experience under this section during the previous year, and prepare a report to the UOSH Administrator which shall be made available to the public. This report shall discuss:

- a. The number of written access orders approved and a summary of the purposes for access;
- b. The nature and disposition of employee; collective bargaining agent, and employer written objections concerning UOSH access to personally identifiable employee medical information; and
- c. The nature and disposition of requests for inter-agency transfer or public disclosure of personally identifiable employee medical information.

L. Inter-agency transfer and public disclosure.

1. Personally identifiable employee medical information shall not be transferred to another agency or office outside of UOSH (other than to The Attorney General's Office) or disclosed to the public (other than to the affected employee or the original record holder) except when required by law or when approved by the Administrator.

2. Except as provided in paragraph R614-1-11.L.3. below, the Administrator shall not approve a request for an inter-agency transfer of personally identifiable employee medical information, which has not been consented to by the affected employees, unless the request is by a public health agency which:

- a. Needs the requested information in a personally identifiable form for a substantial public health purpose;
- b. Will not use the requested information to make individual determinations concerning affected employees which could be to their detriment;
- c. Has regulations or established written procedures providing protection for personally identifiable medical information substantially equivalent to that of this section; and
- d. Satisfies an exemption to the Privacy Act to the extent that the Privacy Act applies to the requested information (See 5 U.S.C. 552a(b); 29 CFR 70a.3).

3. Upon the approval of the Administrator, personally identifiable employee medical information may be transferred to:

- a. The National Institute for Occupational Safety and Health (NIOSH).
- b. The Department of Justice when necessary with respect to a specific action under the federal Occupational Safety and Health Act of 1970 and Utah Occupational Safety and Health Act of 1973.

4. The Administrator shall not approve a request for public disclosure of employee medical information containing direct personal identifiers unless there are compelling circumstances affecting the health or safety of an individual.

5. The Administrator shall not approve a request for public

disclosure of employee medical information which contains information which could reasonably be used indirectly to identify specific employees when the disclosure would constitute a clearly unwarranted invasion of personal privacy.

6. Except as to inter-agency transfers to NIOSH or the State Attorney General's Office, the UOSH Medical Records Officer shall assure that advance notice is provided to any collective bargaining agent representing affected employees and to the employer on each occasion that UOSH intends to either transfer personally identifiable employee medical information to another agency or disclose it to a member of the public other than to an affected employee. When feasible, the UOSH Medical Records Officer shall take reasonable steps to assure that advance notice is provided to affected employees when the employee medical information to be released or disclosed contains direct personal identifiers.

M. Effective date.

This rule shall become effective on January 15, 1981.

#### **R614-1-12. Access to Employee Exposure and Medical Records.**

A. Purpose.

To provide employees and their designated representatives a right of access to relevant exposure and medical records, and to provide representatives of the Administrator a right of access to these records in order to fulfill responsibilities under the Utah Occupational Safety and Health Act. Access by employees, their representatives, and the Administrator is necessary to yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease. Each employer is responsible for assuring compliance with this Rule, but the activities involved in complying with the access to medical records provisions can be carried out, on behalf of the employer, by the physician or other health care personnel in charge of employee medical records. Except as expressly provided, nothing in this Rule is intended to affect existing legal and ethical obligations concerning the maintenance and confidentiality of employee medical information, the duty to disclose information to a patient/employee or any other aspect of the medical-care relationship, or affect existing legal obligations concerning the protection of trade secret information.

B. Scope.

1. This rule applies to each general industry, maritime, and construction employer who makes, maintains, contracts for, or has access to employee exposure or medical records, or analyses thereof, pertaining to employees exposed to toxic substances or harmful physical agents.

2. This rule applies to all employee exposure and medical records, and analyses thereof, of employees exposed to toxic substances or harmful physical agents, whether or not the records are related to specific occupational safety and health standards.

3. This rule applies to all employee exposure and medical records, and analyses thereof, made or maintained in any manner, including on an in-house or contractual (e.g., fee-for-service) basis. Each employer shall assure that the preservation and access requirements of this rule are complied with regardless of the manner in which records are made or maintained.

C. Preservation of records.

1. Unless a specific occupational safety and health standard provides a different period of time, each employer shall assure the preservation and retention of records as follows:

a. Employee medical records. Each employee medical record shall be preserved and maintained for a least the duration of employment plus thirty (30) years, except that health insurance claims records maintained separately from the employer's medical program and its records need not be retained

for any specified period.

b. Employee exposure records. Each employee exposure record shall be preserved and maintained for at least thirty (30) years, except that:

(1) Background data to environmental (workplace) monitoring or measuring, such a laboratory reports and worksheets, need only be retained for one (1) year so long as the sampling results, the collection methodology (sampling plan), a description of the analytical and mathematical methods used, and a summary of other background data relevant to interpretation of the results obtained, are retained for at least thirty (30) years; and

(2) Material safety data sheets and paragraph R614-1-3.M.4. records concerning the identity of a substance or agent need not be retained for any specified period as long as some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least thirty (30) years; and

c. Analyses using exposure or medical records. Each analysis using exposure or medical records shall be preserved and maintained for at least thirty (30) years.

2. Nothing in this rule is intended to mandate the form, manner, or process by which an employer preserves a record so long as the information contained in the record is preserved and retrievable, except that X-ray films shall be preserved in their original state.

#### D. Access to records.

1. Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a reasonable time, place, and manner, but in no event later than fifteen (15) days after the request for access is made.

2. Whenever an employee or designated representative requests a copy of a record, the employer shall, within the period of time previously specified, assure that either:

a. A copy of the record is provided without cost to the employee or representative;

b. The necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or representative for copying the record; or

c. The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

3. Whenever a record has been previously provided without cost to an employee or designated representative, the employer may charge reasonable, non-discriminatory administrative costs (i.e., search and copy expenses but not including overhead expenses) for a request by the employee or designated representative for additional copies of the record, except that:

a. An employer shall not charge for an initial request for a copy of new information that has been added to a record which was previously provided; and

b. An employer shall not charge for an initial request by a recognized or certified collective bargaining agent for a copy of an employee exposure record or an analysis using exposure or medical records.

4. Nothing in this rule is intended to preclude employees and collective bargaining agents from collectively bargaining to obtain access to information in addition to that available under this rule.

#### 5. Employee and designated representative access.

a. Employee exposure records. Each employer shall, upon request, assure the access of each employee and designated representative to employee exposure records relevant to the employee. For the purpose of this rule exposure records relevant to the employee consist of:

(1) Records of the employee's past or present exposure to toxic substances or harmful physical agents,

(2) Exposure records of other employees with past or

present job duties or working conditions related to or similar to those of the employee,

(3) Records containing exposure information concerning the employee's workplace or working conditions, and

(4) Exposure records pertaining to workplaces or working conditions to which the employee is being assigned or transferred.

#### b. Employee medical records.

(1) Each employer shall, upon request, assure the access of each employee to employee medical records of which the employee is the subject, except as provided in R614-1-12.D.4.

(2) Each employer shall, upon request, assure the access of each designated representative to the employee medical records of any employee who has given the designated representative specific written consent. R614-1-12A., Appendix A to R614-1-12., contains a sample form which may be used to establish specific written consent for access to employee medical records.

(3) Whenever access to employee medical records is requested, a physician representing the employer may recommend that the employee or designated representative:

(a) Consult with the physician for the purposes of reviewing and discussing the records requested;

(b) Accept a summary of material facts and opinions in lieu of the records requested; or

(c) Accept release of the requested records only to a physician or other designated representative.

(4) Whenever an employee requests access to his or her employee medical records, and a physician representing the employer believes that direct employee access to information contained in the records regarding a specific diagnosis of a terminal illness or a psychiatric condition could be detrimental to the employees health, the employer may inform the employee that access will only be provided to a designated representative of the employee having specific written consent, and deny the employee's request for direct access to this information only. Where a designated representative with specific written consent requests access to information so withheld, the employer shall assure the access of the designated representative to this information, even when it is known that the designated representative will give the information to the employee.

(5) Nothing in this rule precludes physician, nurse, or other responsible health care personnel maintaining employee medical records from deleting from requested medical records the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.

#### c. Analysis using exposure or medical records.

(1) Each employer shall, upon request, assure the access of each employee and designated representative to each analysis using exposure or medical records concerning the employee's working conditions or workplace.

(2) Whenever access is requested to an analysis which reports the contents of employee medical records by either direct identifier (name, address, social security number, payroll number, etc.) or by information which could reasonably be used under the circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title, etc.) the employer shall assure that personal identifiers are removed before access is provided. If the employer can demonstrate that removal of personal identifiers from an analysis is not feasible, access to the personally identifiable portions of analysis need not be provided.

#### (3) UOSH access.

(a) Each employer shall, upon request, assure the immediate access of representatives of the Administrator to employee exposure and medical records and to analysis using exposure or medical records. Rules of agency practice and

procedure governing UOSH access to employee medical records are contained in R614-1-8.

(b) Whenever UOSH seeks access to personally identifiable employee medical information by presenting to the employer a written access order pursuant to R614-1-8, the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least fifteen (15) working days.

E. Trade Secrets.

1. Except as provided in paragraph R614-1-12.E.2., nothing in this rule precludes an employer from deleting from records requested by an employee or designated representative any trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in a mixture, as long as the employee or designated representative is notified that information has been deleted. Whenever deletion of trade secret information substantially impairs evaluation of the place where or the time when exposure to a toxic substance or harmful physical agent occurred, the employer shall provide alternative information which is sufficient to permit the employee to identify where and when exposure occurred.

2. Notwithstanding any trade secret claims, whenever access to records is requested, the employer shall provide access to chemical or physical agent identities including chemical names, levels of exposure, and employee health status data contained in the requested records.

3. Whenever trade secret information is provided to an employee or designated representative, the employer may require, as a condition of access, that the employee or designated representative agree in writing not to use the trade secret information for the purpose of commercial gain and not to permit misuse of the trade secret information by a competitor or potential competitor of the employer.

F. Employee information.

1. Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform employees exposed to toxic substances or harmful physical agents of the following:

- a. The existence, location, and availability of any records covered by this rule;
- b. The person responsible for maintaining and providing access to records; and
- c. Each employee's right of access to these records.

2. Each employer shall make readily available to employees a copy of this rule and its appendices, and shall distribute to employees any informational materials concerning this rule which are made available to the employer by the Administrator.

G. Transfer of Records

1. Whenever an employer is ceasing to do business, the employer shall transfer all records subject to this Rule to the successor employer. The successor employer shall receive and maintain these records.

2. Whenever an employer is ceasing to do business and there is no successor employer to receive and maintain the records subject to this standard, the employer shall notify affected employees of their rights of access to records at least three (3) months prior to the cessation of the employer's business.

3. Whenever an employer either is ceasing to do business and there is no successor employer to receive and maintain the records, or intends to dispose of any records required to be preserved for at least thirty (30) years, the employer shall:

a. Transfer the records to the Director of the National Institute for Occupational Safety and Health (NIOSH) if so required by a specific occupational safety and health standard; or

b. Notify the Director of NIOSH in writing of the impending disposal of records at least three (3) months prior to

the disposal of the records.

4. Where an employer regularly disposes of records required to be preserved for at least thirty (30) years, the employer may, with at least (3) months notice, notify the Director of NIOSH on an annual basis of the records intended to be disposed of in the coming year.

a. Appendices. The information contained in the appendices to this rule is not intended, by itself, to create any additional obligations not otherwise imposed by this rule nor detract from any existing obligation.

H. Effective date. This rule shall become effective on December 5, 1980. All obligations of this rule commence on the effective date except that the employer shall provide the information required under R614-1-12.F.1. to all current employees within sixty (60) days after the effective date.

**R614-1-12A. Appendix A to R614-1-12 SAMPLE.**

Authorization letter for the Release of Employee Medical Record Information to Designated Representative.

I, (full name of worker/patient), hereby authorize (individual or organization holding the medical records), to release to (individual or organization authorized to receive the medical information), the following medical information from my personal medical records: (Describe generally the information desired to be released).

I give my permission for this medical information to be used for the following purpose: ....., but I do not give permission for any other use or re-disclosure of this information.

(Note---Several extra lines are provided below so that you can place additional restrictions on this authorization letter if you want to. You may, however, leave these lines blank. On the other hand, you may want to (1) specify a particular expiration date for this letter (if less than one year); (2) describe medical information to be created in the future that you intend to be covered by this authorization letter, or (3) describe portions of the medical information in your records which you do not intend to be released as a result of this letter.)

Full name of Employee or Legal Representative  
Signature of Employee or Legal Representative  
Date of Signature

**R614-1-12B. Appendix B to R614-1-12 Availability of NIOSH Registry of Toxic Effects of Chemical Substances (RTECS).**

R614-1-12 applies to all employee exposure and medical records, and analysis thereof, of employees exposed to toxic substances or harmful physical agents (see R614-1-12.B.2.). The term "toxic substance" or "harmful physical agent" is defined by paragraph R614-1-3.FF. to encompass chemical substances, biological agents, and physical stresses for which there is evidence of harmful health effects. The standard uses the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) as one of the chief sources of information as to whether evidence of harmful health effects exists. If a substance is listed in the latest printed RTECS, the standard applies to exposure and medical records (and analysis of these records) relevant to employees exposed to the substances.

It is appropriate to note that the final standard does not require that employers purchase a copy of RTECS and many employers need not consult RTECS to ascertain whether their employee exposure or medical records are subject to the standard. Employers who do not currently have the latest printed edition of the NIOSH RTECS, however, may desire to obtain a copy. The RTECS is issued in an annual printed edition as mandated by Rule 20(a)(6) of the Occupational Safety and Health Act (29 U.S.C. 669 (a)(6)). The 1978 edition is the most recent printed edition as of May 1, 1980. Its Forward and

Introduction describes the RTECS as follows:

"The annual publication of a list of known toxic substances is a NIOSH mandate under the Occupational Safety and Health Act of 1970. It is intended to provide basic information on the known toxic and biological effects of chemical substances for the use of employers, employees, physicians, industrial hygienists, toxicologists, researchers, and, in general, anyone concerned with the proper and safe handling of chemicals. In turn, this information may contribute to a better understanding of potential occupational hazards by everyone involved and ultimately may help to bring about a more healthful workplace environment.

"This registry contains 142,247 listings of chemical substances: 33,929 are names of different chemicals with their associated toxicity data and 90,318 are synonyms. This edition includes approximately 7,500 new chemical compounds that did not appear in the 1977 Registry.

"The Registry's purposes are many, and it serves a variety of users. It is a single source document for basic toxicity information and for other data, such as chemical identifiers and information necessary for the preparation of safety directives and hazard evaluations for chemical substances. The various types of toxic effects linked to literature citations provide researchers and occupational health scientists with an introduction to the toxicological literature, making their own review of the toxic hazards of a given substance easier. By presenting data on the lowest reported doses that produce effects by several routes of entry in various species, the Registry furnishes valuable information to those responsible for preparing safety data sheets for chemical substances in the workplace. Chemical and production engineers can use the Registry to identify the hazards which may be associated with chemical intermediates in the development of final products, and thus can more readily select substitutes or alternate processes which may be less hazardous.

"In this edition of the Registry, the editors intend to identify "all known toxic substances" which may exist in the environment and to provide pertinent data on the toxic effects from known doses entering an organism by any route described. Data may be used for the evaluation of chemical hazards in the environment, whether they be in the workplace, recreation area, or living quarters.

"It must be reemphasized that the entry of a substance in the Registry does not automatically mean that it must be avoided. A listing does mean, however, that the substance has the documented potential of being harmful if misused, and care must be exercised to prevent tragic consequences."

The RTECS 1978 printed edition may be purchased for \$13.00 from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 (202-783-3238) (GPO Stock No. 017-033-00346-7). The 1979 printed edition is anticipated to be issued in the summer of 1980. Some employers may also desire to subscribe to the quarterly update to the RTECS which is published in a microfiche edition. An annual subscription to the quarterly microfiche may be purchased from the GPO for \$14.00 (Order the "Microfiche Edition, Registry of Toxic Effects of Chemical Substances"). Both the printed edition and the microfiche edition of RTECS are available for review at many university and public libraries throughout the country. The latest RTECS editions may also be examined at OSHA Technical Data Center, Room N2439-Rear, United States Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (202-523-9700), or any OSHA Regional or Area Office (See major city telephone directories under United States Government-Labor Department).

**KEY: safety**  
**June 22, 2007**

**Notice of Continuation November 25, 2002**

**R628. Money Management Council, Administration.****R628-15. Certification as an Investment Adviser.****R628-15-1. Authority.**

This rule is issued pursuant to Sections 51-7-3(3), 51-7-18(2)(b)(vi) and (vii), and 51-7-11.5.

**R628-15-2. Scope.**

This rule establishes the criteria applicable to all investment advisers and investment adviser representatives for certification by the Director as eligible to provide advisory services to public treasurers under the State Money Management Act (the "Act"). It further establishes the application contents and procedures, and the criteria and the procedures for denial, suspension, termination and reinstatement of certification.

**R628-15-3. Purpose.**

This rule establishes a uniform standard to evaluate the financial condition and the standing of an investment adviser to determine if investment of public funds by investment advisers would expose said public funds to undue risk.

**R628-15-4. Definitions.**

A. The following terms are defined in Section 51-7-3 of the Act, and when used in this rule, have the same meaning as in the Act:

1. "Certified investment adviser";
2. "Council";
3. "Director";
4. "Public treasurer";
5. "Investment adviser representative"; and
6. "Certified dealer".

B. For purposes of this rule the following terms are defined:

1. "Investment adviser" means either a federal covered adviser as defined in Section 61-1-13 or an investment adviser as defined in Section 61-1-13.

2. "Realized rate of return" means yield calculated by combining interest earned, discounts accreted and premiums amortized, plus any gains or losses realized during the month, less all fees, divided by the average daily balance during the reporting period. The realized return should then be annualized.

3. "Soft dollar" means the value of research services and other benefits, whether tangible or intangible, provided to a certified investment adviser in exchange for the certified investment adviser's business.

**R628-15-5. General Rule.**

Before an investment adviser or investment adviser representative provides investment advisory services to any public treasurer, the investment adviser or investment adviser representative must submit and receive approval of an application to the Division, pay to the Division a non-refundable fee as described in Section 51-7-18.4(2), and become a Certified investment adviser or Investment adviser representative under the Act.

**R628-15-6. Criteria for Certification of an Investment Adviser.**

To be certified by the Director as a Certified investment adviser or Investment adviser representative under the Act, an investment adviser or investment adviser representative shall:

A. Submit an application to the Division on Form 628-15 clearly designating:

- (1) the investment adviser;
- (2) its designated official as defined in R164-4-2 of the Division; and
- (3) any investment adviser representative who provides investment advisory services to public treasurers in the state.

B. Pay to the Division the non-refundable fee described in

Section 51-7-18.4(2).

C. Have a current Certificate of Good Standing dated within 30 days of application from the state in which the applicant is incorporated or organized.

D. Have net worth as of its most recent fiscal year-end of not less than \$150,000 documented by financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principles.

E. Allow the public treasurer to select the forum and method for dispute resolution, whether that forum be arbitration, mediation or litigation in any state or federal court. No agreement, contract, or other document that the applicant requires or intends to require to be signed by the public treasurer to establish an investment advisory relationship shall require or propose to require that any dispute between the applicant and the public treasurer must be submitted to arbitration.

F. Agree to the jurisdiction of the Courts of the State of Utah and applicability of Utah law, where relevant, for litigation of any dispute arising out of transactions between the applicant and the public treasurer.

G. All Investment adviser representatives who have any contact with a public treasurer or its account, must sign and have notarized a statement that the representative:

(1) is familiar with the authorized investments as set forth in the Act and the rules of the Council;

(2) is familiar with the investment objectives of the public treasurer, as set forth in Section 51-7-17(2);

(3) acknowledges, understands, and agrees that all investment transactions conducted for the benefit of the public treasurer must fully comply with all requirements set forth in Section 51-7-7 and that the Certified investment adviser and any Investment adviser representative is prohibited from receiving custody of any public funds or investment securities at any time.

**R628-15-7. Certification.**

A. The initial application for certification must be received on or before the last day of the month for approval at the following month's Council meeting.

B. All certifications shall be effective upon acceptance by the Council.

C. All certifications not otherwise terminated shall expire on June 30 of each year, unless renewed.

**R628-15-8. Renewal of Application.**

A. Certified investment advisers shall apply annually, on or before April 30 of each year, for certification to be effective July 1 of each year.

B. The application must contain all of the documents and meet all of the requirements as set forth above with respect to initial applications.

C. The application must be accompanied by an annual certification fee as described in Section 51-7-18.4(2).

D. A Certified investment adviser whose certification has expired as of June 30 may not function as a Certified investment adviser until the investment adviser's certification is renewed.

**R628-15-9. Post Certification Requirements.**

A. Certified investment advisers shall notify the Division of any changes to any items or information contained in the original application within 30 calendar days of the change. The notification shall provide copies, where necessary, of relevant documents.

B. Certified investment advisers shall maintain a current application on Form 628-15 with the Division throughout the term of any agreement or contract with any public treasurer. Federal covered advisers shall maintain registration as an investment adviser under the Investment Advisers Act of 1940 throughout the term of any agreement or contract with any

public treasurer.

C. Certified investment advisers shall provide written evidence of insurance coverage and shall maintain insurance coverage as follows:

(1) fidelity coverage based on the following schedule:

TABLE	
Utah Public funds under management	Percent for Bond
\$0 to \$25,000,000	10% but not less than \$1,000,000
\$25,000,001 to \$50,000,000	8% but not less than \$2,500,000
\$50,000,001 to \$100,000,000	7% but not less than \$4,000,000
\$100,000,001 to \$500,000,000	5% but not less than \$7,000,000
\$500,000,001 to \$1.250 billion	4% but not less than \$25,000,000
\$1,250,000,001 and higher	Not less than \$50,000,000

(2) errors and omissions coverage equal to five percent (5%) of Utah public funds under management, but not less than \$1,000,000 nor more than \$10,000,000 per occurrence.

D. Certified investment advisers shall provide to the public treasurer the SEC Form ADV Part II prior to contract execution.

E. Certified investment advisers shall file annual audited financial statements with all public treasurers with whom they are doing business and with the Division.

F. Certified investment advisers shall fully disclose all conflicts of interest and all economic interests in certified dealers and other affiliates, consultants and experts used by the Investment adviser in providing investment advisory services.

G. Certified investment advisers shall act with the degree of care, skill, prudence, and diligence that a person having special skills or expertise acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

H. Certified investment advisers shall exercise good faith in allocating transactions to certified dealers in the best interest of the account and in overseeing the completion of transactions and performance of certified dealers used by the Investment adviser in connection with investment advisory services.

I. Certified investment advisers shall fully disclose to the public treasurer any self-dealing with subsidiaries, affiliates or partners of the Investment adviser and any soft dollar benefits to the Investment adviser for transactions placed on behalf of the public treasurer.

J. Certified investment advisers shall fully and completely disclose to all public treasurers with whom they do business the basis for calculation of fees, whether and how fees may be adjusted during the term of any agreement, and any other costs chargeable to the account. If performance-based fees are proposed, the disclosure shall include a clear explanation of the amount of the fee at specific levels of performance and how prior losses are handled in calculation of the performance-based fee.

K. Certified investment advisers shall not assign any contract or agreement with a public treasurer without the written consent of the public treasurer.

L. Certified investment advisers shall provide immediate written notification to any public treasurer to whom advisory services are provided and to the Division upon conviction of any crime involving breach of trust or fiduciary duty or securities law violations.

M. Not less than once each calendar quarter and as often as requested by the public treasurer, Certified investment

advisers shall timely deliver to the public treasurer:

(1) copies of all trade confirmations for transactions in the account;

(2) a summary of all transactions completed during the reporting period;

(3) a listing of all securities in the portfolio at the end of each reporting period, the market value and cost of each security, and the credit rating of each security;

(4) performance reports for each reporting period showing the total return on the portfolio as well as the realized rate of return, when applicable, and the net return after calculation of all fees and charges permitted by the agreement; and

(5) a statistical analysis showing the portfolio's weighted average maturity and duration, if applicable, as of the end of each reporting period.

#### **R628-15-10. Notification of Certification.**

The Director shall provide a list of Certified investment advisers and Investment adviser representatives to the Council at least semiannually. The Council shall mail this list to each public treasurer.

#### **R628-15-11. Grounds for Denial, Suspension or Termination of Status as a Certified investment adviser.**

Any of the following constitutes grounds for denial, suspension, or termination of status as a Certified investment adviser:

A. Denial, suspension or termination of the Certified investment adviser's license by the Division.

B. Failure to maintain a license with the Division by the firm or any of its Investment adviser representatives conducting investment transactions with a public treasurer.

C. Failure to maintain the required minimum net worth and the required bond.

D. Requiring the public treasurer to sign any documents, contracts, or agreements which require that disputes be submitted to mandatory arbitration.

E. Failure to pay the annual certification fee.

F. Making any false statement or filing any false report with the Division.

G. Failure to comply with any requirement of section R628-15-9.

H. Engaging in any material act in negligent or willful violation of the Act or Rules of the Council.

I. Failure to respond to requests for information from the Division or the Council within 15 days after receipt of a request for information.

J. Engaging in a dishonest or unethical practice. "Dishonest or unethical practice" includes but is not limited to those acts and practices enumerated in Rule R164-6-1g.

K. Being the subject of:

(1) an adjudication or determination, within the past five years by a securities or commodities agency or administrator of another state, Canadian province or territory, or a court of competent jurisdiction that the person has willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or the securities or commodities law of any other state; or

(2) an order entered within the past five years by the securities administrator of any state or Canadian province or territory or by the Securities and Exchange Commission denying or revoking license as an investment adviser, or investment adviser representative or the substantial equivalent of those terms or is the subject of an order of the Securities and Exchange Commission suspending or expelling the person from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States post office fraud order.

**R628-15-12. Procedures for Denial, Suspension, or Termination and Reinstatement of Status.**

A. Where it appears to the Division or to the Council that grounds may exist to deny, suspend, or terminate status as a Certified investment adviser, the Council shall proceed under the Utah Administrative Procedures Act, Chapter 46b, Title 63 ("UAPA").

B. All proceedings to suspend a Certified investment adviser or to terminate status as a certified investment adviser are designated as informal proceedings under ("UAPA").

C. In any hearings held, the Chair of the Council shall be the presiding officer, and that person may act as the hearing officer, or may designate another person from the Council or the Division to be the hearing officer. After the close of the hearing, other members of the Council may make recommendations to the hearing officer.

D. The Notice of Agency Action as set forth under UAPA, or any petition filed in connection with it, shall include a statement of the grounds for suspension or termination, and the remedies required to cure the violation.

E. A Certified investment adviser and its Investment adviser representative who has received a Notice of Agency Action alleging violations of the Act or these rules, may continue, in the discretion of the public treasurer, to conduct investment transactions with the public treasurer until the violations asserted by the Money Management Council in the Notice of Agency Action becomes subject to a written order of the Council or Agency against the adviser or adviser representative, or until the Council enters an emergency order indicating that public funds will be jeopardized by continuing investment transactions with the adviser or adviser representative.

F. The Council may issue an emergency order to cease and desist operations or specified actions with respect to public treasurers or public funds. Further, the Council may issue an emergency suspension of certification if the Council determines that public funds will be jeopardized by continuing investment transactions or other specified actions with the adviser or adviser representative.

G. Within ten business days after the conclusion of a hearing on an emergency order, the Council shall lift this prohibition upon a finding that the Certified investment adviser and its investment adviser representative may maintain certification.

**KEY: cash management, public investments, securities regulation, investment advisers**

**June 21, 2007**

51-7-3(3)  
51-7-18(2)(b)(vi)  
51-7-18(2)(b)(vii)  
51-7-11.5(2)(b)  
51-7-11.5(2)©

**R657. Natural Resources, Wildlife Resources.****R657-44. Big Game Depredation.****R657-44-1. Purpose and Authority.**

Under authority of Section 23-16-2, 23-16-3, 23-16-3.1, 23-16-3.2 and 23-16-4, this rule provides:

- (1) the procedures, standards, requirements, and limits for assessing big game depredation; and
- (2) mitigation procedures for big game depredation.

**R657-44-2. Definitions.**

(1) Terms used in this rule are defined in Sections 23-13-2 and 23-16-1.1.

(2) In addition:

(a) "Alternate drawing list" means a list of persons who have not already drawn a permit and would have been the next person in line to draw a permit.

(b) "Cleared and planted land" means private land or privately leased state or federal land used to produce a cultivated crop for commercial gain and the cultivated crop is routinely irrigated or routinely mechanically or manually harvested, or is crop residue that has forage value for livestock.

(c) "Commercial gain" means intent to profit from cultivated crops through an enterprise in support of the crop owner's livelihood.

(d) "Damage incident period" means 90 days, or some longer period as approved in writing by the division, during which the division shall take action to prevent further depredation and during which compensation for damage will be calculated.

(e) "Irrigated" means the controlled application of water for agricultural purposes through man-made systems to supply water not satisfied by rainfall.

(f) "Livestock Forage" means any forage, excluding cultivated crops and crop residues, meant for consumption by livestock, not routinely irrigated or routinely mechanically or manually harvested.

(g) "Mitigation permit voucher" means a document issued to a landowner or lessee, allowing the landowner or lessee to designate who may obtain a big game mitigation permit.

(h) "Private land" means land in private fee ownership and in agricultural use as provided in Section 59-2-502 and eligible for agricultural use valuation as provided in Section 59-2-503 and 59-2-504. Private land does not include tribal trust lands.

**R657-44-3. Damage to Cultivated Crops, Fences, or Irrigation Equipment by Big Game Animals.**

(1) If big game animals are damaging cultivated crops on cleared and planted land, or fences or irrigation equipment on private land, the landowner or lessee shall immediately, upon discovery of big game damage, request that the division take action by notifying a division representative in the appropriate regional office pursuant to Section 23-16-3(1).

(2) Notification may be made:

- (a) orally to expedite a field investigation; or
- (b) in writing to a division representative in the appropriate division regional office.

(3)(a) The regional supervisor or division representative shall contact the landowner or lessee within 72 hours after receiving notification to determine the nature of the damage and take appropriate action for the extent of the damage experienced or expected during the damage incident period.

(b) The division shall consider the big game population management objectives as established in the wildlife unit management plan approved by the Wildlife Board.

(c) Division action shall include:

- (i) removing the big game animals causing depredation; or
- (ii) implementing a depredation mitigation plan pursuant to Sections 23-16-3(2)(b) through 23-16-3(2)(f) and approved in writing by the landowner or lessee.

(4)(a) The division mitigation plan may incorporate any of the following measures:

(i) sending a division representative onto the premises to control or remove the big game animals, including:

- (A) herding;
- (B) capture and relocation;
- (C) temporary or permanent fencing; or
- (D) removal, as authorized by the division director or the division director's designee;

(ii) recommending to the Wildlife Board an antlerless big game hunt in the next big game season framework;

(iii) scheduling a depredation hunter pool hunt in accordance with Sections R657-44-7, R657-44-8, or R657-44-9;

(iv) issuing permits to the landowner or lessee for the harvest of big game animals causing depredation during a general or special season hunt authorized by the Wildlife Board, of which:

(A) the hunting area for big game animals may include a buffer zone established by the division that surrounds, or is adjacent to, the lands where depredation is occurring;

(B) the landowner or lessee may retain no more than five antlerless deer, five doe pronghorn, and two antlerless elk; or

(v) issuing big game mitigation permit vouchers for use on the landowner's or lessee's private land during a general or special hunt authorized by the Wildlife Board.

(b) The mitigation plan may describe how the division will assess and compensate for damage pursuant to Section 23-16-4.

(c) The landowner or lessee and the division may agree upon a combination of mitigation measures to be used pursuant to Subsections (4)(a)(i) through (4)(a)(v), and a payment of damage pursuant to Section 23-16-4.

(d) The agreement pursuant to Subsection (4)(c) must be made before a claim for damage is filed and the mitigation measures are taken.

(5) Vouchers may be issued in accordance with Subsection (4)(a)(v) to:

- (a) the landowner or lessee; or
- (b) a landowner association that:
  - (i) applies in writing to the division;
  - (ii) provides a map of the association lands;
  - (iii) provides signatures of the landowners in the association; and
  - (iv) designates an association representative to act as liaison with the division.

(6) In determining appropriate mitigation, the division shall consider the landowner's or lessee's revenue pursuant to Subsections 23-16-3(2)(f) and 23-16-4(3)(b).

(7) Mitigation permits or vouchers may be withheld from persons who have violated this rule, any other wildlife rule, or the Wildlife Resources Code.

(8)(a) The options provided in Subsections (4)(a)(i) through (4)(a)(v) are for antlerless animals only.

(b) Deer and pronghorn hunts may be August 1 through December 31, and elk hunts may be August 1 through January 31.

(9)(a) The division director may approve mitigation permits or mitigation permit vouchers issued for antlered animals.

(b) A big game mitigation permit may be issued to the landowner or lessee for personal use, provided the division and the landowner or lessee desire the animals to be permanently removed.

(c) A mitigation permit voucher may be issued to the landowner or lessee, provided:

- (i) the division has determined that the big game animals in the geographic area significantly contribute to the wildlife management units;
- (ii) the landowner or lessee agrees to perpetuate the animals on their land; and

(iii) the damage, or expected damage, to the cultivated crop is comparable with the expected value of the mitigation permit voucher on that private land within the wildlife unit.

(10)(a) If the landowner or lessee and the division are unable to agree on the assessed damage, they shall designate a third party pursuant to Subsection 23-16-4(3)(d).

(b) Additional compensation shall be paid above the value of any mitigation permits or vouchers granted to the landowner or lessee if the damage exceeds the value of the mitigation permits or vouchers.

(11)(a) The landowner or lessee may revoke approval of the mitigation plan agreed to pursuant to Subsection (4)(c).

(b) If the landowner or lessee revokes the mitigation plan, the landowner or lessee must request that the division take action pursuant to Section 23-16-3(1)(a).

(c) Any subsequent request for action shall start a new 72-hour time limit as specified in Section 23-16-3(2)(a).

(12) The expiration of the damage incident period does not preclude the landowner or lessee from making future claims.

(13) The division may enter into a conservation lease with the landowner or lessee of private land pursuant to Section 23-16-3(5).

#### **R657-44-4. Landowner or Lessee Authorized to Kill Big Game Animals.**

(1) The landowner or lessee is authorized to kill big game animals damaging cultivated crops on cleared and planted land pursuant to Section 23-16-3.1.

(2) The expiration of the damage incident period does not preclude the landowner or lessee from making future claims.

#### **R657-44-5. Compensation for Damage to Crops, Fences, or Irrigation Equipment on Private Land.**

(1) The division may provide compensation to landowners or lessees for damage to cultivated crops on cleared and planted land, or fences or irrigation equipment on private land caused by big game animals pursuant to Section 23-16-4.

(2) For purposes of compensation, all depredation incidents end on June 30 annually, but may be reinstated July 1.

#### **R657-44-6. Damage to Livestock Forage on Private Land.**

(1)(a) If big game animals are damaging livestock forage on private land, the landowner or lessee shall immediately, upon discovery of big game damage, request that the division take action to alleviate the depredation problem pursuant to Section 23-16-3, and as provided in Subsections R657-44-3(1) through R657-44-3(4)(a)(v), and R657-44-3(5) and R657-44-3(8)(a).

(b) In determining appropriate mitigation, the division shall consider the landowner's or lessee's revenue pursuant to Subsections 23-16-3(2)(f) and 23-16-4(3)(b).

(c) Damage to livestock forage is not eligible for monetary compensation from the division.

(2)(a) Antlerless deer and doe pronghorn hunts may occur August 1 through December 31, and antlerless elk hunts may occur August 1 through January 31.

(b) Antlerless permits shall not exceed ten percent of the animals on the private land, with a maximum of twenty permits per landowner or lessee, except where the estimated population for the management unit is significantly over objective.

(c) Mitigation permits or vouchers may be withheld from persons who have violated this rule, any other wildlife rule, or the Wildlife Resources Code.

(3) The division may enter into a conservation lease with the landowner or lessee of private land pursuant to Subsection 23-16-3(5).

(4) Permits and vouchers for antlered animals using livestock forage on private land are issued only through the provisions provided in Rule R657-43.

#### **R657-44-7. Depredation Hunts for Buck Deer, Bull Elk or Buck Pronghorn.**

(1)(a) Buck deer, bull elk, or buck pronghorn depredation hunts, that are not published in the proclamation of the Wildlife Board for taking big game, may be held.

(b) Buck deer, bull elk, or buck pronghorn depredation hunts may be held when the buck deer, bull elk, or buck pronghorn are:

- (i) causing damage to cultivated crops on cleared and planted land, or fences or irrigation equipment on private land;
- (ii) a significant public safety hazard; or
- (iii) causing a nuisance in urban areas.

(2) The depredation hunts may occur on short notice, involve small areas, and be limited to only a few hunters.

(3) Pre-season depredation hunters shall be selected using:

(a) hunters possessing a limited entry buck deer, bull elk, or buck pronghorn permit for that limited entry unit;

(b) hunters from the alternate drawing list for that limited entry unit; or

(c) general permittees for that unit through the depredation hunter pool pursuant to Section R657-44-9, provided the animals being hunted are determined by the appropriate regional division representative, to not come from a limited entry unit.

(4) Post-season depredation hunters shall be selected using:

(a) hunters from the alternate drawing list for that limited entry unit;

(b) hunters from the alternate drawing list from the nearest adjacent limited entry unit; or

(c) general permittees for that unit through the depredation hunter pool pursuant to Section R657-44-9, provided the animals being hunted are determined by the appropriate regional division representative, to not come from a limited entry unit.

(5) A person may participate in the depredation hunter pool, for depredation hunts pursuant to Subsections (3)(c) and (4)(c), as provided in Section R657-44-9.

(6)(a) Hunters who are selected for a limited entry buck deer, bull elk, or buck pronghorn depredation hunt must possess an unfilled, valid, limited entry buck deer, bull elk, or buck pronghorn permit for the species to be hunted, or must purchase the appropriate depredation permit before participating in the depredation hunt.

(b) Hunters who are selected for a general buck deer or bull elk depredation hunt must possess an unfilled, valid, general buck deer or bull elk permit, respectively.

(7) The deer, bull elk, or buck pronghorn harvested during a depredation hunt must be checked with the division within 72 hours of the harvest.

(8) If a hunter is selected from the alternate drawing list for a depredation hunt in a limited entry unit and harvests a trophy animal, that person shall lose their bonus points and incur the appropriate waiting period as provided in Rule R657-5.

(9)(a) Hunters with depredation permits for buck deer, bull elk, or buck pronghorn may not possess any other permit for those species, except as provided in the proclamation of the Wildlife Board for taking big game and Rule R657-5.

(b) A person may not take more than one buck deer, bull elk, or buck pronghorn in one calendar year.

#### **R657-44-8. Depredation Hunts for Antlerless Deer, Elk or Doe Pronghorn.**

(1) When deer, elk, or pronghorn are causing damage to cultivated crops on cleared and planted land, or livestock forage, fences or irrigation equipment on private land, antlerless hunts not listed in the proclamation of the Wildlife Board for taking big game may be held. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

(2) Depredation hunters shall be selected using:

(a) hunters possessing an antlerless deer, elk, or doe pronghorn permit for that unit;

(b) hunters from the alternate drawing list for that unit; or

(c) the depredation hunter pool pursuant to Section R657-44-9.

(3) The division may contact hunters to participate in a depredation hunt prior to the general or limited entry hunt for a given species of big game. Hunters who do not possess an antlerless deer, elk, or doe pronghorn permit may purchase an appropriate permit.

(4) Hunters with depredation permits for antlerless deer, elk, or doe pronghorn may not possess any other permit for those species, except as provided in the proclamation of the Wildlife Board for taking big game and Rule R657-5.

#### **R657-44-9. Depredation Hunter Pool.**

(1) When deer, elk or pronghorn are causing damage, hunts not listed in the proclamation of the Wildlife Board for taking big game may be held. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

(2) Hunters shall be selected pursuant to Subsections R657-44-7(3), R657-44-7(4), and R657-44-8(2).

(3) A hunter pool application does not affect eligibility to apply for any other big game permit. However, hunters who participate in any deer, elk, or pronghorn depredation hunt may not possess an additional permit for that species during the same year, except as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(4) Applications must be sent to the appropriate regional division office for the area requested.

(5)(a) Applications must be received by the date published in the proclamation of the Wildlife Board for taking big game.

(b) Applications received after the date published in the proclamation of the Wildlife Board for taking big game may be used if adequate numbers of applicants are not available to satisfy depredation situations.

(6) Hunters who have not obtained the appropriate deer, elk, or pronghorn permit may purchase an appropriate permit.

#### **R657-44-10. Appeal Procedures.**

(1) Upon the petition of an aggrieved party to a final division action relative to big game depredation and this rule, a qualified hearing examiner shall take evidence and make recommendations to the Wildlife Board, who shall resolve the grievance in accordance with Rule R657-2.

#### **KEY: wildlife, big game, depredation**

**May 8, 2007**

**Notice of Continuation June 20, 2007**

**23-16-2**

**23-16-3**

**23-16-3.5**

**R708. Public Safety, Driver License.****R708-43. YES or NO Notification.****R708-43-1. Purpose.**

The purpose of this rule is to define the procedures, requirements and format for verifying personal identifying information in accordance with Subsection 53-3-109(1)(c)(iii).

**R708-43-2. Authority.**

This rule is authorized by Subsection 53-3-109(7)(f).

**R708-43-3. Definitions.**

(1) "Yes or No Verification (YON)" means an electronic notification that information submitted by a requester matches the information on the driver license division database. For this purpose Yes verifies a match of (a) through (c), and No indicates one or more items do not match the database information, including:

- (a) name;
- (b) driver license, driving privilege card or identification card number; and
- (c) date of birth.

**R708-43-4. Procedures.**

(1) Upon receipt of a request for verification pursuant to Subsection 53-3-109(1)(c)(iii), the division will search the driver license division database and furnish a YON on any person who has a driver license, driving privilege card or identification card in the state.

(2) The YON contains certain personal identifying information and is protected from public disclosure for privacy reasons in accordance with the federal Driver Privacy Protection Act of 1994 (DPPA), Subsection 53-3-109, and Title 63, Chapter 2.

**R708-43-5. Requirements.**

(1) A YON shall only be released to qualified requesters in accordance with the DPPA and Subsection 53-3-109(1)(c)(iii).

(2) In order to receive a YON, the requester must:

- (a) provide acceptable proof that they are a depository institution as defined in Section 7-1-103;
- (b) enter into a contract with the division or its designated provider to obtain a YON;
- (c) provide the name, Utah driver license number, driving privilege number or identification card number and date of birth of the person who is the subject of the request;
- (d) pay required fees as established by the division;
- (e) agree to comply with state and federal laws regulating the use and further disclosure of information provided; and
- (f) comply with auditing processes and procedures required by the division or its designated provider.

**R708-43-6. Electronic Transactions.**

Requests for a YON will be transacted electronically as approved by the division.

**KEY: driver license verification**

**June 8, 2007**

**53-3-109(1)©**

**R710. Public Safety, Fire Marshal.****R710-2. Rules Pursuant to the Utah Fireworks Act.****R710-2-1. Adoption.**

Pursuant to Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts rules establishing minimum safety standards for retail storage, handling, and sale of class C common state approved explosives; minimum requirements for placement and discharge of display fireworks; and requirements for importer, wholesaler, display or special effects operator licenses.

There is further adopted as part of these rules the following codes which are incorporated by reference:

1.1 International Fire Code (IFC), 2006 edition, as published by the International Code Council, Inc. (ICC), except as amended by provisions listed in R710-2-9, et seq.

1.2 National Fire Protection Association (NFPA), Standard 1123, Code for Fireworks Display, 2006 edition, as published by the National Fire Protection Association, except as amended by provisions listed in R710-2-9, et seq.

1.3 National Fire Protection Association (NFPA), Standard 1126, Standard for the Use of Pyrotechnics Before a Proximate Audience, 2006 edition, as published by the National Fire Protection Association, except as amended by provisions listed in R710-2-9, et seq.

1.4 Copies of the above codes are on file in the Office of Administrative Rules and the State Fire Marshal's Office.

**R710-2-2. Definitions.**

2.1 "Authority having jurisdiction (AHJ)" means such county and municipal officers who are charged with the enforcement of state and municipal laws; consisting of all fire enforcement officials including designated staff from the Utah State Department of Public Safety.

2.2 "ICC" means International Code Council, Inc.

2.3 "IFC" means International Fire Code.

2.4 "NFPA" means National Fire Protection Association.

2.5 "Permanent structure" means a non-movable building, securely attached to a foundation, housing a business.

2.6 "Person" means an individual, company, partnership or corporation.

2.7 "Pre-packaged" means that the product is wrapped in a clear plastic wrap or other equivalent material to prevent the fuse of the class C common state approved explosive from being accessible to the customer.

2.8 "Resale" means the act of reselling class B or C explosives to a new party.

2.9 "SFM" means the State Fire Marshal.

2.10 "Tent" means a temporary structure, enclosure or shelter constructed of fabric or pliable material supported by any manner except by air or the contents it protects.

2.11 "Temporary Stands and Trailers" means a non-permanent structure used exclusively for the sale of fireworks.

2.12 "UCA" means Utah Code Annotated.

**R710-2-3. General Requirements.**

3.1 No person shall engage in any type of retail storage or sale of class C common state approved explosives, without first having obtained a license to sell fireworks from the authority having jurisdiction, if required.

3.2 If a municipality or county in which fireworks are offered for sale, requires a seller to obtain a license, it shall be available at the store or stand for presentation upon request to authorized public safety officials.

3.3 All fireworks retail sales locations shall be under the direct supervision of a responsible person who is 18 years of age or older.

3.4 Those selling fireworks at retail sales locations shall be at least 16 years of age or older.

3.5 A salesperson shall remain at the sales location at all

times unless suitable locking devices or secured metal storage containers are provided to prevent the unauthorized access to the merchandise by others.

3.6 Class C common state approved explosives shall not be sold to any person under the age of 16 years, unless accompanied by an adult.

3.7 All retail sales locations shall be kept clear of dry grass or other combustible material for a distance of at least 25 feet in all directions.

3.8 Storage of class C common state approved explosives shall not be located in residences to include attached garages.

3.9 "No Smoking" signs shall be conspicuously posted at all sales and storage locations.

3.10 A sign, clearly visible to the general public, shall be posted at all fireworks sales locations, indicating the legal dates for discharge of fireworks.

3.11 All retail sales locations shall be equipped with an approved, portable fire extinguisher having a minimum 2A rating.

**R710-2-4. Indoor Sales.**

4.1 Display of class C common state approved explosives inside of buildings shall be so located to ensure constant visual supervision.

4.2 In all retail sales locations in permanent structures, the area where class C common state approved explosives are displayed or stored shall be at least 50 feet from any flammable liquid or gas, or other highly combustible material.

4.3 In permanent structures, retail sales displays of Class C common state approved explosives shall not be placed in locations that would impede egress from the building.

4.4 Class C common state approved explosives shall only be stored, handled, displayed, and sold as packaged units, with unexposed fuses, within a permanent structure.

**R710-2-5. Temporary Stands, Trailers and Tents.**

5.1 Temporary stands, trailers and tents less than 200 square feet used for the retail sales of class C common state approved explosives shall be constructed in compliance with local rules, or if none, in accordance with nationally recognized practice. Tents having an area in excess of 200 square feet shall comply with IFC, Chapter 24.

5.2 The general public shall not be allowed to enter a temporary stand or trailer.

5.3 Each stand, trailer or tent less than 200 square feet shall have a minimum three foot wide unobstructed aisle, running the length of the stand, trailer or tent.

5.4 All tents where customers enter inside shall have a minimum three foot wide unobstructed aisle and two separate exits located a reasonable distance apart and so located that if one is blocked the other will be available.

5.5 The area used for sales of class C common state approved explosives in stands, trailers or tents shall be arranged to permit the customer to only touch or handle pre-packaged class C common state approved explosives. All non pre-packaged class C common state approved explosives shall be displayed in a manner which prevents the fireworks from being handled by the customer without the direct intervention of the retailer who shall be able to maintain visual contact with the customer.

5.6 Temporary stands, trailers or tents for the sale of class C common state approved explosives shall be located at least 50 feet from other stands, trailers, tents, LPG, flammable liquid or gas storage and dispensing units.

5.7 If the stand or trailer is used for the overnight storage of class C common state approved explosives, it shall be equipped with suitable locking devices to prevent unauthorized entry. Tents shall not be used for overnight storage of class C common state approved explosives unless on site security is

provided.

5.8 No person shall be allowed to sleep in any temporary stand, trailer or tent in which class C common state approved explosives are stored or sold.

5.9 Stands, trailers or tents shall not be illuminated or heated by any device requiring an open flame or exposed heating elements. All heaters shall be approved by the authority having jurisdiction (AHJ).

5.10 All illumination shall be installed in accordance with the temporary wiring section of the National Electric Code and approved by the authority having jurisdiction (AHJ).

**R710-2-6. List of Approved Class C Common State Approved Explosives.**

6.1 The State Fire Marshal shall publish a list of approved class C common state approved explosives each year.

6.2 The testing shall be conducted annually or as needed.

**R710-2-7. Importer, Wholesaler, Display or Special Effects Operator Licenses.**

7.1 Application for a importer, wholesaler, display or special effects operator license shall be made in writing on forms provided by the SFM.

7.2 Application for a license shall be signed by the applicant. If the application is made by a partnership, it shall be signed by all partners. If the application is made by a corporation or association, it shall be signed by a principal officer.

7.3 Original licenses shall be valid from the date of issuance through December 31st of the year in which issued. Licenses issued on or after October 1st, will be valid through December 31st of the following year.

7.4 Application for renewal of license shall be made before January 1st of each year. Application for renewal shall be made in writing on forms provided by the SFM.

7.5 The SFM may refuse to renew any license pursuant to Section 8 of these rules. The applicant, upon such refusal, shall also have those rights as are granted by Section 8 of these rules.

7.6 Every licensee shall notify the SFM, in writing, within thirty (30) days, of any change of his address or location.

7.7 No licensee shall conduct his licensed business under a name other than the name which appears on his license.

7.8 No license shall be issued to any person as licensee who is under twenty-one (21) years of age.

7.9 The holder of any license shall submit such license for inspection upon request of the SFM, his duly authorized deputies, or any authorized enforcement official.

7.10 Every person who wishes to secure a display or special effects operator original license shall demonstrate proof of competence by:

7.10.1 Successfully passing a closed book written examination and obtaining a minimum grade of seventy percent (70%).

7.10.2 Submit written verification with the application of having completed a display or special effects operators safety class or demonstrate previous experience acceptable to the SFM.

7.10.3 Submit written verification with the application that the applicant has worked with a licensed display or special effects operator for at least three shows or demonstrate previous experience acceptable to the SFM.

7.11 The written examination stated in Section 7.10(a) shall be valid for five years from the date of the examination.

7.12 At the end of the five year period the licensed display or special effects operator shall take a re-examination. The re-examination shall be open book and sent to the license holder at least 60 days before the renewal date. The re-examination shall focus on the changes in the last 5 years to the adopted standards. The license holder is responsible to complete the re-examination and return it to the Division in time to renew and also comply

with the requirements listed in Section 7.13.

7.13 After the issuance of the original license, and each year thereafter, the display or special effects operator shall complete a minimum of one fireworks performance annually or attend an operator safety class annually or work with another licensed display or special effects operator with a show annually to demonstrate proof of competence.

7.14 When the license has expired for more than one year, an application shall be made for an original license and the initial requirements shall be completed as required in Section 7.10 of these rules.

7.15 Every person who wishes to secure an importer, wholesaler, display or special effects operators license shall be at least 21 years of age.

7.16 Every licensed display or special effects operator shall complete the Pyrotechnician's After Action Report for Fireworks Display form within ten (10) working days after the conclusion of any display or special effects show and send it to the State Fire Marshal.

**R710-2-8. Adjudicative Proceedings.**

8.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

8.2 The issuance, renewal, or continued validity of a license may be denied, suspended or revoked, if the SFM, or his authorized deputies finds that the applicant, person employed for, the person having authority, or the person in question commits any of the following violations:

8.2.1 The person or applicant is not the real person in interest.

8.2.2 Material misrepresentation or false statement in the application.

8.2.3 Refusal to allow inspection by the AHJ.

8.2.4 The person or applicant for a license does not possess the qualifications of skill or competence to conduct operations for which application is made, as evidenced by failure to pass the examination or demonstrate practical skills.

8.2.5 The person or applicant has been convicted of any of the following:

8.2.5.1 a violation of the provisions of these rules;

8.2.5.2 a crime of violence or theft; or

8.2.5.3 any crime that bears upon the person or applicant's ability to perform their functions and duties.

8.2.6 Failure to accurately complete the Pyrotechnician's After Action Report for Fireworks Display form.

8.3 A person may request a hearing on a decision made by the AHJ, by filing an appeal to the Board within 20 days after receiving final notice from the AHJ.

8.4 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

8.5 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

8.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

8.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

8.8 Judicial review of all final Board actions resulting from informal adjudicative proceedings shall be conducted pursuant to UCA, Section 63-46b-15.

**R710-2-9. Amendments and Additions.**

9.1 The following are amendments and additions to the

codes and standards adopted to regulate class C common state approved explosives, placement and discharge of display fireworks, and importer, wholesaler, display or special effects operator licenses, as adopted in Section 1 of these rules:

9.2 IFC, Chapter 33, Section 3301.2.1 and 3301.2.2 is deleted, and rewritten to read as follows:

9.2.1 For the following periods of time: June 1 through July 31; December 1 through January 5; and 30 days before and up to 5 days after the Chinese New Year; class C common state approved explosives may be stored for retail sale as follows:

9.2.1.1 The retail seller shall notify the local fire authority to where the class C common state approved explosives are to be stored.

9.2.1.2 Class C common state approved explosives shall not be stored in residences to include attached garages.

9.2.1.3 The local fire authority shall approve the storage site of the class C common state approved explosives and may use the following guidelines for acceptable places of storage:

9.2.1.3.1 In self storage units where the owner allows it.

9.2.1.3.2 In a temporary stand or trailer used for the retail sales of Class C common state approved explosives, which must be locked or secured when not open for business.

9.2.1.3.3 In a locked or secured truck, trailer, or other vehicle at an approved location.

9.2.1.3.4 In a locked or secured container, garage, shed, barn, or other building, which is detached from an inhabited building.

9.2.1.3.5 Wholesalers warehouse.

9.2.1.3.6 An approved Group M occupancy.

9.2.1.3.7 In a locked or secured metal container adjacent to the temporary stand, trailer or tent that is acceptable to the authority having jurisdiction.

9.2.1.3.8 Any other structure or location approved by the authority having jurisdiction.

9.2.2 All other periods of time, except those stated in Section 9.2(1) of these rules, the storage, use, and handling of fireworks are prohibited, except as follows:

9.2.2.1 The storage and handling of fireworks are allowed as required in IFC, Chapter 33 and these rules.

9.2.2.2 The use of fireworks for display is allowed as set forth in IFC, Chapter 33 and these rules.

#### **R710-2-10. Fire Department Displays.**

10.1 As required in UCA 53-7-223(1) and as allowed for fire departments in UCA 53-7-202(9)(b), the fire department's involvement in the discharge of display fireworks is allowed only for the discharge of display fireworks in that fire departments community or communities it has a contract to protect.

10.2 Within 10 working days after the conclusion of a fireworks display, the fire chief or an assigned fire department member shall complete a Pyrotechnician's After Action Report and send it to the State Fire Marshal.

10.3 Any fire department member that will be involved in the discharge site as defined in NFPA 1123, shall complete a fireworks display safety class yearly to be allowed in the discharge area during the display.

10.4 Any fireworks purchased by a community or fire department outside of the State of Utah shall require the securing of an annual importers license as required in UCA 53-7-224.

**KEY: fireworks**

**March 12, 2007**

**Notice of Continuation June 4, 2007**

**53-7-204**

**R710. Public Safety, Fire Marshal.****R710-3. Assisted Living Facilities.****R710-3-1. Introduction.**

Pursuant to Title 53, Chapter 7, Section 204, of the Utah Code Annotated 1953, the Utah Fire Prevention Board adopts for the purpose of establishing minimum standards for prevention of fire and for the protection of life and property against fire and panic in assisted living facilities. The requirements listed in this rule text are in addition to the requirements listed in R710-9, Rules Pursuant to the Utah Fire Prevention Law.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 International Fire Code (IFC), 2006 edition, as published by the International Code Council, Inc. (ICC), except as amended by provisions listed in R710-3-3, et seq.

1.2 International Building Code (IBC), 2006 edition, as published by the International Code Council, Inc. (ICC), and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.

1.3 Copies of the above code are on file in the Office of Administrative Rules and the State Fire Marshal.

**R710-3-2. Definitions.**

2.1 "Ambulatory" means a person who is capable of achieving mobility sufficient to exit without the physical assistance of another person. An equivalency to "Ambulatory" may be approved under the conditions stated in Sections 3.2.9, 3.3.8 or 3.4.9.

2.2 "Assisted Living Facility" means:

2.2.1 a Type 1 Assisted Living Facility, which is a residential facility subject to licensure by the Utah Department of Health, that provides a protected living arrangement for ambulatory, non-restrained persons who are capable of achieving mobility sufficient to exit the facility without the physical assistance of another person.

2.2.2 a Type 2 Assisted Living Facility, which is a residential facility subject to licensure by the Utah Department of Health, that provides an array of coordinated supportive personal and health care services to residents who meet the definition of semi-independent.

2.2.3 a Residential Treatment/Support Assisted Living Facility, which creates a group living environment for four or more residents contracted by the Division of Services to people with disabilities and subject to licensure by the Utah Department of Human Services, and provides a protected living arrangement for ambulatory, non-restrained persons who are capable of achieving mobility sufficient to exit the facility without the physical assistance of another person.

2.2.4 Assisted Living Facilities shall be classified by size as follows:

2.2.4.1 "Type 1, 2, and Residential Treatment/Support Limited Capacity Facility" means an assisted living facility accommodating five or less residents, excluding staff.

2.2.4.2 "Type 1, 2, and Residential Treatment/Support Small Facility" means an assisted living facility accommodating at least six and not more than 16 residents, excluding staff.

2.2.4.3 "Type 1, 2, and Residential Treatment/Support Large Facility" means an assisted living facility accommodating more than sixteen residents, excluding staff.

2.3 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his duly authorized deputies, or the local fire enforcement authority.

2.4 "Board" means Utah Fire Prevention Board.

2.5 "IBC" means International Building Code.

2.6 "ICC" means International Code Council, Inc.

2.7 "IFC" means International Fire Code.

2.8 "Licensing Authority" means the Utah Department of

Health or the Utah Department of Human Services.

2.9 "Semi-independent" means a person who is:

2.9.1 physically disabled but able to direct his or her own care; or

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

2.10 "SFM" means State Fire Marshal.

**R710-3-3. Amendments and Additions.**

3.1 General Requirements

3.1.1 All facilities shall be inspected annually and obtain a certificate of fire clearance signed by the AHJ.

3.1.2 All facility administrators shall develop emergency plans and preparedness as required in IFC, Chapter 4.

3.1.3 IFC, Chapter 9, Sections 907.3.1.2 and 907.3.1.8 is deleted.

3.1.4 IFC, Chapter 9, Section 903.2.7 is amended to add the following: Exception: Group R-4 fire areas not more than 4500 gross square feet and not containing more than 16 residents, provided the building is equipped throughout with an approved fire alarm system that is interconnected and receives its primary power from the building wiring and a commercial power system. This Exception does not apply to Type II Limited Capacity Assisted Living Facilities.

3.2 Type I Assisted Living Facilities

3.2.1 Type I Limited Capacity Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-3, and maintained in accordance with the IBC and IFC.

3.2.2 Type I Limited Capacity Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

3.2.3 Residents in Type I Limited Capacity Assisted Living Facilities shall be housed on the first story only, unless an approved outside exit leading to the ground level is provided from any upper or lower level. Split entry/split level type homes in which stairs to the lower and upper level are equal or nearly equal, may have residents housed on both levels when approved by the AHJ.

3.2.4 In Type I Limited Capacity Assisted Living Facilities, resident rooms on the ground level, shall have escape or rescue windows as required in IFC, Chapter 10, Section 1025.

3.2.5 In Type I Limited Capacity Assisted Living Facilities an approved independent smoke detector shall be installed and maintained by location as required in IFC, Chapter 9, Section 907.2.10.1.2.

3.2.6 Type I Small Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-4, and maintained in accordance with the IBC and IFC.

3.2.7 Type I Small Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

3.2.8 Type I Large Assisted Living Facilities shall be constructed in accordance with IBC, Institutional Group I-1, and maintained in accordance with the IBC and IFC.

3.2.8.1 An automatic fire sprinkler system shall be provided throughout buildings classified as Group I. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

3.2.9 In a Type I Assisted Living Facility, non-ambulatory persons are permitted after receiving approval for a variance from the Utah Department of Health as allowed in Utah Administrative Code, R432-2-18.

3.3 Type II Assisted Living Facilities

3.3.1 Type II Limited Capacity Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-4, and maintained in accordance with the IBC and IFC.

3.3.2 Type II Limited Capacity Assisted Living Facilities shall have an approved automatic fire extinguishing system installed in compliance with the IBC and IFC, or provide a staff to a resident ratio of one to one on a 24 hour basis.

3.3.3 Type II Small Assisted Living Facilities shall be constructed in accordance with IBC, Institutional Group I-1, and maintained in accordance with the IBC and IFC.

3.3.3.1 An automatic fire sprinkler system shall be provided throughout buildings classified as Group I. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

3.3.4 Type II Small Assisted Living Facilities shall have a minimum corridor width of six feet.

3.3.4.1 Type II Small Assisted Living Facilities licensed before November 16, 2004, shall have a minimum corridor width of six feet or a path of egress that is acceptable to the AHJ.

3.3.5 Type II Large Assisted Living Facilities shall be constructed in accordance with IBC, Institutional Group I-2, and maintained in accordance with the IBC and IFC.

3.3.5.1 An automatic fire sprinkler system shall be provided throughout buildings classified as Group I. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

3.3.6 In Type II Assisted Living Facilities, where the clinical needs of the patients require specialized security, approved access controlled egress doors may be installed when all of the following are met:

3.3.6.1 The controlled egress doors shall unlock upon activation of the automatic fire sprinkler system or the automatic fire detection system.

3.3.6.2 The facility staff can unlock the controlled egress doors by either sensor or keypad.

3.3.6.3 The controlled egress doors shall unlock upon loss of power.

3.3.6.4 The secure area or unit with controlled egress doors shall be located at the level of exit discharge in Type V construction.

3.3.7 In Type II Assisted Living Facilities, where the clinical needs of the patients require approved, listed delayed egress locks, they shall be installed on doors as allowed in IBC, Section 1008.1.8.6. Section 1008.1.8.6(3) is deleted. The secure area or unit with delayed egress locks shall be located at the level of exit discharge in Type V construction.

3.3.8 In a Type II Assisted Living Facility, non-ambulatory persons are permitted after receiving approval for a variance from the Utah Department of Health as allowed in Utah Administrative Code, R432-2-18.

3.4 Residential Treatment/Support Assisted Living Facilities

3.4.1 Residential Treatment/Support Limited Capacity Assisted Living Facility shall be constructed in accordance with IBC, Residential Group R-3, and maintained in accordance with the IBC and IFC.

3.4.2 Residential Treatment/Support Limited Capacity Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

3.4.3 Residents in Residential Treatment/Support Limited Capacity Assisted Living Facilities shall be housed on the first story only, unless an approved outside exit leading to the ground level is provided from any upper or lower level. Split entry/split level type homes in which stairs to the lower and upper level are equal or nearly equal, may have residents housed on both levels when approved by the AHJ.

3.4.4 In Residential Treatment/Support Limited Capacity Assisted Living Facilities, resident rooms on the ground level, shall have escape or rescue windows as required in IBC, Chapter 10, Section 1026.

3.4.5 In Residential Treatment/Support Limited Capacity Assisted Living Facilities an approved independent smoke detector shall be installed and maintained by location as required in IFC, Chapter 9, Section 907.2.10.1.2.

3.4.6 Residential Treatment/Support Small Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-4, and maintained in accordance with the IBC and IFC.

3.4.7 Residential Treatment/Support Small Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

3.4.8 Residential Treatment/Support Large Assisted Living Facilities shall be constructed in accordance with IBC, Institutional Group I-1, and maintained in accordance with the IBC and IFC.

3.4.8.1 An automatic fire sprinkler system shall be provided throughout buildings classified as Group I. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

3.4.9 In a Residential Treatment/Support Assisted Living Facility, non-ambulatory persons are permitted after meeting the requirements listed in Utah Administrative Code, R501-2, and receiving approval from the Office of Licensing, Utah Department of Human Services.

#### **R710-3-4. Repeal of Conflicting Board Actions.**

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

#### **R710-3-5. Validity.**

The Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or the codes adopted, be declared invalid, it is the intent of the Board that it would have passed all other portions of this action, independent of the elimination of any portions as may be declared invalid.

#### **R710-3-6. Conflicts.**

In the event where separate requirements pertain to the same situation in the adopted codes, the more restrictive requirement shall govern, as determined by the AHJ.

#### **R710-3-7. Adjudicative Proceedings.**

7.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

7.2 A person may request a hearing on a decision made by the AHJ by filing an appeal to the Board within 20 days after receiving final decision from the AHJ.

7.3 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

7.4 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

7.5 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

7.6 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

7.7 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

**KEY: assisted living facilities**

**January 9, 2007**

**53-7-204**

**Notice of Continuation June 4, 2007**

**R710. Public Safety, Fire Marshal.****R710-4. Buildings Under the Jurisdiction of the State Fire Prevention Board.****R710-4-1. Adoption of Fire Codes.**

Pursuant to Title 53, Chapter 7, Section 204, of the Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules for the prevention of fire and for the protection of life and property against fire and panic in any publicly owned building, including all public and private schools, colleges, and university buildings, and in any building or structure used or intended for use, as an asylum, hospital, mental hospital, sanitarium, home for the aged, assisted living facility, children's home or day care center, or any similar institutional type occupancy of any capacity; and in any place of assemblage where fifty (50) or more persons may gather together in a building, structure, tent, or room, for the purpose of amusement, entertainment, instruction, or education. The requirements listed in this rule text are in addition to the requirements listed in R710-9, Rules Pursuant to the Utah Fire Prevention Law.

There is further adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 101, Life Safety Code (LSC), 2006 edition, except as amended by provisions listed in R710-4-3, et seq. The following chapters from NFPA, Standard 101 are the only chapters adopted: Chapter 18 - New Health Care Occupancies; Chapter 19 - Existing Health Care Occupancies; Chapter 20 - New Ambulatory Health Care Occupancies; Chapter 21 - Existing Ambulatory Health Care Occupancies; Chapter 22 - New Detention and Correctional Occupancies; Chapter 23 - Existing Detention and Correctional Occupancies; and other sections referenced within and pertaining to these chapters only. Wherever there is a section, figure or table in NFPA 101 that references "NFPA 5000 - Building Construction and Safety Code", that reference shall be replaced with the "International Building Code".

1.2 International Building Code (IBC), 2006 edition, as published by the International Code Council, Inc. (ICC), and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.

1.3 International Mechanical Code (IMC), 2006 edition, as published by the International Code Council, Inc., and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.

1.4 International Fuel Gas Code (IFGC), 2006 edition, as published by the International Code Council, and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.

1.5 International Plumbing Code (IPC), 2006 edition, as published by the International Code Council, Inc., and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.

1.6 Copies of the above codes are on file in the Office of Administrative Rules and the State Fire Marshal.

**R710-4-2. Definitions.**

2.1 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his authorized deputies, or the local fire enforcement authority.

2.2 "Board" means Utah Fire Prevention Board.

2.3 "Bureau of Fire Prevention or Fire Prevention Bureau" means the AHJ.

2.4 "Fire Chief or Chief of the Department" means the AHJ.

2.5 "Fire Department" means the AHJ.

2.6 "Fire Marshal" means the AHJ.

2.7 "Fire Officer" means the State Fire Marshal, the state fire marshal's deputies, the fire chief or fire marshal of any county, city, or town fire department, the fire officer of any fire district or special service district organized for fire protection purposes is the AHJ.

2.8 "IBC" means International Building Code.

2.9 "ICC" means International Code Council, Inc.

2.10 "IFC" means International Fire Code.

2.11 "IFGC" means International Fuel Gas Code.

2.12 "IMC" means International Mechanical Code.

2.13 "IPC" means International Plumbing Code.

2.14 "LSC" means Life Safety Code.

2.15 "NEC" means National Electric Code.

2.16 "NFPA" means National Fire Protection Association.

2.17 "SFM" means State Fire Marshal.

2.18 "UCA" means Utah State Code Annotated 1953 as amended.

**R710-4-3. Amendments and Additions.****3.1 Fire Drills**

3.1.1 IFC, Chapter 4, Section 405.2, Table 405.2, is amended to add the following footnotes:

e. Secondary schools in Group E occupancies shall have a fire drill conducted at least every two months, to a total of four fire drills during the nine-month school year. The first fire drill shall be conducted within 10 days of the beginning of classes.

f. A-3 occupancies in academic buildings of institutions of higher learning are required to have one fire drill per year, provided the following conditions are met:

1. The building has a fire alarm system in accordance with Section 907.2.

2. The rooms classified as assembly, shall have fire safety floor plans as required in Section 404.3.2(4) posted.

3. The building is not classified a high-rise building.

4. The building does not contain hazardous materials over the allowable quantities by code.

**3.2 Door Closures**

3.2.1 IFC, Chapter 7, Section 703.2. Add the following: Exception: In Group E Occupancies, where the corridor serves an occupant load greater than 30 and the building does not have an automatic fire sprinkler system installed, the door closures may be of the friction hold-open type on classroom doors with a rating of 20 minutes or less only.

**3.3 Fire Protection Systems**

3.3.1 IFC, Chapter 9, Section 903.2.7 is amended to add the following: Exception: Group R-4 fire areas not more than 4500 gross square feet and not containing more than 16 residents, provided the building is equipped throughout with an approved fire alarm system that is interconnected and receives its primary power from the building wiring and a commercial power system.

**3.3.2 Water Supply Analysis**

3.3.2.1 For proposed construction in both sprinklered and unsprinklered occupancies, the owner or architect shall provide an engineer's water supply analysis evaluating the available water supply.

3.3.2.2 The owner or architect shall provide the water supply analysis during the preliminary design phase of the proposed construction.

3.3.2.3 The water analysis shall be representative of the supply that may be available at the time of a fire as required in NFPA, Standard 13, Annex A.15.2.1.

**3.3.3 Fire Alarm Systems****3.3.3.1 Required Installations**

3.3.3.1.1 All state-owned buildings, college and university buildings, other than institutional, with an occupant load of 300 or more, all schools with an occupant load of 50 or more, shall have an approved fire alarm system with the following features:

3.3.3.1.1.1 Automatic detection devices that detect smoke shall be installed throughout all corridors and spaces open to the corridor at the maximum prescribed spacing of thirty feet on center and no more than fifteen feet from the walls or smoke detectors shall be installed as required in NFPA, Standard 72, Section 5.3.

3.3.3.1.1.2 Where structures are not protected or partially protected with an automatic fire sprinkler system, approved automatic detectors shall be installed in accordance with the complete coverage requirements of NFPA, Standard 72.

3.3.3.1.1.3 Manual fire alarm boxes shall be provided as required. In public and private elementary and secondary schools, manual fire alarm boxes shall be provided in the boiler room, kitchen, and main administrative office of each building, and any other areas as determined by the AHJ.

#### 3.3.3.2 Main Panel

3.3.3.2.1 An approved key plan drawing and operating instructions shall be posted at the main fire alarm panel which displays the location of all alarm zones and if applicable, device addresses.

3.3.3.2.2 The main panel shall be located in a normally attended area such as the main office or lobby. Location of the Main Panel other than as stated above, shall require the review and authorization of the SFM. Where location as required above is not possible, an electronically supervised remote annunciator from the main panel shall be located in a supervised area of the building. The remote annunciator shall visually indicate system power status, alarms for each zone, and give both a visual and audible indication of trouble conditions in the system. All indicators on both the main panel and remote annunciator shall be adequately labeled.

#### 3.3.3.3 System Wiring, Class and Style

3.3.3.3.1 Fire alarm system wiring shall be designated and installed as follows:

3.3.3.3.1.1 The initiating device circuits shall be designated and installed Class A as defined in NFPA, Standard 72.

3.3.3.3.1.2 The notification appliance circuits shall be designated and installed Class A as defined in NFPA, Standard 72.

3.3.3.3.1.3 Signaling line circuits shall be designated and installed Style 6 or 7 as defined in NFPA, Standard 72.

#### 3.3.3.4 Fan Shut Down

3.3.3.4.1 Fan shut down shall be as required in IMC, Chapter 6, Section 606.

3.3.3.4.2 Duct detectors required by the IMC, shall be interconnected, and compatible with the fire alarm system.

#### 3.3.3.5 Nuisance Alarms

3.3.3.5.1 IFC, Chapter 9, Section 907.20.5 is amended to add the following sentences: Increases in nuisance alarms shall require the fire alarm system to be tested for sensitivity. Fire alarm systems that continue after sensitivity testing with unwarranted nuisance alarms shall be replaced as directed by the AHJ.

#### 3.4 Time Out and Seclusion Rooms

3.4.1 Time Out and Seclusion Rooms are allowed in occupancies protected by an automatic fire alarm system.

3.4.2 A vision panel shall be provided in the room door for observation purposes.

3.4.3 Time Out and Seclusion Room doors may not be fitted with a lock unless it is a self-releasing latch that releases automatically if not physically held in the locked position by an individual on the outside of the door.

3.4.4 Time Out and Seclusion Rooms shall be located where a responsible adult can maintain visual monitoring of the person and room.

inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

#### **R710-4-5. Validity.**

The Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared, for any reason, to be invalid, it is the intent of the Board that it would have passed all other portions of this Board action, independent of the elimination here from of any such portion as may be declared invalid.

#### **R710-4-6. Conflicts.**

In the event where separate requirements pertain to the same situation in the same code, or between different codes as adopted, the more restrictive requirement shall govern, as determined by the AHJ, or his authorized representative.

#### **R710-4-7. Adjudicative Proceedings.**

7.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

7.2 A person may request a hearing on a decision made by the AHJ, by filing an appeal to the Board within 20 days after receiving final decision from the AHJ.

7.3 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

7.4 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

7.5 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

7.6 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

7.7 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

#### **KEY: fire prevention, public buildings**

**May 8, 2007**

**Notice of Continuation June 8, 2007**

**53-7-204**

#### **R710-4-4. Repeal of Conflicting Board Actions.**

All former Board actions, or parts thereof, conflicting or

**R710. Public Safety, Fire Marshal.****R710-9. Rules Pursuant to the Utah Fire Prevention Law.****R710-9-1. Title, Authority, and Adoption of Codes.**

1.1 These rules shall be known as the "Rules Pursuant to the Utah Fire Prevention Law", and may be cited as such, and will be hereafter referred to as "these rules".

1.2 These rules are promulgated in accordance with Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, as amended.

1.3 These rules are adopted by the Utah Fire Prevention Board to provide minimum rules for safeguarding life and property from the hazards of fire and explosion, for board meeting conduct, procedures to amend incorporated references, establishing amendments and additions to the adopted codes, establishing board subcommittees, enforcement of the rules of the State Fire Marshal, and deputizing Special Deputy State Fire Marshals.

1.4 There is adopted as part of these rules the following code which is incorporated by reference:

1.4.1 International Fire Code (IFC), 2006 edition, excluding appendices, as promulgated by the International Code Council, Inc., except as amended by provisions listed in R710-9-6, et seq.

1.5 There is further adopted as part of these rules the following codes which are also incorporated by reference and supercede the adopted standards listed in the International Fire Code, 2006 edition, Chapter 45, Referenced Standards, as follows:

1.5.1 National Fire Protection Association (NFPA), NFPA 10, Standard for Portable Fire Extinguishers, 2007 edition, except as amended by provisions listed in R710-9-6, et seq.

1.5.2 National Fire Protection Association (NFPA), NFPA 13, Standard for Installation of Sprinkler Systems, 2007 edition, except as amended by provisions listed in R710-9-6, et seq.

1.5.3 National Fire Protection Association (NFPA), NFPA 13D, Standard for the Installation of Sprinkler Systems in One and Two Family Dwellings and Manufactured Homes, 2007 edition, except as amended by provisions listed in R710-9-6, et seq.

1.5.4 National Fire Protection Association (NFPA), NFPA 13R, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and including Four Stories in Height, 2007 edition, except as amended by provisions listed in R710-9-6, et seq.

1.5.5 National Fire Protection Association (NFPA), NFPA 70, National Electric Code, 2005 edition, as adopted by the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code R156-56-701. Wherever there is a section, figure or table in the International Fire Code (IFC) that references "ICC Electrical Code", that reference shall be replaced with "National Electric Code".

1.5.6 National Fire Protection Association (NFPA), NFPA 72, National Fire Alarm Code, 2007 edition, except as amended in provisions listed in R710-9-6, et seq.

1.5.7 National Fire Protection Association (NFPA), NFPA 101, Life Safety Code, 2006 edition, except as amended in provisions listed in R710-9-6, et seq. Wherever there is a section, figure or table in NFPA 101 that references "NFPA 5000 - Building Construction and Safety Code", that reference shall be replaced with the "International Building Code".

1.5.8 National Fire Protection Association (NFPA), NFPA 160, Standard for Flame Effects Before an Audience, 2006 edition, except as amended by provisions listed in R710-9-6, et seq.

1.6 National Fire Protection Association (NFPA), NFPA 96, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 2004 edition, except as amended by provisions listed in R710-9-6, et seq.

**R710-9-2. Definitions.**

2.1 "Appreciable Depth" means a depth greater than 1/4 inch.

2.2 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his authorized deputies, or the local fire enforcement authority.

2.3 "Board" means Utah Fire Prevention Board.

2.4 "Division" means State Fire Marshal.

2.5 "ICC" means International Code Council, Inc.

2.6 "IFC" means International Fire Code.

2.7 "Institutional occupancy" means asylums, mental hospitals, hospitals, sanitariums, homes for the aged, residential health care facilities, children's homes or institutions, or any similar institutional occupancy.

2.8 "LFA" means Local Fire Authority.

2.9 "NFPA" means National Fire Protection Association.

2.10 "Place of assembly" means where 50 or more people gather together in a building, structure, tent, or room for the purpose of amusement, entertainment, instruction, or education.

2.11 "SFM" means State Fire Marshal or authorized deputy.

2.12 "Sub-Committee" means Fire Prevention Board Budget Sub-Committee or Amendment Sub-Committee.

2.13 "UCA" means Utah Code Annotated, 1953.

**R710-9-3. Conduct of Board Members and Board Meetings.**

3.1 Board meetings shall be presided over and conducted by the chairman and in his absence the vice chairman or the chairman's designee.

3.2 A quorum shall be required to approve any action of the Board.

3.3 The chairman of the Board and Board members shall be entitled to vote on all issues considered by the Board. A Board member who declares a conflict of interest or where a conflict of interest has been determined, shall not vote on that particular issue.

3.4 Meetings of the Board shall be conducted in accordance with an agenda, which shall be submitted to the members by the division, not less than 21 days before the regularly scheduled Board meetings.

3.5 Public notice of Board meetings shall be made by the Division as prescribed in UCA Section 52-4-6.

3.6 The division shall provide the Board with a secretary who shall prepare minutes and shall perform all secretarial duties necessary for the Board to fulfill its responsibility. The minutes of Board meetings shall be completed and sent to Board members at least 14 days prior to the scheduled Board meeting.

3.7 A Board members standing on the Board shall come under review after two unexcused absences in one year from regularly scheduled board meetings. The Board members name shall be submitted to the governors office for status review.

**R710-9-4. Deputizing Persons to Act as Special Deputy State Fire Marshals.**

4.1 Special deputy state fire marshals may be appointed by the SFM to positions of expertise within the regular scope of the Fire Marshal's Office.

4.2 Pursuant to Section 53-7-101 et seq., special deputy state fire marshals may also be appointed to assist the Fire Marshal's Office in establishing and maintaining minimum fire prevention standards in those occupancy classifications listed in the International Fire Code.

4.3 Special deputy state fire marshals shall be appointed after review by the State Fire Marshal in regard to their qualifications and the overall benefit to the Office of the State Fire Marshal.

4.4 Special deputy state fire marshals shall be appointed by completing an oath and shall be appointed for a specific period of time.

4.5 Special deputy state fire marshals shall have a picture identification card and shall carry that card when performing their assigned duties.

**R710-9-5. Procedures to Amend the International Fire Code.**

5.1 All requests for amendments to the IFC shall be submitted to the division on forms created by the division, for presentation to the Board at the next regularly scheduled Board meeting.

5.2 Requests for amendments received by the division less than 21 days prior to any regularly scheduled meeting of the Board may be delayed in presentation until the next regularly scheduled Board meeting.

5.3 Upon presentation of a proposed amendment, the Board shall do one of the following:

5.3.1 accept the proposed amendment as submitted or as modified by the Board;

5.3.2 reject the proposed amendment;

5.3.3 submit the proposed amendment to the Board Amendment Subcommittee for further study; or

5.3.4 return the proposed amendment to the requesting agency, accompanied by Board comments, allowing the requesting agency to resubmit the proposed amendment with modifications.

5.4 The Board Amendment Subcommittee shall report its recommendation to the Board at the next regularly scheduled Board meeting.

5.5 The Board shall make a final decision on the proposed amendment at the next Board meeting following the original submission.

5.6 The Board may reconsider any request for amendment, reverse or modify any previous action by majority vote.

5.7 When approved by the Board, the requesting agency shall provide to the division within 45 days, the completed ordinance.

5.8 The division shall maintain a list of amendments to the IFC that have been granted by the Board.

5.9 The division shall make available to any person or agency copies of the approved amendments upon request, and may charge a reasonable fee for multiple copies in accordance with the provisions of UCA, 63-2-203.

**R710-9-6. Amendments and Additions.**

The following amendments and additions are hereby adopted by the Board for application statewide:

6.1 International Fire Code - Administration

6.1.1 IFC, Chapter 1, Section 105.6.16 is amended to add the following section: 11. The owner of an underground tank that is out of service for longer than one year, shall receive a Temporary Closure Notice from the Department of Environmental Quality and a copy shall be given to the AHJ.

6.1.2 IFC, Chapter 1, Section 109.2 is amended as follows: On line three after the words "is in violation of this code," add the following "or other pertinent laws or ordinances".

6.2 International Fire Code - Definitions

6.2.1 IFC, Chapter 2, Section 202, Educational Group E, Day care is amended as follows: On line three delete the word "five" and replace it with the word "four".

6.2.2 IFC, Chapter 2, Section 202, Institutional Group I, Group I-1 is amended to add the following: On line ten add "Type 1" in front of the words "Assisted living facilities".

6.2.3 IFC, Chapter 2 Section 202, Institutional Group I, Group I-2 is amended as follows: On line four delete the word "five" and replace it with the word "three". On line eleven after the words "Detoxification facilities" delete the rest of the section, and add the following: "Ambulatory surgical centers with two or more operating rooms where care is less than 24 hours, outpatient medical care facilities for ambulatory patients

(accommodating more than five such patients in each tenant space) which may render the patient incapable of unassisted self-preservation, and Type 2 assisted living facilities. Type 2 assisted living facilities with five or fewer persons shall be classified as a Group R-4. Type 2 assisted living facilities with at least six and not more than 16 residents shall be classified as a Group I-1 facility.

6.2.4 IFC, Chapter 2, Section 202, Institutional Group I, Group I-4, day care facilities, Child care facility is amended as follows: On line three delete the word "five" and replace it with the word "four". Also on line two of the Exception delete the word "five" and replace it with the word "four".

6.2.5 IFC, Chapter 2, Section 202 General Definitions, Occupancy Classification, Residential Group R-1 is amended to add the following: Exception: Boarding houses accommodating 10 persons or less shall be classified as Residential Group R-3.

6.2.6 IFC, Chapter 2, Section 202 General Definitions, Occupancy Classification, Residential Group R-2 is amended to add the following: Exception: Boarding houses accommodating 10 persons or less shall be classified as Residential Group R-3.

6.3 International Fire Code - General Precautions Against Fire

6.3.1 IFC, Chapter 3, Section 304.1.2 is amended as follows: Delete the current line six and add the following in it's place: "the Utah Administrative Code, R652-122-200, Minimum Standards for Wildland Fire Ordinance."

6.3.2 IFC, Chapter 3, Section 311.1.1 is amended as follows: On line ten delete the words "International Property Maintenance Code and the" from this section.

6.3.3 IFC, Chapter 3, Section 311.5 is amended as follows: On line two delete the word "shall" and replace it with the word "may".

6.3.4 IFC, Chapter 3, Section 315.2.1 is amended to add the following: Exception: Where storage is not directly below the sprinkler heads, storage is allowed to be placed to the ceiling on wall mounted shelves that are protected by fire sprinkler heads in occupancies meeting classification as light or ordinary hazard.

6.4 International Fire Code - Emergency Planning and Preparedness

6.4.1 IFC, Chapter 4, Section 404.2(7) is amended as follows: After the word "buildings" add "to include sororities and fraternity houses".

6.5 International Fire Code - Building Services and Systems

6.5.1 IFC, Chapter 6, Section 607.3 is deleted and rewritten as follows: Firefighter service keys shall be kept in a "Supra - Stor-a-key" elevator key box or similar box with corresponding key system that is adjacent to the elevator for immediate use by the fire department. The key box shall contain one key for each elevator, one key for lobby control, and any other keys necessary for emergency service.

6.5.2 IFC, Chapter 6, Section 609.1 is amended to add the following: On line three after the word "Code" add the words "and NFPA 96".

6.6 International Fire Code - Fire Protection Systems

6.6.1 IFC, Chapter 9, Section 901.2 is amended to add the following: The code official has the authority to request record drawings ("as built") to verify any modifications to the previously approved construction documents.

6.6.2 IFC, Chapter 9, Section 902.1 Definitions, RECORD DRAWINGS is deleted and rewritten as follows: Drawings ("as built") that document all aspects of a fire protection system as installed.

6.6.3 IFC, Chapter 9, Section 901.6 is amended to add the following:

The owner or administrator of each building shall insure

the inspection and testing of water based fire protection systems as required in Rule R710-5, Automatic Fire Sprinkler System Inspecting and Testing.

6.6.4 IFC, Chapter 9, Section 903.2.1.2 is amended to add the following subsection: 4. An automatic fire sprinkler system shall be provided throughout Group A-2 occupancies where indoor pyrotechnics are used.

6.6.5 IFC, Chapter 9, Section 903.2.3(2) is deleted and rewritten as follows: Where a Group F-1 fire area is located more than three stories above the lowest level of fire department vehicle access; or

6.6.6 IFC, Chapter 9, Section 903.2.6(2) is deleted and rewritten as follows: Where a Group M fire area is located more than three stories above the lowest level of fire department vehicle access; or

6.6.7 IFC, Chapter 9, Section 903.2.7 Group R, is amended to add the following: Exception: Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) constructed in accordance with the International Residential Code for one- and two-family dwellings.

6.6.8 IFC, Chapter 9, Section 903.2.7 is amended to add the following: Exception: Group R-4 fire areas not more than 4500 gross square feet and not containing more than 16 residents, provided the building is equipped throughout with an approved fire alarm system that is interconnected and receives its primary power from the building wiring and a commercial power system.

6.6.9 IFC, Chapter 9, Section 903.2.8(2) is deleted and rewritten as follows: A Group S-1 fire area is located more than three stories above the lowest level of fire department vehicle access; or

6.6.10 IFC, Chapter 9, Section 903.2.9 is deleted and rewritten as follows: Group S-2. An automatic sprinkler system shall be provided throughout buildings classified as parking garages in accordance with Section 406.2 or where located beneath other groups.

6.6.10.1 Exception 1: Parking garages of less than 5,000 square feet (464m<sup>2</sup>) accessory to Group R-3 occupancies.

6.6.10.2 Exception 2: Open parking garages not located beneath other groups if one of the following conditions are met:

6.6.10.2.1 a. Access is provided for fire fighting operations to within 150 feet (45 720mm) of all portions of the parking garage as measured from the approved fire department vehicle access, or

6.6.10.2.2 b. Class I standpipes are installed throughout the parking garage.

6.6.11 IFC, Chapter 9, Section 903.2.9.1 is deleted and rewritten as follows: Commercial parking garages. An automatic sprinkler system shall be provided throughout buildings used for storage of commercial trucks or buses.

6.6.12 IFC, Chapter 9, Section 903.3.5 is amended by adding the following at the end of the section: The potable water supply to automatic fire sprinkler systems and standpipe systems shall be protected against backflow in accordance with the International Plumbing Code as amended in the Utah Administrative Code, R156-56-707, Utah Uniform Building Standard Act Rules.

6.6.13 IFC, Chapter 9, Section 903.6 is amended to add the following subsection: 903.6.2 Group A-2 occupancies. An automatic fire sprinkler system shall be provided throughout existing Group A-2 occupancies where indoor pyrotechnics are used.

6.6.14 IFC, Chapter 9, Section 904.11 is deleted and rewritten as follows: Commercial Cooking Systems. The automatic fire extinguishing system for commercial cooking systems shall be of a type recognized for protection of commercial cooking equipment and exhaust systems. Pre-engineered automatic extinguishing systems shall be tested in accordance with UL300 and listed and labeled for the intended

application. The system shall be installed in accordance with this code, its listing and the manufacturer's installation instructions. The Exception in Section 904.11 is not deleted and shall remain as currently written in the IFC.

6.6.15 IFC, Chapter 9, Sections 904.11.3 and 904.11.3.1 is deleted and rewritten as follows:

6.6.15.1 Existing automatic fire extinguishing systems used for commercial cooking that use dry chemical is prohibited and shall be removed from service.

6.6.15.2 Existing wet chemical fire extinguishing systems used for commercial cooking that are not UL300 listed and labeled are prohibited and shall be either removed or upgraded to a UL300 listed and labeled system.

6.6.16 IFC, Chapter 9, Section 904.11.4 is amended to add the following subsection: 904.11.4.2. Existing automatic fire sprinkler systems protecting commercial cooking equipment, hood, and exhaust systems that generate appreciable depth of cooking oils shall be replaced with a UL300 system that is listed and labeled for the intended application.

6.6.17 IFC, Chapter 9 Section 904.11.6.4 is amended to add the following: Automatic fire extinguishing systems located in occupancies where usage is limited and less than six consecutive months, may be serviced annually if the annual service is conducted immediately before the period of usage, and approval is received from the AHJ.

6.6.18 IFC, Chapter 9, Section 905.11 is deleted.

6.6.19 IFC, Chapter 9, Section 907.2.10.1.4 is created as follows: Carbon monoxide alarms. Carbon monoxide alarms shall be installed on each habitable level of a dwelling unit or sleeping unit in Groups R-2, R-3, R-4, and I-1 equipped with fuel burning appliances.

6.6.20 IFC, Chapter 9, Section 907.2.10.2 is amended as follows: On line two, line five, and line one of the Exception, the word "smoke" is deleted.

6.6.21 IFC, Chapter 9, Section 907.2.10.3 is amended as follows: On line two and line five, the word "smoke" is deleted. On line nine after the word "closed", add the following sentence: "Approved combination smoke and carbon monoxide detectors shall be permitted."

6.6.22 IFC Chapter 9, Section 907.2.10.4 is amended as follows: On line five after "NFPA 72" add "and NFPA 720, as applicable".

6.6.23 IFC, Chapter 9, Section 907.3 is deleted and rewritten as follows: An approved automatic fire detection system shall be installed in accordance with the provisions of this code and NFPA 72. Devices, combinations of devices, appliances and equipment shall be approved. The automatic fire detectors shall be smoke detectors, except an approved alternative type of detector shall be installed in spaces such as boiler rooms where, during normal operation, products of combustion are present in sufficient quantity to actuate a smoke detector.

6.6.24 IFC, Chapter 9, Sections 907.3.1, 907.3.1.1, 907.3.1.2, 907.3.1.3, 907.3.1.4, 907.3.1.5, 907.3.1.6, 907.3.1.7, and 907.3.1.8 are deleted.

6.6.25 IFC, Chapter 9, Section 907.3.2 is amended to add the following: On line three after the word "occupancies" add "and detached one- and two-family dwellings and multiple single-family dwellings (townhouses)".

6.6.26 IFC, Chapter 9, Section 907.3.2.3 is amended to add the following: On line one after the word "occupancies" add "and detached one- and two-family dwellings and multiple single-family dwellings (townhouses)".

6.6.27 IFC, Chapter 9, Section 907.20.5 is amended to add the following sentences: Increases in nuisance alarms shall require the fire alarm system to be tested for sensitivity. Fire alarm systems that continue after sensitivity testing with unwarranted nuisance alarms shall be replaced as directed by the AHJ.

#### 6.7 International Fire Code - Means of Egress

6.7.1 IFC, Chapter 10, Section 1008.1.8.3 is amended to add the following:

6.7.1.1 5. Doors in Group I-1 and I-2 occupancies, where the clinical needs of the patients require specialized security measures for their safety, approved access controlled egress may be installed when all the following are met:

6.7.1.1.1 5.1 The controlled egress doors shall unlock upon activation of the automatic fire sprinkler system or the automatic fire detection system.

6.7.1.1.2 5.2 The facility staff can unlock the controlled egress doors by either sensor or keypad.

6.7.1.1.3 5.3 The controlled egress doors shall unlock upon loss of power.

6.7.1.1.4 5.4 The secure area or unit with controlled egress doors shall be located at the level of exit discharge in Type V construction.

6.7.1.2 6. Doors in Group I-1 and I-2 occupancies, where the clinical needs of the patients require approved, listed delayed egress locks, they shall be installed on doors as allowed in IFC, Section 1008.1.8.6. The secure area or unit with delayed egress locks shall be located at the level of exit discharge in Type V construction.

6.7.2 IFC, Chapter 10, Section 1009.3 is amended as follows: On line five of Exception 4 delete "7.75" and replace it with "8". On line seven of Exception 4 delete "10" and replace it with "9".

6.7.3 IFC, Chapter 10, Section 1009.10, is amended to add the following exception: 6. In occupancies in Group R-3, as applicable in Section 101.2 and in occupancies in Group U, which are accessory to an occupancy in Group R-3, as applicable in Section 101.2, handrails shall be provided on at least one side of stairways consisting of four or more risers.

6.7.4 IFC, Chapter 10, Section 1012.3 is amended to add the following: Exception: Non-circular handrails serving an individual unit in a Group R-1, Group R-2 or Group R-3 occupancy with a perimeter greater than 6 1/4 inches (160mm) shall provide a graspable finger recess area on both sides of the profile. The finger recess shall begin within a distance of 3/4 inch (19mm) measured vertically from the tallest portion of the profile and achieve a depth of at least 5/16 inch (8mm) within 7/8 inch (22mm) below the widest portion of the profile. This required depth shall continue for at least 3/8 inch (10mm) to a level that is not less than 1 3/4 inches (45mm) below the tallest portion of the profile. The minimum width of the handrail above the recess shall be 1 1/4 inches (32mm) to a maximum of 2 3/4 inches (70mm). Edges shall have a minimum radius of 0.01 inch (0.25mm).

6.7.5 IFC, Chapter 10, Section 1013.2 is amended to add the following exception: 3. For occupancies in Group R-3 and within individual dwelling units in occupancies in Group R-2, as applicable in Section 101.2, guards shall form a protective barrier not less than 36 inches (914mm).

6.7.6 IFC, Chapter 10, Section 1015.2.2 is amended to add the following sentence at the end of the section: Additional exits or exit access doorways shall be arranged a reasonable distance apart so that if one becomes blocked, the others will be available.

6.7.7 IFC, Chapter 10, Section 1028.2 is amended to add the following: On line six after the word "fire" add the words "and building".

#### 6.8 International Fire Code - Explosives and Fireworks

6.8.1 IFC, Chapter 33, Section 3301.1.3, Exception 4 is amended to add the following sentence: The use of fireworks for display and retail sales is allowed as set forth in UCA 53-7-220 and UCA 11-3-1.

#### 6.9 International Fire Code - Flammable and Combustible Liquids

6.9.1 IFC, Chapter 34, Section 3401.4 is amended to add

the following at the end of the section: The owner of an underground tank that is out of service for longer than one year, shall receive a Temporary Closure Notice from the Department of Environmental Quality and a copy shall be given to the AHJ.

6.9.2 IFC, Chapter 34, Section 3406.1 is amended to add the following special operation: 8. Sites approved by the AHJ.

6.9.3 IFC, Chapter 34, Section 3406.2 is amended to add the following: On line five after the words "borrow pits" add the words "and sites approved by the AHJ".

#### 6.10 International Fire Code - Liquefied Petroleum Gas

6.10.1 IFC, Chapter 38, Section 3809.12, is amended as follows: In Table 3809.12, Doorway or opening to a building with two or more means of egress, with regard to quantities 720 or less and 721 - 2,500, the currently stated "5" is deleted and replaced with "10".

6.10.2 IFC, Chapter 38, Section 3809.14 is amended as follows: Delete 20 from line three and replace it with 10.

#### 6.11 National Fire Protection Association

6.11.1 NFPA 72, Chapter 2, Section 2.2 is amended to add the following NFPA standard: NFPA 20, Standard for the Installation of Stationary Pumps for Fire Protection, 2007 edition.

6.11.2 NFPA 72, Chapter 4, Section 4.3.2.2(2) is deleted and rewritten as follows: National Institute of Certification in Engineering Technologies (NICET) fire alarm level II certified personnel.

6.11.3 NFPA 72, Chapter 4, Section 4.3.3(2) is deleted and rewritten as follows: National Institute of Certification in Engineering Technologies (NICET) fire alarm level II certified personnel.

6.11.4 NFPA 72, Chapter 4, Section 4.4.3.7.2 is amended to add the following sentence: When approved by the AHJ, the audible notification appliances may be deactivated during the investigation mode to prevent unauthorized reentry into the building.

6.11.5 NFPA 72, Chapter 4, Section 4.4.5 is deleted and rewritten as follows: Automatic smoke detection shall be provided at the location of each fire alarm control unit(s), notification appliance circuit power extenders, and supervising station transmitting equipment to provide notification of fire at the location.

6.11.5.1 NFPA 72, Chapter 4, Section 4.4.5, Exception No. 1: When ambient conditions prohibit installation of automatic smoke detection, automatic heat detection shall be permitted.

6.11.6 NFPA 72, Chapter 6, Section 6.8.5.9 is amended to add the following section: 6.8.5.9.3 Automatic fire pumps shall be supervised in accordance with NFPA 20, Standard for the Installation of Stationary Pumps for Fire Protection, and the AHJ.

6.11.7 NFPA 72, Chapter 7, Section 7.4.1.2 is amended as follows: On line three delete "110dBA" and replace it with "120dBA".

6.11.8 NFPA 72, Chapter 8, Section 8.3.4.7 is amended as follows: On line two, after the word "notified" insert the words "without delay".

6.11.9 NFPA 72, Chapter 10, Section 10.2.2.5.1 is deleted and rewritten as follows: Service personnel shall be qualified and experienced in the inspection, testing and maintenance of fire alarm systems. Qualified personnel shall meet the certification requirements stated in Utah Administrative Code, R710-11-3, Fire Alarm System Inspecting and Testing.

#### **R710-9-7. Fire Advisory and Code Analysis Committee.**

7.1 There is created by the Board a Fire Advisory and Code Analysis Committee whose duties are to provide direction to the Board in the matters of fire prevention and building codes.

7.2 The committee shall serve in an advisory position to

the Board, members shall be appointed by the Board, shall serve for a term of three years, and shall consist of the following members:

7.2.1 A representative from the State Fire Marshal's Office.

7.2.2 The Code Committee Chairman of the Fire Marshal's Association of Utah.

7.2.3 A fire marshal or fire inspector from a local fire department or fire district.

7.2.4 A representative from the Department of Health.

7.2.5 The Chief Elevator Inspector from the Utah Labor Commission.

7.2.6 A representative from the Department of Human Services.

7.3 This committee shall join together with the Uniform Building Code Commission Fire Protection Advisory Committee to form the Unified Code Analysis Council.

7.4 The Council shall meet as directed by the Board or as directed by the Building Codes Commission or as needed to review fire prevention and building code issues that require definitive and specific analysis.

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

7.6 The chair or vice chair of the council shall report to the Board or Building Codes Commission recommendations of the Council with regard to the review of fire and building codes.

#### **R710-9-8. Enforcement of the Rules of the State Fire Marshal.**

8.1 Fire and life safety plan reviews of new construction, additions, and remodels of state owned facilities shall be conducted by the SFM, or his authorized deputies. State owned facilities shall be inspected by the SFM, or his authorized deputies.

8.2 Fire and life safety plan reviews of new construction, additions, and remodels of public and private schools shall be completed by the SFM, or his authorized deputies, and the LFA.

8.3 Fire and life safety plan reviews of new construction, additions, and remodels of publicly owned buildings, privately owned colleges and universities, and institutional occupancies, with the exception of state owned buildings, shall be completed by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall complete the plan review.

8.4 The following listed occupancies shall be inspected by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall inspect.

8.4.1 Publicly owned buildings other than state owned buildings as referenced in 9.1 of this rule.

8.4.2 Public and private schools.

8.4.3 Privately owned colleges and universities.

8.4.4 Institutional occupancies as defined in Section 9-2 of this rule.

8.4.5 Places of assembly as defined in Section 9-2 of this rule.

8.5 The Board shall require prior to approval of a grant the following:

8.5.1 That the applying fire agency be actively participating in the statewide fire statistics reporting program.

8.5.2 The Board shall also require that the applying fire agency be actively working towards structural or wildland firefighter certification through the Utah Fire Service Certification System.

#### **R710-9-9. Fire Prevention Board Budget and Amendment Sub-Committees.**

9.1 There is created two Fire Prevention Board Sub-Committees known as the Budget Subcommittee and the

Amendment Subcommittee. The subcommittees membership shall be appointed from members of the Board.

9.2 Membership on the Sub-Committee shall be by appointment of the Board Chair or as volunteered by Board members. Membership on the Sub-Committee shall be limited to four Board members.

9.3 The Sub-Committee shall meet as necessary and shall vote and appoint a chair to represent the Sub-Committee at regularly scheduled Board meetings.

#### **R710-9-10. Repeal of Conflicting Board Actions.**

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

#### **R710-9-11. Validity.**

The Utah Fire Prevention Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared invalid, it is the intent of the Utah Fire Prevention Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

#### **R710-9-12. Adjudicative Proceedings.**

12.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

12.2 If a city, county, or fire protection district refuses to establish a method of appeal regarding a portion of the IFC, the appealing party may petition the Board to act as the board of appeals.

12.3 A person may request a hearing on a decision made by the SFM, his authorized deputies, or the LFA, by filing an appeal to the Board within 20 days after receiving final decision.

12.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM, his authorized deputies, or the LFA, to enforce the Utah Fire Prevention and Safety Act and these rules, shall commence in accordance with UCA, Section 63-46b-3.

12.5 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

12.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

12.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

12.8 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

**KEY: fire prevention, law**

**May 8, 2007**

**Notice of Continuation June 8, 2007**

**53-7-204**

**R746. Public Service Commission, Administration.**

**R746-400. Public Utility Reports.**

**R746-400-1. Scope and Applicability.**

This rule is promulgated by Section 54-3-21 and applies to public utilities and telecommunications corporations operating in the state of Utah. This rule shall not limit the ability of the Commission, or the Division, to otherwise obtain information from these entities, as provided by other rules or statutes.

**R746-400-2. Division Authority.**

The Division shall ensure compliance with this rule, prepare and distribute report forms, collect and store the completed reports and information provided by reporting entities subject to in this rule.

**R746-400-3. General Definitions.**

For purposes of this rule, the terms listed below shall bear the following meanings:

A. "Reporting entity" means a public utility as defined in Section 54-2-1, and a telecommunications corporation as defined in Section 54-8b-2.

B. "Commission" means the Public Service Commission of Utah.

C. "Division" means the Division of Public Utilities within the Department of Commerce of the State of Utah.

**R746-400-4. Reports to the Commission.**

A. Report Form Purposes -- The Division shall design report forms that will provide information from reporting entities useful to the Commission and the Division in performing their statutory duties and to administer Commission supervised or directed programs. These forms shall include, but are not limited to, reports used to provide information on a reporting entity's monthly and annual operations, reports concerning an entity's gross revenues used to calculate the public utilities' regulation fee under Section 54-5-2, reports and supplements used to prepare the Commission's annual report to the Governor and Legislature required by Subsection 54-8b-2.5, reports used in the administration the State of Utah Universal Public Telecommunications Service Support Fund, lifeline programs, and telephone relay program.

**B. Acceptable Report Forms --**

1. The Division shall make report forms available to all reporting entities. Applicable report forms for any report shall be available at least 60 days prior to the date the report is due to be completed by a reporting entity. The Division shall design report forms that clearly state the due date for the report and shall provide, as needed, directions, definitions and other information that will assist a reporting entity in completing a report form.

2. The Division may accept a reporting entity's request that an alternative report form or document, used to furnish information to federal government agencies, other agencies of this or other states, or for the entity's other needs or uses, be used in lieu of all or part of a Commission report form. The Division may require that the alternative report form or document be supplemented with other or additional information in order to obtain the same information as sought in the Utah report form.

C. Report Certification and Corrections -- Each report shall be signed by a responsible officer of the public utility certifying that the report is true and correct. If a reporting entity learns that any portion of a filed report is incorrect, it shall file corrected pages as soon as possible with an explanation of the corrections. The utility shall file an electronic copy of the report, in addition to a paper copy, if the report is prepared electronically.

**R746-400-5. Copies of Reports to Federal Government**

**Agencies.**

Upon request of the Division, each reporting entity shall provide the Division with a copy of any report filed with the following federal government agencies: Federal Energy Regulatory Commission, Federal Communications Commission, Rural Utility Services, Securities and Exchange Commission, and Surface Transportation Board. The reporting entity shall provide to the Division the requested reports within 10 days of receiving the Division's request.

**R746-400-6. Copies of Reports to Shareholders and Audited Financial Reports.**

A. Annual Report -- Each reporting entity shall provide the Division with a copy of any annual report sent to shareholders within 10 days of its issuance.

B. Audited Financial Statements -- Upon request of the Division, a reporting entity shall provide the Division with a copy of any audited financial statements, including the opinion statements of the auditor, if the statements are prepared for the reporting entity.

**R746-400-7. Confidentiality.**

A. Public Information -- Reports filed pursuant to this rule shall be considered public information unless otherwise provided.

B. Protected Documents -- If a reporting entity desires that any report, copy or document, or any portion thereof, required by this rule, be treated in any manner other than as public information, it shall comply with the provisions of the Government Records Access and Management Act, Section 63-2-101 et seq., and provide a written claim of confidentiality and the reasons supporting that claim. If the records, or portions thereof, are classified as protected under GRAMA, the Division shall maintain the confidential reports in a separate file and disclosure to anyone outside of the Commission, its staff, the Division, and the staff of the Committee of Consumer Services, shall only be as allowed by GRAMA.

**KEY: public utilities, reports, rules and procedures**

<b>October 30, 2002</b>	<b>54-2-1</b>
<b>Notice of Continuation June 19, 2007</b>	<b>54-8b-2</b>
	<b>54-5-2</b>
	<b>63-2-101</b>

**R767. Regents (Board of), College of Eastern Utah.****R767-1. Government Records Access and Management Act.****R767-1-1. Purpose.**

The purpose of this rule is to provide procedures for access to the records of the College of Eastern Utah.

**R767-1-2. Authority.**

The authority for this rule is provided by Section 63-2-204 and by Section 63-2-904 of the Government Records Access and Management Act (GRAMA), effective July 1, 1992.

**R767-1-3. Allocation of Responsibilities Within Entity.**

College of Eastern Utah (including all campuses, centers, and locations) shall be considered a single governmental entity and the President of College of Eastern Utah shall be considered the head.

**R767-1-4. Chief Administrative Officer.**

(1) The President of College of Eastern Utah (CEU), is the Chief Administrative Officer at CEU responsible for:

(a) Overall administration of records management programs in satisfying requirements for GRAMA.

(b) Exercise of decision-making authority when a request for access to certain private, controlled or protected records is deemed to outweigh the institution's interests in restricting such access.

(c) Adjudicating appeals by requesters who have been denied access.

(d) Adjudicating appeals by the subject of a record who is requesting an amendment to his/her record.

(e) Deciding requests for information regarding materials of Intellectual Property Rights owned by College of Eastern Utah.

**R767-1-5. Records Officer.**

(1) The Director of Admissions and Records is the Records Officer for purposes of satisfying GRAMA requirements and is responsible for:

(a) Development and oversight of records management and access.

(b) Serving as liaison with State Archives.

(c) Receiving and processing requests for access of records for all campuses, centers and locations of College of Eastern Utah.

(d) Preparing and maintaining information on records transferred to, and retrieved from the State Archives Division.

(e) Overseeing retention and destruction schedules of various records and record series of the College.

(f) Training of the campus personnel on the requirements of GRAMA.

(g) Other activities consistent with records officer's duties including the designation of records or records series under Section 63-2-306 of GRAMA.

**R767-1-6. Request for Access.**

(1) Requests for access to government records of College of Eastern Utah shall be in writing and made to the Director of Admissions and Records, Records Office, Administration Building.

(2) Response to a request submitted to other persons within College of Eastern Utah may be delayed in accordance with subsections 63-2-204 (2), (6).

(3) A person making a request for a record shall furnish the governmental entity with a request containing his name, mailing address, daytime telephone number, if available, and a description of the records requested that identifies the record with reasonable specificity in pursuant to section 63-2-204(1).

(4) Subpoenas are not considered written requests under GRAMA.

**R767-1-7. Appeals.**

(1) Appeals of denied requests will be adjudicated by the President of College of Eastern Utah, or designee.

(2) Requests for appeal should be written and made to the President, President's Office, Administration Building in accordance with Section 63-2-401.

**R767-1-8. Fees.**

(1) A fee schedule of the direct and indirect costs of duplicating or compiling a record may be obtained from College of Eastern Utah by contacting the Records Office, Administration Building.

(2) College of Eastern Utah may require payment of overdue fees and future estimated fees before beginning to process a request if fees are expected to exceed \$50.00.

**R767-1-9. Waiver of Fees.**

Fees for duplication and compilation of a record may be waived under certain circumstances described in Subsection 63-2-203 (3). Requests for this waiver of fees may be made through the Records Office, Administration Building.

**R767-1-10. Request for Access for Research Purposes.**

Access to private or controlled records for research purposes is allowed under Subsection 63-2-202 (8). Requests for access to records for research purposes may be made to the Director of Admissions and Records, Records Office, Administration Building.

**R767-1-11. Intellectual Property Rights.**

The College of Eastern Utah, which may own an intellectual property right may duplicate and distribute such materials in accordance with Subsection 63-2-201 (10). Decisions with regard to these rights will be made by the President, President's Office, Administration Building. Any questions regarding the duplication and distribution of such materials should be addressed to the President.

**R767-1-12. Requests to Amend a Record.**

(1) An individual may contest the accuracy or completeness of a document pertaining to him pursuant to Section 63-2-603. Such request should be made to the President, President's Office, Administration Building.

(2) Requests to amend a record shall be conducted in accordance with the steps outlined in Section 63-2-603 of the GRAMA Act.

**R767-1-13. Appeals of Requests to Amend a Record.**

Appeals of requests to amend a record shall be handled as informal hearings under the Utah Administrative Procedures Act. Appeals may be filed with the President, President's Office, Administration Building.

**KEY: government documents, confidentiality of information, public records, records access\*, GRAMA\* 1994**

**Notice of Continuation June 19, 2007**

**63-2-204**

**63-2-904**

**R850. School and Institutional Trust Lands, Administration.****R850-1. Definition of Terms.****R850-1-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X, XVII and XX of the Utah Constitution, and Section 53C-1-302(1)(a)(ii) which authorize the Director of the School and Institutional Trust Lands Administration to provide definitions which apply to all rules promulgated by the director and agency unless otherwise provided.

**R850-1-200. Definitions.**

1. Animal unit (AU): is equal to one cow and calf or their equivalent.
2. Beneficiaries:
  - (a) as to school and institutional trust lands: The public school system and other institutions granted properties by the United States under the Enabling Act to the state of Utah in trust.
3. Board: School and Institutional Trust Lands Board of Trustees.
4. Board policy: Actions taken by the School and Institutional Trust Lands Board of Trustees which comply with the definition of Policies found in Section 53C-1-103(5).
5. Carrying capacity: the acreage required to adequately provide forage for an animal unit (AU) for a specified period without inducing range deterioration.
6. Commercial gain: compensation, in money, in services, or other valuable consideration rendered for products provided.
7. Cultural Resources: prehistoric and historic materials, features, artifacts.
8. Cultural Resource Survey:
  - (a) Class I: literature and site files search.
  - (b) Class II: sample field surface survey or inspection.
  - (c) Class III: intensive field surface survey.
9. Director: the director of the School and Institutional Trust Lands Administration.
10. Agency: School and Institutional Trust Lands Administration.
11. Easements: a right to use or restrict use of land or a portion of a real property interest in the land for a particular purpose granted by the agency to a qualified applicant including but not limited to transmission lines, canals and ditches, pipelines, tunnels, fences, roads and trails.
12. General Management Plans: plans prepared for school and institutional trust lands which guide the implementation of the school and institutional trust land management objectives.
13. In-kind use: occupancy or use by a beneficiary of its institutional trust land for authorized purposes as a direct economic benefit to the institution.
14. Management Plans: General Management Plans, Resource Plans and Site-Specific Plans.
15. Multiple-use: the management of various surface and sub-surface resources so that they are utilized in the combination that will best meet the present and future needs of the beneficiaries.
16. Paleontological Resources (fossils): the remains or traces of organisms, plant or animal, that have been preserved by various means in the earth's crust.
17. Paleontological Resource Survey: an evaluation of the scientific literature or previous paleontological survey reports to assess the potential for discovery or impact to fossils by a proposed development, followed by a pedestrian examination of the exposed geological formations suspected of containing fossils of significance.
18. Paleontological Site: an exposure of a geologic formation having fossil evidence of scientific value as determined by professional consensus.
19. Planning Unit: the geographical basis of a general

management plan; a consolidated block of state land, or a group of isolated state land sections or parts thereof, or a combination of blocks and isolated sections which provide common management opportunities or which have common commercial gain, natural or cultural resource concerns.

20. Preliminary Development Plan: the submittal, both of maps and written material, which shall identify and determine the extent and scope on a proposed unit development of the entire acreage under application. It shall illustrate, in phases, the development of the entire acreage and include a time table of the estimated schedule of development. The preliminary development plan shall identify density, open space, environmental reserves, site features, services and utilities, land ownerships, local master planning, zoning compliance and basic engineering feasibility.

21. Preliminary Development Plat: a plat which shall outline and specify the number of dwelling units, the type of dwelling units, the anticipated location of the transportation systems and description of water and sewage systems for the developed area on a Unit Development Lease.

22. Private Exchange: An exchange of trust lands, for land or other assets of equal or greater value, with a political subdivision of the state or agency of the federal government. Lands involved in a private exchange are not required to be advertised as open for competing exchange, lease, and sale applications.

23. Range condition: the relation between current and potential condition of the range site.

24. Record of Decision: a written finding describing an agency action, relevant facts, and the basis upon which the decision for action was made.

25. Resource Plans: a plan prepared for a specific resource, such as mining, timber, grazing or real estate.

26. Rights-of-Entry: a right to a specific, non-depleting land use granted by the agency to a qualified applicant that is temporary in nature, generally not to exceed one year in duration, including but not limited to seismic and land surveys, research sites, access across trust lands, and other temporary types of land uses.

27. School and institutional trust lands: those properties granted by the United States in the Utah Enabling Act to the state of Utah in trust, or other properties transferred to the trust, to be managed for the benefit of the public school system and the various institutions of the state in whose behalf the lands were granted.

28. Significant site: any site which is designated by the Division of State History as scientifically worthy of specific management.

29. Site: archaeological and cultural sites are places of prehistoric and historic human activity including aboriginal mounds, forts, buildings, earth works, village locations, burial grounds, ruins, caves, petroglyphs, pictographs, or other locations which are the source of prehistoric cultural features and specimens.

30. Site Specific Plans: plans prepared for trust lands which provide direction for specific actions. Site-specific plans shall include, but not be limited to:

(a) Records of Decision in either narrative or summary form.

(b) Board action that designates specific parcels of land for specific uses(s) or disposition.

31. Specimen: includes all man-made relics, artifacts, remains of a prehistorical, archaeological, or anthropological nature found on or below the surface of the earth, and any remains of prehistoric life.

32. Trust lands: school and institutional trust lands and all other lands administered under the authority of the School and Institutional Trust Lands Board of Trustees.

33. Survey Report: report of the various site files and field

surveys or inspections.

34. Sustained-yield: the achievement and maintenance of maximum non-depleting level of annual or periodic production of the various renewable resources of land without impairment of the productivity of the land.

35. Trust land use(s): any use of school and institutional trust lands based on multiple-use, sustained-yield principles or practices designed to maximize support of the beneficiaries.

**KEY: administrative procedure, definitions**  
**1993 53C-1-302(1)(a)(ii)**  
**Notice of Continuation June 27, 2007**

**R850. School and Institutional Trust Lands, Administration.****R850-2. Trust Land Management Objectives.****R850-2-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-204(1) and 53C-1-302 which authorize the Director of the School and Institutional Trust Lands Administration and the Board of Trustees to prescribe the general land management objectives for school and institutional trust lands.

**R850-2-200. School and Institutional Trust Land Management Objectives.**

The general land management objective for school and institutional trust lands is to optimize and maximize trust land uses for support of the beneficiaries over time. The agency shall:

1. maximize the commercial gain from trust land uses for school and institutional trust lands consistent with long-term support of beneficiaries.
2. manage school and institutional trust lands for their highest and best trust land use.
3. ensure that no less than fair-market value be received for the use, sale or exchange of school and institutional trust lands.
4. reduce risk of loss by reasonable trust land use diversification of school and institutional trust lands.
5. upgrade school and institutional trust land assets where prudent by exchange.
6. permit other land uses or activities not prohibited by law which do not constitute a loss of trust assets or loss of economic opportunity.

**KEY: rules and procedures**

1991

Notice of Continuation June 27, 2007

53C-1-204(1)

53C-1-302

**R850. School and Institutional Trust Lands, Administration.  
R850-3. Applicant Qualifications, Application Forms, and  
Application Processing.**

**R850-3-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302(1)(a)(ii) and 53C-2-404 which authorize the Director of the School and Institutional Trust Lands Administration (Trust Lands Administration) to prescribe the applicant requirements and the form of application.

**R850-3-200. Applicant Qualifications.**

Any person qualified to do business in the state of Utah, and not in default under the laws of the state of Utah relative to qualification to do business within the state, or not in default on any previous obligation with the Trust Lands Administration, shall be a qualified applicant for sale, exchange, lease or permit.

**R850-3-300. Application Forms.**

Application for the purchase, exchange, or use of trust lands or resources shall be on forms provided by the Trust Lands Administration, exact copies of its forms, forms retrieved from electronic sources, or forms submitted electronically.

**R850-3-400. Application Processing.**

Within 15 days from receipt of an application for a Special Use Lease, Easement, Sale, Exchange, Modified Grazing Permit, or Materials Permit, the Trust Lands Administration shall conduct an initial evaluation of the application. Trust Lands Administration may refuse the application if it determines, in its sole discretion, that:

- (1) activities with higher priorities would be adversely impacted by processing the application;
- (2) an existing or planned application or activity on the parcel would be adversely impacted by processing the application;
- (3) an agency-initiated activity would be adversely impacted by processing the application; or
- (4) proceeding with the proposal would not be in the best interests of the trust land beneficiaries.

No fees shall be collected from the applicant prior to the above-referenced evaluation. If the Trust Lands Administration chooses to refuse the application, it shall notify the applicant in writing. If the Trust Lands Administration chooses to accept the application, it shall inform the applicant of any further information, material, deposits and fees which may be required in order to accept the application and commence processing. Failure to provide the requested items by the deadline established by the Trust Lands Administration may result in the application being rejected. A determination refusing an application shall not be subject to administrative review.

**R850-3-500. No Interest Conveyed by Submitting Application.**

(1) Until an executed instrument of conveyance, lease, permit or right is delivered or mailed to the successful applicant, applications for the purchase, exchange, or use of trust lands or resources shall not convey or vest the applicant with any rights or interests.

(2) The Trust Lands Administration may reject any application prior to execution if it determines that rejection is in the best interest of the trust.

(3) If an application is rejected, all monies tendered by the applicant, except the application fee, shall be refunded.

(4) Should an applicant desire to withdraw the application, the applicant must make a written request. If the request is received prior to the time that the application is considered for formal action, all monies tendered by the applicant, except the application fee and any amounts expended on advertising or

appraisals prior to the receipt of the withdrawal request, will be refunded. If the request for withdrawal is received after the application is approved, all monies tendered are forfeited to the Trust Lands Administration, unless otherwise ordered for a good cause shown.

(5) Any deposit to cover advertising, appraisal costs and processing fees shall be forfeited if any lease, permit, grant or certificate is offered but not executed by the applicant.

**R850-3-600. Rule Changes During Application Processing.**

Applications shall be processed in accordance with the applicable rules in effect at the time the application was accepted except that the Trust Lands Administration may apply rule changes that become effective during the processing of an application if the Trust Lands Administration determines that the application of the rule change is in the best interest of the beneficiary of the land. If the applicant objects to compliance with changes in the rules, then the applicant may elect to withdraw the application, or the Trust Lands Administration may reject the application. For applications which are withdrawn or rejected under this section 600, all fees, except application fees, shall be refunded to the applicant without penalty.

**KEY: administrative procedures, residency requirements  
June 3, 2003 53C-1-302(1)(a)(ii)  
Notice of Continuation June 27, 2007 53C-2-404**

**R850. School and Institutional Trust Lands, Administration.****R850-4. Application Fees and Assessments.****R850-4-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Section 53C-1-302(1)(a)(ii) which authorizes the Director of the School and Institutional Trust Lands Administration to adopt rules necessary to fulfill the purposes of Title 53C.

**R850-4-200. Fee Schedule.**

The fees are established by the agency pursuant to policy set by the School and Institutional Trust Lands Board of Trustees. A copy of the fee schedule is available at the School and Institutional Trust Lands Administration offices listed in R850-6-200(2)(a).

**R850-4-300. Fee Waivers.**

1. The director may waive any fees when appropriate and when doing so would not be adverse to the interests of the beneficiaries.

2. The director shall provide a semi-annual report to the Board of Trustees of any fees waived and the reasons for waiving the fees.

**KEY: administrative procedure, filing fees, rates**

**May 16, 2006**

**53C-1-302(1)(a)(ii)**

**Notice of Continuation June 27, 2007**

**R850. School and Institutional Trust Lands, Administration.  
R850-5. Payments, Royalties, Audits, and Reinstatements.  
R850-5-100. Authorities.**

This rule is authorized by Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution and Section 53C-1-302(1)(a)(ii) of the Utah Code entitling the Director of the School and Institutional Trust Lands Administration to establish fees, procedures and rules for management of the agency.

**R850-5-200. Payments.**

Payments include rentals, royalties or any other financial obligation owed under the terms of a lease, permit or any other agreement.

1. As a matter of convenience, the agency allows parties other than the obligee to remit payments on the obligee's behalf; however, this practice in no way relieves the obligee of any statutory or contractual obligations concerning the proper and timely payments or the proper and timely filing of reports. For practical reasons, the agency often makes direct requests for reports and other records from parties other than the obligees. Payors should be aware that their actions subject leases to cancellation or subject delinquent royalties to interest charges. It is, therefore, in the best interest of all parties to cooperate in responsibly discharging their obligations to each other and to the Trust Lands Administration.

2. The obligee bears final responsibility for payments. Payments must be for the full amount owed. Partial payments will only be accepted if approved in writing by the agency before submission. In order to fulfill payment obligations of a lease, permit, or other financial contract with the agency, payments must be received as defined in subsection 3 of this rule by the appropriate due dates and must be accompanied by the appropriate report. If the obligee submits payment by electronic fund transfer then appropriate supporting documentation must be submitted by electronic data transfer on the same day.

3. Payments will be considered received if sent by electronic fund transfer, delivered to the agency, or if the postmark stamped on the envelope is dated on or before the due date. If the post office cancellation mark is illegible, erroneous, or omitted, the payment will be considered timely if the sender can establish by competent evidence that the payment was deposited in the United States mail on or before the date for filing or paying. If the due date or cancellation date falls upon a Saturday, Sunday, or legal holiday, the payment shall be considered timely if received as defined herein by the next business day.

4. A 6% penalty and \$30 return check charge will be assessed on all checks returned by the bank. The check must be replaced by cash, certified funds, or immediately available funds. The Director may require future payments with certified funds when notified in writing.

5. Any financial obligation not received by its contractual due date will initiate a written cancellation notice by certified mail, return receipt requested. The cancellation date for any lease/permit or other contractual agreement unless otherwise specified by the contract, is defined as 30 days after the postmark date stamped on the U.S. Postal Service Receipt for Certified Mail of the cancellation notice. In the event payment is not received by the agency on or before the cancellation date, the lease, permit or other contractual agreement will be subject to cancellation, forfeiture or termination without further notice.

A default in the payment of any installment of principal or interest due under the terms of any land purchase agreement not received by the agency more than 30 days after the due date shall initiate a certified billing, return receipt requested. If all sums then due and payable are not received within 30 days after the mailing of the U.S. Postal Service certified notice, the

agency may elect any of the remedies as outlined in R850-80-700(8). If the cancellation date falls on a weekend or holiday, payment will be accepted the next business day until 5 p.m.

6. A late penalty of 6% or \$30, whichever is greater, shall be charged after failure to pay any financial obligation, excluding royalties as provided in R850-5-300(2), within the time limit under which such payment is due.

7. Subject to R850-4-300, rental payments received after the due date which do not include a late fee will be returned to the lessee by certified mail, return receipt requested. Payment will only be accepted for the full amount due.

**R850-5-300. Royalties.**

1. Royalty Reports and Reporting Periods

(a) All royalty payments shall be made payable to the School and Institutional Trust Lands Administration and shall be accompanied by a royalty report on a form specified by the agency. Check stubs or other report forms are unacceptable and do not satisfy the reporting requirement of this section.

(b) Any report not sufficiently complete and accurate to enable the agency to deposit the royalty to the correct institutional fund must be promptly corrected or amended by the payor. Failure to provide such a report may, after proper notification, subject the lease to cancellation.

(c) Any report submitted which includes entries as described below, may be returned and may be made subject to the penalty provisions of this rule.

i) Any report including adjustments to reporting periods more than 24 months prior to the current report period.

ii) Amendments to prior report periods creating a net adjustment of less than \$10.

iii) Any oil and gas royalty report line of original entry submitted after the first 180 days following the month of first production with a volume entry of zero which is subsequently amended with the actual volume.

2. Interest on Delinquent Royalties

Interest shall be based on the prime rate of interest at the beginning of each month as approved by the Director and documented in the agency's Director's Minutes, plus 4%. However, interest will not be assessed for prior period adjustments or amendments except as provided in R850-5-300(1)(c) and for amounts of additional royalties due discovered during any audit action. Also, interest will not be accrued or billed for amounts less than \$30.

**R850-5-400. Audits.**

The agency shall have the right at reasonable times and intervals to audit the books and records of any lessee/permittee/payor and to inspect the leased/permited premises and conduct field audits for the purpose of determining whether there has been compliance with the rules or the terms of agreement.

**R850-5-500. Reinstatements.**

1. The director may reinstate the following specific leases, permits, and easements, in the event of their cancellation, upon filing of a request for reinstatement, the payment of all late fees, reinstatement fees, and rental fees in arrears, based on a written finding that a reinstatement would be in the best interest of the trust beneficiaries:

(a) Special use leases issued using a competitive process within 60 days of cancellation.

(b) Special use leases issued without using a competitive process within 60 days of cancellation if:

i) there are no apparent competing interests,

ii) the cost of requiring a competitive process would be excessive in light of the potential revenue,

iii) a negotiated settlement appears to present greater opportunity for increased compensation than a competitive

settlement, or

iv) there exists compelling reason establishing that the best interests of the trust would be met by waiving the competitive process.

(c) Grazing permits within 60 days of cancellation with the exception that grazing permits cancelled for reasons of non-payment of grazing fees may be reinstated by the director without a written finding.

(d) Easements within 60 days of cancellation provided that:

i) if the easement term is perpetual, then the easement shall be amended so that the term is 30 years beginning as of the original effective date. However, if the remaining number of years on an easement so amended is less than 15, the ending date of the easement shall be set so that there will be 15 years remaining in the easement;

ii) if the easement term is not perpetual, easements shall be reinstated only for the balance of the original term; and

iii) the applicant for an easement reinstatement agrees to pay the difference between what was originally paid for the easement and what the agency would charge for the easement at the time the request for reinstatement is submitted.

(e) Materials permits within 60 days of cancellation.

(f) Materials permits issued without using a competitive process within 60 days of cancellation if:

i) there are no apparent competing interests,

ii) the cost of requiring a competitive process would be excessive in light of the potential revenue,

iii) a negotiated settlement appears to present greater opportunity for increased compensation than a competitive settlement, or

iv) there exists compelling reason establishing that the best interests of the trust would be met by waiving the competitive process.

2. The director may reinstate any application for lease, permit, easement, exchange, or sale cancelled pursuant to R850-30, R850-40-700(3), or R850-80 upon the filing of a request for reinstatement and the payment of applicable reinstatement fees, and based on a written finding that a reinstatement would be in the best interest of the trust beneficiaries.

**KEY: administrative procedure**

**June 21, 2007**

**53C-1-302(1)(a)(ii)**

**Notice of Continuation June 27, 2007**

**R850. School and Institutional Trust Lands, Administration.**  
**R850-6. Government Records Access and Management.**  
**R850-6-100. Purposes and Authority.**

1. This rule provides procedures for appropriate access to agency records.

2. This rule is authorized by Sections 6, 8, 10, and 12 of the Utah Enabling Act; Articles X and XX of the Utah Constitution; and Sections 63-2-204, 63-2-603, 63-2-904, 53C-1-201(3)(a)(i)(A), and 53C-2-102.

**R850-6-200. Definitions.**

1. Terms used in this rule are defined in Section 63-2-103.

2. In addition:

(a) Records coordinators: individuals designated by the agency director to coordinate records access requests and to assist the public in gaining access to records maintained by the agency. Records coordinators are located in the following:

i) Salt Lake Office Public Room, 675 East 500 South, Suite 500, Salt Lake City, UT 84102-2818.

ii) Northern Area Office, 675 East 500 South, Suite 500, Salt Lake City, UT 84102-2818.

iii) Central Area Office, 130 N Main St, Richfield, UT 84701.

iv) Southwestern Area Office, 359 East Riverside Drive, St. George, UT 84790.

v) Southeastern Area Office, 1165 South Highway 191, Suite 5, Moab, UT 84532.

**R850-6-300. Allocation of Responsibility Within the Agency.**

The agency is considered a governmental entity and the director of the agency is considered the head of the government entity.

**R850-6-400. Requests for Access.**

1. Request for access to records shall be on a form provided by the agency or in another legible written document which contains the following information: the requester's name, mailing address, daytime telephone, a description of the records requested that identifies the record with reasonable specificity, and if the record is not public, information regarding requester's status.

2. The request shall be submitted to the records officer or coordinator. The response to the request may be delayed if not properly directed.

3. The agency shall deny a request for private, controlled, protected or limited access records if the request is not made in writing and does not contain information required in this section.

4. Notwithstanding the provision of subsection 63-2-204(1), the agency 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.

**R850-6-500. Other Requests.**

1. For research purposes:

Access requests for private or controlled records for research purposes pursuant to Section 63-2-202(8), shall be made in writing and directed only to the records officer.

2. To amend a record:

An individual may contest the accuracy or completeness of a document pertaining to him as maintained by the agency pursuant to Section 63-2-603.

(a) The request to amend shall be made in writing to the records officer.

(b) Appeals of requests to amend a record shall be handled as informal hearings under the Utah Administrative Procedures Act.

3. To claim business confidentiality:

A request for protected records status based on a claim of business confidentiality may be made pursuant to Section 63-2-308. Such a request shall be submitted in writing to the director or his designee. The request shall contain the claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality.

4. To claim limited records status:

A lessee may claim that mineral information provided to the agency should be protected under Section 53C-2-102.

(a) Such a request shall be submitted in writing to the director or his designee. The request shall contain a claim that the information provided the agency is of a proprietary nature and a concise statement of reasons supporting the claim.

(b) If the agency agrees the information is of a proprietary nature, the request shall be granted and the information shall receive limited records status until:

i) the lease is terminated and the agency believes the release of the information is not detrimental to the trust; or

ii) the lessee or its successor in interest ceases to exist as an entity and the agency believes the release of the information is not detrimental to the trust.

(c) A record granted limited records status under this section shall not be released to another party without written permission from the lessee providing the information during the period the limited records status is in effect.

(d) The agency may make information provided limited records status under this section available for inspection, but not for copying, by the Utah Geological Survey or the Division of Oil, Gas and Mining if consultation is requested by the agency, provided further that the confidentiality of such information is safeguarded.

**R850-6-600. Denials.**

1. If any access or status request is denied in whole or in part, a notice of denial shall be given to the requester in person or sent to the requester's address.

2. The notice of denial shall contain the information required in subsection 63-2-205(2).

**R850-6-700. Appeal of Determination.**

1. Any person aggrieved by an access or status request determination including a person not a party to the agency proceeding may, within 30 days after the determination, appeal the determination to the director by submitting a notice of appeal either on a form provided by the agency or another legible written document which contains the following information: the petitioner's name, mailing address and daytime telephone number (if available); and the relief sought.

2. Upon receiving the notice of appeal and review of relevant information including that submitted with the appeal and criteria prescribed in Sections 63-2-204, 63-2-603, 63-2-904, 53C-2-102, the director may:

(a) uphold the original classification or status request determination; or,

(b) reclassify the record if he believes the original classification was incorrect; or,

(c) release the record regardless of its classification if the director believes that the interest of the public in obtaining access to the record outweighs the interest of the agency in prohibiting access to the record.

**R850-6-800. Fees.**

1. A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from the records officer or any records coordinator located at the addresses provided in R850-6-200, Definitions.

**KEY: GRAMA\*, government documents, public records**  
**1994 53C-1-201(3)(a)(i)(A)**

Notice of Continuation June 27, 2007

53C-2-102

**R850. School and Institutional Trust Lands, Administration.****R850-30. Special Use Leases.****R850-30-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302(1)(a)(ii) and 53C-4-101(1) which authorize the Director of the School and Institutional Trust Lands Administration to prescribe standards and conditions for the leasing and development of surface resources on Trust Lands Administration lands.

**R850-30-150. Planning.**

Pursuant to Section 53C-2-201(1)(a), the Trust Lands Administration shall also undertake to complete the following planning obligations, in addition to the rule-based analysis and approval processes that are prescribed by this rule:

1. To the extent required by the Memorandum of Understanding between the State Planning Coordinator and the School and Institutional Trust Lands Administration, submit the proposal for review by the Resource Development Coordinating Committee (RDCC); and

2. Evaluation of comments received through the RDCC process.

3. Evaluation of and response to any comments received through the solicitation process conducted pursuant to R850-30-500(2)(a) or R850-30-500(2)(b).

**R850-30-200. Surface Leasing of Trust Lands Administration Lands.**

1. The agency may issue special use leases for terms of up to 51 years for surface uses, excluding grazing, on all school and institutional trust lands.

2. In exceptional cases, the agency may issue leases for a term of up to 99 years when it has been determined that such a term would be in the best interest of the trust beneficiaries.

3. The agency shall issue leases for the term most consistent with land management objectives found in R850-2. The term of a lease will not normally be for a period longer than specified below for a particular lease type.

- (a) Military ten years
- (b) Agricultural 20 years
- (c) Recreational 20 years
- (d) Telecommunications 20 years
- (e) Commercial 51 years
- (f) Industrial 51 years
- (g) Residential 51 years
- (h) Governmental (Other than Military) 51 years.

**R850-30-300. Classifications of Special Use Leases.**

Special use leases are classified either as standard or unit development special use leases. Applications may be made under the following categories.

## 1. Standard

The standard classification may include the following uses:

- (a) Commercial: Restaurant, service station, boating facilities, motels, retail businesses.
- (b) Industrial: Testing sites, mining or extraction facilities, manufacturing plants.
- (c) Residential: A lease on which the applicant intends, at the time of lease issuance, to establish a private, permanent home and legal domicile.
- (d) Agricultural: Crop production, improved pasture lands.
- (e) Recreational: Outdoor sports, picnicking facilities, open space, conservation zones, recreational cabin sites.

## 2. Unit Development Special Use Lease

The unit development lease may be issued when the proposed land use requires a planning and decision process beyond the scope of the standard special use lease procedures.

**R850-30-310. Requests for Proposals.**

1. The agency may issue requests for proposals (RFP) for any lands on which the director has determined the potential for development exists.

2. A proposal submitted in response to the RFP may be for sale, lease, joint development, or exchange and shall receive protected status until the director selects the preferred proposal.

3. Proposals will be evaluated on the criteria found in R850-30-500(2)(g).

4. Requests for proposals shall be advertised pursuant to R850-30-500(2)(d) as well as any other advertising methods which the director determines will increase exposure of the subject property to qualified applicants. The advertisement shall indicate where a person interested in submitting a proposal may obtain an information packet.

5. Proposals shall contain a non-refundable application and review fee as specified in R850-4.

6. Applicants selected in an RFP process shall be exempt from R850-30-500(2)(b) through R850-30-500(2)(e).

**R850-30-400. Lease Rates.**

1. The agency shall receive at least fair market value for surface leases. Fair market value of the subject property shall be determined by the agency based upon a market analysis including:

(a) the income-producing ability of the highest and best use of the property; and

(b) a market study of comparable values of similar properties.

2. Lease rates shall be based on fair market value. Lease rates may be determined by the agency by:

(a) multiplying the fair market value of the subject property by the current agency-determined interest rate.

(b) comparable lease data which may include percentage rent based on either net or gross income with a guaranteed minimum.

(c) using either a fixed rate per acre or a crop-share formula for agricultural leases providing that the rental rate is customary and reasonable. The agency may require the lessee to acquire adequate crop insurance.

3. The agency, pursuant to board policy, may periodically establish minimum lease rates for special use leases based on the costs incurred in administering the leases, and a desired minimum rate of return.

## 4. Rental Review Procedures for Special Use Leases

## (a) Standard

i) Base rentals shall be adjusted as of the effective date specified in the respective lease through a lease review conducted by the agency. Any lease which is reviewed within one year of the effective date specified in the lease shall be deemed to have been reviewed timely and any adjustment in base rentals shall be as of the effective date.

ii) Adjustments in base rentals may be based upon changes in the market value, changes in established indices, or other methods which may be appropriate and in the best interest of the trust beneficiaries. The determination of which method to use may be based upon an analysis of the cost effectiveness of performing the review.

iii) When using established indices, the rate of adjustment shall be the sum of the indices established for the years involved in the review period, unless the rate of adjustment exceeds a maximum adjustment rate, or fails to reach a minimum rate of adjustment as specified in the respective lease. If no maximum adjustment rate or minimum rate of increase is specified in the lease, then the percent change will increase or decrease according to the above described rate of adjustment.

iv) The index may be composed of any or all of the components listed below, depending upon availability. The agency shall ascertain the percent change in index components

annually and shall use this information to determine the percent of change to be required in the base rental of applicable leases.

A) Changes in assessed value for the most current year for the appropriate category of land as published by the State Tax Commission;

B) The applicable component of the CPI-U;

C) The applicable Implicit Price Deflators for the Gross National Product;

D) Data from market analyses of comparable leases.

v) A separate index shall be established for each of the following lease types:

A) Commercial/industrial;

B) Residential;

C) Agricultural;

D) Recreational.

vi) For the purpose of this rule, the Military, Telecommunications, and Governmental lease types shall be adjusted using the Industrial Index.

vii) The adjusted rental amount as determined pursuant to this rule shall be rounded to the nearest number evenly divisible by \$10.

(b) Unit Development

Rental adjustments for unit development leases shall be based upon changes in the market value of the property or the applicable index as may be appropriate as determined by the agency.

(c) Suspension, Deferral, and Waiver of Lease Rental Adjustment

The director may suspend, defer, or waive the adjustment of base rentals in specific instances when justified by natural disasters or periods of economic crises, based on a written finding that the suspension, deferral, or waiver is in the best interest of the trust beneficiaries.

#### **R850-30-500. Application Procedures.**

1. Applications for special use leases should be submitted pursuant to R850-3.

2. Competitive Leasing

(a) The agency may advertise a parcel of land as open and available for lease.

i) The advertising shall be done pursuant to R850-30-500(2)(d) and R850-30-500(2)(e), as well as any additional advertising the director deems appropriate and shall be considered as a substitute for the competitive advertising process described in R850-30-500(2)(b).

ii) Applications received in response to agency advertising will be evaluated pursuant to R850-30-500(2)(g).

(b) Upon acceptance of any special use lease application, the agency shall solicit competing lease applications. If the subject parcel meets the established criteria for sale contained in R850-80-500(1), then applications to purchase shall also be solicited.

(c) The applicant may request an exemption from R850-30-500(2)(b) by petitioning the director to provide for rules exempting that particular class of applications from the competitive process. Pursuant to this rule, the following classes of leases are exempt from the requirements of R850-30-500(2):

i) Communication sites.

ii) Mineral and oil and gas extraction facilities when the agency does not own the mineral estate.

(d) Competing applications will be solicited through publication at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county in which the lease is offered. At least 30 days prior to auction or acceptance of a bid, certified notification will be sent to lessees/permittees of record, adjoining permittees/lessees and adjoining landowners. Notices will also be posted in the local governmental administrative building or courthouses.

(e) Notification and advertising shall include a general

description of the parcel including township, range, and section, and any other information which may create interest in the parcel without violating the confidentiality of the initial application. The successful applicant shall bear the cost of the advertising.

(f) An applicant may claim that information provided to the agency on the initial application except for the legal description and the lease type should be protected under Section 63-2-304(1) or 63-2-304(2). The claimant shall submit a written request for protected records status pursuant to R850-6-500(3). The appropriate information shall receive protected records status during the competitive process.

(g) At the conclusion of the advertising process conducted pursuant to R850-30-500(2)(b), the agency shall review and select the preferred applicant using either of the following processes. The director shall have full discretion to select which process to use:

i) The agency shall allow all applicants at least 20 days from the date of mailing of notice, as evidenced by the certified mail posting receipt (Postal Service Form 3800), within which to submit a sealed bid containing their proposal to lease, purchase or exchange the subject parcel. Applicants not submitting a proposal within the prescribed time period shall have their application(s) rejected. The sealed bid proposal for a lease shall contain the first year's rental. A sealed bid proposal for a sale shall contain 10% of the offer to purchase as required by R850-80-600(1). These deposits are refundable if the applicant is not successful or if the applicant withdraws the application prior to the issuance of the record of decision. Competing bids are evaluated using the following criteria:

A) Income potential,

B) Ability of proposed use to enhance adjacent state property,

C) Proposed timetable for development,

D) Ability of applicant to perform satisfactorily, and

E) Desirability of proposed use.

ii) The director shall invite each qualified applicant to meet privately with the agency and present its proposal for the use of the subject property. The director may request parties other than those responding to the initial solicitation to meet with the agency. The director shall have full authority to:

A) offer counter-proposals;

B) negotiate with any or all of the applicants to create a proposal which best satisfies the objectives of R850-2-200;

C) terminate the negotiation process entirely; or

D) require the respondents to proceed through the process described in R850-30-500(2)(g)(i).

The director shall consult with the board, pursuant to board policies in place at the time of the consultation or as amended at that time, prior to selecting a preferred applicant or applicants.

(h) The director shall select the preferred applicant based on R850-30-500(2)(g). If the preferred application is for a lease, it shall proceed through the review process as outlined in R850-30-500(5). If the preferred application is for a purchase, it shall be reviewed pursuant to R850-80-500. If the preferred application is for an exchange, it shall be reviewed pursuant to R850-90-200.

(i) If a competing application received pursuant to R850-30-500(2) qualifies as a unit development lease as defined in R850-30-1100, the agency shall extend the sealed bid proposal deadline to 120 days.

#### **R850-30-600. Special Use Lease Provisions.**

Each lease shall contain provisions necessary to ensure responsible surface management, including those provisions enumerated under Section 53C-4-202 and the following provisions: the rights of the lessee, rights reserved to the lessor; the term of the lease; annual rentals and royalties; reporting of

technical and financial data; reservation for mineral exploration and development and other compatible uses; operation requirements; lessee's consent to suit in any dispute arising under the terms of the lease or as a result of operations carried on under the lease; procedures of notification; transfers of lease interest by lessee; terms and conditions of lease forfeiture; and protection of the state from liability from all action of the lessee.

#### **R850-30-800. Bonding Provisions.**

1. At the time of initial lease payment, the lessee may be required to post with the agency a bond in the form and amount as may be determined by the agency to assure compliance with all terms and conditions of the lease.

2. All bonds posted on surface leases may be used for payment of all monies, rentals, and royalties due to the lessor, also for costs of reclamation and for compliance with all other terms and conditions of the lease, and rules pertaining to the lease. The bond shall be in effect even if the lessee has conveyed all or part of the leasehold interest to a sublessee, assignee, or subsequent operator until the lessee fully satisfies the lease obligations, or until the bond is replaced with a new bond posted by the sublessee or assignee.

3. Bonds may be increased in reasonable amounts, at any time as the agency may order, provided lessor first gives lessee 30 days written notice stating the increase and the reason(s) for the increase.

4. Bonds may be accepted in any of the following forms at the discretion of the agency:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. However, Trust Lands Administration will not be responsible for any investment returns on cash deposits.

(c) Certificate of deposit in the name of "School and Institutional Trust Lands Administration 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 agency, 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 agency.

#### **R850-30-900. Lease Assignments and Subleases.**

1. Any special use lease may be assigned or subleased to any person, firm, association, or corporation qualified to hold a lease on trust land, provided, however, that all assignments and subleases are approved by the agency; and no assignment or sublease is effective until approval is given. Any assignment or sublease made without such approval is voidable at the agency's option.

2. An assignment or sublease shall take effect the day of the approval of the assignment or sublease. On the effective date of any assignment or 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, except conditions in the assignment to the contrary notwithstanding.

3. An assignment must be a sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the lease number, the land involved, and the name and address of the assignee, and the interest transferred.

4. An assignment shall be executed according to agency procedures.

5. Additional occupants of a telecommunication facility must abide by all the requirements of this rule. In addition, the agency shall charge each communication site sublessee an amount based on the then current fair market rental value of the

premises, and such other factors as may reasonably bear upon the suitability of the sublessee as a tenant of the premises.

6. As a condition of the approval of an assignment or sublease the agency shall require:

(a) The assignee to accept the most current applicable lease form unless continuation of the existing form is clearly in the best interests of the trust beneficiaries.

(b) The lessee to be acceptable to the lessor.

#### **R850-30-1000. Lease Amendments.**

1. Special use leases issued using a competitive process may be amended as to the following terms and conditions with the lessee's consent, and with prior notice to the board, upon the payment of all appropriate processing and other charges, and based on a written finding that the amendment would be consistent with the school and institutional trust land management objectives found in R850-2.

(a) Purpose of the lease;

(b) Term of the lease;

(c) Rental or royalty amount;

(d) Rental or royalty due date; and

(e) Decrease or increase in contiguous acreage, provided that total amended acreage cannot exceed 125% of the original acreage. If the total amended acreage exceeds 125% of the original acreage, the amendment must be advertised pursuant to R850-30-500(2).

2. Special use leases not issued using a competitive process may be amended as to the following terms and conditions with the lessee's consent, and with prior notice to the board, upon the payment of all appropriate processing and other charges, and based on a written finding that the amendment would be consistent with the school and institutional trust land management objectives found in R850-2.

(a) Purpose of the lease;

(b) Term of the lease;

(c) Rental or royalty amount;

(d) Rental or royalty due date; and

(e) Decrease or increase in contiguous acreage, when the amendment to increase acreage is advertised pursuant to R850-30-500(2).

#### **R850-30-1100. Unit Development Lease.**

The procedure provided below for unit development leases shall supersede any conflicting procedures found elsewhere in R850-30. All other non-conflicting rules in R850-30 shall apply to unit development leases.

##### **1. Applicant eligibility**

The unit development lease may be issued at the discretion of the agency when a complex relationship between numerous potential uses under the proposed lease indicate a planning and decision process requiring continuing agency involvement to facilitate trust management objectives. Parties continuing to have an interest in developing Trust Lands Administration lands after pre-application discussions with the agency may either file a letter of interest (R850-30-1200), or file an application for a unit development lease.

##### **2. Application procedure**

Individuals wishing to lease land under a unit development lease shall file the following material with the local agency office:

(a) The appropriate application fee pursuant to R850-4.

(b) A form, as specified by the agency, indicating tentative approval from city or county planning officials.

(c) The applicant's public disclosure statement, as specified by the agency.

(d) The applicant's Qualifications and Financial Responsibility Statement, as specified by the agency.

(e) A preliminary development plan, as defined in R850-1-200(20).

### 3. Application Review and Acceptance

Upon receipt of an application, the agency will review the documents to determine completeness. Applicants submitting incomplete applications shall be allowed 60 days to provide the required data. Applications not remedied within the 60-day period shall be rejected with the application fee forfeited to the Trust Lands Administration. Upon acceptance of an application, the applicant shall have 120 days within which to submit a preliminary development plan. During this 120-day period, the agency shall solicit competing applications pursuant to R850-30-500(2)(b) and contract for an appraisal of the subject parcel. The appraisal shall divide the parcel into units of similarly valued lands and shall establish a specific value for each unit. The cost of this appraisal shall be borne by the ultimate lessee of the parcel. The agency will also notify those individuals or groups who have filed letters of interest.

### 4. Lease Approval

Upon acceptance of an application following the competitive process, the agency shall review the application and make a recommendation to the director to approve or deny the lease.

### **R850-30-1200. Letter of Interest.**

1. Parties having a continued interest in developing a particular parcel of Trust Lands Administration land, but who are not ready to commence the development, may notify the agency by a letter of interest stating the nature of continued interest.

2. The letter of interest shall remain in effect for a period not to exceed two consecutive years. Prior to the expiration of the two-year period, the interested party will be advised that the letter of interest is about to expire and that the party has the opportunity to renew under the current rules and fees.

3. The interested party shall include an address which will be used by the agency for all correspondence with that party.

4. The interested party shall submit a non-refundable fee of \$100 for each contiguous tract which does not exceed 640 acres.

5. The right acquired by the fee paid is limited to the right to be notified by the agency as described in R850-30-1200(6).

6. When the agency receives an application for sale, lease, material permit or exchange for a parcel of land for which a current letter of interest is on file, the agency shall notify by certified mail all parties having letters of interest on file, regarding the subject property and the applicant.

7. Parties who have submitted a letter of interest shall have 30 days from the date the notification was sent in which to respond by submitting a competing application pursuant to R850-30-500(2). If no application is received from the party having filed a letter of interest, it will be assumed that the party has no further interest in the subject property.

**KEY: administrative procedures, leases, trust land management, request for proposals**

November 1, 2002

53C-1-302(1)(a)(ii)

Notice of Continuation June 27, 2007

53C-2-201(1)(a)

53C-4-101(1)

53C-4-202

**R850. School and Institutional Trust Lands, Administration.****R850-40. Easements.****R850-40-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302 and 53C-4-203 which authorize the Director of the School and Institutional Trust Lands Administration to establish rules for the issuance of easements on, through, and over any Trust Lands Administration land, and to establish price schedules for this use.

**R850-40-150. Planning.**

Pursuant to Section 53C-2-201(1)(a), the Trust Lands Administration shall also undertake to complete the following planning obligations, in addition to the rule-based analysis and approval processes that are prescribed by this rule:

1. To the extent required by the Memorandum of Understanding between the State Planning Coordinator and the School and Institutional Trust Lands Administration, submit the proposal for review by the Resource Development Coordinating Committee (RDCC); and

2. Evaluation of comments received through the RDCC process.

**R850-40-200. Easements Issued on Trust Lands Administration Lands.**

1. The agency may issue exclusive, non-exclusive, and conservation easements on trust lands when the agency deems it consistent with trust responsibilities.

**R850-40-300. Easements Acquired by Application.**

1. Easements across Trust Lands Administration lands may be acquired only by application and grant made in compliance with these rules and the laws applicable thereto. No easement, or other interest in Trust Lands Administration lands may be acquired by prescription, by adverse possession, nor by any other legal doctrine except as provided by statute. All applications shall be made on agency forms. The filing of an application form is deemed to constitute the applicant's offer to purchase an easement under the conditions contained in the conveyance document and these rules.

2. Pursuant to Section 72-5-203(2)(a), applications shall be accepted for easements for roads in existence prior to January 1, 1992 for which easements were not in effect on that date. Easements issued under this section shall be subject to all applicable provisions of R850-40.

**R850-40-400. Easement Charges.**

1. The charge for any easement granted or renewed under these rules, including those granted to municipal or county governments or agencies of the state or federal government, shall be determined pursuant to R850-40-600.

2. The charge for easements issued to a subdivision of the state pursuant to R850-40-300(2) shall be subtracted from the aggregate pool of value collected from sovereign land receipts and other sources allocated for this purpose by the legislature pursuant to statute. Payments may be made over time.

3. The agency may, when issuing easements pursuant to R850-40-300(2), also accept payment from sources other than the aggregate pool and may credit the value of benefits accruing to trust beneficiaries from continued maintenance of the easement and the value of access against accrued interest.

**R850-40-500. Surveys.**

Anyone desiring to perform a survey on Trust Lands Administration land with the intent of filing an application for an easement, shall prior to entry for surveying activities, file with the agency written notice of intent to conduct a survey of the proposed location of the easement. The notice, which may

be in letter form, shall describe the proposed project, including the purpose, general location, potential resource disturbances of the proposed easement and survey, and projected construction time for any improvements. The notice shall contain an agreement to indemnify and hold the agency and any authorized lessees harmless against liability and damages for loss of life, personal injury and property damage occurring due to survey activities and caused by applicant, his employees, his agents, his contractors or subcontractors and their employees. In lieu of an agreement the applicant may submit a surety bond in an amount agreeable to the director. The written notice shall be reviewed by the agency. The agency may require the applicant to obtain a right-of-entry agreement.

**R850-40-600. Minimum Charges for Easements.**

The agency may establish price schedules for easements based on the cost incurred by the agency in administering the easement and the fair-market value of the particular use.

**R850-40-700. Application Procedures.**

1. Time of Filing. Applications for an easement shall be received for filing in the office of the agency during office hours pursuant to R850-3.

2. Application approval by the director constitutes acceptance of the applicant's offer.

3. The easement shall be executed by the applicant and returned to the agency within 60 days from the date of applicant's receipt of the written easement. Failure to execute and return the documents to the agency within the 60-day period may result in cancellation of the conveyance and the discharge of any obligation of the agency arising from the approval of the application.

**R850-40-800. Term of Easements.**

Easements granted under these rules shall normally be for no greater than a 30 year term. Longer or shorter terms may be granted upon application if the director determines that such a grant is in the best interest of the trust beneficiaries.

**R850-40-900. Conveyance Documents.**

1. Each easement shall contain provisions necessary to ensure responsible surface management, including, the following provisions: the rights of the grantee, rights reserved to the grantor; the term of the easement; payment obligations; reporting of technical and financial data; reservation for mineral exploration and development and other compatible uses; operation requirements; grantee's consent to suit in any dispute arising under the terms of the easement or as a result of operations carried on under the easement; procedures of notification; transfers of easement interest by grantee; terms and conditions of easement forfeiture; and protection of the Trust Lands Administration from liability from all actions of the grantee.

2. In addition to the requirements of R850-40-900(1), conservation easements shall specify the resource(s) which is being protected and the conditions under which the conservation easement may be terminated.

**R850-40-1000. Bonding Provisions.**

1. Prior to the issuance of an easement, or for good cause shown at any time during the term of the easement, upon 30 days' written notice, the applicant or grantee, as the case may be, may be required to post with the agency a bond in the form and amount as may be determined by the agency to assure compliance with all terms and conditions of the easement.

2. All bonds posted on easements may be used for payment of all monies, rentals, and royalties due to the grantor, also for costs of reclamation and for compliance with all other terms and conditions of the easement, and rules pertaining to the

easement. The bond shall be in effect even if the grantee has conveyed all or part of the easement interest to a sublessee, assignee, or subsequent operator until the grantee fully satisfies the easement obligations, or until the bond is replaced with a new bond posted by the sublessee or assignee.

3. Bonds may be increased in reasonable amounts, at any time as the agency may decide, provided grantor first gives grantee 30 days' written notice stating the increase and the reason(s) for the increase.

4. Bonds may be accepted in any of the following forms at the discretion of the agency:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. However, Trust Lands Administration will not be responsible for any investment returns on cash deposits.

(c) Certificate of deposit in the name of "School and Institutional Trust Lands Administration and Grantee, c/o Grantee'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 agency, the grantee will be entitled to and receive the interest payments. All certificates of deposit must be endorsed by the grantee prior to acceptance by the director.

(d) Other forms of surety as may be acceptable to the agency.

#### **R850-40-1100. Conflict of Use.**

The agency reserves the right to issue non-exclusive easements or other leases, or to dispose of the property by sale or exchange, on land encumbered by existing easements when compatible with the original grant.

#### **R850-40-1200. Amendments.**

Any holder of an existing easement desiring to change any of the terms of, or the alignment described in the grant shall make application following the same procedure as is used to make an application for a new easement. An amendment fee pursuant to R850-4 must accompany the amendment request.

#### **R850-40-1210. Easement Conversion.**

Easements issued for uses or purposes which would more appropriately be authorized by a special use lease shall be converted, whenever possible, to a special use lease. Any application for the conversion of an easement to a special use lease must follow the process outlined in R850-30-500(2)(g).

#### **R850-40-1300. Renewal of Easement.**

Prior to the expiration date of any easement heretofore or hereafter granted for a limited term of years, an application may be submitted for a renewal of the grant upon payment of the consideration as may then be required.

#### **R850-40-1400. Removal of Sand and Gravel.**

The removal of ordinary sand and gravel or similar materials from the land by grantee is not permitted except when the grantee has applied for and received a materials purchase permit.

#### **R850-40-1500. Removal of Trees.**

In the event the easement crosses forested Trust Lands Administration land, no trees may be cut or removed unless and until a small forest product permit or a timber contract as provided for in agency rules has been obtained.

#### **R850-40-1600. Easement Assignments.**

1. An easement may be assigned to any person, firm, association, or corporation qualified under R850-3-200,

provided that:

(a) the assignment is approved by the agency;

(b) if the easement term is perpetual, the easement shall be amended so that the term is 30 years beginning as of the original effective date. However, if the remaining number of years on an easement so amended is less than 15 years, the ending date of the easement shall be set so that there will be 15 years remaining in the easement; and

(c) payment is made of either:

(i) the difference between what was originally paid for the easement and what the agency would charge for the easement at the time the application for assignment is submitted, or

(ii) an alternate fee established by, and at the discretion of, the director. In allowing for any alternate fee the director shall consider the following factors:

(A) the fee established under 1(c)(i) would exceed \$10,000, or would otherwise create an undue financial burden upon the applicant, or

(B) the assignment facilitates an agency objective.

2. An assignment shall take effect the date of the approval of the assignment. On the effective date of any assignment, the assignee is bound by the terms of the easement to the same extent as if the assignee were the original grantee, any conditions in the assignment to the contrary notwithstanding.

3. An assignment must be a sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the easement number, land involved, and the name and address of the assignee and, for the purpose of this rule shall include any agreement which transfers control of the easement to a third party.

4. An assignment shall be executed according to agency procedures.

5. An assignment is not effective until approval is given by the agency. Any assignment made without such approval is void.

#### **R850-40-1700. Termination of Easement.**

Any easement granted by the agency across its land may be terminated in whole or in part for failure to comply with any term or conditions of the conveyance document or applicable laws or rules. Upon determination by the director that an easement is subject to termination pursuant to the terms of the grant or applicable laws or rules, the director shall issue an appropriate instrument terminating the easement.

#### **R850-40-1800. Abandonment.**

In order to facilitate the determination of an abandonment of easement, the grantee shall pay an administrative charge every three years during the term of the easement as provided in R850-4. This charge shall not be construed as rent. In lieu of this charge, the agency may allow a grantee to pay to the agency a one-time negotiated charge.

**KEY: natural resources, management, surveys, administrative procedures**

**November 1, 2002**

**Notice of Continuation June 27, 2007**

**53C-1-302**

**53C-2-201(1)(a)**

**53C-4-203**

**R850. School and Institutional Trust Lands, Administration.****R850-50. Range Management.****R850-50-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302(1)(a)(ii) and 53C-5-102 which authorize the Director of the School and Institutional Trust Lands Administration to establish rules prescribing standards and conditions for the utilization of forage and related development of range resources on trust lands.

**R850-50-150. Planning.**

1. Pursuant to Section 53C-2-201(1)(a), the issuance of grazing permits within this category of activity carries no planning obligations by the agency beyond existing rule-based analysis and approval processes.

2. Range improvement projects authorized pursuant to this section carry the following planning obligations beyond existing rule-based analysis and approval processes:

(a) To the extent required by the Memorandum of Understanding between the State Planning Coordinator and the School and Institutional Trust Lands Administration, submit the proposal for review by the Resource Development Coordinating Committee (RDCC); and

(b) Evaluation of and response to comments received through the RDCC process.

3. Applications for modified grazing permits which do not involve surface disturbing activities are governed by paragraph 1, above. Applications for modified grazing permits which involve surface disturbing activities are subject to the planning obligations set forth in paragraph 2, above.

**R850-50-200. Grazing Management.**

Management of trust lands for grazing purposes is based upon grazing capacity which permits optimum forage utilization and seeks to maintain or improve range conditions. Grazing capacity shall be established after consideration of historical stocking rates, forage utilization, range condition, trend and climatic conditions.

**R850-50-300. Applications.**

Unless land has been withdrawn from grazing or has been determined to be unsuitable for grazing, applications shall be accepted for grazing rights upon all trust lands not otherwise subject to a grazing permit.

School and institutional trust lands may be declared unsuitable for grazing if it is determined that range conditions are incapable of supporting economic grazing practices or if grazing would substantially interfere with another trust land use that is better able to provide for the support of the beneficiaries.

**R850-50-400. Permit Approval Process.**

Applications shall be accepted on lands available for permitting under R850-50-300 or upon termination of an existing permit as follows:

1. On trust lands that are available for grazing, but are not subject to an existing permit, applications may be solicited through advertising or any other method the agency determines is appropriate, including notification of adjacent landowners and other permittees in an allotment.

2. On trust lands subject to an expiring grazing permit, competing applications shall be accepted from April 1 to April 30, or the next working day if either of these days is a weekend or holiday, of the year in which the permit terminates.

3. If no competing applications are received, the person holding the expiring grazing permit shall have the right to renew the permit by submitting a completed application along with the first year's rent and other applicable fees.

4. Persons desiring to submit a competing application shall

do so on forms acceptable to the agency. Forms may be acquired at the offices listed in R850-6-200(2)(b). Applications shall include payment in the amount of the non-refundable application fee, and the one-time bonus bid. Bids shall be refunded to unsuccessful applicants. Upon establishment of the yearly rental rate, the successful applicant shall be required to submit the first year's rental and other required fees.

5. Applications shall be evaluated by the agency and shall be accepted only if the agency determines that the applicant's grazing activity shall not create unmanageable problems of trespass, range and resource management, or access.

(a) For purposes of this evaluation adjoining permittees and lessees, adjoining property owners, or adjoining federal permittees shall be considered acceptable as competing applicants unless specific problems are clearly demonstrated.

(b) Applicants not meeting the requirements in (a) above, whose uses would not unreasonably conflict with the uses of other permittees of trust lands in the area, shall nevertheless be accepted if the size of the grazing area, the access to the grazing area, and other factors demonstrate that the applicant is able to utilize the area without adverse impact on the range resources, adjoining lands, or beneficiaries of affected trust lands.

(c) For purposes of evaluating an applicant's acceptability for a grazing permit, the agency may consider the applicant's ability to maintain any water rights appurtenant to the lands described in the application.

6. An existing permittee shall have a preference right to permit the property provided he agrees to pay an amount equal to the highest competing application.

**R850-50-500. Grazing Fees and Annual Adjustments.**

An annual fee shall be charged for the grazing of all livestock on trust lands. The grazing fee shall be established by the board and shall be reviewed annually and adjusted if appropriate.

**R850-50-600. Grazing Permit Terms.**

No grazing permit shall be issued for a period of time exceeding 15 years. The agency may at its discretion, however, extend the period of time beyond 15 years if it determines that substantial range improvements approved pursuant to R850-50-1100 warrant such an extension. Every grazing permit executed under these rules shall include the following terms and conditions:

1. Terms, conditions, and provisions that shall protect the interests of the trust beneficiaries with reference to securing the payment to the agency of all amounts owed.

2. Terms, conditions, and provisions that shall protect the range resources from improper and unauthorized grazing uses.

3. Other terms, conditions, and provisions that may be deemed necessary by the agency or board in effecting the purpose of these rules and not inconsistent with any of its provisions.

4. The agency may cancel or suspend grazing permits, in whole or in part, after 30 days notice by certified mail to the permittee for a violation of the terms of the permit, or of these rules, or upon the issuance of a lease or permit, the purpose of which the agency has determined to be a higher and better use, or disposal of the trust land. Failure to pay the required rental within the time prescribed shall automatically work a forfeiture and cancellation of the permits and all rights thereunder.

5. Locked gates on trust land without written approval are prohibited. If such approval is granted, keys shall be supplied to the agency and other appropriate parties requiring access to the area as approved by the agency, including those with fire and regulatory responsibilities.

6. Supplemental livestock feeding on trust grazing lease lands may be permitted subject to written authorization by the agency with the designation of a specific area, length of time,

number and class of livestock, and subject to a determination that this shall not inflict long term damage upon the land. The agency may assess an additional fee for authorized supplemental feeding. Emergency supplemental feeding shall be allowed for ten days prior to notification.

#### **R850-50-700. Reinstatements.**

Trust land on which a grazing permit has been cancelled and which is ineligible for reinstatement pursuant to R850-50-500(1)(c) may be advertised as available pursuant to R850-50-400(2). If the advertisement does not bring forth any competing applications, or if the agency does not advertise the property, the person previously holding the permit may apply for a new permit by submitting an application and all applicable fees including a fee equal to the reinstatement fee.

#### **R850-50-800. Grazing Permits--Legal Effect.**

Grazing permits transfer no right, title, or interest in any lands or resources held by the agency, nor any exclusive right of possession and grant only the authorized utilization of forage.

#### **R850-50-900. Non-Use Provisions.**

The granting of non-use for trust lands shall be at the discretion of the agency. The following criteria shall apply to all non-use requests:

1. The permittee shall submit an application for non-use in advance or, if the trust land is within a federal grazing allotment, as soon as notification of non-use is received from the applicable federal agency. The request shall be accompanied by the applicable application fee and by any appropriate documentation which is the basis for the request. In the event of approved grazing non-use, fees shall not be waived or refunded but shall be applied to the next year.
2. Non-use shall not be approved for periods of time exceeding one year.
3. Non-use may be approved in times of emergency conditions.
4. Non-use for personal convenience with no payment of fees shall not be approved.

#### **R850-50-1000. Assignment and Subleasing of Grazing Permits.**

1. Permittee shall not assign, partially assign, sublease, mortgage, pledge, or otherwise transfer, dispose or encumber any interest in the permit without the written consent of the agency. To do so shall automatically, and without notice, work a forfeiture and cancellation of the permit.
2. The agency shall assess a fee equal to 50% of the difference between the base grazing fee per AUM assessed by the agency and the AUM fee received by the permittee through the sublease multiplied by the number of AUMs subleased, or a \$1.00 per AUM minimum fee, whichever is greater, for its approval of any sublease. The approval of any sublease shall be subject to the following restrictions:
  - (a) Consent for subleasing shall only be given if the sublease is compatible with the best interests of the beneficiaries and long-term management of the land and will not unreasonably conflict with the interests of other permittees in the area.
  - (b) Subleases in-lieu of a collateral assignment shall not be approved.
  - (c) Any subleases shall not be effective for more than five years.
3. The agency may assess an additional fee based upon either the fair market value of the permit or a flat fee per AUM for its approval of any assignment or partial assignment.
4. Mortgage agreements or collateral assignments are for the convenience of the permittee. The term of a mortgage agreement or collateral assignment shall not exceed the

remaining term of the permit. If the grazing permit is renewed, the permittee may also renew the mortgage agreement or collateral assignment of the permit pursuant to these rules.

#### **R850-50-1100. Range Improvement Projects.**

1. Range Improvement Projects shall be submitted for approval on appropriate application forms. Range Improvement Projects shall be approved or denied by the agency based on a written finding.
2. All range improvement activity shall be approved by the agency in writing before construction begins. Line cabins and similar structures shall not be authorized as range improvement projects and shall be authorized by a special use lease pursuant to R850-30.
3. Agency authorization for range improvement projects shall be valid for periods of time not to exceed two years from the date the applicant is notified of the authorization. Extensions of time may be granted only in extraordinary circumstances.
4. Range improvements constructed or placed upon trust land without prior approval shall become the property of the agency.
5. Range improvements shall not be authorized if they would be:
  - (a) located on a parcel that the agency has determined has potential for sale, lease or exchange and the possibility exists that improvements may encumber these actions.
  - (b) located on a parcel designated for disposal.
  - (c) a project or structure that does not fill a critical need or enhance the value of the resource.
6. Range improvements which are necessary to rehabilitate lands whose forage production has been diminished by poor grazing practices or poor stewardship of the permittee shall not be considered a reimbursable improvement but rather a requirement to keep the grazing permit in effect.
7. Authorized Range Improvement Projects shall be depreciated using schedules consistent with typical schedules published by the USDA Soil Conservation Service. In the event of disposal of the property, the issuance of a permit to a competing applicant, or withdrawal of the property, the permittee shall receive no more than the original cost minus the indicated depreciation costs; or in the alternative, shall be allowed 90 days to remove improvements pursuant to section 53C-4-202(6).
8. If the range improvement project is designed to increase carrying capacity, the permittee shall agree to pay for the increase in AUMs annually starting no later than two years after project completion. The agency may allow any increase in fees to be phased-in at 20% per year.
9. The agency may participate in cost-sharing of designated range improvement projects, or maintenance of existing range improvement projects, by providing funding in amounts and at rates determined by the agency.
10. The agency's cost/share portion of the project may be in the form of project materials. In these instances, the permittee shall be required to provide all necessary equipment and manpower to complete the project to specifications required by the agency.

#### **R850-50-1200. Additional Leases.**

If the agency determines that there is unused forage available on a parcel of trust land resulting from temporary conditions, it may issue an additional permit or permits. These permit(s) shall be issued in accordance to R850-50-400. Existing permittees shall have a first right of refusal to unused forage.

#### **R850-50-1300. Rights Reserved to the Agency.**

In all grazing permits the agency shall expressly reserve the

right to:

1. issue special use leases, timber sales, materials permits, easements, rights-of-entry and any other interest in the trust land.
2. issue permits for the harvesting of seed from plants on the trust land. If loss of use occurs from harvesting activities, a credit for the amount of loss shall be made to the following year's assessment.
3. enter upon and inspect the trust land or to allow scientific studies upon trust land at any reasonable time.
4. allow the public the right to use the trust land for purposes and periods of time permitted by policy and rules. However, nothing in these rules purports to authorize trespass on private land to reach trust land.
5. require that all water rights on trust land be filed in the name of the trust and to require express written approval prior to the conveyance of water off trust land.
6. require a permittee, when an agency-owned water right is associated with the grazing permit, to ensure that the water right, to the extent allowed under the permit, is maintained in compliance with state law.
7. close roads for the purpose of range or road protection, or other administrative purposes.
8. dispose of the property without compensation to the permittee, subject to R850-50-1100(7).
9. terminate a grazing permit in order to facilitate higher and better uses of trust lands.

**R850-50-1400. Trespass.**

1. Unauthorized activities which occur on trust land shall be considered trespass and damages shall be assessed pursuant to 53C-2-301. These activities include, but are not limited to:
  - (a) The use of forage at times and at places not authorized in the permit.
  - (b) The placement of numbers of livestock on the trust land which, if left on the trust land for the length of time allowed in the permit, would result in forage being used in excess of that authorized by the permit.
  - (c) Grazing or trailing livestock on or across trust land without a valid permit or right-of-entry.
  - (d) The dumping of garbage or any other material on the trust land.
2. The permittee shall cooperate with the agency in taking civil action against the owners of trespass livestock on trust lands to recover damages for lost forage or other values.

**R850-50-1500. Trailing Livestock Across Trust Land.**

1. The trailing of livestock across trust land by a person not holding a grazing permit may be authorized if no other reasonable means of access is available.
2. Written approval in the form of a right-of-entry shall be obtained in advance from the agency.
3. The authorization to trail livestock across trust land shall restrict and limit the route, the number and type of animals, and the time and duration, not to exceed two consecutive days of the trailing.

**R850-50-1600. Modified Grazing Permit.**

1. At the discretion of the director, the agency may issue modified grazing permits in instances where the proposed use is grazing related but is more intensive than livestock grazing alone and when improvements, if any, are primarily temporary in nature. Such uses may include, but are not limited to, uses authorized under R850-30-300(1)(d), camps, corrals, feed yards, irrigated livestock pastures, or other related uses.
2. Modified grazing permits may be approved pursuant to the following process:
  - (a) Applications for modified grazing permits shall be submitted pursuant to R850-3.

(b) Applications, if accepted, shall be accompanied with an application fee equal to the application fee for special use leases.

(c) Applications shall be evaluated pursuant to R850-3-400 and R850-50-400.

3. Modified grazing permits shall be subject to the following terms and conditions:

(a) The term of a modified grazing permit shall be no longer than 15 years and contain terms, conditions, and provisions the agency, in its discretion, deems necessary to protect the interest of the trust beneficiaries.

(b) A modified grazing permit is subject to cancellation pursuant to R850-50-600(4).

(c) Annual rental for a modified grazing permit shall be based on the fair market value of the permitted property. Fair market value of the permitted property and annual rental rates shall be determined by the agency pursuant to R850-30-400. Periodic rental reviews may be completed pursuant to R850-30-400(4).

(d) Upon cancellation of the modified grazing permit:

- i) the permittee shall be allowed 90 days to remove approved temporary range improvements; and
- ii) at the discretion of the director, the agency may reimburse the permittee for approved permanent range improvements pursuant to R850-50-1100; or
- iii) the permittee shall be allowed 90 days to remove approved permanent range improvements.

(e) Prior to the issuance of a modified grazing permit, or for good cause shown at any time during the term of the modified grazing permit, the applicant or permittee, as the case may be, may be required to post with the agency a bond in the form and amount as may be determined by the agency to assure compliance with all terms and conditions of the permit. Any bond posted pursuant to this rule is subject to R850-30-800(2) through (4).

**KEY: administrative procedures, range management**

**May 1, 2005**

**Notice of Continuation June 27, 2007**

**53C-1-302(1)(a)(ii)**

**53C-2-201(1)(a)**

**53C-5-102**

**R850. School and Institutional Trust Lands, Administration.****R850-60. Cultural Resources.****R850-60-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302(1)(a)(ii) and 53C-2-201(1)(a) which authorize the Director of the School and Institutional Trust Lands Administration to prescribe the management of cultural resources on trust lands. This rule outlines the manner by which the agency shall, pursuant to Section 9-8-404, take into account the effect of trust land uses and other land uses on any district, site, building, structure or specimen that is included in or eligible for inclusion in the State Register or National Register of Historic Places, and allow the State Historic Preservation Officer a reasonable opportunity to comment with regard to the undertaking. This rule also outlines the manner by which the agency shall, pursuant to Section 9-8-305(2), issue permits for archaeological surveys and excavations on trust lands.

**R850-60-200. Definitions.**

For purposes of this rule:

1. "Area of potential effects" means the geographic area or areas established by the agency within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist.

2. "Discovery property" means any site or archaeological resources that are encountered, found or otherwise made known during the course of land use conducted subsequent to approval of that use by the agency.

3. "Historic property" means any prehistoric or historic district, site, building or structure, or object included in, or eligible for inclusion in, the National Register of Historic Places. This term includes, for the purposes of this rule, artifacts, records, and remains that are related to and located within such historic properties.

4. "Interested persons" means those organizations and individuals that are concerned with the effects of an undertaking on historic properties and have expressed their concern to the agency.

5. "Local government" means any city, county, township, municipality or other general purpose subdivision of the state.

6. "National Register" means the National Register of Historic Places, maintained by the United States Secretary of the Interior.

7. "National Register Criteria" means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of cultural resources for the National Register; these criteria are found in 36 CFR Part 60, hereby incorporated by reference.

8. "Undertaking" means any trust land use or other land use that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects.

**R850-60-300. Authorization of Cultural Resource Work.**

1. No person shall alter, remove, injure or destroy cultural resources on trust lands, without written permission from the agency.

2. No person shall survey or excavate archaeological resources on trust lands without first obtaining an archaeological permit from the agency.

A condition of permission shall be that the permittee shall provide the agency with a copy of all records resulting from such investigations. No requirement for permission shall be made for non-documentary, non-disturbing, purely recreational visitation of sites on trust lands.

3. Any person found in violation of R850-60-300 will be subject to civil and criminal penalties.

**R850-60-400. Archaeological Permits.**

1. The agency shall issue archaeological survey and excavation permits, after consultation with SHPO, to persons who demonstrate compliance with the following requirements:

(a) the minimum standards for education and experience set by federal regulation, codified as 43 CFR 7.8(a)(1), hereby incorporated by reference. Permit applicants shall submit resumes or vitae as proof of conformity with these minimum standards.

(b) the ability to conduct the proposed work in a manner consistent with current professional practice, including access to proper equipment, facilities, and other personnel who are qualified to assist in executing the proposed work. Permit applicants shall submit the appropriate documentation as proof of conformity with this requirement.

(c) written proof that an agreement with the Utah Museum of Natural History (UMNH) is in place for curation of all recovered archaeological materials, specimens and collections at either the UMNH or another repository or curation facility approved by the UMNH.

2. All work conducted under an archaeological survey permit shall be conducted in accordance with current professional practice and the terms of the permit.

3. For archaeological excavation permits, the agency shall require that the permit applicant provide the following:

(a) A research design which explicitly states the questions to be addressed; the reasons for conducting the work; defines the methods to be used; describes the analysis to be performed; outlines the expected results and the plans for reporting; evaluates the expected contributions of the project work to archaeological science and the field of anthropology.

(b) Written proof of consultation with the appropriate Indian tribe, if required by Section 9-9-403.

(c) Any other information requested by the agency.

4. All archaeological permits shall be issued with the following requirements:

(a) The permittee shall provide reports documenting results of the work and data obtained, and deliver relevant records, site forms, and reports to the agency within the time specified in the permit.

(b) Any permittee who discovers human remains shall notify the agency and other appropriate agencies pursuant to Section 9-9-403 and cease further activity, except in compliance with Section 9-9-403.

(c) If the permittee fails to comply with any statute, rule or the provisions of the permit, the agency may terminate the permit and either continue the study or grant another permittee the responsibility or opportunity to complete the permitted work.

5. The duration of archaeological permits shall be the following:

(a) Survey permits shall be issued for one year.

(b) Excavation permits shall be issued for the period of time necessary to accomplish the proposed work. The period of time may be extended by the agency upon application by the permittee.

(c) The UMNH shall be consulted if the duration of an excavation permit is to be modified.

6. The agency may require other provisions as necessary.

**R850-60-500. Delegation of Permitting Authority.**

Authority for permitting cultural resources surveys, excavations, or both under R850-60-300 may be delegated to the Division of State History through a Memorandum of Agreement (MOA) between the agency and the Division of State History. The delegation shall be contingent upon terms or conditions which the director deems appropriate and in the best interest of the trust. Authority for permitting surveys shall either be delegated annually by MOA to the Division of State

History or retained annually by the agency. The agency may reserve in the MOA the right to issue an excavation permit for a specific undertaking upon a written finding that the best interest of the trust requires that the excavation be conducted pursuant to R850-60-400. The delegation may be rescinded through termination of the MOA after ten day's notice of the intent to terminate the MOA published in the Utah State Bulletin.

#### **R850-60-600. Identifying Historic Properties.**

1. Following the agency's determination that a proposed trust land use or other land use constitutes an undertaking the agency shall establish the undertaking's area of potential effects. Thereafter, the agency shall review existing information about historic properties that may be affected by the undertaking. As part of this process, the agency may seek information from the State Historic Preservation Officer (SHPO), Indian tribes, local governments, state or federal agencies or any other interested parties likely to have knowledge or concerns about cultural resources in the area. The agency may delegate this collection of information to an appropriate person.

2. Based on this assessment, the agency shall determine whether a field survey will be required to identify historic properties.

3. If the agency determines that a field survey will be required, the agency shall make a reasonable and good faith effort to identify historic properties that might be affected by an undertaking and shall gather sufficient information to evaluate the eligibility of these properties for the National Register. The agency shall utilize the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716), incorporated by reference, in making this effort.

4. The agency may conduct field surveys on school and institutional trust lands in the order of priority determined by the agency. The agency shall assign a higher priority to those field surveys for proposed uses which the agency has determined will best fulfill the trust land management objectives in R850-2-200. Agency personnel shall not normally conduct field surveys for mineral exploration or development activity, easements, or projects where federal, state, or local government agencies are the applicants.

5. School and institutional trust land applicants may conduct authorized field surveys at their own expense.

(a) If the applicant is the successful bidder for the trust land use, no reimbursement shall be made by the agency.

(b) If the applicant is not the successful bidder for the trust land use, the agency shall reimburse the applicant for the cost of the survey, provided that the agency has previously authorized the estimated maximum cost of the survey prior to its initiation.

#### **R850-60-700. Evaluating Eligibility.**

1. The agency shall make a determination of the eligibility for the National Register for any site identified within the undertaking's area of potential effects.

(a) The agency shall follow the Secretary of the Interior's Standards and Guidelines for Evaluation in applying the National Register Criteria to any sites that may be affected by the undertaking.

(b) The passage of time or changing perceptions of significance may justify re-evaluation of sites that were previously determined to be eligible or ineligible.

2. The agency shall consult the SHPO regarding the agency's determination of eligibility. If the SHPO does not provide comment within 15 days of receipt, the SHPO is presumed to agree with the agency's determination of eligibility.

3. If the agency determines the property is eligible, the historic property will be assessed for effect in accordance with R850-60-800.

#### **R850-60-800. Assessing Effects.**

1. The agency shall assess the effect of a proposed trust land use or other land use on historic properties by applying the Criteria of Effect and Adverse Effect found in 36 CFR 800.9, hereby incorporated by reference.

2. The agency shall consult the SHPO regarding the finding of effect. If the SHPO does not provide the agency with comment within 15 days, or 30 days if consultation regarding eligibility is included, the SHPO is presumed to agree with the agency's finding of effect.

3. Based upon the determination made in R850-60-600, R850-60-700 and R850-60-800, the agency shall take into account the effect of the undertaking on the historic property.

4. The agency may establish treatment options in consultation with the SHPO that may include:

- (a) archaeological data recovery;
- (b) "alternative" or "creative" mitigation;
- (c) physical treatment to alleviate or minimize the adverse effect(s);
- (d) historic property documentation; or
- (e) simple case documentation.

#### **R850-60-900. Discoveries.**

1. Any user of trust lands shall immediately cease any use which may threaten an unanticipated discovery property upon discovery until such time as the discovery property has been evaluated and treated to the satisfaction of the agency.

#### **R850-60-1000. Emergency Undertakings.**

The agency may waive cultural resource management considerations when responding to wildland fires, flood control and other emergency actions.

#### **R850-60-1100. Programmatic Agreements.**

The agency may enter into programmatic agreements with the SHPO, or with other state or federal agencies, and with local governments for compliance with Section 9-8-404 or other pertinent state or federal statutes. The agency may also cooperate with federal agencies in federal programmatic agreements where practicable and appropriate.

#### **R850-60-1200. Records.**

1. The agency shall submit one copy each of all site forms, survey and data recovery, treatment or mitigation reports prepared by the agency to the SHPO. All similar data prepared by permittees conducting work in accordance with R850-60-400 shall be required to furnish one copy of the results of their investigations to the SHPO.

2. Records and data containing site location information which could jeopardize the integrity of those sites shall be provided protected records status pursuant to Section 63-2-304(25).

#### **R850-60-1300. Ownership and Management of Collections.**

Collections recovered from school and institutional trust lands are the property of the respective trust and shall be labeled as belonging to that trust and are held in trust for the beneficiaries by the institution in possession and managed according to state law and the rules of the UMNH.

#### **KEY: cultural resources**

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**R850. School and Institutional Trust Lands, Administration.****R850-80. Sale of Trust Lands.****R850-80-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Subsections 53C-1-302(1)(a)(ii) and 53C-4-101(1) which authorize the Director of the School and Institutional Trust Lands Administration to prescribe the terms and conditions for the sale of trust land; and Subsection 72-5-203(2)(a) which directs the Administration to enact rules establishing a process by which responsible authorities may apply to convert permissive temporary easements or rights-of-entry to permanent easements or rights-of-entry.

**R850-80-150. Planning.**

Pursuant to Subsection 53C-2-201(1)(a), the Trust Lands Administration shall also undertake to complete the following planning obligations, in addition to the rule-based analysis and approval processes that are prescribed by this rule:

1. To the extent required by the Memorandum of Understanding between the State Planning Coordinator and the School and Institutional Trust Lands Administration, submit the proposal for review by the Resource Development Coordinating Committee (RDCC);
2. Evaluation of and response to comments received through the RDCC process; and
3. Evaluation of and response to any comments received through the solicitation process conducted pursuant to R850-80-400(1).

**R850-80-200. Sale of Trust Lands.**

The agency may sell trust lands at no less than the fair market value if the agency determines that sale of the lands would be consistent with these rules and in the best interest of the trust beneficiaries.

**R850-80-250. Determination of the Status of Temporary Easements and Rights-of-Entry.**

1. Prior to the sale of any trust land, the agency shall undertake the notification process set forth in R850-80-250(2) to evaluate whether any temporary easement or right-of-entry created under Subsection 72-5-203(1)(a)(i) exists on the subject property. This evaluation shall not adjudicate the status of any highway crossing trust land that may have been established pursuant to any federal statute, such as R.S. 2477. Highways established in accordance with the requirements of federal law, including R.S. 2477, prior to the state taking title to the underlying property are recognized as valid existing rights.
2. In order to determine the existence of a statutory temporary easement or right-of-entry on the subject property, the agency shall give notice to responsible authorities, as defined in Subsection 72-5-202(1), that the subject property is proposed for disposal through sale. This notice will permit any responsible authority asserting a temporary easement or right-of-entry pursuant to Subsection 72-5-203(1)(a)(i) to file an application to make such temporary easement or right-of-entry permanent (the "application"). The application shall contain a description of the facts which lead the applicant to believe that a statutory temporary easement or right-of-entry exists on the subject property, and other information that may be required by the agency to verify the assertion. Notice shall be provided as follows:
  - (a) Certified notice shall be mailed to the Attorney General and the executive body of the county in which the subject property is located. This notice shall include the legal description of the subject property proposed for sale and a map showing its location. The executive body of the county will have 90 days from the date of the notice within which to submit the application.

(b) Notice to other responsible authorities who may have an interest in the subject property will be given through publication at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county where the subject property is located. In addition to the legal description of the subject property being considered for sale, the advertisement shall put responsible authorities on notice that the agency may take action extinguishing the temporary easement or right-of-entry upon sale of the subject property. Other responsible authorities will have 90 days from the first date of publication within which to submit the application.

3. Upon the receipt of an application to convert a temporary easement or right-of-entry into a permanent property easement or right-of-entry, the agency will evaluate the request pursuant to the fiduciary responsibilities of the agency as described in Section 53C-1-302. A decision on whether or not to approve the application will be made at least 30 days prior to the sale of the subject property. Prior to the agency approving or rejecting an application, if any, the agency will review the supporting documentation submitted by the applicant. The agency shall consider material submitted by any responsible authority pursuant to the applicant's appropriate statutory authority. If no application is received after notice is given pursuant to R850-80-250(2), or if an application to make the temporary easement or right-of-entry permanent is not approved, the temporary easement or right-of-entry granted pursuant to Subsection 72-5-203(1)(a)(i) on the subject property will be extinguished upon the execution of a certificate of sale.

**R850-80-300. Sales Initiation Process.**

The sales process may be initiated by:

1. The acceptance of a completed application form pursuant to R850-3-400; or,
2. A determination by the director that disposal of a parcel of property is timely and in the best interests of the trust land beneficiaries.

**R850-80-400. Competitive Offering.**

1. Upon acceptance of a lease or sale application, the agency shall solicit competing applications for lease, sale or exchange through commercially feasible means, including publication at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county in which the sale is proposed. Certified notice that competing applications are being solicited shall be sent to lessees/permittees of record, adjoining lessees/permittees, and adjoining landowners at least 30 days prior to the selection of the successful applicant.
2. Notification and advertising shall include a description of the location of the parcel and any other information which may create interest in the parcel. The successful applicant shall bear the cost of the advertising.
3. The agency shall allow each applicant at least 20 days from the date of mailing of notice as evidenced by the certified mailing posting receipt (Postal Service form 3800), within which to submit a sealed bid containing their proposal for the subject parcel. Competing bids shall be evaluated using the criteria found in R850-30-500(2)(g), R850-80-500, and R850-90-200.
4. The director shall select the preferred applicant. If the preferred application is for a lease, it shall proceed through the process as outlined in R850-30-500(5). If the preferred application is for a sale, it shall proceed through the process outlined in R850-80-500. If the preferred application is for an exchange, it shall be processed pursuant to R850-90-300.
5. If any competing application received pursuant to R850-80-400 qualifies as a unit development lease as defined in R850-30-1100, the agency shall extend the sealed bid proposal deadline to 120 days.

**R850-80-500. Sale Determination Procedures.**

## 1. Preliminary Analysis

(a) The director may offer for sale, without further market analysis or sale determination, trust lands which have been:

- i) designated for disposal in General Management Plans; or
- ii) offered for sale within the previous three years but not purchased.

(b) The director may also offer for sale trust lands subject to market analysis and sale determination as provided in R850-80-500(2) and R850-80-500(3) when lands are not precluded from consideration under R850-80-500(1)(c).

(c) The director shall not further consider an application for sale when:

- i) the sale results in an unmanageable or uneconomical parcel of trust land, or eliminates or materially restricts access to a remnant holding, without additional remuneration to cover any loss in value to the remnant parcel;
- ii) the land has been, or is intended to be designated for development pursuant to R850-140;
- iii) the director finds that withdrawing the parcel from public application to develop a marketing plan is justified by market trends or anticipated market demand in the area; or
- iv) the director finds that the sale may lead to development which may have a negative effect on the value, developability or marketability of any remaining land holdings.

## 2. Market Analysis

(a) The agency shall contract for an appraisal in accordance with agency specifications for the purpose of estimating the fair market value of the trust land. The cost of the appraisal shall be borne by the successful purchaser of the parcel. The agency will determine the minimum acceptable selling price of the subject parcel using the appraisal, the data in (b) below and any other information which is deemed relevant. The minimum acceptable selling price of the parcel, as determined by the agency, shall be provided protected records status pursuant to Subsection 63-2-304(1) or 63-2-304(7) until the sale is consummated, unless otherwise ordered by the director.

(b) The agency shall conduct an economic analysis of the proposal, which shall include:

- i) appraisal;
- ii) real estate trends;
- iii) market demand;
- iv) opportunity costs including potential for appreciation; and
- v) associated management costs of retention.

## 3. Sale Determination

If the market analysis conducted pursuant to R850-80-500(2) above indicates that the increase in income to the trust from leasing the parcel, or from retaining the parcel for appreciation purposes, can reasonably be expected to exceed the return to the trust beneficiaries from the sale of the parcel, the director shall deny the sale application.

**R850-80-550. Methods of Sale.**

Upon authorization to sell trust land and related assets by the director pursuant to R850-80-300(2) or R850-80-500, the agency shall dispose of the land or assets using methods described below:

- 1. A public sale pursuant to R850-80-600, or
- 2. A negotiated sale to a party, either directly or using a broker or real estate marketing entity, after appropriate advertising of the proposed sale and 30-days prior written notice to the board and affected beneficiary institutions describing the terms, reasons and other pertinent facts of the proposed sale. Board approval is required in any of the following situations:

- (a) the value of the parcel exceeds \$100,000;
- (b) the parcel to be sold exceeds 320 acres in size; or

(c) advertising brings forth additional interested purchasers.

**R850-80-600. Public Sale Procedures.**

1. If a sale is authorized pursuant to R850-30-500(2)(h) or R850-80-400(4), the applicant shall be required to submit an amount equal to 10% of the offer to purchase. This amount shall constitute the applicant's bid for the purchase of the parcel and shall be provided protected records status pursuant to Subsection 63-2-304(1) or 63-2-304(7) until sealed bids are opened at a subsequent auction. The applicant will be allowed to enter into oral bidding subject to R850-80-600(5).

2. All sales shall be advertised through publication at least once each week for three consecutive weeks in one or more newspapers of general circulation in the county in which the land is located. Notices shall also be posted in the local governmental administrative building or courthouse and other appropriate locations. This advertisement shall indicate when and where the sale will be held. It shall contain a general description of the parcel to be sold including township, range and section and a brief description of where the parcel is located. The advertisement shall also indicate the agency office where parties interested in purchasing the land can obtain more information.

3. At least 30 days prior to the sale, notice shall be sent by certified mail to each person who owns property adjoining the land proposed for sale.

4. In addition to the requirements of R850-80-600(2), the agency may advertise sales using commonly accepted methods to the extent which the director has determined may reasonably increase the potential for additional bidding at the sale. Applicant's deposit for advertising specified by R850-80-300(1) will not be used for additional advertising.

## 5. Public sales shall commence with:

(a) the submission of fixed price sealed bids. A sealed bid shall contain an amount equal to at least 10% of the total amount offered to purchase the property. The agency may require these funds to be in the form of a certified check. On cash sales the purchaser shall pay the purchase price in full with guaranteed funds. The agency reserves the right to reject any bid however submitted. No less than three of those submitting the highest bids shall be allowed to enter into oral bidding, beginning at the amount of the highest sealed bid. The number of additional parties allowed to participate in oral bidding shall be those parties who submit a sealed bid that is within 20% of the third highest sealed bid. In the event that a parcel is offered both as one piece, and broken into several sub-parcels, the prevailing bidders for each of the sub-parcels shall be allowed to participate in the oral bidding when the parcel is offered as one piece. Current Grazing Permittees, Material Permittees and Special Use Lessees who submit sealed bids shall automatically qualify to enter into oral bidding, even if their sealed bid does not otherwise meet the qualifications described above. A bidder shall be held to the value of the bidder's sealed bid; or

(b) the payment of an agency-established bidding deposit. When the sales method outlined in this subsection is used, the agency may waive the requirement to not disclose the minimum acceptable sales price imposed by R850-80-500(2)(a).

6. If no bid submitted pursuant to R850-80-600(5)(a) equals or exceeds the minimum selling price, then the sale shall not be made except as provided below.

(a) The bidders who participated in the oral bidding may, at the discretion of the officer conducting the sale, be allowed to enter into additional oral bidding, with the starting amount being the previous high bid. In the event that more than one sealed bid was submitted, but there was no oral bidding, those persons having submitted a sealed bid who would have been allowed to enter into oral bidding pursuant to R850-80-600(5) shall be allowed to enter into oral bidding with the starting

amount being the highest sealed bid. To facilitate the sale of the parcel, the officer conducting the sale may divulge the minimum acceptable selling price;

(b) if there is still not a successful bidder, the person submitting the highest bid, whether it be sealed or oral, may request the agency to reevaluate the minimum selling price. If the agency chooses to accept the request of the person submitting the highest bid, it shall contract for an independent appraisal, the cost for which shall be borne by the requesting party. If this appraisal indicates a value less than the highest bid, then the agency may elect to notify the highest bidder by certified mail and give him two weeks from the date of notice in which to purchase the property pursuant to R850-80-600(7).

7. At the consummation of the sale, the agency shall collect at least 10% of the total sale price, interest on the unpaid balance from the date of sale to the first day of the following month, the advertising and appraisal costs, and a sales closing charge. The balance shall be payable in no more than 20 annual payments. The first payment shall be payable one year from the first day of the month following the sale; subsequent payments shall be payable on the first day of the same month each year thereafter until the balance is paid in full. Payments in excess of the current obligations shall be applied to principal. Any unpaid balance, plus interest to date, may be paid in full at any time without penalty.

8. The interest rate which shall be charged against any unpaid balance at the time of sale shall be the prime rate, as published by Zion's First National Bank, plus 2 1/2% (Prime Rate + 2 1/2%) as ascertained on the date that the sale is approved. Interest shall be calculated on a 365-day basis. Every year thereafter, the interest rate which shall be charged against the unpaid balance shall be the prime rate, as published by Zion's First National Bank, plus 2 1/2% (Prime Rate + 2 1/2%) as ascertained on the Monday prior to the first of the month previous to the due date of the annual installment.

9. Third parties owning authorized improvements on the parcel at the time of the sale shall be allowed 90 days to remove the improvements.

#### **R850-80-700. Certificates of Sale.**

1. As soon as reasonably possible following the sale, the agency shall prepare and deliver a certificate of sale to the purchaser. This certificate shall contain a legal description of the land purchased, and shall include information regarding the amount paid, the amount due, the time when the principal and interest shall become due, the beneficiary of the land, and any other terms, covenants, deed restrictions, or conditions which the agency finds appropriate. Upon payment in full, the agency shall issue a patent pursuant to Subsection 53C-4-102(7).

2. Certificates of sale shall be executed by the purchaser and returned to the agency within 30 days from the date of the purchaser's receipt of the certificate. If the certificate is not received by the agency within the 30 day period, certified notice will be sent to the purchaser giving notice that after 30 days the sale will be canceled with all monies received, including the down-payment, forfeited to the Trust Lands Administration. Notification by certified mail, return receipt requested, of this forfeiture provision shall accompany the transmittal of the certificate to the purchaser.

3. A certificate of sale shall be signed by the director after it has been signed by the purchaser and returned to the agency. The certificate and the agreement of sale shall not be final and no rights shall vest in the purchaser until the certificate is executed by the director. The agency reserves the right to reject bids for any reason prior to execution of the certificate by the director.

4. A certificate of sale may be assigned to any person qualified to purchase trust lands, provided that the assignment is approved by the agency, and that no assignment is effective

until approval is given by the director in writing.

5. An assignment must be consistent with these rules, executed by the assignee and assignor and acknowledged, and clearly set forth the certificate of sale number, the land involved, and the name and address of the assignee.

6. Assignment of a certificate of sale does not relieve the assignor from responsibility under the original contract.

7. Partial releases of property sold under certificates may be allowed at the discretion of the agency. The following conditions must be met:

(a) A partial release may only be made for parcels ten acres or larger;

(b) Access to the remainder of the land must be preserved without restriction;

(c) All utilities and infrastructure, including water, sewer and storm drains, electric power, and natural gas, installed on land covered by the certificate must have the capacity and capability to service all lands covered by the certificate;

(d) Unless the director makes a written finding that waiver of this condition would be in the best interests of the trust beneficiaries, payment shall be made to the agency in an amount equal to 125% of the price per acre paid by the purchaser under the certificate of sale, multiplied by the number of acres to be released, plus interest on that amount to the date payment is received. The payment shall be in the form of guaranteed funds, and shall be applied to principal. This payment shall not affect the amount or due dates of annual payments;

(e) Unless the director makes a written finding that waiver of this condition would be in the best interests of the beneficiaries, the 125% payment required by paragraph (d) above shall not include the 10% down payment required by statute or any other payment not designated by the payor, and accepted by the agency for that purpose;

(f) The buyer shall provide a survey and legal description prepared and sealed by a Utah Registered Land Surveyor of the parcel to be released; and

(g) The value of the remaining land shall not be reduced below the remaining principal balance of the certificate.

8. Certificates issued pursuant to this section shall contain provisions for remedies that the agency may elect in the event of default. Those remedies shall include, without limitation, acceleration of the debt, forfeiture, any remedy which the agency may pursue under the contract of sale, suit for judgment, foreclosure as provided for under Section 57-1-19 et seq. for trust deeds, and any other remedies afforded at law or equity. Purchasers who have defaulted on certificates of sale may be required to make larger down-payments on subsequent sales.

#### **R850-80-800. Agency-Initiated Sales.**

1. The agency may also offer lands for sale when they have been:

(a) Subdivided by the agency pursuant to Subsection 53C-4-102(4); or

(b) Otherwise subdivided pursuant to state law; and the subdivision is accepted by the director.

2. Sales of parcels pursuant to this section shall be made according to the following procedures:

(a) The agency may offer the subject parcels for sale after advertising pursuant to R850-80-600(2).

(b) The minimum acceptable sales price shall be no less than the appraised fair market value of the parcel and shall be disclosed.

(c) Sales shall be by public oral auction, with the minimum acceptable sales price as the starting bid. Buyers may be represented by third parties.

(d) Bidders must qualify by placing a deposit with the agency for each parcel on which they bid. The amount of the deposit shall be established by the agency for each public auction. Deposits shall be returned to unsuccessful bidders.

(e) Sealed bids shall be accepted from those unable to attend the auction and, if they equal or exceed the minimum acceptable sales price, shall be the starting bids in the oral auction. Sealed bids must clearly designate the lot on which the bid is made, and must include the qualifying deposit.

(f) Payment by the successful bidder shall be made pursuant to the applicable provisions of R850-80-600(7).

(g) In addition to the sales price, each purchaser of a parcel shall pay:

- i) a prorated portion of the appraisal costs; and
- ii) an application and sales processing charge.

(h) Other provisions of the sale shall be administered pursuant to R850-80-600(8), R850-80-600(10) and R850-80-700.

3. Over the Counter Sales

(a) Following a public auction, the director may designate any unsold parcel for over the counter sale. The designation shall continue in force for a period determined by the director, but not to exceed two years.

(b) The minimum acceptable price of an unsold parcel on an over the counter sale shall be set by the director, using one of the following:

- i) The average price of at least three parcels closest in size and characteristics which were sold at the related public auction under R850-80-800(2); or
- ii) A reappraisal.

4. At the discretion of the director, unsold parcels may be retained for offering at a subsequent public auction.

5. At the discretion of the director, unsold parcels may be listed with a realtor at the minimum acceptable price plus an amount equivalent to the commission which the realtor will charge on the sale.

**KEY: administrative procedures, sales**

**October 4, 2004**

**Notice of Continuation June 27, 2007**

**53C-1-302(1)(a)(ii)**

**53C-2-201(1)(a)**

**53C-4-101(1)**

**53C-4-102**

**53C-4-202(6)**

**63-2-304**

**72-5-203(1)(a)(i)**

**72-5-203(2)(a)**

**R982. Workforce Services, Administration.****R982-101. Americans with Disabilities Complaint Procedure.****R982-101-100. Authority and Purpose.**

(1) The legal authority for these rules is found in U. C. A. Sections 35A-1-104 and 63-46a-3(3) and Title II of the Americans with Disabilities Act (ADA).

(2) No qualified individual with a disability, by reason of such disability, shall be excluded from participation in or be denied the benefits, services, programs, or activities of the Department, or be subjected to discrimination by the Department.

(3) The Department will provide prompt and equitable resolution of all complaints filed with, received by, or referred to the Department by qualified individuals with disabilities arising from exclusion from participation in, or denial of benefits or services, programs or activities, administered by the Department.

**R982-101-101. Definitions.**

(1) "ADA coordinator" (coordinator) means the Department's coordinator or coordinators who have responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals alleging discrimination in the receipt of services or work accommodation due to disability.

(2) "Executive Director" (Director) means the chief administrative officer of the Department appointed by the governor pursuant to Utah Code Ann. 35A-1-201(1)(a) or the Director's designee.

(3) "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 an individual; a record of an impairment; or being regarded as having an impairment.

(4) "Qualified individual with a disability" The Department adopts the definition in Title II of the ADA. The term generally means a person who has a disability which limits one or more major life activities and who meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the Department or who, with or without reasonable accommodation, can perform the essential functions of the position in the Department, or who would otherwise be an eligible applicant for vacant positions with the Department, as well as those who are employees of the Department.

(5) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, sitting, seeing, hearing, speaking, breathing, learning and working.

**R982-101-102. Classification of Records.**

The record of each complaint and appeal, and all written records produced or received as part of the complaint procedure under this rule, shall be classified as protected as defined under Section 63-2-304 until the coordinator, Director, or designee issues the decision, at which time any portions of the record which may pertain to the individual's medical condition shall remain classified as private as defined under Section 63-2-302, or controlled as defined in Section 63-2-303. All other information gathered as part of the complaint record shall be classified as private information. The written decision of the coordinator, Director or designee shall be classified as protected information.

**R982-101-103. 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 35.170, et seq.; or any other

federal law, Utah law or the common law that provides equal or greater protection for the rights of individuals with disabilities.

**R982-101-104. Appointment of ADA Coordinator.**

The Director shall appoint one or more persons as the ADA coordinator to investigate and resolve complaints filed by qualified individuals with disabilities.

**R982-101-200. Filing of Complaints by Department Employees or Applicants for a Vacant Position.**

(1) A complaint shall be filed in a timely manner to assure prompt, effective investigation, but no later than 180 days from the date of the alleged act of discrimination.

(2) The complaint may be filed by a qualified individual with a disability with any Division, Office or Regional Office of the Department or directly with the coordinator. The complaint shall be in writing or in another accessible format suitable to the individual. Complaints filed locally are to be forwarded immediately to the coordinator. If filed directly with the coordinator it should be delivered or mailed to:

ADA Coordinator  
Department of Workforce Services  
140 East 300 South  
Salt Lake City, UT 84145-0249

(3) Each complaint shall be in writing or in another accessible format suitable to the individual and include:

- (a) the individual's name and address;
- (b) the nature and extent of the individual's disability;
- (c) the Department's alleged discriminatory action in sufficient detail to inform the Department of the nature and the date of the alleged violation;
- (d) a description of the action and accommodation desired;

and,

- (e) be signed by the individual or 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.

(5) With or without exhausting Department procedures, individuals may also file complaints alleging discrimination in employment with:

Utah Anti-Discrimination and Labor Division  
160 East 300 South  
Salt Lake City, UT 84114  
or,  
Equal Employment Opportunity Commission  
4520 North Central Avenue, Suite 300  
Phoenix, AZ 85012-1848  
Phone 602-640-2598

**R982-101-201. Investigation and Resolution of Employee Complaints.**

(1) The coordinator shall conduct an investigation of each complaint received.

(2) Within 15 working days after receiving the complaint, the coordinator shall either issue a decision in writing stating the action that will be taken on the complaint, that no action will be taken on the complaint, or notify the complainant in writing that the decision is being delayed and the amount of additional time needed to issue a decision.

(3) The party initiating the complaint and the Department may agree in writing to waive or extend the time limits set forth in the complaint process.

**R982-101-202. Appeals of Employee Complaints.**

(1) The complainant may appeal the decision of the coordinator by filing an appeal within five working days from the receipt of the decision. The appeal shall be in writing or in another accessible format suitable to the individual.

(2) The filing of an appeal shall be considered as

authorization by the complainant to allow review of all information, including information classified as other than public information, by the Director.

(3) 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.

(4) The Director shall review the coordinator's findings and decision and may conduct an additional investigation.

(5) The Director shall either issue a decision within ten working days of receipt of the appeal, or shall notify the complainant in writing or in another accessible format suitable to the individual that the decision is being delayed and the amount of additional time needed to issue a decision.

(6) Nothing in this rule relieves the complainant from complying with or assisting in the complaint process by providing information necessary to make a decision on the complaint.

(7) Nothing in this rule requires the Director to gather information or seek documentation to support the complaint.

(8) The decision issued by the Director shall constitute the final agency action.

(9) The Director may appoint a designee other than the coordinator to fulfill the Director's obligations under this rule.

#### **R982-101-300. Filing of Complaints by Clients.**

(1) The Department will resolve all written complaints filed by a qualified individual with a disability with the Department arising from exclusion from participation in, or denial of benefits or services, programs or activities, administered by the Department. Complaints shall be made on a form as developed by the Department.

(2) All client complaints shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 180 days from the date of the alleged act of discrimination.

(3) The complaint may be filed with any Division, Regional Office or Local Office of the Department or directly with the coordinator. Complaints filed locally are to be forwarded immediately to the coordinator. The complaint shall be in writing or in another accessible format suitable to the individual and delivered or mailed to:

ADA Coordinator  
Department of Workforce Services  
140 E 300 South  
Salt Lake City, UT 84145-0249

(4) Each complaint shall include:

- (a) the individual's name and address;
- (b) the nature and extent of the individual's disability;
- (c) the Department's alleged discriminatory action in sufficient detail to inform the Department of the nature and the date of the alleged violation;
- (d) a description of the action and accommodation desired;

and,

(e) be signed by the individual or legal representative.

(5) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

(6) With or without exhausting Department procedures, complainants may also file complaints alleging discrimination in the delivery of services with:

Director, Civil Rights Center  
U.S. Department of Labor  
200 Constitution Avenue, NW Room N4123  
Washington, D.C. 20210; or  
Office of Civil Rights  
U.S. Department of Health and Human Services  
Federal Office Building  
1961 Stout Street  
Denver, CO 80295-3538

Or, for employment related complaints based on disability:  
Utah Anti-Discrimination and Labor Division  
160 East 300 South  
Salt Lake City, UT 84114; or  
Equal Employment Opportunity Commission  
4520 North Central Avenue, Suite 300  
Phoenix, AZ 85012-1848  
Phone 602-640-2598.

#### **R982-101-301. Investigation of Client Complaints.**

(1) The coordinator shall document the filing of the complaint and shall assemble all the necessary information to process the complaint.

(2) When conducting the investigation, the coordinator may seek assistance from the Attorney General or any Department employee or other person or agency in determining what action, if any, shall be taken on the complaint.

#### **R982-101-302. Issuance of Decisions and Appeal Rights of Client Complaints.**

The coordinator shall issue a decision in writing or other accessible format suitable to the individual within 90 days from the date the complaint was received by the Department. The decision shall inform the parties of their appeal rights and the procedure for filing an appeal. The decision shall outline what action was taken or will be taken, if any.

**KEY: disabilities, complaints**

**January 1, 2003**

**Notice of Continuation June 26, 2007**

**35A-1-104**

**R982. Workforce Services, Administration.****R982-201. Government Records Access and Management Act.****R982-201-101. Request for Access to Department of Workforce Services Records.**

1. Authority. As required by Subsection 63-2-204(2), this rule specifies where and to whom a request for access of Department of Workforce Services (DWS) records shall be directed.

2. Definition. Words used in R982-201 are defined in Section 63-2-103.

3. Requests for Access.

a. All requests for records shall be submitted in accordance with Subsection 63-2-204(1).

b. A person may submit a request for a record to any DWS office. If the record requested is one originated in that office, that office will respond to the request. If the record is unknown or not available in the office where the request is filed, the request will be sent immediately to the appropriate Employment Center or administrative office. If the office is unsure as to which office is the appropriate one, the request will be sent to the Department of Workforce Services, Records Manager.

4. News Media/Expedited Release. If a requester demonstrates that he is a member of the news media or that expedited release of the record benefits the public rather than an individual, the request shall be submitted to the Department of Workforce Services, Records Manager, or Public Information Officer.

**R982-201-102. Fee Schedule for Records Copies.**

1. Authority. Pursuant to Section 63-2-203, the Department will charge fees for the copying and compiling of records, and may waive fees as specified in this rule.

2. Fee Rates. For records which are reproducible in their current form the fee charged for making copies shall be established by the Executive Director in accordance with Section 63-2-203(1).

3. Payment Waiver.

a. The right to waive payment of fees for copying records shall reside with the staff in the Employment Center or administrative office. No fees shall be charged for reviewing a record or inspecting a record according to Subsections 63-2-203(4)(a) and (b).

b. Fees shall not be waived where records are provided to professionals providing services for a fee to individuals who would otherwise have access to records under Sections 63-2-301 through 63-2-304.

**R982-201-103. Appellate Requests, Research Requests and Intellectual Property Access Requests.**

1. Authority. As required by Subsection 63-2-401(9), this rule specifies where and to whom appeals on records access denials may be directed and Subsection 63-2-201(10) to whom and where requests regarding duplication and distribution of materials for which the agency owns the intellectual property rights, Subsection 63-2-202(8) regarding requests for access for research purposes may be submitted.

2. Appeals and Special Requests.

a. All first level appeals shall be directed to the individual(s) designated by the Executive Director of the Department of Workforce Services.

b. Special requests including requests for access to records for research purposes, and duplication and distribution of materials for which the agency owns the intellectual property rights shall be submitted to the individuals designated by the Executive Director for the respective Division, Office, Institution, or Bureau of the Department of Workforce Services.

3. Discretionary Access Authority. Notwithstanding Section 35A-4-312 of the Employment Security Act and other

state or Federal statute or Federal rules and as specified in Subsection 63-2-201(5)(b) decisions regarding discretionary access to records that are private, or protected under Sections 63-2-302 and 63-2-304 where the public interest to know exceeds the right of privacy shall be determined by the Executive Director or designee of the Executive Director.

**R982-201-104. Records Modification and Clarification.**

1. Authority. Section 63-2-603 Governmental Records Access and Management Act and Section 63-46b-4 Utah Administrative Procedures Act designate the option of either formal or informal hearings governing modification of records in dispute.

2. Hearings. Hearings on disputed records accuracy shall be conducted informally.

**KEY: records**

**November 6, 1997**

**Notice of Continuation June 26, 2007**

**35A-1-104**

**R982. Workforce Services, Administration.****R982-301. Councils.****R982-301-101. General Definitions.**

1. Employer. This rule adopts the definition of employer as used in Section 35A-4-203 except that for purposes of this rule, and for purposes of membership on the State Council on Workforce Services or a Regional Council on Workforce Services, an employer shall be a for-profit enterprise.

2. Median sized employer. The median sized employer shall be calculated, based on the previous calendar year, by the Division of Workforce Information and Payment Services each June 30. The median sized employer in a region is determined by arranging the establishments in an array by number of employees including the number of employees in each employer size interval, and choosing the employer in the array that employs the middle employee. The median sized employer in the state is determined similarly.

3. Attendance. Pursuant to Subsection 35A-2-103(6)(b), a council member may be considered present at the meeting when given permission by the council chair to participate in the business of the meeting by videoconference or teleconference.

4. Conflict of Interest. Prior to voting on any matter before a council, a council member must disclose and declare for the council records any direct financial benefit the member would receive from a matter being considered by the council.

**R982-301-102. State Council on Workforce Services.**

1. Authority. As required by Subsections 35A-1-206(2)(a)(iv)(A) and 35A-1-206(2)(a)(iv)(B), this rule defines Small Employers and Large Employers for membership on the State Council on Workforce Services.

## 2. Definitions.

a. "Small employer" means an employer who employs fewer employees than the median sized employer in the state.

b. "Large employer" means an employer who employs a number of employees that is greater than or equal to the median sized employer in the state.

c. "Median Sized Employer" as used in R982-301-102(2)(a) and R982-301-102(2)(b) is based solely on the number of employees an employer has in his/her employ in the state during the calendar year.

**R982-301-103. Regional Councils on Workforce Services.**

1. Authority. As required by Sections 35A-2-103(2)(a)(i) and 35A-2-103(2)(a)(ii) this rule defines small employers and large employers for membership on the Regional Councils on Workforce Services.

## 2. Definitions.

a. "Small employer" means an employer who employs fewer employees than the median sized employer in the region.

b. "Large employer" means an employer who employs a number of employees that is greater than or equal to the median sized employer in the region.

c. "Median Sized Employer" as used in R982-301-103(2)(a) and R982-301-103(2)(b) is based solely on the number of employees an employer has in his/her employ in the region during the calendar year.

3. Voting. A voting member of a regional council must either be present at a council meeting to vote or, if unable to attend a council meeting, may submit to a regional director in writing 24 hours in advance of a council meeting the member's vote on a specific matter or proposal before the council.

4. Council Leadership. A chair of a regional council may, in consultation with the regional director, appoint members of the council to be the vice chair or second vice chair to serve in leadership positions at the direction of the chair. The vice chair and second vice chair shall be representatives of private sector employers.

**KEY: councils**

November 4, 2002

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35A-1-104(1)

35A-1-206(2)(a)(iv)(A)

35A-1-206(2)(a)(iv)(B)

35A-2-103(2)(a)(i)

35A-2-103(2)(a)(ii)

**R982. Workforce Services, Administration.****R982-601. Provider Code of Conduct.****R982-601-101. Statement of Purpose.**

The Provider Code of Conduct is written in addition to all Department of Workforce Services policies, rules and regulations governing delivery of services to clients. The purpose of the code is to protect vulnerable clients from abuse, neglect, maltreatment and exploitation. The Code of Conduct clarifies the expectation of conduct for providers of contracted, licensed and certified programs and their employees, which includes administrative staff, non direct care staff, direct care staff, support services staff and any others when interacting with clients. Written agency policy required by this code must be approved by the licensing or certifying authority. Nothing in this Code shall be interpreted to mean that clients should not be held accountable for misbehavior or inappropriate behavior on their part, or that providers are restricted from instituting suitable consequences for such behavior.

**R982-601-102. Abuse, Sexual Abuse and Sexual Exploitation, Neglect, Exploitation, and Maltreatment Prohibited.**

A. No contracted, licensed or certified agency, individual, employee shall abuse, sexually abuse or sexually exploit, neglect, exploit or maltreat; (as defined below) any client.

1. No person shall cause physical injury to any client. All injury to clients (explained or unexplained) shall be documented in writing and immediately reported to supervisory personnel.

2. No person by acting, failing to act, encouragement to engage in, or failure to deter from will cause any client to be subject to abuse, sexual abuse or sexual exploitation, neglect, exploitation, or maltreatment.

3. No person shall engage any client as an observer or participant in sexual acts.

4. A person may not make clearly improper of a client or their resources for profit or advantage.

B. Failure to comply with this Code of Conduct may result in corrective action, probation, suspension, and/or termination of contract, license or certification, in accordance with administrative procedures act and Department of Workforce Services regulations.

**R982-601-103. Definition of Client.**

Any person under the age of 18 years; and any person 18 years of age or older who is impaired because of mental illness, mental deficiency, physical illness or disability, use of drugs, intoxication, or other cause, to the extent that he is unable to care for his own personal safety, health or medical care; and is a participant in, or a recipient of a program or service contracted with, or licensed or certified by the Department of Workforce Services.

**R982-601-104. Definitions of Abuse, Sexual Abuse and Sexual Exploitation, Neglect, Exploitation, and Maltreatment.**

A. Abuse of clients may include, but is not limited to:

1. Harm or threatened harm, meaning damage or threatened damage to the physical or emotional health and welfare of a client such as failure.

2. Unlawful confinement.

3. Deprivation of life-sustaining treatment.

4. Physical injury including, but not limited to, any contusion of the skin, laceration, malnutrition, burn, fracture of any bone, subdural hematoma, injury to any internal organ, any injury causing bleeding, or any physical condition which imperils a client's health or welfare.

5. Any type of physical hitting or corporal punishment inflicted in any manner upon the body.

B. Sexual abuse and sexual exploitation will include, but

not be limited to:

1. Engaging in sexual intercourse with any client.

2. Touching the anus or any part of the genitals or otherwise taking indecent liberties with a client, or causing an individual to take indecent liberties with a client, with the intent to arouse or gratify the sexual desire of any person.

3. Employing, using, persuading, inducing, enticing, or coercing a client to pose in the nude.

4. Employing, using, persuading, inducing, enticing or coercing a client to engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way the sexual or simulated sexual conduct. This includes displaying, distributing, possessing for the purpose of distribution, or selling material depicting nudity, or engaging in sexual or simulated sexual conduct with a client.

5. Committing or attempting to commit acts of sodomy or molestation with a client.

6. This definition is not to include therapeutic processes used in the treatment of sexual deviancy or dysfunction which have been outlined in the clients treatment plan and is in accordance with written agency policy.

C. Neglect may include but is not limited to:

1. Denial of sufficient nutrition.

2. Denial of sufficient sleep.

3. Denial of sufficient clothing, or bedding.

4. Failure to provide adequate supervision; including impairment of employee resulting in inadequate supervision. Impairment of an employee may include but is not limited to use of alcohol and drugs, illness, sleeping.

5. Failure to arrange for medical care and/or medical treatment as prescribed or instructed by a physician when not contraindicated by agency after consultation with agency physician.

6. Denial of sufficient shelter, except in accordance with the written agency policy.

D. Exploitation will include, but is not limited to:

1. Utilizing the labor of a client without giving just or equivalent return except as part of a written agency policy which is in accordance with reasonable therapeutic interventions and goals.

2. Using property belonging to clients.

3. Acceptance of gifts as a condition of receipt of program services.

E. Maltreatment will include, but is not limited to:

1. Physical exercises, such as running laps or performing pushups, except in accordance with an individual's service plan and written agency policy.

2. Chemical, mechanical or physical restraints except when authorized by individual's service plan and administered by appropriate personnel or when threat of injury to the client or other person exists.

3. Assignment of unduly physically strenuous or harsh work.

4. Requiring or forcing the individual to take an uncomfortable position, such as squatting or bending, or requiring or forcing the individual to repeat physical movements when used solely as a means of punishment.

5. Group punishments for misbehaviors of individuals except in accordance with the written agency policy.

6. Verbal abuse by agency personnel: engaging in language whose intent or result is demeaning to the client except in accordance with written agency policy which is in accordance with reasonable therapeutic interventions and goals.

7. Denial of any essential program service solely for disciplinary purposes except in accordance with written agency policy.

8. Denial of visiting or communication privileges with family or significant others solely for disciplinary purposes except in accordance with written agency policy.

9. Requiring the individual to remain silent for long periods of time solely for the purpose of punishment.

10. Extensive withholding of emotional response or stimulation.

11. Exclusion of a client from entry to the residence except in accordance with the written agency policy.

**R982-601-105. Reporting Requirements.**

Any contracted, licensed or certified agency, individual, or employee is responsible to document and report abuse, sexual abuse and sexual exploitation, neglect, maltreatment and exploitation as outlined in this Code and cooperate fully in any resulting investigation.

1. Any person will immediately report abuse, sexual abuse and sexual exploitation, neglect, maltreatment or exploitation by contacting the local Regional Office within 24 hours. During weekends and on holidays such reports will be made to the Regional Office On-call worker.

2. All reports and documentation made regarding situations of abuse, sexual abuse and sexual exploitation, neglect, and exploitation will be made available upon request, or with court order when required by federal regulations, to appropriate Department of Workforce Services personnel and law enforcement.

3. All injury to clients (explained or unexplained) shall be documented in writing and immediately reported to supervisory personnel.

4. A poster, provided by the Department of Workforce Services, notifying contractor employees of their responsibilities to report violations and giving appropriate phone numbers, is required to be prominently displayed in all contractor facilities.

**KEY: economic development, training programs, code of conduct, unemployed workers**

**July 1, 1997**

**35A-1-104(1)**

**Notice of Continuation June 26, 2007**

**35A-1-104(2)**

**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)
- (j) 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 or certain exceptions under R986-200-218 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.

**R986-100-114a. Determining When a Document is Considered Received by the Department.**

(1) The date of receipt of a document filed with the Department is the date the document is actually received by the Department and not the post mark date. Any document received after 5 p.m., including documents received by Fax or email, will be considered received the next day Department offices are open.

(2) If a document has a due date and that due date falls on a Saturday, Sunday, or legal holiday, the time permitted for filing the document will be extended to 5 p.m. on the next day Department offices are open.

(3) "Document" as used in this section means application for assistance, verification, report, form and written notification of any kind.

(4) A verbal report or notification will be considered received on the date the client talks to a Department representative. A voice message received after 5 p.m. will be considered received the next day Department offices are open.

**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 IPV's).**

(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 IPV's 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**

June 14, 2007

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 in addition to the eligibility requirements found in R986-100.

(3) Persons who are fleeing to avoid prosecution of a felony are ineligible for financial assistance.

(4) All clients who are required to complete a negotiated employment plan as provided in R986-200-206 must attend a FEP orientation meeting and sign a FEP Agreement within 30 days of submitting his or her application for assistance. Attendance at the orientation meeting can only be excused for reasonable cause as defined in R986-200-212(8). The application for assistance will not be complete until the client has attended the meeting.

**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. Pursuing these benefits includes cooperating fully and providing all the necessary documentation to insure receipt of benefits. If the individual is already receiving assistance from the Department and it is found he or she is not cooperating fully to obtain benefits from another source, the individual will be considered to not be participating in his or her employment plan. 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. If an individual's application for SSA benefits is denied, the individual must fully cooperate in prosecuting an appeal of that SSA denial at least to the Social Security ALJ level.

(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, and provide verification for, each eligible activity in the employment plan in order to stay eligible for financial assistance. A list of what will be considered acceptable documentation is available at each employment center.

(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 30 hours per week. All 30 hours must be in eligible activities. 20 of those 30 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 30 hours of participation per week, or 20 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 30 hours per week in eligible activities. Twenty of those 30 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.

(9) Reasonable cause can also be established, as provided in 45 CFR 261.56, by a client who is a single custodial parent caring for a child under age six who refuses to engage in required work because he or she is unable to obtain needed child care because appropriate and affordable child care arrangements are not available within a reasonable distance from the home or work site.

(10) If a client is also receiving food stamps and the client's is disqualified for non-participation under this section, the client will also be subject to the food stamp sanctions found in 7CFR 273.7(f)(2) unless the client meets an exemption under food stamp regulations.

#### **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 50 of those hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. Parents in a FEPTP household who are refugees are not restricted to those activities on the approved priority or eligible activities list for the first three months of FEPTP eligibility but the parents are still required to participate for a combined total of 60 hours per week.

(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 determined 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 unforeseen 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 R986-200-218 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;

(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; or

(f) months when a parent client received transitional assistance.

#### **R986-200-218. Exceptions to the Time Limit.**

Exceptions to the time limit may be allowed 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;

(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 section is 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; or

(h) is currently receiving assistance under one of the exceptions in this section and needs additional time to obtain employment. A client can only receive assistance for one month under this subparagraph. If the Department determines that granting an exception under this subparagraph adversely impacts its federally mandated participation rate requirements or might otherwise jeopardize its funding, the one month exception will not be granted.

(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 two months, the parent client was employed for no less than 20 hours per week. 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) 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.

(8) Exceptions are subject to a review at least once every six months.

#### **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 \$450 for rent on April 1 and requests an additional EA payment of \$300 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 \$450 per family for one month's rent payment or \$700 per family for one month's mortgage payment, and \$300 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 \$60 each month in addition to the standard financial assistance payment. Enhanced participation activities are limited to:

(a) work experience sites of at least 20 hours a week and other eligible activities that together total 30 hours per week;

(b) full-time attendance in an education or employment

training program; or

(c) employment of 20 hours or more a week and other eligible activities that together total 30 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.

#### **R986-200-246. Transitional Cash Assistance.**

(1) Transitional Cash Assistance, (TCA) is offered to help FEP and FEPTP customers stabilize employment and reduce recidivism.

- (2) To be eligible for TCA a client must;
- (a) have been eligible for and have received FEP or FEPTP during the month immediately preceding the month during which TCA is requested or granted. The FEP or FEPTP assistance must have been terminated due to earned or unearned income and not for nonparticipation under R986-200-212. If the immediately preceding month was during a diversion period, the client is not eligible for TCA, and
  - (b) be employed an average of 30 hours per week for FEP households. The parents in a FEPTP household cannot combine hours for TCA. Each parent must be employed 30 hours per week.
- (3) TCA is only available if the customer verifies employment averaging the minimum required in subparagraph (2)(b) of this section.
- (4) TCA is available for a maximum of three months.
- (a) The assistance payment for the first two months of TCA is based on household size. All household income, earned and unearned, is disregarded.
  - (b) Payment for the third month is one half of the payment available in (4)(a) of this section.
- (5) If initial verification is provided and a client is paid one month of TCA but the client is unable to provide documentation to support that initial verification, no further payments will be made under TCA but the one month payment will not result in an overpayment.
- (6) A client can only receive TCA once in any 24 month period. This time limit applies regardless of how many months of TCA a client received.
- (7) TCA does not count toward the 36 month time limit found in R986-200-217.

**KEY: family employment program**  
**July 1, 2007** 35A-3-301 et seq.  
**Notice of Continuation September 14, 2005**

**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 the date of

application. 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.

(6) A client who meets the eligible alien status requirements for GA but does not meet the eligible alien requirements for SSI can participate in activities that may help them to become eligible for SSI such as pursuing citizenship.

**R986-400-405. Interim Aid for SSI Applicants.**

(1) A client who has applied for SSI or SSDI benefits may be provided with GA financial assistance pending a determination on the application for SSI or SSDI. If the client is applying for SSI, he or she 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 or SSDI benefits.

(3) A client must fully cooperate in prosecuting an appeal of an SSI or SSDI 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.

(4) If a client's SSI or SSDI benefits have been terminated due to a physical or mental health condition, the client is ineligible 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) At least 16 hours must be spent in an approved internship or in paid employment. Some basic educational activities are also available; 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.

**KEY: general assistance, working toward employment**  
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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 by court order. If there is no court order, an exception can be made on a case by case basis in unusual circumstances by the Department program specialist.

(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 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;

(h) a provider who has committed fraud as a provider, as determined by the Department or by a court; and

(i) any provider disqualified under R986-700-718.

**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.

(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 during:

(i) the six 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 seventh month after the period covered by the diversion payment; or

(ii) the six 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 seventh month after the termination of FEP or FEPTP. The six month time limit is the same regardless of whether the client receives TCA or not.

(6) A client does not need to fill out a new application for child care during the six month transitional period even if there is a gap in services during those six months.

#### **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.

#### **R986-700-718. Provider Disqualification.**

(1) A child care provider removing child care subsidy funds from a client's account by way of electronic benefit transfer (EBT), which includes the Horizon card and interactive voice response (IVR), can only remove those funds from a client's account that are authorized by the Department for that provider. All providers receiving payment for child care services through an EBT may learn the exact amount authorized for that provider for each client by accessing the Department's Provider Payment Authorization website. Providers who remove more funds than authorized will be required to reimburse the Department for the excess funds and will be disqualified from receipt of further CC subsidy funds as follows;

(a) if the provider has never removed unauthorized CC subsidy funds before, the Department will send a demand letter to the provider's last known address informing the provider of the unauthorized access and establishing an overpayment in the amount of the excess funds. If the provider repays the overpayment within six months, no further action will be taken on that overpayment,

(b) if the provider removes funds in excess of those authorized by the Department a second time, and the provider repaid the previous overpayment or is making a good faith effort to repay the overpayment, a second demand letter will be sent

to the provider's last known address. The second letter will establish an overpayment in the amount of the excess funds removed and inform the provider that any further unauthorized access will result in disqualification. If the provider removes unauthorized funds and has not repaid the first overpayment, or is not making a good faith effort to repay the first overpayment to the Department, no second demand letter will be sent and the provider will be disqualified for a period of one year from the date the Department issues its letter, or in the case of an appeal, from the date the ALJ issues his or her determination. A good faith effort to repay the overpayment means the provider is repaying at least 10% of the overpayment due each month.

(c) if a child care provider removes unauthorized funds a third time, or a second time without repayment of the first overpayment as provided in paragraph (1)(b) of this subsection, the provider will be disqualified and is ineligible for receipt of further CC subsidy funds for a period of one year from the date the Department issues its letter, or in the case of an appeal, from the date the ALJ issues his or her determination,

(d) a CC provider previously disqualified for one year from receipt of CC subsidy funds due to unauthorized removal of funds in paragraph (1)(c) of this subsection, will be disqualified for a period of two years if the provider removes unauthorized funds again. Warning letters under paragraphs (a) and (b) of this subsection will not be sent if a provider was previously disqualified for receipt of CC subsidy funds,

(e) a CC provider previously disqualified for a two year period due to unauthorized removal of funds in paragraph (1)(d) of this subsection will be permanently disqualified if the provider removes unauthorized funds again. Warning letters under paragraphs (a) and (b) of this subsection will not be sent if a provider was previously disqualified for receipt of CC subsidy funds.

(2) CC providers disqualified under subsection (1) of this section will be ineligible for receipt of quality grants awarded by the Department during the period of disqualification.

(3) A CC provider overpayment not paid in full within six months will be referred to collection and will be collected in the same manner as all public assistance overpayments. Payment of provider overpayments must be made to the Department and not to the client.

(4) A CC provider may appeal an overpayment or disqualification as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of letter establishing the overpayment or disqualification. A provider who has been found ineligible may continue to receive CC subsidy funds pending appeal until a decision is issued by the ALJ. The disqualification period will take effect even if the provider files an appeal of the decision issued by the ALJ.

**KEY: child care**

**July 1, 2007**

**Notice of Continuation September 14, 2005**

**35A-3-310**

**R994. Workforce Services, Unemployment Insurance.****R994-202. Employing Units.****R994-202-101. Legal Status of Employing Unit.**

The Department may, on its own motion or if requested by an employer, determine the legal status of an employing unit according to Section 35A-4-313. The determination will be based on the best available information including, registration forms, income tax returns, financial and business records, regulatory licenses, legal documents, and information from the involved parties. The Department's determination is subject to review and may be appealed according to rule R994-508, Appeal Procedures.

**(1) Sole Proprietorship.**

A sole proprietorship is a legal entity that is owned by one person. The sole proprietor is the employing unit. The sole proprietor's services are exempt from coverage pursuant to rule R994-208-103(1)(j). The services of the sole proprietor's spouse, children under age 21, and parents are also exempt from coverage and those individuals are not entitled to unemployment benefits based on the compensation received from the sole proprietorship.

**(2)(a) Partnership.**

A partnership is a legal entity composed of two or more persons or business entities that agree to contribute money, assets, labor, or skills to the business. Each partner shares the profits, losses, and management of the business and each partner is personally and wholly liable for debts of the partnership. The partners are the employing unit. The partners' services are exempt from unemployment coverage and the partners are not entitled to unemployment benefits based on compensation received from the partnership pursuant to rule R994-208-103(1)(k). The services of individuals working for partners who are also employing units, such as corporations and limited liability companies, are subject or exempt as provided under this section. If partners are added or one or more of the partners leaves the partnership, the partnership ceases to exist at the point the change occurs, and any remaining entity becomes a different employing unit. Rule R994-205-102(2) explains partnership family employment that is exempt from coverage.

**(b) Limited Partnership (LP) and Limited Liability Partnership (LLP).**

LPs and LLPs are partnerships composed of one or more general partners and one or more limited partners. The general partners manage the business and share fully in its profits and losses. Limited partners share in the profits of the business, but their losses are limited to the extent of their investment. The general partner's services are exempt from unemployment insurance coverage, but any payments to limited partners for services are wages subject to unemployment insurance contributions pursuant to rule R994-208-103(1)(k).

**(3) Corporation.**

A corporation is a legal entity granted a state charter legally recognizing it as a separate entity having its own rights, privileges, and liabilities distinct from those of its owners. The corporation is the employing unit. Corporations must be registered and in good standing with the Utah Department of Commerce. If a corporation is not registered or is in an expired status, it is treated as a proprietorship or partnership, based upon the best available information.

**(a)** A change of ownership occurs when the corporate assets are sold or transferred according to successorship rule R994-303-106. The sale, transfer, or exchange of corporate stock is not a change of ownership except as specified in rule R994-304-101.

**(b)** All individuals employed by the corporation, including officers, are employees of the corporation. Compensation to officers who perform services for the corporation is considered wages. Payments to corporate employees of dividends, loans, property distributions, and expenses in lieu of compensation for

services may be reclassified as wages by the Department based on the extent and significance of the work performed and the documentation supporting the payments. This applies to all corporations regardless of income tax reporting status. The following payments to officers are generally not wages:

- (i) directors fees that are uniform and reasonable;
- (ii) reimbursement for expenses that are reasonable and documented. The Department may require receipts to document questionable expenses. Section R994-208-103, Payments Not Considered to be Wages, contains additional information on expense reimbursements;
- (iii) loans supported by notes and reasonable repayment schedules. Non-interest bearing notes that are payable upon demand with no payment schedule are considered wages if the officer is performing services for the corporation; or
- (iv) documented return of an investment where the officer has loaned money to, or invested money in, the corporation.

**(4) Limited Liability Company (LLC).**

A LLC is a legal entity that combines the limited liability protection of a corporation and the pass through taxation of a sole proprietorship or partnership. The LLC is the employing unit and must be registered and in good standing with the Utah Department of Commerce. A LLC that is not registered or is in an expired status is treated as a proprietorship or partnership, based upon the best available information.

**(a)** Members of a LLC are not employees of the LLC and payments to them are exempt from coverage provided all of the following criteria are met;

- (i) the LLC is registered and in good standing with the Utah Department of Commerce,
- (ii) the member has a bona fide ownership interest in the LLC and is listed in the articles of organization, the operating agreement, or federal income tax return, and
- (iii) the LLC has not been approved by the IRS as an "eligible entity" which allows the LLC to file with the IRS as a corporation. Approval may be obtained by the IRS accepting a written application or form, or the IRS accepting the filing of a U.S. Corporation Income Tax Return or U.S. Income Tax Return for an S Corporation.

**(b)** A nonmember manager is an employee of the LLC.

**(c)** Legal actions, subpoenas, and court orders will be issued to a member or manager of record.

**(d)** Assessments and liens will be issued in the name of the LLC, and not against the members of record.

**(5) Trust.**

A trust is a legal entity created to transfer property to a trustee to hold and manage for the benefit and profit of designated persons. The trust is the employing unit. A trust instrument or document must exist in order for the entity to be recognized. If the trustee does not independently perform fiduciary and management responsibilities, the trustee is an employee of the trust.

**(6) Association.**

An association is an entity consisting of a collection or organization of persons or other legal entities that have joined together for a certain common objective. Payments to association members for business services such as accounting and maintenance are considered wages unless the member is exempt as an independent contractor as defined in Section R994-204-301, Independent Contractor. Documented expense reimbursements paid to members are not wages.

**(7) Joint Venture.**

A joint venture is a legal entity consisting of a one-time grouping of two or more persons or legal entities in a business undertaking. Unlike a partnership, a joint venture does not entail a continuing relationship among the parties. The exempt or employment status of proprietors, partners, LLC members, or corporate officers is not lost in the formation of the joint venture.

## (8) Estate.

An estate is a legal entity consisting of the property of a living, deceased, or bankrupt person. An estate established to manage a person's business is the employing unit. The executor or administrator of the estate is not considered to be an employee of the estate.

**R994-202-102. Temporary Help Company.**

(1) "Temporary help services" means services consisting of an organization:

- (a) recruiting and hiring its own employees;
- (b) finding other organizations that need the services of those employees;
- (c) assigning those employees to perform work at or services for the other organizations to support or supplement the other organizations' workforces;
- (d) providing assistance in special work situations such as employee absences, skill shortages, seasonal workloads, or to perform special assignments or projects with a definite ending date; and
- (e) customarily attempting to reassign the employees to other organizations when they finish each assignment by a definite ending date.

(2) A company that provides all or substantially all of the client company's regular workers with no restrictions or limitation on the duration of employment, is not the employing unit for those workers and, therefore, the client company is considered the employing unit subject to all of the provisions of the Employment Security Act as an employer, unless the company is registered as a Professional Employer Organization (PEO) pursuant to the provisions of Section 58-59-101 et seq.

(3) Individuals and services exempt under the Act based on the nature of service or due to a specific exemption continue to be exempt if the individual is an employee of the temporary help services company or the services are rendered by an employee of the temporary help services company.

**R994-202-103. Common Paymaster.**

(1) A common paymaster relationship exists when two or more related corporations concurrently employ the same individual and one of the corporations compensates the individual for the concurrent employment. The Internal Revenue Service will recognize a common paymaster if the closely related corporations satisfy all of the following criteria:

- (a) each related company is a corporation;
- (b) there must be at least 50 percent common ownership of stock or interest, or there must be at least 50 percent common officers in the related companies, or 30 percent of the employees work for all of the related companies;
- (c) the reporting for any calendar year must be consistent with FUTA annual 940 reporting; and
- (d) the employee(s) must be performing concurrent service for some or all of the related companies.

(2) The Department does not allow or recognize common paymaster reporting as of March 1, 2005, even if the relationship is approved by the Internal Revenue Service. Each corporation is required to register with the Department and obtain a Utah Employer Registration Number.

**R994-202-104. Payrolling.**

(1) Payrolling is defined as the practice of an employing unit paying wages to the employees of another employer or reporting those wages on its payroll tax reports. Generally an employee is reportable by the employer:

- (a) who has the right to hire and fire the employee;
- (b) who has the responsibility to control and direct the employee; and
- (c) for whom the employee performs the service.

(2) Payrolling is not allowed. Exceptions to this provision

are contained in the Professional Employer rule R994-202-106 and the Temporary Help Services rule R994-202-102.

**R994-202-105. Constructive Knowledge of Work Performed.**

(1) If an individual is hired to perform or assist in performing the work of an employee, the individual is deemed to be employed by the employer provided the employer had actual or constructive knowledge of the work performed by the individual. This is the case even when the individual who is hired to assist the employee is hired or paid by that employee.

(2) The employer must report and pay contributions for all actual and constructive employment.

(3) An employer has actual or constructive knowledge if:

- (a) The employer knows or should have known the employee hires an assistant;
- (b) The employer knows or should have known that the employee's duties require an assistant;
- (c) The employer instructs the employee to perform duties without an assistant, but the employee disregards the instructions and hires an assistant. If the employer becomes aware of the situation and takes no action to discontinue the current or future working relationship between the employee and the assistant, the assistant is considered to be employed by the employer for both the past and future work performed.

However, if the employer takes action to prevent the employee from hiring an assistant in the future, then the assistant is not considered employed by the employer for the work already performed; or

(d) The employer gives the employee the option of hiring an assistant. The employee hires an assistant but does not inform the employer of the hire.

**R994-202-106. Professional Employer Organizations (PEO).**

(1) Definitions.

(a) "Agent" means an individual or organization authorized to act on behalf of an employer.

(b) "Client" or "client company" means a person or entity that enters into a professional employer agreement with a PEO.

(c) "Employment agreement" means a written contract between the PEO and each individual hired to provide services to a client.

(d) "Organization" means any individual, partnership, corporation, limited liability company, association, or any other form of legally recognized entity.

(e) "Professional employer agreement" means a written contract by and between a client and a PEO.

(f) "Professional employer organization" or "PEO" means any organization engaged in the business of providing professional employer services. "Employee leasing company" is a term also used to describe a PEO.

(g) "Professional employer services" means the service of entering into a relationship with a client as defined in the PEO Registration Act, Section 58-59-101 et seq.

(2) Before the employer is considered to be a PEO, it must comply with the requirements of Sections 58-59-101 through 58-59-503 of the Utah Code. In the absence of such compliance, the Department may choose to hold each "client company" as the employing unit.

(3) A PEO that fails to qualify as an employer under Sections 58-59-101 through 58-59-501 of the PEO Registration Act and as an employing unit under 35A-4-202(1), is considered to be the agent of the client company. The client's workers are not the employees of the agent. The client company remains the employer of its workers for all purposes of the Employment Security Act. An employee not covered by a professional employment agreement or employment agreement remains the employee of the client company.

(4) Individuals and services exempt under the Act based

on the nature of service or due to a specific exemption continue to be exempt if the individual is an employee of a PEO or the services are rendered by an employee of a PEO. The exemptions for domestic and agricultural services contained in Section 35A-4-205 are taken into consideration for the PEO's clients in the aggregate, and not on an individual client basis.

(5) A PEO cannot elect reimbursable coverage even if the client company could independently qualify as a reimbursable employer.

(6) Reporting Requirements.

(a) Any entity conducting business as a PEO must register with the Department and complete all forms and reports required by the Department. Licensing penalties for failure to file reports or pay contributions are outlined in Section 58-59-501 et. seq. of the PEO Registration Act:

(b) Within 30 days of the effective date of a contract with a client, a PEO must submit to the Department the following information:

(i) the effective date of the contract;

(ii) the client's name and address;

(iii) the client's Federal Employer Identification Number (FEIN) if registered with the IRS, and the client's Employer's Utah Registration Number if previously registered with this Department; and

(iv) the client's principal business activity.

(c) Within 30 days of the termination of a contract with a client, a PEO must submit to the Department the following information:

(i) the effective date of contract termination;

(ii) the client's name and address; and

(iii) the client's FEIN if registered with the IRS, and the client's Employer's Utah Registration Number if previously registered with this Department.

(7) The Department may directly contact a PEO or its clients in order to conduct investigations, audits and otherwise obtain information necessary for the administration of the Employment Security Act as permitted by Section 35A-4-312.

(8) The rules pertaining to "payrolling" in R994-202-104 do not apply to a PEO that is in compliance with the PEO Registration Act, Sections 58-59-101 through 58-59-501.

**KEY: unemployment compensation, employment  
July 1, 2007 35A-4-202(1)  
Notice of Continuation May 23, 2003**

**R994. Workforce Services, Unemployment Insurance.****R994-204. Covered Employment.****R994-204-201. Localization of Services.**

Employment is covered under the Act if all of a worker's service is performed within Utah. Workers who perform services for one employer in more than one state are covered in Utah under certain circumstances.

**(1) Service Localized in this State.**

The service is considered to be localized in Utah if it is performed entirely within Utah. The service is also considered to be localized in Utah if performed both inside and outside of Utah, but the service outside of Utah consists of isolated transactions or is otherwise incidental or transitory to the service in Utah. Some of the factors which might indicate that the service is incidental or transitory are:

- (a) the employer and the worker intend the service outside of Utah to be an isolated transaction, and not a regular part of the worker's duties;
- (b) the worker intends to return to Utah upon completion of the work assignment, rather than move to the other state;
- (c) the service performed outside the state is different in nature from the service performed within Utah;
- (d) it is anticipated that the worker will be performing services outside the state for 12 months or less however this length of time is intended only as a yardstick and other variables, such as the terms of the contract of hire, whether written or oral, will be considered.

**(2) Service Is Not Localized in Any State But Some Service is Performed in Utah.**

If the service is not localized in any state but some of the service is performed by the worker in Utah, the entire service is covered in Utah if one of the following conditions apply:

**(a) The Base of Operations is in Utah.**

The worker's base of operations is in Utah. The "base of operations" is the place from which the worker starts work and to which he or she customarily returns for instructions from the employer, communications from customers, to replenish stocks or materials, to repair equipment or to perform any other function necessary in the trade or profession. The base of operations may be the worker's business office, which may be located at his or her residence, or the contract of employment may specify a particular place at which the worker is to receive direction and instructions.

**(b) The Place from Where Service is Controlled or Directed is in Utah.**

If the worker has no base of operations or does not perform any service in the state in which the base of operations is located, it is necessary to determine if any service is performed in the state from which the service is controlled or directed. The place from which the service is controlled or directed is the place at which the basic authority exists rather than the place at which a manager or foreman supervises the service.

**(c) The Place of Residence is in Utah.**

If the conditions in paragraphs (a) or (b) of this subsection do not apply, it is necessary to apply the test of residence. Under this test, the service is covered in Utah if the worker lives in Utah and performs some of his or her services in Utah.

**(3) Service Is Not Localized in Any State and No Service is Performed in Utah.**

If the service is not localized in any state and none of the service is performed by the worker in Utah, the entire service is covered in Utah if one of the following conditions apply:

**(a) The Base of Operations is in Utah.**

The worker's base of operations is in Utah. The "base of operations" is the place from which the worker starts work and customarily returns for instructions from the employer, to replenish stocks or materials, to repair equipment or to perform any other function necessary in the worker's trade or profession. The base of operations may be the worker's business office,

which may be located at his or her residence, or the contract of employment may specify a particular place at which the worker is to receive his or her direction and instructions.

**(b) The Place from Where the Service is Controlled or Directed is in Utah.**

If the worker has no base of operations or does not perform any service in the state in which the base of operations is located, it is necessary to determine if the worker is controlled and directed from Utah. The place from which the service is controlled or directed is the place at which the basic authority exists rather than the place at which a manager or foreman supervises the service.

**(4) Reciprocal Coverage.**

If after applying all of the above tests to a given set of circumstances, the worker's service is found not to be subject to any one state, the employer may elect to cover all of the worker's service in one state. This election must be made under the provisions for reciprocal coverage arrangements found in Section 35A-4-106. The Department will approve reciprocal coverage and allow an employer to cover a worker's entire service in Utah if:

- (a) the employer petitions for coverage;
- (b) part of the worker's service is in Utah, the worker lives in Utah, or the worker maintains a place of business in Utah; and
- (c) the other state or states approve the election

**R994-204-202. Outside Commissioned Salespersons in Covered Employment.**

Outside commissioned salespersons are excluded from the Act under the outside commissioned salesperson exclusion contained in Section 35A-4-205(1)(t) unless all of the following "traveling or city salesperson" conditions apply:

**(1) The Salesperson is Engaged on a Full-Time Basis.**

Full-time under this section means the salesperson devotes at least 80% of his or her working time in any quarter to the solicitation of orders for one employer. This is true even if the salesperson works for the employer less than 40 hours per week. For example, a salesperson who works only 20 hours a week and spends 80 percent or more of that time working for one principal is engaged on a full-time basis.

**(2) The Salesperson Solicits Orders From Wholesalers, Retailers, Contractors or Operators of Hotels and Restaurants.**

The salesperson must solicit orders from certain types of customers. Generally, the following types of customers are not included: manufacturers, schools, hospitals, churches, institutions, municipalities and state and federal governments. However, a clearly identifiable and separate business carried on through such a customer, such as a bookstore or gift shop would be included as a "retailer." The salesperson must solicit orders from the following types of customers:

- (a) Wholesalers who buy merchandise in comparatively large quantities and sell such merchandise in smaller quantities to jobbers and retailers for the purpose of resale.
- (b) Retailers who sell merchandise to the ultimate consumers.

(c) Contractors who, for a fixed price, undertake the performance of work on an independent basis, such as construction contractors and certain service organizations. These include, among others, electrical, plumbing, painting, building, window washing and delivery service contractors.

(d) Operators of hotels, restaurants or other similar establishments. The phrase "other similar establishments" refers solely to establishments similar to hotels and restaurants and usually is limited to establishments whose primary function is the furnishing of food, lodging, or both food and lodging.

**(3) The Salesperson Takes Orders for Merchandise for Resale or Supplies Used in Business.**

- (a) Merchandise for resale includes goods, wares and

commodities that ordinarily are the objects of trade and commerce and that are purchased for resale. This term refers specifically to tangible materials that do not lose their identities between the time of purchase and the time of resale.

(b) Supplies for use in the customer's business operations means articles consumed in conducting or promoting the customers' businesses. Generally the term "supplies" includes all tangible items that are not "merchandise for resale" or capital items. Services such as radio time and advertising space, are intangible items and not within the definition. However, calendars, advertising novelties, etc., used by the advertiser in his business constitute "supplies."

(4) The contract of service contemplates that substantially all of the services are to be performed personally by the worker. This means that the services to which the contract relates will not be delegated to any other person by the worker who undertakes under the contract to perform such services; and

(5) The worker does not have a substantial investment in facilities used in connection with the performance of his or her services. The facilities include equipment and premises available for the work but does not include such tools and equipment or clothing as are commonly provided by employees; and

(6) The services are part of a continuing relationship with the person for whom the services are performed.

**R994-204-203. Domestic Service Included in Covered Employment.**

Subsection 35A-4-204(2)(k) defines when domestic services, that are exempt under Subsection 35A-4-205(1)(f), become covered employment.

(1) \$1000 in a Calendar Quarter.

Domestic services performed in a private home, local college club or local chapter of a college fraternity or sorority are exempt unless the employer pays cash remuneration of \$1000 or more in one or more calendar quarter in the current calendar year or the preceding calendar year. Cash wages include wages paid by cash, check, or money order. Cash wages do not include the value of food, lodging, clothing, and other non-cash items. However, cash given to an employee in lieu of these items is considered to be cash wages.

(2) Services That Are Domestic Services.

Domestic services include services of a household nature in or about any of the places listed in subsection (1) of this section. Domestic services include work done by:

- (a) baby-sitters
- (b) cleaning people
- (c) drivers
- (d) housekeepers
- (e) nannies
- (f) health aids
- (g) maids
- (h) caretakers
- (i) yard workers
- (j) cooks
- (k) butlers

(3) Services That are Not Domestic Services.

Services that are not of a household nature such as secretarial services performed in a private home or services related to remodeling or building a private home, local college club or local chapter of a college fraternity or sorority are not domestic services.

(4) Private Home.

A private home is a fixed place of abode of an individual or family. This may include a dwelling unit in an apartment building or hotel.

(5) Local College Club or Local Chapter of a College Fraternity or Sorority Does Not Include an Alumni Club or Chapter.

(6) All Remuneration is Reportable.

Once the \$1000 cash threshold is met, all payments including cash and non-cash payments are reportable as wages.

**R994-204-301. Independent Contractor Services.**

(1) An independent contractor is a worker who is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as the services performed, and the individual providing the services must be free from the employer's control and direction while performing services for the employer. A worker must clearly establish his or her status as an independent contractor by taking steps that demonstrate independence indicating an informed business decision has been made.

(2) Payments to or through another entity for personal services performed by a worker is exempt from employment if the personal services meet the provisions of Subsection 35A-4-204(3).

**R994-204-302. Independent Contractor Determination.**

(1) The Department will determine the status of a worker based upon information provided by the employer, the worker, and any other available source.

(2) If a worker files a claim for benefits and the Department, as the result of an audit, investigation, or declaratory ruling, has made a determination that the worker is an independent contractor and his or her services for an employer are exempt from coverage, any earnings from those services for that employer will be excluded from the claimant's monetary determination. The claimant may protest the monetary determination by filing an appeal as provided in Section R994-204-402.

**R994-204-303. Factors for Determining Independent Contractor Status.**

Services will be excluded under Section 35A-4-204 if the service meets the requirements of this rule. Special scrutiny of the facts is required to assure that the form of a service relationship does not obscure its substance, that is, whether the worker is independently established in a like trade, occupation, profession or business and is free from control and direction. The factors listed in Subsections R994-204-303(1)(b) and R994-204-303(2)(b) of this section are intended only as aids in the analysis of the facts of each case. The degree of importance of each factor varies depending on the service and the factual context in which it is performed. Additionally, some factors do not apply to certain services and, therefore, should not be considered.

(1) Independently Established.

(a) An individual will be considered customarily engaged in an independently established trade, occupation, profession, or business if the individual is, at the time the service is performed, regularly engaged in a trade, occupation, profession, or business of the same nature as the service performed, and the trade, occupation, profession, or business is established independently of the alleged employer. In other words, an independently established trade, occupation, profession, or business is created and exists apart from a relationship with a particular employer and does not depend on a relationship with any one employer for its continued existence.

(b) The following factors, if applicable, will determine whether a worker is customarily engaged in an independently established trade or business:

(i) Separate Place of Business. The worker has a place of business separate from that of the employer.

(ii) Tools and Equipment. The worker has a substantial investment in the tools, equipment, or facilities customarily required to perform the services. However, "tools of the trade" used by certain trades or crafts do not necessarily demonstrate

independence.

(iii) Other Clients. The worker regularly performs services of the same nature for other customers or clients and is not required to work exclusively for one employer.

(iv) Profit or Loss. The worker can realize a profit or risks a loss from expenses and debts incurred through an independently established business activity.

(v) Advertising. The worker advertises services in telephone directories, newspapers, magazines, the Internet, or by other methods clearly demonstrating an effort to generate business.

(vi) Licenses. The worker has obtained any required and customary business, trade, or professional licenses.

(vii) Business Records and Tax Forms. The worker maintains records or documents that validate expenses, business asset valuation or income earned so he or she may file self-employment and other business tax forms with the Internal Revenue Service and other agencies.

(c) If an employer proves to the satisfaction of the Department that the worker is customarily engaged in an independently established trade, occupation, profession or business of the same nature as the service in question, there will be a rebuttable presumption that the employer did not have the right of or exercise direction or control over the service.

(2) Control and Direction.

(a) When an employer retains the right to control and direct the performance of a service, or actually exercises control and direction over the worker who performs the service, not only as to the result to be accomplished by the work but also as to the manner and means by which that result is to be accomplished, the worker is an employee of the employer for the purposes of the Act.

(b) The following factors, if applicable, will be used as aids in determining whether an employer has the right of or exercises control and direction over the service of a worker:

(i) Instructions. A worker who is required to comply with other persons' instructions about how the service is to be performed is ordinarily an employee. This factor is present if the employer for whom the service is performed has the right to require compliance with the instructions.

(ii) Training. Training a worker by requiring or expecting an experienced person to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the employer for whom the service is performed expects the service to be performed in a particular method or manner.

(iii) Pace or Sequence. A requirement that the service must be provided at a pace or ordered sequence of duties imposed by the employer indicates control or direction. The coordinating and scheduling of the services of more than one worker does not indicate control and direction.

(iv) Work on Employer's Premises. A requirement that the service be performed on the employer's premises indicates that the employer for whom the service is performed has retained a right to supervise and oversee the manner in which the service is performed, especially if the service could be performed elsewhere.

(v) Personal Service. A requirement that the service must be performed personally and may not be assigned to others indicates the right to control or direct the manner in which the work is performed.

(vi) Continuous Relationship. A continuous service relationship between the worker and the employer indicates that an employer-employee relationship exists. A continuous relationship may exist where work is performed regularly or at frequently recurring although irregular intervals. A continuous relationship does not exist where the worker is contracted to complete specifically identified projects, even though the service relationship may extend over a significant period of time.

(vii) Set Hours of Work. The establishment of set hours or a specific number of hours of work by the employer indicates control.

(viii) Method of Payment. Payment by the hour, week, or month points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying progress billings as part of a fixed price agreed upon as the cost of a job. Control may also exist when the employer determines the method of payment.

#### **R994-204-401. Safe Haven Created by Independent Contractor Determinations.**

The "safe haven" provision of 35A-4-204(4) allows an employer to rely on a declaratory order, ruling, or final determination by the Department that determines the independent contractor status of a worker or class of workers. A determination can be made at the request of an employer or by the Department as the result of an audit or status investigation. The final determination will only determine whether the employer is liable to pay contributions on payments made to the workers in question and does not affect the worker's right to challenge the determination at a more appropriate time like when the work relationship has ended and a claim for benefits has been filed. The worker, or class of workers, are not bound by the determination in the event a worker later files a claim for unemployment benefits.

#### **R994-204-402. Procedure for Issuing a Safe Haven Determination.**

(1) If the issue of the status of a worker or class of workers arises out of an audit or request for declaratory order and there is no claim for benefits pending at the time, the Department will determine the status on the basis of the best information available at the time. A request for a declaratory order will be denied if there is a pending claim for benefits by a worker who would be affected by the order.

(2) A worker whose status is determined as a result of an audit or declaratory order is not required to file a written consent to the determination pursuant to Subsection 63-46B-21(3)(b). Any consent given by the worker is invalid and will be considered to be in violation of Subsection 35A-4-103(1)(c)(ii).

(3) If the issue of a worker's status arises out of a claim for benefits and there has been a prior audit determination or declaratory order determining the status of the worker or a class of workers to which the individual belonged, the Department will issue a notice as part of the monetary determination, denying use of the worker's independent contractor earnings as wage credits for the base period on the basis of the prior status determination. The worker may protest the determination by filing an appeal within 15 days of the date of the notice. Upon receipt of a protest the Department will review the status of the worker. On the basis of its review, the Department will issue a new determination which will either affirm, reverse, or revise the original determination. The new determination will be mailed to the parties and can be appealed by the employer or the worker as though it were an "initial Department determination" as provided in rule Sections R994-508-101 through R994-508-104.

#### **R994-204-403. Employer Reliance on Official Determination.**

If a declaratory order or final audit finding has been issued concluding that a worker or class of workers are independent contractors, the employer will have no liability to pay unemployment contributions on payments made to the worker or workers, except as provided in Section R994-204-404.

#### **R994-204-404. Effect of New Determination on Employer.**

If a new determination by the Department, an

administrative law judge, or the Workforce Appeals Board holds that the status of a worker or class of workers to which the individual belonged is that of employee for purposes of the Act, the employer is liable to pay unemployment contributions on all wages paid to workers in the class to which the individual belonged, from the beginning of the calendar quarter in which the new determination is made. In addition, the employer shall also be liable to pay contributions on any wages used by a claimant for purposes of establishing any claim for benefits affected by the new determination.

**KEY: unemployment compensation, employment tests,  
independent contractor**

**July 1, 2007**

**35A-4-204**

**Notice of Continuation April 1, 2005**

**R994. Workforce Services, Unemployment Insurance.****R994-205. Exempt Employment.****R994-205-101. Exempt Domestic Service.**

Domestic services are exempt under the Act, provided they are not included in covered employment under Subsection 35A-4-204(2)(k).

**R994-205-102. Exempt Family Service.**

Certain family service is exempt from coverage under the Act based upon the type of employing entity.

(1) Sole proprietorship exempt family service includes the following relationships:

(a) A worker employed by his or her spouse.

(b) A parent employed by his or her son or daughter. The exemption also applies to a stepparent employed by his or her stepchild.

(c) A child under the age of 21 employed by his or her parent regardless of the child's marital status. The exempt relationship is met even if the child is an adopted child, stepchild, or foster child. The foster child must be living with the foster parent.

(2) Partnership family service is exempt from coverage if the worker has an exempt family relationship to all partners. Exempt family relationships are the same relationships as for sole proprietorships in subsection (1) of this section. However, it is not necessary for the same relationship to exist between the worker and each partner.

(a) Examples of partnership family relationships that are exempt include:

(i) A child employed by a partnership composed of the child's parents.

(ii) A woman employed by a partnership composed of her husband and her son.

(b) Examples of partnership family relationships that are not exempt include:

(i) A woman employed by a partnership composed of her husband and his brother is not exempt because the required family relationship between the woman and her brother-in-law does not exist.

(ii) A man employed by a partnership composed of his wife and his son-in-law is not exempt because the required family relationship between the man and his son-in-law does not exist.

(3) There are no exempt family relationships in corporations, limited liability companies, and any other entity types not discussed in this section.

**R994-205-103. Exempt Employees Hired Temporarily for a Disaster.**

The Act excludes the services of governmental entity or Indian tribe employees hired solely on a temporary basis for disaster-type emergencies.

(1) Temporary basis employment is not the same as intermittent or irregular employment. Intermittent or irregular employment involves an on-going relationship, such as workers with an "on-call" status.

(2) Disaster type emergencies are those that affect the community on a wide scale, such as a forest fire, storm, or flood. Incidents that affect a few individuals, such as a house fire or automobile accident are not disaster type emergencies.

**R994-205-104. Exempt Casual Labor.**

(1) Casual labor is exempt under the Act if:

(a) The service is not in the course of the employing unit's trade or business;

(b) The payment for such service is less than \$50 in a calendar quarter; and

(c) The worker performs such service on some portion of a day for less than 24 days in a calendar quarter or less than 24

days during the preceding calendar quarter.

(2) Services "not in the course of the employing unit's trade or business" include services that do not promote or advance the trade or business, such as services performed in connection with the employer's hobby or repairs to the employer's private home.

(3) Casual labor does not apply to domestic service exempt under subsection 35A-4-205(1)(f).

(4) Casual labor does not apply to any services performed for a corporation or limited liability company.

(5) Services performed by a worker for a property owner in regard to building or remodeling the owner's home are exempt if the requirements in subsection (1)(a) of this section are satisfied.

**R994-205-105. Exempt Commission Insurance Sales.**

Employment does not include services performed as an insurance agent or solicitor if payment for such services is solely by way of commission.

(1) An insurance solicitor is an employee of an insurance agent and is empowered to sell insurance on behalf of the agent. The solicitor usually does not have binding authority, and the business generated by the solicitor is usually owned by the agent, and not the solicitor.

(2) Services performed by a worker selling insurance are exempt if all such services are paid solely by way of commission.

(a) If any part of the payment for insurance sales services is a salary, all of the services are covered employment and the total payment, salary and commission, is subject to contribution payments.

(b) If a worker is guaranteed a minimum salary for any pay period in which sales commissions are less than the guaranteed minimum, all earnings are subject to contribution payments when the worker is paid the guaranteed salary. In any pay period in which the commissions equal or exceed the guaranteed salary, the earnings are considered to be solely by way of commission and are not subject to contribution payments.

(c) If the worker is given advances against future commissions and is required to repay any advances that exceed the commissions, the advances are considered to be payment solely by way of commission.

(d) If a worker performs both commission sales services and other salaried services, such as an accountant, the sales are excluded from employment and the other services are included in covered employment. If the payment for all services is for the same pay period, the "included and excluded" provisions of Subsection 35A-4-205(2) are applied.

**R994-205-106. Exempt Real Estate Sales.**

Employment does not include services as a licensed real estate agent if payment for such services is solely by way of commission.

(1) The "licensed" requirement refers to the license issued by the Utah Division of Real Estate to principal real estate brokers, associate real estate brokers, and real estate sales agents.

(2) The services performed as a real estate agent are those activities generally associated with the sale of real property. Such services include appraising property, advertising and showing property, closing sales, acquiring a lease to the property, and recruiting, training and supervising other salespersons. The services performed as a real estate agent do not include the management of property.

(3) Services performed by a worker as a licensed real estate agent are exempt if all such services are paid solely by way of commission.

(a) If any part of the payment for real estate sales services is a salary, all of the services are covered employment and the

total payment, salary and commission is subject to contribution payments.

(b) If a worker performing real estate sales services is guaranteed a minimum salary for any pay period in which sales commissions are less than the guaranteed minimum, all earnings are subject to contribution payments when the worker is paid the guaranteed salary. In any pay period in which the commissions equal or exceed the guaranteed salary, the earnings are considered to be solely by way of commission and are not subject to contribution payments.

(c) If a worker performing real estate sales services is given advances against future commissions and is required to repay any advances that exceed the commissions, the advances against future commissions are considered to be payment solely by way of commission.

(4) If a worker performs both commission sales services and other salaried services, such as an accountant, the sales are excluded from employment and the other services are included in covered employment. If the payment for all services is for the same pay period, the "included and excluded" provisions of Subsection 35A-4-205(2) are applied.

#### **R994-205-107. Exempt Outside Sales.**

The Act excludes the services of salespersons if the services are performed outside the employer's place of business, the salesperson is paid solely by way of commission, the services are not employment at common law, and the services are not employment as a traveling or city salesperson defined in Subsection 35A-4-204(2)(i).

(1) The employer's place of business is defined as an establishment where business is conducted, services are rendered, retail sales are made, or goods are manufactured, stored, or processed. This definition also includes temporary places of business such as booths or exhibits at trade shows, fairs and festivals.

(2) A commission is defined as a payment calculated as a percentage of the sales volume or value. Outside sales services are exempt if all such services are paid solely by way of commission.

(a) If any part of the payment for outside sales services is a salary, all of the services are covered employment and the total payment, salary and commission, is subject to contribution payments.

(b) If a worker is guaranteed a minimum salary for any pay period in which sales commissions are less than the guaranteed minimum, all earnings are subject to contribution payments when the worker is paid the guaranteed salary. In any pay period in which the commissions equal or exceed the guaranteed salary, the earnings are considered to be solely by way of commission and are not subject to contribution payments.

(c) If the worker is given advances against future commissions and is required to repay any advances that exceed the commissions, the advances are considered to be payment solely by way of commission.

(d) If a worker performs both outside commission sales services and other salaried services, such as an accountant, the sales are excluded from employment and the other services are included in covered employment. However, if the payment for all services is for the same pay period, the "included and excluded" provisions of Subsection 35A-4-205(2) are applied.

(3) Employment at common law is defined by the Internal Revenue Service's current common law rules.

(4) An outside salesperson may perform incidental activities at the employer's place of business, such as writing up and transmitting orders, replenishing sales supplies, or attending sales meetings, provided such activities are not routine, without losing the classification as an outside salesperson.

#### **R994-205-201. Included and Excluded Service.**

When a worker performs both included and excluded services for an employer during a pay period, all the services are considered to be included or excluded for that pay period, depending on the time spent in each activity.

(1) Time Spent in a Pay Period.

(a) If 50% or more of a worker's time is spent performing services that constitute employment, all the services are considered to be covered employment.

(b) This 50% test is applied to each pay period. A worker could have all services included in covered employment during one period and excluded in another.

(2) Employer Must Verify Time Spent.

In order to have all services performed by an worker excluded from covered employment, the employer must show to the satisfaction of the Department that less than 50% of the time spent in any pay period is for services that constitute employment.

(3) Pay Period.

Subsection 35A-4-205(2) does not apply if there is no regular pay period, the pay period covers more than 31 consecutive days or there are separate pay periods for the included and excluded services.

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July 1, 2007  
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**35A-4-205**

**R994. Workforce Services, Unemployment Insurance.****R994-206. Agricultural Labor.****R994-206-101. Definition of Agricultural Labor.**

Agricultural labor is exempt under Subsection 35A-4-205(1)(e) of the Act unless it is covered under Subsection 35A-4-204(2)(j). Subsection 35A-4-204(2)(j) covers larger agricultural employers based on wages paid or number of workers employed.

## (1) Definition of Agricultural Terms.

The terms used in Section R994-206-101 are defined as follows:

## (a) Agricultural Commodities.

Agricultural commodities include livestock, bees, poultry, fur-bearing animals, wildlife and all crops such as fruits, nuts, vegetables, grains and other commodities grown in the soil or other growth mediums for use or profit.

## (b) Horticultural Commodities.

Horticultural commodities are flowers and nursery products such as sod, fruit trees, shade trees, Christmas trees, ornamental plants and shrubs.

## (c) Raising and Harvesting.

Raising includes planting the seeds, watering or irrigating, applying insecticide or fertilizer and otherwise caring for the commodity prior to harvesting. In regard to livestock, bees, poultry, fur-bearing animals and wildlife, raising includes caring for, feeding, shearing, breeding, training and management. Harvesting includes picking, cutting, threshing, shucking corn, baling hay, and hulling nuts. Horticultural commodities are harvested when they are made available for sale.

## (d) Farm.

A farm includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, orchards, and such greenhouses and other similar structures as are used primarily for the raising of agricultural or horticultural commodities. Greenhouses and other similar structures used primarily for other purposes, such as display, storage, and fabrication of wreaths, corsages, and bouquets, do not constitute "farms".

## (2) Agricultural Labor as Defined in Subsection 35A-4-206(1)(a).

(a) Agricultural labor includes services performed on a farm by a worker for any person in connection with any of the following activities:

## (i) The cultivation of the soil;

(ii) The raising, shearing, feeding, caring for, training, or management of livestock, bees, poultry, fur-bearing animals, or wildlife; or

(iii) The raising or harvesting of any other agricultural or horticultural commodity.

(b) Services performed in connection with the production or harvesting of maple sap, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry constitute agricultural labor only if such services are performed on a farm. Thus, services performed in connection with the operation of a hatchery, if not operated as part of a poultry or other farm, do not constitute agricultural labor.

## (3) Agricultural Labor as Defined in Subsection 35A-4-206(1)(b).

(a) Agricultural labor includes the following activities performed by a worker in the employ of the owner or tenant or other operator of one or more farms, provided the major part, defined as 50% or more, of such services is performed on a farm:

(i) Services performed in connection with the operation, management, conservation, improvement, or maintenance of any of such farms or its tools or equipment; or

(ii) Services performed in salvaging timber, or clearing land of brush and other debris, left by a hurricane, storm, flood, or other natural disaster.

(b) The services described in subparagraph (a)(i) of this section may include services performed by carpenters, painters, mechanics, farm supervisors, irrigation engineers, bookkeepers, and other skilled or semi-skilled workers, which contribute in any way to the conduct of the farm or farms operated by the person employing them. Since the services described in this paragraph must be performed in the employ of the owner or tenant or other operator of the farm, the term "agricultural labor" does not include services performed by workers of commercial concerns that contract with a farmer to repair, maintain, or renovate farm properties.

## (4) Agricultural Labor as Defined in Subsection 35A-4-206(1)(c).

Agricultural labor includes the following activities performed by a worker in the employ of any person without regard to the place where such services are performed:

(a) the production or harvesting of agricultural commodities defined in the Federal Agricultural Marketing Act, 12 U.S.C. 1141j. These commodities are limited to crude gum, also known as oleoresin, from a living tree and gum spirits of turpentine and gum rosin processed from crude gum by the original producer of the crude gum; or

(b) the ginning of cotton; or

(c) the operation or maintenance of ditches, canals, reservoirs or water ways if not owned or operated for profit and used primarily for farming purposes.

## (5) Agricultural Labor as defined in Section 35A-4-206(1)(d).

(a) Agricultural labor includes services performed by a worker in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of any agricultural or horticultural commodity if:

(i) Such services are performed by the worker in the employ of an operator of a farm or in the employ of a group of operators of farms, other than a cooperative organization; and

(ii) Such services are performed with respect to the commodity in its unmanufactured state; and

(iii) Such operator produced more than one-half of the commodity with respect to which such services are performed during the pay period, or such group of operators produced all of the commodity with respect to which such services are performed during the pay period.

(b) The term "operator of a farm" as used in this section means an owner, tenant, or other person, in possession of a farm and engaged in the operation of such farm.

(c) The services described in this paragraph do not constitute agricultural labor if performed in the employ of a cooperative organization. The term "organization" includes corporations, joint-stock companies, and associations which are treated as corporations pursuant to section 7701(a)(3) of the Internal Revenue Code. For purposes of this paragraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than 20 at any time during the calendar quarter in which the services involved are performed.

(d) Processing services which change the commodity from its raw or natural state do not constitute agricultural labor. For example, the extraction of juices from fruits or vegetables is a processing operation which changes the character of the fruits or vegetables from their raw or natural state and, therefore, does not constitute agricultural labor. Likewise, services performed in the processing of maple sap into maple syrup or maple sugar do not constitute agricultural labor. On the other hand, services rendered in the cutting and drying of fruits or vegetables are processing operations which do not change the character of the fruits or vegetables and, therefore, constitute agricultural labor, if the other requisite conditions are met. Services performed with respect to a commodity after its character has been changed

from its raw or natural state by a processing operation do not constitute agricultural labor.

(e) The term "commodity" refers to a single agricultural or horticultural product, for example, all apples are to be treated as a single commodity, while apples and peaches are to be treated as two separate commodities. The services with respect to each such commodity are to be considered separately in determining whether the condition set forth in subparagraph (a)(iii) of this subsection has been satisfied. The portion of the commodity produced by an operator or group of operators with respect to which the services described in this paragraph are performed by a particular worker shall be determined on the basis of the pay period in which such services were performed by such worker.

(f) The services described in this paragraph do not include services performed in connection with commercial canning or commercial freezing or in connection with any commodity after its delivery to a terminal market for distribution for consumption. Moreover, since the services described in this paragraph must be rendered in the actual handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market of the commodity, such services do not, for example, include services performed as stenographers, bookkeepers, clerks, and other office employees, even though such services may be in connection with such activities. However, to the extent that the services of such individuals are performed in the employ of the owner or tenant or other operator of a farm and are rendered in major part on a farm, they may be within the provisions of paragraph (3) of this section.

(6) Examples of the Application of the Definition of Agricultural Labor.

(a) Raising and Selling.

Services in connection with raising agricultural or horticultural commodities are agricultural labor. However, if this business also sells the commodity, the selling activity is not agricultural labor unless performed on the farm.

(b) Agricultural Labor Included and Excluded Services.

If the same worker performs both agricultural and nonagricultural labor, the entire service will be considered to be agricultural labor if 50% or more of the time in a pay period was spent in agricultural labor. For reference see Subsection 35A-4-205(2).

(c) Poultry Hatchery.

Poultry hatchery services are agricultural labor provided they are performed on the farm or in the employ of a farm operator or group of operators who produced more than one-half the eggs. Services for a commercial hatchery that is not part of a farm that raises poultry are not agricultural labor.

(d) Raising Livestock.

Raising livestock and related activities performed on a farm are agricultural labor. Services in connection with livestock held, cared for and fed in a feed lot over an extended period of time to make an appreciable weight increase are agricultural labor. However, operating a stable or stud farm where no animals are raised is not agricultural labor. Services in connection with racing horses, using livestock in rodeos, exhibiting livestock and training livestock for these purposes are not agricultural labor when not performed on the farm where the animals were raised.

(e) Forestry, Lumbering and Landscaping.

Services performed in forestry, lumbering and landscaping are not agricultural labor.

(f) Brine Shrimp Harvesting.

Services performed in harvesting brine shrimp are not agricultural labor unless the services are performed on a farm.

**R994. Workforce Services, Unemployment Insurance.****R994-208. Wages.****R994-208-101. Definition of Wages.**

Section 35A-4-208 defines "wages".

(1) Wages means all payments for employment including the cash value of all payments in any medium other than cash, except payments excluded under Subsection 35A-4-208(5) and Section R994-208-103. Wages are subject to the Act only if they are for services that are employment as defined in Section 35A-4-204.

(2) Wages are reportable by the employer in the quarter actually paid or constructively paid. Wages are constructively paid, as defined in 26 CFR 31.3301-4. Wages are constructively paid when they are credited to the account of or set apart for a worker so that they may be drawn upon by the worker at any time without any substantial limitation or restriction as to the time, manner, or condition upon which the payment is to be made. The payment must also be within the worker's control and disposition.

(3) Wages subject to the Act are taxable only to the extent of the yearly taxable wage base. Wages in excess of the taxable wage base are reportable but not taxable. The taxable wage base applies to wages paid to each worker in any calendar year and is established pursuant to Subsection 35A-4-208(2). The employer must report all wages subject to the Act and pay contributions on the taxable wages as specified in the contribution payment due date Section R994-302-102.

**R994-208-102. Wages Include.**

Wages include the following:

**(1) Payments for Personal Services.**

All payments by the hour, by the job, piece rate, salary, or commission are wages.

**(2) Meals, Lodging and Other Payments in Kind.**

Meals, lodging and payments in kind that are furnished to promote good will, to attract prospective workers, or as part of payment for services are wages except as noted in Section R994-208-103. The value of these payments in kind shall be determined as follows:

(a) If a cash value for payments in kind is agreed upon in any contract, the amount agreed upon shall be deemed to be the value of such payments in kind provided such value equals or exceeds the cash value prevailing under similar conditions in the locality.

(b) If a cash value for payments in kind is not agreed upon, the Department will determine the value on the basis of the cash value prevailing under similar conditions in the locality.

**(3) Tips and Gratuities.**

(a) Tips or gratuities accounted for by the worker to the employer are wages whether paid directly to the worker by the customer or by the employer.

(b) If a worker's only payment for services is tips or tips are used to supplement the worker's regular wages in order to meet the applicable federal or state minimum wage laws, the Department will determine the worker's wages. However, such wages will not be less than the applicable federal or state minimum wage.

(c) Wages also include any allocated tips calculated by the employer.

**(4) Payment for Services of Worker with Equipment.**

When a worker is hired with equipment, the fair value of the payment for the worker's services, as distinguished from an allowance for use of equipment, if specified in the contract of hire, will be considered "wages". The Department will determine the worker's wages based on the prevailing wages for similar work under comparable conditions if the contract of hire does not specify the worker's wages, or the value of wages agreed upon in the contract of hire is not a fair value.

**(5) Vacation Pay**

Vacation payments made by the employer during the employment relationship or upon termination of employment are wages.

**(6) Sick Pay.**

(a) Sick payments made by the employer during the employment relationship or upon termination of employment are wages.

(b) Sick pay is not wages if paid after the end of six calendar months following the calendar month the employee last worked for the employer.

(c) Sick pay, if paid by a third party such as an insurance company, is not wages reportable by the employer unless the third party notifies the employer of the sick pay payments. If the third party does not notify the employer of the sick pay payments, the third party is liable for the unemployment contributions due on these payments. These provisions regarding sick pay are established to comply with the Federal Unemployment Tax Act (FUTA) provisions. For reference, see Internal Revenue Code Section 3306(b).

**(7) Bonuses and Gifts.**

(a) Bonuses and gifts to employees are wages unless the value is so small that it would be unreasonable for the employer to account for it. The value of benefits such as store discounts, discounts at company cafeterias, and company picnics are not wages.

(b) The value of gifts such as a turkey, ham, or other item of nominal value at Christmas or other holidays are not wages. However, gifts of cash, gift certificates, or similar items that can easily be exchanged for cash, are wages.

**(8) Stock Payments.**

Payments of stock for services performed are wages. The value of the stock is its cash value at the time of transfer to the employee.

**(9) Stock options included as wages.**

There are three kinds of stock options: incentive stock options, employee stock purchase plan options, and non-statutory, also known as non-qualified stock options. There are wage implications only with respect to non-qualified stock options.

(a) Non-qualified stock options are defined by the Internal Revenue Service as those that do not meet all of the requirements of the Internal Revenue Code to qualify as incentive stock options or employee stock purchase plan options.

(b) A worker may receive an option as payment for services. The granting of the option is not wages.

(c) A worker exercises an option when the worker takes an action to buy the stock.

(d) The difference between the exercise price, the value of stock at the time the option is issued, and the fair market value of the stock at the time of exercise is called the spread. The amount of a positive spread at the time the option is exercised is wages.

**(10) Contributions to Deferred Compensation Plans.**

Contributions by either the employer or the worker to deferred compensation plans including 401(k) plans are wages. For reference, see Section 3306(r) of the Internal Revenue Code.

**(11) Residual Payments.**

Performers in the television, radio and motion picture industry may receive additional payments, termed "residuals" by the industry as a result of the re-use of a recording or the re-showing of a film or taped television production. Residuals are deferred compensation and are wages if the performer, at the time of the original performance, was an employee.

(a) Residual payments are reportable by the employer in the quarter they are paid.

(b) Residual payments are reportable by the claimant only for the weeks in which the service was originally performed.

(c) Since residual payments are reportable as wages by the employer and the claimant, they can be used for the purpose of establishing a monetary base for future unemployment benefits. These wages can be used to purge a disqualification made under the Utah Employment Security Act only if the original work was performed subsequent to the disqualification.

**R994-208-103. Wages Do Not Include.**

Wages do not include any of the following:

(1) Meals and Lodging Furnished for Employer's Convenience.

Meals and Lodging provided by an employer to a worker shall not be considered wages if excluded from the definition of wages by the Internal Revenue Service under the following conditions:

(a) they are provided at the employer's place of business; and

(b) in the case of lodging, the worker must accept the lodging as a condition of employment; and

(c) they are provided for the employer's convenience. Meals and lodging will be considered to be for the convenience of the employer if there is a good business reason for providing them including:

(i) To have workers available at all times or for emergency calls.

(ii) Workers have a short meal period.

(iii) Adequate eating and lodging facilities are not otherwise available.

(2) Expense Reimbursement.

Expense reimbursements are excluded from the definition of wages based upon the existence of an accountable plan as defined in Section 62 of the Internal Revenue Code.

(a) An accountable plan is any reimbursement or other expense allowance arrangement, including per diem allowances providing for ordinary and necessary expenses of traveling away from home, that meets all of the following requirements:

(i) There is a business connection. The expenses are paid or incurred by the worker in connection with the performance of services as an employee of the employer;

(ii) Information sufficient to substantiate the amount, time, and business purpose of the expenses must be submitted to the employer; and

(iii) Excess reimbursement amounts, as a result of advances, are returned to the employer.

(b) A nonaccountable plan is any plan that fails to meet any one or more of the requirements of an accountable plan. Reimbursements in a nonaccountable plan are wages.

(3) Insurance Premiums Paid by the Employer.

Insurance premiums for health or life insurance paid by the employer for workers generally or a class of workers are not wages under Subsection 35A-4-208(5)(a).

(4) Sick Pay Excluded as Wages.

The following provisions regarding sick pay are established to comply with the FUTA provisions contained in Section 3306(b) of the Internal Revenue Code.

(a) Sick pay is not wages if paid after the end of six months following the calendar month the worker last worked for the employer.

(b) Sick pay, if paid by a third party such as an insurance company, is not wages reportable by the employer unless the third party notifies the employer of such sick pay payments. If the third party does not notify the employer of the sick pay payments, the third party will be liable for the unemployment contributions due on these payments.

(c) Payments made to a worker that are received under a workers' compensation law are not wages.

(5) The Employer's Share of the Social Security Tax and Medicare Tax.

(6) Retirement Plan Payments Made by the Employer.

Payments made by the employer to retirement plans described in Section 3306(b)(5) of the Internal Revenue Code are not wages.

(7) Training Allowances.

Employment-related training allowances such as payments for expenses necessary for school including tuition, fees, books and travel expenses are not wages. However, payments for services performed as part of the training, such as on-the-job training, are wages.

(8) Corporate Payments Not Considered Wages.

(a) The following payments are not considered wages:

(i) Directors fees paid to directors of a corporation for attending Board of Directors' meetings, reviewing and studying reports, and establishing general company policies. Director services do not include managerial services or other services that are part of the routine activities of a corporation;

(ii) Distributions made to shareholders based on stock ownership;

(iii) Reimbursement for expenses that are reasonable and documented;

(iv) Loans supported by notes and reasonable repayment schedules. Non-interest bearing notes that are payable upon demand with no payment schedule are considered wages if the officer is performing services for the corporation; and

(v) Documented returns of investment where the officer has loaned or invested money in the corporation.

(b) If the amount of compensation, if any, paid to a corporate officer is inadequate given the nature, duration, frequency or significance of the service performed by that officer, other payments made to the officer may be reclassified as wages if there is a lack of documentation or insufficient document to support those other payments. This applies to all corporations regardless of income tax reporting status.

(9) Finder or Referral Fees.

A fee paid to an individual for the referral of a potential customer, provided that the transaction is in the nature of a single or infrequent occurrence and does not involve a continuing relationship with the person paying the fee, is not wages.

(10) Payments to Sole Proprietors.

Payments to sole proprietors, whether draws or payment for services, are not wages. The sole proprietor is the employing unit rather than an employee.

(11) Payments to Partners.

Payments to partners, including draws and payment for services, are not wages. The partners are the employing unit rather than employees. However, payments to limited partners are wages because they do not have the same rights and responsibilities as general partners.

(12) Supplemental Unemployment Benefits (SUB).

Supplemental Unemployment Benefits are not wages if they meet the requirements specified in Revenue Rulings 56-249, 58-128 and 60-330. Because of the complexity of the factors involved, employers should request a declaratory ruling from the Department on their specific SUB plan. The factors required are as follows:

(a) the benefits are paid only to unemployed former employees of the employer who is providing the SUB Plan;

(b) eligibility for benefits depends on the meeting of prescribed conditions subsequent to the termination of the employment relationship with the employer;

(c) eligibility for benefits is contingent upon the former employee's maintaining eligibility for state unemployment insurance benefits;

(d) the benefits ultimately paid are not attributable to the performance of any service by the recipient for the employer during the period of unemployment;

(e) no employee has any vested right, title, or interest in or to the funds from which the SUB benefits will be paid; and

(f) the funds for the payment of SUB benefits is either established as an independent trust fund administered by trustees, or as a separate account on the employer's general accounting records.

(13) Stock Options Excluded From Wages.

(a) There are three kinds of stock options: incentive stock options, employee stock purchase plan options, and non-statutory, also known as non-qualified stock options.

(b) Incentive Stock Options and Employee Stock Purchase Plan Options are defined by the Internal Revenue Code.

(c) Payments resulting from the exercise of an incentive stock option or an employee stock purchase plan option, or from any disposition of stock acquired by exercising such an option are not wages.

(14) Stipends.

Stipend payments are not wages. Stipends are payments in lieu of actual expense reimbursements that help cover the costs of expenses such as transportation, meals, and supplies associated with training, schooling, meetings, and volunteer activities.

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**35A-4-208**

**R994. Workforce Services, Unemployment Insurance.****R994-302. Employer Contribution Payments.****R994-302-101. Employer Responsibilities.**

An employer must notify the Department that it has entered into a business, to report wages paid, to make payments of contributions based on those wages, and to comply with instructions on report forms issued by the Department. An employer must also notify the Department of changes in the business that might affect filing reports or paying contributions.

**R994-302-102. Due Dates for Contribution Payments.**

(1) Quarterly contribution payments are due from employers who are subject to the Utah Employment Security Act except as noted in subsections (2) and (3) of this section. The payment is due on the last day of the month that follows the end of each calendar quarter unless the Department, after giving written notice, changes the due date. Interest and penalties for late payments begin to accrue the day after the due date. Contribution payments postmarked on or before the due date are considered paid timely.

(2) Domestic employers defined in Subsection 35A-4-204(2)(k) may elect to pay contributions annually. The payment is due on January 31 of the year following the year wages were paid.

(3) Employers with seasonal employment may petition the Department to only pay contributions one, two, or three calendar quarters a year. The payment is due on the last day of the month that follows the end of the calendar quarter unless the Department, after giving written notice, changes the due date.

(4) The Department may establish a different due date for the payment of contributions when:

(a) The employing unit can show a reasonable basis for contending that the status of the employing unit as an employer, the status of any service performed for the employer, or the status of any contribution liability is doubtful. Appealing or disagreeing with the Department's decision regarding the employer's status or status of the liability does not in itself show the status is doubtful. Some examples of when a separate due date may be established by the Department are when an employer can show a reasonable basis for erroneously:

- (i) reporting wages to another state;
- (ii) not reporting wages it considered to be exempt as agricultural labor; or
- (iii) not reporting wages for individuals it considered exempt from employment.

(b) The possible collection of any contribution will be jeopardized by delaying the collection thereof until the regular due date.

(5) An extension of up to 90 days for making quarterly payments may be granted if the employer makes a written request within ten days after the date the written demand for payment is mailed by the Department. Further extensions may be granted if in the judgment of the Department an extension would preserve the possibility of collecting payments due. Interest will accrue on the outstanding balance from the original due date.

**R994-302-103. Contribution Payments.**

The contributions due will be based on wages paid during the quarter for subject employment, as defined by Section R994-401-205.

(1) All contributions or other payments should be made payable in United States currency to the Utah Unemployment Compensation Fund or to a depository account specified by the Department or Utah State Treasurer.

(2) Contribution payments will be reflected on the Department records on the day received. Payments other than cash will constitute payment on the day received only if honored by the financial institution. In the event that the payment is not

honored in full, the Department will remove the dishonored payment from the employer's account and may assess fees as provided for in Section 35A-4-305 and Utah Code Title 07, Chapter 15.

(3) If a non-cash payment instrument has been given in payment and has been returned by the depository institution unpaid, the Department reserves the right thereafter to accept from the employer only cash, certified cashier's check, or money order.

(4) Contributions, interest or penalty payments received without a report or billing will be applied first to any unpaid costs, then to the oldest quarter in which an amount is due and will be applied first to the contributions, then to the interest and finally to the penalties due in that quarter. Payments will be applied in this manner unless the employer or Department specifies otherwise. Payments accompanied by a contribution report or a billing will be applied to the quarters shown on that report or billing.

**R994-302-104. Due Dates for Filing Contribution and Equivalent Reports.**

(1) Contribution reports and any equivalent reports required of those employers liable for payments in lieu of contributions are due quarterly on the last day of the month that follows the end of each calendar quarter; unless the Department, after giving written notice, changes the due date. Reports postmarked on or before the due date are considered filed timely.

(a) Extension for Filing Reports.

The Department may, for good cause, grant an extension of time for filing a report if the employer makes a written request not later than the due date of the report.

**R994-302-105. Other Responsibilities of the Employer.**

(1) The executor or administrator of an employer's estate must give written notice of the employer's death to the Department as soon as practicable.

(2) An employer must immediately notify the Department of commencement of any receivership or similar proceeding, or of any assignment for the benefit of creditors, and of any court order with respect to the foregoing. An employer must immediately notify the Department of the filing of any voluntary or involuntary petition in bankruptcy or other proceeding under the Federal Bankruptcy Act.

(3) An employer, receiver, trustee, executor, administrator, or other person appointed under the laws of the State of Utah who is in control of the assets of an employer, must file timely with the Department all reports that are required.

**R994-302-106. Adjustments and Refunds.**

Adjustments or refunds for contributions overpaid will be made as provided by Subsection 35A-4-306(5). Adjustments for reports not filed or for reports and contributions filed incorrectly will be made as provided by Subsection 35A-4-305(2).

**KEY: unemployment compensation, employer liability****July 1, 2007****35A-4-302****Notice of Continuation May 9, 2006**

**R994. Workforce Services, Unemployment Insurance.****R994-303. Contribution Rates.****R994-303-101. Benefit Ratio Contribution Rate Computation.**

(1) There are two types of contribution rates, "new" employer rates and "experience" rates.

(2) The new employer rate is assigned to employers with less than one fiscal year of reporting experience. New employers are assigned a rate based on the two-year average benefit ratio, which is calculated by dividing benefit costs by taxable wages, of all employers in the respective industry. The overall new employer rate is the benefit ratio of the respective industry multiplied by the reserve factor plus the Social Cost. New out-of-state contractors are assigned the maximum tax rate allowable under state law unless they purchase an existing business.

(3) Experience rates are assigned to employers with one or more fiscal years of reporting experience. The overall contribution rate is calculated annually for each employer using the following three components:

(a) The "Benefit Ratio" is determined by dividing the total of all chargeable benefits paid to the employer's former employees in the last four fiscal years, by the employer's taxable wages for the same time period.

(b) The "Reserve Factor" adjustment to the benefit ratio, which may be an increase, decrease, or 1.0, is used to maintain an adequate balance in the benefit reserve fund.

(c) The "Social Cost" is applied to all employers to recover benefit costs that cannot be attributed to a specific employer.

The overall tax rate is calculated using the following formula:

Benefit Ratio X Reserve Factor + Social Cost

(4) Contribution rates may be affected by delinquent contributions, delinquent reports, and acquiring a business of another employer, as these terms are used in Sections 35A-4-301, 35A-4-303, 35A-4-304, 35A-4-306, and 35A-4-307.

(5) The objective of the benefit ratio method of taxation is to employ an experience rating system that provides for equitable allocation of costs, increases incentives for employer participation, and makes building and maintaining a solvent reserve fund the responsibility of those employers who use the system.

**R994-303-102. Computation Date.**

"Computation date" means July 1st of any year. The computation date is not the date contribution rates are computed but merely serves as a reference point to identify the period of time used to compute rates.

**R994-303-103. Notification of Contribution Rate and Appeal Rights.**

The Department will notify the employer of its contribution rate prior to the beginning of the calendar year to which the rate applies. If the employer protests this rate, the protest must be filed within 30 days after the date the "Contribution Rate Notice" is issued by filing a written appeal stating the grounds upon which the appeal is based. This right to appeal the contribution rate does not, however, give new rights of appeal to protest the benefit costs used in computing the rate. The appeal rights for protesting the payment of benefits to former employees, charges to the employer, or the correctness of benefit charges are established in Section 35A-4-306 of the Act.

**R994-303-104. Qualified Employer.**

A "qualified employer" is an employer who was an employer during all four quarters of the fiscal year immediately preceding the computation date.

If an employer reopens its UI account after the account has been closed, the Department will determine if the employer

qualifies for an experience rate or new employer industry rate. A qualified employer will be assigned an overall contribution rate for their account using the employer's unemployment experience during the past four fiscal years immediately preceding the computation date. If the reopening employer had no payroll for two or more consecutive calendar years immediately prior to the reopen date, the employer will be considered a new employer and will receive a new account number and the new employer industry rate, pursuant to Section 35A-4-203 of the Act.

**R994-303-105. Rates Assigned to Qualified Employers.**

(1) On or after January 1, 1988, a qualified employer who fails to pay all contributions due for the "applicable fiscal year" which is the four consecutive calendar quarters in the fiscal year immediately preceding the computation date, will be assigned a contribution rate equal to the overall contribution rate or the assigned contribution rate, plus an additional one percent surcharge. Unpaid contributions for fiscal years prior to the applicable fiscal year have no effect on the employer's rate, as provided in Subsection 35A-4-303(9)(b).

(2) Contributions assessed for the applicable fiscal year after the rates are computed will not cause the one percent surcharge to be added to the rate for the following year.

(3) A qualified employer who has been assigned the 1 percent surcharge in addition to his overall contribution rate because of delinquent contributions for the applicable fiscal year shall be reassigned a rate based upon his own experience, as provided under the experience rating provisions of the Act, effective the first day of the quarter in which full payment of contributions due is made. The Department will reassign a rate effective January 1st of the year if the Department determines that the party liable for the delinquent contributions was not properly notified of the liability.

(4) Delinquent Reports - Effect on Rate.

A delinquent report is one that is not properly filed when due. Failure to file the delinquent report by the time the contribution rates are computed will be treated as if a report had been filed showing no payroll for that quarter. This will usually result in a higher contribution rate. A delinquent report that still has not been filed by the end of the calendar year will not result in adding the one percent surcharge to an employer's overall contribution rate as a penalty. Other penalties and interest assessed due to delinquent reports are discussed in Section 35A-4-305 of the Act.

**R994-303-106. Successorship and Its Effect on Contribution Rates.**

(1) Definitions.

(a) "Successor" is the employing unit which acquires the business or acquires substantially all of the assets of a business.

(b) "Predecessor" is the employing unit which last operated the business.

(c) "Acquired" means to come into possession of, obtain control of, or obtain the right to use the assets of a business by any legal means including a gift, lease, repossession or purchase. For purposes of succession, a purchase through bankruptcy court proceedings where assets are being liquidated is not considered an acquisition, if the court places restrictions on the transfer of liabilities to the purchaser. It is not necessary to purchase the assets in order to have acquired the right to their use, nor is it necessary for the predecessor to have actually owned the assets for the successor to have acquired them. The right to the use of the asset is the determining factor.

(d) "Assets" are commonly defined to include any property, tangible or intangible, which has value. Therefore, acquiring use of assets is defined to mean that the successor obtains the physical assets such as cash, inventories, equipment, or buildings. Use of assets may also include the acquisition of

the name of the business, customers, accounts receivable, patent rights, goodwill, employees, or an agreement by the predecessor not to compete.

(e) "Business" is an employing unit which pursues an activity or enterprise for gain, benefit, advantage or livelihood.

(f) "Substantially all" means acquisition of 90 percent or more of all of the predecessor's assets.

(g) "Discontinued operations" means that immediately at the point of acquisition, the preceding employer has no continuing business activity in this state. Liquidation of accounts receivable or "wind-down payroll" is not considered to be a continued business activity. In determining whether an employer is a successor, the phrases "substantially all" and "discontinued operations" are applied conjunctively. If less than 90 percent of all the assets are acquired, then there is no successorship and the "discontinued operations" test need not be applied.

(h) "Like part or character" will be defined by using the most current North American Industry Classification System (NAICS) manual. There is no succession unless it is determined that a like part or character of the business acquired is retained. An example of such a situation occurs when a new owner acquires a business or substantially all of its assets. The business formerly operated as an automotive service station and the predecessor employer has ceased to operate. If the new owner opens an automotive repair shop and not a service station, there is no successorship.

(2) If the acquired business was closed for 30 or more consecutive calendar days during its normal operating period immediately prior to the acquisition, there is no successorship.

(3) Succession.

In the case of succession, effective on the first day of the year following the year in which the business is acquired, a successor will pay a contribution rate newly computed on the basis of the combined experience of the predecessor and the successor unless the date of acquisition is January 1, in which case the new rate takes effect immediately. The successor's rate during the year of acquisition will be as follows:

(a) Successor Was a Qualified Employer.

If the successor was a "qualified employer" immediately prior to the time of the acquisition, it shall continue to pay the rate assigned prior to the acquisition.

(b) Successor Was Not a Qualified Employer.

If the successor was an employer but not a "qualified employer" immediately prior to the time of the acquisition and acquires one or more businesses simultaneously, it shall pay a new rate computed based on the combined experience of the predecessor(s) and the successor. This rate shall be effective on the first day of the next calendar quarter. The successor pays its previously assigned rate for the balance of the quarter in which the acquisition occurs unless the acquisition occurs on the first day of that quarter, in which case the newly computed rate takes effect on that day.

(i) Simultaneously as used in this section means the same day.

(ii) If the predecessor(s) and successor are not qualified employers and have different NAICS codes, and the successor continues to operate the acquired business(s), the successor will retain their original NAICS code.

(c) Successor Was Not an Employer.

If the successor was not an employer immediately prior to the time of the acquisition it shall pay the predecessor's rate for the current calendar year. If the successor simultaneously acquires two or more businesses it shall pay a rate newly computed based on the combined experience of the predecessors. This new computed rate shall be effective on the day of acquisition.

(4) Effect of Contributions Owed by the Predecessor on the Successor's Rate.

A successor will be assigned a 1 percent surcharge in addition to its overall contribution rate if unpaid contributions are owed by the predecessor in the prior fiscal year. The one percent surcharge applies in the years that the successor's rate is affected by the predecessor's payroll and benefit costs.

(5) Successorship Determination and Burden of Proof.

The Department will determine whether the predecessor's payroll and benefit costs will be transferred to the successor. Either the predecessor or successor may appeal the determination within 10 days of the date the determination is issued. Once the determination has been made, the burden of proof is on the predecessor or the successor to show that the determination was made in error.

**R994-303-107. Fiscal Year.**

Fiscal year is defined in Subsection 35A-4-301(6), and means the year beginning with the 1st day of July of one year and ending the 30th day of June of the next year.

**R994-303-108. Benefit Costs.**

(1) Net benefit costs are defined as those benefits actually paid during the fiscal year without regard to the week ending date for which the payment is made. The benefit is considered paid on the date the unemployment payment is issued.

(a) Net benefit costs do not include those benefits established as an overpayment during the same fiscal year in which the benefits were paid.

(b) Benefit costs from a prior fiscal year subsequently established as an overpayment will be deducted from cumulative benefit costs beginning with the fiscal year in which the overpayment is established. Such benefit costs will not be deducted from benefit costs attributable to prior fiscal years except in cases where failure to make the deduction would result in a gross inequity and provided the employer has made a written request within 30 days of when it knew or should have known of the establishment of the overpayment.

(c) Once the fiscal year ends, any benefit costs from a prior fiscal year which are subsequently identified as an overpayment will be deducted from the cumulative benefit costs beginning with the year in which the overpayment is established and subsequent years.

(2) If the benefit costs used to compute the basic tax rate are less than zero, they will be treated as if they were zero. In this case, the minimum overall tax rate an employer can be assigned will be the social tax rate.

**R994-303-109. Actual Reserve Fund Balance.**

The "actual reserve fund balance" used in the calculation of the reserve factor is this state's Trust Fund balance on deposit with the United States Department of the Treasury as of June 30 preceding the computation date.

**KEY: unemployment compensation, rates**

**July 1, 2007**

**35A-4-303**

**Notice of Continuation May 17, 2007**

**R994. Workforce Services, Unemployment Insurance.****R994-305. Collection of Contributions.****R994-305-101. Policy Governing the Filing of Warrants.**

(1) Warrants will be issued on fault overpayments and delinquent employer accounts when there is no installment agreement in effect, when the installment agreement provides for more than three years from the date the liability is established to pay the liability, when the monthly installment payment amount on a fault overpayment is less than the amount specified in Subsection R994-406-302(4)(b), or when an installment agreement is canceled due to failure to make payments or due to the occurrence of a new liability.

(2) Warrants will be issued on all fraudulent overpayments established under Subsection 35A-4-405(5), even if there is an installment agreement and warrants on such overpayments, penalties, and costs will be renewed until paid in full.

(3) No warrants will be issued on non-fault overpayments established under Subsection 35A-4-406(5).

**R994-305-102. Write Off Policy for Nonfault Overpayments.**

All nonfault overpayments established under Subsection 35A-4-406(5) may be written off and removed from the records of the Department after three years without further review unless a payment or offset has been made within the prior 90 days. These debts will be forgiven and forgotten and no further collection or offset will take place.

**R994-305-103. Write Off Policy for Other Overpayments.**

Except for fraud overpayments established under Subsection 35A-4-406(5), all accounts receivable overpayments for claimant and employer liabilities including interest and penalties which have not been collected or offset within three years after the filing of a warrant may be reviewed for determination of collectibility. If it is determined on the information reasonably available to the Department that the delinquent claimant or employer has no known assets which are subject to the attachment, and it appears there is no likelihood of collection in the foreseeable future, the Department will write off the account. All collection or offset action shall cease as far as enforcement of collection procedures are concerned. However, consistent with general accounting principles, if the Department receives money by virtue of a warrant judgment on a debt that has been written off, the Department will reinstate the equivalent portion of the debt and retain the collected monies.

**R994-305-801. Wage List Requirement.****(1) Federal Requirement.**

Section 1137 of the Social Security Act requires employers to submit quarterly wage reports to a state agency. This Department is the designated agency for the state of Utah. The Unemployment Insurance Division of the Department uses wage information submitted by employers to establish benefit determinations for claimants and to verify employer contribution payments.

**(2) Wage List Due Date.**

(a) Contributory employers must file a wage list with the Form 3, Employer's Contribution Report. Reimbursable employers must file a wage list with the Form 794, Insured Employment and Wage Report. Wage lists are due the last day of the month following the end of the calendar quarter.

(b) Domestic employers electing to file an annual report must file a wage list with the Form 3D, Domestic Employer's Annual Report. The wage list is due January 31 of the year following the year wages were paid.

(c) Reimbursable employers must not file a wage list with Form 794-N, Non-insured Employment and Wage Report.

(d) Wage list due dates may be changed and extensions granted under the same provisions established for contribution

reports in Rule R994-302.

**(3) Wage Information Required.**

Each page of the wage list must be identified by the employer's Utah registration number, the employer's name, and the quarter and year being reported. The following information must be provided for each employee as a line item on each wage list in the following order:

(a) social security number;

(b) first initial, second initial and full last name; and

(c) gross wages paid during the quarter. Section 35A-4-204 defines subject employment and Section 35A-4-208 defines wages. Only those employees who were paid wages during the quarter should be reported on the wage list.

**(4) Wage Reporting Methods.**

The Department will accept wage lists filed on approved forms, approved magnetic and electronic media, or the Department website. All wage lists reported on forms other than those provided by the Department require prior approval.

**(a) Approved Form Reporting.**

The wage list must be typewritten or machine printed in black ink so that it is capable of being processed by an optical scanner. The wage list must be on Department approved forms or on plain white paper using the exact same format, placement on the page, and spacing as on the Department approved forms. Wage list forms are available upon request from the Department or may be downloaded from the Department's website.

**(b) Magnetic and Electronic Media Reporting.**

Magnetic and electronic media reporting must be submitted according to specifications approved by the Department.

**(5) Wage List Total Must Equal the Quarterly Report Total.**

The total amount of wages reported on the wage list must be the same as the total wages shown on the Form 3, Employer's Contribution Report. The total of the wage list for a reimbursable employer must be the same as the total wages shown as "insured payroll" on Form 794, Insured Employment and Wage Report. Wage lists consisting of more than one page must show the employer's Utah registration number, the quarter and year of the reporting period, a total for each page and a grand total for all pages on the first page.

**(6) Wage Lists Corrections for Prior Quarters.**

(a) Corrections to wage lists for prior quarters must be made on a separate report and not on the wage list for the current quarter. The employer must submit the following information for each employee in the following order:

(i) social security number;

(ii) first initial, second initial and full last name; and

(iii) gross wages that should have been properly reported.

(b) Each page of the wage list adjustments must be identified by the employer's Utah registration number, the employer's name, and the quarter and year.

(c) The employer must submit an explanation for the corrections being made.

(d) Corrections to wages may result in additional contributions being assessed or refunded.

**(7) Penalty for Failure to Provide Wage List Information.**

(a) A penalty may be assessed for each failure to submit a wage list by the due date as specified in this rule or for failure to submit a wage list in an acceptable format as specified in this rule. The penalty amount is \$50 for every 15 days, or fraction thereof, that the filing is late or not in an acceptable format, not to exceed \$250 per filing.

(b) The penalty will be collected in the same manner and under the same legal provisions as unpaid contributions. Waiver of the penalty will be made if the employer can show good cause for failure to provide the required wage list. Good cause is established if the employer was prevented from filing a wage list for circumstances that are compelling or beyond the employer's control. Payment of the penalty does not relieve the

employer from the responsibility of filing the wage list in the acceptable format.

**KEY: unemployment compensation, overpayments**  
**July 1, 2007**                      **35A-4-305(1)**  
**Notice of Continuation December 10, 2004**

**R994. Workforce Services, Unemployment Insurance.****R994-308. Bond Requirement.****R994-308-101. Authority to Require a Bond.**

To ensure compliance with the contribution provisions of the Act, the Department may require an employer to provide a bond or other security deposit under Subsection 35A-4-308(1).

**R994-308-102. Types of Deposits.**

A cash deposit will generally be required, however, at the Department's discretion, other forms of security may be accepted.

**R994-308-103. Reasons for Requiring a Deposit.**

(1) A deposit may be required whenever circumstances would reasonably cause doubt as to an employer's future compliance with the provisions of the Act. Failure to comply includes such things as failing to file reports, pay amounts due, file a wage list or comply with other requests made by the Department. Some of the more common reasons for requiring a deposit are;

- (a) the employer's past failure to comply,
- (b) the employer is an out-of-state employer and has workers in Utah,
- (c) the employer is in an industry where the rate of past failure to comply is high, or
- (d) the employer's or principal's past failure to comply in other businesses with which the employer or principal is or has been affiliated.

**R994-308-104. Amount of Deposit.**

(1) When a deposit is required from a contributory employer, the deposit shall be the greater of \$1000 or three times the quarterly contribution liability currently accruing or expected to accrue.

(2) When a deposit is required from a reimbursable governmental or Indian tribal employer, the deposit shall be the greater of \$1000 or nine times the monthly benefit charges currently accruing or expected to accrue.

**R994-308-105. Disposition of Deposit.**

If the employer fails to comply with the Act after making the required deposit, the Department will use the deposit to pay amounts due as defined by Subsection R994-302-103(4). The Department may then require a new deposit.

**R994-308-106. Interest Earned on Deposits.**

Interest earned on cash deposits will be paid into the same fund as other interest and penalties collected by the Department as provided by Subsection 35A-4-305(1)(e).

**KEY: unemployment compensation, bonding requirements**  
**July 1, 2007** **35A-4-308(1)**  
**Notice of Continuation May 9, 2006**

**R994. Workforce Services, Unemployment Insurance.****R994-309. Nonprofit Organizations.****R994-309-101. Nonprofit Organization Requirements.**

Nonprofit organizations described in Subsection 35A-4-309(1)(b) will pay contributions in the same manner as other employers under Section 35A-4-302 unless they elect to become reimbursable employers which are liable for payments in lieu of contributions. A nonprofit organization which elects to become a reimbursable employer pays to the Department an amount equal to the regular benefits and one-half of the extended benefits paid to former employees. These reimbursements for benefits paid and other amounts due are payable monthly. Reimbursable employers do not pay for any administrative expenses of the unemployment insurance program.

**R994-309-102. Nonprofit Organizations (Section 501(c)(3) of IRC).**

Section 35A-4-309 applies only to organizations exempt from income tax as described in Section 501(c)(3) of the Internal Revenue Code. Some examples are organizations operated exclusively for religious, charitable or educational purposes. The Internal Revenue Service issues a letter of exemption to exempted organizations. A copy of this letter is required by the Department to allow a nonprofit organization to elect to become a reimbursable employer.

**R994-309-103. Election of Payments by Contributions or Reimbursement.****(1) Initial Election.**

A nonprofit organization electing to become a reimbursable employer must make a written election within 30 days after the organization becomes subject to the Act. Since it may take some time for the employer to obtain the IRS letter of exemption required for this election, the employer will be a contributing employer until the letter is provided to the Department timely. The employer has 30 days from the date of the IRS letter to provide a copy to the Department in order to be granted reimbursable status retroactive to the date it became subject to the Act under Subsection 35A-4-309(1)(e). When the letter is provided timely, all contributions paid by the employer in excess of benefits paid to former employees will be refunded. Under Subsection 35A-4-309(1)(e) the Department may, for good cause, extend the 30-day period within which the election is made or the 30 days within which the letter of exemption is provided. An initial election to become a reimbursable employer remains in effect for at least one calendar year.

**(2) Subsequent Elections.**

A nonprofit organization may elect to change from the contributions to the reimbursement method or from the reimbursement to the contributions method. An election to change from the contributions to the reimbursement method can be made only if accompanied by a copy of the letter of exemption from the IRS. To be consistent with the principle of Subsection 35A-4-309(1)(d), changes from one method to the other will remain in effect for at least two calendar years. Any election to change from one method of payment to the other must be made in writing no later than 30 days prior to January 1 of the year for which the change is requested. Under Subsection 35A-4-309(1)(e) the Department may for good cause waive the 30 day period within which a change from one method to the other is requested. As provided by Subsection 35A-4-309(3), the Department may terminate the reimbursable status if the organization is delinquent in filing Form 794, Insured Employment and Wage Report, Form 3H Employer's Quarterly Wage List, making the reimbursable payments, or paying any other amounts due.

**R994-309-104. Liability of an Organization When Changing the Method of Payment.**

A nonprofit organization changing from the reimbursement to the contributions method must reimburse the Department for benefits paid on wages earned during the time the organization was a reimbursable employer. Example: A nonprofit organization was a reimbursable employer during 2003 and 2004. For 2005 the organization elects to pay contributions. If a former employee receives benefits in 2005 based on wages paid by the organization in 2004, the organization must reimburse the Department for the benefits based on the 2004 wages. The organization must also pay contributions on the 2005 wages. If this organization changes back to the reimbursement method in 2007, any benefits received by a former employee which were based on wages paid in 2006 would not be subject to reimbursement since contributions have been paid on those wages.

**R994-309-105. Reimbursable Employer's Liability for Benefits Paid.**

(1) The reimbursable employer's liability is limited to the amount of benefits paid to the claimant. The employer may also be required to pay interest, penalty, and collection costs on past due amounts.

(2) The employer is not liable for benefits overpaid as a result of agency error or a Department decision which is later reversed unless the reversal was due in whole or in part to the failure of the reimbursable employer to provide complete and accurate information within the time limits established by the Department.

(3) Any benefits established as an overpayment, except overpayments due to the failure of the employer to provide information as provided in subparagraph (2) above, will be deducted from the employer's liability or, at the Department's discretion, refunded as the overpayment is recovered.

(4) If a claimant continues working part-time for a reimbursable employer and had other employment during the base period, the reimbursable employer may be eligible for relief of charges if all the requirements of Subsection R994-401-302(1) are met.

**R994-309-106. Records of Benefits Paid.**

The Department will maintain records of benefits paid to former employees of reimbursable employers for five calendar years. Such records will include the name and social security account number of each employee, the week for which payment is made, and the amount of each payment.

**R994-309-107. Monthly Billing of Benefits Paid.**

The Department will send a monthly billing to the reimbursable employer if any benefits have been paid to former employees. The billing will include the name and social security number of each claimant, the amount of the payment to each claimant on the basis of wages paid to him by the reimbursable employer in his base period, any adjustments to prior benefit charges, and the total amount paid to all such claimants during the previous calendar month.

**KEY: unemployment compensation, nonprofit organizations  
July 1, 2007 35A-4-309  
Notice of Continuation July 14, 2004**

**R994. Workforce Services, Unemployment Insurance.****R994-310. Coverage.****R994-310-101. Coverage Definitions.**

(1) "Subject date" is the first day of the calendar quarter in which the employer is required to comply with the Act.

(2) "Effective date" is the first day an employer pays wages or acquires an employing unit.

(3) "Inactive date" is the last day an employer pays wages.

**R994-310-102. Initiating Coverage.**

(1) An agricultural employer is subject to unemployment contributions the first day of the quarter that wages are paid in the year in which the employer;

(a) pays \$20,000 or more in cash wages in a quarter, or

(b) employs ten or more workers for some portion of a day in each of 20 different calendar weeks.

(2) A domestic employer is subject to unemployment contributions the first day of the quarter that wages are paid in the year in which the employer pays \$1000 or more in cash wages in any quarter.

(3) A nonprofit organization defined in 26 U.S.C.3306(c)(8) is subject to unemployment contributions the first day of the quarter that wages are paid in the year in which the employer employs four or more workers for some portion of a day in each of 20 different calendar weeks.

(a) A nonprofit organization that has an Internal Revenue Service 501(c)(3) classification as the result of an affiliation with a national organization that is subject in another state, is a subject employer on the day they pay any wages in this state.

**R994-310-103. Inactivating Coverage.**

(1) An agricultural employer's account may be inactivated the last day of a calendar year in which the employer;

(a) pays less than \$20,000 in wages in each quarter of that year, and

(b) employs less than ten workers for some portion of a day in each of 20 different calendar weeks.

(2) A domestic employer's account may be inactivated the last day of a calendar year in which the employer pays less than \$1000 in wages in each quarter of that year.

(3) The account of a nonprofit organization defined in the 26 U.S.C.3306(c)(8) may be inactivated the last day of a calendar year in which the employer employs less than four workers for some portion of a day in each of 20 different calendar weeks.

(4) Coverage will automatically be inactivated if the employing unit has paid no wages in the preceding calendar year.

(5) If within four fiscal years after coverage is inactivated, an employer becomes subject to the Act again, the employer's account may be reopened.

**R994-310-104. Elections to Become Covered.**

An employing unit's election to become covered under the Act for either the entire employing unit or for services which do not constitute employment as defined in the Act, may be approved by the Executive Director or designee.

**KEY: unemployment compensation, coverage**

**July 1, 2007**

**35A-4-310**

**Notice of Continuation July 14, 2004**

**R994. Workforce Services, Unemployment Insurance.****R994-311. Governmental Units and Indian Tribes.****R994-311-101. Governmental Unit and Indian Tribe Requirements.**

(1) Governmental units and Indian Tribes described in Subsection 35A-4-311(1) will pay contributions in the same manner as other employers under Section 35A-4-302 unless they elect to become reimbursable employers which are liable for payments in lieu of contributions. A governmental unit or Indian tribe that elects to become a reimbursable employer pays to the Department an amount equal to the regular benefits and all of the extended benefits paid to former employees. These reimbursements for benefits paid and other amounts due are payable monthly. Reimbursable employers do not pay any administrative expenses of the unemployment insurance program.

(2) This state, as required by 35A-4-204(d)(ii), shall reimburse the Department for all regular and extended benefits paid for service performed in the employ of this state.

**R994-311-102. Definition of Governmental Units and Indian Tribes.**

Section 35A-4-311 applies to governmental units including any county, city, town, school district, or political subdivision and instrumentality of the foregoing or any combination thereof and political subdivisions or instrumentalities of the State of Utah or other states as provided by Subsection 35A-4-204(2)(d) and Indian Tribes. A political subdivision or instrumentality of a state or county, city, town or school district is a subdivision thereof to which has been delegated certain functions of that state, county, etc. Examples of governmental units to which this section applies are county water conservancy districts, state universities, city fire departments, and associations of county governments. The provisions of this rule do not apply to federal agencies.

**R994-311-103. Effective Period of Payments by Contributions or Reimbursement.****(1) Initial Election**

A governmental unit or Indian tribe electing to become a reimbursable employer must make a written election within 30 days after the organization becomes subject to the Act. Under Subsection 35A-4-311(1)(e) the Department may, for good cause, extend the 30 day period within which the election is made. This initial election remains in effect for at least one full calendar year.

**(2) Subsequent Elections**

A governmental unit or Indian tribe may elect to change from the contributions to the reimbursement method or from the reimbursement method to the contributions method. To be consistent with the principle of Subsection 35A-4-311(1)(d), changes from one method to the other will remain in effect for at least two calendar years. Any election to change from one method of payment to the other must be made in writing no later than 30 days prior to January 1 of the year for which the change is requested. Under Subsection 35A-4-311(1)(e) the Department may for good cause waive the 30 day period within which a change from one method to the other is requested. As provided by Subsection 35A-4-311(3), the Department may terminate the reimbursement status if the governmental unit or Indian tribe is delinquent in filing Form 794, Insured Employment and Wage Report, Form 3H Employer's Quarterly Wage List, making the reimbursement payments, or paying any other amounts due.

**R994-311-104. Liability of a Governmental Unit or Indian Tribe When Changing the Method of Payment.**

A governmental unit or Indian tribe changing from the reimbursement to the contributions method must reimburse the

Department for benefits paid on wages earned during the time the organization was a reimbursable employer. Example: A governmental unit was a reimbursable employer during 2003 and 2004. For 2005 the organization elects to pay contributions. If a former employee receives benefits in 2005 based on wages paid by the organization in 2004, the organization must reimburse the Department for the benefits based on the 2004 wages. The organization must also pay contributions on the 2005 wages. If this organization changes back to the reimbursement method in 2007, any benefits received by a former employee which were based on wages paid in 2006 would not be subject to reimbursement since contributions have been paid on those wages.

**R994-311-105. Reimbursable Employer's Liability for Benefits Paid.**

(1) The reimbursable employer's liability is limited to the amount of benefits paid to the claimant. The employer may also be required to pay interest, penalty, and collection costs on past due amounts.

(2) The employer is not liable for benefits overpaid as a result of agency error or a Department decision which is later reversed unless the reversal was due in whole or in part to the failure of the reimbursable employer to provide complete and accurate information within the time limits established by the Department.

(3) Any benefits established as an overpayment, except overpayments due to the failure of the employer to provide information as provided in subparagraph (2) above, will be deducted from the employer's liability or, at the Department's discretion, refunded as the overpayment is recovered.

(4) If a claimant continues working part-time for a reimbursable employer and had other employment during the base period, the reimbursable employer may be eligible for relief of charges if all the requirements of Subsection R994-401-302(1) are met.

**R994-311-106. Records of Benefits Paid.**

The Department will maintain records of benefits paid to former employees of reimbursable employers for five calendar years. Such records will include the name and social security account number of each employee, the week for which payment is made, and the amount of each payment.

**R994-311-107. Monthly Billing of Benefits Paid.**

The Department will send a monthly billing to the reimbursable employer if any benefits have been paid to former employees. The billing will include the name and social security number of each claimant, the amount of the payment to each claimant on the basis of wages paid to him by the reimbursable employer in his base period, any adjustments to prior benefit charges, and the total amount paid to all such claimants during the previous calendar month.

**R994-311-108. Charter Schools.**

(1) In order to be recognized by this state as a charter school, a school must apply with the Utah State Charter School Board. Charter schools recognized by the Charter School Board are considered to be public schools within the state's public education system.

(2) If a school desires to be eligible for election as a reimbursable employer under Section 35A-4-311, it must verify its status as a school within the state's public education or higher education systems. A charter school must provide evidence it has a current charter with the State Charter School Board.

**KEY: unemployment compensation, government corporations**  
**July 1, 2007**

**35A-4-311**

Notice of Continuation July 14, 2004

**R994. Workforce Services, Unemployment Insurance.****R994-312. Employing Units Records.****R994-312-101. Recordkeeping Requirements.**

(1) Each employing unit shall, for a period of at least three calendar years, preserve and make available for inspection all records with respect to employment performed in its service.

(2) The following information is required for each pay period and for each worker;

(a) Name and social security number,

(b) Place of employment. This includes the city and town, or where appropriate the county, in which the work was performed. If work is performed in several locations, assignment of place of employment is made in the following order;

(i) the worker's base of operations,

(ii) the place from which the worker's services are directed or controlled, and

(iii) the worker's place of residence,

(c) The date hired,

(d) The date and reason for separation from work,

(e) The ending date of each pay period,

(f) The total amount of wages paid for each pay period showing separately:

(i) money wages; and

(ii) wages as otherwise defined in Section 35A-4-208 and Section R994-208-102, and

(g) Daily time cards or time records, kept in the regular course of business.

**R994-312-102. Examination of Employer Records: Scope and Authority.**

(1) The Department is authorized to examine any and all records necessary for the administration of the Act. These records include payroll records, disbursement records, accounting records, tax returns, magnetic and electronic media, personnel records, minutes of meetings, loan documentation, articles of organization, operating agreements, and any other records which might be necessary to determine claimant eligibility and employer liability.

(2) The Department may initiate legal action to compel an employer to provide access to records if the employer fails to provide full access to records.

(3) If an employer maintains its records outside of this state, the employer may be required to submit copies of records for review within this state. The employer is responsible for any costs associated with providing such copies of records.

**R994-312-103. Confidentiality of Records.**

(1) Employers and individuals have a legitimate expectation of privacy in the information they provide to the Department. Therefore, consistent with federal and state requirements of confidentiality, it is the intent of this rule to limit access to Department records for use in:

(a) administration of the programs of the Department and the other divisions of the Department of Workforce Services;

(b) the detection and avoidance of duplicate or fraudulent claims against public assistance funds, or to avoid significant risk to public safety; and

(c) as specifically mandated by federal or state law. Department records shall not be published or open to public inspection in any manner revealing the employer's or the individual's identity except upon written request which shall set forth one or more of the following reasons for disclosure:

(i) Records used in making an initial determination or any decision by the Department may be provided to all interested parties prior to the rendering of any decision to the extent necessary for the proper presentation of the case.

(ii) Any information requested by employers concerning claims for benefits with respect to former or current employees

may be provided where the employer's reason for seeking the information is directly related to the unemployment insurance program. Information in the records may be made available to the party who submitted the information to the Department; and an individual's wage data submitted by an employer may be made available to that individual.

(iii) Information in the record may be made available to the public for any purpose following a written waiver by all parties of their rights to non-disclosure.

(iv) Employment and claim information may be disclosed by the Department to other divisions of the Department of Workforce Services for the purpose of carrying out the programs administered by the Department for the protection of workers in the work place; to the Governor's office and other governmental agencies administratively responsible for statewide economic development, to the extent necessary for economic development policy analysis and formulation; and to any other governmental agency which is specifically authorized by federal or state law to receive such information, subject to the requirements of Subsection R994-312-304(2).

(v) Employment and claim information may be disclosed by the Department to any other public employees in the performance of their public duties only upon a determination by the Department that such disclosure will not discourage the willingness of employers to report wage and employment information or individuals to file claims for unemployment benefits, and such disclosure:

(A) is directly related to the detection or avoidance of duplicate, inconsistent or fraudulent claims against public assistance funds, or the recovery of overpayments of such funds; or

(B) is necessary to avoid a significant risk to public safety; and Disclosure pursuant to R994-312-304(1)(vi)(B) shall be subject to the requirements of Subsection R994-312-304(2).

(vi) No disclosure of employment or claim information may be made by the Department other than as set forth above. All requests for information must comply with the requirements and procedures contained in this rule. The Department will request a judicial or administrative body to withdraw any subpoena issued by that body if the subpoena does not conform to the Act and this rule.

(2) Employment and claim information may be disclosed to the divisions of the Department of Workforce Services, other governmental agencies, and other public employees only upon completion of a written agreement containing all of the following terms and conditions:

(a) The requesting division or agency must specify a bona fide need for the information, and must agree to use the information only to the extent necessary to assist in its valid administrative needs.

(b) The requesting division or agency must identify all agency officials, by position, authorized to request and receive information.

(c) The methods and timing of requests for information must be agreed upon by the Department and the requesting division or agency, and there must be provision for the appropriate reimbursement of the Department for the costs associated with furnishing the requested information.

(d) The requesting division or agency must agree to implement, at a minimum, the following requirements for safeguarding disclosed information:

(i) the disclosed information may not be used by the requesting division or agency for any purposes not specifically authorized; and

(ii) the information must be stored by the requesting division or agency in a secure place, and electronically stored information must be secured so that unauthorized persons cannot access the information; and

(iii) the requesting division or agency must instruct all

persons authorized to request and receive information as to the confidential nature of the information and of the legal sanctions for unauthorized disclosure; and

(iv) the requesting division or agency must permit the Department to make on-site inspections to insure that there is a genuine need for the information, that the information is being used only for that purpose, and that state and federal confidentiality requirements are being met; and

(v) the head of the requesting division or agency must sign a written acknowledgment attesting to the confidentiality requirements of this rule.

**KEY: unemployment compensation, confidentiality of information**

**July 1, 2007**

**35A-4-312**

**Notice of Continuation July 14, 2004**

**R994. Workforce Services, Unemployment Insurance.****R994-403. Claim for Benefits.****R994-403-101a. Filing a New Claim.**

(1) A new claim for unemployment benefits is made by filing with the Department of Workforce Services Claims Center. A new claim can be filed by telephone, completing an application at the Department's web site, or as otherwise instructed by the Department.

(2) The effective date of a new claim for benefits is the Sunday immediately preceding the date the claim is filed, provided the claimant did not work full-time during that week, or is not entitled to earnings equal to or in excess of the WBA for that week. A claim for benefits can only be made effective for a prior week if the claimant can establish good cause for late filing in accordance with R994-403-106a.

(3) When a claimant files a new claim during the last week of a quarter and has worked less than full-time for that week, the Department will make the claim effective that week if it is advantageous to the claimant, even if the claimant has earnings for that week that are equal to or in excess of the WBA.

(4) Wages used to establish eligibility for a claim cannot be used on a subsequent claim.

**R994-403-102a. Cancellation of Claim.**

(1) Once a weekly claim has been filed and the claimant has been deemed monetarily eligible, the claim is considered to have been established, even if no payment has been made or waiting week credit granted. The claim then remains established for 52 weeks during which time another regular claim may not be filed against the state of Utah unless the claim is canceled.

(2) A claim may be canceled if the claimant requests that the claim be canceled and one of the following circumstances can be shown:

(a) no weekly claims have been filed;

(b) cancellation is requested prior to the issuance of the monetary determination;

(c) the request is made within the same time period permitted for an appeal of the monetary determination and the claimant returns any benefits that have been paid;

(d) the claimant had earnings, severance, or vacation payments equal to or greater than the WBA applicable to all weeks for which claims were filed;

(e) the claimant meets the eligibility requirements for filing a new claim following a disqualification due to a strike in accordance with the requalifying provisions of Subsection 35A-4-405(4)(c);

(f) the claimant meets the requirements for cancellation established under the provisions for combined wage claims in R994-106-107; or

(g) the claimant has filed an unemployment compensation for ex-military (UCX) claim, and it is determined the claimant does not have wage credits under Title 5, chapter 85, U.S. Code.

**R994-403-103a. Reopening a Claim.**

(1) A claim for benefits is considered "closed" when a claimant reports four consecutive weeks of earnings equal to or in excess of the WBA or does not file a weekly claim within 27 days from the last week filed. In those circumstances, the claimant must reopen the claim before benefits can be paid.

(2) A claimant may reopen the claim any time during the 52-week period after first filing by contacting the Claims Center. The effective date of the reopened claim will be the Sunday immediately preceding the date the claimant requests reopening unless good cause is established for failure to request reopening during a prior week in accordance with R994-403-106a.

**R994-403-104g. Using Unused Wages for a Subsequent Claim.**

(1) A claimant may have sufficient wage credits to

monetarily qualify for a subsequent claim without intervening employment.

(2) Before payment can be made on a subsequent claim using those unused wages, each of the following elements must be satisfied:

(a) the claimant must have performed work in covered employment after the effective date of the original claim, but not necessarily during the benefit year of the original claim;

(b) actual services must have been performed. Vacation, severance pay, or a bonus cannot be used to requalify;

(c) the claimant must have earnings from covered employment, as defined in R994-201-101(9), equal to at least six times the WBA of the original or subsequent claim, whichever is lower;

(d) the claimant must have actually received benefits during the preceding benefit year; and

(e) benefits will not be paid under Subsection 35A-4-403(1)(g) from the effective date of the claim and continuing until the week the claimant provides proof of covered employment equal to at least six times the WBA.

**R994-403-105a. Filing Weekly Claims.**

(1) Claims must be filed on a weekly basis. For unemployment benefit purposes, the week begins at 12:01 a.m. on Sunday and ends at midnight on Saturday. The claimant is the only person who is authorized to file weekly claims. The responsibility for filing weekly claims cannot be delegated to another person.

(2) Each weekly claim should be filed as soon as possible after the Saturday week ending date. If the claim has not been closed, the Department will allow 20 days after the week ending date to file a timely claim. A weekly claim filed 21 or more calendar days after the week ending date will be denied unless good cause for late filing is established in accordance with R994-403-106a.

**R994-403-106a. Good Cause for Late Filing.**

(1) Claims must be filed timely to insure prompt, accurate payment of benefits. Untimely claims are susceptible to errors and deprive the Department of its responsibility to monitor eligibility. Benefits may be paid if it is determined that the claimant had good cause for not filing in a timely manner.

(2) The claimant has the burden to establish good cause by competent evidence. Good cause is limited to circumstances where it is shown that the reasons for the delay in filing were due to circumstances beyond the claimant's control or were compelling and reasonable. Some reasons for good cause for late filing may raise other eligibility issues. Some examples that may establish good cause for late filing are:

(a) a crisis of several days duration that interrupts the normal routine during the time the claim should be filed;

(b) hospitalization or incarceration; or

(c) coercion or intimidation exercised by the employer to prevent the prompt filing of a claim.

(3) The Department is the only acceptable source of information about unemployment benefits. Relying on inaccurate advice from friends, relatives, other claimants or similar sources does not constitute good cause.

(4) Good cause for late filing cannot extend beyond 65 weeks from the filing date of the initial claim.

**R994-403-107b. Registration, Workshops, Deferrals - General Definition.**

(1) A claimant must register for work with the Department, unless, at the discretion of the Department, registration is waived or deferred.

(2) The Department may require attendance at workshops designed to assist claimants in obtaining employment.

(3) Failure, without good cause, to comply with the

requirements of Subsections (1) and (2) of this section may result in a denial of benefits. The claimant has the burden to establish good cause through competent evidence. Good cause is limited to circumstances where it is shown that the failure to comply was due to circumstances beyond the control of the claimant or which were compelling and reasonable. The proof of inability to register or report may raise an able or available issue.

(4) The denial of benefits begins with the week the claimant failed to comply and ends with the week the claimant contacts the Department and complies by either registering for work, reporting as required, or scheduling an appointment to attend the next available workshop or conference. The denial can be waived if the Department determines the claimant complied within a reasonable amount of time.

**R994-403-108b. Deferral of Work Registration and Work Search.**

(1) The Department may elect to defer the work registration and work search requirements. A claimant placed in a deferred status is not required to actively seek work but must meet all other availability requirements of the act. Deferrals are generally limited to the following circumstances:

(a) Labor Disputes.

A claimant who is unemployed due to a labor dispute may be deferred while an eligibility determination under Subsection 35A-4-405(4) is pending. If benefits are allowed, the claimant must register for work immediately.

(b) Union Attachment.

A claimant who is a union member in good standing, is on the out-of-work list, or is otherwise eligible for a job referral by the union, and has earned at least half of his or her base period earnings through the union, may be eligible for a deferral. If a deferral is granted to a union member, it shall not be extended beyond the mid-point of the claim unless the claimant can demonstrate a reasonable expectation of obtaining employment through the union.

(c) Employer Attachment.

A claimant who has an attachment to a prior employer and a date of recall within ten weeks of filing or reopening a claim may have the work registration requirement deferred to the expected date of recall. The deferral should not extend longer than ten weeks.

(d) Three Week Deferral.

A claimant who accepts a definite offer of full-time work to begin within three weeks, shall be deferred for that period.

(e) Seasonal.

A claimant may be deferred when, due to seasonal factors, work is not available in the claimant's primary base period occupation and other suitable work is not available in the area.

(2) Deferrals cannot be granted if prohibited by state or federal law for certain benefit programs.

**R994-403-109b. Profiled Claimants.**

(1) The Department will identify individuals who are likely to exhaust unemployment benefits through a profiling system and require that they participate in reemployment services. These services may include job search workshops, job placement services, counseling, testing, and assessment.

(2) In order to avoid disqualification for failure to participate in reemployment services, the claimant must show good cause for nonparticipation. Good cause for nonparticipation is established if the claimant can show:

(a) completion of equivalent services within the 12 month period immediately preceding the date the claimant is scheduled for reemployment services; or

(b) that the failure to participate was reasonable or beyond the claimant's control.

(3) Failure to participate in reemployment services without

good cause will result in a denial of benefits beginning with the week the claimant refuses or fails to attend scheduled services and continuing until the week the claimant contacts the Employment Center to arrange participation in the required reemployment service.

(4) Some reasons for good cause for nonparticipation may raise other eligibility issues.

**R994-403-110c. Able and Available - General Definition.**

(1) The primary obligation of the claimant is to become reemployed. A claimant may meet all of the other eligibility criteria but, if the claimant cannot demonstrate ability, availability, and an active good faith effort to obtain work, benefits cannot be allowed.

(2) A claimant must be attached to the labor force, which means the claimant can have no encumbrances to the immediate acceptance of full-time work. The claimant must:

(a) be actively engaged in a good faith effort to obtain employment; and

(b) have the necessary means to become employed including tools, transportation, licenses, and childcare if necessary.

(3) The continued unemployment must be due to the lack of suitable job opportunities.

(4) The only exception to the requirement that a claimant actively seek work is if the Department has approved schooling under Section 35A-4-403(2) and the claimant meets the requirements of R994-403-107b.

(5) The only exception to the requirements that the claimant be able to work and actively seeking full-time work are that the claimant meets the requirements of R994-403-111c(5).

**R994-403-111c. Able.**

(1) The claimant must have no physical or mental health limitation which would preclude immediate acceptance of full-time work. A recent history of employment is one indication of a claimant's ability to work. If there has been a change in the claimant's physical or mental capacity since his or her last employment, there is a presumption of inability to work which the claimant must overcome by competent evidence. The claimant must show that there is a reasonable likelihood that jobs exist which the claimant is capable of performing before unemployment insurance benefits can be allowed. Pregnancy is treated the same as other physical limitations.

(2) For purposes of determining weekly eligibility for benefits, it is presumed a claimant who is not able to work more than one-half the normal workweek will be considered not able to perform full-time work. The normal workweek means the normal workweek in the claimant's occupation. A claimant will be denied under this section for any week in which the claimant refuses suitable work due to an inability to work, regardless of the length of time the claimant is unable to work.

(a) Past Work History.

Benefits will not be denied solely on the basis of a physical or mental health limitation if the claimant earned base period wages while working with the limitation and is:

(i) willing to accept any work within his or her ability;

(ii) actively seeking work consistent with the limitation; and

(iii) otherwise eligible.

Under these circumstances, the unemployment is considered to be due to a lack of employment opportunities and not due to an inability to work.

(b) Medical Verification.

When an individual has a physical or mental health limitation, medical information from a competent health care provider is one form of evidence used to determine the claimant's ability to work. The provider's opinion is presumed to be an accurate reflection of the claimant's ability to work,

however, the provider's opinion may be overcome by other competent evidence. The Department will determine if medical verification is required.

(3) Temporary Disability.

(a) Employer Attached.

A claimant is not eligible for benefits if the claimant is not able to work at his or her regular job due to a temporary disability and the employer has agreed to allow the claimant to return to the job when he or she is able to work. In this case, the claimant's unemployment is due to an inability to work rather than lack of available work. The claimant is not eligible for benefits even if there is other work the claimant is capable of performing with the disability. If a claimant is precluded from working due to Federal Aviation Administration regulations because of pregnancy, and the employer has agreed to allow the claimant to return to the job, the claimant is considered to be on a medical leave of absence and is not eligible for benefits.

(b) No Employer Attachment.

If the claimant has been separated from employment with no expectation of being allowed to return when he or she is again able to work, or the temporary disability occurred after becoming unemployed, benefits may be allowed even though the claimant cannot work in his or her regular occupation if the claimant can show there is work the claimant is capable of performing and for which the claimant reasonably could be hired. The claimant must also meet other eligibility requirements including making an active work search.

(4) Hospitalization.

A claimant is unable to work if hospitalized unless the hospitalization is on an out-patient basis or the claimant is in a rehabilitation center or care facility and there is independent verification that the claimant is not restricted from immediately working full-time. Immediately following hospitalization, a rebuttable presumption of physical inability continues to exist for the period of time needed for recuperation.

(5) Workers' Compensation.

(a) Compensation for Lost Wages.

A claimant is not eligible for unemployment benefits while receiving temporary total disability workers' compensation benefits.

(b) Subsequent Awards.

The Department may require that a claimant who is receiving permanent partial disability benefits from workers' compensation show that he or she is able and available for full-time work and can reasonably expect to obtain full-time work even with the disability.

(c) Workers' compensation disability payments are not reportable as wages.

(6) Physical or Mental Health Limitation.

(a) A claimant who is not able to work full-time due to a physical or mental health limitation, may be considered eligible under this rule if:

(i) the claimant's base period employment was limited to part-time because of the claimant's physical or mental health limitations;

(ii) the claimant's prior part-time work was substantial. Substantial is defined as at least 50 percent of the hours customarily worked in the claimant's occupation;

(iii) the claimant is able to work at least as many hours as he or she worked prior to becoming unemployed;

(iv) there is work available which the claimant is capable of performing; and

(v) the claimant is making an active work search.

(b) The Department may require that the claimant establish ability by competent evidence.

**R994-403-112c. Available.**

(1) General Requirement.

The claimant must be available for full-time work. Any

restrictions on availability, such as lack of transportation, domestic problems, school attendance, military obligations, church or civic activities, whether self-imposed or beyond the control of the claimant, lessen the claimant's opportunities to obtain suitable full-time work.

(2) Activities Which Affect Availability.

It is not the intent of the act to subsidize activities which interfere with immediate reemployment. A claimant is not considered available for work if the claimant is involved in any activity which cannot be immediately abandoned or interrupted so that the claimant can seek and accept full-time work.

(a) Activities Which May Result in a Denial of Benefits.

For purposes of establishing weekly eligibility for benefits, a claimant who is engaged in an activity for more than half the normal workweek that would prevent the claimant from working, is presumed to be unavailable and therefore ineligible for benefits. The normal workweek means the normal workweek in the claimant's occupation. This presumption can be overcome by a showing that the activity did not preclude the immediate acceptance of full-time work, referrals to work, contacts from the Department, or an active search for work. When a claimant is away from his or her residence but has made arrangements to be contacted and can return quickly enough to respond to any opportunity for work, the presumption of unavailability may be overcome. The conclusion of unavailability can also be overcome in the following circumstances:

(i) Travel Which is Necessary to Seek Work.

(A) Benefits will not be denied if the claimant is required to travel to seek, apply for, or accept work within the United States or in a foreign country where the claimant has authorization to work and where there is a reciprocal agreement. The trip itself must be for the purpose of obtaining work. There is a rebuttable presumption that the claimant is not available for work when the trip is extended to accommodate the claimant's personal needs or interests, and the extension is for more than one-half of the workweek.

(B) Unemployment benefits cannot be paid to a claimant located in a foreign country unless the claimant has authorization to work there and there is a reciprocal agreement concerning the payment of unemployment benefits with that foreign country. An exception to this general rule is that a claimant who travels to a foreign country for the express purpose of applying for employment and is out of the United States for two consecutive weeks or less is eligible for those weeks provided the claimant can prove he or she has a legal right to work in that country. A claimant who is out of the United States for more than two weeks is not eligible for benefits for any of the weeks.

(ii) Definite Offer of Work or Recall.

If the claimant has accepted a definite offer of full-time employment or has a date of recall to begin within three weeks, the claimant does not have to demonstrate further availability and is not required to seek other work. Because the statute requires that a claimant be able to work, if a claimant is unable to work for more than one-half of any week due to illness or hospitalization, benefits will be denied.

(iii) Jury Duty or Court Attendance.

Jury duty or court attendance is a public duty required by law and a claimant will not be denied benefits if he or she is unavailable because of a lawfully issued summons to appear as a witness or to serve on a jury unless the claimant:

(A) is a party to the action;

(B) had employment which he or she was unable to continue or accept because of the court service; or

(C) refused or delayed an offer of suitable employment because of the court service.

The time spent in court service is not a personal service performed under a contract of hire and therefore is not

considered employment.

(b) Activities Which Will Result in a Denial of Benefits.

(i) Refusal of Work.

When a claimant refuses any suitable work, the claimant is considered unavailable. Even though the claimant had valid reasons for not accepting the work, benefits will not be allowed for the week or weeks in which the work was available. Benefits are also denied when a claimant fails to be available for job referrals or a call to return to work under reasonable conditions consistent with a previously established work relationship. This includes referral attempts from a temporary employment service, a school district for substitute teaching, or any other employer for which work is "on-call."

(ii) Failure to Perform All Work During the Week of Separation.

(A) Benefits will be denied for the week in which separation from employment occurs if the claimant's unemployment was caused because the claimant was not able or available to do his or her work. In this circumstance, there is a presumption of continued inability or unavailability and an indefinite disqualification will be assessed until there is proof of a change in the conditions or circumstances.

(B) If the claimant was absent from work during the last week of employment and the claimant was not paid for the day or days of absence, benefits will be denied for that week. The claimant will be denied benefits under this section regardless of the length of the absence.

(3) Hours of Availability.

(a) Full-Time.

Except as provided in R994-403-111c(5), in order to meet the availability requirement, a claimant must be ready and willing to immediately accept full-time work. Full-time work generally means 40 hours a week but may vary due to customary practices in an occupation. If the claimant was last employed less than full-time, there is a rebuttable presumption that the claimant continues to be available for only part-time work.

(b) Other Than Normal Work Hours.

If the claimant worked other than normal work hours and the work schedule was adjusted to accommodate the claimant, the claimant cannot continue to limit his or her hours of availability even if the claimant was working 40 hours or more. The claimant must be available for full-time work during normal work hours as is customary for the industry.

(4) Wage Restrictions.

(a) No claimant will be expected, as a condition of eligibility, to accept a wage that is less than the state or federal minimum wage, whichever is applicable, or a wage that is substantially less favorable to the claimant than prevailing wages for similar work in the locality. Benefits cannot be allowed if the claimant is restricting himself or herself to a wage that is not available.

(b) A claimant must be given a reasonable time to seek work that will preserve his or her earning potential. At the time of filing an initial claim, or at the time of reopening a claim following a period of employment, the claimant may restrict his or her wage requirement to the highest wage earned during or subsequent to the base period and prior to filing the claim or the highest wage available in the locality for the claimant's occupation, whichever is lower, but only if there is a reasonable expectation that work can be obtained at that wage.

(i) After a claimant has received 1/3 of the maximum benefit amount (MBA) for his or her regular claim, the claimant must accept any wage that is equal to or greater than the lowest wage earned during the base period, as long as that wage is consistent with the prevailing wage standard.

(ii) After a claimant has received 2/3 of the MBA for his or her regular claim, the claimant must be willing to accept the prevailing wage in the locality for work in any base period occupation.

(c) Exception for Deferred Claimants.

The provisions of this section do not apply to those claimants who qualify for deferrals under Subsection 35A-4-403(1)(b) and R994-403-202 during the period of deferral.

(5) Type of Work.

(a) One of the purposes of the unemployment insurance program is to help a claimant preserve his or her highest skill by providing unemployment benefits so the claimant can find work similar to what the claimant had prior to becoming unemployed. A skill is defined as a marketable ability developed over an extended period of time by training or experience which could be lost if not used. It is not the intent of the program to subsidize individuals who are limiting their availability because of a desire to improve their employment status.

(i) At the time of filing an initial claim or reopening a claim following a period of employment, a claimant may restrict availability to the highest skilled employment performed during or subsequent to the base period provided the claimant has a reasonable expectation of obtaining that type of work. A claimant who is not willing to accept employment consistent with work performed during or subsequent to the base period must show a compelling reason for that restriction in order to be considered available for work.

(ii) After the claimant has received 1/3 of the MBA for his or her regular claim, the claimant must be willing to accept work in any of the occupations in which the claimant worked during the base period.

(iii) After the claimant has received 2/3 of the MBA for his or her regular claim, the claimant must be willing to accept any work that he or she can reasonably perform consistent with the claimant's past experience, training, and skills.

(b) Contract Obligation.

If a claimant is restricted due to a contractual obligation from competing with a former employer or accepting employment in the claimant's regular occupation, the claimant is not eligible for benefits unless the claimant can show that he or she:

(i) is actively seeking work outside the restrictions of the noncompete contract;

(ii) has the skills and/or training necessary to obtain that work; and

(iii) can reasonably expect to obtain that employment.

(6) Employer/Occupational Requirements.

If the claimant does not have the license or special equipment required for the type of work the claimant wants to obtain, the claimant cannot be considered available for work unless the claimant is actively seeking other types of work and has a reasonable expectation of obtaining that work.

(7) Temporary Availability.

When an individual is limited to temporary work because of anticipated military service, school attendance, travel, church service, relocation, a reasonable expectation of recall to a former employer for which the claimant is not in deferral status, or any other anticipated restriction on the claimant's future availability, availability is only established if the claimant is willing to accept and is actively seeking temporary work. The claimant must also show there is a realistic expectation that there is temporary work in the claimant's occupation, otherwise the claimant may be required to accept temporary work in another occupation. Evidence of a genuine desire to obtain temporary work may be shown by registration with and willingness to accept work with temporary employment services.

(8) Distance to Work.

(a) Customary Commuting Patterns.

A claimant must show reasonable access to public or private transportation, and a willingness to commute within customary commuting patterns for the occupation and community.

(b) Removal to a Locality of Limited Work Opportunities.

A claimant who moves from an area where there are substantial work opportunities to an area of limited work opportunities must demonstrate that the new locale has work for which the claimant is qualified and which the claimant is willing to perform. If the work is so limited in the new locale that there is little expectation the claimant will become reemployed, the continued unemployment is the result of the move and not the failure of the labor market to provide employment opportunities. In that case, the claimant is considered to have removed himself or herself from the labor market and is no longer eligible for benefits.

(9) School.

(a) A claimant attending school who has not been granted Department approval for a deferral must still meet all requirements of being able and available for work and be actively seeking work. Areas that need to be examined when making an eligibility determination with respect to a student include reviewing a claimant's work history while attending school, coupled with his or her efforts to secure full-time work. If the hours of school attendance conflict with the claimant's established work schedule or with the customary work schedule for the occupation in which the claimant is seeking work, a rebuttable presumption is established that the claimant is not available for full-time work and benefits will generally be denied. An announced willingness on the part of a claimant to discontinue school attendance or change his or her school schedule, if necessary, to accept work must be weighed against the time already spent in school as well as the financial loss the claimant may incur if he or she were to withdraw.

(b) A presumption of unavailability may also be raised if a claimant moves, for the purpose of attending school, from an area with substantial labor market to a labor market with more limited opportunities. In order to overcome this presumption, the claimant must demonstrate there is full-time work available in the new area which the claimant could reasonably expect to obtain.

(10) Employment of Youth.

Title 34, Chapter 23 of the Utah Code imposes limitations on the number of hours youth under the age of 16 may work. The following limitations do not apply if the individual has received a high school diploma or is married. Claimants under the age of 16 who do not provide proof of meeting one of these exceptions are under the following limitations whether or not in student status because they have a legal obligation to attend school. Youth under the age of 16 may not work:

(a) during school hours except as authorized by the proper school authorities;

(b) before or after school in excess of 4 hours a day;

(c) before 5:00 a.m. or after 9:30 p.m. on days preceding school days;

(d) in excess of 8 hours in any 24-hour period; or

(e) more than 40 hours in any week.

(11) Domestic Obligations.

When a claimant has an obligation to care for children or other dependents, the claimant must show that arrangements for the care of those individuals have been made for all hours that are normally worked in the claimant's occupation and must show a good faith, active work search effort.

**R994-403-113c. Work Search.**

(1) General Requirements.

A claimant must make an active, good faith effort to secure employment each and every week for which benefits are claimed. Efforts to find work must be judged by the standards of the occupation and the community.

(2) Active.

An active effort to look for work is generally interpreted to mean that each week a claimant should contact a minimum of two employers not previously contacted unless the claimant is

otherwise directed by the Department. Those contacts should be made with employers that hire people in the claimant's occupation or occupations for which the claimant has work experience or would otherwise be qualified and willing to accept employment. Failure of a claimant to make at least the minimum number of contacts creates a rebuttable presumption that the claimant is not making an active work search. The claimant may overcome this presumption by showing that he or she has pursued a job development plan likely to result in employment. A claimant's job development activities for a specific week should be considered in relation to the claimant's overall work search efforts and the length of the claimant's unemployment. Creating a job development plan and/or writing resumes may be reasonable and acceptable activities during the first few weeks of a claim, but may be insufficient after the claimant has been unemployed for several weeks.

(3) Good Faith.

Good faith efforts are defined as those methods which a reasonable person, anxious to return to work, would make if desirous of obtaining employment. A good faith effort is not necessarily established simply by making a specific number of contacts to satisfy the Department requirement.

(4) Union Attachment.

(a) Union attachment is sufficient to meet the requirements of an active work search if the claimant is eligible for a deferral as established under Subsection 35A-4-403(1)(b).

(b) If the claimant is not in deferred status because the claimant did not earn at least 50 percent of his or her base period wage credits in employment as a union member, or the deferral has ended, the claimant must meet the requirements of an active, good faith work search by contacting employers in addition to contacts with the union. This work search is required even though unions may have regulations and rules which penalize members for making independent contacts to try to find work or for accepting nonunion employment.

**R994-403-114c. Claimant's Obligation to Prove Weekly Eligibility.**

The claimant:

(1) has the burden of proving that he or she is able, available, and actively seeking full-time work;

(2) must report any information that might affect eligibility;

(3) must provide any information requested by the Department which is required to establish eligibility; and

(4) must keep a detailed record of the employers contacted, as well as other activities that are likely to result in employment for each week benefits are claimed.

**R994-403-115c. Period of Ineligibility.**

(1) Eligibility for benefits is established on a weekly basis. If the Department has determined that the claimant is not able or available for work, and it appears the circumstances will likely continue, an indefinite disqualification will be assessed, and the claimant must requalify by showing that he or she is able and available for work.

(2) If the Department has reason to believe a claimant has not made a good faith effort to seek work, or the Department is performing a routine audit of a claim, the Department can only require that the claimant provide proof of work search activities for the four weeks immediately preceding the Department's request. However, if the claimant admits he or she did not complete the work search activities required under this rule, the Department can disqualify a claimant for more than four weeks.

(3) The claimant will be disqualified for all weeks in which it is discovered that the claimant was not able or available to accept work without regard to the four-week limitation.

**R994-403-116c. Eligibility Determinations: Obligation to**

**Provide Information.**

(1) The Department cannot make proper determinations regarding eligibility unless the claimant and the employer provide correct information in a timely manner. Claimants and employers therefore have a continuing obligation to provide any and all information and verification which may affect eligibility.

(2) Providing incomplete or incorrect information will be treated the same as a failure to provide information if the incorrect or insufficient information results in an improper decision with regard to the claimant's eligibility.

**R994-403-117e. Claimant's Responsibility.**

(1) The claimant must provide all of the following:

(a) his or her correct name, social security number, citizenship or alien status, address and date of birth;

(b) the correct business name and address for each base period employer and for each employer subsequent to the base period;

(c) information necessary to determine eligibility or continuing eligibility as requested on the initial claim form, or on any other Department form including work search information. This includes information requested through the use of an interactive voice response system or the Internet;

(d) the reasons for the job separation from base period and subsequent employers when filing a new claim, requalifying for a claim, or any time the claimant is separated from employment during the benefit year. The Department may require a complete statement of the circumstances precipitating the separation; and

(e) any other information requested by the Department. This includes requests for documentary evidence, written statements, or oral requests. Claimants are required to return telephone calls when requested to do so by Department employees.

(2) Claimants are also required to report, at the time and place designated, for an in-person interview with a Department representative if so requested.

(3) By filing a claim for benefits, the claimant has given consent to the employer to release to the Department all information necessary to determine eligibility even if the information is confidential.

**R994-403-118e. Disqualification Periods if a Claimant Fails to Provide Information.**

(1) A claimant is not eligible for benefits if the Department does not have sufficient information to determine eligibility. A claimant who fails to provide necessary information without good cause is disqualified from the receipt of unemployment benefits until the information is received by the Department.

(2) If insufficient or incorrect information is provided when the initial claim is filed, the disqualification will begin with the effective date of the claim.

(3) If a potentially disqualifying issue is identified as part of the weekly certification process and the claimant fails to provide the information requested by the Department, the disqualification will begin with the Sunday of the week for which eligibility could not be determined.

(4) If insufficient or incorrect information is provided as part of a review of payments already made, the disqualification will begin with the week in which the response to the Department's request for information is due.

(5) The disqualification will continue through the Saturday prior to the week in which the claimant provides the information.

**R994-403-119e. Overpayments Resulting from a Failure to Provide Information.**

(1) Any overpayment resulting from the claimant's failure to provide information, or based on incorrect information provided by the claimant, will be assessed as a fault

overpayment in accordance with Subsection 35A-4-406(4) or as a fraud overpayment in accordance with Subsection 35A-4-405(5).

(2) Any overpayment resulting from the employer's failure to provide information will be assessed as a nonfault overpayment in accordance with Subsection 35A-4-406(5).

(3) If more than one party was at fault in the creation of an overpayment, the overpayment will be assessed as:

(a) a fraud or fault overpayment if the claimant was more at fault than the other parties; or

(b) a nonfault overpayment if the employer and/or the Department was more at fault, or if the parties were equally at fault.

**R994-403-120e. Employer's Responsibility.**

Employers must provide wage, employment, and separation information and complete all forms and reports as requested by the Department. The employer also must return telephone calls from Department employees in a timely manner and answer all questions regarding wages, employment, and separations.

**R994-403-121e. Penalty for the Employer's Failure to Comply.**

(1) A claimant has the right to have a claim for benefits resolved quickly and accurately. An employer's failure to provide information in a timely manner results in additional expense and unnecessary delay.

(2) If an employer fails to provide information in a timely manner without good cause, the ALJ will determine on appeal that the employer has relinquished its rights with regard to the affected claim and is no longer a party in interest. The employer's appeal will be dismissed and the employer is liable for benefits paid.

(3) The ALJ may, in his or her discretion, choose to exercise continuing jurisdiction with respect to the case and subpoena or call the employer and claimant as witnesses to determine the claimant's eligibility. If, after reaching the merits, the ALJ determines to reverse the initial decision and deny benefits, the employer is not eligible for relief of charges resulting from benefits overpaid to the claimant prior to the date of the ALJ's decision.

(4) In determining whether to exercise discretion and reach the merits, the ALJ may take into consideration:

(a) the flagrancy of the refusal or failure to provide complete and accurate information. An employer's refusal to provide information at the time of the initial Department determination on the grounds that it wants to wait and present its case before an ALJ, for instance, will be subject to the most severe penalty;

(b) whether or not the employer has failed to provide complete and accurate information in the past or on more than one case; and

(c) whether the employer is represented by counsel or a professional representative. Counsel and professional representatives are responsible for knowing Department rules and are therefore held to a higher standard.

**R994-403-122e. Good Cause for Failure to Comply.**

If the employer or claimant has good cause for failing to provide the information in the time frame requested, no disqualification or penalty will be assessed. Good cause, as it applies to this section of the rule, may be established if the claimant or employer:

(1) made reasonable attempts to provide the information within the time frame requested, or

(2) was prevented from complying due to circumstances which were compelling or beyond their control.

**R994-403-123. Obligation of Department Employees.**

Employees of the Department are obligated, regardless of when the information is discovered, to bring to the attention of the proper Department representatives any information that may affect a claimant's eligibility for unemployment insurance benefits or information affecting the employer's contributions.

**R994-403-201. Department Approval for School Attendance - General Definition.**

(1) Unemployment insurance is not intended to subsidize schooling. However, it is recognized that training may be a practical way to reduce chronic and persistent unemployment due to a lack of work skills, job obsolescence or foreign competition. Even though the claimant is granted Department approval, the claimant must still be able to work. With Department approval, a claimant meets the availability requirement based on his or her school attendance and successful performance. With the exception of very short-term training, Department approval is intended for classroom training as opposed to on-the-job training. Department approval is to be used selectively and judiciously. It is not to be used as a substitute for selective placement, job development, on-the-job training, or other available programs.

(2) If a claimant is ineligible under 35A-4-403(1)(c) due to school attendance, Department approval will be considered.

(3) Department approval will be granted when required by state or federal law for specific training programs.

**R994-403-202. Qualifying Elements for Approval of Training.**

All of the following nine elements must be satisfied for a claimant to qualify for Department approval of training. Some of these elements will be waived or modified when required by state or federal law for specific training programs.

(1) The claimant's unemployment is chronic or persistent, or likely to be chronic or persistent, due to any one of the following three circumstances:

(a) A lack of basic work skills. A lack of basic work skills may not be established unless a claimant:

(i)(A) has a history of repeated unemployment attributable to lack of skills and has no recent history of employment earning a wage substantially above the federal minimum wage or

(B) qualifies for Department sponsored training because the claimant meets the eligibility requirements for public assistance;

(ii) has had no formal training in occupational skills;

(iii) does not have skills developed over an extended period of time by training or experience; and

(iv) does not have a marketable degree from an institution of higher learning; or

(b) a change in the marketability of the claimant's skills has resulted due to new technology, or major reductions within an industry; or

(c) inability to continue working in occupations using the claimant's skills due to a verifiable, permanent physical or emotional disability,

(2) a claimant must have a reasonable expectation of success as demonstrated by:

(a) an aptitude for and interest in the work the claimant is being trained to perform, or course of study the claimant is pursuing; and

(b) sufficient time and financial resources to complete the training.

(3) The training is provided by an institution approved by the Department.

(4) The training is not available except in school. For example, on-the-job training is not available to the claimant.

(5) The length of time required to complete the training should generally not extend beyond 18 months.

(6) The training should generally be vocationally oriented unless the claimant has no more than two terms, quarters, semesters, or similar periods of academic training necessary to obtain a degree.

(7) There is a reasonable expectation of employment following completion of the training. Reasonable expectation means the claimant will find a job using the skills and education acquired while in training pursuant to a fair and objective projection of job market conditions expected to exist at the time of completion of the training.

(8) A claimant did not leave work to attend school even if the employer required the training for advancement or as a condition of continuing employment.

(9) The schooling is full-time, as defined by the training facility.

**R994-403-203. Extensions of Department Approval.**

Initial approval shall be granted, for the school term beginning with the week in which the attendance began, or the effective date of the claim, whichever is later. The Department may extend the approval if the claimant establishes proof of:

(1) satisfactory attendance;

(2) passing grades;

(3) continuance of the same course of study and classes originally approved; and

(4) compliance with all other qualifying elements.

**R994-403-204. Availability Requirements When Approval is Granted.**

(1) If Department approval is granted, the claimant will be placed in deferred status once the training begins and will not be required to register for work or to seek and accept work. The deferral also applies to break periods between successive terms as long as the break period is four weeks or less. A claimant must make a work search prior to the onset of training, even if the claimant has been advised that the training has been approved. Benefits will not be denied when work is refused as satisfactory attendance and progress in school serves as a substitute for the availability requirements of the act.

(2) Absences from school will not necessarily result in a denial of benefits during those weeks the claimant can demonstrate he or she is making up any missed school work and is still making satisfactory progress in school. Satisfactory progress is defined as passing all classes with a grade level sufficient to qualify for graduation, licensing, or certification, as appropriate.

(3) A disqualification will be effective with the week the claimant knew or should have known he or she was not going to receive a passing grade in any of his or her classes or was otherwise not making satisfactory progress in school. It is the claimant's responsibility to immediately report any information that may indicate a failure to maintain satisfactory progress.

(4) The claimant must attend school full-time as defined by the educational institution. If a claimant discontinues school attendance, drops or changes any classes before the end of the term, Department approval may be terminated immediately. However, discontinuing a class that does not reduce the school credits below full-time status will not result in the termination of Department approval. Department approval may be reinstated during any week a claimant demonstrates, through appropriate verification, the claimant is again attending class regularly and making satisfactory progress.

(5) Notwithstanding any other provisions of this section, if the claimant was absent from school for more than one-half of the workweek due to illness or hospitalization, the claimant is considered to be unable to work and unemployment benefits will be denied for that week. A claimant has the responsibility to report any sickness, injury, or other circumstances that prevented him or her from attending school.

(6) A claimant is ineligible for Department approval if the claimant is retaking a class that was originally taken while receiving benefits under Department approval. However, if Department approval was denied during the time the course was originally in progress, approval may be reinstated to cover that portion of the course not previously subsidized if the claimant can demonstrate satisfactory progress.

**R994-403-205. Short-Term Training.**

Department approval may be granted even though a claimant has marketable skills and does not meet the requirements for Department approval as defined in R994-403-202 if the entire course of training is no longer than eight weeks and will enhance the claimant's employment prospects. A claimant will not be granted a waiver for training that is longer than eight weeks even if the claimant needs only eight weeks or less to complete the training. This is intended as a one-time approval per benefit year and may not be extended beyond eight weeks.

**R994-403-301. Requirements for Special Benefits.**

Some benefit programs, including Extended Benefits, have different availability and work search requirements. The rule governing work search for Extended Benefits is R994-402. Other special programs are governed by the act or federal law.

**KEY: filing deadlines, registration, student eligibility, unemployment compensation**

**August 22, 2006**

**35A-4-403(1)**

**Notice of Continuation June 26, 2007**

**R994. Workforce Services, Unemployment Insurance.****R994-405. Ineligibility for Benefits.****R994-405-101. Voluntary Leaving (Quit) - General Information.**

(1) A separation is considered voluntary if the claimant was the moving party in ending the employment relationship. A voluntary separation includes leaving existing work, or failing to return to work after:

- (a) an employer attached layoff which meets the requirements for a deferral under R994-403-108b(1)(c),
- (b) a suspension, or
- (c) a period of absence initiated by the claimant.

(2) Failing to renew an employment contract may also constitute a voluntary separation.

(3) Two standards must be applied in voluntary separation cases: good cause and equity and good conscience. If good cause is not established, the claimant's eligibility must be considered under the equity and good conscience standard.

**R994-405-102. Good Cause.**

To establish good cause, a claimant must show that continuing employment would have caused an adverse effect which the claimant could not control or prevent. The claimant must show an immediate severance of the employment relationship was necessary. Good cause is also established if a claimant left work which is shown to have been illegal or to have been unsuitable new work.

(1) Adverse Effect on the Claimant.

(a) Hardship.

The separation must have been motivated by circumstances that made the continuance of the employment a hardship or matter of concern, sufficiently adverse to a reasonable person to outweigh the benefits of remaining employed. There must have been actual or potential physical, mental, economic, personal or professional harm caused or aggravated by the employment. The claimant's decision to quit must be measured against the actions of an average individual, not one who is unusually sensitive.

(b) Ability to Control or Prevent.

Even though there is evidence of an adverse effect on the claimant, good cause may not be established if the claimant:

(i) reasonably could have continued working while looking for other employment, or

(ii) had reasonable alternatives that would have made it possible to preserve the job. Examples include using approved leave, transferring, or making adjustments to personal circumstances, or,

(iii) did not give the employer notice of the circumstances causing the hardship thereby depriving the employer of an opportunity to make changes that would eliminate the need to quit. An employee with grievances must have made a good faith effort to work out the differences with the employer before quitting unless those efforts would have been futile.

(2) Illegal.

Good cause is established if the individual was required by the employer to violate state or federal law or if the individual's legal rights were violated, provided the employer was aware of the violation and refused to comply with the law.

(3) Unsuitable New Work.

Good cause may also be established if a claimant left new work which, after a short trial period, was unsuitable consistent with the requirements of the suitable work test in Subsections 35A-4-405(3)(c) and 35A-4-405(3)(e). The fact a job was accepted does not necessarily make the job suitable. The longer a job is held, the more it tends to set the standard by which suitability is measured. After a reasonable period of time a contention that the quit was motivated by unsuitability of the job is generally no longer persuasive.

**R994-405-103. Equity and Good Conscience.**

(1) If the good cause standard has not been met, the equity and good conscience standard must be applied in all cases except those involving a quit to accompany, follow, or join a spouse as outlined in Section R994-405-104. If there were mitigating circumstances, and a denial of benefits would be unreasonably harsh or an affront to fairness, benefits may be allowed under the provisions of the equity and good conscience standard if the following elements are satisfied:

- (a) the decision is made in cooperation with the employer;
- (b) the claimant acted reasonably;
- (c) the claimant demonstrated a continuing attachment to the labor market.

(2) The elements of equity and good conscience are defined as follows:

(a) In Cooperation with the Employer.

A decision is made in cooperation with the employer when the Department gives the employer an opportunity to provide separation information.

(b) The Claimant Acted Reasonably.

The claimant acted reasonably if the decision to quit was logical, sensible, or practical. There must be evidence of circumstances which, although not sufficiently compelling to establish good cause, would have motivated a reasonable person to take similar action. Behaviors that may be acceptable to a particular subculture do not establish what is reasonable.

(c) Continuing Attachment to the Labor Market.

A continuing attachment to the labor market is established if the claimant took positive actions which could have resulted in employment during the first week subsequent to the separation and each week thereafter. Evidence of an attachment to the labor market may include: making contacts with prospective employers, preparing resumes, and developing job leads. An active work search should have commenced immediately subsequent to the separation whether or not the claimant received specific work search instructions from the Department. Failure to show an immediate attachment to the labor market may not be disqualifying if it was not practical for the individual to seek work. Some examples of circumstances that may interfere with an immediate work search include illness, hospitalization, incarceration, or other circumstances beyond the control of the claimant provided a work search commenced as soon as practical.

**R994-405-104. Quit to Accompany, Follow or Join a Spouse.**

If an individual quit work to join, accompany, or follow a spouse to a new locality, good cause is not established. Furthermore, the equity and good conscience standard is not to be applied in this circumstance. It is the intent of this provision to deny benefits even though a claimant may have faced extremely compelling circumstances including the cost of maintaining two households and the desire to keep the family intact.

**R994-405-105. Evidence and Burden of Proof.**

The claimant was the moving party in a voluntary separation, and is the best source of information with respect to the reasons for the quit. The claimant has the burden to establish that the elements of good cause or of equity and good conscience have been met.

**R994-405-106. Quit or Discharge.**

(1) Refusal to Follow Instructions.

If the claimant refused or failed to follow reasonable requests or instructions, and knew the loss of employment would result, the separation is a quit.

(2) Leaving Prior to Effective Date of Termination.

(a) If an individual leaves work prior to the date of an impending reduction in force, the separation is voluntary.

Notice of an impending layoff does not establish good cause for leaving work. However, the duration of available work may be a factor in considering whether a denial of benefits would be contrary to equity and good conscience. If the claimant is not disqualified for quitting under Subsection 35A-4-405(1)(a), benefits shall be denied for the limited period of time the claimant could have continued working, as there was a failure to accept all available work as required under Subsection 35A-4-403(1)(c).

(b) An individual may not escape a discharge disqualification under Subsection 35A-4-405(2)(a) by quitting to avoid a discharge that would result in a denial of benefits. In this circumstance the separation shall be adjudicated as a discharge.

(3) Leaving Work Because of a Disciplinary Action.

If the disciplinary action or suspension was reasonable, leaving work rather than submitting to the discipline, or failing to return to work at the end of the suspension period, is considered a voluntary quit unless the claimant was previously disqualified for a discharge under the provisions of Subsection 35A-4-405(2)(a).

(4) Leave of Absence.

If a claimant takes a leave of absence for any reason and files a claim while on such leave from the employer, the claimant will be considered unemployed even though there still may be an attachment to the employer. If a claimant fails to return to work at the end of the leave of absence, the separation is a voluntary quit.

(5) Leaving Due to a Remark or Action of the Employer or a Coworker.

If a worker hears rumors or other information suggesting that he or she is to be discharged, the worker has the responsibility to confirm, prior to leaving, that the employer intended to end the employment relationship. The claimant also has a responsibility to continue working until the date of an announced discharge. If the claimant failed to do so and if the employer did not intend to discharge the claimant, the separation is a quit.

(6) Resignation Intended.

(a) Quit.

If a worker gives notice of a future date of leaving and is paid regular wages through the announced resignation date, the separation is a quit even if the worker was relieved of work responsibilities prior to the effective date of the resignation. A separation is also a quit if a worker announces an intent to quit but agrees to continue working for an indefinite period as determined by the employer, even though the date of separation was determined by the employer. If a worker resigns, later decides to stay and attempts to remain employed, the reasonableness of the employer's refusal to continue the employment is the primary factor in determining if the claimant quit or was discharged. For example, if the employer had already hired a replacement, or taken other action because of the claimant's impending quit, it may not be practical for the employer to allow the claimant to rescind the resignation, and the separation is a quit.

(b) Discharge.

If a worker submitted a resignation to be effective at a definite future date, but was relieved of work responsibilities prior to that date, the separation is considered a discharge as the employer was the moving party in determining the final date of employment. If the claimant was not paid regular wages through the balance of the notice period, the separation is a discharge. Merely assigning vacation pay, which was not previously assigned to the notice period, does not make the separation voluntary.

(1) Prospects of Other Work.

Good cause is established if, at the time of separation, the claimant had a definite and immediate assurance of another job or self-employment that was reasonably expected to be full-time and permanent. Occasionally, after giving notice, but prior to leaving the first job, an individual may learn the new job will not be available when promised, permanent, full-time, or suitable. Good cause may be established in those circumstances if the claimant immediately attempted to rescind the notice, unless such an attempt would have been futile. However, if it is apparent the claimant knew, or should have known, about the unsuitability of the new work, but quit the first job and subsequently quit the new job, a disqualification shall be assessed from the time the claimant quit the first job unless the claimant has purged the disqualification through earnings received while on the new job.

(a) A definite assurance of another job means the claimant has been in contact with someone with the authority to hire, has been given a definite date to begin working and has been informed of the employment conditions.

(b) An immediate assurance of work generally means the prospective job will begin within two weeks from the last day the claimant was scheduled to work on the former job. Benefits may be denied for failure to accept all available work under the provisions of Subsection 35A-4-403(1)(c) if the claimant files during the period between the two jobs.

(2) Reduction of Hours.

The reduction of an employee's working hours generally does not establish good cause for leaving a job. However, in some cases, a reduction of hours may result in personal or financial hardship so severe that the circumstances justify leaving.

(3) Personal Circumstances.

There may be personal circumstances that are sufficiently compelling or create sufficient hardship to establish good cause for leaving work, provided the individual made a reasonable attempt to make adjustments or find alternatives prior to quitting.

(4) Leaving to Attend School.

Although leaving work to attend school may be a logical decision from the standpoint of personal advancement, it is not compelling or reasonable, within the meaning of the Act.

(5) Religious Beliefs.

To support an award of benefits following a voluntary separation due to religious beliefs, there must be evidence that continuing work would have conflicted with good faith religious convictions. If an individual was not required to violate such religious beliefs, quitting is not compelling or reasonable within the meaning of the Act. A change in the job requirements, such as requiring an employee to work on the employee's day of religious observance when such work was not agreed upon as a condition of hire, may establish good cause for leaving a job if the employer is unwilling to make adjustments.

(6) Transportation.

If a claimant quits a job due to a lack of transportation, good cause may be established if the claimant has no other reasonable transportation options available. However, an availability issue may be raised in such a circumstance. If a move resulted in an increased distance to work beyond normal commuting patterns, the reason for the move, not the distance to the work, is the primary factor to consider when adjudicating the separation.

(7) Marriage.

(a) Marriage is not considered a compelling or reasonable circumstance, within the meaning of the Act, for voluntarily leaving work. Therefore, if the claimant left work to get married, benefits shall be denied even if the new residence is beyond a reasonable commuting distance from the claimant's former place of employment.

**R994-405-107. Examples of Reasons for Voluntary Separations.**

(b) If the employer has a rule requiring the separation of an employee who marries a coworker, the separation is a discharge even if the employer allowed the couple to decide who would leave.

(8) Health or Physical Condition.

(a) Although it is not essential for the claimant to have been advised by a physician to quit, a contention that health problems required the separation must be supported by competent evidence. Even if the work caused or aggravated a health problem, if there were alternatives, such as treatment, medication, or altered working conditions to alleviate the problem, good cause for quitting is not established.

(b) If the risk to the health or safety of the claimant was shared by all those employed in the particular occupation, it must be shown the claimant was affected to a greater extent than other workers. Absent such evidence, quitting was not reasonable.

(9) Retirement and Pension.

Voluntarily leaving work solely to accept retirement benefits is not a compelling reason for quitting, within the meaning of the Act. Although it may have been reasonable for an individual to take advantage of a retirement benefit, payment of unemployment benefits in this circumstance is not consistent with the intent of the Unemployment Insurance program, and a denial of benefits is not contrary to equity and good conscience.

(10) Sexual Harassment.

(a) A claimant may have good cause for leaving if the quit was due to discriminatory and unlawful sexual harassment, provided the employer was given a chance to take necessary action to alleviate the objectionable conduct. Sexual harassment is a form of sex discrimination which is prohibited by Title VII of the United States Code and the Utah Anti-Discrimination Act.

(b) "Sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(i) submission to the conduct is either an explicit or implicit term or condition of employment, or

(ii) submission to or rejection of the conduct is used as a basis for an employment decision affecting the person, or

(iii) the conduct has a purpose or effect of substantially interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment.

(c) Inappropriate behavior which has sexual connotation but does not meet the test of sexual discrimination is insufficient to establish good cause for leaving work.

(11) Discrimination.

A claimant may have good cause for leaving if the quit was due to prohibited discrimination, provided the employer was given a chance to take necessary action to alleviate the objectionable conduct. It is a violation of federal law to discriminate against employees regarding compensation, terms, conditions, or privileges of employment, because of race, color, religion, sex, age or national origin; or to limit, segregate, or classify employees in any way which would deprive or tend to deprive them of employment opportunities or otherwise adversely affect their employment status because of the individual's race, color, religion, sex, age or national origin.

(12) Voluntary Acceptance of Layoff.

If an employer notifies employees that a layoff is going to take place and the employer gives the employees the option to volunteer for the layoff, those who do volunteer are separated due to reduction of force regardless of incentives.

**R994-405-108. Effective Date of Disqualification.**

A disqualification under this section technically begins with the week the separation occurred. However, to avoid any confusion which may arise when a disqualification is made for a period of time prior to the filing of a claim, the claimant shall be notified benefits are denied beginning with the effective date

of the new or reopened claim. The disqualification shall continue until the claimant returns to work in bona fide covered employment and earns six times his or her weekly benefit amount. A disqualification that begins in one benefit year shall continue into a new benefit year unless purged by subsequent earnings. Severance or vacation pay may not be used to purge a disqualification.

**R994-405-201. Discharge - General Definition.**

A separation is a discharge if the employer was the moving party in determining the date the employment ended. Benefits shall be denied if the claimant was discharged for just cause or for an act or omission in connection with employment, not constituting a crime, which was deliberate, willful, or wanton and adverse to the employer's rightful interest. However, not every legitimate cause for discharge justifies a denial of benefits. A just cause discharge must include some fault on the part of the worker. A reduction of force is considered a discharge without just cause at the convenience of the employer.

**R994-405-202. Just Cause.**

To establish just cause for a discharge, each of the following three elements must be satisfied:

(1) Culpability.

The conduct causing the discharge must be so serious that continuing the employment relationship would jeopardize the employer's rightful interest. If the conduct was an isolated incident of poor judgment and there was no expectation that it would be continued or repeated, potential harm may not be shown. The claimant's prior work record is an important factor in determining whether the conduct was an isolated incident or a good faith error in judgment. A long term employee with an established pattern of complying with the employer's rules may not demonstrate by a single violation, even though harmful, that the infraction would be repeated. In this instance, depending on the seriousness of the conduct, it may not be necessary for the employer to discharge the claimant to avoid future harm.

(2) Knowledge.

The worker must have had knowledge of the conduct the employer expected. There does not need to be evidence of a deliberate intent to harm the employer; however, it must be shown that the worker should have been able to anticipate the negative effect of the conduct. Generally, knowledge may not be established unless the employer gave a clear explanation of the expected behavior or had a written policy, except in the case of a violation of a universal standard of conduct. A specific warning is one way to show the worker had knowledge of the expected conduct. After a warning the worker should have been given an opportunity to correct the objectionable conduct. If the employer had a progressive disciplinary procedure in place at the time of the separation, it generally must have been followed for knowledge to be established, except in the case of very severe infractions, including criminal actions.

(3) Control.

(a) The conduct causing the discharge must have been within the claimant's control. Isolated instances of carelessness or good faith errors in judgment are not sufficient to establish just cause for discharge. However, continued inefficiency, repeated carelessness or evidence of a lack of care expected of a reasonable person in a similar circumstance may satisfy the element of control if the claimant had the ability to perform satisfactorily.

(b) The Department recognizes that in order to maintain efficiency it may be necessary to discharge workers who do not meet performance standards. While such a circumstance may provide a basis for discharge, this does not mean benefits will be denied. To satisfy the element of control in cases involving a discharge due to unsatisfactory work performance, it must be shown that the claimant had the ability to perform the job duties

in a satisfactory manner. In general, if the claimant made a good faith effort to meet the job requirements but failed to do so due to a lack of skill or ability and a discharge results, just cause is not established.

#### **R994-405-203. Burden of Proof.**

In a discharge, the employer initiates the separation, and therefore, has the burden to prove there was just cause for discharging the claimant. The failure of one party to provide information does not necessarily result in a ruling favorable to the other party. Interested parties have the right to rebut information contrary to their interests.

#### **R994-405-204. Quit or Discharge.**

The circumstances of the separation as found by the Department, determine whether it was a quit or discharge. The conclusions on the employer's records, the separation notice or the claimant's report are not controlling on the Department.

##### **(1) Discharge Before Effective Date of Resignation.**

###### **(a) Discharge.**

If an individual notifies the employer of an intent to leave work on a definite date, but is separated prior to that date, the reason the separation took place on the date that it did, is the controlling factor in determining whether the separation is a quit or discharge. If the decision to separate the worker is a result of the announced resignation to be effective at a future date, the separation is a discharge. Unless there is some other evidence of disqualifying conduct, benefits shall be awarded.

###### **(b) Quit.**

If a worker gives notice of an intent to leave work on a particular date and is paid regular wages through the announced resignation date, the separation is a quit even if the worker was relieved of work responsibilities prior to the effective date of resignation. A separation is also a quit if a worker announces an intent to quit but agrees to continue working for an indefinite period, even though the date of separation is determined by the employer. If a worker resigns, later decides to stay and announces an intent to remain employed, the reasonableness of the employer's refusal to continue the employment is the primary factor in determining whether the claimant quit or was discharged. If the employer had already hired a replacement, or had taken other action because of the claimant's impending quit, it may not be practical for the employer to allow the claimant to rescind the resignation, and it would be held the separation was a quit.

##### **(2) Leaving in Anticipation of Discharge.**

If an individual leaves work in anticipation of a possible discharge and if the reason for the discharge would not have been disqualifying, the separation is a quit. However, an individual may not escape a disqualification under the discharge provisions, Subsection 35A-4-405(2)(a), by quitting to avoid a discharge that would result in a denial of benefits. In this circumstance the separation shall be considered a discharge.

##### **(3) Refusal to Follow Instructions (Constructive Abandonment).**

If the worker refused or failed to follow reasonable requests or instructions, knowing the loss of employment would result, the separation is a quit.

#### **R994-405-205. Disciplinary Suspension.**

When an individual is placed on a disciplinary suspension, the definition of being unemployed may be satisfied. If an individual files during the suspension period, the matter shall be adjudicated as a discharge, even though the claimant may have an attachment to the employer and may expect to return to work. A suspension that is reasonable and necessary to prevent potential harm to the employer will generally result in a disqualification if the elements of knowledge and control are established. If the individual fails to return to work at the end

of the suspension period, the separation is a voluntary quit and may then be adjudicated under Subsection 35A-4-405(1), if benefits had not been previously denied.

#### **R994-405-206. Proximal Cause - Relation of the Offense to the Discharge.**

(1) The cause for discharge is the conduct that motivated the employer to make the decision to discharge the worker. If a separation decision has been made, it is generally demonstrated by giving notice to the worker. Although the employer may learn of other offenses following the decision to terminate the worker's services, the reason for the discharge is limited to the conduct the employer was aware of prior to making the separation decision. If an employer discharged an individual because of preliminary evidence, but did not obtain "proof" of the conduct until after the separation notice was given, it may still be concluded the discharge was caused by the conduct the employer was investigating.

(2) If the discharge did not occur immediately after the employer became aware of an offense, a presumption arises that there were other reasons for the discharge. The relationship between the offense and the discharge must be established both as to cause and time. The presumption that a particular offense was not the cause of the discharge may be overcome by showing the delay was necessary to accommodate further investigation, arbitration or hearings related to the worker's conduct. If an individual files for benefits while a grievance or arbitration process is pending, the Department shall make a decision based on the best information available. The Department's decision is not binding on the grievance process nor is the decision of an arbitrator binding upon the Department. If an employer elects to reduce its workforce and uses a worker's prior conduct as the criteria for determining who will be laid off, the separation is a reduction of force.

#### **R994-405-207. In Connection with Employment.**

Disqualifying conduct is not limited to offenses that take place on the employer's premises or during business hours. However, it is necessary that the offense be connected to the employment in such a manner that it is a subject of legitimate and significant concern to the employer. Employers generally have the right to expect that employees shall refrain from acts detrimental to the business or that would bring dishonor to the business name or institution. Legitimate interests of employers include: goodwill, efficiency, employee morale, discipline, honesty and trust.

#### **R994-405-208. Examples of Reasons for Discharge.**

In the following examples, the basic elements of just cause must be considered in determining eligibility for benefits.

##### **(1) Violation of Company Rules.**

If an individual violates a reasonable employment rule and the three elements of culpability, knowledge and control are satisfied, benefits shall be denied.

(a) An employer has the prerogative to establish and enforce work rules that further legitimate business interests. However, rules contrary to general public policy or that infringe upon the recognized rights and privileges of individuals may not be reasonable. If a worker believes a rule is unreasonable, the worker generally has the responsibility to discuss these concerns with the employer before engaging in conduct contrary to the rule, thereby giving the employer an opportunity to address those concerns. When rules are changed, the employer must provide appropriate notice and afford workers a reasonable opportunity to comply.

(b) If an employment relationship is governed by a formal employment contract or collective bargaining agreement, just cause may only be established if the discharge is consistent with the provisions of the contract.

(c) Habitual offenses may not constitute disqualifying conduct if the acts were condoned by the employer or were so prevalent as to be customary. However, if a worker was given notice the conduct would no longer be tolerated, further violations may result in a denial of benefits.

(d) Culpability may be established if the violation of the rule did not, in and of itself, cause harm to the employer, but the lack of compliance diminished the employer's ability to maintain necessary discipline.

(e) Serious violations of universal standards of conduct may not require prior warning to support a disqualification.

(2) Attendance Violations.

(a) Attendance standards are usually necessary to maintain order, control, and productivity. It is the responsibility of a worker to be punctual and remain at work within the reasonable requirements of the employer. A discharge for unjustified absence or tardiness is disqualifying if the worker knew enforced attendance rules were being violated. A discharge for an attendance violation beyond the control of the worker is generally not disqualifying unless the worker could reasonably have given notice or obtained permission consistent with the employer's rules, but failed to do so.

(b) In cases of discharge for violations of attendance standards, the worker's recent attendance history must be reviewed to determine if the violation is an isolated incident, or if it demonstrates a pattern of unjustified absence within the worker's control. The flagrant misuse of attendance privileges may result in a denial of benefits even if the last incident is beyond the worker's control.

(3) Falsification of Work Record.

The duty of honesty is inherent in any employment relationship. An employee or potential employee has an obligation to truthfully answer material questions posed by the employer or potential employer. For purposes of this subsection, material questions are those that may expose the employer to possible loss, damage or litigation if answered falsely. If false statements were made as part of the application process, benefits may be denied even if the claimant would not have been hired if all questions were answered truthfully.

(4) Insubordination.

An employer generally has the right to expect lines of authority will be followed; reasonable instructions, given in a civil manner, will be obeyed; supervisors will be respected and their authority will not be undermined. In determining when insubordination becomes disqualifying conduct, a disregard of the employer's rightful and legitimate interests is of major importance. Protesting or expressing general dissatisfaction without an overt act is not a disregard of the employer's interests. However, provocative remarks to a superior or vulgar or profane language in response to a civil request may constitute insubordination if it disrupts routine, undermines authority or impairs efficiency. Mere incompatibility or emphatic insistence or discussion by a worker, acting in good faith, is not disqualifying conduct.

(5) Loss of License.

If the discharge is due to the loss of a required license and the claimant had control over the circumstances that resulted in the loss, the conduct is generally disqualifying. Harm is established as the employer would generally be exposed to an unacceptable degree of risk by allowing an employee to continue to work without a required license. In the example of a lost driving privilege due to driving under the influence (DUI), knowledge is established as it is understood by members of the driving public that driving under the influence of alcohol is a violation of the law and may be punishable by the loss of driving privileges. Control is established as the claimant made a decision to risk the loss of his or her license by failing to make other arrangements for transportation.

(6) Incarceration.

When an individual engages in illegal activities, it must be recognized that the possibility of arrest and detention for some period of time, exists. It is foreseeable that incarceration will result in absence from work and possible loss of employment. Generally, a discharge for failure to report to work because of incarceration due to proven or admitted criminal conduct, is disqualifying.

(7) Abuse of Drugs and Alcohol.

(a) The Legislature, under the Utah Drug and Alcohol Testing Act, Section 34-38-1 et seq., has determined the illegal use of drugs and abuse of alcohol creates an unsafe and unproductive workplace. In balancing the interests of employees, employers and the general welfare, the Legislature has determined the fair and equitable testing for drug and alcohol use is a reasonable employment policy.

(b) An employer can establish a prima facie case of ineligibility for benefits under the Employment Security Act based on testing conducted under the Drug and Alcohol Testing Act by providing the following information:

(i) A written policy on drug or alcohol testing consistent with the requirements of the Drug and Alcohol Testing Act and which was in place at the time the violation occurred.

(ii) Reasonable proof and description of the method for communicating the policy to all employees, including a statement that violation of the policy may result in discharge.

(iii) Proof of testing procedures used which would include:

(A) Documentation of sample collection, storage and transportation procedures.

(B) Documentation that the results of any screening test for drugs and alcohol were verified or confirmed by reliable testing methods.

(C) A copy of the verified or confirmed positive drug or alcohol test report.

(c) The above documentation shall be admissible as competent evidence under various exceptions to the hearsay rule, including Rule 803(6) of the Utah Rules of Evidence respecting "records of regularly conducted activity," unless determined otherwise by a court of law.

(d) A positive alcohol test result shall be considered disqualifying if it shows a blood or breath alcohol concentration of 0.08 grams or greater per 100 milliliters of blood or 210 liters of breath. A blood or breath alcohol concentration of less than 0.08 grams may also be disqualifying if the claimant worked in an occupation governed by a state or federal law that allowed or required discharge at a lower standard.

(e) Proof of a verified or confirmed positive drug or alcohol test result or refusal to provide a proper test sample is a violation of a reasonable employer rule. The claimant may be disqualified from the receipt of benefits if his separation was consistent with the employer's written drug and alcohol policy.

(f) In addition to the drug and alcohol testing provisions above, ineligibility for benefits under the Employment Security Act may be established through the introduction of other competent evidence.

**R994-405-209. Effective Date of Disqualification.**

The Act provides any disqualification under Subsection 35A-4-405(2) shall include "the week in which the claimant was discharged . . ." However, to avoid confusion, the denial of benefits shall begin with the Sunday of the week the claimant filed for benefits. Disqualifications assessed in a prior benefit year shall continue into the new benefit year until purged by sufficient wages earned in subsequent bona fide covered employment.

**R994-405-210. Discharge for Crime - General Definition.**

(1) A crime is a punishable act in violation of law, an offense against the State or the United States. Though in

common usage "crime" is used to denote offenses of a more serious nature, "crime" and "misdemeanor" mean the same thing. An insignificant, although illegal act, or the taking or destruction of something that is of little or no value, or believed to have been abandoned may not be sufficient to establish that a crime was committed for the purposes of Subsection 35A-4-405(2)(b), even if the claimant was found guilty of a violation of the law. Before a claimant may be disqualified under the provisions of Subsection 35A-4-405(2)(b), it must be established that the claimant was discharged for a crime that was:

- (a) In connection with work, and
- (b) Dishonest or a felony or class A misdemeanor, and
- (c) Admitted or established by a conviction in a court of law.

(2) Discharges that are not disqualifying under Subsection 35A-4-405(2)(b), discharge for crime, must be adjudicated under Subsection 35A-4-405(2)(a), discharge for just cause.

#### **R994-405-211. In Connection with Work.**

Connection to the work is not limited to offenses that take place on the employer's premises or during business hours nor does the employer have to be the victim of the crime. However, the crime must have affected the employer's rightful interests. The offense must be connected to the employment in such a manner that it is a subject of legitimate and significant concern to the employer. Employers generally have the right to expect that employees shall refrain from acts detrimental to the business or that would bring dishonor to the business name or institution. Legitimate employer interests include goodwill, efficiency, business costs, employee morale, discipline, honesty, trust and loyalty.

#### **R994-405-212. Dishonesty or Other Disqualifying Crimes.**

(1) For the purposes of this Subsection, dishonesty generally means theft. Theft is defined as taking property without the owner's consent. Theft also includes swindling, embezzlement and obtaining possession of property by lawful means and thereafter converting it to the taker's own use. Theft includes:

- (a) obtaining or exerting unauthorized control over property;
- (b) obtaining control over property by threat or deception;
- (c) obtaining control knowing the property was stolen; and,
- (d) obtaining services from another by deception, threat, coercion, stealth, mechanical tampering or by use of a false token or device.

(2) Felonies and Class A misdemeanors may include assault, arson, or destruction of property. Whether the crime is a felony or misdemeanor is determined by the Court's verdict and not by the penalty imposed.

(3) A disqualification under this Subsection 35A-4-405(2)(b) may be assessed against Utah claimants based upon equivalent convictions in other states.

#### **R994-405-213. Admission or Conviction in a Court.**

(1) An admission is a voluntary statement, verbal or written, in which a claimant acknowledges committing an act in violation of the law. The admission does not necessarily have to be made to a Department representative. However, there must be sufficient information to establish that the admission was made freely and that it was not a false statement given under duress or made to obtain some concession.

(a) A disqualification under Subsection 35A-4-405(2)(b) may be assessed if the claimant makes a valid admission to a crime involving dishonesty, even if no charges have been filed and it appears the claimant will not be prosecuted. If the claimant agrees to a diversionary program as permitted by the

court, there is a rebuttable presumption, for the purposes of this Subsection, that the claimant has admitted to the criminal act.

(b) If an admission is made to any other crime, not involving dishonesty, resulting in a discharge for which it appears the claimant will not be prosecuted, the Department must review the Utah criminal code to determine whether a disqualification shall be assessed under Subsection 35A-4-405(2)(b), discharge for crime, or 35A-4-405(2)(a), just cause discharge.

(2) A conviction occurs when a claimant has been found guilty by a court of committing an act in violation of the criminal code. Under Subsection 35A-4-405(2)(b), a plea of "no contest" is considered a conviction.

#### **R994-405-214. Disqualification Period.**

The 52-week disqualification period for Subsection 35A-4-405(2)(b) shall begin effective with the Sunday immediately preceding the discharge even if this date precedes the effective date of the claim. A disqualification which begins in one benefit year shall continue into a new benefit year until the 52-week disqualification has ended.

#### **R994-405-215. Deletion of Wage Credits.**

The wage credits to be deleted are those from the employer who discharged the claimant under circumstances resulting in a denial under Subsection 35A-4-405(2)(b), "Discharge for Crime." All base period and lag period wages from this employer will be unavailable for current or future claims.

#### **R994-405-301. Failure to Apply for or Accept Suitable Work.**

(1) The primary obligation of a claimant is to become reemployed. The intent of the unemployment insurance program is to assist people during periods of unemployment when suitable work is not available. However, if suitable work is available, the claimant has an obligation to properly apply for and accept offered work.

(2) A claimant will not be disqualified for failing to apply for or accept suitable work unless all of the following elements are established:

- (a) Availability of a Job.

There must be an actual job opening the claimant could reasonably expect to obtain.

- (b) Knowledge.

It must be shown that the claimant knew, or should have known, about the job including the wage, type of work, hours, general location, and conditions of the job. The claimant must understand a referral for work is being offered as opposed to a general discussion of job possibilities or labor market conditions. If a job offer is made, it must be clearly communicated as an offer of work.

- (c) Control.

The failure of the claimant to obtain the employment must be the result of the claimant's own actions or behavior in failing to:

- (i) accept a referral, or
- (ii) properly apply for work, or
- (iii) accept work when offered.

(3) If the elements of Subsection (2) above have been met, benefits will be denied under Subsection 35A-4-405(3) unless:

- (a) the job is not suitable;
- (b) the claimant had good cause for refusing a referral, the failure to apply for or accept the job; or
- (c) a denial of benefits would be contrary to equity and good conscience.

#### **R994-405-302. Failure to Accept a Referral.**

(1) Definition of a Referral. A referral is when the department provides information about a job opening to the

claimant and the claimant is given the opportunity to apply. The information must meet the requirements of R994-405-301(2)(b).

(2) Failure to Accept a Referral. A claimant fails to accept a referral when he or she prevents or discourages the Department from providing the necessary referral information. Failing to respond to a notice to contact the Department for the purpose of being referred to a specific job is the same as refusing a referral for possible employment.

(3) If there was a suitable job opening to which the claimant would have been referred, benefits will be denied unless good cause is established for not responding as directed, or the elements of equity and good conscience are established.

**R994-405-303. Proper Application for Work.**

A proper application for work is established if the claimant does those things normally done by applicants who are seriously and actively seeking work. Generally, the claimant must:

(1) meet with the employer at the designated time and place,

(2) report to the employer dressed and groomed in a manner appropriate for the type of work being sought, and

(3) present no unreasonable conditions or restrictions on acceptance of the available work.

**R994-405-304. Failure to Accept an Offer of Work.**

It will be considered to be a refusal of new work if the claimant engages in conduct which discourages an offer of work, places unreasonable barriers to employment, or accepts an offer of new work but imposes unreasonable conditions which causes the offer to be rescinded. A refusal of work will not result in a denial of benefits if the claimant has accepted a definite offer of full-time employment which is expected to start within three weeks or has a date of recall to full-time work expected to begin within three weeks.

**R994-405-305. Suitability of Work.**

(1) A claimant must be allowed time to seek work comparable to the most advantageous base period employment if there is a reasonable expectation of obtaining that type of work.

(2) The unemployment compensation system is not intended to exert downward pressure on existing labor standards, nor is it intended to allow claimants to restrict availability to jobs with increased wages or improved working conditions.

(3) Workers should not feel compelled, through a threatened or potential denial of benefits, to accept work under less favorable conditions than those generally available in the area for similar work. The phrase "similar work" does not mean "identical work." Similar work is work in the same occupation or a different occupation which requires essentially the same skills.

**R994-405-306. Elements to Consider in Determining Suitability.**

A claimant is not required to accept an offer of new work unless the work is suitable. Whether a job is suitable depends on the length of time the claimant has been unemployed. As the length of unemployment increases, the claimant's demands with respect to earnings, working conditions, job duties, and the use of prior training must be systematically reduced unless the claimant has immediate prospects of reemployment. The following elements must be considered in determining the suitability of employment:

(1) Prior Earnings.

Work is not suitable if the wage is less than the state or federal minimum wage, whichever is applicable, or the wage is substantially less favorable to the claimant than prevailing wages for similar work in the locality.

The claimant's prior earnings, length of unemployment and prospects of obtaining work are the primary factors in determining whether the wage is suitable. If a claimant's former wage was earned in another geographical area, the prevailing wage is determined by the new area.

(a) During the first one-third of the claim, work paying at least the highest wage earned during or subsequent to the base period, or the highest wage available in the locality for the claimant's occupation, whichever is lower is suitable, but only if there is a reasonable expectation that work can be obtained at that wage.

(b) After a claimant has received one-third of the MBA for his or her regular claim, any work paying a wage that is equal to or greater than the lowest wage earned during the base period is suitable, as long as that wage is consistent with the prevailing wage standard.

(c) After a claimant has received two-thirds of the MBA for his or her regular claim, any work paying the prevailing wage in the locality for work in any base period occupation is suitable.

(2) Prior Experience.

If an initial claim or the reopening of a claim is filed following employment at the claimant's highest skill level, work that is not expected to utilize the claimant's highest skill level is not suitable. A worker must be given a reasonable time to seek work that will preserve his or her highest skills and earning potential. However, if a claimant has no realistic expectation of obtaining employment in an occupation utilizing his or her highest skill level, work in related occupations becomes suitable.

(a) After the claimant has received one-third of the MBA for his or her regular claim, work in any of the occupations in which the claimant worked during the base period is considered suitable.

(b) After the claimant has received two-thirds of the MBA for his or her regular claim, any work that he or she can reasonably perform consistent with the claimant's past experience, training and skills is considered suitable.

(3) Working Conditions.

Working conditions refers to the provisions of the employment agreement whether express or implied as well as the physical conditions of the work. If the working conditions are substantially less favorable than those prevailing for similar work in the area, the work is not suitable. Working conditions include the following:

(a) Hours of Work.

Claimants are expected to make themselves available for work during the usual hours for similar work in the area. If work periods are in violation of the law or if the hours are substantially less favorable than those prevailing for similar work in the area, the employment is not suitable. However, the hours the claimant worked during his or her base period are generally considered suitable. A claimant's preference for certain hours or shifts based on mere convenience is not good cause for failure to accept otherwise suitable employment.

(b) Benefits in Addition to Wages.

Work is not suitable if "fringe benefits" such as life and group health insurance; paid sick, vacation, and annual leave; provisions for leaves of absence and holiday leave; pensions, annuities, and retirement provisions; or severance pay are substantially less favorable than benefits received by the claimant during the base period or than those prevailing for similar work in the area, whichever is lower.

(c) Labor Disputes or Law Violations.

Work is not suitable if the working conditions are in violation of any state or federal law, or the job opening is due to a strike, lockout, or labor dispute. If a claimant was laid off or furloughed prior to the labor dispute, and the former employer makes an offer of employment after the dispute begins, it is

considered an offer of new work. The vacancy must be presumed to be the result of the labor dispute unless the claimant had a definite date of recall, or recall has historically occurred at a similar time.

(4) Prior Training.

The type of work performed during the claimant's base period is suitable unless there is a compelling circumstance that would prevent returning to work in that occupation. If a claimant has training that would now meet the qualifications for a new occupation, work in that occupation may also be suitable, particularly if the training was obtained, at least in part, while the claimant was receiving unemployment benefits under Department approval, or the training was subsidized by another government program.

(5) Risk to Health and Safety.

Work is not suitable if it presents a risk to a claimant's physical or mental health greater than the usual risks associated with the occupation. If a claimant would be required, as a condition of employment, to perform tasks that would cause or substantially aggravate health problems, the work is not suitable.

(6) Physical Fitness.

The claimant must be physically capable of performing the work. Employment beyond the claimant's physical capacity is not suitable.

(7) Distance of the Available Work from the Claimant's Residence.

To be considered suitable, the work must be within customary commuting patterns as they apply to the occupation and area. A claimant's failure to provide his or her own transportation within the normal or customary commuting pattern in the area, or failure to utilize alternative sources of transportation when available, does not establish good cause for failing to apply for or accept suitable work. Work is not suitable if accepting the employment would require a move from the current area of residence unless that is a usual practice in the occupation.

(8) Religious or Moral Convictions.

The work must conflict with sincerely held religious or moral convictions before a conscientious objection could support a conclusion that the work was not suitable. This does not mean all personal beliefs are entitled to protection. However, beliefs need not be acceptable, logical, consistent, or comprehensible to others, or shared with members of a religious or other organized group in order to show the conviction is held in good faith.

(9) Part-time or Temporary Work.

Part-time or temporary work may be suitable depending on the claimant's work history. If the major portion of a claimant's base period work history consists of part-time or temporary work, then any work which is otherwise suitable would be considered suitable even if the work is part-time or temporary. If the claimant has no recent history of temporary or part-time work, the work may still be considered suitable, particularly if the claimant has been unemployed for an extended period and does not have an immediate prospect of full-time work.

**R994-405-307. New Work.**

(1) All work is performed under a contract of employment between a worker and an employer whether written, oral, or implied. The contract addresses the job duties, as well as the terms and conditions under which the work is to be performed. A substantial change in the duties, terms, or conditions of the work, not authorized by the existing employment contract, is in effect a termination of the existing contract and the offer of a new contract and constitutes a separation and an offer of new work.

(2) The provisions of R994-405-310 are used to determine if the new contract constitutes suitable work. A request to perform different duties that are customary in the occupation

and that do not result in a loss of skills, wages, or benefits, does not constitute an offer of a new work, even if those duties are not specified as part of the official job requirements. The contract of employment has not changed if it is customary for workers to perform short-term tasks involving different or new duties and those assignments do not replace the regular duties of the worker. It is not considered to be a termination of the existing contract and an offer of new work if the claimant fails to return after a vacation, with or without pay, or a short-term layoff for a definite period. A short-term layoff must meet the requirements for a deferral under R994-403-108b(1)(c).

(3) New work is defined as:

(a) work offered by an employer for whom the individual has never worked;

(b) work offered by an individual's current employer involving duties, terms, or conditions substantially different from those agreed upon as part of the existing contract of employment; or

(c) reemployment offered by an employer for whom the individual is not working at the time the offer is made, whether the conditions of employment are the same or different from the previous job.

**R994-405-308. Burden of Proof.**

(1) The statute requires that the wage, hours, and other conditions of the work shall not be substantially less favorable to the individual than those prevailing for similar work in the area in order to be considered suitable work. The Department has the burden to prove that the work offered meets these minimum standards before benefits can be denied. Before benefits may be denied, the Department must show:

(a) the job was available,

(b) the claimant had an opportunity to learn about the conditions of employment,

(c) the claimant had an opportunity to apply for or accept the job, and

(d) the claimant's action or inaction resulted in the failure to obtain the job.

(2) When the Department has established all of the elements in paragraph (1) of this subsection, a disqualification must be assessed unless it can be established that the work was not suitable, that there was good cause for failing to obtain the job, or the claimant or the Department can show that a disqualification would be against equity and good conscience.

(3) The Department has the option, but not the obligation, to review Department records concerning the claimant's wages and work history to determine suitability in cases where the claimant has not provided a reason for refusing the job, or the claimant's stated reason for refusing the job was for a reason other than suitability. In these cases, department intervention would only be appropriate if the available information establishes that a denial would be an affront to fairness.

**R994-405-309. Period of Ineligibility.**

(1) The disqualification period imposed under Subsection 35A-4-405(3) shall include the week in which the claimant's action or inaction resulted in the failure to obtain employment or the first week the work was available, whichever is later. The disqualification shall continue until the claimant has performed services in bona fide covered employment and earned wages equal to at least six times his or her WBA.

(2) A disqualification will be assessed as of the effective date of a new claim if the claimant refused an offer of suitable work after his or her last job ended and prior to the effective date of the claim. A disqualification will also be assessed as of the reopening date, if the claimant refused an offer of suitable work after his or her last job ended and prior to the reopening date.

(3) Disqualifications assessed in a prior benefit year shall

continue into the new benefit year and until the claimant has earned six times his or her WBA in subsequent bona fide covered employment.

**R994-405-310. Good Cause.**

(1) Good cause for failing to accept available work is established if the work is not suitable or accepting the job would cause hardship which the claimant was unable to overcome. Hardship can only be established if the claimant can show that the employment would result in actual or potential physical, mental, economic, personal, or professional harm.

(2) Good cause is limited to circumstances which were beyond the claimant's control or were compelling and reasonable.

(3) A claimant may have good cause for failing to obtain employment due to personal circumstances if acceptance of the employment would cause a substantial hardship and there are no reasonable alternatives. However, if a personal circumstance prevents the acceptance of suitable employment, there is a presumption the claimant is not able or available for work.

(4) Good cause is not established if a claimant refuses suitable work because the work will interfere with school or training. Claimants attending school full-time with Department approval are not required to seek work.

**R994-405-311. Equity and Good Conscience.**

A claimant will not be denied benefits for failing to apply for or accept work if it would be contrary to equity and good conscience, even though good cause has not been established. If there were mitigating circumstances and a denial of benefits would be unreasonably harsh or an affront to fairness, benefits may be allowed. A mitigating circumstance is one that may not be sufficiently compelling to establish good cause, but would motivate a reasonable person to take similar action. In order to establish eligibility under the equity and good conscience standard the following elements must be shown:

(1) Reasonableness.

The claimant must have acted reasonably and the refusal of work was logical, sensible, or practical.

(2) Continuing Attachment to the Labor Market.

The claimant must show evidence of a genuine and continuing attachment to the labor market by making an active and consistent effort to become reemployed. The claimant must have a realistic plan for obtaining suitable employment and show evidence of employer contacts prior to, during, and after the week the job in question was available.

**R994-405-401. Strike - General Definition.**

Strikes and lockouts, except where prohibited by law, are frequently used by labor and management in the negotiation process. The purpose of Subsection 35A-4-405(4) is to prevent workers from receiving benefits when work is not being performed due to a strike.

**R994-405-402. Elements Necessary for a Disqualification.**

All of the following elements, as defined by this rule, must be present before a disqualification will be assessed under Subsection 35A-4-405(4):

(1) the claimant's unemployment must be the result of an ongoing strike,

(2) the strike must involve workers at the factory or establishment of the claimant's last employment,

(3) the strike must have been initiated by the workers,

(4) the employer must not have conspired, planned or agreed to foment a strike,

(5) there must be a stoppage of work,

(6) the strike must involve the claimant's grade, group or class of workers,

(7) the strike must not have been caused by the employer's

failure to comply with State or Federal laws governing wages, hours or other conditions of work.

**R994-405-403. Unemployment Due to a Strike.**

(1) The claimant's unemployment must be the result of an ongoing strike. A strike exists when combined workers refuse to work except upon a certain contingency involving concessions either by the employer, or the bargaining unit. A strike consists of at least four components in addition to the suspended employer-employee relationship:

(a) a demand for some concession,

(b) a refusal to work with intent to bring about compliance with demands,

(c) an intention to return to work when an agreement is reached, and

(d) an intention on the part of the employer to re-employ the same employees or employees of a similar class when the demands are acceded to or withdrawn or otherwise adjusted.

(2) A strike may exist without such actions as a proclamation preceding a stoppage of work or pickets at the business or industry, announcing an intent and purpose to go out on strike. Although a strike involves a labor dispute, a labor dispute can exist without a strike and a strike can exist without a union. The party or group who first resorts to the use of economic sanctions to settle a dispute must bear the responsibility. A strike occurs when workers withhold services. A lockout occurs when the employer withholds work because of a labor dispute including: the physical closing of the place of employment, refusing to furnish available work to regular employees, or by imposing such terms on their continued employment so that the work becomes unsuitable or the employees could not reasonably be expected to continue to work.

(3) The following are examples of when unemployment is due to a strike:

(a) a strike is formally and properly announced by a union or bargaining group, and as a result of that announcement, the affected employer takes necessary defensive action to discontinue operations; or

(b) after a strike begins the employer suspends work because of possible destruction or damage to which the employer's property would not otherwise be exposed, provided the measures taken are those that are reasonably required; or

(c) if the employer is not required by contract to submit the dispute to arbitration and the workers ceased working because the employer rejects a proposal by the union or bargaining group to submit the dispute to arbitration; or

(d) upon the expiration of an existing contract, whether or not negotiations have ceased, the employer is willing to furnish work to the employees upon the terms and conditions in force under the expired contract.

(4) The following are examples of when unemployment is not due to a strike:

(a) the claimant was separated from employment for some other reason which occurred prior to the strike, for example: a quit, discharge or a layoff even if the layoff is caused by a strike at an industry upon which the employer is dependent; or

(b) the claimant was replaced by other permanent employees; or

(c) the claimant was on a temporary lay-off, prior to the strike, with a predetermined date of recall; however, if the claimant refuses to return to his regular job when called on the predetermined date his subsequent unemployment is due to a strike; or

(d) as a result of start up delays, the claimant is not recalled to work for a period after the settlement of the strike; or

(e) the claimant is unemployed due to a lockout. The immediate cause of the work stoppage determines if it is a strike or a lockout depending on who first imposes economic

sanctions. A lockout occurs when:

(i) the employer takes the first action to suspend operations resulting from a dispute with employees over wages, hours, or working conditions, or

(ii) an employer, anticipating that employees will go on strike, but prior to a positive action by the workers, curtails operations by advising employees not to report for work until further notice. (Positive action can include a walkout or formal announcement that the employees are on strike. In this case the immediate cause of the unemployment is the employer's actions, even if a strike is subsequently called.), or

(iii) upon expiration of an existing contract where the employer is seeking to obtain unreasonable wage concessions, the employees offer to work at the rate of the expired agreement and continue to bargain in good faith.

(f) the employer refuses to agree to binding arbitration when the contract provides that the dispute shall be submitted to arbitration.

**R994-405-404. Workers at Factory or Establishment of the Claimant's Last Employment.**

(1) "At the factory or establishment" of last employment may include any job sites where the work is performed by any members of the grade, group or class of employees involved in the labor dispute, and is not limited to the employer's business address.

(2) "Last employment" is not limited to the last work performed prior to the filing of the claim, but means the last work prior to the strike. If the claimant becomes unemployed due to a strike, the provisions of Subsection 35A-4-405(4) apply beginning with the week in which the strike began even if the claimant did not file for benefits immediately and continues until the strike ends or until the claimant establishes subsequent eligibility as required by Subsection 35A-4-405(4)(c). For example: the claimant left work for employer A due to a strike, and then obtained work for employer B where he worked for a short period of time before being laid off due to reduction of force. If he then files for unemployment benefits, and cannot qualify monetarily for benefits based solely on his employment with employer B, the provisions of Subsection 35A-4-405(4) would apply if all the other elements are present.

**R994-405-405. Fomented by the Employer.**

A strike will not result in a denial of benefits to claimants if the employer or any of his agents or representatives conspired, planned or agreed with any of his workers in promoting or inciting the development of the strike.

**R994-405-406. Work Stoppage.**

For a work stoppage to be disqualifying, it must be because of a strike, it is not necessary for the employer to be unable to continue to conduct business, however, there is generally a substantial curtailment of operations as the result of the labor dispute. For the purposes of this rule, a work stoppage exists when an employee chooses to withhold his services in concert with fellow employees.

**R994-405-407. Grade, Group or Class of Worker.**

(1) A claimant is a member of the grade, group or class if:

(a) the dispute affects hours, wages, or working conditions of the claimant, even if he is not a member of the group conducting the strike or not in sympathy with its purposes, or

(b) the labor dispute concerns all of the employees and causes, as a direct result, a stoppage, of their work, or

(c) the claimant is covered either by the bargaining unit or is a member of the union, or

(d) he voluntarily refuses to cross a peaceful picket line even when the picket line is being maintained by another group of workers.

(2) The burden of proof is on the claimant to show that he is not participating in any way in the strike. A claimant is not included in the grade, group or class if:

(a) he is not participating in, financing, or directly interested in the dispute or is not included in any way in the group that is participating in or directly interested in the dispute, or

(b) he was an employee of a company which has no work for him as a result of the strike, but the company is not the subject of the strike and whose employee's wages, hours or working conditions are not the subject of negotiation, or

(c) he was an employee of a company which is out of work as a result of a strike at one of the work sites of the same employer but he is not participating in the strike, will not benefit from the strike, and the constitution of the union leaves the power to join a strike with the local union, provided the governing union has not concluded that a general strike is necessary, or

(d) work continues to be available after a strike begins and the claimant reported for work and performed work after the strike began and was subsequently unemployed.

**R994-405-408. Strike Caused by Employer Non-Compliance with State or Federal Laws.**

If the strike was caused by the employer's failure to comply with State or Federal laws governing wages, hours, or working conditions, the provisions of Subsection 35A-4-405(4) will not apply. However, to establish that the strike was caused by unlawful practices, the issue of an unfair labor practice must be one of the grievances still subject to negotiation at the time the strike occurs. The making of such an allegation after the strike begins will not enable workers to claim that such a violation was the initiating factor in the strike.

**R994-405-409. Period of Disqualification.**

Subsection 35A-4-405(4) applies beginning with the week the strike begins, however, for administrative convenience, the disqualification will be assessed with the effective date of the new or reopened claim and continue as long as all the elements are present. If the claimant has other employment subsequent to the beginning of the strike which is insufficient when solely considered to qualify for a new claim, the disqualification under Subsection 35A-4-405(4) would continue to apply. It is not necessary for the employer involved in the strike to be a base period employer for a disqualification to be assessed.

**R994-405-410. Wages Used to Establish Claim as Provided by Subsection 35A-4-405(4)(c).**

(1) Ineligibility following a strike. A disqualification must be assessed if the elements for disqualification are present, even if the claim is not based on employment with the employer involved in the labor dispute. Wages for an employer not involved in the strike which are concurrent with employment for an employer that is involved in the strike will not be used independently to establish a claim in order to avoid a disqualification.

(2) New claim following strike. If a claimant is ineligible due to a strike, wages used in establishing a new claim must have been earned after the strike began. The job does not have to be obtained after the strike but only those wage credits obtained after the strike may be used to establish a new claim. If the claimant has sufficient wages to qualify for a new benefit year after his unemployment due to a strike, a new claim may be established even if the claimant has a current benefit year under which benefits have been denied due to a strike.

(3) Redetermination after strike ends. No wages from the employer involved in the strike will be used to compute the new benefit amount, until after the provisions of Subsection 35A-4-405(4) no longer apply. Any such redetermination must be

requested by the claimant and will be effective the beginning of the week in which the written request for a redetermination is made.

**R994-405-411. Availability.**

If benefits are not denied under Subsection 35A-4-405(4), the claimant's availability for work will be considered including the amount of time spent walking picket lines and working for the bargaining unit. A refusal to seek work except with employers involved in a lockout or strike is a restriction on availability which will be considered in accordance with Subsection 35A-4-405(3) and R994-403-115c. A refusal to accept work with an employer involved in a lockout or strike is not disqualifying.

**R994-405-412. Suitability of Work Available Due to a Strike.**

Subsection 35A-4-405(3)(b) provides that new work is not suitable and benefits shall not be denied if the position offered is vacant due directly to a strike, lockout or other labor dispute. If the claimant was laid off or furloughed prior to the strike, and an offer of employment is made after the strike begins by the former employer, it is considered an offer of new work. The vacancy must be presumed to be the result of the strike unless the claimant had a definite date of recall, or recall has historically occurred at a similar time.

**R994-405-413. Strike Benefits.**

Strike benefits received by a claimant which are paid contingent upon walking a picket line or for other services are reportable income which must be deducted from any weekly benefits to which the claimant is eligible in accordance with provisions of Subsection 35A-4-401(3). Money received for performance of services in behalf of a striking union may not be subject wages used as wage credits in establishing a claim. However, money received as a general donation from the union treasury which requires no personal services is not reportable income.

**R994-405-701. Payments Following Separation - General Definition.**

The intent of Subsection 35A-4-405(7) is to withhold payment of unemployment insurance benefits to claimants during periods when they are entitled to receive remuneration from an employer in the form or vacation or severance payments. Even if vacation or severance payments do not meet the statutory definition of wages, they are still disqualifying to the extent they exceed a claimant's weekly benefit amount.

**R994-405-702. Elements.**

(1) Before a disqualification is assessed, the claimant must be entitled to vacation or severance pay in addition to regular wages for work performed which is attributable to weeks following the last day worked.

(a) Entitled To Receive. The claimant may not receive unemployment benefits for any week if he is eligible to receive remuneration from the employer whether the payment has already been made or will be made. However, the payments will only be deducted if the claimant is entitled to receive the payment during the benefit year. A claimant is not considered "entitled to receive" the payment if it will not be paid until a subsequent benefit year, as in the case of someone who will receive lump sum separation payments every six months for several years. The week in which the payment is actually received is not controlling in determining when the remuneration is deductible. It is not necessary for the employer to assign such remuneration to a particular week on his payroll records.

(b) Severance or Vacation Pay Which Is Subject to

Negotiation. If there is a question of whether the claimant is entitled to receive a payment and the matter is being negotiated by the court, the Department of Workforce Services, a union, or the employer, it has not been established that the claimant is entitled to remuneration and therefore a disqualification cannot be assessed. However, when it is determined that the claimant is entitled to receive remuneration from the employer, a disqualification would then be assessed beginning with the week in which the agreement is made establishing the right to remuneration, provided the other elements are present. An overpayment would be established as appropriate.

(2) Vacation Pay.

Vacation pay is NOT considered earned during the period of time the claimant worked to qualify for the vacation pay, even if the amount of vacation pay is dependent upon length of service.

(3) Separation Payments.

(a) Any form of separation payment may subject the claimant to disqualification under Subsection 35A-4-405(7) if the payment would not have been made except for the severance of the employment relationship. If the payment is given at the time of the separation but would have been made even if the claimant was not separated, it is not a separation payment, but is considered earnings assignable to the period of employment subject to the provisions of Subsection 35A-4-401(7). The controlling factor is not the method used by the employer to determine the amount of the payment, but the reason the payment is being made. The history of similar payments is indicative of whether the payment is a bonus or is being made as the result of the separation. Whether a payment is based on the number of years of service or some other factor does not determine if the payment is disqualifying. When a business changes owners and some employees are retained by the new owners, but all employees receive a similar payment from the prior owner, the payment is not made subject to the separation of the employees and therefore would be a bonus and not a separation payment. However, accrued sick leave, which is paid at the time of separation not because of an illness or injury, is not considered a separation payment and will not result in a disqualification or a reduction in benefits under Subsection 35A-4-405(7).

(b) Payments for Remaining on the Job.

When an employer offers an additional payment for remaining on the job until a job is completed, the additional remuneration will be considered an increased wage or bonus attributable to a period of time prior to the date of separation, not a severance payment.

(4) Attributable to Weeks Following the Last Day of Work.

All vacation and severance payments are attributable to a period of time following the last day worked after a permanent separation and assigned to weeks according to the following guidelines:

(a) Designated as Covering Specified Weeks. If the employer specified that the payment is for a number of weeks which is consistent with the average weekly wage, the payment is attributable to those weeks. For example, if the claimant was entitled to two weeks of vacation or severance pay at his regular wage or salary, and the last day worked was a Wednesday, his normal working days were Monday through Friday, he would be considered to have two weeks of pay beginning on the Thursday following his last day of work. His earnings for the first week, including his wages would normally exceed his weekly benefit amount; he would have a full week of pay for the second week, and he would have reportable earnings for Monday, Tuesday and Wednesday of the following week.

(b) Lump Sum Payments. A lump sum payment is assigned to a period of time by comparison to the employee's most recent rate of pay. The period of assignment following the

last day of work is equivalent to the number of days during which the worker would have received a similar amount of his regular pay. For example, if the claimant received \$500 in severance pay, and he last earned \$10 an hour while working a 40 hour week, his customary weeks earnings were \$400 a week. He would be denied for one week and must report \$100 as if it were earnings on the claim for the following week.

(c) **Payments Less than Weekly Benefit Amount.** If dismissal or separation payments are paid out over a specific period of time and the claimant does not have the option to receive a lump sum payment, the claimant will be entitled to have benefits reduced as provided by Subsection 35A-4-401(3), pursuant to offset earnings if the amount attributed to the week is less than the weekly benefit amount.

(d) If the claimant is entitled to both vacation and separation pay, the payments are assigned consecutively, not concurrently.

(5) **Temporary Separation.**

A claimant is not entitled to benefits if it is established that the week claimed coincides with a week:

(a) **Designated as a week of vacation.** If the separation from the employer is not permanent and the claimant chooses to take his vacation pay, or he is filing during the time previously agreed to as his vacation, the vacation pay is assigned to that week. If the employer has prepaid vacation earnings and at the time of a temporary layoff the claimant may still take his vacation time after being recalled, the vacation pay is not assigned to the weeks of the layoff unless the claimant chooses to have the vacation pay assigned to those weeks, or the employer, because of contractual obligations, must pay any outstanding vacation due the claimant.

(b) **Designated as a vacation shutdown.** If the claimant files during a vacation shutdown, and he is entitled to vacation pay equivalent to the length of the vacation shutdown, the vacation pay is attributable to the weeks designated as a vacation shutdown, even if the claimant chooses to actually take his time off work before or after the vacation shutdown.

**R994-405-703. Period of Disqualification.**

Only those payments which are greater than the claimant's weekly benefit amount require a disqualification. Payments which are less than the weekly benefit amount are treated the same as earnings and deductions are made as provided by Subsection 35A-4-401(3).

**R994-405-704. Disqualifying Separations.**

If the claimant has been disqualified as the result of his separation under either Subsections 35A-4-405(1) or 35A-4-405(2), the vacation or separation pay cannot be used to satisfy the requirement to earn six times the weekly benefit amount in bona fide covered employment.

**R994-405-705. Base Period Wages.**

Vacation pay is used as base period wages. Separation payments which are attributable to weeks following the separation can be used as base period wages only if the employer verifies that he was legally required to make such payments as provided in Section 35A-4-208. The separation payments which are treated as wages will be assigned to weeks in the manner explained in Subsections R994-405-702(3). The weeks will be attributable to the quarter in which they fall.

**R994-405-801. Services in Education Institutions - General Definition.**

The intent of Subsection 35A-4-405(8) is to deny unemployment benefits during periods when the claimant's unemployment is due to school not being in session provided the claimant expects to return to work when school resumes. Schools have traditionally not been in session during the

summer months, holidays and between terms. This circumstance is known to employees when they accept work for schools. It is for this reason that some people choose to work for schools, although many school employees routinely obtain employment during the vacation between regular school years. In extending coverage to school employees, it was intended that such coverage would only be available when the claimant is no longer attached in any way to a school and when the reason for the unemployment is not due to normal school recesses, or paid sabbatical leave.

**R994-405-802. Elements Required for Denial.**

(1) The disqualifying provisions of Subsection 35A-4-405(8) apply only if all of the following elements are present.

(a) The Claimant is an Employee of an Educational Institution.

The claimant's benefits are based on employment for an educational institution or a governmental agency established and operated exclusively for the purpose of providing services to an educational institution. The service performed for the educational institution may be in any capacity including professional employees teachers, researchers and principals and all non-professional employees including secretaries, lunch workers, teacher's aides, and janitors.

(b) School is Not in Session or the Claimant is on a Paid Sabbatical Leave.

Benefits are only denied if the week for which benefits are claimed is during a period between two successive academic years or a similar period between two regular terms whether or not successive, during a period of paid sabbatical leave provided in the contract, or during holiday recesses and customary vacation periods.

(c) The claimant has a reasonable assurance of returning to work for an educational institution at the next regular year or term.

**R994-405-803. Educational Institution (School).**

(1) To be considered an educational institution it is not necessary that the school be non-profit or that it be funded or controlled by a school district. However, the instruction provider must be sponsored by an "institution" which meets all of the following elements.

(a) An institution in which participants, trainees, or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher.

(b) The course of study or training which it offers is academic, technical, trade, or preparation for gainful employment in an occupation.

(c) The instruction provider is approved or, licensed to operate as a school by the State Board of Education or other government agency that is authorized to issue such license or permit.

(2) Head start programs operated by community based organizations, Indian tribes, or governmental associations as a side activity in a sponsorship role do not meet the definition of educational institution and therefore are not subject to the disqualifying provisions of this rule.

**R994-405-804. Employee for an Educational Institution.**

(1) All employees of an educational institution, even though not directly involved in educational activities, are subject to the disqualifying provisions of Subsection 35A-4-405(8). Also employees of a state or local governmental entity are not eligible for benefits provided the entity was established and operated exclusively for the purpose of providing services to or on behalf of an educational institution. For example, if a school bus driver is employed by the city rather than the school

district, he is not subject to a disqualification under Subsection 35A-4-405(8).

(2) Ineligibility under Subsection 35A-4-405(8) shall only apply if any of the benefits are based in service for an educational institution. If the claimant had sufficient non-school employment in the base period to qualify for benefits, he may establish a claim based only on the non-school employment and benefits would be payable during the period between successive school terms, provided he is otherwise eligible. If the claimant continues to be unemployed when school commences, he may be entitled to benefits based upon the combined school and non-school employment. In most cases this would result in higher weekly and maximum benefit amounts, less the benefits already received. A revision of the monetary determination will be made effective the beginning of the week in which the claimant submits a written request for a revision to include school employment.

#### **R994-405-805. Reasonable Assurance.**

(1) "Reasonable assurance" is defined as a written, oral, or implied agreement that the employee will perform service in the same or similar capacity during the ensuing academic year, term, or remainder of a term.

(2) Reasonable Assurance Presumed.

A claimant is presumed to have implied reasonable assurance of employment during the next regular school year or term with an educational institution if he worked for the educational institution during the prior school term and there has been no change in the conditions of his employment which would indicate severance of the employment relationship. Under such circumstances benefits initially must be denied.

(3) Advised on Non-Recall.

If the claimant has been advised by proper school administrative authorities that he will NOT be offered employment when the next school term begins, benefits would not be denied under Subsection 35A-4-405(8).

(4) Offer of New Work by an Educational Institution.

Reasonable assurance is not limited to the same school where the claimant was employed during the base period or the same type of work, but includes any bona fide offer of suitable work at any educational institution. Reasonable assurance exists if the terms and conditions of any new work offered in the second term are not substantially less suitable, as defined by Subsection 35A-4-405(3), than the terms and conditions of the work performed during the first term. A disqualification under Subsection 35A-4-405(8) would begin with the week the employment is offered, and a disqualification under Subsection 35A-4-405(3) may begin with the week in which the offered employment would become available. For example: if a claimant was advised that due to reduction in enrollment he will not be recalled by the school where he last worked as a teacher's aide, but he then obtains an offer of employment as a librarian from another school or another school district, a disqualification under Subsection 35A-4-405(8) would be assessed beginning with the week in which the offer of employment was made to the claimant, and a disqualification under Subsection 35A-4-405(3) would begin at the beginning of the school term if the work is not accepted.

(5) Separated Due to a Quit or Discharge.

If the employment relationship is severed either due to a quit or discharge, the provisions of Subsection 35A-4-405(8) do not apply, but Subsections 35A-4-405(1) or 35A-4-405(2) may apply and a disqualification, if assessed, would begin with the effective date of the claim even if the separation is at the end of a regular school term.

#### **R994-405-806. Substitute Teachers.**

A substitute teacher is treated the same as any other school employee. If the individual worked as a substitute teacher

during the prior school term, he is presumed to have a reasonable assurance of having work under similar conditions during the next term and benefits must be denied when school is not in session. However, for any weeks that he is not called to work when school is in session, a disqualification under Subsection 35A-4-405(8) would not apply.

#### **R994-405-807. Period of Disqualification.**

The effective date of the unemployment insurance claim does not have to begin between regular school terms for a disqualification to apply, but benefits shall be denied for a week which begins during a period when school is not in session or the claimant is on a paid sabbatical leave. A disqualification under Subsection 35A-4-405(8) can only be assessed for weeks that are:

(1) between two successive academic years or terms, or

(2) during a break in school activity which is between two regular terms even if the terms are not successive, including school vacations and holidays as well as the break between academic terms, or

(3) for weeks when the claimant is on a paid sabbatical leave if the claimant worked during the prior school year and has a contract or reasonable assurance of working in any capacity for an educational institution in the school term following the sabbatical leave. When the claimant is on an unpaid sabbatical leave benefits may be allowed provided he is otherwise eligible including the eligibility requirements of Subsection 35A-4-403(1)(c).

#### **R994-405-808. Retroactive Payments.**

Retroactive payments under Subsection 35A-4-406(2) may be made after a disqualification has been assessed only if the claimant:

(1) is NOT a professional employee in an instructional, research or administrative capacity, and

(2) was not offered an opportunity for employment for an educational institution for the second academic years or terms, and

(3) filed weekly claims in a timely manner as instructed, and

(4) benefits were denied solely by reason of Subsection 35A-4-405(8).

#### **R994-405-1001. Aliens - General Definition.**

The protection provided by the unemployment insurance program is limited to American citizens and people who are lawfully admitted to the United States. It is not the intent of this program to subsidize people who have worked unlawfully or who cannot legally accept employment. All claimants will be required, as a condition of eligibility, to sign a declaration under penalty of perjury stating whether the individual is a citizen or national of the United States, or if not, whether the individual is lawfully admitted to the United States with permission to work. A claimant who certifies to lawful admission must present documentary evidence. A denial of benefits under Subsection 35A-4-405(10) can only be made if there is a preponderance of evidence that the claimant is not legally admitted to work. Benefits must be denied to claimants who are NOT United States citizens unless they are lawfully present BOTH during the base period of the claim and while filing for benefits. In addition, to be considered "available for work," a claimant must be legally authorized to work at the time benefits are claimed.

#### **R994-405-1002. Alien Status.**

(1) An alien may establish wage credits and qualify for benefit payments if he was:

(a) Lawfully admitted for permanent residence at the time the services were performed, or

(b) Lawfully present for the purpose of performing the

services, or

(c) Permanently residing in the United States under color of law at the time the services were performed, or

(d) Granted the status of "refugee" or "asylee" by the Immigration and Nationality Act, United States Code Title 8, Section 1101 et seq.

(2) The status of temporary residence or the granting of work authorization does not confer retroactive lawful presence for purposes of monetary entitlement or work authorization.

**R994-405-1003. Lawfully Admitted for Permanent Residence.**

An individual who is lawfully admitted for permanent residence must be given a dated employment authorization or other appropriate work permit by INS.

**R994-405-1004. Lawfully Present for the Purpose of Performing Services.**

These are aliens with work permits issued by INS who have received permission to work in the United States. Aliens who do not possess INS documentation have not been processed through INS procedures and are not lawfully present in the United States. Aliens permitted to reside in the United States temporarily have privileges accorded by INS which may include work authorization. The claimant's work authorization must be printed on the document or stamped on the form.

**R994-405-1005. Permanently Residing in U.S. Under Color of Law.**

Eligibility can be established if:

(1) The INS knows of the alien's presence and has provided the alien with written assurance that deportation is not planned, and

(2) The alien is "permanently residing" which means the INS has given the alien permission to remain in the U.S. for an indefinite period of time. Individuals who have been granted the status of refugees or have been granted asylum have been defined by the INS as individuals who are permanently residing "under color of law."

**R994-405-1006. Section 1182(d)(5)(A) of the Immigration and Nationality Act.**

For reference, 8 USC 1182(d)(5)(A) includes people, referred to as parolees, admitted under specific authorization given by the United States Attorney General and those paroled into the United States temporarily for emergent reasons or for reasons rooted in the public interest, including crew members refused shore leave which are admitted on parole for medical treatment. All of these individuals are issued INS forms endorsed to show work status.

**R994-405-1007. Procedural Requirements.**

(1) Verification of Status.

If the claimant states he is an alien, he must present documentary evidence of his alien status. Acceptable evidence includes:

(a) An alien registration document or other proof of immigration registration from INS that contains the individual's alien admission number or alien file number, or

(b) Other documents which constitute reasonable evidence indicating a satisfactory alien status such as a passport.

(2) Verification by the Department.

The Department must verify documentation referred to in Subsection R994-405-1007(1) with the INS through an automated system or other system designated by the INS. This system must protect the claimant's privacy as required by law. The Department must use the individual's alien file number or alien admission number as the basis for verifying the alien status. If the claimant provides other documents, the

Department must submit a photocopy of the documents to INS for verification. Pending verification of the alien's documentation, the Department may not delay, deny, reduce or terminate the claimant's eligibility for benefits.

(3) Claimant Rights.

(a) Reasonable Opportunity to Submit Documentation.

The Department will provide the claimant with a reasonable opportunity to submit documentation establishing satisfactory alien status if such documentation is not presented at the time of filing. The Department will also provide the claimant reasonable opportunity to submit evidence of satisfactory alien status if the documentation presented is not verified by the INS. The claimant will initially be given three weeks to provide documentation or advise the Department as to any circumstances which would justify an extension of the time allowed. Failure to provide documentation or request an extension of time will result in a denial of benefits under Subsection 35A-4-403(1)(e) or Sections R994-403-122e through R994-403-128e.

(b) Disqualification Restrictions.

The Department will not delay, deny, reduce or terminate a claimant's eligibility for benefits on the basis of alien status until a reasonable opportunity has been provided for the claimant to present required documentation or pending its verification after the claimant presents the documents. The claimant will be considered at fault in the creation of any overpayment, if benefits were paid based on the claimant's unverifiable assertion of legal admission.

(c) Notice of Disqualification.

When benefits are denied by reason of alien status, a written, appealable decision must be issued to the claimant stating the evidence upon which the denial is based, the findings of fact, and the conclusion of law.

**R994-405-1008. Preponderance of Evidence.**

Benefits will be denied only if the preponderance of evidence supports denial. Aliens are presumed lawfully admitted or lawfully present under the Immigration and Nationality Act until it is established by a preponderance of evidence that they are not lawfully admitted. The preponderance of evidence required to support a denial of benefits is not satisfied by a lack of evidence. Therefore, the claimant's certification as to citizenship or legal alien status should be accepted while INS is being contacted for verification.

**R994-405-1009. Availability for Work.**

While filing for benefits, an alien must show authorization to work to be considered available for work as required under Subsection 35A-4-403(1)(c). An alien with temporary resident status may be granted authorization to engage in employment in the United States. In such cases the alien will be provided with an "employment authorized" endorsement or other appropriate work permit. Termination of "temporary residence status" can be made by the United States Attorney General only upon a determination that the alien is deportable.

**R994-405-1010. Periods of Ineligibility.**

Any wages earned during a period of time when the alien was not in legal status, cannot be used in the monetary determination, and a disqualification must be assessed under Subsection 35A-4-405(10). If the claimant was in legal status during a portion of the base period, only wages earned during that portion may be used to establish a claim. If the alien did earn sufficient wage credits while in legal status, but is no longer in legal status at the time the benefits are claimed, he is ineligible under Subsection 35A-4-403(1)(c) because he cannot legally obtain employment.

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